

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No.25 of 2013 & IA No.41 of 2013

Dated: 25th November, 2014

Present:

HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. NAYAN MANI BORAH, TECHNICAL MEMBER

In the Matter of:

M/s Gujarat State Petronet Ltd.
Udyog Bhawan, Block No.15,
3rd Floor, Sector-11,
Ghandi Nagar-382010

....Appellant(s)

Versus

Petroleum and Natural Gas Regulatory Board
1st Floor, World Trade Center,
Babar Road,
New Delhi-110001

..... Respondent(s)

Counsel for the Appellant(s) : Mr. Piyush Joshi
Ms. Sumiti Yadava

Counsel for the Respondent(s): Mr. Ashish Tiwari and
Ms. Sonali Malhotra
Ms. Soumi Guha for R-1

J U D G M E N T

Per Hon'ble Mr. Nayan Mani Borah, Technical Member, (Petroleum and Natural Gas)

1. Gujarat State Petronet Ltd. (Gujarat Petronet) is the Appellant herein.

2. Petroleum and Natural Gas Regulatory Board (PNGRB, referred hereinafter as Petroleum Board) is the Respondent.
3. The Impugned Order, collectively, comprises of (i) Tariff Order No. TO/09/2012 dated 11/09/2012 and (ii) Review Decision vide Letter Ref. No. PNGRB/M(c)/43/2012 dated 23/10/2012, both issued by the Petroleum Board. The Appellant has filed this Appeal on being aggrieved over the Impugned Order.
4. The Appellant is a Govt. of Gujarat company which constructs and manages a natural gas pipeline transmission network.
5. The Impugned Tariff Order seeks to establish a Provisional Initial Unit Natural Gas Pipeline Tariff for the High Pressure Gujarat Gas Grid of the Appellant. The Impugned Review Decision of the Petroleum Board rejected the Appellant's request for a review of the Tariff Order and also declined to grant the Appellant a hearing to press its case.
6. The short facts are as follows:-

- a) The Appellant is a company formed to implement the policy of the Govt. of Gujarat to develop, operate and manage a state-wide natural gas pipeline grid to be constructed in stages.
- b) The Appellant filed an application dated 06.12.2008 seeking grant of authorisation for its Gujarat Gas Pipeline Grid network.
- c) The Gujarat Gas grid is a project which was being implemented by the Appellant in phases, leading to incremental increase in pipeline capacity and costs over a period of time.
- d) The Respondent is vested with the statutory function and power of authorising entities to lay, build, operate or expand a common carrier or contract carrier natural gas pipeline by the PNGRB Authorisation Regulations, 2008
- e) The Respondent has been further vested with the function of establishing a Provisional Initial Unit natural gas pipeline tariff by the PNGRB (Determination of Tariff for Natural Gas Pipelines) Regulations 2008 notified on 20.11.2008.
- f) The Appellant is covered by Regulation 18 of the PNGRB Authorization Regulations, as it is an entity that was laying,

building, operating or expending natural gas pipelines before the appointed day of the PNGRB Act and was not authorized by the Central Government.

- g) The Appellant had applied for authorization of its High Pressure Gujarat Gas Grid pipeline on 06.12.2008 which was granted by the Petroleum Board on 27.07.2012.
- h) Before the Petroleum Board came into vogue, the pipeline entities were free to determine the capacity allocation and the tariff in relation thereto based on private contractual arrangement.
- i) As per Petroleum Board Regulations, the capacity of a common carried gas pipeline shall be an aggregate of the following three elements:-
 - (A) Capacity requirement of the entity
 - (B) Firmed-up contractual capacity with other entities, and,
 - (C) At least 33% of the sum of (A) and (B) as an extra capacity.
- (j) As per the Petroleum Board Regulations, the Appellant is required to file his tariff proposal, providing all relevant data in specified formats to the Petroleum Board within a period of

ninety (90) days from obtaining the authorization from the Petroleum Board for his pipelines.

