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

Appeal No. 39 of 2017 &
IA Nos. 94, 95, 187 of 2017

Dated: 15th November, 2019

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

In the matter of:-

PIPELINE INFRASTRUCTURE LIMITED)
Through its Authorised Signatory)
Registered Office at Reliance)
Corporate Park, Building No. 7, B-Wing)
Second Floor, Ghansoli,)
Navi Mumbai – 400 701) **...Appellant**

AND

PETROLEUM AND NATURAL)
GAS REGULATORY BOARD,)
First Floor, World Trade Center,)
Babar Road, New Delhi-110001) **...Respondents**

Counsel for the Appellant(s) : Mr. N. Venkataraman, Sr. Adv.
Mr. Gaurav Mitra
Mr. Vishnu Sharma
Mr. Roshan Ganpaty
Mr. K. R. Sasiprabhu
Mr. Aditya Shandilya

Counsel for the Respondent(s) : Ms. Sonali Malhotra for PNGRB

JUDGMENT

Per Hon'ble Mr. B. N. Talukdar, Technical Member, (Petroleum and Natural Gas)

1. The Appellant is a company incorporated under the Companies Act, 1956 and engaged in the business of construction and

operation of pipelines for the transportation of natural gas. The Appellant Company, when original incorporated, was named as "Reliance Has Transportation Infrastructure Ltd", which was later changed to the present name, i.e., "Pipeline Infrastructure Limited" as per this Tribunal's order dated 08.11.2019. The Appellant owns and operates a 1460 (One Thousand Four Hundred Sixty) kilometer long "common carrier" natural gas pipeline by the name "East-West Pipeline" **("EWPL")** which runs from Gadimoga in Andhra Pradesh to Bharuch in Gujarat, traversing the States of Telangana, Karnataka and Maharashtra.

2. The Respondent is a statutory body constituted under the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 ("**PNGRB Act, 2006**") to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all

parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto.

3. In this appeal the Appellant has challenged declaration dated 30/12/2016 made by the Respondent Board of the Appellant's EWPL capacity for the period 1/4/2010 to 31/3/2011 at 85 MMSCMD and for the period 1/4/2011 to 31/3/2012 at 95 MMSCMD. The impugned declaration has been assailed by the Appellant on many grounds.

4. The gist of facts of the case is as below:

The case is concerning the capacity declaration of the EWPL for the years 2010-11 and 2011-12. Laying of the East-West pipeline was originally awarded authorization by the Central Government. Later, the said □uthorization was accepted by the Petroleum and Natural Gas Regulatory Board (**the Board**) on 19.03.2013 as a common carrier pipeline with certain terms and conditions and subject to compliance of certain PNGRB regulations.

5. The Board, in exercise of its powers under the PNGRB Act, 2006 has promulgated the Petroleum and Natural Gas Regulatory Board (Determining Capacity of Petroleum, Petroleum Products

and Natural Gas Pipeline) Regulations, 2010 ("Capacity Regulations") which became effective from 07/06/2010.

As per this 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 2½ years of submission by the Appellant.

6. As per the Appellant, 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. Pressure was going down with time which in turn was leading to lowering of the capacity of the pipeline.

As per Regulation 7 of the PNGRB Capacity Regulations, the Appellant informed the Board vide its letter dated 10.06.2011 that there were changes in the operating parameters of the pipeline. In particular, it was pointed out that the gas supply

pressure at entry point at Gadimoga had dropped below 72 barg. In fact, the actual operating pressure had reduced drastically to 45 barg. Accordingly, the Appellant reassessed its capacity in accordance with the Capacity Regulations, at the reduced supply pressure at the entry point, at 60 MMSCMD. It was further pointed out that in order to combat reduced volume it was necessary to explore connectivity to more sources to sustain EWPL operation and incorporate an additional entry point to receive gas from the Shell Hazira Terminal. In light of the same the capacity was revised by the Appellant to 72 MMSCMD (i.e., 60 MMSCMD from the OT + 12 MMSCMD from the Shell Hazira Terminal).

Furthermore, on 14.08.2012, the Appellant intimated to the Board that the OT gas pressure had further dropped from the initial level of 72 barg to below 40 barg. Correspondingly, the gas production from the source had also significantly dropped to below 30 MMSCMD. Taking into consideration the aforesaid gas pressure decline, the Appellant submitted its reassessed capacity for inter-alia the financial years 2010-11 and 2011-12 on a weighted average annual capacity basis at 70 MMSCMD for

the financial year 2010-11 and 52 MMSCMD for the financial year 2011-12.

