

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 331 OF 2022 & IA No.1259 OF 2022
APPEAL No. 332 OF 2022 & IA No.1260 OF 2022
APPEAL No. 361 OF 2022 & IA No.1277 OF 2022
APPEAL No. 13 OF 2023 & IA No.1253 OF 2022
APPEAL No. 636 OF 2023 & IA Nos.1137 OF 2023 & 1136 OF 2023
APPEAL No. 640 OF 2023 & IA Nos.1128 OF 2023 & 1127 OF 2023

Dated : 26th April, 2024

Present: Hon'ble Dr. Ashutosh Karnatak, Technical Member (P&NG)
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

APPEAL No. 331 OF 2022

AGP CGD INDIA PVT. LTD.

Through Mr. Susheel Jad,
Senior Vice President and General Counsel
Unit No. 305, Third Floor, Worldmark-2
Asset 8 Hospitality District, Aerocity
New Delhi 110037
Email: susheel.jad@agpglobal.com

... Appellant(s)

Versus

PETROLEUM AND NATURAL GAS REGULATORY BOARD

Through The Secretary, PNGRB
1st Floor, World Trade Centre,
Babar Road, New Delhi – 110001
Email: secretary@pngrb.gov.in

... Respondent (s)

Counsel for the Appellant(s)

:

Paras Kuhad Sr. Adv.

Manu Aggarwal for App.1

Counsel for the Respondent(s) : Rahul Sagar Sahay
Tanuja Dhoulakhandi
Sumit Kishore
Mohit Budhiraja
Kartikey Joshi
Harshita Tomar
Sanskriti Bhardwaj for R.1

APPEAL No. 332 OF 2022

AGP CITY GAS PVT. LTD.

Through Mr. Susheel Jad,
Senior Vice President and General Counsel
Unit No. 305, Third Floor, Worldmark-2
Asset 8 Hospitality District, Aerocity
New Delhi 110037

Email: susheel.jad@agpglobal.com

... Appellant(s)

Versus

PETROLEUM AND NATURAL GAS REGULATORY BOARD

Through The Secretary, PNGRB
1st Floor, World Trade Centre, Babar Road
New Delhi-110001

Email: secretary@pngrb.gov.in

...Respondent(s)

Counsel for the Appellant(s) : Paras Kuhad Sr. Adv.
Manu Aggarwal for App.1

Counsel for the Respondent(s) : Rahul Sagar Sahay
Tanuja Dhoulakhandi
Sumit Kishore
Mohit Budhiraja
Kartikey Joshi

Harshita Tomar
Sanskriti Bhardwaj for R.1

APPEAL No. 361 OF 2022

AGP CITY GAS PVT. LTD.

Through Mr. Susheel Jad,
Senior Vice President and General Counsel
Unit No. 305, Third Floor, Worldmark-2
Asset 8 Hospitality District, Aerocity
New Delhi 110037
Email: susheel.jad@agpglobal.com

... Appellant(s)

Versus

PETROLEUM AND NATURAL GAS REGULATORY BOARD

Through The Secretary, PNGRB
1st Floor, World Trade Centre, Babar Road
New Delhi-110001
Email: secretary@pngrb.gov.in

... Respondent(s)

Counsel for the Appellant(s) : Paras Kuhad Sr. Adv.
Manu Aggarwal for App.1

Counsel for the Respondent(s) : Rahul Sagar Sahay
Tanuja Dhoulakhandi
Sumit Kishore
Mohit Budhiraja
Kartikey Joshi
Harshita Tomar
Sanskriti Bhardwaj for R.1

APPEAL No. 13 OF 2023

AGP CITY GAS PVT. LTD.

