

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Appeal No.205 of 2010**

Dated: 06 Feb, 2012

Present: **Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson,**  
**Hon'ble Mr.M.B. Lal, Technical Member (P&NG),**

**Appeal No.205 of 2010**  
**I.A. No.280 of 2010**

GAIL (India) Limited,  
GAIL Bhavan,  
16, Bhikaji Cama Place,  
New Delhi-110 066

... Appellant(s)

Versus

1. Petroleum and Natural Gas Regulatory Board,  
1<sup>st</sup> Floor, World Trade Centre,  
Babar Road,  
New Delhi-110 007
2. Gujarat State Petronet Limited,  
GSPC Bhavan, Behind Udyog Bhavan,  
Sector-11, Gandhinagar,  
Gujarat-382 011
3. Indian Oil Corporation Limited,  
3079/3, J.B. Tito Marg,  
Sadiq Nagar, New Delhi-110049
4. Hindustan Petroleum Corporation Limited,  
7<sup>th</sup> Floor, North Tower,  
Scope Minar,  
Laxmi Nagar, Delhi-110092

5. Bharat Petroleum Corporation Limited,  
ECE House,  
Connaught Circus,  
New Delhi-110001

.....Respondents

Counsel for Appellant(s): Mr. M.G. Ramachandran  
Mr. Anand K. Ganesan  
Mr. Ankit Jain  
Ms. Ranjitha Ramachandran  
Ms. Sneha Venkataramani

Counsel for Respondent(s): Mr. Arun Kumar Verma for R-1  
Ms. Anita Sahani for R-1  
Mr. Rakesh Dewan for R-1  
Ms. Mansi Wadhwa for R-1  
Mr. Dhruv Malik for R-1  
  
Mr. P.S. Narsimha, Sr. Adv for R-2  
Mr. Aspi Kapadia for R-2  
Mr. Kumar Shashank for R-2  
Mr. Arjun Garg for R-2  
Mr. Sumit Goel for R-2  
Mr. E R Kumar for R-2  
  
Mr. Abhinav Vasisht, Sr. Adv. for R-3  
Mr. Achint R Singh for R-3  
Mr. Rajat Navet for R-3  
Mr. Sumit Singh Benipal for R-3

## **JUDGEMENT**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON**

1. GAIL (India) Limited is the Appellant herein.
2. Aggrieved by the decision taken by the Petroleum Board (R-1) accepting the technical bid submitted by the 2nd Respondent Gujarat State Petronet Limited, despite such a technical bid not being in conformity with the tender conditions, the Appellant, being the only responsive bid has filed this Appeal.
3. The facts which are relevant leading to the filing of this Appeal are summarised as under:
  - (a) GAIL (India) Limited, the Appellant is a public sector undertaking and is owned and controlled by the Government of India. The natural gas constitutes the core business of the Appellant. The Appellant owns and operates various pipelines networks of over 7650 Kms for transportation of natural gas.
  - (b) The Petroleum and Natural Gas Regulatory Board (Petroleum Board), is the 1<sup>st</sup> Respondent. This Board has been constituted under the provisions of the Petroleum Natural Gas Regulatory Board Act, 2006 (Board Act) to regulate refining, processing, storage, transportation,

distribution, marketing and sale of petroleum products and natural gas etc. in India.

(c) In accordance with the Sections 11 and 19 of the Petroleum and Natural Gas Regulatory Board Act, 2006, the Petroleum Board (R-1) has notified the Petroleum and Natural Gas Regulatory Board (Authorising Entities to Lay, Build, Operate, or Expand Natural Gas Pipelines) Regulations, 2008. In terms of the above Act and Regulations, the Petroleum Board is empowered to grant authorisation for laying out natural gas pipelines either on receipt of the application from the interested parties or on suo-moto basis.

(d) Gujarat State Petronet Limited is the 2<sup>nd</sup> Respondent. It is engaged in transportation of natural gas by pipelines. Indian Oil Corporation is the 3<sup>rd</sup> Respondent. It is also engaged in the hydrocarbon Sector being a Government Company. Hindustan Petroleum Corporation Limited, the Respondent No.4 is also a Company of Government of India engaged in hydrocarbon sector. Respondent No.5, Bharat Petroleum Corporation Limited which is also a Government Company is engaged in hydrocarbon sector. These Respondents 2 to 5 constitute the Consortium.

(e) There is a necessity to provide transportation pipeline from Vijaywada in the State of Andhra Pradesh to Vijapur in the State of Madhya Pradesh. So in terms of the Regulations 2008, the GAIL (India) Limited, the Appellant submitted 'Expression of Interest' to the Petroleum Board on 20.11.2008. After receipt of the said Expression of Interest, the Petroleum Board (R-1) announced the commencement of the public consultation process and solicited views from interested entities. In pursuance of the said announcement, the Gujarat State Petronet Limited(R-2) also filed an application giving Expression of Interest for laying down transportation of pipelines from Mallavaram in the State of Andhra Pradesh to Bhilwara in the State of Rajasthan.

(f) On 23.10.2009, the Petroleum Board merged both the "Expression of Interest" and floated a common tender for bids from all interested entities for development of natural gas pipelines from Mallawaram (Andhra Pradesh) to Bhilwara (Rajasthan) and Vijaipur (Madhya Pradesh) via Bhopal (Madhya Pradesh) spanning a distance of approximately 1585 Kms with a design capacity of at least 30 MMSCMD.

(g) As per the tender, the bid submission date was fixed as 29.12.2009. On 23.12.2009, the Petroleum Board issued addendum to extend the date of bid purchase period

upto 23.2.2010 and thereafter extended upto 2.3.2010. Again, another addendum was issued on 8.2.2010 extending the period of bid purchase upto 24.5.2010 and thereafter bid submission date upto 31.5.2010. Again the bid purchase date was extended upto 8.7.2010 and then bid submission date was fixed as 15.7.2010.

(h) In the meantime, certain clarifications were sought for from the Board by the parties and accordingly the instructions were issued by the Board. On 15.7.2010, the Appellant as well as the Respondent Consortium submitted the respective bids to the Board. On 28.7.2010, the Board sought for some particulars and documents from the Appellant regarding the bid submitted by it. Accordingly, those particulars and documents were furnished.

(i) On 13.8.2010, the Petroleum Board (R-1) called the Appellant for a meeting on 17.8.2010 to discuss certain issues while evaluating the technical bid. Accordingly, the Appellant attended the meeting. In the meantime, the Appellant came to know that the technical bid submitted by the Respondent Consortium was in deviation of the tender terms in many respects. On 30.9.2010, the Petroleum Board conveyed that the technical bid evaluation is under progress and is likely to be finalised in due course and extended the financial bids opening date upto 18.10.2010.

(j) At this stage, by the letter dated 8.10.2010, the Petroleum Board declared that **(a)** the gas injection at any point in the pipelines system including the termination point will be allowed **(b)** linkage of capacity with volume quoted in the bid shall not be the criteria for selection or rejection of the bid **(c)** the grant of the authorisation shall be subject to the conditions that various entities shall be required to create minimum 33% of the capacity for own use and for contractual purpose, as common carrier capacity over and above the volume quoted in the financial bids. Through the said letter, the Petroleum Board also informed the Appellant that the Appellant has become qualified in the technical bid evaluation process and the price bids would be opened on 18.10.2010.

(k) On receipt of the letter dated 8.10.2010, the Appellant sent a reply letter on 12.10.2010 raising objection to the said declaration contained in the communication dated 8.10.2010 providing for multiple originating points on the ground that this letter contained substantial modifications to the tender terms and conditions subsequent to submissions of the bids by the Appellant and Respondent Consortium; and requested the Board that said declaration through the said letter dated 8.10.2010 should not be given effect to and that the tender should be evaluated based on the

original tender terms and conditions. The Appellant also requested the Petroleum Board through this letter not to open the price bid on 18.10.2010 and not to qualify any bid which provides for multiple originating points as declared in the letter dated 8.10.2010.

(I) In reply to said letter, the Petroleum Board sent a letter dated 13.10.2010 reiterating the same contents as contained in the letter dated 8.10.2010. In the meantime, the Appellant came to know that the bid submitted by the Respondent Consortium also was accepted by the Board though it was in deviation.

4. Under those circumstances, the Appellant filed this Appeal before this Tribunal on 13.10.2010 as against the decision taken by the Board accepting the bid submitted by the 2<sup>nd</sup> Respondent and modifying the tender terms through the letter dated 8.10.2010.