- (k) The Appellant has alleged that the determination of the Provisional Initial Unit Pipeline tariff as per the Impugned Order is not based on the latest available actual data, and is, in fact, based on outdated data contrary to applicable regulatory framework.
 - (l) The Appellant further alleges that while determining the tariff, the treatment meted out by the Petroleum Board to a few issues, viz, (i) Common Carrier Capacity and Volume Divisor (ii) System Use Gas (iii) Depreciation Rate, (iv) Capital Expenditure (v) Spur Lines (vi) Number of Employees and (vii) Inflation Rate etc. is not rational and this fact has impaired due commercial interests of the Appellant.
 - (m) On the other hand, the Respondent Petroleum Board, stoutly defends the Impugned Order and, hence, prays for dismissal of the Appeal.
8. The Appellant has made the following submissions in the Appeal assailing the Impugned Order passed by the Petroleum Board:-

- (a) On 06.12.2008, the Appellant filed the application for grant of authorization for its Gujarat Gas Grid pipeline network from the Petroleum Board.
- (b) On 15.04.2011, the Appellant submitted its tariff proposal for its pipeline network, pursuant to the Petroleum Board's specific directions to do so.
- (c) The Appellant submitted an updated tariff proposal suo moto on 08.02.2012 to the Respondent.
- (d) On 27.07.2012, the Petroleum Board issued grant of authorisation for the Appellant's High Pressure Gujarat Gas Grid.
- (e) On 11.09.2012, the Respondent issued the Impugned Order (Tariff Order) without considering the updated data submitted vide the Appellant's letter dated 17.08.2012 for considering the submission made by the Appellant on 08.02.2012.
- (f) Instead of relying on the updated data, the Tariff Order issued by the Respondent is based on the outdated data submitted with the application for authorisation in 2008.
- (g) The Petroleum Board's Tariff Regulations mandate an entity to submit data for tariff determination within a period of 90 days

from the date of grant of authorisation. The Respondent did not provide such an opportunity to the Appellant.

- (h) The above act of denying the Appellant a legitimate opportunity to provide updated tariff data is not only unfair and irrational, but is also discriminatory in nature, since similar opportunities have been accorded to other gas pipeline entities like Gujarat Gas Company Ltd. by the Respondent.
- (i) It is not a complicated exercise for the Respondent to recompute the tariff based on the latest tariff data provided by the Appellant.
- (j) The Impugned Order does not encourage efficiency or good performance nor does it encourage optimisation of investments. From this perspective, the Impugned Order violates the overall guiding principles of the PNGRB Act, subject to which only the Petroleum Board can exercise its power to determine transportation tariff.
- (k) The Impugned Order has erred on giving more importance to precedents than applying relevant PNGRB regulations while dealing with certain elements of tariff determination like (i) System Use Gas (ii) Inflation Rate (iii) Common Carrier Volume

and (iv) Capex of pipelines under implementation / development. The factual data related to these parameters provided by the Appellant were ignored by the Respondent which has resulted in undue reduction in the tariff value.

(l) Item-wise submission from the Appellant as regards the alleged irrational and arbitrary way of handling by the Respondent of various elements of tariff determination is summarised below:-

(i) Inflation Rate:- The Respondent has considered inflation at 4.5% without providing any rationale for the same, and without giving reasons for rejecting the rate of inflation submitted by the Appellant at 5.34%. The inflation rate of 5.34% stipulated by the Appellant was based on the last 15 years' actual historical data as reported by the Reserve Bank of India and, hence, is considered to be truly representative.

(ii) System Use Gas (SUG):- The Appellant has reported its SUG level for the Gujarat Pipeline Grid at 0.3% which it claims is well within international industry norm. While the Respondent vide its own regulations clearly recognises

SUG and transmission loss (Unaccounted Gas), complete disallowance of SUG in tariff determination by Respondent and further its issuing of a direction to the Appellant to refund SUG with retrospective effect is not justified. The Respondent's decision in this regard is not reasoned, and is based on presumptions without any technical basis, benchmarking or expert opinion.

- (iii) Volume Divisor:- Regulation 6 of Schedule A of PNGRB Tariff Regulation defines volumes to be considered as volume divisors. The Respondent has considered 100% of pipeline volume from the 1st year of economic life as against 6th year as prescribed in the Regulation. The Respondent, in an arbitrary manner, has not considered the actual common carrier capacity for calculation of volume divisor. Since the Respondent itself had declared a common carrier capacity of 7.615 MMSCMD of the Appellant vide authorisation letter dated 27.07.2012, not considering that common carrier capacity for tariff determination is incorrect. In a discriminatory manner, under similar circumstances, the Respondent has

considered common carrier volumes for calculation of volume divisor in case of M/s GAIL's Dahej Uran pipeline. Further, the Respondent has erroneously failed to recognise the extra capacity built up phase-wise in the Appellant's gas grid for tariff determination.