Through Mr. Susheel Jad,
Senior Vice President and General Counsel
Unit No. 305, Third Floor, Worldmark-2
Asset 8 Hospitality District, Aerocity
New Delhi 110037
Email: susheel.jad@agpglobal.com

... Appellant(s)

Versus

PETROLEUM AND NATURAL GAS REGULATORY BOARD

Through The Secretary, PNGRB
1st Floor, World Trade Centre, Babar Road
New Delhi-110001
Email: secretary@pngrb.gov.in

...Respondent(s)

Counsel for the Appellant(s) : Paras Kuhad Sr. Adv.
Manu Aggarwal for App.1

Counsel for the Respondent(s) : Rahul Sagar Sahay
Tanuja Dhoulakhandi
Sumit Kishore
Mohit Budhiraja
Kartikey Joshi
Harshita Tomar
Sanskriti Bhardwaj
Raghav Rajmalani for R.1

APPEAL No. 636 OF 2023

AGP CITY GAS PVT. LTD.

Through: Susheel Jad, Legal Head
Having registered office at:
Unit No. 305, Third Floor, Worldmark-2
Asset- 8 Hospitality District, Aerocity, NH-8,
New Delhi 110037
Email: susheel.jad@agppratham.com

Mobile: 9711030712

... Appellant(s)

Versus

PETROLEUM AND NATURAL GAS REGULATORY BOARD

Through The Secretary
1st Floor, World Trade Centre,
Babar Road, New Delhi-110001
Email: secretary@pngrb.gov.in
Mobile: +919312061203

...Respondent(s)

Counsel for the Appellant(s) : Paras Kuhad Sr. Adv.
Manu Aggarwal for App.1

Counsel for the Respondent(s) : Rahul Sagar Sahay
Sanskriti Bhardwaj
Sumit Kishore
Suyash Gaur
Harshita Tomar
Kartikey Joshi for R.1

APPEAL No. 640 OF 2023

AGP CGD INDIA PVT. LTD.

Through: Susheel Jad, Legal Head
Having registered office at:
Unit No. 305, Third Floor, Worldmark-2
Asset- 8 Hospitality District, Aerocity, NH-8,
New Delhi 110037
Email: susheel.jad@agppratham.com
Mobile: 9711030712

... Appellant(s)

Versus

PETROLEUM & NATURAL GAS REGULATORY BOARD

Through the Secretary
1st Floor, World Trade Centre,

Babar Road, New Delhi-110001
Email: secretary@pngrb.gov.in
Mobile: +919312061203

...Respondent(s)

Counsel for the Appellant(s) : Paras Kuhad Sr. Adv.
Manu Aggarwal for App.1

Counsel for the Respondent(s) : Rahul Sagar Sahay
Sanskriti Bhardwaj
Sumit Kishore
Suyash Gaur
Harshita Tomar
Kartikey Joshi for R.1

JUDGMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The batch of above captioned six appeals is taken up for disposal vide this common judgement for the reason that these involve identical issues on law and facts.

2. In these appeals, the Appellant has assailed the letters dated 5th May, 2022 (in Appeal No. 13 of 2023), dated 24th April, 2023 (in Appeals bearing number 636 of 2023 & 640 of 2023), dated 10th June, 2022 (in Appeal numbers 331 of 2022 & 332 of 2022) and dated 14th July, 2022 (in Appeal number 361 of 2022) issued by the Respondent – Petroleum and Natural Gas Regulatory Board herein after referred to as (“Board” or “PNGRB”) in its regulatory capacity thereby rejecting the Appellant’s

request for extension of exclusivity from the purview of common carrier or contract carrier and Minimum Work Programme (MWP) target for setting up of CGD network in the respective geographical areas forming subject matter of the appeals. The request had been made by the Appellant in terms of 3rd proviso of the Regulation 12(2) of Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 (hereinafter referred to as the “**CGD Authorization Regulations 2008**”).

