

Court-I

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

Appeal No. 161 of 2013 & IA Nos. 134,135 of 2014
&
Appeal Nos. 244, 245, 38, 176 & 177 of 2014

Dated: 29th May, 2015

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. Nayan Mani Borah, Technical Member (P&NG)**

Appeal No. 161 of 2013 & IA Nos. 134 & 135 of 2014

In the matter of:-

**GAIL (India) Ltd.
Gail Bhawan
16, Bhikaji Cama Place,
New Delhi-110066**

....Appellant(s)

Versus

- 1. Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Center,
Babar Lane, Barakhamba Road,
New Delhi-110001**
- 2. GMR Vemagiri Power Generation Ltd.
Skip House, 25/1,
Museum Road,
Bangalore-560025**
- 3. M/s GMR Energy Limited
Skip House, 25/1,
Museum Road,
Bangalore-560025**

**4. Lanco Kondapali Power Pvt. Ltd.
Registered Office at Plot No.4,
Software Units Layout, Hitec City,
Madhapur, Hyderabad – 500 081**

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Ramji Srinivasan, Sr. Adv.
Mr. Ajit Pudussery
Ms. Sara Sundaram
Mr. Rishabh Kapur
Ms. Iti Agarwal

Counsel for the Respondent(s) : Mr. Saurav Agrawal
Mr. Abhijit Mitra for R.1

Mr. Amit Kapur
Mr. Apoorva Mishra
Ms. Pallavi Mohan for R.2 & 3

Mr. Manuseshadri for R.4

Appeal No. 244 of 2014

In the matter of:-

**GAIL (India) Ltd.
Gail Bhawan
16, Bhikaji Cama Place,
New Delhi-110066**

....Appellant(s)

Versus

**Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Center,
Babar Lane, Barakhamba Road,
New Delhi-110001**

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Ramji Srinivasan, Sr. Adv.
Mr. Ajit Pudussery
Ms. Sara Sundaram
Mr. Rishabh Kapur
Ms. Iti Agarwal
Mr. Ankit Jain

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh

Appeal No. 245 of 2014**In the matter of:-**

**GAIL (India) Ltd.
Gail Bhawan
16, Bhikaji Cama Place,
New Delhi-110066**

....Appellant(s)

Versus

**Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Center,
Babar Lane, Barakhamba Road,
New Delhi-110001**

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Ramji Srinivasan, Sr. Adv.
Mr. Ajit Pudussery
Ms. Sara Sundaram
Mr. Rishabh Kapur
Ms. Iti Agarwal
Mr. Ankit Jain
Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh

Appeal No. 38 of 2014**In the matter of:-**

**GAIL (India) Ltd.
Gail Bhawan
16, Bhikaji Cama Place,
New Delhi-110066**

....Appellant(s)

Versus

**Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Center,
Babar Lane, Barakhamba Road,
New Delhi-110001**

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Ramji Srinivasan, Sr. Adv.
Mr. Ajit Pudussery
Ms. Sara Sundaram
Mr. Rishabh Kapur
Ms. Iti Agarwal

Mr. Ankit Jain

Counsel for the Respondent(s) : Mr. Saurav Agrawal
Ms. Sonali Malhotra
Mr. Rakesh Dewan

Appeal No. 176 of 2014

In the matter of:-

**GAIL (India) Ltd.
Gail Bhawan
16, Bhikaji Cama Place,
New Delhi-110066**

....Appellant(s)

Versus

**Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Center,
Babar Lane, Barakhamba Road,
New Delhi-110001**

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Ramji Srinivasan, Sr. Adv.
Mr. Ajit Pudussery
Ms. Sara Sundaram
Mr. Rishabh Kapur
Ms. Iti Agarwal
Mr. Ankit Jain

Counsel for the Respondent(s) : Mr. Prashant Bezboruah

Appeal No. 177 of 2014

In the matter of:-

**GAIL (India) Ltd.
Gail Bhawan
16, Bhikaji Cama Place,
New Delhi-110066**

....Appellant(s)

Versus

**Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Center,
Babar Lane, Barakhamba Road,
New Delhi-110001**

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Ramji Srinivasan, Sr. Adv.
Mr. Ajit Pudussery
Ms. Sara Sundaram
Mr. Rishabh Kapur
Ms. Iti Agarwal
Mr. Ankit Jain
Counsel for the Respondent(s) : Mr. Prashant Bezboruah

ORDER

1. The instant appeals challenge the Provisional Initial Unit Natural Gas Pipeline Tariff Orders ("**Provisional Tariff Orders**") passed by the Petroleum and Natural Gas Regulatory Board ("**Board**") on various grounds, including alleged wrong interpretation of certain provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 ("**PNGRB Act**") and the relevant Regulations besides factual challenges. Some broad heads of challenges that appear common to most appeals relate to Volume Divisor, Inflation Rate, Unaccounted Gas Loss, Future Capex, Line Pack and Terminal Value, Number of Working Days/ Shutdown Period, Depreciation Rate (NFA), Reasonable Rate of Return, etc.