5. Though the Appeal was admitted, no stay was granted by this Tribunal. Hence, the Petroleum Board proceeded to open the financial bid of both the Appellant and Respondent Consortium on 18.10.2010. However, the results were not announced. Thereafter, as directed by this Tribunal, the Petroleum Board communicated to this Tribunal the result of the financial bids opened on 18.10.2010 indicating that the

Respondent Consortium was the lowest bidder. Thereupon, the Appellant filed the present amended Appeal seeking for the fresh prayer.

6. The Learned Counsel for the Appellant had elaborately made his submissions to substantiate his plea that the decision taken by the Petroleum Board in accepting the bid of the Respondent Consortium is legally invalid in as much as that the Consortium cannot claim to have become legally qualified since the bid submitted by it was in deviation to the original tender terms and conditions.

7. The gist of the submissions made on behalf of the Appellant is as follows:-

(i) The decision of the Petroleum Board in accepting the technical bid submitted by the Respondent Consortium which was in material deviation to the tender terms and conditions as contained in the tender documents issued on 23.10.2009 and to the other clarifications issued thereafter is illegal.

(ii) The decision of the Petroleum Board to accept the technical bid of the Respondent Consortium and to proceed to open financial bid of the Consortium despite the material deviation from the original terms and conditions is contrary to the express provisions contained in the tender

documents. As such, the tender submitted by the Respondent Consortium was not in accordance with the terms and conditions and therefore it should have been rejected as non-responsive.

(iii) The Petroleum Board has no authority to provide for changes in the tender terms and conditions by issuing the letter dated 8.10.2010, that too, after the submission of technical and financial bids by the bidders. The Petroleum Board can not modify the tender terms and conditions in material aspects that too after the event of bidding and after the Respondent Consortium submitting the bid in material deviation from the tender terms and conditions.

(iv) The plain reading of the terms and conditions of the tender documents dated 23.10.2009 clearly provide that the originating point is Mallavaram (State of Andhra Pradesh) and terminating points are Bhilwara (Rajasthan) and Vijaypur (Madhya Pradesh). The clarifications issued in the tender documents before the bid also clearly indicate that there would be no change in the originating point and terminating points. But the decision of the Board in allowing the terminating point to be considered as an originating point, through the letter dated 8.10.2010, is contrary to the objective and purpose of the bid proceedings initiated by the Board.

(v) As per the terms of tender documents namely the source of gas, the Appellant had arranged its bid in total conformity with the letter and spirit of the terms and conditions of the bid. It is the bid on the above scheme of the uni-direction of the flow of the Krishna-Godavari basin gas from Mallavaram (AP) to Vijaypur (MP) and Bhilwara (Rajasthan) via Bhopal. The design decision on the required capacity of the pipelines, the associated plant etc to effect the movement of the gas was made as desired by the Appellant, completely based on the aspect namely the pipeline was to be uni-directional. The Petroleum Board was not entitled to construe the terminating point at Bhilwara or Vijaypur as originating points after the bid was floated on 20.7.2010, on the ground that the originating point and terminating point mentioned in the tender map was enough for laying down the gas pipeline and not for the gas flow.

(vi) This stand now taken by the Petroleum Board is patently erroneous. The provision in the tender documents allowing the originating point and termination point on the gas pipeline is for allowing the gas of Krishna-Godavari basin to supply to end-users at various places, along with the gas pipeline. Utilisation of the surplus capacity available as a result of the gas taken out, additional gas to

be pumped into the pipeline in uni-direction namely towards Bhopal, Vijaypur, Bhilwra. This is not for injecting the gas at any place to move downward towards Mallavaram(AP).

(vii) If the Petroleum Board has specifically modified the bid terms even before the bid submission date and allowed the multi direction flow of the gas pipeline, the Appellant would have arranged its affairs in such a way in a different manner in regard to the bids submitted by it. In other words, the Appellant would have proposed much larger volume than 42 MMSCMD which has been quoted in its bid, if the terms had been modified that Vijaypur also could be used as a originating point for reverse direction movement of the gas. Thus, through this belated modification, the rights of the Appellant have been seriously affected.

(viii) The Petroleum Board has erred in modifying the position regarding common carrier portion of the pipeline after the submission of the bids by the parties. The modification made by the Board to the effect that 33% capacity over and above the bid volume is to be created would amount to completely revising the tender conditions, subsequent to the submission of the bid. This is arbitrary and against the settled principles of the law.

8. The learned Counsel for the Petroleum Board (R-1) and the Learned Counsel for the Consortium ( R-2 to R-5) while making the reply to the above submissions made by the Appellant have raised the preliminary objection with regard to the maintainability of the Appeal, which is as follows:

9. According to the Respondent, the Appeal filed by the Appellant at this premature stage is not maintainable in view of the fact that the mere action taken by the Petroleum Board in accepting the technical bid of the Respondent Consortium being responsive cannot be construed to be either an order or a decision within the meaning of Section 33 of the Petroleum Board Act (PNGRB) which alone would entitle the Appellant to file this Appeal.

10. Besides this, the learned Counsel for the Respondents made their elaborate reply to the various grounds urged on behalf of the Appellant which are as follows:

(i) The tender documents specify originating point and the terminating points only with reference to the physical construction of the natural gas pipeline and not with reference to the flow of the gas in the pipeline.

(ii) Injection of gas can be at any point of the place including at Bhilwara (Rajasthan) and Vijaypur (MP) which

are described as terminating points. The gas injection is not restricted to Mallavaram(AP) only.

(iii) The tender conditions do not provide for the flow of the gas as uni-directional i.e. from Mallavaram to Bhopal to Vijaypur to Bhilwara. In the tender, the gas flow would be bi-directional with the injections at any point at Bhilwara or at Vijaypur. As per the practice, any gas pipeline, unless specifically stated to be uni-directional should be considered as a bi-directional permitting flexible gas line at any point including terminating points.

(iv) The Petroleum Board (PNGRB) has the authority for notifying the Regulations duly permitting the injection of the gas in the gas pipeline at any point en route and also at the terminating points. The tender terms and conditions have to be read with the provisions of the Act and Regulations. In the present case the Regulations framed by the Petroleum Board have actually permitted the flexibility of the injection of the gas at any point including terminating points. When such being the case, it would not be appropriate to ignore the Regulations and give supremacy or any clarification issued in regard to the tender terms and conditions. In other words, the tender conditions and clarifications have to be read together with the relevant

Regulations. In the present case, tender conditions and clarification was in consonance with the Regulations.

(v) Petroleum Board Act (PNGRB) and Regulations envisage that the consumer's interest is to be supreme. Therefore, it permits the total flexibility, so that the price of the gas to the consumers is minimum. There is no useful purpose in using the gas pipeline only in a uni-directional manner in absence of the injection of gas at Bhilwara or Vijaypur. But, giving flexibility alone would substantially reduce the price to the consumers. In the present case, the Respondent Consortium have quoted very low price with the flexibility offered as compared to the price offered by the Appellant.

(vi) The tender documents issued on 23.10.2009 do not specify anywhere that the tender being in connection with or otherwise based on the evacuation of the natural gas. Therefore, the tender was not restricted to the evacuation of the gas from Krishna-Godavari basin alone. The pipeline gas flow in any direction enroute including injection at Bhilwara and Vijaypur.

(vii) The common carrier capacity was not to be a particular quoted volume as per the tender terms and conditions. It is the Appellant's technical bid which wrongly

includes the common carrier capacity within the quoted capacity contrary to the tender terms and conditions. The Petroleum Board has been lenient enough for consideration of the technical bid by providing that the Appellant should construct 33% more of the quoted value for common carrier purpose.

(viii) There is no violation in not giving the details of the spur lines with no additional cost to the consumers within the specified distance from main gas pipeline is a mandatory under the regulations of the Board. There is no need to specify the same again.

11. In the light of rival contentions the following questions may arise for consideration:-

(i) Whether this Appeal at this stage is maintainable when the mere action taken by the Board in accepting the technical bid of the Respondent Consortium as responsive cannot be construed to be an order or the decision within the meaning of section 33 of the Petroleum Board Act?

(ii) Whether the tender terms and conditions floated by the Petroleum Board can be construed as allowing the

termination points to be used as the originating points also for the transportation of the gas?

(iii) Whether the introduction of the conditions subsequent to the bid through letter 8.10.2010 to the effect that bidders shall be required to create minimum 33% of the capacity for their own use and for contractual purpose as common carrier over and above the contractual volume quoted in the financial bid is not a new stipulation in deviation from the tender documents?

(iv) Whether the failure of the Respondent Consortium to specify spur lines required to service the consumers on route in different zones in the transportation of pipeline at least 30 MMSCMD of gas is not violation of tender terms and conditions?

12. The **first question** relates to the maintainability of this Appeal. According to the Respondent No.1(Petroleum Board), the Appeal has been filed by the Appellant against the letter dated 8.10.2010 which is only a reiteration of clarification addressed to the Appellant and on that basis, the acceptance of the bid submitted by the Respondent is neither a decision nor an order and as such the same cannot be challenged in the Appeal in terms of Section 33 of Petroleum Act.