7. On 03.04.2014, the Appellant submitted its determination of reassessed capacity for the financial years 2012-13 and 2013-14 at 34.12 MMSCMD and 20.52 MMSCMD respectively. The reduced capacity was on account of source field depletion as well as depletion from gas flows from Shell Hazira Terminal also. While submitting the reassessed capacities, the Appellant also requested the Board to declare the capacities for the years pending with the Board. The capacity was declared only for 2009-10 till then.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 instant appeal before 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.

14. 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.

15. We have heard Mr. N. Venkataraman, Senior Counsel appearing for the Appellant and perused the submissions made by the Appellant. The gist of submissions is as under:

(i) The Board has wrongly declared the capacity of the EWPL for the years 2010-11 and 2011-12 as 85 MMSCMD and 95 MMSCMD respectively. The Board has failed to take into account the fact that the pressure at the entry point of EWPL has reduced drastically at no fault of RGTIL and correspondingly the capacity of the pipeline has gone down.

(ii) The Board has fallaciously relied on the contractually stipulated pressure in assessing capacity. Such conduct of the Respondent is in violation of the Capacity Regulations which expressly contemplates taking into account changes in actual operating parameters more particularly variable parameters such as pressure which have an effect on capacity.

(iii) The Board has acted in an arbitrary manner without considering parameters unanimously agreed and recommended by the CAG to be applied to all natural gas pipelines, which included taking into account

changes in pressure at entry point as well as gas source limitation in computation of capacity.

(iv) The Board's conduct is all the more arbitrary when it is considered that various applicable parameters laid down by the CAG have been considered in computation of capacity for other natural gas pipelines such as those of GAIL and GSPL.

(v) The impugned order passed by the Board is liable to be set aside on the ground of violation of principles of natural justice in that the observations of CAG on the Appellant's submissions / comments were not even furnished to the Appellant but were taken into account by the Board in passing the impugned order.

(vi) The impugned order is liable to be set aside on the ground that the Board has purely been motivated by the end result or consequence of the capacity determined on tariff fixation which is not a criteria under the capacity regulations which mandates a purely technical exercise for determination of capacity.

(vii) The impugned order fails to consider the fact of the Appellant accepting the Gas at lower pressure with a sole objective of ensuring uninterrupted gas supplies to priority sectors including fertilisers, power generation and city gas distribution.

(viii) The declaration of capacity by the Board is violative of the mandate of the Capacity Regulations 2(l), 7(i)(c) and 9(3) which clearly indicates that it is actual pressure corresponding to ground realities which is to be taken into account in determining and declaring capacity.

(ix) The declaration of Capacity by the Board has failed to consider the distinction between Regulation 2(k) of the Capacity Regulation which deals with maximum capacity of the pipeline and Regulation 2(l) of the same Regulations which deals with declared capacity of the pipeline, i.e., what the pipeline is capable of transporting.

(x) The declaration of capacity by the Board fails to take into account that the governing factor for determining capacity in the instant case would no longer be MAOP

but would be limited by the compressor discharge pressure corresponding to the reduced actual inlet pressure as per the mandate of Regulation 5(5) (a)(ii) of the Capacity Regulations.

(xi) The declaration of capacity by the Board has wrongly placed reliance on Regulation 5 of the Access Code which has no relevance to the exercise of capacity assessment.

(xii) The impugned order passed by the Board is wrong in on the one hand upholding the sanctity of CAG guidelines and on the other hand failing to apply the same uniformly and impartially to the Appellant.

(xiii) It is pertinent to mention that when the CAG had already clarified out a detailed exercise and submitted its report in that regard to which the Appellant had been invited and did in fact give its submissions/comments on, there was no question of further inviting the CAG's observations on the submissions/comments of the Appellant. Furthermore, these observations of CAG on the Appellant's submissions/comments were not even

furnished to the Appellant but were taken into account by the Board in passing the impugned order. The non-furnishing of CAG's observations/ report to the Appellant and taking the same into consideration in passing the impugned order is a gross violation of the principles of natural justice. This resulted I the Appellant not being aware and thus unable to meet the case made out against it causing serious prejudice to the Appellant.

16. We have heard Ms. Sonali Malhotra, counsel appearing for the Board and perused the submissions made by the Board. The gist of submissions is as under:

(i) The Appellant has malafidely filed the appeal against the Board's order dated 30.12.2016.