3. The Appellant is the successor of the Consortium of AG&P LNG Marketing PTE Ltd. & Atlantic gulf & Pacific Company of Manila Inc. (“AGP Consortium”) which was the successful bidder inter alia for six geographical areas involved in these six appeals, in the 9th & 10th CGD bidding rounds launched by PNGRB for development of city gas distribution network in various areas of the country. Upon accepting the bids of the said consortium, the PNGRB vide letters dated 26th September, 2018 and 24th April, 2019 granted authorization to it for development of city gas distribution network in geographical areas as

mentioned in the six appeals as under:-

APL No.	Geographical Area	CGD Bidding Round
640/2023	Kanchipuram District	9 th
636/2023	Chittor, Kolar and Vellore (CVK)	10 th
361/2022	Sri Potti Sriramallu Nellore District (Nellore)	10 th
331/2022	Barmer, Jaisalmer & Jodhpur Districts (BJJ)	9 th
332/2022	Uttar Kannada, Haveri and Shivamogga Districts	10 th
13/2023	Alapuzzha, Kollam and Thiruvananthapuram Districts (AKT)	10 th

4. The authorization was later on transferred in the name of the Appellant by the PNGRB.

5. Be it noted here that by way of amendment in the PNGRB Authorization Regulations, 2008, the 3rd proviso was attached to Regulation 12(2) w.e.f. 6th April, 2018 providing for extension of exclusivity to the authorized entities in case of delay in flow of natural gas in the designated transmission pipeline for a period beyond three months from the scheduled date.

6. There is no dispute between the parties with regard to the fact that unlike the previous bidding rounds, the application-cum-bid document in case of 9th & 10th CGD bidding rounds did not specify any designated transmission pipeline from which the authorized entities were supposed to take supply of gas. Even the authorization letters issued for these two bidding rounds neither mandated nor identified any designated pipeline for source of natural gas for CGD network development in the geographical areas involved therein. However, the Appellant in its bids for each of the geographical areas in these six appeals had specified a transmission pipeline from which it proposed to take gas but for certain reasons, that pipeline has still not been commissioned.

7. In this backdrop, the issue which arises for consideration in all the appeals is whether the transmission pipeline identified by the Appellant in its bids in respect of the geographical areas involved in these six appeals would constitute “Designated Transmission Pipeline” for the purposes of the 3rd proviso to Regulations 12(2) of PNGRB Regulations, 2008 so as to entitle the Appellant for postponement of the start date for the purpose of MWP targets and marketing exclusivity in the concerned geographical areas accordingly.

8. Here, we find it appropriate to mention the relevant facts specific to the six appeals respectively for the purposes of clarity :-

(i) Appeal No. 640 of 2023 concerns Kanchipuram District, GA which was allotted to the Appellant in 9th CGD bidding round. In its bid, the Appellant had designated Ennore-Thiruvallur-Bengaluru-Puducherry-Nagapattinam-Madurai-Turicorn Natural Gas Pipeline (ETBPNMTPL) of India Oil Corporation Limited from which it proposed to take gas and which was to be commissioned by December, 2018. On 30th December, 2021, the Appellant executed connectivity agreement with Indian Oil Corporation Limited for taking up tap-off on (ETBPNMTPL) at SV-107 located in Kanchipuram District. This line ETBPNMTPL is stated to criss-cross through Kanchipuram GA covering a length of 101.17 kilometers. Due to the delay in commissioning of ETBPNMTPL, the Appellant developed the LCNG at Vallam which was completed and commissioned on 30th September, 2022. However, ETBPNMTPL pipeline is yet to be connected to domestic gas source.

(ii) Appeal No. 636 of 2023 pertains to Chittoor Kolar and Vellore (CVK) geographical area allotted to the Appellant in 10th CGD bidding

