

30th August 2012

To:

Joint Secretary (Exploration),
Ministry of Petroleum and Natural Gas, Government of India,
Shastri Bhavan, New Delhi - 110001

Dear Shri A. Giridhar,

We are pleased to respond to your invitation for comments on the draft policy for exploration and exploitation of shale gas in India. Our comments are divided into four categories of issues: bid evaluation and contractual issues, governance issues, socio-environmental issues and other issues.

Bid evaluation and contractual issues

1. **Production linked payments (PLP):** It is proposed that ad valorem PLP would be linked to different slabs of production rates. We suggest that it would be preferable to ask for a single bid for the ad-valorem PLP rather than base it on production rate slabs for the following reasons:
 - a. Having multiple slabs would provide perverse incentives to the operator to control production rates to minimize PLP, rather than maximize public interest.
 - b. The draft policy does not state how the winner would be chosen from multiple bidders in the presence of bids for multiple slabs of PLP.
 - c. If the decision is made on the basis of an assumed production profile (as is the case with CBM), the assumed profile may not match the real possible profile since the block would not have been sufficiently explored at bidding time – thus making bid evaluations very subjective and possibly selecting a bidder who may not give best returns.
2. **PLP in cash or kind:** The draft policy currently does not make it clear whether the PLP would have to be in kind or cash (or either). It would be desirable to clarify this, and incorporate appropriate clauses into the model contract. We also submit that it should be explicitly mentioned in the model contract that the amount to be paid (if PLP can be in cash) would be calculated based on actual realization from sale of shale gas.
3. **Pricing methodology:** NELP requires the Government to approve the pricing methodology or formula. It is not clear whether the shale gas policy or contract will have an equivalent clause.
4. **Utilization policy:** NELP restricts the sales of gas to abide by the utilization policy for natural gas. It is not clear whether the sale of shale gas would have similar restrictions.
5. **Role of PNGRB:** The draft policy does not make it clear if PNGRB would have any role in shale gas – e.g. in issues such as pricing, marketing margin, booking pipeline space etc.
6. **Commercial discovery bonus:** It is not clear why the commercial discovery bonus is a fixed amount and not a percentage of the approved technically recoverable reserves of the block.

7. **Ownership of data:** Section 3.7 of the draft policy states that all data gathered during the operation of the block would become the property of GoI. This should find clear mention in the model contract – it is currently not mentioned.
8. **Rentals, license fees etc.:** The fiscal regime does not make it clear when and how rentals, license / lease fees etc. are fixed. If these are some of the negotiable parameters subsequent to bidding, it could create distortions in the bidding process.
9. **Bid evaluation weightages:** The draft policy does not indicate the break-up of weightage between the minimum work program and investment to be made by the contractor. This should be clearly indicated in the notice inviting offers.

Governance / oversight issues

1. **Publication of bid comparisons:** One of the good practices followed in the power sector is to publish the names of the winner, the winning bid and an anonymous comparison with all the other bidders. This should also be followed for shale gas block auctions. Such transparency will reassure citizens about the integrity of the bidding process.
2. **Model contract:** The model contract should be finalized after a public consultation process similar to the process followed for the shale gas policy, and the final model contract should also be made public. This is particularly important given the presence of negotiable items in the contract. Needless to say, the number of such negotiable items should be minimized.
3. **Steering committee:** The draft policy does not describe the structure, powers, roles and responsibilities of the steering committee in detail. It would be good if these are explicated. Further, the functioning of the steering committee should be transparent. In particular, minutes of all steering committee meetings should be published. This will further reassure citizens about the integrity of the management of the block.
4. **Approval hierarchy:** It is expected that the bidding parameters and evaluation criteria would be highly objective. So, it is not clear why blocks can only be granted after the ECS and CCEA have given their approvals. Similarly, the role of ECS is not clear in the context of operation of a block.
5. **Ring-fencing accounts:** It is correctly suggested that accounts for conventional and unconventional oil and gas blocks should be maintained separately and the two should be ring-fenced (Paragraph 3.5 of the draft policy). However, given the weak governance regime in the country, ensuring this would require special steps on the part of the Government.

Socio-environmental issues

1. **Competing water uses:** Given the increasing water scarcity in various parts of the country, shale block auctions must be conducted only after a detailed study of all competing water uses near the block and ensuring that there would be sufficient water available for fracking. Further, it may be desirable to introduce conditions in the model contract to ensure that fracking only takes place at those times when sufficient water is available for it after accounting for other uses. We would also like to point out that it is not clear from the draft policy whether the water requirement of 11000 to 15000 cu m (Paragraph 2.5) is per frack or for the lifetime of the well.
2. **Multiple casings:** The conditions imposed on the operator in the model contract must include the clause related to multiple casings as mentioned in paragraph 2.5.

3. **Oversight of environmental compliance:** We submit that it is not sufficient to simply state that the operator should 'comply with existing and proposed rules and regulations' because of the extremely weak oversight and enforcement mechanisms in practice. It would be desirable if the policy outlined specific and appropriate institutional and procedural mechanisms to ensure that existing and proposed rules and regulations are followed in letter and spirit by the operators.
4. **Chemicals used in fracking:** Given the uncertainty surrounding the toxicity of chemicals used in fracking, the policy should mandate full disclosure of all the chemicals used in fracking, along with their concentrations, for each well.
5. **Land related issues:** It is not clear whether only blocks on public land would be auctioned, or it could also involve privately owned land. Access to private land may also be required to enable access to the auctioned blocks and wells dug there. Given the sensitivity of land related issues in India, it would be good if the policy document also addresses land related issues.

Other issues

1. **Detailed exploration by India:** It appears that the assessment of shale resources in the country is based on two studies by US Government agencies. It may be prudent for Government of India to commission its own studies to assess the country's resources. It may also be worth considering whether the country should invest in detailed exploration of all its basins – thus getting a clear idea of actual resources and reducing the risk for bidders.
2. **Joint operation of a block:** The policy should impose stronger conditions (such as a defined timeline, milestones etc.) on the operator of an existing conventional oil/gas block and the winner of an overlapping unconventional oil/gas block to ensure that they enter into a model co-development and operating agreement.
3. **Producing conventional blocks:** The draft policy states that currently operating blocks would not be offered for shale oil/gas exploration. However, it does not make clear how these blocks would be explored for shale oil/gas – some clarity on this issue would be welcome.
4. **Automatic extension of ML:** It is not clear why it is proposed that mining leases would be automatically extended. It would be better if it is based on an application from the operator assessment of production history, balance extractable reserves in the well etc. and. It could be easy and painless – but perhaps not automatic.
5. **Clearances:** Sub-clause iv of paragraph 6.2 seems to contradict itself as it states that the ECS would ensure that the existence of all clearances before the bidding and also that it will monitor the progress of clearances during the contract.

With best regards

Ashok Sreenivas
Senior Research Fellow
Prayas (Energy Group)