(ii) The capacity of EWPL has been declared vide order dated 30.12.2016 in compliance with the orders of the Hon'ble Tribunal dated 08.07.2016. Personal hearing was given to the Appellant on 08.08.2016 and asked for written submission which the Appellant did on 22.08.2016. Thereafter, on 30.08.2016, a public notice was issued as per proviso of PNGRB

(Determining Capacity of Petroleum, Petroleum Product and Natural Gas Pipeline) Regulations, 2010 seeking comments from public, if any, on the declared capacity in Schedule-C, the report of the CAG and comments received from the Appellant. On 17.10.2016, a personal hearing was given to the Appellant and asked to make a summarized submissions which the Appellant did on 26.10.2016. A meeting of the CAG was convened on 16.11.2016 to submit its report on the Appellant's comments and observations and finally the CAG responded to this on 15.12.2016. The impugned order was thereafter issued on 30.12.2016.

(iii) The capacity assessment exercise goes by the contractual obligation of the shipper as regards to supply gas pressure to the transporter. Maintaining contractual pressure at inlet is shipper's obligation. It is the shipper's responsibility to ship at the contractual conditions or pay for the default. Such a 'ship or pay' clause is an important part of the contract between the transporter and the shipper. Any drop in this

pressure is extraneous to the capacity assessment procedure. CAG verified that the claimed change in inlet pressure at OT has not been reflected in the contract between the transporter and the shipper in the case of EWPL. The Board procedure is bound only by contractual obligations. The Capacity Regulations 7(i)(c) is cross-referred to relevant Access Code Regulations wherein under Regulations 5(6) and 5(7), it has been clearly specified that *the entry point pressure and temperature shall be as per the contract between shipper and the transporter*.

Capacity Regulation 5(a) (i) states,--

"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."

(iv) The steady state operating conditions is used to measure the efficiency factor of the pipeline in normal condition. The efficiency factor is used in the

approved flow equation for determining the capacity in the software as mentioned in the Capacity Regulations. In case, interpretation of the Appellant about actual operating conditions being taken for declaring the capacity then the actual volume transported would be inferred as capacity of pipeline thereby making all the other parameters as mentioned in Capacity Regulations infructuous. Therefore, the steady state operating condition only reflects the state in which all parameters like flow, pressure, temperature are in harmony and vary only along the length of pipeline but not with time when the capacity is determined based on the approved flow equation and the selected software package.

(v) The PNGRB (Determining capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010 stipulates the various variable parameters as input to the approved flow equation for determining capacity in the software package. The inlet pressure as specified in these regulations is *"the*

maximum pressure that is available at the entry point to the pipeline system".

(vi) The Capacity Regulations provide for the setting of the pressure as a fixed parameter corresponding to the maximum allowable operating pressure (MAOP) or available compression facilities at the originating point and at intermediate points in the direction of flow in determining the capacity of the pipeline. Further, the inherent capacity of the pipeline inter alia depends upon the maximum allowable operating pressure. Any pressure less than MAOP on account of the selection of compressor etc would result in lower capacity of the pipeline. Further, in case if any other pressure than MAOP or the contracted pressure is considered then it would provide room for manipulation as any entity can select a compressor with lower outlet pressure to circumvent the intent of the Regulations to declare lower than inherent capacity of the pipeline. Further, any modification in the pipeline system, i.e., change of compressor, reduction in diameter of pipeline to reduce the

capacity of the pipeline defeats the purpose of this regulation for efficient and optimal use of capital.

(vii) It has also been noted that only contracted pressure is considered in the flow equation at the exit points as given in the sub-regulation 5 (a) (vii) of the Capacity Regulations:

"vi. 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 th e approved flow equation and selected software package offline in the steady state operation of the system to arrive at capacities of various sections."

(viii) It is extremely significant to mention that the investment in a pipeline project is determined by the

entity based on the design capacity of the pipeline which in turn is based on the entity's own assessment of cost and market conditions. Reduction in capacity utilization of a pipeline on account of failure of the Shipper to meet its obligations should not be considered as reduction in pipeline capacity as it would lead to increase in the transportation tariff for the consumer and would be completely detrimental to the interest of the consumer and would be a complete departure from the tenets of the PNGRB Act which guide the Board to protect the consumer interests. That the contention of the Appellant that the PNGRB should not utilize the capacity of 2009-10 for tariff determination is also misconceived and erroneous and misplaced submission as the capacity of 2009-10 remained unchallenged and has thus attained finality.