13. This preliminary objection in our view is not sustainable for the following reasons. The expression “decision” as contemplated under section 33 of Petroleum Act would include anything done by the Petroleum Board which has an impact of affecting the rights of the parties. According to the Appellant, the decision of the Petroleum Board accepting the technical bid of the Respondent Consortium as responsive when there were serious deviations from the tender terms would be termed as a decision affecting the rights of the Appellant. It is further stated that if the Board has taken the decision not to accept the technical bid of the Respondent Consortium as responsive since the same is in deviation of tender terms, then it will be rejected and in that event other bidder namely the Appellant alone will become a single bidder whose bid has been accepted as responsive. In short, it is the contention of the Appellant that the wrong decision taken by the Petroleum Board by accepting the bids of the Respondent Consortium has affected the right of the Appellant to emerge as a single successful bidder.

14. In view of this, this Tribunal has to decide the question as to whether the decision taken by the Board to accept the technical bid submitted by the Respondent Consortium as responsive which was said to be in deviation from the tender terms and conditions thereby affecting the right of the Appellant,

is legally valid or not. Hence, we are of the view that this Appeal is maintainable.

15. Let us now come to the other issues raised by the Appellant:

The first issue relates to the processing of selection of eligible company for laying down the pipeline for transportation of the natural gas from Mallavaram (AP) to the northern parts of India i.e. Bhilwara(Rajasthan) through the specified routes. The main question is this: “Whether in the facts and circumstances of the case, the technical bid submitted by the Respondent Consortium with stipulations was consistent with terms and conditions of the tender or whether there were any deviations and if so to what effect ?”

16. According to the Appellant, the technical bid submitted by the Respondent Consortium was in deviation of tender terms and conditions on three aspects and therefore, Respondent Consortium can not qualify to become the responsive bidder and therefore, its bid should have been rejected. The three aspects regarding the deviation were pointed out by the Appellant. They are as follows:-

(a) The tender terms and conditions stipulate Mallavaram to be the originating point for gas injection with reference to evacuation of gas pipelines in Krishna-Godavari basin and Bhilwara and Vijaypur to be the terminating points but the Respondent Consortium submitted the bids that the terminating point at Bhilwara in the state of Rajasthan will also be a point of gas injection.

(b) Respondent Consortium has not included the entire capacity of the proposed gas pipeline i.e. not including 33% minimum capacity to be used as common carrier as a part of the quoted volume of the bid.

(c) The technical bid submitted by the Respondent Consortium has not specified all the required stipulations for the delivery of the gas at the places of consumers.

17. According to the Appellant, each of the above aspects is a material deviation from the tender terms and conditions and consequently the bid submitted by the Respondent Consortium was clearly non responsive and therefore the Petroleum Board ought to have rejected the said bid.

18. Before dealing with these aspects, it would be appropriate to refer to the object of the Act as well as the Regulations. As

per the said Act, the Petroleum and Natural Gas Regulatory Board has been established 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, in order to protect the interest of consumers and entities engaged in specific activities relating to Petroleum, Petroleum Products and Natural Gas in all parts of the country and promote competitive markets.

19. One of the functions of the Board includes the granting and authorisation to entities to lay, build, operate, or expand a common carrier on contract. The object of the Board is to develop natural gas pipeline through which almost all the parts of the country are to be connected via multiple interconnected pipelines. As per the Regulation authorising entities to lay, build, operate or expand natural gas pipelines in Para 5(iv) (c), the Board in deciding so, shall be guided by one or more of the following objectives;

- i) Promoting competition among entities;
- ii) Avoiding infructuous investment;
- iii) Maintaining or increasing supplies or for securing equitable distribution or ensure adequate availability of natural gas throughout the country;
- iv) Protection of customers' interest in terms of availability of natural gas at reasonable natural gas pipeline tariff;

- v) Incentivizing rapid development of natural gas pipeline infrastructure.

Under Section-61 of Petroleum Board Act, the Board is empowered to make rules and frame regulations to be made on subjects as specified. Section-62 of the Act requires such rules made under regulations framed by the Board to be laid before the Parliament for approval. Some of the relevant regulations framed by the Board which were approved by the Parliament are as follows:-

- i) Petroleum and Natural Gas Regulatory Board (Authorising Entities to lay, build, operate or expand natural gas pipeline) Regulations,2008.
- ii) Petroleum Natural Gas Regulatory Board(Determining the Capacity of petroleum, Petroleum Products and Natural Gas pipeline Regulations,2010)
- iii) The Petroleum Natural Gas Regulatory Board (Guiding principles for declaring or authorizing Natural Gas pipeline as Common Carrier or Contract Carrier Natural Pipelines)

20. As per the Act and Regulations, the entities bidding for the work of laying down the pipelines will be required to lay, build, operate, or expand natural gas pipeline in line with the provisions/functions specified in the Petroleum Board Act,2006 as well as under the Regulations notified by the Petroleum

Board for such functions. The bidders have to carefully go through the provisions of the Act, 2006, the notified Regulations and the draft Regulations available in the public domain. In other words, entities shall be required to carry out the development of natural gas pipeline project in line with the Act and Regulations laid down by the Petroleum Board. While dealing with the questions framed above, the above basic principles have to be borne in mind.

21. According to the Appellant, while elaborating the 1<sup>st</sup> aspect, there cannot be any change in the originating point and the terminating point and consequently the pipelines to be laid are to be uni-directional and not bi-directional and as such, the multi-injection points are not possible in the said pipelines.

22. Let us now look into the relevant provisions of the Petroleum Board Act and Regulations in relation to grant of authorisation to an entity for a natural gas transmission pipeline. The term “Natural gas pipeline” is defined under Clause-2 of the Regulations:

*“Natural Gas Pipeline” means any pipeline including spur lines for transport of natural gas and includes all connected equipments and facilities, such as, compressors, storage facilities, metering units, etc. but excludes:*

*(i) Dedicated pipeline laid to transport natural gas to specific customer to meet his requirement and not resale.*

*(ii) Pipeline in a city or local natural gas distribution network which are regulated by the Petroleum and Natural Gas Regulatory Board.*

This provision defines the Natural Gas Pipeline means any pipeline including spur lines and all connected by equipments and facilities. Let us now quote section 19 of the Act, which is reproduced below:

**“Grant of Authorisation:**

*(1) When, either on the basis of an application for authorisation for laying, building, operating or expanding a common carrier or contract carrier or for laying, building, operating or expanding a city or local natural gas distribution network is received or on suo moto basis, the Board forms an opinion that it is necessary or expedient to lay, build, operate or expand a common carrier or contract carrier between two specified points, or to lay, build, operate or expand a city or local **natural gas distribution network** in a specified geographic area, the Board may give wide publicity of its intention to do so and may invite applications from interested parties to lay, build, operate or expand such pipelines or city or local natural gas distribution network”.*

In line with the above, it could have been desirable for the Board to have specified in the tender that the pipeline has to be built between Mallavaram and Vijaipur in one segment and Mallavaram and Bhilwara the other segment in line with the wording “Between two points”. By

inserting the words “originating point” and “ terminating point” in Annexure I of the tender, certain amount of ambiguity may have been created in the bidder’s mind about the purpose of specifying this as originating point and termination point.

23. The Appellant had submitted its “Expression of Interest on 20.11.2008 for construction of gas transmission pipeline from Vijayawada (AP) to Vijaypur(MP) after which process of public consultation was initiated by the Board. Although the Expression of interest has been submitted by the Appellant giving the routes of pipeline, the Petroleum Board had notified the tender independently and gave its own rule for laying the pipeline while notifying the bids.

24. Let us see the ‘Expression of Interest’ submitted by the Appellant which is as follows:-

*“Assessment of total gas volume for transportation in the proposed natural gas pipeline: 30 MMSCMD considering 33% additional capacity creations as per PNGRB requirement”.*

*“Any other issue considered by the entity; the pipeline will pass through gas starved region of central India and will help develop in the region. This P/L limb will ensure connectivity of all major gas sources through a ring network thereby ensuring security of supply to consumers connected on major trunk lines”.*

25. Similarly the 'Expression of Interest' submitted by the Respondent Consortium is mentioned as follows:-

*"The proposed pipeline will pass through economically backward, underdeveloped areas of that this could, but the British and Rajasthan so as to ensure the development of the conception and backward areas including overall growth of the country.*

*Interlinking with the existing network in the state of Gujarat will ensure continuous supply of gas from other sources such as Panna Mukta fields, shell L.N.G. and Petronet LNG at Dahej. This will ensure security of supply to consumers connected on this proposed trunk line.*

*Interlinking with the GAIL network in Madhya Pradesh.*

*Connectivity to the cole Bed Mothane(CBM) blocks along the pipeline route and other indigenous gas fields.*

26. The perusal of both the Expression Of Interest would clearly indicate the intention and the understanding of both the bidders. There was no ambiguity at any point of time with regard to the connectivity and interlinking of the gas pipeline which is possible only with the multiple injections. The Appellant has laid upon the map of the route of pipeline to show that the route of the pipeline is indicative of the gas flow. According to the Petroleum Board, the map is only for the purpose of route of the pipeline and is not indicative of the gas flow.

