

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY

AT NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. 64 OF 2019

Dated: 5th July, 2023

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson

Hon'ble Dr. Ashutosh Karnatak, Technical Member (P&NG)

IN THE MATTER OF

GSPL India Gasnet Limited

GSPL Bhawan

Plot No. E-18, GIDC Electronic Estate

Nr. K-7 Circle, Sector 26,

Gandhi Nagar - 382028,

Gujarat

...APPELLANT

Versus

Petroleum & Natural Gas Regulatory Board

1st floor, World Trade Centre, Babar Road,

New Delhi – 110 001

...RESPONDENT

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J U D G M E N T

PER HON'BLE DR. ASHUTOSH KARNATAK, TECHNICAL MEMBER

BACKGROUND

1.0 The present appeal is filed by GSPL India Gasnet Limited herein referred to as “**The Appellant**” under Section 33 of Petroleum and Natural Gas Regulatory Board Act, 2006 (“**PNGRB Act**”) praying that the following condition, as provided in para 6 of the PNGRB’s Letter Ref: Infra/PL/Monitoring/MBPL/04 dated 05th December 2018, to be declared as arbitrary, void and illegal which states that “***with the condition that if the gas is supplied in the reverse direction in MBPL to Gujarat customers (i.e. from Pali towards Palanpur instead of flowing towards Bhatinda) then in such case, the transportation tariff will be lower of the following: - (i) calculated based on the quoted tariff for MBPL by following actual path of gas, and (ii) Tariff derived by considering 190 km Tie-in connectivity from RDG Barmer to GSPL’s Gujarat High Pressure network at Palanpur.***” (“**Impugned Reverse Flow Tariff**”)

2.0 FACTS OF THE CASE

2.1 The Appellant is the Company incorporated by the consortium of Gujarat State Petronet Limited (“**GSPL**”), Hindustan Petroleum

Corporation Limited (“**HPCL**”), Indian Oil Company Limited (“**IOCL**”) and Bharat Petroleum Corporation Limited (“**BPCL**”), which was selected as the preferred bidder by the Respondent i.e PNGRB, for the development of the Mehsana-Bhatinda Pipeline (“**MBPL**”) pursuant to a competitive bid process followed by it. Respondent issued the authorization for MBPL projects in the name of Gujarat State Petronet Limited (lead member of the GSPL consortium) on 7th July 2011. Thereafter the Appellant was incorporated following the due process stipulated under the Companies Act, 1956 for incorporation of companies. Thereafter, the Respondent amended the authorization for MBPL in favour of Appellant vide its letter reference INFRA / PL / MISCELL / MBPL-BJSPL / 01 / 2012 dated 31st May 2012.

- 2.2 It is pertinent to mention herein that as per the PNGRB authorization letter, the capacity in the MBPL natural gas pipeline shall be equal to 77.11 MMSCMD & the extra capacity in the natural gas pipeline shall be equal to 19.27 MMSCMD as per the provision as specified in clause (j) of sub-regulation (6) of regulation 5 and shall be available for use on common carrier basis by any third party on open access and non- discriminatory basis.

2.3 Respondent i.e. Petroleum and Natural Gas Regulatory Board (“**PNGRB**”) is a statutory body constituted under the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 (“**PNGRB Act**”) notified via gazette notification dated 31st March 2006 to regulate “the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interest of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto.

2.4 Cairn India Limited (“**CIL**”) submitted to PNGRB a Tie- in Connectivity proposal on 16th March, 2015 wherein it sought PNGRB’s direction to be given to GSPL to allow Tie-in Connectivity of the GSPL Gujarat Gas Grid at the Palanpur Terminal (Gujarat) with its Raageshwari Deep Gas Terminal at Barmer (Rajasthan). The said proposal was webhosted by PNGRB on 25th March, 2015 and comments from the entities were invited.

2.5 Vide letter dated 24th April, 2015, Appellant commented on the CIL's proposal and objected it by stating that IP-01 of MBPL at Pali is the nearest feasible point for Tie-in connectivity and hence as per Regulation 21(1) of the Authorising Entities to Lay, Build, Operate or Expand Natural Gas Pipelines, Regulation 2008, the first right of refusal is legally vested with Appellant for providing upstream connectivity to the Raageshwari Deep Gas Terminal. Further it was also submitted that it is developing the MBPL and the point at IP-01 at Shivtalao, Pali is the commercially and technically feasible point for achieving tie-in connectivity with Raageshwari Deep Gas Terminal.

2.6 Gujarat State Petronet Limited ("**GSPL**") which has developed GSPL High Pressure Gas Grid, had also submitted its comments on CIL's Tie-In proposal and stated that connectivity to GSPL's High Pressure Gujarat Gas Grid may lead to expansion in capacity of its pipeline network and it would not prefer to be part of such scheme that would lead to pipeline capacity expansion and subsequent loss in revenue due to expansion beyond 10% and therefore GSPL itself did not intend to develop the said connectivity. The same stand was also taken by GSPL in the open house meeting held on 08th June, 2015 by PNGRB.

- 2.7 It is submitted by the Appellant that the Framework agreement executed thereafter with CIL & GSPL with Appellant on 14th October, 2015 was to record the mutual understanding whereby the Appellant would provide the connectivity to the RDG Terminal of CIL and enable the evacuation of gas from RDG Terminal to reach the Gujarat market and interconnect with GSPL's High Pressure Gujarat Gas Grid through MBPL.
- 2.8 On 04th November, 2015, CIL also informed PNGRB that it has reached an understanding with the Appellant & GSPL that tie-in connectivity shall be done from RDG Terminal to IP-01 of MBPL at Pali by Appellant.
- 2.9 On 17th November, 2015, the Appellant submitted its application u/r 12 (1) of PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulation 2008 for its decision for expansion of MBPL capacity to the Respondent for providing the required connectivity to CIL's RDG Terminal, together with the applicable fee of Rs. 15 Lakhs by laying 18" pipeline of 175 KM length from its IP-01 at Pali to RDG source of CIL. The Appellant also stated in its proposal that Regulation 12(1) Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines, Regulation 2008 provides the entity to expand the authorized capacity in the

natural gas pipeline upto 10 %. However vide letter dated 3rd February, 2016, PNGRB replied that, since no physical progress has been achieved on MBPL pipeline project, the proposal is premature and hence Appellant may re-submit the proposal once some significant progress takes place. Accordingly the demand draft was also returned by PNGRB and was advised not to undertake any incremental activity in this regard.

2.10 That showing the disagreement on PNGRB's decision, Appellant resubmitted the proposal on 18th February, 2016 & informed PNGRB that Regulation 12(1) Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines, Regulation 2008 conferred Appellant with "deemed authorization" to expand the authorized capacity of MBPL. The said regulation empowers Appellant to lay build, operate and expand MBPL to expand the authorized capacity of MBPL up to 10% and re-submitted the requisite fee of Rs. 15 Lakhs along with the above letter.

