

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

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**IA NO. 976 OF 2018 IN APPEAL NO. 39 OF 2017 &
IA NOS. 94, 95, 187 OF 2017 & IA NO. 975 OF 2018**

Dated: 20th November, 2018

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. B.N. Talukdar, Technical Member (P&NG)**

IN THE MATTER OF:

**RELIANCE GAS TRANSPORTATION)
INFRASTRUCTURE LIMITED)
THROUGH ITS AUTHORIZED SIGNATORY)
REGISTERED OFFICE AT)
RELIANCE CORPORATE PARK,)
BUILDING NO. 7, B-WING, 2ND FLOOR,)
GHANSOLI, NAVI MUMBAI-400 701)** **...APPELLANT**

VERSUS

**PETROLEUM AND NATURAL GAS)
REGULATORY BOARD)
1ST FLOOR, WORLD TRADE CENTRE,)
BABAR ROAD,)
NEW DELHI- 110 001)** **...RESPONDENT**

**Counsel for the Appellant(s) : Mr. N. Venkataraman, Sr. Adv.
Mr. Gaurav Mitra,
Mr. Vishnu Sharma
Ms. Rashmita Roy Choudhary
Mr. K.R. Sasiprabhu
Mr. Aditya Saindalya**

Counsel for Respondent(s) : Ms. Sonali Malhotra
Mr. Anand Bhardwaj

ORDER

PER HON'BLE MR. B.N. TALUKDAR, TECHNICAL MEMBER (P&NG)

1. The Applicant, Reliance Gas Transportation Infrastructure Ltd. of this application (IA No. 976 of 2018) is the Appellant in Appeal No. 39 of 2017 in the matter of the Appellant versus the Petroleum and Natural Gas Regulatory Board (the Board). The Appellant owns and operates the 1460 kilometer long common carrier pipeline by the name of East-West Pipeline (EWPL) which runs from Gadimoga in Andhra Pradesh to Bharuch in Gujarat, traversing the states of Telangana, Karnataka and Maharashtra. The Respondent is the Petroleum and Natural Gas Regulatory Board (the Board) which is a statutory body constituted under the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006.
2. In the main appeal (Appeal No. 39 of 2017), the case of the Appellant is that they had assessed the capacity of the pipeline for the years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 and submitted the same to the Board for final declaration. After this appeal,

they also had submitted the capacity application for the year 2016-17 and 2017-18 to the Board.

3. The Board has so far declared capacity for the years 2009-10, 2010-11, and 2011-12 only and the capacity for the remaining years are still pending with the Board. The declared capacities for the years 2010-11, and 2011-12 have been challenged by the Appellant in the Appeal No. 39 of 2017 which is pending adjudication before this Tribunal. There has also been an application filed by the Appellant before this Tribunal (IA No. 94 of 2017 in Appeal No. 39 of 2017) seeking certain interim reliefs for stay of usage of the impugned capacity declaration for the years 2009-10, 2010-11, & 2011-12 and a direction to the Board to expedite the process of capacity assessment for the years 2012-13, 2013-14, 2014-15 and 2015-16. This application is also pending adjudication before this Tribunal.
4. In the instant application (IA No. 976 of 2018 in Appeal No. 39 of 2017), the Appellant has sought appropriate directions to the Respondent Board pending adjudication and final disposal of the main appeal (Appeal No. 39 of 2017) to consider the capacity, by way of an interim measure, as the capacity mentioned in the letter of Acceptance to Central Government authorization dated 19.03.2013 issued by the Board, for the purpose of determination of final initial unit natural gas pipeline tariff.

5. Since we are discussing only the instant application, for the sake of brevity, we outline below only the relevant background leading to the instant application for interim relief. Laying of the East-West pipeline was originally accorded authorization by the Central Government. Later on, the said authorization was accepted by the Petroleum and Natural Gas Regulatory Board on 19.03.2013 as common carrier pipeline with certain terms and conditions and subject to compliance of certain PNGRB regulations.
6. As per the provisions of the Petroleum and Natural Gas Regulatory Board (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010 (Capacity Regulations), the Appellant determined the capacity of the EWPL for the year 2009-10 as 80 million standard cubic meters per day (80 MMSCMD) and submitted the same to the Board on 10.04.2010. The Board constituted a Capacity Assessment Group (CAG) under Regulation 2 (d) of Capacity Regulations and as recommended by CAG, the capacity of the EWPL for 2009-10 was declared by the Board as 85 MMSCMD on 02.11.2012 after about 2 ½ years of submission by the Appellant.
7. In the meantime, changes took place in the operational parameters of the EWPL in terms of gas supply pressure at the entry point of the EWPL at Gadimoga which started affecting the capacity of the pipeline. The

pressure was going down with time which in turn was leading to lowering of the capacity of the pipeline. The Appellant was constrained to reassess the pipeline capacity for the subsequent years vis-à-vis its original assessments. The final reassessed capacity that were submitted to the Board by the Appellant for 2010-11, 2011-12, 2012-13 and 2013-14 were as under:-