round. In its bid for the said GA, the Appellant had designated Ennore Tuticorin Pipeline (Vellore-Bangalore Spurline) of Indian Oil Corporation Limited which was to be commissioned on December, 2018. The Appellant had designated Kakinada-Vya-Vellore pipeline (KVNPL) for Chittoor district which was authorized in February, 2019 and Dabhol-Bangalore Pipeline (DBPL) for Kolar district which was authorized in November, 2011. The Appellant executed connectivity agreement with the Indian Oil Corporation Limited for taking tap off on ETBPNMTPL at SV-213 on 13th May, 2022 and SV-208 on 21st March, 2023. The ETBPNMTPL pipeline is stated to criss-cross through DVK geographical area covering a length of 181.51 kilometers. Due to delay in commissioning of ETBPNMTPL pipeline to cater to the customers within CVK geographical area, the Appellant developed an LCNG at Wallajah which was completed and commissioned on June, 2022. As already noted, the said ETBPNMTPL pipeline is yet to be connected to the domestic gas source.

(iii) Appeal No. 361 of 2022 is with respect to Sri Potti Sriramulu Nellore District (Nellore) geographical area allotted to the Appellant

in 10th CGD Bidding Round. In its bid for the said geographical area, the Appellant had designated Ennore-Nellore pipeline (ENPL) which was authorized in December, 2014 and was to be commissioned in April, 2020. The said ENPL pipeline is stated to be passing through Nellore geographical area covering a length of 108 kilometers. However, the authorization of ENPL pipeline was cancelled by PNGRB vide order dated 20th December, 2022 which was upheld by this Tribunal vide its judgement dated 4th October, 2023. Thus, there has been delay in commissioning of the said ENPL pipeline to cater to the customers during Nellore GA.

(iv) Appeal No. 331 of 2022 concerns Barmer, Jaisalmer & Jodhpur districts (BJJ) geographical area allotted to the Appellant in 9th CGD bidding round. In its bid for the said geographical area, the Appellant had designated Pali-Jodhpur Spurline of Mehsana Bhatinda pipeline (MBPL) which was to be commissioned by July, 2014 and once commissioned was to carry domestic gas from Mehsana gas field to Jodhpur, the primary demand center in the said geographical area. The Barmer-Pali Spurline was sanctioned on 5th December, 2018 but has not been commissioned as yet. Therefore, the same is still

not available for being connected the domestic gas source for the said geographical area.

(v) Appeal No. 332 of 2022 is with regard to the Uttar Kannada, Haveri and Shivamogga Districts (UHS) geographical area was allotted to the Appellant in 10th CGD bidding round. In its bid for the said geographical area, the Appellant had designated Jaigarh-Mangalore Pipeline ("JMPL"), along with Dabhol-Bangalore pipeline (DBPL) from which it proposed to take gas. JMPL was to be commissioned by June, 2019, but its authorization was cancelled by PNGRB vide order dated 4th July, 2022 which was upheld by this Tribunal vide judgement dated 10th May, 2023. Thus, the said pipeline is still not available to the Appellant for taking supply of gas.

(vi) Appeal No. 13 of 2023 is with respect to Alapuzzha, Kollam and Thiruvananthapuram Districts (AKT) geographical area allotted to the Appellant in 10th CGD bidding round. In its bid, for the said geographical area, the Appellant had designated Kochi-Bangalore Section of Kochi-Koottanand-Bangalore-Mangalore Natural Gas Pipeline Network ("KKMBPL") which was to be commissioned by February, 2019. Upon its commissioning, it was to be connected to

the Dabhol-Bangalore Pipeline (DBPL) which in-turn is connected to Hazira Gas field, the source of domestic gas. Due to the delay in commissioning of KKB MPL to cater to the customers within the AKT geographical area, the Appellant developed the LCNG stations at Chirthala (Alapuzzha) and DIC Kochivalli Thiruvananthapuram) which were completed and commissioned on 18th October, 2022 and 16th September, 2022 respectively, However, the said designated pipeline has still not been commissioned.

9. The Appellant vide communications dated 11th April, 2022, 2nd May, 2022, 30th November, 2021 and 14th February, 2023 informed the PNGRB of all the circumstances and claimed extension of exclusivity as well as MWP targets under the 3rd proviso of Regulation 12(2) of CGD Authorization Regulation, 2008 which has been rejected by the Board vide communications dated 5th May, 2022, 10th June, 2022, 14th July, 2022 and 24th April, 2023. These very communications of the Board have been assailed before us in these six appeals.