2.11 Thereafter in the review meeting on MBPL held on 9th February 2017, the Respondent PNGRB was made aware of the work being undertaken on MBPL including the connectivity with RDG Gas Terminal. The Respondent concluded the meeting directing "***The entity was advised to take up work of pending permissions and***

clearances with the local/state authorities and continue with the construction phase of the project. The entity was directed to submit its proposal of time extension in writing with activity wise time frame for completion of the project along with documentary support including copy of communications with respective authorities. Regarding RDG connectivity the proposal will have to be submitted for consideration of the Board.” It is relevant to

mention herein that the Appellant submitted in the review meeting that on-shore gas fields in Rajasthan was one of the gas sources which Appellant identified for transportation through MBPL in the Bid submitted to the Respondent Board. That CIL expects gas production in Rajasthan to commence by December, 2017. That pipeline connectivity from MBPL to RDG will be the shortest possible distance to make gas available from RDG Terminal.

2.12 It is relevant to mention herein that in said meeting PNGRB sought clarification from Appellant on whether gas will be supplied to Gujarat region or Gujarat Gas Grid customers through MBPL in reverse direction from Pali to Palanpur for which Appellant confirmed that initially the gas will be supplied from RDG to Pali and from Pali to Palanpur in reverse direction in MBPL so that it can be fed to Gujarat region to serve the customers either through direct supply or by

means of swapping. However there will be no effect in tariff. It was viewed by PNGRB that tariff zone for Gujarat region customers may change if connectivity in MBPL is done at Palanpur which may be within 200 km whereas in present case the same will be more than 300 km. Appellant replied that connectivity to MBPL at Palanpur may not be viable from the business point of view due to change in tariff zone.

2.13 Another review meeting on MBPL progress was held on 16th October, 2017 by PNGRB wherein the Appellant apprised the Respondent of the work being undertaken on MBPL including the connectivity with RDG Terminal. On 9th November 2017, the Appellant submitted another application to the Respondent for approval of the expansion of the capacity of the MBPL in light of the connectivity being provided to the RDG Gas Terminal. On 9th January 2018 another review meeting on MBPL progress was held wherein the Appellant informed the Respondent on the progress being made on MBPL including the connectivity to RDG Terminal. It was duly recorded in the minutes of this meeting that *“no separate tariff shall be applicable to shippers/customers. MBPL capacity increase shall not exceed 4.2MMSCMD.”* It was also recorded in minutes of the meeting that Appellant has not been granted permission to lay Cairn Barmer Pali

pipeline. The same is under examination of PNGRB. It is relevant to mention herein that Appellant continuously reported the progress status of capacity expansion related work of MBPL in their QPR.

2.14 On 20th March 2018 the Respondent Board, in a meeting, requested the Appellant to submit fresh demand draft of Rs. 20 Lakhs as it had not processed the earlier demand drafts that had been submitted and returned the earlier demand drafts as having expired. On 3rd May 2018, the Appellant submitted the required demand draft for Rs. 20 Lakhs.

2.15 However, on 20th November, 2018, the Respondent again formally communicated to the Appellant that although its application is “under process”, it should re-submit a fresh demand draft of Rs. 20 Lakhs as the Respondent had not deposited the earlier ones submitted before their expiry. On 29th November, 2018, the Appellant submitted the required demand draft of Rs. 20 Lakhs to the Respondent.

2.16 On 5th December, 2018 PNGRB issued the Letter Ref: Infra/PL/Monitoring/MBPL/04 wherein while approving the extension of time for completion of the MBPL and approving the expansion of capacity and tie-in connectivity between RDG Gas Terminal and MBPL, the Respondent in Para 6 of the said letter imposed a condition of “directionality” in the gas flow in MBPL, and determined

tariff for supply of gas “in the reverse direction in MBPL to Gujarat customers (i.e. from Pali towards Palanpur instead of flowing towards Bhatinda)” (collectively “**Impugned Reverse Flow Tariff**”). The present appeal is limited to “**Impugned Reverse Flow Tariff**” condition imposed by Respondent in Para 6 which is under challenge before this Tribunal.

3.0 Contentions of the Appellant

It is contended by the Appellant that the said Impugned Reverse Flow Tariff is *ultra vires* the framework of the PNGRB Act and applicable regulations governing the development of the Mehsana-Bhatinda Pipeline (MBPL) since the said decision :-

- (i) arbitrarily imposes “directionality” in the gas flow in MBPL, much after the conclusion of the competitive bid process for MBPL, and after conclusion of financial closing and investment of hundreds of Crores in development of the pipeline; and
- (ii) arbitrarily determines, without any basis in law, a tariff of supply of gas “in the reverse direction in MBPL to Gujarat customers (i.e. from Pali towards Palanpur instead of flowing towards Bhatinda)”.
- (iii) purports to impose a formula for determination of the tariff for supply of gas in reverse direction based on impossible criteria, which are not contemplated under the applicable regulations for a bid out pipeline.
- (iv) The Impugned Reverse Flow Tariff, undermines and makes uncertain the bid out tariff itself and causes uncertainty in the

basis of the funding of a pipeline developed pursuant to a competitive bid process.

- (v) The only reason provided for the Impugned Reverse Flow Tariff is that of “annoyance” of the Respondent Board on the Appellant implementing the connectivity allegedly without prior approval. However, this is contrary to Para 5 of the Respondent Board’s Letter Ref: Infra/PL/Monitoring/MBPL/04 dated 5th December 2018 wherein the Respondent Board has accepted and approved that:

“It is further informed that the Board has considered the proposal of GIGL for expansion of MBPL under Regulation 12(1) of PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipeline) Regulations, 2008 for laying pipeline from Cairn India Limited’s RDG Terminal at Barmer to IP Station 01 of MBPL at Pali with following specification and submission of a written undertaking that GIGL will complete the entire MBPL within the aforesaid extended time frame.

Length of the pipeline : 180 km

Diameter of the Pipeline : 18”

Capacity : 3 MMSCMD including common carrier capacity as per relevant regulation.

In view of the above expansion, the revised Capacity Built up Schedule for MBPL is modified as: ...”

- (vi) The capacity expansion undertaken is less than 10%, under the provisions of Reg.12(1), NGPL Authorisation Regulations, no prior authorisation for the said expansion works were needed, and consequently, no prior approval from Respondent was required.