(iv) Capital Expenditure (Capex):- The Respondent has considered Capex incurred only in relation to the pipelines that had been listed in the Appellant's application for authorization filed in December, 2008. The Appellant's pipeline grid has been built over the years in phases. The Respondent, Petroleum Board has not taken into account and has denied the CAPEX incurred by the Appellant after December, 2008. The Respondent's decision to deny CAPEX already incurred by the Appellant is arbitrary as the updated list of pipelines had been submitted by the Appellant well in advance of the Tariff Order.

(v) Removal of Future Spur Lines:- The Petroleum Board's own Regulations make it obligatory on part of pipeline operators like the Appellant to connect the customers by laying spur lines coming within 50 km of the operator's

existing pipeline. While the Appellant has complied with this statutory obligation, the Respondent has not taken into consideration the CAPEX incurred by the Appellant towards laying of all the declared spur lines. As per Regulation 4 (1) of Tariff Regulation, a reasonable rate of return shall be applied on the total capital employed in the project over its economic life. Accordingly, proposed capital to be employed for future spur lines, which the entity would have to construct to fulfil its obligations under the Regulations, would form an integral part of total CAPEX over the project's economic life. The Respondent has not considered this element of future CAPEX while determining the provisional tariff vide the Impugned Order. The Impugned Order, consequently, has erroneously fixed a tariff without taking into consideration relevant material facts supplied by the Appellant. (As against this, the Respondent has allowed future CAPEX of spur lines while determining tariff for GAIL's DUPL/DPPL pipeline).

- (vi) Treatment of Number of Employees:- While determining tariff, the Respondent has used a much lower number of manpower vis-a-vis the corresponding number submitted by the Appellant. Furthermore, training costs etc. submitted by the Appellant duly supported by relevant documents have not been considered by the Respondent for tariff calculations.
- (vii) Rate of Depreciation:- The Ministry of Company Affairs, Govt. Of India under the Companies Act, 1956 has specified applicable normative rate of depreciation which is 3.17% for the Appellant. Contrary to this Govt. guidelines, the Respondent has considered an arbitrary rate of depreciation at 8.33% on pipelines for calculation of tariff.
- (m) Each and every factor enumerated under sub-para (i) though (vii) above has, to varying degrees, adversely impacted the tariff determination done by the Respondent to the disadvantage of the Appellant. As a cumulative fall-out of this development, the tariff has been erroneously fixed at Rs.24.27/MMBTU on Gross Calorific Value (GCV) basis instead

of an appropriate tariff of Rs.39.12/MMBTU on GCV basis. The arbitrary moderation of the tariff elements as above by the Respondent has deprived the Appellant from being entitled to receive the mandated 12% post-tax rate of return on investment as per the Petroleum Board's own regulations.

- (n) As stated above, the Tariff Order is based on data submitted prior to the date of authorisation of the Appellant's pipeline grid. In accordance with NGP Tariff Regulations, the Respondent should have asked the Appellant to file its tariff proposal within a period of ninety (90) days from granting authorisation. While the Appellant received the authorisation for its pipeline network from the Respondent on the 27th July, 2012, no opportunity to submit an updated Tariff proposal within 90 days was accorded to the Appellant. This treatment to the Appellant is also discriminatory in nature since opportunity to submit Tariff details of its pipelines after issuance of authorisation was given to some other gas pipeline entities such as Gujarat Gas Company Ltd. (GGCL) etc.
- (o) The Impugned Order neither encourages optimisation of investments, nor does it safeguard consumer interest. Cost of

gas transportation incurred by the Appellant is not allowed in a reasonable manner by the tariff proposed vide the Impugned Order.