2010-11	:	70 MMSCMD	}	Initiated on 14.08.2012
2011-12	:	52 MMSCMD		
2012-13	:	34.12 MMSCMD	}	Submitted on 03.04.2014
2013-14	:	20.52 MMSCMD		

8. The capacities had to be brought down on account of source/field depletion as well as depletion of gas flows from the Shell Hazira Terminal. While submitting the reassessed capacity, the Appellant also requested the Board to declare the capacities for the years pending with the Board, in line with the Capacity Regulations considering the parameters agreed by the CAG. The capacity was declared only for 2009-10 till then.
9. Since the capacity declaration was pending with the Board, the tariff determination was also consequently pending with the Board. In view of this, the Appellant preferred a writ petition – W.P. (C) No. 3204 of 2014

before the High Court of Delhi seeking issuance of appropriate writs to the Respondent, directing it, inter alia: (a) to determine the final initial unit gas tariff in respect of the EWPL in terms of the Petroleum and Natural Gas Regulatory Board Act, 2006 (Act) and the Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Regulations, 2008 (Tariff Regulations) within a reasonable time frame to be fixed by the Court; and (b) to ensure that tariff determination for the next tariff review period is completed within a reasonable time frame laid down by the Court.

10. The Appellant's case is that after submission of the writ petition, the Board on 10.07.2014 unilaterally declared the capacity of the EWPL at 85 MMSCMD for 2010-11 and 95 MMSCMD for 2011-12 without considering the changes in parameters pointed out repeatedly by the Appellant in its various communications.
11. The Appellant challenged the above capacity declarations before this Tribunal vide Appeal No. 253 of 2014 seeking to set aside the declarations made by the Board for 2010-11 and 2011-12 and direct the Board to declare the capacities for 2010-11, 2011-12 and subsequent periods taking into account the changes in parameter, within a reasonable time schedule. In the meantime, the High Court of Delhi also on 11.12.2014, passed an order in W.P. (C) No. 3204 of 2014 directing the

Respondent Board to complete the exercise and fix the final tariff latest by 28.02.2015 and disposed of the writ petition.

12. Subsequently, on an application moved by the Appellant (CM No. 2116 of 2015) in the said writ petition, the High Court of Delhi, vide its order dated 09.02.2015, extended the aforesaid period for fixing of the final tariff till two months after the final disposal of the Appeal No. 253 of 2014 by this Tribunal. Later on, based on an application (CM No. 14945 of 2017) dated 10.04.2017 filed by the Respondent, the High Court vide its order dated 21.04.2017, passed an order extending the time period for determination of final initial unit pipeline tariff of the EWPL for a period of 6 months from the date of availability of the complete quorum of the Respondent Board.
13. This Tribunal, vide its order dated 08.07.2016 passed an order in Appeal No. 253 of 2014 setting aside the impugned declaration of capacity dated 10.07.2014 of the Respondent Board. The matter was remanded to the Board for passing an order independently in accordance with law, after giving a personal hearing to the Appellant and directed the Board to complete the entire exercise within three months.
14. The Board thereafter vide order dated 30.12.2016 reiterated its original declaration of capacity at 85 MMSCMD for 2010-11 and 95 MMSCMD

for 2011-12. Aggrieved by this order, the Appellant filed the main appeal i.e. Appeal No. 39 of 2017 to this Tribunal seeking to set aside the impugned order dated 30.12.2016 and direct the Respondent Board to declare the capacity for 2010-11 and 2011-12 and the subsequent years i.e. 2012-13, 2013-14, 2014-15 and 2015-16 taking into account the changes in the operational parameters as outlined by the Appellant in their various communications to the Board.

15. The Appellant also filed an application seeking the following interim reliefs vide IA No. 94 of 2017 in Appeal No. 39 of 2017 dated 25.01.2017:

- a. A stay of the operation and effect of the impugned order dated 30.12.2016;
- b. A stay of the utilization of the impugned capacity declaration for the financial years 2010-11 to 2011-12 in finalization of tariff;
- c. A stay of the utilization of the previous capacity declaration for the financial year 2009-10 in finalization of tariff;
- d. A direction to the Respondent to expedite the process for capacity assessment for the financial years 2012-13, 2013-14, 2014-15 and 2015-16.