- (vii) Having accepted, in Para 5 of the said letter dated 5th December, 2018, that the connectivity between Pali on MBPL and RDG terminal at Barmer was in the nature of a capacity expansion, and thereby regulated by Reg.12(1), NGPL Authorisation Regulations, there is no basis for the Impugned Reverse Flow Tariff imposed under Para 6 of the letter dated 5th December, 2018.
- (viii) The letter dated 5th December, 2018 is (a) communicating the decision of Respondent Board as the text of the letter in Para 2, Para 4, Para 5 and Para 6, clearly refer to decisions by the “Board” that are being communicated, and therefore the said communication is not simply a letter issued by an officer or adviser of the Respondent Board, and is clearly a decision of the Board being communicated, which is appealable under Section 33 of the PNGRB Act; (b) the public interest is served by making available access to the gas being produced at the Barmer Gas Fields to a larger market in North India, and not merely in the already gas intensive State of Gujarat. The proposal by Cairn was for a pipeline that would connect the Barmer gas fields directly to the GSPL’s High Pressure Gujarat Gas Grid, and bypass MBPL. This was not a proposal that was accepted by even GSPL, the owner and operator of the High Pressure Gujarat Gas Grid, on various grounds, including that it would lead to capacity increase and require technical works.
- (ix) It is also highlighted that the Appellant is a different and distinct entity from GSPL, and the Respondent Board’s pleadings at various points seem to conflate the identity of GSPL’s High Pressure Gujarat Gas Grid, with the Appellant’s MBPL pipeline.

Furthermore, Cairn itself would not have been able to implement the said pipeline in light of its various disputes with the Government of India, and in any event, had dropped the proposal and entered into a mutually agreed Framework Agreement with the Appellant, seeking the development of the Barmer-Pali connectivity to MBPL. The Barmer-Pali connectivity has also enabled availability of the gas in a larger part of Rajasthan, including to CGD networks being developed in districts that fall within the tariff zone of the said pipeline; (c) there is no limitation either in the bid document or the authorisation for the direction of the flow. The appellant has relied on this Hon'ble Tribunal judgment dated 6th February, 2012 in the matter of ***GAIL (India) Ltd. v PNGRB and ors. (Appeal No. 205 of 2010)*** that directionality is not a condition under the framework of PNGRB Act.

- (x) The Impugned Reverse Flow Tariff is a “fictional order” passed by PNGRB/Respondent Board that imagines a “hypothetical pipeline” over a route where no pipeline exists, and levies different tariff for gas flowing in “reverse direction”.
- (xi) The Impugned Reverse Flow Tariff is *ultra vires* the provisions of the PNGRB Act, had been passed without jurisdiction, is misdirected, is illegal and ought to be set aside.

4.0 Contention of Respondent i.e. PNGRB

It is contended by the Respondent that:-

- (i) Board agreed and approved the above authorization of the pipeline with this condition as it was laid in contravention of the direction and without due approval. Therefore, the above

authorization is conditional. If the said condition is set aside then its authorization would also become null and void

- (ii) the Board in all fairness has for the benefit of the customers only stated that the Transportation tariff, whichever is lower, i.e. whether the calculated based on the quoted tariff for MBPL by following actual path of gas flow or the tariff derived by considering 190 km tie-in-connectivity from RDG Barmer to GSPL's Gujarat High Pressure Network at Palanpur be charged to the customer. This is solely and wholly for the benefit of the customer which is the paramount consideration of the Respondent's Board.
- (iii) The Appellant has completely ignored the Proviso to the Regulation which clearly states that there shall be no change in the natural gas pipeline tariff, post expansion. The Appellant, it seems, has completely obliterated and ignored the Proviso with impunity. This is because the expansion that has been done by the Appellant will certainly change the tariff that would have otherwise been charged from the customer of Gujarat if the gas would have flowed from RDG Barmer to Palanpur directly.
- (iv) That the proposal of Cairn India Limited (CIL) was for Tie-in connectivity from its Barmer field to GSPL's Gujarat High Pressure Gas Grid at Palanpur. The length of the proposed tie-in connectivity was 194 Km. However, GSPL shared its intent to exercise Right of First Refusal to lay the proposed tie-in connectivity since it was the entity owning and operating a common carrier pipeline nearest to the gas source.
- (v) Later on Appellant has laid the connectivity to GSPL's HP Gas Grid on a new route i.e. from Barmer to Pali and then from Pali

to Palanpur through its existing Mehsana Bhatinda (MBPL) NGPL instead of the direct route from Barmer to Palanpur as earlier proposed by CIL and on which GSPL had intended to lay the said connectivity. In such a scenario, the natural gas travels a distance of 181 km from Barmer to Pali and 158 km from Pali to Palanpur, totaling to 339 km.

- (vi) Mehsana Bhatinda NGPL authorised to GIGL, is a bid-out pipeline for which tariff is a bidding parameter and tariff from 1st year to 25th year is submitted by the bidder at the time of bid submission. This connectivity on a new route in place of the above direct route would attract Zonal Tariff equivalent to Zone 2 (i.e. beyond 300 km and upto 600 km) which is approximately 46 paisa for 1st year and Rs. 41 for 2nd year to 15th year).
- (vii) As per CIL's earlier proposal the length of connectivity to GSPL's HP Gas Grid would have been 194 km which would have attracted Zonal Tariff of Zone 1 (i.e. upto 300 km from the gas entry point). The Zone 1 tariff of GSPL's HP Gas Grid from 01.04.2018 onwards was appointed as Rs.33.15/MMBTU. That thus, the CAPEX and the Tariff for the alternate line is explained in the Tariff Order Ref: No. TO/09/2018 dated 1st February, 2023.

5.0 Thus the Issue before this Tribunal to decide is :-

- 1) whether PNGRB is justified in imposing the condition in para 6 which states that ***“with the condition that if the gas is supplied in the reverse direction in MBPL to Gujarat customers (i.e. from Pali towards Palanpur instead of flowing towards***

Bhatinda) then in such case, the transportation tariff will be lower of the following: - (i) calculated based on the quoted tariff for MBPL by following actual path of gas, and (ii) Tariff derived by considering 190 km Tie-in connectivity from RDG Barmer to GSPL's Gujarat High Pressure network at Palanpur."

- 2) Whether PNGRB has erred by imposing such condition relating to direction of flow of gas in relation to MBPL which has been authorized by PNGRB after competitive bidding process.
- 3) Whether "impugned reverse flow tariff" condition as stated in para 6 is void being vague and arbitrary.

To decide the above mentioned issues this Tribunal deliberated relying on documents, arguments and written submissions by the Appellant & Respondent, affidavit by Appellant & Respondent pursuant to this Tribunal's order dated 01st February, 2023 wherein certain queries were raised & the affidavit submitted by the Respondent pursuant to the direction given by this Tribunal vide their order dated 01st March, 2023 vis a vis applicable Act & Regulations.

In order to deliberate the above mentioned issue it is relevant to answer the following question to bring more clarity :-

- a) Whether CIL's Tie-in connectivity proposal dated 16th March 2015 was processed by Respondent or not?
- b) Whether the Appellant can expand capacity of the MBPL natural gas pipeline upto 10% without permission of Respondent as per Regulation 12 (1) of the Natural Gas Pipeline Authorisation Regulation ?
- c) Whether PNGRB can impose "**Impugned Reverse Flow Tariff**" condition on MBPL which is a bid out pipeline?
- d) Whether the tariff can be linked with the direction of flow of gas in the pipeline?