- (p) The Review Decision (which together with the Tariff Order comprises the Impugned Order) is bereft of any reasoning and causes injury to the legitimate interest of the Appellant by simply stating that the Tariff Order “is explicit and detailed reasons and justifications for all decisions have been conveyed and there can hardly be any fresh cause for review at this stage”. Thus the Review Decision denies, unjustifiably, another opportunity to the Appellant of being heard before the Respondent.
9. In reply to the Appellant’s above submissions, the Respondent has put forward the following arguments:-
- (a) The Appellant submitted tariff fixation related data to the Respondent vide the former’s letters dated 15.04.2011 and 08.02.2012, both of which tariff petitions were pre-authorisation. The changes in these two sets of data pertained to (i) change of

depreciation rate and (ii) change (increase) in pipeline length of the grid.

- (b) Both the aspects of (a) above related to change in data sets have been considered by the Respondent in the Impugned Order. The Petroleum Board has considered the modified tariff petition of 08.02.2012, but rejected the alterations made by the Appellant in the data submitted.
- (c) The increase in pipeline length indicated in the later tariff petition dated 08.02.2012 was not considered since this was not part of the original pipeline for which authorisation was sought. This implies that the increase in pipeline length refers to a new pipeline not authorised by the Respondent. The aspect of pipeline length has been dealt with, inter alia, in para 5.2 of the Impugned Order.
- (d) The aspect of depreciation rate has been considered at length in the Impugned Order in para 3.2.6. The Petroleum Board has summarised its position in this regard vide para 3.2.6 (iv) which is reproduced below:-

QUOTE

3.2.6.- (iv) To sum up, the practice adopted by GSPL in respect of the accounting depreciation rate for pipelines during different period of time is given below:-

(a) Till 2009-10 depreciation on the pipelines has been considered @ 8.33% per annum.

(b) For the period from 01.04.2010 to 31.12.2010, pipelines were initially depreciated @ 4.75%. However, in the audited books of accounts for 2010-11, consequent to receiving the dispensation from Ministry of Corporate Affairs, the accounting depreciation rate of 3.17% has been considered w.e.f. 01.04.2010 onwards.

(v) In their tariff submissions, GSPL have calculated the net fixed assets as on 30.09.2008 by adopting the depreciation rate at 4.75% and 3.17% on assets since inception in initial and revised submission respectively. In view of the reasons given above, for determination of the quantum of net fixed assets to be considered in the provisional initial unit natural gas pipeline tariff for High Pressure Gujarat Gas Grid of GSPL at the point of

“cut-off” i.e., 20.11.2008, the Board has considered depreciation rate equivalent to 8.33% which is also the rate considered by GSPL in their books of accounts. Since GSPL has not provided the net fixed assets considering depreciation rate @ 8.33% in respect of pipelines as on the date of “cut-off”, the same has been internally calculated by the Board based on information and other details extracted from the tariff model provided by GSPL. In natural gas pipelines of other entities where the provisional initial unit natural gas pipeline tariff has already been determined, suitable adjustments would be carried out at the time of finalizing the initial unit natural gas pipeline tariff to ensure conformity with the above principles.

UNQUOTE

- (e) The contention of the Appellant that its updated tariff petition data have not been considered by the Respondent in tariff determination is, therefore, not correct.
- (f) One of the premises for challenging the Tariff Order is based on the fact that the Respondent has considered the CAPEX for pipeline length of 2239 km and not 3105.66 km as submitted

vide Appellant's tariff petition on 08.02.2012. As per tariff regulations, the portion of the pipeline which is not authorised, cannot be factored for tariff determination. In the instant case, the Respondent granted authorisation on 27.07.2012 for a pipeline length of 2239 km and on that basis, CAPEX for 2239 km has been considered for tariff determination.

- (g) As regards the factor of Inflation Rate, the Respondent has adopted an equitable Treatment of the entities without discrimination. In this context, the Impugned Tariff Order vide its para 5.3 states:

QUOTE:

5.3:- Inflation rate has been considered at 4.5% in calculation of the provisional initial unit natural gas pipeline tariff as per extant practice on a conservative assumption. This is different from that proposed by GSPL @ 5.34%. Further, inflation has been considered only on the cost which will be incurred on the future, and not on the already capitalized or committed costs.