27. The Appellant has filed a chart showing as many as five different other pipeline projects where only in one case

specifically the word bi-directional has been used in order to show that the gas flow has to be considered unidirectional except where otherwise specified as bidirectional. However, in these cases, the precise source has been specified and the pipeline project is only for receiving gas only from these resource. But in this project, the specific source of gas has not been specified. In the Expression of Interest issued by the Ministry of Petroleum it does not appear that source of gas is specified only for unidirectional pipelines and not for the bidirectional pipelines. It is seen from the chart that even for bidirectional gas under originating point, it is stated that Haldia in the state of West Bengal or Jagdishpur in the state of U.P will be the source of gas. Therefore, it can not be said where the bidirectional flow has been mentioned, the specific source of gas has not been mentioned. In fact, the chart submitted by the Appellant shows the notice inviting Expression of Interest issued by the Ministry of Petroleum, indicates the gas source and mention "originating point" which indicated the source of gas injection.

28. As pointed out by the Learned Counsel for the Petroleum Board, the 'Expression of Interest' filed by the Appellant itself mentions that the pipeline could take natural gas injection from several sources thereby forming a ring network. This would show that the Appellant acknowledges that there should be more than one gas injection point on the pipeline based on the

availability of gas from KG basin and other gas sources. The relevant part of the 'Expression of Interest' filed by the Appellant is reproduced below:

***“Clause 2(C) of Schedule A of Eoi:***

***Natural gas Availability position:***

*The source of gas will be the new discovery of RIL, GSPC and ONGC in KG Basin, GAIL has signed MoUs with RIL and ONGC for natural gas marketing and transportation. Agreement/MoU with GSPC are in advance stage.*

*Expected availability of natural gas for the Pipeline:*

*RIL : 5-10 MMSCMD  
GSPC: 5-10 MMSCMD  
ONGC: 15-20 MMSCMD  
Total 25-40 MMSCMD*

***Clause 2(F) of Schedule A of EOI***

*The pipeline will pass through gas starved region of Central India and will help development in the region. This P/L limb will ensure connectivity of all major gas source through a ring network thereby ensuring security of supply to consumers connected on major trunk lines”*

29. Similarly, the Respondent-2 also submitted its “Expression of Interest” for construction of gas transmission pipeline from Mallavaram (AP) to Bhilwara (Rajasthan). In this also, there is

an indication that there could be a multiple gas source and gas injection points in the pipeline. The relevant portion of the EOI is reproduced below:

**Clause 29 (F) of Schedule A of EOI of GSPL**

**“Any other issues considered by the entity: (i.e GPL):**

*The proposed pipeline will pass through economically backward underdeveloped areas of Chhatisgarh, Madhya Pradesh and Rajasthan so as to ensure the development of weaker section and backward areas including overall growth of the country.*

*Interlinking with the existing network in the State of Gujarat will ensure continuous supply of gas from other sources such as **Panna-Mukta fields, Shell LNG and Petronet LNG and Dahej.** This will ensure security of supply to consumers connected on this proposed trunk lines*

(Emphasize supplied”).

30. Only after receipt of this ‘Expression of Interest’ from both of them, the process of public consultation was undertaken for the ‘Expression of Interest’ submitted by both the Appellant and R-2. Thereupon, the Petroleum Board constituted a high level Pipeline Advisory Committee (PAC) for advising in respect of the two ‘Expression of Interest’.

31. This provision makes it clear that the Petroleum Board for the purpose of laying, building, operating or expanding a common carrier or contract carrier between the two specified

points in a specified geographic area, may invite applications from the interested parties. The wordings contained in this Section as “to lay, build between two specified points” assumes significance. Let us see the relevant **Regulation 5(4) of the PNGRB Regulations 2008** which is as under:

***“Criteria for Selection of Entity for Expression of Route:***

*(4) The Board shall based on the views received, within a period of forty five days after the last day of the public consultation period decide:*

*(a) to reject the expression of interest on grounds of non-availability of natural gas;*

*(b) not to allow the proposed natural gas pipeline if it is convinced that, instead of laying, building or expanding the proposed natural gas pipeline, the projected potential demand could be better met in cost effective manner by expansion of an existing pipeline; or*

***(c) To go ahead with the proposal with or without modification***

*Provided that, if required, the Board may also hold an open house discussion with the entities who have offered their views to arrive at a decision:*

*Provided further that the Board in deciding so shall be guided by one or more of the following objectives, namely:*

*(i) promoting competition among entities;*

*(ii) avoiding infructuous investment;*

***(iii) maintaining or increasing supplies or for securing equitable distribution or ensure adequate availability of natural gas throughout the country;***

***(iv) protection of customers' interest in terms of availability of natural gas at reasonable natural gas pipeline tariff;***

*(v) incentivizing rapid development of natural gas pipeline infrastructure:*

32. This Regulation would provide for the Board to go ahead with the proposal with a view to maintain or increase supply or for securing equitable distribution throughout the country taking the customers interests in terms of availability of natural gas at a reasonable tariff.

33. According to the Respondent Board, the objective contained in the Regulation can be better achieved only when there is no restriction as to the multiple gas injection points. Taking into consideration these Regulations, the Board finalised the route for the pipe line and invited the bid from all interested entities for laying of natural gas pipeline from Mallavaram (Andhra) to Bhilwara (Rajasthan) and Vijaypur (MP) via Bhopal extending to a distance of 1585 Kms.

34. In this context it is noteworthy to quote the relevant clause of the bid document. They are reproduced below:

**“Clause 1 of the Instructions to Bidders (ITB) of the bid document read as under:**

1.1. Application cum Bids are invited by Petroleum & Natural Gas Regulatory Board (PNGRB), 1<sup>st</sup> Floor, World Trade Centre, Babar Road, New Delhi-110001 from the interested and eligible parties **for authorisation of Natural Gas pipeline network** from Mallavaram (Kakinada, Andhra Pradesh) to Bhilwara (Rajasthan) & Vijaipur (Guna, Madhya Pradesh) via Bhopal (Madhya Pradesh) spanning about 1585 Kilometers with a design capacity of at least 30 MMSCMD. The spur-lines shall be provided by the authorized entity as per the customer’s requirement en-route the pipeline in line with the provisions of the relevant regulations. Proposed natural gas **pipeline would pass through** states of Andhra Pradesh, Maharashtra, Madhya Pradesh & Rajasthan.

1.2. **The bidders participating in the Application cum Bid are advised to go through the various provisions under the Petroleum and Natural Gas Regulatory Board Act 2006 as also the relevant Regulations notified by the Board.** The PNGRB has notified the following regulations related to natural gas pipelines in the Gazette of India and are available on website <http://www.pngrb.gov.in>.....”

35. So, these instructions would clearly provide that the Bidders participating in the bid process have been advised to go through the provisions of the Petroleum Board and also the relevant Regulations notified by the Board. The Board in deciding the route of the pipelines considered various objectives in order to avoid infructuous investment in the natural gas pipeline for securing equitable distribution or to ensure

adequate availability of natural gas throughout the area covered.

36. According to the Appellant, the objective of laying pipelines is only to evacuate the gas and no pipelines shall be laid otherwise.

37. In our opinion Laying a gas pipeline is to fulfil two objectives i.e. (1) taking or evacuating gas from a source to linking and making this gas available to consumers who are in need of the gas and (2) If adequate evacuation facilities through pipelines are not provided at producing source, it can result in loss of production at huge cost and gas producing fees can not be developed. One purpose of gas pipeline is to evacuate from a producing source and another purpose is to provide this gas to the consumer at the most economic tariff.

38. Let us now look into the provisions contained in the bid documents as well as the Regulations. Section II of the bid document i.e. **“Scope of Work”** reads as under:

## **17.0 Scope of Work**

### **17.1 General**

**17.1.1** Petroleum & Natural Gas Regulatory Board (PNGRB) was constituted under the “Petroleum & Natural Gas Regulatory Board Act, 2006”. The objective of the Board is 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 specific activities related 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.