6.0 Issue of Tie-in Connectivity

6.1 In the present case, it is relevant to verify whether the said Pipeline laid by Appellant from CIL's RDG Terminal at Barmer (Rajasthan) to IP-01 of MBPL at Pali falls under the definition of Tie-in connectivity or is it merely an expansion of existing pipeline. Regulation 21(1) of NG Pipeline Authorizing Regulation which provides the methodology for Tie-in Connectivity states that :-

“(a) In case of the upstream connectivity requirement near a common carrier or contract carrier natural gas pipeline, a detailed proposal for the connectivity shall be submitted by the concerned entity to the Board indicating the details of the

gas sources or injection points facilities, existing natural gas pipeline infrastructure in vicinity and demand-supply projections along with the length and capacity of the proposed tie-in connectivity.

(b) The Board shall webhost the proposal for a period of thirty days for initiating the public consultation process seeking views and comments from the stakeholders.

(c) Based upon the views and comments received during the public consultation process, the Board may conduct an open house discussion with the stakeholders who have provided their views.

(d) The Board may authorize such tie-in connectivity as per the following methodology, namely:-

(i) tie-in connectivity shall be preferably constructed by the entity owning the common carrier or contract carrier natural gas pipeline existing near the gas source or injection point provided that the length of such tie-in connectivity is twenty per cent. of the authorized length of the common carrier or contract carrier natural gas pipeline subject to a maximum of 200 kilometer:

Provided that in case of more than one natural gas pipeline existing near the gas source or injection point, the entity owning and operating the common carrier or contract carrier natural gas pipeline nearest to the natural gas source shall have first right of refusal for laying tie in connectivity subsequently in the order of physical proximity:

Provided further that in case the entities owning and operating the common carrier or contract carrier natural gas pipeline refuse to lay the said tie-in connectivity, the Board may authorize the interested entity who initiated the proposal with the terms and conditions to lay the said tie-in connectivity and in such a case, the interested entity shall be considered as “shipper” in terms of the Petroleum and Natural Gas Regulatory Board (Access Code of Conduct for Common Carrier or Contract Carrier Natural Gas Pipelines) Regulations, 2008.

(ii) in case the tie- in connectivity is resulting in to expansion of natural gas pipeline, the applicable tariff methodology shall be as provided in regulation 12.

(iii) the Board may also consider inviting bids for the subject tie-in connectivity as per the provisions of sub-regulation (5) of regulation 5

(iv) any proposal to construct tie-in pipeline connectivity exceeding the length as provided in sub-clause (i) shall be dealt in line with the relevant provisions of the regulations for competitive bidding route;”

6.2 It is an undisputed fact that, Cairn India Limited (“CIL”) had submitted a Tie-in Connectivity proposal to PNGRB on 16th March, 2015 under Regulation 21(1) of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008 and sought PNGRB direction to GSPL to allow Tie-in Connectivity of the GSPL Gujarat Gas Grid at the Palanpur Terminal (Gujarat) with its Raageshwari Deep Gas Terminal (RDG) at Barmer (Rajasthan). Accordingly, in line with Regulation 21(1)(b) the said proposal was webhosted by PNGRB on 25th March 2015 and comments from the entities were invited .

6.3 Vide letter dated 24th April, 2015, Appellant commented on the CIL proposal and objected to the proposal stating that IP-01 of MBPL at Pali is the nearest feasible point for Tie-in connectivity and hence as

per Regulation 21(1), the first right of refusal is legally vested with Appellant for providing upstream connectivity to the Raageshwari Deep Gas Terminal. Appellant also submitted that it is developing the MBPL and the point at IP-01 at Shivtalao, Pali is the commercially and technically feasible point for achieving tie-in connectivity with Raageshwari Deep Gas Terminal.

6.4 Gujarat State Petronet Limited (“GSPL”) which has developed GSPL High Pressure Gas Grid, had also submitted its comments on CIL’s Tie-In proposal and stated that connectivity to GSPL’s High Pressure Gujarat Gas Grid may lead to expansion in capacity of its pipeline network and it would not prefer to be part of such scheme that would lead to pipeline capacity expansion and subsequent loss in revenue due to expansion beyond 10%. Therefore GSPL itself did not intend to develop the said connectivity.

6.5 In accordance to the Regulation, open house discussion by PNGRB was also held on 8th June, 2015 which was also attended by representative of CIL, GSPL and Appellant wherein the Board did not accept the Appellant Proposal stating that MBPL is not an existing pipeline and is much way behind its schedule and observed that Appellant’s response is devoid of any merit and MBPL cannot be considered as an existing pipeline. It is also matter of record that

PNGRB advised GSPL to give specific answer to whether the proposal of Tie-in Connectivity is agreeable to them or else they would have to exercise their right of first refusal for which the GSPL's representative conveyed that they have submitted their comments in writing and the Board may decide accordingly. While concluding the meeting, Board provided one month time to Appellant from 8th June, 2015 to submit their reply/comments, if any, limited to the issues raised during the public consultation process before the Board takes a final decision.

6.6 Thus this Tribunal is of the view that the said meeting was inconclusive in the sense that no decision was arrived with respect to the CIL's proposal of Tie-in connectivity and GSPL was not seen to be inclined to accept the CIL's proposal. It is also relevant to mention herein that pursuant to open house discussion held on 8th June, 2015, Appellant once again submitted to PNGRB vide letter dated 8th July, 2015 to consider their request for laying Tie-in connectivity from MBPL to Raageshwari Deep Gas Terminal.

6.7 It is a matter of fact that CIL instead of proceeding with their own Tie-in proposal submitted to PNGRB, entered into Framework agreement with GSPL & Appellant dated 14th October, 2015 to record the mutual understanding whereby the Appellant would

provide the said connectivity to the RDG Terminal of CIL and enable evacuation of the gas from RDG Terminal to reach the Gujarat market and interconnect with GSPL's High Pressure Gujarat Gas Grid through MBPL. On 3rd November, 2015, Appellant informed PNGRB about the discussion amongst the entities consenting to support the Tie-in connectivity between the RDG Terminal and Appellant's MBPL at Pali (Rajasthan) and once again requested for authorization for tie-in connectivity between RDG Terminal (Barmer, Rajasthan) and Appellants MBPL at Pali in terms of Regulation 21(1).

6.8 There is a letter of CIL dated 4th November, 2015 on record, wherein they have acknowledged their understanding reached between Appellant and GSPL regarding development of pipeline to connect Raageshwari Deep Gas Terminal with Appellant's MBPL and informing PNGRB that, as per understanding, Appellant will be approaching the PNGRB to seek approval for laying of Tie-in connectivity from Raageshwari Deep Gas Terminal to Pali on the MBPL and requested PNGRB to extend full support and grant timely approval for same.