UNQUOTE

- (h) As regards System Use Gas (SUG), the volume of SUG and tariff for such SUG is treated as a cost of fuel under Tariff Regulations. In the tariff computed by the Respondent, the cost towards SUG has already been accounted for as an operating cost element.
- (i) The Appellant's contention of an additional claim of "unaccounted loss" 0.30% as an integral part of operating expense is not permissible since "unaccounted gas" is not a term defined in the Act or the Tariff Regulations. The Respondent vide para 3.2.5 (ii) of its Impugned Order refers to an earlier Tariff Order and states:

QUOTE:-

In fact, in the recent Tariff Order issued in the case of the Mumbai Regional network of GAIL bearing reference No.T0/01/2012 dated 12.03.2012, the arguments for its (SUG's) disallowance have been further strengthened. Therefore, from the perspective of ensuring uniformity and consistency, the decision to disallow unaccounted gas stands.

UNQUOTE:-

- (j) The Ministry of Corporate Affairs, Govt. of India, vide its letter dated 13.05.2014 to the Appellant approved the Appellant's proposal to provide for rate of depreciation at 3.17% per annum on its pipelines with effect from 01.04.2010. The Appellant's action of applying a rate of depreciation of 3.17% per annum right from the time of inception of the commercial operation of the pipeline in 2001 cannot, therefore, be permitted.
- (k) In their books of account, the Appellant charged depreciation @ 8.33% from the date of start commercial operations of the pipeline in 2001 till 2009-10. On receipt of approval from the Ministry of Corporate Affairs, the depreciation rate applied thereafter was reduced to 3.17%.
- (l) The Appellant has already cornered benefit arising out of considering high depreciation prior to 01.04.2010. Its pleading, now, to allow it to apply a lower depreciation rate of 3.17% per annum over the entire economic life of the pipeline asset would entail the Appellant of unjust benefits to charge a higher tariff from its consumers.
- (m) Prior to enactment of the Petroleum Act and framing of the relevant Regulations, pipeline entities built pipelines

considering capacity requirements for the entity's own requirements (Capacity-A) plus contracted capacity of other entities (Capacity-B). It was only when the Petroleum Act was enacted and the relevant Regulations framed that it became mandatory for a common carrier pipeline to cater for an extra capacity of at least 33% of Capacity-A and Capacity-B taken together. Since the Appellant's pipeline was in existence prior to enactment of the Petroleum Act, any "extra" capacity over Capacity-A and Capacity-B in the said pipeline would have been built purely on the entity's commercial prudence and not to meet any statutory/mandated requirements. The contention of the Appellant to consider common carrier capacity of its pipeline in volume divisor for calculation of tariff by the Petroleum Board, therefore, is not acceptable. This is but an attempt by the Appellant to reduce the volume divisor and, thereby, raise the tariff to an unjustifiably higher level.

- (n) The instant case of tariff fixation is on a provisional basis and the tariff would get finalised subsequently based on the actual data. There would always be certain time interval between the submission of the tariff petition and fixation of provisional tariff ;

but in the process, the tariff petition already submitted would not become outdated as has been contended by the Appellant.

- (o) The Respondent had at its disposal two tariff petitions, both pre-authorization, submitted by the Appellant on 15.04.2011 and another submitted suo moto on 08.02.2012. The Impugned Order contains sufficient reasons as to why the Petroleum Board had not accepted the data submitted on 08.02.2012.
- (p) As a common carrier, the Appellant is under obligation to charge levelized tariff from its customers on a non-discriminatory basis. In contravention of this principle, the Appellant had been charging different rates of tariff from different customers.
- (q) The current challenge to the Tariff Order, in reality, is nothing but an attempt to merely delay the tariff fixation process so that the Appellant can continue charging the customers as per its own wish.
- (r) The Appellant itself, after authorisation of its pipeline, had asked the Respondent Petroleum Board vide letter dated 17.08.2012 to consider the data submitted by it on 08.02.2012

(which was pre-authorisation) as the data for tariff determination.