## **17.2 Natural Gas Pipeline to be authorised**

**17.2.1** PNGRB has received Expressions of Interest (EOIs) from entities for laying, building, operating or expanding natural gas pipeline from Mallavaram (Kakinada, Andhra Pradesh) to Vijaipur (Guna, Madhya Pradesh) via Bhopal (Madhya Pradesh).

**17.2.3 It is the bidder's responsibility to obtain all information related to the present gas supply position and existing and future customers if any falling along the route of the proposed natural gas pipeline"**

39. It is also mentioned in Note 33 of the Bid Document about the bidding document as under:

### ***"PRE BID CONFERENCE***

*During the course of Pre-Bid Conference, the bidders will be free to seek clarifications and make suggestions for consideration of the PNGRB. The PNGRB shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process".*

40. So, these provisions would make it clear that it was open to the Appellant to seek clarification during the pre bid meeting as to whether the purpose of this pipeline is only to evacuate gas from KG basin. However, the Appellant had not asked for any clarification on this point. It is true that the Respondent Consortium has considered the KG Basin as a prime source of gas in its bid but it has also considered other available source of gas as well keeping in line with the objective as mentioned in Regulation 5(4) of the Board Regulations 2008.

41. The Appellant has claimed that the Respondent Consortium has not disclosed the gas availability at Bhilwara. In order to verify whether this contention is correct or not, we will now refer to the bid issue dates for the natural gas pipelines projects of the Board. They are quoted as under:

(1) **Mallavaram Vijaipur Bhilwara Pipeline:**

**Bid Issue date: 23<sup>rd</sup> October, 2009**

**Route of the Main Trunk Pipeline (tentative):**

Mallavaram, district Kakinada (Originating Point) – Peddapuram-Sipur-Nagpur-Bhopal-Sehore-Mandsaur-Bhilwara (Termination Point #1) & Bhopal-Vijaipur (Guna) (Termination Point #2)

Spur-lines: The spur-lines shall be provided by the authorised entity as per the customer's requirement en-route the pipeline in line with the provisions of the relevant regulations.

**(2) Mehsana Bhatinda Pipeline**

**Bid issue date: 16<sup>th</sup> October, 2009**

**Route of the Main Trunk Pipeline (tentative)**

Mehsana (Originating Point) – Palanpur-Abu Road-Sirohi-Nasirabad-Sikar-Jhunjhunun-Rajgarh-Sirsa-Bhatinda (Termination Point)

**Spur lines- Following locations en route the pipeline shall be connected through spur lines**

Udaipur, Jodhpur, **Bhilwara**, chittorgarh, Ajmer, Jaipur, Alwar & Rohtak.

42. The above particulars would clearly indicate that one of the obligations is “Allowing Access and Interconnectivity to other natural gas pipeline systems”. This would clearly indicate that there is a possibility of other pipelines connecting to this project which could be a source of natural gas i.e. entry point or an exit point.

43. Thus, it becomes evident that it was in the knowledge of all the Bidders that route map of the proposed pipe line was establishing interconnection between the Mallavaram Pipe Line and Bhilwara Pipe Line. The Gas sources availability at Bhilwara was very much in public domain. Accordingly, the Respondent Consortium considered the Bhilwara as one of the gas injection point considering that the Bhilwara Pipe Line would

feed gas from various LNG terminals and domestic gas fields in Gujarat.

44. A tender is not for evacuation of gas from KG Basin or Mallavaram alone. It is for supply of gas to the consumers along the route of the pipe lines. Source of gas has not been fixed.

45. As pointed out by the Learned Counsel for the Board, neither the provisions of the Petroleum Board Act nor the provisions of any of the Regulations and nor the terms and conditions of the bid documents stipulate that the gas has to be mandatorily injected at the originating point only. There is no indication in these documents that the injection can not be done at any other point on the pipe lines. In other words, the provisions of the Regulation, 2008 referred to above, put together with the terms and conditions of the bidding documents did not hinder any bidder in assuming gas injection from various entry points to the termination point. The tender documents invited the bidders for development of natural gas pipelines from one point to another point without any specific mentions of the gas source.

46. As indicated above, the reference to the wordings 'Originating Point' and the 'Termination Point' as given in the bid documents referred to the pipeline only and not the gas as such.

It only suggests that the Pipe Line will originate at one point and terminate at another point. It means the gas in the same pipe line can be carried from any side or away from any point. None of the documents or the Regulations supports uni-directional flow of gas. None of the documents or Regulation would indicate that uni-directional flow of gas has to be carried through said pipeline. It is claimed by the Appellant that the pipeline be construed to be uni-directional unless specifically identified as bi-directional. There is no technical definition as to the term uni-directional or bi-directional pipeline. None of the technical standards that are prevailing in the pipeline industry have any definition about this term. Gas flows in the pipeline from higher pressure to low pressure naturally. There is no restriction on flow of gas from one point to another in the pipelines. The only requirement is sufficient pressure shall be there to push the gas from one point to another point. The gas flow direction is always decided by the source of supply and from higher pressure or voltage to low pressure. It is not necessary that flow direction would always be the same. Hence the contention of the Appellant that when the tender is silent, then it should be considered as a uni-directional is misconceived.

47. When nothing is specified, then it is for the bidder to construct the natural gas transmission pipeline in such a manner so that it caters to the need of the customers in most cost

effective manner from the available gas sources. In this context, it would be appropriate to refer to the following clause of the bid document:

**“17.4. Design of Natural Gas Pipeline**

*17.4.1 The design of the natural gas pipeline shall as per the Petroleum and Natural Gas Regulatory Board relevant regulations on Technical Standard and Specifications including Safety Standards for the Natural Gas Pipelines”*

48. This clause would indicate that the bidders are required to comply with the technical standards and specifications. As indicated above, neither the bid document nor the Regulation defined can permit uni-directional or bi-directional pipeline.

49. The Appellant relies upon the specific Notification by the Ministry of Petroleum and Natural Gas for pipeline as bi-directional pipelines to prove its point that the pipeline has to be specifically mentioned as bi-directional pipelines. This notification was not based on any technical standard, Regulations, policies or statute etc. The Ministry has given the authorisation to various pipelines based upon the ‘Expression of Interest’ submitted by the Appellant. It is pertinent to note that the Ministry which is not a technical body had not invited any bids in this regard asking for a bi-directional or uni-directional pipeline or prescribing to any technical specifications. On the contrary, it has simply given authorisation to proposal submitted

by the Appellant for laying of natural gas pipelines. It is the Petroleum Board who deals with the complex technical and commercial issues.

50. The Appellant has claimed that as per the terms of the bid document, Mallavaram, the originating point should be considered as the gas injection point with reference to the evacuation of gas finds in Krishna-Godavari Gas finds and as such, the claim by the Respondent Consortium that the Bhilwara is one of the gas injection points is a material deviation as Bhilwara is only a termination point as referred to in the bid documents. We will now refer to the Annexure I of the bid documents. The relevant part is reproduced below:

***“Route of the Main Trunk Pipeline (tentative) as follows:***

*Mallavaram, district Kakinada (Originating Point)  
Peddapuram-Ramagundam-Sipur-Nagpur-Bhopal-  
Sehore-Mandsaur-Bilwara (Termination # 1) &  
Bhopal-Vijaipur (Guna) (Termination Point #2)”.*

51. The respondent has argued that the term as Originating point and Termination point has been specified only to determine the route between which the main Trunk Pipeline is to be constructed. However, in the method for determination of pipeline capacity, as stated in para 58 on page 43 at sub-para (ii) ....., “ at the originating point and at intermediate points in the direction of flow” ..... This would seem to indicate that originating

point refers to the point at which the gas is injected at the beginning of the pipeline i.e. the starting point for gas flow. If we accept that 'originating point' refers to the first point of injection of gas, then 'terminating point' would as a corollary, refer to the terminal or last point of gas flow. In the notice inviting Expression of Interest for participating in GAIL's pipeline projects by Government of India, the term Originating point refers to the first gas injection point and this has been the practice for several years in the past.

52. As indicated above Section 19 of the Act, contemplates the laying of pipelines from one point to another point since originating point has been merely mentioned as a point of origin. This point of origin as referred to in Regulation 2008 has not been defined either in the Act or in the Regulation of the bid documents. Therefore, the Originating Point as referred to in the bid documents only refers to the point from where the pipelines will begin. Similarly, the termination point mentioned as end point as referred to in Regulation 2008 has also not been defined either in the Act or in the Regulation or bid documents. Hence, the termination point as referred to in the bid documents only refers to the point where the pipeline will end. Thus, neither originating point nor terminating point can mean injection point. As a matter of fact, the injection point can be in the pipelines

anywhere between the originating point and termination point.