(ix) It is pertinent to mention that the CAG's submissions that Low Pressure network of GSPL was receiving gas from some of the decades old gas wells. The pipeline network itself is about 17 years old and some sections of it even de-rated. Accordingly, CAG placed an upper

limit ono the gas availability at source. However, CAG had estimated the capacity by maximising the flow from Essar source till the gas velocity limit was met. At the capacity recommended by CAG in its report, gas velocity reached 19.91 m/s. Therefore, no concession was granted to GSPL on source depletion, although it was considered justified in view of the age of the wells concerned. Such consideration was not applicable even remotely to the EWPL case where the pipeline and the gas source are both very recent. Further, the Appellant, itself had claimed, as well as achieved, EWPL capacity of 80 MMSCMD for 2009-10.

17. Before going into the discussions on the matter, let us first understand as to how the EWPL operates.

The EWPL became operational in April, 2009 based on gas sourcing from KGD6 block being operated by RIL through entry point at Gadimoga in Andhra Pradesh. The trunk pipeline length is 1375 kms with uniform diameter of 48" starting from Gadimoga to Ankot in Gujarat. Including the spur-lines, the EWPL length is 1460 kms. The maximum achievable capacity of

the EWPL under steady state conditions is 85 MMSCMD and MAOP is 98 barg.

Since most of the customers/shippers of the pipeline are located on third party pipeline networks, various interconnects were executed to connect these pipeline networks. In addition to taking gas from KGD6 block, later, some other sources were also connected to the EWPL through their entry points to get gas into the pipeline to improve gas delivery through the line. Current physical entry and exit points are as follows :

Entry Points:

1. Gadimoga (Andhra Pradesh) - for KGD6 gas.
2. Oduru (Andhra Pradesh) - for ONGC gas
3. Mallavaram(Andhra Pradesh) - for GSPC gas
4. Mora(Gujarat) - for RLNG from Shell Terminal at Hazira
5. Bhadbhut SG-1 and Bhadbhut M&R-03 (Gujarat) : - for GSPL gas

Exit Points:

1. Chevuturu (Andhra Pradesh) – interconnect for Lanco Kondapalli.
2. Shamirpet (Telangana): Bhagyanagar Gas Limited.

3. Mhaskal (Maharashtra):Interconnect with GAIL's Dahej-Uran Pipeline.

4. Bhadbhut (Gujarat): Interconnect with GSPL pipeline Network.

5. Ankot(Gujarat): Interconnect with GAIL's HVJ-DVPL network.

6. Hazira(Gujarat): for RIL Hazira.

7. Dhamka : for RIL's Hazira-Dahej Pipeline for RIL.

8. Atakpardi (Gujarat) : Interconnect with GSPL network.

The EWPL system comprised of 11 compressor stations installed along the pipeline for boosting the pressure and delivery to various exit points with number of mainline block valves and tap off points as 44.

18. The customers who are also the shippers of the EWPL are Fertilizer Sector consumers, Power Sector consumers, Refinery / Petrochemical Sector consumers, Iron/Steel Sector consumers and CGD Sector consumers. Under the EWPL arrangement, there are three parties involved, viz., supplier of gas, transporter and shippers (consumers). RIL being the main supplier, transporter is the Appellant and the shippers are the consumers named as above. The Gas Transportation

Agreement (GTA) is between the consumer/shipper and the transporter (Appellant). The consumers/shippers buy the gas from the suppliers like RIL etc and they become the owners of the gas which is being transported by the transporter (Appellant).

19. The issue in the instant case pertains to capacity determination of the EWPL for the second and third year of operation of the pipeline, i.e., 2010-11 and 2011-12. For the year 2009-10, the Board has already declared the capacity about which the Appellant does not have any dispute. For the years following 2011-12, the Board has, as yet not declared the capacities. However, on instructions from the Board, Ms Sonali Malhotra, counsel appearing for the Board, submitted before this Court on 27.02.2019 that the Board would try to take a decision with regard to declaration of capacity of the pipeline in question for the years from 2012-13 to 2017-18 by 31.12.2019. The prayer under 'd' in IA No. 94 of 2017 in Appeal No. 39 of 2017 has therefore been dealt with already. The challenge by the Appellant that has remained to be dealt with is regarding declaration of capacity of the pipeline by the Board for 2010-11 as 85 MMSCMD and for 2011-12 as 95 MMSCMD.