- (s) It is fundamental that once a tariff petition is submitted with a particular set of data, then that data set cannot really change, especially in case of historical expenditure data pertaining to an existing pipeline. If time-dependent additional data is, subsequently, brought up, that would not cause any prejudice as the initial tariff gets fixed up only on a provisional basis which would be finalised later based on actual audited data. Thus, its first tariff petition submitted would not become outdated as has been contended by the Appellant.
- (t) For the purpose of tariff finalization, the Petroleum Board would suitably adjust the provisional tariff by considering actual data of capital and operating costs or that normatively assessed by it, whichever is lower. Para 8.4 of the Impugned Order states:-

QUOTE

8.4 The audited cost and financial data as per the formats specified in the Regulations from the financial year 2010-11 onwards shall be submitted by GSPL to the Board so that the initial unit natural gas pipeline tariff can be finalized. Any

comments received from the stakeholders/customers consequent to the web-hosting of this Order will also be appropriately considered by the Board before the finalization of the initial unit natural gas pipeline tariff.

UNQUOTE

- (u) The Respondent is not required to blindly accept whatever data and submissions that an entity would make in its tariff petition. The Petroleum Board, after applying its mind, obviously, can reject a calculation or data submitted by an entity like in the instant case of the Appellant.
 - (v) Once a tariff petition is submitted, it cannot be updated or modified at the whims of the Appellant as and when it fancies. Otherwise, the process of tariff fixation would never get over as data would always be attempted to be updated.
11. In the light of the above rival contentions urged by the parties, the following questions would arise for consideration:-
- (a) Whether the Impugned Order has been issued ignoring and without considering relevant facts submitted by the Appellant?**

- (b) Whether the Appellant is entitled, by the Respondent's own Regulations, to an opportunity to provide an updated Tariff proposal post-authorisation?
- (c) Whether the Review Decision (which together with the Tariff Order comprises the Impugned Order) is unsustainable in law because it chooses not to provide any reasons or rationale in detail for the conclusions it draws.
- (d) Whether the Appellant's claim has any merit that the Respondent Petroleum Board has handled certain elements of tariff determination, (viz, Inflation Rate, System Use Gas (SUG), Volume Divisor, Capital Expenditure, Removal of Future Spur Lines, Treatment of Number of Employees and Rate of Depreciation) in an irrational and arbitrary manner leading to an adversial impact on the tariff fixed to the disadvantage of the Appellant.
- (e) Whether the Impugned Order is justified in asking the Appellant to make retrospective adjustments from the year 2008 onwards for a tariff determined by the Respondent in 2012?

12. We will now proceed to discuss in seriatim the aforesaid issues.

(A) **First Issue (Issue (a))**

13. As per its own regulations framed by the Petroleum Board, the Appellant has the right to file his tariff proposal, providing all up-to-date relevant data in specified formats to the Respondent Petroleum Board within a period of 90 (ninety) days from the date of receiving the authorisation from the Petroleum Board for his pipeline.
14. In this context, the following dates/events are relevant:
 - (a) Appellant filed the application for grant of authorization for its Gujarat Gas Grid pipeline network on 06.12.2008.
 - (b) Pursuant to Respondent Petroleum Board's direction, the Appellant submitted his tariff proposal for the grid on 15.04.2011.
 - (c) The Appellant submitted an updated tariff proposal on 08.02.2012.
 - (d) The Respondent Petroleum Board issued Grant of Authorisation for the Appellant's High Pressure Gujarat Gas Grid on 27.07.2012.
 - (e) The Appellant submitted on 01.08.2012 information on various pipeline sections for the period 2007 to 2012 for capacity determination of the Gujarat Gas Grid.

(f) The Impugned Tariff Order No. TO/09/2012 was issued by the Respondent Petroleum Board on 11.09.2012.

15. The Respondent Petroleum Board vide para 1.2 of the Impugned Order states:-

“1.2 The methodology for determination of the pipeline tariff has been specified in the relevant provisions of the Petroleum and Natural Gas Regulatory Board (Determination of Tariff for Natural Gas Pipelines) Regulations, 2008 notified on 20.11.2008. Under the provisions of these regulations, the Board is required to determine the initial unit natural gas pipeline tariff on a provisional basis first and then finalize the same considering the actual costs and data at the end of the financial year on the basis of audited accounts.”

16. The Impugned Order goes on to state the following:

“2.1. In consonance with the requirements of the PNGRB (Determination of Natural Gas Pipeline Tariff) Regulations, 2008 GSPL initially filed the transportation tariff data for the High Pressure Gujarat Gas Grid networks vide letter No. GSPL/PNGRB/MD/209 dated 15.04.2011.”