6.9 There is another letter dated 17th November, 2015 of Appellant to PNGRB on record wherein instead of Tie-in connectivity, the

Appellant requested to allow the same as expansion of MBPL under Regulation 12(1) of NGPL Authorization Regulation. In the said letter Appellant has submitted that the said connectivity will be achieved by laying 18" x 175 Kms of trunk P/L from IP-01 station at Ch. 158.315 kms of MBPL to connect CIL's gas source at RDG terminal. It was also informed through the letter that said connectivity will ensure availability of gas from Rajasthan fields to the customers falling along the MBPL including to northern states and also at shortest possible distance to make gas available at competitive tariff to shippers. The same would not have any adverse commercial implication on any of the shippers and the additional capacity shall be within 10% of the authorized capacity only (estimated gas production will be 3 MMSCMD plateau for a period of 5 years with an overall profile of 15 years as per M/s CIL). Accordingly post said expansion, the authorized capacity of MBPL will increase by 3 MMSCMD which is within 10% permissible limit allowed by PNGRB under the said expansion Regulation.,

6.10 From the above it is clear that Appellant had informed PNGRB about its decision for expansion of MBPL capacity within 10% of the permissible limit allowed, as per Regulation 12 (1) of PNGRB NGPL Authorization Regulation, which was being done by laying trunk

pipeline from IP-01 Pali station at Ch. 158.315 kms of MBPL to CIL's RDG terminal at Barmer, Rajasthan for source connectivity. Further as required u/r 3 of PNGRB (Levy of Fee and Other Charges) regulations, 2007 and amendments there of requisite fees of Rs. 15 Lakhs was also paid to PNGRB in the form of Demand Draft for laying of trunk P/L of less than 500 kms .

6.11 It is also clear from the above facts and circumstances that proposal for Tie-in connectivity u/r 21 (1) was gradually converted into the proposal for capacity expansion u/r 12 (1) by the Appellant and was submitted to PNGRB as required in accordance with Regulation.

6.12 While deciding on both the proposals, PNGRB informed Appellant vide letter dated 19th November, 2015 that :

“This has reference to your letter No. GIGL/COMM/2015 dated 03.011.2015 on the subject mentioned above. In this regard, this is to inform that Cairn India Limited (CIL) vide letter dated 04.11.2015 has submitted to PNGRB that CIL is no more interested in pursuing their original proposal for laying Tie-in Connectivity from Raageshwari Deep Gas (RDG) Terminal to GSPL's Gujarat Gas Grid at Palanpur Terminal. Hence, it has been decided by PNGRB that CIL's original proposal dated 16.03.2015 shall not be processed further by PNGRB.

2. It has been further observed that GIGL has not submitted a complete proposal to PNGRB in terms of the provision of Regulation 21(1) of the PNGRB (Authorising Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations 2008 for tie-in connectivity between RDG Terminal and Pali. Accordingly the request to authorize GIGL for laying the Tie-in connectivity between RDG Terminal and Pali at GIGL's MBPL vide letter dated 03.11.2015 cannot be processed by PNGRB"

6.13 Thus this Tribunal is of view that PNGRB followed Regulation 21(1)(a) to (c) i.e till public consultation & open house. Since GSPL showed its disinterest in the CIL proposal of Tie-in Connectivity which was submitted under Regulation 21(1)(d) and the fact that PNGRB itself acknowledged in the letter that the original proposal dated 16th March, 2015 of Tie-in Connectivity by CIL was not further processed by PNGRB since CIL was no longer interested in pursuing and as a result the CIL proposal was never materialised. It is pertinent to mention herein that as per Regulation 21(1)(d)(iii) PNGRB could have explored the option of "**...considering inviting bids for the subject tie-in connectivity as per the provisions of sub-regulation (5) of regulation 5**" but there is nothing on the record to show that PNGRB took any step for the same.

6.14 It is also relevant to mention herein that in the same letter, the Tie-in connectivity proposal of Appellant, which was submitted by Appellant vide letter dated 3rd November, 2015, was also not processed by PNGRB considering that Appellant did not submit a complete proposal.

6.15 Thus from the facts and circumstances this Tribunal is of the view, that it is clear that there is no applicability of tie-in connectivity regulation here as CIL's Tie-in Connectivity proposal was never materialized and was no further steps with regard to Tie-in connectivity proposal of CIL was taken by PNGRB considering the fact that CIL was no more interested in pursuing the said proposal.

7.0 Expansion of capacity of Natural Gas Pipeline

7.1 The question remains now to consider whether it is an expansion of capacity, if prior approval is required for capacity expansion upto 10% and whether there is change in tariff or not .

7.2 It is a matter of fact that the proposal of Tie-in connectivity was brought to an end by PNGRB but the proposal of capacity expansion, as proposed vide letter dated 17th November, 2013 by Appellant, was still pending. It is pertinent to mention herein that, vide letter dated 25th January, 2016, PNGRB requested the Appellant to provide updated status of MBPL and documents to

substantiate Appellant's claim about the shortest possible distance to make gas available from RDG Terminal at competitive tariff to shippers, latest by 31st January, 2016.

7.3 The said details were submitted by Appellant vide letter dated 30th January, 2016. In the said letter, it was also clarified by Appellant that:-

- (i) CIL's RDG Terminal shall be connected with MBPL by means of laying 175 kms P/L viz a viz approx. 194 kms P/L proposed by CIL to PNGRB for connecting GSPL's Gas Grid earlier.
- (ii) Connectivity will not only ensure availability of gas from Barmer fields to the customers falling along the MBPL at competitive tariffs but also make gas available to customers located in various states like Haryana, Punjab, Rajasthan and J&K at competitive tariff.
- (iii) MBPL being the pipeline authorized by the PNGRB after competitive bidding process under the PNGRB Authorization Regulations, gas delivered to shippers through MBPL shall be on such competitive tariff and hence shall be at the lowest tariff.
- (iv) Appellant's proposed RDG connectivity shall be part of MBPL project and no separate tariff shall be applicable for such connectivity viz a viz CIL's Tie-in connectivity (since CIL's

proposal was for laying a new P/L, a separate tariff would have been applicable.

7.4 Keeping in view that no physical progress was achieved on MBPL the said proposal of Appellant was returned by PNGRB and was asked to resubmit the proposal once some significant progress takes place. It was also advised by PNGRB not to undertake any incremental activity in this regard. The said letter was contested by Appellant and was informed that post submission of compliance vide letter dated 17th November, 2015 the conditions specified u/r 12(1) of PNGRB Authorization Regulations stand satisfied and hence Appellant is conferred with “*deemed authorization*” to expand the authorized capacity of MBPL up to 10% by means of said MBPL-Cairn’s RDG connectivity & will continue with simultaneous development of MBPL network & MBPL RDG Cairn connectivity before completion by the end of 2017.

7.5 The expansion of capacity of the natural gas pipeline as provided in u/r 12 of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008 is as follows :-

(1) The entity may expand the authorized capacity in the natural gas pipeline upto ten percent and immediately inform the Board of its decision:

Provided that there shall be no change in the natural gas pipeline tariff post expansion.

(2) In case it is proposed to expand the capacity of the natural gas pipeline by more than ten percent of that authorized by the Board, the entity shall submit a proposal for consideration of the Board and the Board may allow for expansion of the capacity in the natural gas pipeline provided that the entity agrees to a reduction in the unit natural gas pipeline tariff by sharing fifty percent of the proposed incremental tariff revenue calculated based on the applicable unit natural gas pipeline tariff before expansion and the incremental volumes sought to be transported.