The main appeal as well as the aforesaid application for interim reliefs are pending adjudication before this Tribunal.

16. The present application i.e. IA No. 976 of 2018 in Appeal No. 39 of 2017 has now been filed by the Appellant for a direction as an interim order pending adjudication and final disposal of the Appeal No. 39 of 2017. The prayer in this application is to direct the Respondent Board to consider the capacity as mentioned in the letter of authorization dated 19.03.2013 issued by the Board in respect of the EWPL which is 85 MMSCMD for the purpose of determination of tariff as per Regulation 6 (1) (C) of the Tariff Regulations as amended by the Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff Regulations) Amendment Regulations, 2015.
17. We have heard learned counsel Mr. N. Venkataraman appearing for the Appellant and learned counsel Ms. Sonali Malhotra appearing for the Respondent. We have also perused the written submission made by the Appellant in IA No. 976 of 2018 and its reply submitted by the Respondent. As per the Appellant, capacity of a pipeline as declared by the Board plays a vital role in determining the transportation tariff of the pipeline. In the formula for determining tariff, volume (capacity) appears as denominator whereas other major parameters like capital expenditure (Capex) and operating expenditure (Opex) appear as numerator. If the capacity is declared high, the tariff is computed low and if the capacity is declared low, the tariff becomes high. In the instant case, the capacity has

been reducing with time because of the gas supply pressure at the entry point of the EWPL at Godimoga dropping with time. Continuous dropping in the gas supply pressure has repeatedly been reported to the Board through various communications in the past. First intimation was made on 10.06.2011. The relevant regulations framed under the PNGRB Act, 2006 provides for the capacity to reflect changes in actual operating parameters like drop in gas supply pressure. But the Board has not considered the change in operating parameters while declaring the capacity till the year 2011-12 and hence the capacity declared has been higher than the capacity determined by the Appellant. If this level of capacity as declared by the Board till 2011-12 is used for the remaining years till the economic life of the pipeline, the EWPL will result in an incongruous situation leading to reduction in tariff.

18. The Appellant has been making repeated requests to the Board to declare capacity for the years beyond 2009-10 vide various letters dated 08.07.2013, 03.04.2014, 06.05.2016, 10.05.2016, 15.02.2017 and 11.07.2018 for subsequent finalization of transportation tariff in accordance with the regulatory framework in place. Since the Board was not declaring the capacities beyond 2011-12, the Appellant through the instant application has prayed to direct the Respondent Board to consider the capacity as mentioned in the acceptance letter issued by the Board on

19.03.2013 for tariff determination as per Regulation 6 (1) (c) of the Tariff Regulations as amended by the Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff Regulations) Amendment Regulations, 2015.

19. On the above issue, learned counsel Ms. Sonali Malhotra argued that this regulation is misconceived and misconstrued by the Appellant. This regulation is very categorical that the capacity as mentioned in the authorization of acceptance letter issued by the Board shall be used for tariff determination in the case where capacity has not been declared. In the instant case, capacities upto the year 2011-12 have been declared by the Board. For 2009-10, capacity has been declared as 85 MMSCMD and for the years 2010-11 and 2011-12, capacities have been declared as 85 MMSCMD and 95 MMSCMD respectively vide communication dated 10.07.2014. Thus it is not at all a case where capacity has not been declared.
20. The Appellant has asked to consider the capacity of 85 MMSCMD for tariff determination whereas the Appellant itself prayed for stay of utilization of the same 85 MMSCMD capacity declared by the Board for the years 2009-10, 2010-11 and 2011-12.

21. The Board's another contention is that in compliance of the order of the Hon'ble Tribunal dated 08.07.2016, the Board declared the capacity for the years 2010-11 and 2011-12 after giving due hearing to the Appellant. The declaration was made taking the CAG's report as basis and comments received from the Appellant. Even after this declaration which was made following the principles of natural justice by giving adequate hearing to the Appellant, the Appellant has contested this declaration and now has sought to consider the capacity as mentioned in the acceptance letter issued by the Board.
22. To adjudicate the matter, we felt necessary to study the following relevant regulations to see whether the actions taken by both the Appellant and the Respondent Board have been in order as per regulations.
- Petroleum and Natural Gas Regulatory Board (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010.
 - Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Regulations, 2008.
 - Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Amendment Regulations, 2015.