2. During the course of hearing of these appeals, we reemphasized the factual position that the Tariff Orders under challenge were only provisional and were yet to be finalized. We suggested that all the contentions raised by the Appellant could be presented before the Board at the time of finalization of the tariff and the Board would consider the same independently

without being influenced by the view already taken by it in the impugned orders. That would expedite finalization of the Provisional Tariff Orders and the final orders could be challenged by the parties before this Tribunal if they so desire. We also made it clear that contentions of the Appellant could be kept open. We adjourned these appeals to enable counsel to get in touch with their respective clients. It gives us great satisfaction to note that response of the counsel was very positive and their respective clients have also shown a positive and pragmatic approach. Counsel for the Board, on instructions from the Board, submitted that the Board shall complete the process of finalization of Provisional Tariff Orders as per the Regulations of the Board and all submissions of the Appellant and the stakeholders would be considered with open mind without being influenced by the view already taken in the impugned orders. In view of this pragmatic and reasonable approach shown by the Board, which we highly appreciate and in view of the fact that the counsel for the Appellant has also graciously agreed to our suggestions, with the assistance of the counsel and after taking into account the inputs furnished by their respective clients, we pass the following order without expressing any opinion on the merits of the case and keeping the contentions of all parties open.

- (a) The Board shall complete the process of finalization of the Provisional Tariff Orders as per the Regulations of the Board.
- (b) In this process, the Board shall consider all submissions including challenges of the entities against the findings/observations/conclusions/calculations in the Provisional Tariff Orders. Such submissions shall be made by the entities in writing before the Board by 30.07.2015.
- (c) All submissions would be considered on merits with an open mind, uninfluenced by the view already taken, and would not be rejected on the ground that the Board has already taken a view in the Provisional Tariff Orders.
- (d) For finalization of Tariff, the Board shall inform the pipeline owning entities (GAIL) about the pending data and information required, if any, within 15 days from the date of this order, and the entities (GAIL) shall provide the same immediately within 30 days of being called upon to provide the necessary data.

- (e) The Board will then in the first case being Appeal No.161 of 2013, within 21 days of the pending data and information being provided by the entities (GAIL), issue a detailed Public Consultation Document (PCD), inviting comments / suggestions from all stakeholders including consumers within 21 days and hold an open house hearing to hear all the stakeholders within 7 days thereafter. PCDs in all the other cases will be issued in a progressive manner.
- (f) Copies of all comments / suggestions received in the Public Consultation exercise shall be furnished to the pipeline owning entities (GAIL) within one week who shall then submit their response within 15 days of receipt thereof.
- (g) Before the final determination, the Board shall hear the Appellant (GAIL) and the other stakeholders first and thereafter grant the Appellant (GAIL) a full opportunity of hearing. The hearing shall be concluded within 21 days.
- (h) The Board is expected to consider the matter independently without being influenced by the view

already taken by it in the Provisional Tariff Order. However, if after independently considering the matter, the Board takes a view similar to the one taken in the Provisional Tariff Order, then this would not be held against the Board.

- (i) The Board shall complete the process by 31.12.2015 in the first case being Appeal No.161 of 2013 and pass a speaking and reasoned order. So far as the other cases are concerned, the Board shall conclude the hearing and pass speaking and reasoned orders by 31.03.2016. In the meantime, the Provisional Tariff already fixed shall continue to apply, subject to adjustment, if any, in terms of the Regulations. The entities are at liberty to notify all consumers that the current Tariff is only provisional and it is subject to adjustment, if any, in terms of the Regulations, upon final tariff as may be determined by the Board.
- (j) All contentions of the Appellant are left open and they would be entitled to challenge the Final Tariff Order in accordance with law.
- (k) The timelines suggested above for operationalizing the proposed scheme for tariff finalization is with a

view to completing the process within a reasonable period, on an expeditious basis. The timelines have been jointly worked out by the counsel of the Appellant and the Respondent based on inputs from their respective clients.

3. The Appeals are disposed of in terms of the above order. In view of the disposal of the appeals, interim applications, if any, stand disposed of.

4. Before parting, we again express our appreciation of the efforts made by counsel for the parties and the parties to enable us to pass the present order, which in our opinion, would expedite the finalization of the Provisional Tariff Orders and would not in any manner, affect the right of the parties to challenge the Final Tariff Orders, if they so desire.

(Nayan Mani Borah)
Technical Member (P&NG)

(Justice Ranjana P. Desai)
Chairperson

Ts/vg