“2.3. Subsequently, vide letter No. GSPL/PNGRB/MD/863 dated 08.02.2012 GSPL submitted data containing the revised tariff proposal considering the revised rate of depreciation of 3.17% for the pipeline assets right from the date of commercial commencement of the operation of the High Pressure Gujarat Gas Grid network for re-calculating the net fixed assets at the point of “cut-off” i.e., 20.11.2008 which is the date when the relevant tariff regulations have been brought into force. Aside from the changes relating to depreciation, in the revised proposal dated 08.02.2012, GSPL also updated the data on project cost/estimates.”

“2.4. The revised submission was given by GSPL despite the fact that there was no requirement for the same from the Board and GSPL had full knowledge that verification had already been completed earlier considering the data provided vide the initial submission dated 15.04.2011. Keeping this in view, the initial tariff model/submissions have formed the basis for the process of determination of the provisional initial natural gas pipeline tariff for the High Pressure Gujarat Gas Grid of GSPL and the revised submissions have not been considered.”

17. From the above excerpts from the Impugned Order, it is clear that the Respondent Board has clearly worked out the said provisional initial natural gas pipeline tariff for the High Pressure Gujarat Gas Grid on the basis of the initial tariff data submitted on 15.04.2011 by the Appellant. Subsequent/revised submissions made by the Appellant have not been taken into consideration by the Respondent Petroleum Board while issuing the Impugned Tariff Order.
18. Thus, the answer to query (a) is unequivocally in the affirmative.
- (B) **Second Issue (Issue-(b))**
19. The Appellant has submitted that under the provisions of the Respondent Petroleum Board (PNGRB) regulations, he is entitled to file a tariff proposal within (90) ninety days of authorisation issued by the Respondent Board for the pipeline. This submission has not been challenged.
20. While the Respondent Petroleum Board issued the said grant of authorisation on 27.07.2012, admittedly, the Appellant was not asked by the Respondent Petroleum Board to submit fresh/updated tariff data within a period of 90 (ninety) days from the date of grant of authorisation, i.e. 27.07.2012.

21. Thus, although the Appellant is entitled to an opportunity to provide an updated Tariff Proposal within a period of 90 (ninety) days of grant of authorisation for his pipeline, opportunity for the same was not accorded to him by the Respondent Petroleum Board.

(C) **Third Issue (Issue-(c))**

22. We note that vide his letter No. GSPL/MD/COMM/2012, dated 10.10.2012, the Appellant raised a number of critical issues before the Respondent Petroleum Board expressing his concerns and disagreements regarding the Impugned Tariff Order. In the last paragraph of his letter, the Appellant (GSPL) states:-

“In view of the issues and concerns specified above, we request the Board to consider our requests positively and review the tariff order. Also an opportunity may please be given to GSPL to present its concerns mentioned above before the Board.”

23. The Respondent Board communicated its Review Decision vide Letter No. PNGRB/M(c)/43/2012 dated 23.10.2012 which is a constituent part of the Impugned Order in the instant case.

24. Vide the above Review Decision, the Respondent Board made its position clear that in its opinion “there can hardly be any fresh cause for review at this state.” The Respondent Board, accordingly, came to the conclusion that “it is felt that no purpose would be served by providing GSPL another opportunity for being heard.”
25. it is settled law that when a party files a Review Petition in which various issues have been raised, those issues should be considered after affording the opportunity of hearing to the party which prayed for the same and thereafter speaking order could be passed.

(D) **Fourth Issue (Issue-(d))**

26. The item-wise claims and counter-claims made by the Appellant and the Respondent Petroleum Board on the parameters in question have been highlighted above.
27. The fact that the updated tariff data within 90 (ninety) days of grant of authorisation of the pipeline was admittedly not used, contrary to its own regulations by the Petroleum Board, leaves some grey areas in the tariff computation.
28. On close scrutiny of all the foregoing, we have come to the inevitable conclusion that, prima facie, the claim of the Appellant that the allegedly arbitrary and irrational treatment of the said parameters by

the Respondent Petroleum Board has brought down the provisional tariff to such a level in which the Appellant cannot enjoy a 12% post-tax return on capital employed as is mandated by the Respondent Board's own guidelines cannot be brushed aside as something totally void of merit.