Schedule –A to the Regulation 2008 stipulates as follows:

*“The entity submitting the Expression of Interest must submit the following information:*

*2A **point of origin** and **end point** of the proposed natural gas pipeline*

*2B indicative route of the proposed natural gas pipeline indicating the likely natural gas injections points and likely delivery points depicted on a physical map”*

53. The reading of the above Regulations would make it clear that it is the responsibility of entity which is submitting the tender to indicate the route of the pipeline (point of origin and end point of the pipeline) and likely natural gas injections point and delivery points for the proposed pipeline. Thus where there is only one originating point of the pipeline, there can be multiple gas injection points on the pipeline.

54. Now we will look into the various other Regulations in order to analyse this aspect further. The definition of the tariff zone has been mentioned in Regulation 2(h) of the Regulation 2008. The relevant portion of the definition of tariff zone is given below:

**“2 (h) “tariff zone” means the zone-**

*(i) Of a length of three hundred kilometres each along the route of the natural gas pipeline from the point of origin till the end point:*

*Provided that.....*

*(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 kilometres measured from the nearest point on the surface of the natural gas pipeline on both sides, and including the point or 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.....”.*

55. 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.

56. As per Regulation 2(h)(i), zones of three hundred Kilometers along the route of the pipelines are demarcated from the point of origin. Regulation 2(h) (ii) (a) stipulates that the first tariff zone shall be counted with reference to any 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 or tariff zone shall be counted separately on either side along the contractual path for delivery of natural gas in the natural gas pipelines. This indicates by-directional flow of the gas in the pipeline.

57. The first proviso provides 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. This clearly indicates that there can be multiple gas injection points in a pipeline.

58. In addition to above Regulations, we have to take note of one other regulation namely 5 (5) (a) of Petroleum Board Regulation, 2010. The said Regulation specifies the methodology for determining the capacity for a pipeline system, having single or multiple injection point to cover all potential sources of natural gas along the length of pipeline. The relevant para of clause 5 (5) (a) of Regulation, 2010 is reproduced below:

***“Natural Gas Pipelines:***

*(i) The entire pipeline system shall be configured in the selected software package operating offline. The steady state condition of the pipeline hydraulics with contractual flow parameters (pressure, temperature and flow) at entry and exit points shall be simulated in the selected software package.*

*(ii) At the originating point and at intermediate points in the direction of flow, set the pressure as a fixed parameter corresponding to the maximum allowable operating pressure (MAOP) or available compression facilities and compute the maximum pressure at all exit points with contractual flow.*

*(iii) Thereafter, assuming gas at the entry (single source of gas) is unlimited, the selected software will be run till any customer connected to the system reaches limiting condition of pressure required the respective exist point or maximum flow capacity is reached at entry or intermediate compressor stations (if installed in the system) or the velocity of natural gas reaches limiting value as defined in these Regulations. The capacity at this juncture would be the maximum system capacity achievable in the pipeline*

*system and the customer at the exit point where pressure becomes limiting shall be the critical customer.*

*(iv) Now simulate the flow from **any other source considering the entry** should take place at the pressure marginally higher than the available at that section. The exercise carried above shall be repeated to get threshold pressure limit at any location to calculate the flow exiting from each point in the entire pipeline system and the sum total of these flows shall be the pipeline capacity as determined by the approved flow equation and selected software. This would be the system capacity for multi source pipeline system.*

*(v) The section wise capacity of the pipeline system shall be computed between an entry point and exit points. In case of multi entry, the section wise capacity may also be determined taking into account flow from each of the input points. Thus, the first section is from first entry point to first exit point and second section shall be from first entry point to second exit point and another section and so on. This exercise shall be repeated for each of the entry point. However, in real time working, the effect of each source will have to be worked out on the pipeline capacity and the flow parameters at intermediate points shall not be allowed to reduce the system or section capacity. The procedure mentioned above shall be applicable for determining the capacity of specific section of the pipeline.*

*(vi) In a real time model of pipeline system, the flow at specific entry points shall be the actual available flow from that source. The gas supply from various sources at entry points and delivery at exit points shall be scheduled to optimize the pipeline system capacity.*

*(vii) The obligatory or contractual requirement of pressure at any exit point shall determine the possible capacity*

*within a particular section serving that exit points. Provided further that maintainability of a particular steady state hydraulics condition at any exit point shall be mutually determined between capacity determining authority and the transporter within the flexibility available in the system. The Section wise capacity thus calculated with **single or multiple entry** and exit points shall be run with the approved flow equation and selected software package offline in the steady state operation of the system to arrive at capacities of various sections”.*

59. These Regulations were actually published before the bids were submitted. As a matter of fact, the said Regulations have been framed by the Petroleum Board to determine the capacity of pipelines with single or multiple injection points. In the developed markets globally, multiple injection points is a common practice, but in India, the use of multiple injection points for gas may be a recent phenomenon.

60. The Learned Counsel for the Petroleum Board has brought to our notice the details of the clarifications issued by the Board on various queries put by the parties. These clarifications are as follows:

*“Query: 9.07.2010:*

*Regulation No.13 (3): The Board may allow re-routing of the Natural Gas Pipeline that such re-routing does not result in increase in natural gas pipeline length by more than 10% of the authorised length of the natural gas pipeline.*

*Clarification dated 13.5.2010: The bidders are allowed to deviate from the route of the main trunk pipeline including*

*originating/termination point of the pipeline upto +/-5% w.r.t. the indicative route mentioned in the bid document for the purpose of preparation of Feasibility Report. However, the provision of sub-regulation 3 of Regulation 13 shall be applicable.*

*Clarification dated 4.3.2010: No change of originating and terminal points will be permitted except for marginal change due to **availability of land** etc.*

**Clarification:**

*(i) There is no ambiguity in the sub-regulation 13 (3) and clarifications issued.*

*(ii) Clarification dated 13.5.2010 allows the bidders to deviate upto +/-5% w.r.t. the indicative route mentioned in the bid document for the purpose of preparation of FR”.*

61. From the above clarifications, it is clear that the originating point and termination point with respect to a pipeline refers to the construction of the physical pipeline only. In the above context, as pointed out by the Learned Counsel of the Petroleum Board, we have to take note of the letter dated 8.10.2010 issued by the Board to the Appellant in response to the various correspondence made by the Appellant in relation to the bid. The relevant portion of the clarification is as follows:

*“It is reiterated that the bid document should be read with and interpreted as per the provisions of the PNGRB Act, 2006 and regulations notified there under.*

*However, since you have raised the same issues again, in order to make the things clear beyond doubt, the following is informed for the benefit of the bidder:*

*(i) Gas injection at any point in the pipeline system including the termination point shall be allowed.*

*(ii) Linkage of capacity with volume quoted in the bid shall not be a criteria for selection or rejection of bid and the grant of authorisation shall be subject to the condition interalia that the authorised entity shall be required to create minimum 33% of the capacity for own use and for contractual purpose as common carrier capacity over and above the volume quoted in the financial bid.*

62. This letter clarifies that the gas injection at any point in the pipeline system should be allowed including at the termination point as provided in the provisions of the Act as well as the Regulation notified under the Act.

63. In view of the above, the contention of the Appellant that the Respondent Board had made substantial deviation in the specifications of the pipeline after the bids were submitted by way of treating the Bhilwara as the originating point instead of being treated only as the termination point, has no basis.

64. It is important to note that the purpose while developing the pipeline is to ensure uninterrupted and adequate supply of Natural Gas, in all parts of the country. This cannot be achieved by putting a restriction that there must be only one injection point being a originating point. If the gas cannot be injected anywhere in the pipeline instead of originating point, this would only lead to infructuous investment. This would also jeopardize customers interest of having reasonable natural gas pipeline tariff.

65. It was never the objective nor the requirement of the Act, Regulations or the Bid documents to specify the injection points as it is impossible to specify the injection point at the time of bidding, as the gas infrastructure is evolving in the country and there would be many more injection points that would come in the future.

66. As indicated above, the Regulation contemplated multiple points of gas injection. No provisions either by the Act or by the Regulations and nor the tender documents stipulates that the injection of gas has to be mandatorily done only at the originating point only at Mallavaram or injection of gas cannot be done at any other point on the pipeline, including the termination point.

67. One more aspect has been pointed out by the Respondent. The Board in its second pre bid meeting held on 27.4.2010, apprised all the bidders that what would be a successful bidder's obligation. One of the obligation is **“Allowing Access and Interconnectivity to other natural gas pipeline Systems”**. This clearly brings out that there is a possibility of other pipelines connecting to the entire route which could be a source of natural gas or an exit point.

68. In order to explain this position, the Respondent has cited an example. The said example is as follows:

*“If bid is invited to build road from place A to B, then, it does not mean that traffic shall flow only from A to B. On the other hand, the traffic can flow from B to A also”*

In our view, this may not be the appropriate analogy since on a road we could have forward and reverse flow of traffic simultaneously while for a pipeline facility may need to be redesigned for facilitating two directional flow or unidirectional flow.