23. Regulation 5 (2) of Petroleum and Natural Gas Regulatory Board (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010 clearly shows that the first responsibility lies with the Appellant to determine the pipeline capacity for submitting to the Board for declaration. The regulation reads as under:-

5. *Determining capacity of a Petroleum, Petroleum Products and Natural Gas Pipeline.*

1.

2. *The entity while submitting the capacity of the pipeline system to the Board shall furnish a declaration that the capacity has been calculated using the approved flow equation. The entity shall also submit the detailed calculations of the capacity and the software used for the purpose within thirty days of the notification of these regulations and thereafter as per the periodicity for determining capacity of a Petroleum, Petroleum Products and Natural Gas pipeline defined in regulation 7 of these regulations.*

We have noted that the Appellant has taken the initiative as per the above regulation and submitted the same to the Board.

24. That the declaration of the capacity is to be made by the Board is clear from Regulation 6 of the same Capacity Regulations which reads as under:-

6. *Declaring capacity of Petroleum, Petroleum Products and Natural Gas pipeline by the Board.*

(a) *The Board, after having satisfied with the data submitted by the entity regarding capacity of the pipeline, shall decide-*

(i) *to reject the capacity so determined and direct the entity to revise the capacity calculations based on the revised parameters; or*

(ii) *to go ahead with the proposal with or without modification:*

(b) *The capacity so determined shall be declared by the Board as the declared capacity of pipeline system and specific Sections and the same shall be available to the shippers or consumers. The Board shall declare the section wise capacity of the system in the format specified at Schedule C.*

(c)

We note as per above regulation, the Board has declared the capacity of the EWPL for the years 2009-10, 2010-11 & 2011-12.

25. Periodicity for determination of natural gas pipeline capacity is also specified in the said Capacity Regulations as under:-

7. Periodicity for determining capacity of a Petroleum, Petroleum Products and Natural Gas pipeline.

(i) *The capacity of a pipeline shall be determined on first working day of April every year or whenever-*

(a) *there is a major change in the injected quantity or off taken quantity of petroleum, petroleum products and natural gas;*

(b)

(c) *there is a change of plus or minus ten percent in gas composition or product quality or in other operating parameters from the operating conditions of the pipeline system within the parameters defined under the relevant regulations on the access code as and when notified;*

(d)

(e)

(ii) *The entity shall submit the details of the so re-determined capacity of the pipeline to the Board in line with the provisions of these regulations for the purpose of declaration of capacity.*

We observe from the submissions of the Appellant that they have followed the above regulation and submitted the capacity determined by them with details to the Board year-wise from 2009-10 till 2017-18.

26. Regulation 4 (2) (b) of the same Capacity Regulations states that the capacity so determined shall be used for tariff determination which reads as under:-

4. Intent

(1) *It is intended to apply these regulations to all new and existing petroleum, petroleum products and natural gas pipelines including dedicated pipelines for the purpose of declaration of capacity of the pipeline under steady state conditions.*

(2) *The capacity of the petroleum, petroleum products and natural gas pipeline so determined shall be used for –*

(a)

(b) *determining the tariff for petroleum, petroleum products and natural gas pipeline as per the methodology or formulae defined under relevant regulations.*

27. The procedure for determination of tariff is spelt out in Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Regulations, 2008 which reads as under:-

4. Determination of natural gas pipeline tariff.

(1)

(2) *prior to determination of the natural gas pipeline tariff, the Board shall issue a public notice on its website containing a public consultation document providing an opportunity to stakeholders (including the entity concerned) to participate in the determination of the natural gas pipeline tariff.*

(3) *Stakeholders (including the entity concerned) may submit their comments in writing within fifteen days from the date of webhosting of the public notice.*

(4) *On the expiry of the period provided for stakeholder comments as referred to in sub-regulation (3), the Board shall forward the comments received to the entity concerned for it to submit its response within fifteen days of the receipt thereof. The Board may, if required, also invite all stakeholders who have offered their comments including the entity concerned for discussions. The Board shall after considering the tariff filings by the entity, the comments of other stakeholders, the response of the entity concerned and discussions, if any, issue the tariff order.*

28. We have also noted that the “Tariff Regulations”, 2008 was later amended in January, 2016 as Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Amendment Regulations, 2015. Regulation 6 (1) of Tariff Regulations, 2008 was amended in this Regulation as under:

6. Volumes to be considered in determination of the unit natural gas pipeline tariff:

(1) *The volumes of natural gas to be considered as divisor in the determination of the unit natural gas pipeline tariff over the economic life of the project shall be computed on a normative or*

actual basis, whichever is higher. Volume on normative basis shall be calculated as indicated below:-