20. It is necessary to know as to how the system works in declaring capacity of a common carrier pipeline as per relevant regulations of PNGRB. It is clear from the regulations that the first responsibility lies with the operator of the pipeline, i.e., the Appellant in this case, to determine the capacity for submitting to the Board. The responsibility of finally declaring the capacity lies with the Board.

Regulation 5(2) of Petroleum and Natural Gas Regulatory Board (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010, indicates that the entity, i.e., the operator of the pipeline has to determine the capacity first, as seen below:

> ***"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."*

21. 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) The entity after declaring the pipeline capacity and Section wise capacities by the Board shall publish the same in line with the relevant regulations on the Access Code for that pipeline as and when notified on their website."*

22. 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."

23. 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.

(3) The capacity of the petroleum, petroleum products and natural gas pipeline so determined shall be used for providing access to available capacity on non-discriminatory basis under the relevant regulations on access code."

24. The Petroleum and Natural Gas Regulations Board (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010 (Capacity Regulations) became effective from June, 2010 , much after the EWPL became operational in April, 2009. On advice from the Board, the Appellant determined the capacity of the pipeline for the year 2009-10 and submitted to the Board on 10.04.2010 and the Board declared the capacity for 209-10 only on 02.11.2012, by that time the second year, 2011-11 and the third year, 2011-12 were over and even the fourth year 2012-13 of operations was coming to an end.

25. As per the Appellant, during the first year of operation, i.e., 2009-10, the actual pressure at entry point was 72 barg which was taken by the Appellant while determining the capacity for this year and the same was also adopted by the Board in declaring the capacity as 85 MMSCMD for the year. However, during 2010-11, the entry point pressure at CS-1 of EWPL started dropping below the design pressure of minimum 72 barg. This pressure decline, as per the Appellant was beyond reasonable control of the pipeline operator, i.e., the Appellant.

26. The Appellant realized the fact that the continued fall of entry point pressure below the design pressure would make the compressor at CS-1 incapable of boosing the pressure to required level which in turn would lead to complete stoppage of the gas supply to various customers. After consulting the compressor OEM, the Appellant implemented necessary technical schemes to handle lower than minimum design pressure at the entry point. The Appellant on 10.06.2011, intimated the Board of this declining entry point pressure and steps taken in this regard.

27. Later, as per Capacity Regulations, mandating capacity reassessment whenever there is a change of plus or minus 10%

in operating parameter, capacity reassessment applications were filed by the Appellant for each 10% drop in entry point pressures as below:-(reference Appellant's submission dated 18.09.2019)

Year	**Period**	**Average Actual Pressure at entry point at Gadimoga (Barg)**	**Entry Point pressure taken for capacity Reassessment (Barg)**
2010-11	Apr'10 – Jul'10	68.15	72.00
	Aug'10 – Nov'10	59.30	60.00
	Dec'10 – Mar'11	47.35	50.00
2011-12	Apr'11 – Sep'11	42.36	45.00
	Oct'11 – Mar'12	39.61	40.00

28. The Appellant contends that in view of declining OT pressure and reduced volumes from KGD6 block during the year 2010-11, it became necessary to connect additional sources and entry

points for the pipeline to sustain and improve gas volumes for the pipeline. Accordingly, additional entry point was created to receive gas from Shell Terminal at Hazira, Gujarat from April, 2011. Subsequently, more entry points were created as per requirement of shippers and upstream operators at various points of time for transportation of gas through the pipeline. The Appellant also claims that whenever any shipper requested for transportation of gas from any entry point to required exit point, it was always successfully undertaken by the transporter, i.e., the Appellant. There have been no cases of Appellant declining to transport shipper's gas because of constraints in the pipeline.

29. The Board's main contention is that the capacity of the pipeline is determined by the contractual obligation of the shipper as regards to gas pressure to the transporter. Maintaining contractual pressure at the inlet is shipper's obligation. It is the shipper's responsibility to ship at the contractual conditions, i.e., "ship or pay". In the contract between the transporter, i.e., the Appellant and the shipper, drop in the inlet pressure is not reflected and hence change in inlet pressure cannot be considered while determining/declaring the capacity of the

pipeline. The Board has argued that Regulation 7(i)(c) of the Capacity Regulations allows change in operating parameters within plus or minus 10% only for reassessment of capacity of the pipeline. The Appellant's contention is that whenever there is a change within plus or minus 10% or more, redetermination of the pipeline capacity is allowed by relevant regulation. It means, the Board in principle agrees that change in operational parameters attracts reassessment of pipeline capacity.