69. However, it is pointed out by the Learned Counsel for the Respondent that if the concept of one injection point is accepted, then it would destroy very purpose of common gas grid infrastructure which links various sources of supply to various customers at various locations on the pipelines which would enable efficient use of natural gas from any source along the pipeline. In the light of the above reply, which we agree, the submissions made by the Appellant on this point relating to deviation are liable to be rejected.

70. We shall now deal with next issue in relation to the introduction of condition subsequent to the bid to the effect that bidders shall be required to create 33% of the capacity for their own use. It is submitted by the Appellant that the modifications to this effect made by the Petroleum Board through their letter dated 8.10.2010 would amount completely revising the tender conditions imposed

subsequent to the bids. On this point, both the Learned Counsel for the Appellant as well as the Respondent have made their elaborate submissions.

71. On going through the Regulations, it is noticed that the requirement of minimum 33% of the capacity over and above the sum of capacity for their own use and for the contractual purposes, as a common carrier, cannot be said to be a new stipulation. The said condition finds place already in the Regulation of PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008. Clause 5 (6) (j) of the Regulations, 2008 is relevant in this regard which is as under:

***“(j) the entity agrees to build extra capacity in the natural gas pipeline as per the following basis, namely:-***

***(i) the capacity of natural gas pipeline shall be an aggregate of following namely:-***

- (A) capacity requirements of the entity,***
- (B) firmed up contracted capacity with other entities,***
- (C) at least 33% of the sum of (A) and (B) as an extra Capacity,***

72. The above clause would indicate that the conditions relating to 33% of the capacity is very much available in the above Regulations.

73. The next Regulation is 5(5) (a) of PNGRB (determining capacity of petroleum products and natural gas pipeline Regulation, 2010 (for short 'Regulations 2010)'). It provides mechanism for calculating capacity taking into account several factors including multiple injection points in the pipeline. We will quote this relevant clause:

***“Clause 5 (5) (a): Natural Gas Pipeline***

***(i) The entire pipeline system shall be configured in the selected software package operating off line. The steady state condition of the pipeline hydraulics with contractual flow parameters (pressure, temperature and flow) at entry and exit points shall be simulated in the selected software package.***

***(ii) At the originating point and at intermediate points in the direction of flow, set the pressure as a fixed parameter corresponding to the maximum allowable operating pressure (M.A.O.P) or available compression facility and compute the maximum pressure at all exit points with contractual flow.***

***(iii) Thereafter assuming gas at the entry point (single source of gas) is unlimited. The selected software will be run till any customer connected to the system reaches limiting condition of pressure required at the respective exit point or maximum flow capacity is reached at any entry or intermediate compressor stations (if installed in the system) or the velocity of natural gas reaches limiting value as defined in the Regulations. The capacity at this juncture would be the maximum system capacity achievable in the pipeline system and the customer at the exit point***

**where pressure becomes limiting shall be the critical customer.**

**(iv) Now simulate the flow from any other source considering the entry should take place at the pressure marginally higher than the available at that section. The exercise carried above shall be repeated to get threshold pressure limit at any location to calculate the flow existing from each point in the entire pipeline system and the sum total of these flows shall be the pipeline capacity as determined by the approved flow equation and selected software. This would be the system capacity for multisource pipeline system.**

**(v) The section wise capacity of the pipeline system shall be computed between an entry point and exist points. In case of multi-entry the section wise capacity may also be determined taking into account flow from each of the input points. Thus, the first section is from first entry point to first exit and second section shall be from first entry point to second exist point and another section and so on. This exercise shall be repeated for each of the entry point. However, in the real time working, the effect of each source will have to be worked out on the pipeline capacity and the flow Parameters at intermediate points shall not be allowed to reduce the system or section capacity. The procedure mentioned above shall be applicable for determining the capacity of specific section of the pipeline.**

74. The above Regulation would clearly reveal that if the pipeline was to be only uni-directional, these Regulations would not have been there and as such, there is no need to specify mechanism in regard to capacity as explained above.

75. The next such Regulation is Regulation 14 which provides as follows:

***Regulation 14 (Service Obligation of authorised Entity (Post Commissioning))***

***(i) the entity shall meet the annual target of transporting natural Gas equal to the volume of natural gas quoted in the bid and the Board shall monitor the actual progress in this regard on a quarterly basis:***

***Provided that no fulfilment of the annual target by the entity shall result in default and encashment of the performance bond on the following basis namely:-***

***(a).....***

***(b).....***

***(c).....***

***(2) the authorised entity shall not cause the activities of transport of natural gas in the natural gas pipeline and its delivery to any customer be made conditional to sourcing of the natural gas from the entity or any other entity.***

***(3) the authorised entity shall give wide publicity of the capacity available in the natural gas pipeline for use in common carrier or contract carrier basis to encourage maximum utilisation of the pipeline capacity and shall maintain information on this regard, on its official website as specified in the relevant regulations on the access code.***

***(4) the capacity available in natural gas pipeline for use as common carrier shall be allocated on the basis specified in the relevant regulations on the access code and declaring natural gas pipeline as contract carrier or common carrier”.***

76. This Regulation also would provide for the capacity available in natural gas pipeline to be used as a common carrier and it shall be allocated declaring natural gas pipeline as contract carrier or common carrier.

77. In addition to these Regulations, it would be appropriate to refer to the clarifications given by the Board for various queries raised by the parties. The following are the queries and the answers in the clarification dated 1.4.2010:

**“Question:** *With reference to Regulation 14, clarify whether if an entity constructs a pipeline of 30 MMSCMD capacity and bids for 30 MMSCMD of volume assuming 25% volume on common carrier basis on which entity has no control, then should annual volume targets be 30 MMSCMD or 75% of 30 MMSCMD i.e. 22.5 MMSCMD?*

**Answer:** *Annual target of transporting natural gas shall be equal to the volume of natural gas quoted in the bid and may or may not have linkage with the design capacity of the pipeline authorised by the Board. However, maximum volume quoted in the bid shall be 75% of the design capacity of the pipeline.*

78. The above query related to hypothetical situation where the design capacity of the pipeline was assumed as 30 MMSCMD.

This means that the pipeline would be incapable of carrying any volume more than 30 MMSCMD. In this situation, and keeping in mind, the mandatory regulation of keeping 33% capacity as spare capacity for future, the maximum volume that a bidder could quote in its bid could be 75% of 22.5 MMSCMD. When additional 33% of 22.5 MMSCMD would be added to it in future, it would translate to  $22.5 + 7.5$  which would be 30 MMSCMD, the maximum design capacity of this hypothetical pipeline.

79. The next query and clarification issued on 9.7.2010 is as follows:

**“Question:** *Is the indicated demand of 30 MMSCMD inclusive of 33% extra as indicated in (c).*

**Answer:** *Annexure 1 of application come bid document clearly indicates 30 MMSCMD including common carrier capacity available for any third party on open access and non-discriminatory basis as per Sub Regulation 5(6) (j) (mentioned above).*

80. The clarification has been quoted above. As indicated above, Regulation 14 of Regulations, 2008 pertaining to service obligation, mandates the obligation on the authorised entity to achieve the volume target quoted in the bid for any year. Any failure in achieving volume targets would lead to penal provisions including termination of the authorisation. Therefore, the contention urged by the Appellant on this point is contrary to the public interest and also to the very purpose of having a

natural gas grid whereby different sources of gas can be tapped and the gas can be injected into the nearest pipeline available for the transportation.

81. The purpose of keeping spare carrying capacity in the pipeline is to provide the benefit of the pipeline to the consumers in the future after the pipeline has come into operation. At the time of submitting its bid, the bidder cannot possibly have any idea of future demand en route the pipeline and therefore cannot be asked to promise to carry that volume also, which may or may not be required to be carried in future. Hence, as a service condition, no financial implications can be fastened on the bidder for this uncertainty. This would make it clear that the volume required by the bidder is excluding the 33% extra volume capacity. However, the design capacity of the pipeline should be such that it can accommodate the bid volumes as well as the spare 33% of the bid volume.

82. It is not the decision of the Board to allow/permit gas injections at any point in the natural gas pipeline system or to require the bidder to create minimum 33% of the capacity as common carrier capacity over and above the volume quoted in the financial bid. Therefore, in the light of the above circumstances, the contention on this issue urged by the Learned Counsel for the Appellant would fail.

83. We shall now refer to the next issue relating to the spur lines. The Appellant has contended that the Respondent Consortium did not take into account in its feasibility report all the spur lines required to service the consumers en route the transportation pipeline, which is one of the explicit requirements of the tender documents and that therefore, the Respondent Consortium did not qualify to become responsive bid technically.