10. In these impugned communications, the Respondent-Board has rejected the contentions of the Appellant regarding non-availability of access to domestic gas source and has stated that the Appellant was

required to get the pipeline connectivity in all these concerned geographical areas from the nearest available natural gas pipeline source which has not been done by the Appellant. The Board has also emphasized that the extension of exclusivity under Regulation 12(2) of CGD Authorization Regulations, 2008 is available only where there is no pipeline connectivity at all.

11. Before us also, it is argued on behalf of the Respondent-Board that the 3rd proviso of Regulation 12(2) of the CGD Authorization Regulations, 2008 has no application to the cases like the instant one where the Board has not designated any pipeline in the bid document for supply of gas to the concerned geographical areas. It is contended that “Designated Transmission Pipeline” envisaged under the 3rd proviso of Regulation 12(2) is to be designated by the Board in the bid document and since that has not been done in 9th & 10th bidding round, said provision has no obligation to the appeals at hand. Further submission made on behalf of the Board is that the Appellant participated in 9th & 10th bidding rounds knowing fully that no pipeline has been designated for the geographical areas covered under these bidding rounds and merely because the Appellant has identified a gas

pipeline in its bid from which it proposes to take gas, the same cannot be termed as “Designated Transmission Pipeline” referred to in the 3rd proviso of Regulation 12(2).

12. Here we think it apposite to reproduce the Regulation 12 as well as the other material regulations. Regulation 12 reads as under :-

“12. Exclusivity period

(1) The exclusivity period to lay, build, operate or expand a city or local natural gas distribution shall be as per the provisions in the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008.

(2) Notwithstanding anything contained in any other regulation made under the Act, the exclusivity from purview of common carrier or contract carrier shall be eight years;

Provided that in case an entity timely achieves the work programme in each of the eight contract years, such exclusivity shall be extended by a period of two years.

Provided further that in case an entity is not able to timely achieve the work programme in any of the eight contract years but is successful in timely achieving the cumulative work programme at the end of the eighth contract year, such exclusivity shall be extended by a period of one year.

Provided also that in case flow of natural gas in the designated transmission pipeline is delayed for a period beyond three months from the scheduled date as indicated and is also later than the date CGD network is ready to take gas for reasons not attributable to the authorized CGD entity selected through the bidding process, the Board may extend the exclusivity period for exemption from the purview of common carrier or contract carrier

by a period corresponding to the difference in the actual and scheduled natural gas flow in the transmission pipeline serving the authorized geographical area or the date when CGD network is ready to take gas, whichever is less, after assessing the reasons for such a delay and in case, the year-wise targets in respect of domestic piped natural gas connection, **CNG stations** and inch-kilometer of steel pipeline as well as schedule of levying transportation rate for CGD and transportation rate for CNG shall also be shifted accordingly by the Board. Further, the exclusivity period for laying, building or expanding the CGD network as stipulated shall also be extended by the same period. For the purpose of monitoring progress of committed targets, the same shall be prorated in the effected years.

Provided also that in respect of those geographical areas where designated source of natural gas in the bid is other than from natural gas pipelines, including from an LNG terminal, the third proviso shall not apply

Explanation 1 : - For the purpose of this sub-regulation, it is clarified that, the exclusivity for laying, building or expansion of CGD networks, in all cases, shall remain twenty-five years from the date of authorisation.

Explanation 2 : For the purpose of this sub-regulation, the readiness of CGD networks shall mean any of the following, namely:-

- (a) Operation of at least one CNG Station within authorized geographical area, or
- (b) Procurement of land for setting up City Gate Station, or
- (c) Completing laying of steel pipeline at least to the extent of 10% of the MWP target for the first year, or
- (d) Completing laying of MDPE pipeline at least to the extent of 50% of the MWP target of steel pipeline for the first year.