(3) The provisions regarding expansion of capacity in natural gas pipeline under sub-regulations (1) and (2) shall be applicable to all natural gas pipelines either authorized by the Board under regulation 4, 18 or 19 or accepted under regulation 17 as authorized by the

Central Government: Provided that the entity shall keep separate accounts for the above mentioned expansion with detailed break-up of capital expenditure, operational expenditure and volume transported and shall submit the reports at the end of the relevant financial year duly certified by a Chartered Accountant.

- 7.6 This Tribunal is of the view that plain reading of Regulation 12(1) NGPL Authorization Regulation states that authorized entity may expand the capacity of its pipeline maximum upto ten percent and inform immediately to the Board of its decision with a proviso that there shall be no change in the natural gas pipeline tariff post expansion. Thus it can be said that entity is well within its right to expand the capacity upto 10 percent without any change in the tariff and thereby inform Board immediately about its decision. It is nowhere said in the Regulation 12(1) that first approval of the Board is required if the capacity expansion is upto ten percent and then only capacity expansion can be done. The only compliance required from the entity in this scenario is to immediately inform the Board about its decision of capacity expansion with the confirmation that there is no change in the tariff.

7.7 However, if the proposed capacity expansion of the natural gas pipeline would have been more than ten percent of that authorized by the Board, in that scenario only, as per regulation 12 (2), the entity is required to submit a proposal for consideration of the Board. In that case Board may allow for expansion of the capacity in the natural gas pipeline provided that the entity agrees to a reduction in the unit natural gas pipeline tariff by sharing fifty percent of the proposed incremental tariff revenue calculated based on the applicable unit natural gas pipeline tariff before expansion and the incremental volumes sought to be transported. In this scenario the Board does have discretion to use its power to allow for expansion of the capacity in the natural gas pipeline subject to entity agreeing to a reduction in the unit natural gas pipeline tariff by sharing fifty percent of the proposed incremental tariff revenue calculated based on the applicable unit natural gas pipeline tariff before expansion and the incremental volumes sought to be transported. Herein in this context of capacity expansion which is beyond ten percent does give right to PNGRB to use discretion. But nothing like this discretion is seemed to be given to PNGRB if the capacity expansion of natural gas pipeline is within 10 percent.

- 7.8 Moreover it is also clarified under Regulation 12 (3) that, this deemed capacity expansion upto 10 percent envisaged u/r 12 (1) or beyond ten percent, as envisaged under Regulation 12(2) is applicable to all natural gas pipeline either authorized by the Board under regulation 4 (as in present case), 18 or 19 or accepted under regulation 17 as authorized by the Central Government. It is also clarified under Regulation 12(3) the authorized entity has to keep separate accounts for the above mentioned expansion with detailed break up of capital expenditure, operational expenditure and volume transported and shall submit the reports at the end of the relevant financial year required to be duly certified by a chartered Accountant.
- 7.9 The laying of the pipeline from Raageshwari Deep Gas Terminal to MBPL would result in expansion of capacity by 3 MMSCMD, which is less than 10% and falls under the permissible limit of Regulation 12(1) NGPL Authorization Regulation. The said condition was duly complied by the Appellant by submitting the requisite notice vide communication dated 17th November, 2015 and again resubmitted with Appellant letter dated 18th February, 2016 together with the fee under Regulation 3 of PNGRB (Levy of Fee & other Charges) regulation 2007, as the earlier proposal was rejected considering it

premature & DD was returned by PNGRB. It has always been the stand taken by Appellant that there will be no change in the tariff. Thus both the condition required under Regulation 12 (1) was complied by Appellant. It was only PNGRB which took two years to accept the Appellant's proposal of capacity expansion with no explanation on record. In the meeting dated 9th February, 2017, PNGRB sought a clarification from Appellant on whether gas will be supplied to Gujarat region or Gujarat Gas Grid customers through MBPL in reverse direction from Pali i.e. Pali to Palanpur, for which Appellant had confirmed that initially the gas will be supplied from RDG to Pali and from Pali to Palanpur in reverse direction in MBPL so that it can be fed to Gujarat region to serve the customers either through direct supply or by means of swapping but there will be no effect in tariff.

7.10 It is relevant to mention herein that PNGRB also consider it as a capacity expansion u/r 12(1) of (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipeline) Regulations, 2008 and accordingly accepted the capacity expansion vide their Letter Ref: Infra/PL/Monitoring/MBPL/04 dated 5th December 2018 which itself stated that “**---Board has considered the proposal of GIGL for expansion of MBPL under Regulation 12(1)of PNGRB**

(Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipeline) Regulations, 2008 for laying pipeline from Cairn India Limited's RDG Terminal at Barmer to IP Station01 of MBPL at Pali with following specification and submission of a written undertaking that GIGL will complete the entire MBPL within the aforesaid extended time frame.

Length of the pipeline : 180 km

Diameter of the Pipeline : 18"

Capacity : 3 MMSCMD including common carrier capacity as per relevant regulation.

In view of the above expansion, the revised Capacity Built up Schedule for MBPL is modified as:"

7.11 Thus this Tribunal is of the view that capacity expansion u/r 12(1) NGPL Authorization Regulation is permissible upto ten percent provided there is no change in the tariff and the said decision is required to be immediately informed by entity to PNGRB. If capacity expansion would have been more than ten percent, then it is required to be governed by applicable regulatory framework as detailed in Regulation 12(2).

7.12 Para 5 of the PNGRB's letter dated 05th December, 2018 makes it clear that the Respondent also considered that the connectivity provided from Cairn India Limited's RDG terminal at Barmer to the

MBPL IP-01Pali, was indeed in the nature of an expansion under Regulation 12(1) of the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008, which has resulted in an expansion of the capacity by 3 MMSCMD (comparison chart of the same in the letter with the original capacity build up schedule provided with the authorisation for MBPL. The comparison of the two capacity tables also makes it clear that the increase in capacity is annually of 3 MMSCMD in each year, and which is less than 10% of the original authorised capacity, which was 77.11 MMSCMD.

7.13 This tribunal is of the view that , since the capacity expansion undertaken is less than 10%, under the provisions of Reg.12(1), NGPL Authorisation Regulations, no prior authorisation for the said expansion works were needed nor prior approval from Respondent Board was required. The Appellant was well within its right to expand the capacity maximum upto 10 percent. The only compliance required by the Appellant was to inform the PNGRB immediately about the capacity expansion with the confirmation that there is no change in the tariff which was duly complied by the Appellant.