84. Let us now deal with the Regulations relating to the spur lines. The relevant Regulations are as under:

***“ii (a):Section 2 (o) of the Petroleum and Natural Gas Regulatory Board Act 2006 defines-“spur line” means a pipeline necessarily originating or branching out from the trunk or transmission pipeline for some transmission line or another spur line or from a terminal station on the existing transmission or trunk pipeline with the diameter and capacity not greater than the trunk or transmission pipeline but having no compression facility for supply of natural gas to one or more consumers. Any pipeline having a separate gas source or a compressor shall not be treated as the spur line. The length of spur line may not depend upon the length of the trunk pipeline. A spur line must use capacity of trunk pipeline in order to transport gas. Spur line includes branch line also.***

***iii (b) PNGRB Regulations on determining Capacity Petroleum, Petroleum Products and Natural Gas Pipeline.***

### **Section 3. Applicability**

**(1) These regulations shall apply to entity:**

**(a) which is laying, building, operating or expanding or which proposes to lay, build, operate or expand a petroleum, petroleum products and natural gas pipeline**

**(b) which proposes to lay a dedicated pipeline or is directed by the Board to convert a dedicated pipeline for supply of petroleum, petroleum products and natural gas into a common or contract carrier Petroleum, petroleum products and natural gas pipeline; or**

**(c) which proposes extension or expansion of pipeline resulting into increasing capacity of the petroleum, petroleum products and natural gas pipeline**

**(2) These regulations convene the procedure, Parameters both constant and variable and frequency of declaration of pipeline capacity in MMSCMD for natural gas pipeline or in an MMTPA for Petroleum and Petroleum products pipeline”.**

85. In addition to the above Regulations, we would refer to the clarification given by the Board 1.4.2010 for the following query:

*“Q.No.7: Whether the spur lines shall be provided by the authorised entity as per the customers requirement on route the pipeline, clarify whether the bidder is required to consider capital cost for spur line while bidding and incorporate the same in the FR to be submitted along with the bid.*

**Answer:** *Yes, the bidder is required to consider capital cost for spur lines while bidding and incorporate the same in the FR to be submitted along with the bid. It is further clarified that there will not be any additional tariff for such investment in future. However, the subsequent additions of spur lines shall have to be undertaken to serve the consumers en route the pipeline.*

86. In view of the above clarification and Regulation, it cannot be said there are deviations in the entire exercise of bidding process.

87. As mentioned above, Regulation 5(6)(j) of the PNGRB (Authorising Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008 puts an obligation to an authorised entity for building up extra 33% common carrier capacity. Therefore, the communications issued by the Board were in line with the provisions of the Regulations as well as the tender documents. There were no implications on the bids and bidding process.

88. As a matter of fact, the Respondent Consortium has identified the spur lines which is beyond tariff zone based on the demand centre, in the bid submitted by the Respondent Consortium.

89. Under these circumstances, it is to be held that the submission that the bids submitted by the Respondent Consortium has included spur lines for supply of gas and the

place of end users as part of the bid does not deserve acceptance. As such, this contention also would fail.

90. **SUMMARY OF OUR FINDINGS**

**(1) The First Question relates to the maintainability of this Appeal. According to the Respondent, the acceptance of the bid submitted by the Respondent is neither a decision nor an order, and therefore, the same cannot be challenged in the Appeal in terms of Section 62 of the Petroleum Act. This objection is not sustainable. The expression “decision” as contemplated under section 62 of the Petroleum Act would include anything done in pursuance of any decision by the Petroleum Board which has an impact of affecting the rights of the parties. In the present case, the Appellant has pleaded that the decision taken by the Petroleum Board to accept the bid of the Respondent Consortium has affected the right of the Appellant to emerge as a single successful bidder. Therefore, this Tribunal has to decide the question as to whether the decision taken to accept the bid submitted by the Respondent Consortium affecting the right of the Appellant is valid or not. Therefore, the Appeal is maintainable.**

**(2) (a) The next question relates to the process of selection of eligible Company for laying out the pipeline for transportation of natural gas from Mallavaram (Andhra Pradesh) to Bhilwara (Rajasthan) through the specified routes. According to the Appellant the bid submitted by the Respondent Consortium was in deviation of the tender terms and conditions floated by the Petroleum Board. The perusal of the Expression of Interest submitted by both the bidders would indicate the intention and the understanding of both the bidders. It cannot be disputed at any point of time with regard to the connectivity and interlinking of the natural gas pipeline which is possible only with the multiple injections. “Expression of Interest” filed by the Appellant itself mentions that the pipelines could take natural gas injection from several sources thereby forming a ring network. This would show that the Appellant acknowledges that there should be more than one gas injection point on the pipeline based on the availability of the gas from KG basin and other gas sources. The instructions issued by the Board would indicate that bidders participating in the bid process have been advised to go through the**

**provisions of the Act and also the relevant regulations notified by the Board.**

**(b) From the perusal of the Regulations framed by the Board and clarifications issued by the Board for various queries, it is clear that the originating point and termination point with respect to pipelines refers to the construction of the physical pipeline only. If the concept of one injection point is accepted, then it would destroy very purpose of common gas grid infrastructure which links various sources of supply to various customers at various locations on the pipelines which would enable efficient use of natural gas from any source along the pipeline. Therefore, the contention of the Appellant that the Respondent Board made substantial deviation in the specifications of the pipeline after the bids were submitted, has no basis.**

**(3) The next issue is in relation to the introduction of condition subsequent to the bid to the effect that bidders shall be required to create 33% of the capacity for their own use. According to the Appellant, the modification has been made by the Petroleum Board through letter dated 8.10.2010 and as such the same**

would amount to revising the tender conditions imposed subsequent to the bids. On going through the Regulations, it is clear that the requirement of 33% of the capacity over and above the sum of capacity for their own use and for the contractual purposes, as a common carrier cannot be said to be a new stipulation. The said condition finds place already in the Regulation in Clause 5 6) (j) of the Regulations, 2008 as well as in Regulation 5 (5(a) of the Regulation, 2010. Regulation 14 also would provide for the capacity available in natural gas pipelines to be used as a common carrier. In addition to these Regulations, the clarifications have been issued by the Petroleum Board now and then to indicate that different source of gas can be tapped and gas can be injected in the nearest pipeline available for transportation. The volume required by the bidder is excluding the 33% extra volume capacity. The design capacity of the pipeline should be such that it can accommodate the bid volume as well as the spare 33% of the bid volume. Hence the contention urged by the Appellant on this aspect does not merit consideration.

(4) The last issue is relating to spur lines. According to the Appellant, the Respondent Consortium did not

**take into account in its feasibility report all the spur lines required to service the consumers en route the transportation pipelines and therefore, the Respondent Consortium did not qualify to become responsive bid technically. As mentioned above, Regulations 2008 as well as the clarification puts obligation to an authorised entity for building up extra 33% common carrier capacity. Therefore, the communications issued by the Board were in line with the provisions of the Regulations as well as the tender documents. As a matter of fact, the Respondent Consortium has identified the spur lines which is beyond tariff zone based on the demand centre in the bid submitted by the Respondent Consortium. As such, the point regarding this aspect urged by the Appellant has to fail.**

91. In view of the above summary of our findings, we find that there is no merit in this Appeal. Consequently, the Appeal is liable to be dismissed.

92. Before parting with this case, we are constrained to direct the Board to consider the two aspects pointed out by the Appellant which shall be taken note of in future:

(a) The Petroleum Board has not clearly mentioned or defined the concept of originating point and terminating point in their bid documents. This has created confusion whether pipeline is unidirectional or bidirectional. Both the kind of pipelines are in practice. Therefore, the Board could have specified it in tender documents clearly to have created an understanding among the bidders.

(b) The Board has not clarified the above concept before inviting or opening the financial bid if they missed to explain the same in the tender documents. In that event, the Board could have given all the bidders some time for resubmission of the bids as this concept largely affect the operating philosophy of pipelines and thereby bids.

93. Both these aspects as referred to above require consideration of the Board. Of course, we have decided this case on the strength of both bid documents and Regulation. However, the Petroleum Board is directed that in future they should make all attempt to keep the tender out of such conceptual ambiguity without giving any room for confusion, while maintaining competitive bid won by Gujarat State Petronet Limited (R-2) in this case.

94. With these observations, this Appeal is dismissed. However, there is no order as to costs.

**(M B LAL)**

**Technical Member (P&NG)**

**(Justice M. Karpaga Vinayagam)**

**Chairperson**

Dated: 06 Feb, 2012

~~√REPORTABLE/NON-REPORTABLE~~