Note: Explanation 2 This will be applicable to all authorized entities irrespective of the year of bidding or authorization”

13. Regulation 2(c) of the CGD Authorization Regulations, 2008 defines "authorized area" as :-

"2(c) authorized area" means the specified geographical area for a city or local natural gas distribution network (hereinafter referred to as CGD network) authorized under these regulations for laying, building, operating or expanding the CGD network which may comprise of the following categories, either individually or in any combination thereof, depending upon the criteria of economic viability and contiguity as stated in Schedule A, namely: -

(i) geographic area, in its entirety or in part thereof, within a municipal corporation or municipality, any other urban area notified by the Central or the State Government, village, block, tehsil, sub-division or district or any combination thereof; and

(ii) any other area contiguous to the geographical area mentioned in sub-clause (i);

14. Schedule A, attached to these Regulations states that a geographical area shall either have availability of natural gas or a natural gas pipeline passing within such area or passing in its vicinity or a natural gas pipeline is proposed to be laid either within or in vicinity of such area.

15. Regulation 5(1) states that the Board may carry out preliminary assessment of the expression of interest with respect to the following namely :-

5. Criteria for selection of entity for expression of interest route.

(1) *The Board may carry out a preliminary assessment of the expression of interest with respect to the following, namely:-*

(a) *natural gas availability position;*

(b) *possible connectivity with an existing or proposed natural gas pipeline for supply of natural gas to the city gate of the proposed CGD network, including LNG supplies by tank trucks or tank wagons and CNG by cascades; and*

(c) *any other relevant issue as the Board may consider necessary.*

16. As per Regulation 5(6), the Board is required to scrutinize the bids received in response to the advertisement in respect of only those entities which fulfils the minimum eligible criteria prescribed in Clauses (a) to (k) thereof. Clause (g) of the said Regulations 5(6) states that the entity submitting the bid should have a credible plan for sourcing natural gas for supply in the proposed CGD network.

17. Coming to the application-cum-bid document prescribed for 9th & 10th bidding rounds, its clause 1.1.3 states as under :-

“1.1.3 It is the bidder responsibility to obtain all information related to the present gas supply availability and pipeline

connectivity and also existing customers, if any, in the specified geographical area.....”

18. So, even though, the Board had not designated any transmission pipeline for the 9th & 10th bidding rounds, still in view of Regulation 5(6)(g) it was the responsibility of each bidder to have a credible plan for sourcing natural gas for supply in the proposed CGD network and as per Schedule A, it was the responsibility of the Board to determine the geographical areas in such a manner as to ensure that each geographical areas either has availability of natural gas or a natural gas pipeline passing with such area or passing in its vicinity or a natural gas pipeline proposed to be laid either within or in vicinity of such area.

19. It does not appear that the Respondent-Board had done any such exercise envisaged under Schedule A to the Regulations. Therefore, it was completely left to the bidders to make such exercise and identify natural gas pipeline from which it proposed to source the natural gas for supply in the concerned CGD network.

20. Undisputedly, as noted herein above, the Appellant in its bid for the six geographical areas with which we are concerned in these six appeals, had identified natural gas pipeline from which it proposed to

take gas for supply in the concerned CGD network. It goes without saying that the bids so submitted by the Appellant and other bidders were examined by the Respondent-Board and thereupon were approved. It is not the case of the Respondent-Board that the natural gas pipelines designated by the Appellant in its bids for these six geographical area involved herein were not proposed to be laid and were not supposed to pass through these geographical areas in their vicinity. The Board has also maintained eerie silence on the aspect as to which natural gas pipeline was conceived by it for the six geographical areas in terms of Schedule A to these Regulations of 2008 when these geographical areas were determined.