8.0 Imposition of Impugned tariff condition by PNBGRB is justified or not.

8.1 The contention of the Respondent for justifying their decision with respect to the impugned condition is that Board agreed and approved the proposal for authorizing expansion of MBPL by laying a new line with the condition as it was laid in contravention of the direction and without due approval. Therefore, the above authorization is conditional. If the said condition is set aside then its authorization would also become null and void. The Board in all fairness has for the benefit of the customers only stated that the Transportation tariff, whichever is lower, i.e. whether the calculated based on the quoted tariff for MBPL by following actual path of gas flow or the tariff derived by considering 190 km tie-in-connectivity from RDG Barmer to GSPL's Gujarat High Pressure Network at Palanpur be charged to the customer. This is solely and wholly for the benefit of the customer which is the paramount consideration of the Respondent's Board and the expansion that has been done by the Appellant will certainly change the tariff that would have otherwise been charged from the customer of Gujarat if the gas would have flowed from RDG Barmer to Palanpur directly.

8.2 It is also contended by PNGRB that tariff zone for Gujarat region customers may change if connectivity in MBPL is done at Palanpur which may be within 200 km whereas in present case the same will be more than 300 km. Appellant did clarified that connectivity to MBPL at Palanpur may not be viable from the business point of view due to change in tariff zone, Keeping this in view PNGRB have specifically asked the Appellant that the proposal of transporting Gas in the reverse direction, would lead to customers being charged a higher tariff, than the tariff which would be there in case there would have been a tie-in connectivity at Palanpur as was proposed by CIL. PNGRB has relied on the Section 22 of the PNGRB Act contending that they are well within their right to impose the condition with respect to the reverse flow tariff that has been fixed for the Appellant herein as Section 22 of the PNGRB Act is amply clear, that the transportation tariff i.e. being laid down/determined by the PNGRB shall be guided by the facts which may encourage competition, efficiency, economic use of the resources, good performance and optimum investments. The Board shall also be guided by the factum of safeguarding the consumer interest.

8.3 Section 22 of the PNGRB Act states as under:-

"22. Transportation tariff.-

- 1) *Subject to the provisions of this Act, the Board shall lay down, by regulations, the transportation tariffs for common carriers or contract carriers or city or local natural gas distribution network and the manner of determining such tariffs.*
- 2) *For the purposes of sub-section (1), the Board shall be guided by the following, namely:-*
 - a. *the factors which may encourage competition, efficiency, economic use of the resources, good performance and optimum investments;*
 - b. *safeguard the consumer interest and at the same time recovery of cost of transportation in a reasonable manner,*
 - c. *the principles rewarding efficiency in performance;*
 - d. *the connected infrastructure such as compressors, pumps, metering units, storage and the like connected to the common carriers or contract carriers;*
 - e. *benchmarking against a reference tariff calculated based on cost of service, internal rate of return, net present value or alternate mode of transport;*
 - f. *policy of the Central Government applicable to common carrier, contract carrier and city or local distribution natural gas network."*

8.4 This tribunal is of the view that PNGRB has erred in converting the Appellant's letter of submitting information in compliance of 12(1) of NGPL Authorising Regulation of deemed capacity expansion to an exercise for determining tariff for a bid out pipeline. It is apposite to

say that the claim of PNGRB that, *“if CIL proposal would have been implemented the end consumer would not have to pay any additional tariff and entire cost of the pipeline would have been... “subsumed under their Gas Fields....”*. is based on assumption of fictitious pipeline and that too is only focused for consumers of Cairn’s Barmer gas fields located in state of Gujarat and claiming that because of Barmer-Pali connectivity consumers in Gujarat would have to pay Zone-2 tariff of MBPL. Board forgot that in case of the fictitious alternate route of 194 km , as being suggested by PNGRB for transportation of gas from Barmer, the consumers in Rajasthan might have to pay higher Zone-2 tariff beyond 106 Km from Palanpur on MBPL.

8.5 It is relevant to mention herein that Appellant undertook the development of the pipeline connecting to RDG Terminal pursuant to an understanding with CIL in November that RDG Gas Field will be interconnected with MBPL. The said development of pipeline was implemented in exercise of their right to expand the capacity of its authorised common carrier pipeline upto ten percent of its earlier authorised capacity.

8.6 It is also pertinent to mention herein that Appellant was granted authorisation to develop Mehsana-Bhatinda Pipeline (**“MBPL”**)

pursuant to a competitive bid process. In the bid process, financial bid comprised of natural gas pipeline tariff bid. Regulation 7 of the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008 (“**NGPL Authorisation Regulations**”) determines bid out tariff wherein the lowness of the natural gas pipeline tariff for the economic life of the project is also one of the criteria for selection of the entity and under the applicable law the tariff is determined by the financial bid that has been submitted by the entity and has been accepted by the PNGRB during the bid process. PNGRB (Determination of Natural Gas Pipeline Tariff) Regulations, 2008 (“**NGPL Tariff Regulations**”) are not applicable for bid out pipelines. By imposing the impugned Reverse flow Tariff condition, it is resulting into unilaterally modifying the tariff that has already been determined through a competitive bid process. By imposing the condition PNGRB has virtually reduced the tariff of a bid out pipeline authorised pursuant to a bidding process on hypothetical basis. Moreover PNGRB has erred in imposing a condition that the tariff would be lower of either competitively bid out tariff or a tariff that would be determined in relation to a pipeline that does not exist.

- 8.7 Further the fact that initial proposal of 194 Kms pipeline of the direct connectivity line to GSPL's High Pressure Gujarat Gas Grid that had been submitted by CIL, has no relevance with the expansion of capacity, since CIL itself did not proceed with its initial proposal to lay the pipeline, but in fact entered into an agreement for connectivity to be developed by Appellant connecting the Barmer gas fields to MBPL. The submissions by the Respondent relying on the CIL proposal and the facts surrounding such proposal including the objections raised by GSPL to the proposal seems to have no relevance to the Impugned Reverse Flow Tariff. Relying on the assumption of a hypothetical pipeline by PNGRB that was never laid, and was merely proposed and the cost of which pipeline and details of which pipeline was never formalised in any manner without any basis is completely erroneous.
- 8.8 The objective of PNGRB Act is to protect the overall interest and to stop the infructuous investment. Section 12(1) also envisaged clearly that there will be no change in the tariff if there is capacity expansion upto ten percent. Whereas by imposing the impugned condition, while accepting capacity expansion, PNGRB itself is violating the provision of Regulation 12.

9.0 Linkage of Transportation tariff with Direction of Flow of gas

- 9.1 PNGRB failed to provide the basis of linkage of transportation tariff with the direction of flow of gas in a pipeline in the PNGRB. There are no regulatory provisions to substantiate their claim for doing so. The Appellant has relied on this Hon'ble Tribunal Judgment dated 06.02.2012 in the matter of GAIL (India) Ltd. v PNGRB and ors (Appeal No. 205 of 2010), that directionality is not a condition under the framework of PNGRB Act.
- 9.2 It is relevant to mention herein that the authorisation to the entity is given for Building, laying, operating and expanding Natural Gas pipeline to meet requirement of natural gas in industrial, commercial segments & CGD networks etc. falling along the route of the natural gas pipeline (irrespective of direction of gas supply) for which capacity expansion of natural gas pipeline is permitted in line with Regulation 12 of Natural Gas pipeline authorising regulation.
- 9.3 Determination of tariff of bid out pipeline on the basis of directionality of gas supply by PNGRB is not justified as there is no regulatory provision supporting the same. It is not only for the authorised entity but also for PNGRB, being the regulator, to exercise its power & function within the framework of PNGRB Act & Regulation.