(a)

(b)

(c) *In case, capacity has not been declared as per capacity determination regulations, capacity as mentioned in the authorization or acceptance letter issued by the Board shall be used for tariff determination and subsequently when the capacity as per Petroleum and Natural Gas Regulatory Board (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010 is available, this capacity shall be replaced with the capacity declared as per capacity determination regulations at the time of next tariff review.*

29. In the instant application, amended Regulation 6 (1) (c) is relied upon by the Appellant.

30. From the above contentions of both the Appellant and the Respondent Board and our observations, it becomes evident that the Appellant submitted the capacity of the EWPL determined by them to the Board for all the years from 2009-10 till 2017-18 following the relevant regulations. Out of these capacity determinations, the capacities for the years 2016-17 and 2017-18 were submitted after the instant Appeal (Appeal No. 39 of 2017). The Board has so far declared the capacity only for the first 3 years i.e. 2009-10, 2010-11, & 2011-12. Capacities declared for 2010-11 and 2011-12 have been challenged by the Appellant vide Appeal No. 39 of 2017 on the ground that the Board has not taken into account the

change in the operational parameters of the pipeline which it should have taken as per instant regulations. This appeal is sub-judice before this Tribunal. The Appellant also prayed for stay of utilization of this impugned capacity for the years 2010-11 and 2011-12 in finalization of tariff in their stay application (IA No. 94 of 2017) which is also sub-judice before this Tribunal.

31. As regards 2009-10, though the capacity declared by the Board has not been impugned, the same has been prayed for stay of utilization for tariff determination in the same stay application which is also sub-judice before this Tribunal.
32. For the remaining years 2012-13, 2013-14, 2014-15 & 2015-16, the Appellant has prayed in Appeal No. 39 of 2017 to direct the Board to declare the capacity taking into account the change in parameters. For the same years, the Appellant also vide its IA No. 94 of 2017 has prayed to direct the Board to expedite process for capacity assessment. Capacity declaration for 2016-17 and 2017-18 though not under sub-judice, the same has also not be done by the Board till the last date of hearing of the instant application (IA No. 976 of 2018).
33. We observe that without declaration of capacity, the transportation tariff for the pipeline cannot be determined as per Regulation 4 (2) (b) and we

strongly believe that non-determination of tariff for such a long time for a total of 9 years (2009-10 till 2017-18) greatly affects not only the operation of the pipeline but also the customers of gas supplied through this pipeline and the stakeholders. To take care of such a situation as in the instant case, remedy has been rightly provided in Regulation 6 (1) (c) of Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Amendment Regulations, 2015. We rely on this regulation which reads as under:-

(c) In case, capacity has not been declared as per capacity determination regulations, capacity as mentioned in the authorization or acceptance letter issued by the Board shall be used for tariff determination and subsequently when the capacity as per Petroleum and Natural Gas Regulatory Board (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010 is available, this capacity shall be replaced with the capacity declared as per capacity determination regulations at the time of next tariff review.

34. In the above context, we have examined the letter of acceptance of Central Government Authorization issued by the Respondent Board on 19.03.2013 in respect of the EWPL and note that the maximum achievable capacity of the EWPL is equal to 85 MMSCMD.
35. In the circumstances and in view of above discussion, reasonings, and findings, our considered opinion is that the Respondent Board should follow the Regulation 6 (1) (c) of Petroleum and Natural Gas Regulatory

Board (Determination of Natural Gas Pipeline Tariff) Amendment Regulations, 2015.

36. IA No. 976 of 2018 is allowed.

ORDER

- a) The Petroleum and Natural Gas Regulatory Board is directed to use 85 MMSCMD as it appears in the acceptance to Central Government's authorization letter issued by the Board on 19.03.2013 for tariff determination of the East-West Pipeline of the Appellant for the years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2015-16, 2016-17 & 2017-18 pending adjudication and final disposal of the Appeal No. 97 of 2017 and IA No. 94 of 2017 by this Tribunal.
- b) We make it clear that we have not expressed any opinion on merits of the Appeal No. 39 of 2017 and IA No. 94 of 2017.

37. IA No. 976 of 2018 is disposed of in the aforesaid terms.

38. Pronounced in the open Court on this **20th** day of **November, 2018**.

B.N. Talukdar
[Technical Member (P&NG)]

Justice Manjula Chellur
[Chairperson]

√**REPORTABLE/NON-REPORTABLE**