21. Having regard to these facts and circumstances, we do not find it justified and plausible to accept the contention of the Board that the natural gas pipeline designated by the Appellant in its bid for the six geographical areas from which it proposed to take gas for supply of the CGD networks, cannot be termed as “Designated Transmission Pipeline” envisaged in the 3rd proviso to Regulation 12(2).

22. In view of the above noted Regulations and also considering the obligation of the selected bidders to maintain uninterrupted supply of

natural gas to all customers within the CGD networks, it is difficult to consider a situation where the bidders in the 9th & 10 CGD round including the Appellant herein would have submitted their respective bids without doing ground work for identifying a natural gas pipeline passing through or in the vicinity of the concerned geographical area or proposed to be through or in the vicinity of the concerned geographical area. It is manifest that the Appellant had embarked upon such exercise and identified a natural gas pipeline proposed to be through the concerned geographical areas or in their vicinity to ensure smooth, uninterrupted supply of natural gas to the consumers within the CGD networks. Concededly, all the natural gas pipelines identified by the Appellant and designated by it in its bids had been duly authorized by the Board and, therefore, no fault can be found with the Appellant in designating these in its bids. However, unfortunately these pipelines were not commissioned for reasons known to either the Board or the Government of India.

23. Since no natural gas pipeline was designated by the Respondent-Board for 9th and 10th bidding rounds, it was, all the more necessary for the bidders in these two rounds to specify a gas pipeline in the bids from

which they proposed to take gas for supply to the concerned CGD networks. In the absence of specifying any such gas pipelines in the bids, these would have been out-rightly rejected by the Board on the ground that the bidders have not specified the source of natural gas to be supplied in the CGD network as required under Regulation 5(6)(g) as well as clause 1.1.3 of the Application-bum-bid document.

24. The argument on behalf of the Respondent-Board that it has not scrutinized the bids is preposterous, to say the least. We wonder as to how, without examining the bids, the Board would find whether the bidder has a credible source of gas as mandated under said Regulation 5(6)(g) or that the gas pipeline identified in the bids is existing/proposed to be laid in near future or that the gas pipeline runs through/ or in the vicinity of the CGD network. When a bidder identifies a gas pipeline in the bid from which it proposed to take supply of gas for the concerned CGD network and the bid is approved by the Board, it is indicative of the fact that the gas pipeline fulfils all the required parameters. In these circumstances, the Board is precluded from contending that such a gas pipeline cannot be termed as “Designated Gas Pipeline” envisaged under 3rd proviso to Regulations 12(2). Once it was left to the bidders in

the 9th & 10th bidding rounds to identify the source of gas to be supplied to CGD networking, it does not lie in the mouth of the Board to say that the gas pipeline so identified by the bidder in the bid cannot be construed as “Designated Gas Pipeline” to attract the 3rd proviso of Regulation 12(2).

25. It is also to be noted that the ENPL, the gas pipeline designated by the Appellant for sourcing of gas for Nellor geographical area and JMPL designated by the Appellant for sourcing of gas for UHS geographical area were later on cancelled by the Respondent-Board on 20th December, 2022 and 4th July, 2022 respectively, a fact which could not have been anticipated by the Appellant at the time of submission of bid for these two geographical areas.

26. Even otherwise also a minute and meaningful reading of the entire Regulation 12(2) would clearly reveal that it does apply to the geographical areas allotted in 9th & 10th bidding rounds also. The expression “Designated Transmission Pipeline” used in the 3rd proviso attached to said Regulation 12(2) has not been defined either in the Regulations or in the PNGRB Act. There is nothing in the entire proviso to suggest that such a transmission pipeline shall be designated only by

the Board. A plain reading of the proviso would indicate that such a pipeline may be designated either by the authority inviting the bids i.e. the Board in the application-cum-bidding document or by the bidders in their bids. Such an interpretation would be in consonance with the Regulation 5 & clause 1.1.3 of the application-cum-bid document. Further explanation 2 attached to sub-Regulation (2) of Regulation 12 clearly specifies that this sub-Regulation would be applicable to all authorized entities irrespective of the year of bidding or authorization. Even though this explanation has been engrafted into the Regulations w.e.f. 7th September, 2021 yet its language makes it clear that it applies to the entities which have been authorized prior to engrafting of the explanation. The expression “authorized entities” used in the explanation is clearly indicative of the intention that the entire Regulation 12(2) including the 3rd proviso would apply to the entities which have been authorized in the past also i.e. before the said explanation has been attached to the Regulations. Therefore, the application of 3rd proviso of the said Regulation 12(2) to the authorized entities selected in 9th & 10th bidding rounds no longer remains debatable.