30. The Appellant has relied on Regulation 5 of the Capacity Regulation where the parameters to be considered for pipeline capacity are mentioned as under:

(a) Constant parameters.

(b) Variable parameters.

Under variable parameters, in Regulation 5(3)(b)(iv), the inlet pressure consideration is mentioned as below:

(iv) Inlet pressure : The maximum pressure that is available at the entry point to the pipeline system.

In the instant case, we have been made to understand that the Appellant has considered the actual inlet pressure as per this regulation for the year 2010-2011 and 2011-12. In the said Capacity Regulations, we have also observed that outlet

pressure has also been mentioned as the minimum pressure that is required by the customer at the delivery or exit point as per access arrangement entered into by the shipper and the transporter. In this regard, the Appellant claims that it has followed this regulation while delivering the gas to the customers at the exit point maintaining the minimum pressure required by the customers at the exit points.

On this issue, we have also observed the Regulation 5(3)(b)(vi) of the same Capacity Regulations which reads as follows:

> "(vi) Source supply flow – This is the maximum flow that can be available from the source."

31. In this regard, we have noted that both the rival parties have agreed that there is no dispute about the actual inlet pressure and volume of gas coming from the source at the entry points. As pointed out by the Appellant, we have also observed the content of Regulation 9(3) of the Capacity Regulations which reads as under :

> "9(3). The Board may validate the computed capacity with actual capacity as per the flow regime of the pipeline with actual flow conditions as and when desired."

32. The Board argues that for capacity determination, only the contractual pressure is to be considered. It has also stated that for the years 2010-11 and 2011-12, there has been no contract between the Appellant and shippers reflecting the reduced entry pressure. On the other hand, the Board contends that the inherent capacity of the pipeline inter alia depends upon the maximum allowable operating pressure. Any pressure less than MAOP on account of selection of compressors etc would result in lower capacity of the pipeline. Further, in case if any pressure other than MAOP or the contractual pressure is considered then it would provide room for manipulation as any entity can select a compressor with lower outlet pressure to circumvent the intent of the Regulations to declare lower than inherent capacity of the pipelines. On this point, we observe that it is not the case of the Board that the Appellant has wrongly selected the compressors. As per the Appellant, to maintain pipeline operating pressure within MAOP, maximum operating discharge pressure limit has been defined in all compressors and it acts as Discharge Pressure Set point and accordingly, compressors are operated. What we understand regarding MAOP is, it is the maximum safe operating pressure to keep the pipeline integrity intact. It is

always seen that at any point of time, the pipeline operating pressure does not exceed the MAOP. We have also noted that the inherent capacity of a pipeline and declared capacity of a pipeline are two different parameters.

33. The Board also has contended that the only contracted pressure is considered in the flow equation at the exit points as given in sub-regulation 5(a)(vii). The Appellant has made its statement that it has always maintained the exit/delivery pressure to supply gas to customers by taking additional measures etc. It means, the case now is concerned with the entry pressure only.

34. The Board states the responsibility of maintaining the entry point pressure lies with the shipper. The shipper gets the gas from the supplier of gas. As we have been made to understand that the Appellant is not a shipper and it is not a supplier of gas, it is the transporter of the gas. It is therefore clear that the Appellant is not responsible for maintaining the entry point pressure. On this issue, we have also read Regulation 5(7) of the Access Code Regulations which stipulates that the transporter (Appellant)'s obligation is to deliver gas at the exit points conforming to parameters and shipper's obligation is to

supply at the entry points conforming to parameters. The Regulation 5(7) reads as under:

> "(7) Shipper shall supply gas confirming to all parameters specified in sub-regulations (1), (4) to (6) and the transporter shall deliver gas at exit point conforming to parameters of gas as specified in sub-regulations (1), (4) and (5)."

35. During arguments/pleadings in the Court, there arose an issue, i.e., ship-or-pay (SOP) clause in the agreement between the Appellant and the shipper vis-a-vis the matter of reassessment of capacity of the pipeline. The Appellant states that as per the operating code of the GTA between the Appellant and the shippers, the transporter (Appellant) has the option to refuse to accept the shipper's gas if it is supplied at a pressure less than the contractually stipulated pressure and shippers may be liable for ship-or-pay payments as determined in the GTA. The shippers started tendering gas at lower pressures at the entry point in view of declining pressure at the supply source. As per the Appellant, though it did not have any obligation to accept this gas, it still continued to accept gas in the interest of all stake-holders. It did so to accept gas to ensure that the

precious natural resource like gas does not go waste and also the priority sectors of the economy, viz., fertilizer and power producing companies do not suffer fully for want of gas. The Appellant maintained uninterrupted transportation of gas in spite of lower entry pressure of gas.