9.4 It is a matter of fact that Appellant undertook the development of the pipeline pursuant to an understanding with Cairn India that the gas fields would be interconnected with MBPL and in exercise of the vested right under Regulation 12(1) NGPL Authorisation Regulation to expand the capacity of the pipeline upto 10%. In light of the same the said pipeline could have only been laid on the shortest route between Barmer and MBPL by Appellant.

9.5 Under the framework of the PNGRB Act & Regulation, there is no restriction on the direction of flow of gas in a pipeline. The tariff fixed for the bid out pipelines is for entire economic life of the pipeline. The natural gas tariff zone determination methodology under Regulation 2(h)(i) of the PNGRB regulation is applicable irrespective of flow of direction in pipeline which defines as :-

“tariff zone” means the zone- (i) of a length of three hundred kilometers each along the route of the natural gas pipeline from the point of origin till the end point:

Provided that the last zone of the natural gas pipeline may be of a length of three hundred kilometers or less;

(ii) a corridor along the natural gas pipeline with a width of up to ten percent of the total length of the natural gas pipeline without including the length of the spur lines or fifty kilometers measured from the nearest point on the surface of the natural gas pipeline on both sides, and including the

point of origin and the end point of the natural gas pipeline, whichever is less, and-

(a) the first tariff zone shall be counted with reference to any zone in which the point of injection of natural gas into the natural gas pipeline falls; and

(b) the subsequent tariff zone or tariff zones, as the case may be, shall be counted separately on either side along the contractual path for delivery of natural gas in the natural gas pipeline:

Provided that the natural gas pipeline tariff for transport of natural gas from the same source shall be uniform for all the customers located within the zone:

Provided further that....”

9.6 From the tariff zone definition it is explicitly clear that there could be more than one gas injection point on the pipeline and the natural gas pipeline tariff for transportation of natural gas from the same source shall be uniform for all the customers located within the zone.

9.7 Zone of 300 kms along the route of the pipeline are demarcated from the point of origin. Regulation 2(h) (ii) (a) stipulates that the first tariff zone in which the point of injection of natural gas pipeline falls. This indicates that the injection of gas can be at any point along the pipeline and not necessarily at the originating point.

Regulation 2(h) (ii) (b) provides that the subsequent tariff zone shall be counted separately on either side along the contractual path for delivery of natural gas in the natural gas pipeline which clearly indicates bi-directionality. The natural gas pipeline tariff for transport of natural gas from the same source shall be uniform for all the customers located within the zone.

In the matter Appeal No. 205 of 2010, in para 55 this Tribunal has also clarified that ***“...under this definition, it is explicit that there could be more than one gas source and more than one gas injection point on the pipeline as it is indicated from the part of the definition which says “natural gas pipeline tariff for transport of natural gas from the same source shall be uniform for all the customers located within the zone”. This Regulation clearly recognizes the fact that the gas injection point and point of origin are not one and the same and where there is only one originating point for the construction of the pipelines, there can be multiple gas injection points and tariff has to be determined based on the contractual flow of either side of the injection point”.***

9.8 Thus this Tribunal is of the view that the direction of the flow is nowhere envisaged in the definition of tariff zone thereby the

comparison sought to be imposed by the Respondent, or tariff on imaginary pipeline connectivity with an existing bid out pipeline is not contemplated under the PNGRB Act & Regulation. If CIL's RDG Terminal connectivity to MBPL falls within Zone-2, tariff as applicable to all the customer falling within that zone will be applicable to them without any discrimination. Regulation 11(3) of the Natural Gas Pipeline Authorising Regulation clarifies that **“the applicable natural gas pipeline tariff shall be recovered through an invoice on a non-discriminatory basis, that is, without any premium or discount, from all customers”**.

9.9 The Respondent has erred by imposing an arbitrary condition of direction in the pipeline of the flow of natural gas in determining the tariff for the pipeline merely by laying it down as a condition in a communication issued to the Appellant while approving the extension of time for completion of the MBPL and approving the expansion of capacity between the RDG Gas Terminal & MBPL. Even under Section 22 of PNGRB Act, a transportation tariff cannot be determined in reference to another pipeline or a non-existent pipeline.

9.10 This Tribunal is of the view that reverse flow tariff, has no basis under the PNGRB Act or regulations framed there under and can not be justified as being in the interest of benefit of the consumer.

10.0 CONCLUSION:

10.1 In view of the above it can very well be said that:-

- i. Condition imposed by PNGRB in para 6 of the PNGRB's Letter Ref: Infra/PL/Monitoring/MBPL/04 dated 05th December 2018 is not justified being vague and arbitrary which states that "***with the condition that if the gas is supplied in the reverse direction in MBPL to Gujarat customers (i.e. from Pali towards Palanpur instead of flowing towards Bhatinda) then in such case, the transportation tariff will be lower of the following: -***
(i) calculated based on the quoted tariff for MBPL by following actual path of gas, and (ii) Tariff derived by considering 190 km Tie-in connectivity from RDG Barmer to GSPL's Gujarat High Pressure network at Palanpur."
- ii. The capacity expansion undertaken by Appellant is less than 10%, and according to the provisions of Reg.12(1), NGPL Authorisation Regulations, no prior authorisation for the said expansion works were needed nor prior approval from Respondent Board was required. The only compliance required

by the Appellant was to inform the PNGRB immediately about the capacity expansion with the confirmation that there is no change in the tariff which was duly complied by the Appellant.

- iii. PNGRB has erred in imposing condition relating to direction of flow of gas in relation to MBPL which has been authorized by PNGRB after competitive bidding process.
- iv. PNGRB has erred in imposing a condition that the tariff would be lower of either competitively bid out tariff or a tariff that would be determined in relation to a pipeline that does not exist.

Order

Appeal is accordingly allowed and the condition, as provided in para 6 of the PNGRB's Letter Ref: Infra/PL/Monitoring/MBPL/04 dated 05th December 2018 is declared as void being vague and arbitrary which states that "***with the condition that if the gas is supplied in the reverse direction in MBPL to Gujarat customers (i.e. from Pali towards Palanpur instead of flowing towards Bhatinda) then in such case, the transportation tariff will be lower of the following: - (i) calculated based on the quoted tariff for MBPL by following actual path of gas, and (ii) Tariff derived by considering 190 km Tie-in connectivity from RDG Barmer to GSPL's Gujarat High Pressure***

network at Palanpur. (“Impugned Reverse Flow Tariff”).

Consequently, pending IAs, if any, shall stand disposed of.

Pronounced in the open court on this **5th day of July, 2023.**

(Dr. Ashutosh Karnatak)
Technical Member (P&NG)

(Justice Ramesh Ranganathan)
(Chairperson)

REPORTABLE / ~~NON-REPORTABLE~~