27. We may also refer to 4th proviso attached to Regulation 12(2) which reads as under :-

*“Provided also that in respect of those geographical areas where designated source of natural gas **in the bid** is other than from natural gas pipelines, including from an LNG terminal, the third proviso shall not apply.”*

28. Though this proviso has been brought into the Regulations w.e.f. 7th September, 2021 but it indicates the intention of the Board that the 3rd proviso would apply in all situations except where the designated source of natural gas in the bids for geographical areas is stated to be other than from natural gas pipeline. Thus, it is evident that the Board never intended to exclude those geographical areas from the purview of 3rd proviso where designated source of natural gas in the bid has been stated to be from a natural gas pipeline as has been done by the appellant in the cases under consideration.

29. There is another disturbing feature which has brought our attention and which demonstrates the inconsistent, unjust and casual approach of the Respondent-Board. Vide communication dated 12th April, 2022 addressed by the Board to M/s Gujarat Gas Ltd. in respect of Ferozepur, Faridkot -- Sri Muktsar Sahib Districts GEOGRAPHICAL AREAS, copies of which have been annexed in Appeal Nos. 636 of

2023 & 640 of 2023, the Respondent-Board had granted extension under the 3rd proviso to Regulation 12(2) to the Appellant on the ground of delay in flow of gas in the MBPL Gas pipeline designated in the bids submitted for the said GA. The order clearly indicates that the Board accepted the pipeline designated by the Appellant in its bids for the said geographical area as the “Designated Transmission Pipeline” envisaged under 3rd proviso to Regulation 12(2). The same pipeline was identified by Appellant herein as source of gas for BJJ Geographical Area (see Appeal No. 331 of 2022) but no extension, as given to Gujarat Gas Ltd., has been given to the Appellant herein. Hence, it is not understandable what lead the Board to take a U-turn later on and to state in the impugned communications to the Appellant that the 3rd proviso to Regulations 12(2) does not apply to bidders selected in 9th & 10th bidding rounds. The Board is expected to maintain consistency in its orders while interpreting the Regulations as well as the entitlement of the authorized entities unless a very strong and cogent ground is shown for taking a contrary stand. We do not find anything in the impugned communications to suggest that there was any compelling reason for the Board to take a stand contrary to its own previous communication dated 12th April, 2022.

30. In the light of the above discussion, we hold that the natural gas pipeline referred to by the Appellant in its bids in respect of the geographical areas involved in these six appeals constitute “Designated Transmission Pipelines” for the purpose of 3rd proviso to Regulation 12(2) of PNGRB Regulations 2008 thereby entitling the Appellant for extension of exclusivity period from purview of common carrier or contract carrier and of MWP targets.

31. Accordingly, the communications dated 5th May, 2022 (in Appeal No. 13 of 2023), dated 24th April, 2023 (in Appeals bearing number 636 of 2023 & 640 of 2023), dated 10th June, 2022 (in Appeal numbers 331 of 2022 & 332 of 2022) and dated 14th July, 2022 (in Appeal number 361 of 2022) received by the Appellant from the Board which have been impugned in these appeals stand set aside. The appeals are hereby allowed and pending applications disposed of accordingly.

Pronounced in the open court on this 26th day of April, 2024.

(Virender Bhat)
Judicial Member

(Dr. Ashutosh Karnatak)
Technical Member (P&NG)

js