36. As per the Appellant, since no gas tendered for delivery at the entry point was refused by the transporter (Appellant) due to lower pressure, no ship-or-pay was levied, nor could be levied, to the shippers on account of shortfall of gas due to lower entry pressure. In this context, the Appellant has also referred to the Board's Development of Model GTA Guidelines, 2012, wherein the ship-or-pay is excluded in cases of shipper's inability to supply gas due to no fault of theirs. The entry point pressure has been low because of decline in pressure at the gas supply source. The Appellant, therefore, argues that ship-or-pay clause cannot be a ground for rejecting to accept the lower entry point pressure for capacity determination.

37. On the issue of contractual pressure, the Appellant submits that the issue of low entry pressure was taken up with the shippers and they were put on notice that in case of further decline in pressure, the Appellant would not be able to transport gas due

to operational constraints. It is also submitted by the Appellant that the GTAs entered into with shippers after the period of April, 2014 have the necessary amendments including change in entry point pressure and additional clauses for extension of contracts.

38. While on this issue of inlet pressure, we have also taken note of the suggestion made by the CAG in 2012 on the parameters to be incorporated in the report for finalization of capacity of IOCL, GAIL and GSPL. The CAG also stated that the parameters shall be uniformly applicable in all future capacity assessment of natural gas pipelines. The parameters under source capacity limitations were stated ass under:

(a) Source/Field depletion

(b) LNG terminal capacity

(c) Contractual off-take

(d) Entry point pressure limitations of source

(e) Non-availability of gas at connected sources.

39. The Appellant alleges that the Board applied this suggestion in regards to the relevant parameters for other similar situations, but not applied in case of the Appellant which clearly indicates discriminatory approach of the Board. As per the Appellant, the

Board in case of GSPL's HP network of Gujarat, declared capacity for the year 2010-11 as 31 MMSCMD against the declared capacity for the year 2009-10 as 36 MMSCMD. Though the Board has defended this allegation by saying that no concession was granted to GSPL on source depletion, the statements that it has made in regards to source depletion do not appear to be appropriate in our opinion. The Board states that in case of GSPL, source depletion is considered justified in view of the age of the wells concerned, but in case of the source depletion of the Appellant's case, it is not applicable even remotely where the pipeline and the gas source are both very recent. This view of the Board could lead to two possible scenarios. Had the well been old enough, source depletion could have been considered for the Appellant or the source depletion declared by the Appellant could not be accepted as a correct statement.

40. At the same time, the counsel appearing for the Board made a statement in the Court that there has not been any dispute on the input pressure declared by the Appellant. The Appellant also reconfirmed that there has been no doubt raised by the Board on this issue ever. We are not expressing any opinion on this

issue of source depletion since production of crude oil and natural gas is outside the purview of this Court as per the PNGRB Act, 2006. We however, note that the CAG in 2012 recommended to consider 'source/field depletion' while assessing capacity of a common carrier pipeline.

41. As regards the CAG formed for capacity assessment for the years 2010-11 and 2011-12 for the EWPL, the CAG's report was made public only after this Tribunal's order dated 08.07.2016. The Board issued a public notice on 30.08.2016 seeking comments from public, if any, on the declared capacity in Schedule-C, the report of the CAG and the comments received from the Appellant during the public consultation. The Board after consulting the CAG on the comments from the Appellant declared the capacity for 2010-11 and 2011-12 on 30.12.2016. We note here that the Appellant was not given any opportunity to interact with the CAG on its comments. At the same time, we also note that no comments were received from the public during public consultation on the CAG's report and also on the comments of the Appellant on the CAG's report.

42. On the issue of implications of reduced declared capacity of the pipeline, the Board's contention is that if the capacity is

reduced, the transportation rate will go up accordingly and consequently, the customers will suffer. The Appellant has, however, contested this view stating that the capacity declaration pertains to the 2nd and 3rd year of the operation of the pipeline and for these years, reduced capacity of the pipeline is not going to affect the transportation tariff when it would be determined based on the formula specified in the Capacity Regulations.

