



Ref. No.: PF/9  
May 7, 2012

Shri P. K. Sinha  
Secretary  
Ministry of Shipping  
Ports Wing, Transport Bhavan  
1, Parliament Street, New Delhi - 110 001

**Sub: Draft Captive Use Policy**

Dear Sir,

Oil & Gas play a very significant role in India's energy mix and we are heavily dependant on their import. In this context the Draft Captive Use Policy bearing reference No. PD-25021/6/2006-Pvt(pt) and titled "*Draft Policy for Award of Ports waterfront and associated land on captive user basis*" hosted recently on the website of the Ministry of Shipping is very crucial for the industry.

The Petroleum Federation of India is an apex industry Society which acts as an oil industry interface with Government, regulatory authorities and facilitates evolution of hydrocarbons related policies and regulations. It represents the industry on Government bodies, committees and task forces.

The industry members are very concerned about certain provisions of the policy since they are detrimental for not only the growth of the oil & gas industry but the growth of port based industries in general. Some of the measures proposed in the draft policy are liable to discourage large industries from locating near Major Ports.

In the interest of a more progressive Policy we are enclosing our brief para-wise suggestions on the draft Policy and urge you to kindly take a favourable view on the same.

In case you so desire, we will be happy to make a presentation in this regard.

Thanking you in anticipation of a favourable response.

Yours faithfully,

  
A. K. Arora  
Director General

Encl.: as above

✓ cc: The Secretary, Ministry of Petroleum & Natural Gas, Shastri Bhavan, New Delhi

*A. K. Arora*  
07 May 12

**Petroleum Federation of India**



**Oil Industry Comments on “Draft for Award of Ports Waterfront & Associated land on captive user basis” issued by Ministry of Shipping**

Sl. No.	Reference	Suggestion	Justification
1.	4(3) - <i>Intermediary organisations</i>	It is suggested that intermediary organizations be considered as eligible for consideration	Nowadays, corporates are opting for formation of JVs or subsidiaries for handling allied services such as cargo handling, etc. These agencies could then be termed as intermediary organizations serving the larger interest of the parent organization. Hence, such organisations should be considered as eligible for allotment of captive berths.
2.	Clause 4 (4) - <i>Additional water front and land from existing captive facility user</i>	Any request for allotment of additional waterfront or land from an existing captive facility user should be permitted without the process of any EOI/bidding	<p>It must be appreciated that a port based industry starts with certain scale of capacity and investment, and would accordingly plan the captive port facilities. By setting up the port based industry and captive port facility, such industry gets locked in that location and port. Over the years, it would be reasonable to expect such industry to grow in size and diversity, and therefore, they would need to concomitantly augment their port facilities also. Therefore, it is important that the port based industries are permitted to expand their captive port facilities in line with their industrial expansion without any fresh conditions or restrictions, as they are critically dependent upon that Port. If such flexibility for expansion is not provided, such industries will not be able to expand their plants, which would hurt industrial development in the country and dampen economic growth.</p> <p>Further, it may be appreciated that it is very risky for a port based industry</p>



Sl. No.	Reference	Suggestion	Justification
			<p>which invests several billion dollars (say Rs.30,000 to 40,000 crore) in setting up the plant/factory, to be made dependent on an external party for operating the captive facilities.</p> <p>It may be borne in mind that facilities like Crude unloading SPMS are installed with certain scale of capacity and investment with potential expansion plans to meet the future requirement &amp; should be permitted to expand their facilities.</p>
3.	Clause 5 (i) - <i>Availability of common user facility</i>	In situations where there is no demand for a particular commodity from common users, and there is demand for that commodity only from a given port based industry, such port based industry should be provided rights to develop the captive facilities.	It is quite possible only a port based industry requires bulk commodities and there are no other users. In such case, the port based industry should be encouraged to develop the captive port facilities.
4.	Clause 5 (iv) <i>Minimum Guaranteed Throughput within three years of commercial operation</i>	During initial years of commissioning, when the plant will not be operating at full capacity, It may not be feasible to achieve 70% of the optimum capacity. Therefore, MGT should be progressively increased from a reasonably lower base.	Industries like, LNG terminals are set up in phases with their expansions in line with the gas demands. With the passage of time as the demands for the gas increases, the terminals are expanded accordingly. The optimum capacity of LNG terminals varies with the expansion of such facilities. It will be difficult to achieve MGT or 70% of captive capacity in the initial years.
5.	Clause 5 (vi) - <i>Bid Security for quoting MGT and revenue payable</i>	The Bid Security shall be increased from 1% to 10% of estimated project cost.	This is to ensure that only serious and bona-fide bidders participate in the bid process. It would discourage non-serious bidders.