(E) **Fifth Issue (Issue-(e))**

29. It is noted that the methodology for determination of the pipeline tariff has been specified in the relevant provisions of the Petroleum and Natural Gas Regulatory Board (Determination of Tariff for Natural Gas Pipelines) Regulations, 2008 notified on 20.11.2008 which, together with section 11 (e) and 22 of the PNGRB Act, and the PNGRB (Authorising Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008, provide the basic framework for the Respondent Petroleum Board to work out a provisional initial natural gas transportation tariff.
30. Although the Appellant's pipeline was granted authorisation only on 27.07.2012, the Respondent Board's Impugned Order has made the computed tariff applicable retrospectively with effect from 20.11.2008, i.e. the date of notification of the Petroleum and Natural Gas

Regulatory Board (Determination of Tariff for Natural Gas Pipelines) Regulations, 2008.

31. The issue of effective date of applicability of tariff fixed by the Petroleum Board has been dealt with in detail by this Tribunal earlier in its judgment dated 06.01.2014 in Appeal No.222 of 2012 in the matter of Reliance Industries Ltd. Vs. The Petroleum Board and Gujarat State Petronet Ltd. (GSPL). The said judgment, inter alia, concludes that "Regulation 3(2) of the Tariff Regulations, 2008 mandates that the Tariff Regulations are applicable only to those entities which have already been granted authorisation under the Authorising Regulations. These provisions do not refer to anything with reference to retrospective effect." Thus, it is abundantly clear that no tariff fixed by the Respondent Petroleum Board can be made applicable for any period prior to the authorisation for pipeline coming within the purview of the Tariff Regulations.
32. In the instant case, as mentioned above, the Appellant's pipeline has been granted authorisation by the Respondent Petroleum Board only on 27.07.2012.

33. Consequently, we hold that provisional initial tariff fixed by the Respondent Petroleum Board in the instant case would be applicable only from the date of grant of authorisation i.e. 27.07.2012.

34. **Summary of Our Findings:**

(A) **The Impugned Order issued by the Respondent Petroleum Board suffers from a fatal deficiency in that updated/recent Tariff data was not considered while determining the provisional initial natural gas transportation tariff for the Appellant's pipeline.**

(B) **There are some grey areas in the treatment given by the Respondent Petroleum Board in the matter of a few critical parameters which can potentially have varying degrees of adverse impact on the computed tariff so as to overall bring it down to an unreasonable level. From this perspective, in particular, we hold that a more elaborate analysis/treatment of the item-wise concerns raised by the Appellant vide his letter dated 10.10.2012 in the Review Decision by the Respondent Petroleum Board, as well as granting an opportunity to the Appellant to present its case before the Respondent Petroleum Board, would have**

helped to clear the air and create a more conducive environment for the parties to come to a mutually agreed scenario.

(C) In our considered opinion, the Respondent Petroleum Board with its available resource both in-house, and also its capacity to outsource domain expertise should it deem necessary to do so, is the most respected and appropriate authority to delve into the nitty-gritties of the issues raised by the Appellant as regards some parameters impacting the tariff determination in a way detrimental to the due commercial interest of the Appellant.

(D) While protecting consumer's interest is central and is of paramount interest, ensuring a just and reasonable return permitted by the Petroleum Board's own regulations to the tune of 12% post-tax on capital employed from transportation tariff to the Appellant is also in the interest of all the stake holders.

35. In view of our above findings, the Appeal is allowed. The Impugned Order in the instant case is set aside. The present matter is remanded back to the Respondent Petroleum Board to reconsider

tariff proposals to be submitted by the Appellant based on relevant data with reference to a cut-off date of 90 (ninety) days from the date of grant of authorisation as specified in the regulations, and also incorporate various communications/representations made by the Appellant in this connection from time to time. The Respondent Petroleum Board, based on this suggested reconsideration, will then pass a final order making it clear that the provisional initial natural gas pipeline tariff fixed therein will be effective from the date of grant of authorisation of the pipeline, i.e. 27.07.2012.

36. There is no order as to costs.

(Nayan Mani Borah)
Technical Member (P&NG)
Dated: 25th November, 2014

(Justice M. Karpaga Vinayagam)
(Chairperson)

~~√REPORTABLE/NON-REPORTABLE~~