43. The Appellant has also pointed out the difference between the express wording of Regulation 5(3) (b)(iv) of Capacity Regulations and that of Regulation 5(3)(b)(v) and Regulation 5(3)(b)(vii). In Regulation 5(3)(b)(iv), it states in regards to inlet pressure as "The maximum pressure that is available at the entry point to the pipeline system, whereas in Regulation 5(3)(b)(v) in regards to outlet pressure, it states "The minimum pressure …….as per access arrangement entered into by the shipper and the transporter". In Regulation 5(3)(b)(vii) in regards to delivery flow, it states, "as per access arrangement entered into by the shipper and the transporter". We have noted that the condition "as per access arrangement entered into by the shipper and the transporter" is kept in case of

outlet pressure and delivery flow, but the same is not kept in the case of inlet pressure.

44. The Regulation 7(i)(a) of the Capacity Regulations while talking of periodicity for determining capacity of a petroleum, petroleum products and natural gas pipeline, states that whenever there is a major change in the injected quantity or off-taken quantity of petroleum, petroleum products and natural gas, the capacity of the pipeline needs to be re-determined.

The Regulation 7(i)(c) states that whenever 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 witin the parameters defined under the relevant regulations on the access code as and when notified, the capacity is required to be re-determined. In the case of the EWPL, both the gas quantity and inlet pressures have changed and accordingly it turned out to be a requirement for the Appellant to re-assess the capacity of the pipeline for declaration by the Board. Conditions under Regulation 7(i)(b), 7(i)(d) and 7(i)(e) also warrant re-assessment of capacity.

45. Another issue that has been brought to our notice by the Appellant is the fallacy regarding the capacity to be declared for the year 2010-11 and 2011-12. If interalia, the original contractual capacity of the pipeline is considered for determination of capacity for the year 2010-11 and 2011-12, the capacity so determined would not represent the actual operational capacity of the pipeline. This capacity when webhosted, would give a false inflated capacity information to the customers/shippers of gas to have access to the pipeline which the pipeline is not capable of transporting that capacity in terms of volume under the prevailing circumstances. We are inclined to believe this scenario under the facts and circumstances of the situation.

46. From the discussions and observations as above, it transpires that the instant matter is typically an unusual matter. The EWPL was originally laid based on the volume and pressure of a single source which started declining immediately after a year of operation. The pressure that became available at the entry point at Gadimoga started declining fast even within a particular year itself. It became beyond the control of the shipper to maintain the contractual parameters, viz., inlet pressure and

volume etc. The transporter (Appellant), however, made sure that gas available from additional sources, viz., Shell Hazira, GSPL etc at additional entry points were accepted to transport their gas to the customers. The transporter (Appellant), also ensured that the customers get their gas at the exit points within contractual parameters by taking necessary steps etc. No shipper was refused by the Appellant to transport their gas through the EWPL. The Appellant ensured that the natural resource, i.e., gas is not wasted even if available at low pressure from the shippers and the priority customers, viz., power and fertilizer customers are not affected completely leading to shutting down of their plants on want of gas. It is also noted that not only the KGD6 gas source declined but the other available gas sources also declined with time. We also note that other than these gas sources, no other gas sources were available in the region for transporting their gas through the EWPL. The Appellant did not have any other option available to it to enhance the capacity of the pipeline. The maximum achievable operational capacity of the pipeline got limited because the variable parameters like inlet pressure, source flow etc declined. Supplying gas under contractual parameters at the

entry points was the responsibility of the shipper and not of the transporter (Appellant). The relevant regulations also allow the operator of the pipeline to redetermine the capacity of the pipeline considering the changes in the operational parameters. Having regards to the facts and circumstances of the case in regards to capacity determination of the EWPL for the years 2010-11 and 2011-12, the appeal deserves to be allowed.

ORDER

(i) The Appeal is allowed.

(ii) The impugned order in the instant case is set aside.

(iii) The Board is directed to consider the change in the operating parameters, viz., inlet pressure etc., while declaring the capacity of the pipeline for the years 2010-11 and 2011-12 and declare the capacities within 3 (three) months from the date of this order. However, this is an unusual situation calling for a special approach to solve the issue. This order, therefore, should not be cited as a precedent in future.

(iv) The Appellant shall not claim any penalty/compensation from the shippers for not conforming to the conditions of ship-or-pay of GTA.

47. The appeal is disposed of in the aforesaid terms. Needless to say that IA Nos. 94, 95, 187 of 2017 do not survive and are disposed of, as such.

48. There is no order as to cost.

Pronounced in the Open Court on this 15th day of November, 2019.

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

(Justice Manjula Chellur)
(Chairperson)

√REPORTABLE/~~NON-REPORTABALE~~