Sl. No.	Reference	Suggestion	Justification
6.	Clause 6 (i) - <i>Bid parameter and payment to Port Authority in bid situations</i>	<p>The proposed methodology for bid parameter, MGT and bid evaluation should be aligned in line with BOT projects.</p> <p>Currently, the evaluation criteria for BOT projects is only one viz. “Revenue share” quoted in % terms, and as such there is no bid parameter in terms of “Guaranteed throughput”. Therefore, in line with the BOT projects, the bid methodology should be changed removing the requirement to quote any MGT, and only revenue share should be kept as the bid parameter. Further in case of BOT projects, no minimum threshold for revenue share is prescribed, and the revenue share is determined through process of open and transparent bidding, and the Party quoting the highest revenue share is awarded the BOT project. It is suggested to follow the same methodology for captive facilities also.</p>	<p>The terms of the proposed Captive use Policy are significantly inferior and adverse compared to the Policy for BOT projects. For example, bidders are not required to quote any MGT (Minimum Guaranteed Throughput) in case of BOT projects. Further, no minimum threshold is prescribed for revenue share in such projects. Projects are awarded to the party quoting the highest revenue share. It would be in the interest of equity, fairness and justice that the terms of Captive use Policy are not made inferior compared to the terms of BOT policy, but are applied alike. This would also enable level playing field and bring fairness and transparency in the bid process. However, considering the fact that the bidding would be limited only to port based industries, a minimum threshold revenue share of 10% may be prescribed.</p>
7.	Clause 6 (ii) (a) - <i>Bid parameter and payment to Port</i>	<p>In cases where there is no competition, we suggest the following changes which are in line with the philosophy outlined above</p>	<p>The revenue payable to the Major Port has to be kept reasonable, as any attempt to make it high or exorbitant would adversely affect the competitiveness of the port based</p>

Sl. No.	Reference	Suggestion	Justification
	<i>Authority in single bid situation</i>	for Clause 6(i): a) No MGT should be prescribed b) Revenue share should be kept reasonable at less than 15% in order to protect the cost competitiveness of the port based industry.	<p>industry. It may be noted that the port based industry would be critically dependent upon the captive port facilities, and logistics cost would have a significant impact on its competitive position in the market place where margins are shrinking gradually due to opening up of the economy and increasing competition from local and international industry players</p> <p>Further, it must be appreciated that the entire investment in creation of the captive port facilities would be made by the captive facilities developer, who would also be responsible for complete operations &amp; maintenance at its cost and as such, the Port will not be providing any infrastructure or rendering any handling services or incurring any cost. Also it is important to note that currently the users having captive facilities in ports are paying charges which are based on certain fixed percentage of the wharfage charges only, and not based on any composite charge.</p>
8.	Clause 6 (ii) (c) - <i>Vessel related charges</i>	In case an existing berth is provided to the port based industry, the Port should either collect the berth hire charges or recover the cost of the Berth at the time of handover, but not both.	To make it fair & reasonable and ensure there is no duplication of charges
9.	Clause 6 (iii) - <i>Dredging</i>	It is the responsibility of the major port to undertake capital and maintenance dredging, both in the channel and	The suggestion is also in-line with the practice followed in BoT port projects.



Sl. No.	Reference	Suggestion	Justification
		alongside the berth earmarked for captive use.	
10.	6(iv) - <i>Navigational safety</i>	Navigational safety during operations and compliance with all requirements of the port like MARPOL, ISPS code compliance etc. should be the responsibilities of port.	As the pilots & tug boats are provided by port, navigational safety should be the responsibility of the port. Else, there are chances that navigational responsibilities will clash with port regulations/ authorities and in case of any incident; it may be difficult to fix a clear responsibility.
11.	Clause 6 (v) & (vi) - <i>Cargo of other users</i>	Whenever surplus capacity is available in the captive facility, or where there is demand from other port users, the Captive user should be entitled to handle such third party cargo under intimation to the Port.  Flexibility should also be given to the Captive user to handle non specified cargo.  These measures will enhance throughput and revenue for the port.	To effectively utilise surplus capacity of the captive facility, and also cater to the demand from other users. The other users will stand to benefit significantly due to wider choice, increased competition, reduced tariff and better services.  Further, where the demand for specified cargo is low, flexibility should be given to handle non specified cargo in order to ensure optimal utilisation of the captive facility capacity. This flexibility is specifically required in POL industry where there are frequent changes in usage of dedicated products/ grades
12.	Clause 6 (vi) - <i>Collection of charges</i>	It has been mentioned that in case captive facility is not fully utilised, the port shall have the right to assign the use of the facilities to other users and collect charges such as wharfage, port dues, pilotage, etc. from such other users.  We suggest that in addition	The Captive user is responsible for making the entire investment and also O&M of the captive facility



Sl. No.	Reference	Suggestion	Justification
		to berth hire charges the wharfage should also be passed on to the captive user/concessionaire.	
13.	Clause 6 (vii) - <i>Minimum Guaranteed Throughput (MGT)</i>	<p>MGT for termination of the Concession should be reduced from 70% of optimum capacity in three years to a more reasonable level of less than 50%.</p> <p>In case of LNG projects, however, a nominal penalty may be imposed instead of the stringent provision of termination of concession, since they are created at substantial cost.</p>	<p>LNG Terminals are highly capital intensive infrastructure projects. They are set up in phases with their expansions in line with the gas demands. With the passage of time as the demand for the gas increases, the terminals are expanded accordingly. The optimum capacity of LNG terminals varies with the expansion of such facilities.</p> <p>Their execution is synchronized with back to back arrangements of LNG sourcing Agreement with Overseas LNG Supplier, LNG Shipping, and Gas Agreement with Customers and availability of pipeline infrastructure etc.</p> <p>Since the RLNG off take will be dependent on conversion of existing liquid fuel customers to gas and/ or addition of new Greenfield capacity, the capacity utilization is gradual. The capacity build up cannot take place as envisaged in the captive policy.</p> <p>Also the capacity of various equipments is optimized based on future plans. Particularly Jetty capacity will be much higher than the land terminal capacity.</p>