पेट्रोलियम एवं प्राकृतिक गैस विनियामक बोर्ड
Petroleum and Natural Gas Regulatory Board
प्रथम-तल, वर्ल्ड ट्रेड सेंटर, बाबर रोड, नयी दिल्ली - 110001
1st Floor, World Trade Centre, Babar Road, New Delhi – 110001

No.: Infra/PL/Bid/NGPL/ETBPNMTPL/2014/01 30.07.2014

To

All Prospective Bidders

Sub: Clarifications related to Ennore-Thiruvallur-Bengaluru-Puducherry-Nagapattinam-Madurai-Tuticorin Natural Gas Pipeline (Bid No.: BID/NGPL/07/2014/1/ ETBPNMTPL)

Sir,

Further to the clarifications issued on 25.04.2014, as per the query received from M/s GAIL (India) Limited vide letter dated 10.07.2014 (Annex-I) related to the bids invited for development of Ennore-Thiruvallur-Bengaluru-Puducherry-Nagapattinam-Madurai-Tuticorin natural gas pipeline, apart from the provisions under Clause 17.4.2 and Clause 17.4.3 of the Application cum Bid Document, following additional clarifications are being issued:

(A) Clause (a) of ANNEXURE-1 of the Application cum Bid Document has been amended and may now be read as:

a) **Route of the Main Trunk Pipeline (tentative):**
Ennore – Thiruvallur - Bengaluru - Puducherry – Nagapattinam - Madurai - Tuticorin

(B) As far as contours and sequencing of tariff zones are concerned, definition of tariff zone provided in Regulation 2(1) (h) of the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008 does not distinguish between "the point of origin" from "the point of injection" for a pipeline. This definition determines the tariff zones w.r.t. the

transportation of natural gas from each entry point (i.e. injection point which may or may not be the point of origin as the case may be) to each exit point (i.e. re-delivery point, which may or may not be the end point of the pipeline as the case may be).

2. The above clarifications shall constitute a part of the Application-Cum-Bid Document and shall be duly signed and submitted along with the bid document by the authorized signatory of the bidder.

Yours faithfully,

Encl: As above

20/7/2014

(K. Rajeswara Rao)
OSD (R)

Annex-I

गेल (इंडिया) लिमिटेड
(भारत सरकार का उपक्रम
एक नवरत्न कम्पनी)
GAIL (India) Limited
(A Government of India Undertaking-
A Navratna Company)

No: GAIL/ND/RA/PNGRB/2014/248368/5791

Date: 10.07.2014

The Secretary
Petroleum and Natural Gas Regulatory Board (PNGRB)
1st Floor, World Trade Centre,
Babar Road,
New Delhi-110001

SUBJECT: Ennore – Thiruvallur – Bengaluru Puduchery – Nagapattinam – Madurai – Tuticorin Natural Gas Pipeline (ETBPNMTPL) Tender – Pre-bid Query

Dear Sir,

This has reference to the "Application – cum – Bid Document" invited by PNGRB for the subject Pipeline.

2. In this regard following are observations:

(i) Ennore has been mentioned "Originating Point" and Madurai & Tuticorin have been mentioned as "Termination Point". However, Bengaluru has been mentioned both as "Termination / Originating Point".

(ii) In Mallavaram – Bhopal - Bhilwara – Vijaipur Natural Gas Pipeline, which was challenged by GAIL before Appellate Tribunal (APTEL) and at that time PNGRB submitted to APTEL in an Affidavit under Para 10 (E-F) as follows:

"..... The reference to the words Originating point and the termination point as given in the documents refers to the pipeline and not the gas as such....."

Relevant page of the affidavit is enclosed as **Annexure-A.**

(iii) APTEL vide Judgment in Appeal No. 205 of 2010 dated 06.02.2012, under Para 52 stated as follows:

".....point of origin as referred to in Regulation 2008 has not been defined either in the Act or in the Regulation of the bid documents. Therefore, the Originating Point as referred to in the bid documents only refers to the point from where the pipelines will begin. Similarly, the termination point mentioned as end point as referred to in Regulation 2008 has also not been

defined either in the Act or in the Regulation or bid documents. Hence, the termination point as referred to in the bid documents only refers to the point where the pipeline will end. Thus, neither originating point nor terminating point can mean injection point....."

and finally Hon'ble APTEL concluded under Para 90 (2)(b) of the Judgment that-

"From the perusal of the Regulations framed by the Board and clarifications issued by the Board for various queries, it is clear that the originating point and termination point with respect to pipelines refers to the construction of the physical pipeline only"

(iv) APTEL has also observed under Para 92 (a) that-

"The Petroleum Board has not clearly mentioned or defined the concept of originating point and terminating point in their bid documents....."

Relevant pages of the APTEL Judgment are enclosed as **Annexure-B**.

3. Thus, two things are clear from the above judgment of APTEL in Mallavaram – Bhopal - Bhilwara – Vijaipur Natural Gas Pipeline that-

   (i) APTEL has already, under Para 52 of the APTEL Order, settled that "..... *neither originating point nor terminating point can mean injection point....."*

   (ii) Unless aforesaid interpretation by the APTEL is overturned by any other higher Judicial Court, the aforesaid interpretation stays for all the cases.

4. In view of the foregoing, the classification of the Bengaluru as "Origination Point" as well as "Termination Point", is leading to confusion particularly in respect of identification and sequential numbering of "Tariff Zone" of the proposed ETBPNMTPL pipeline. Therefore, PNGRB is requested to please issue necessary clarifications / amendment to the Tender.

Submitted for kind consideration please.

Thanking You

Yours faithfully,

(N S Parthasarathy)
General Manager (RA)
E-mail: nsp@gail.co.in

Annexure A

(34)

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. OF 2010

GAIL (INDIA) LTD. APPELLANT

VS

PETROLEUM & NATURAL GAS REGULATORY BOARD & ORS. RESPONDENTS

1.	REPLY ON BEHALF OF RESPONDENT NO 1 WITH AFFIDAVIT	1-12
2.	VAKALATNAMA	13-14

06.12.2010

RESPONDENT NO.1

THROUGH

ANITA SAHANI ADVOCATE
363 LAWYERS' CHAMBER
DELHI HIGH COURT
NEW DELHI-
9810113256

same is contrary to the well setteled principals of selection of bidders through tender as laid down by the Hon'ble courts. Reliance on the judgments quoted by the appellant is completely misplaced and the same are not applicable to the present facts and circumstances of the case. The answering respondent reserves its right to refer to the law applicable to the facts and circumstances of the present case.

B to D. Grounds B to D as stated are wrong and are denied. It is denied that there is any deviation from the tender conditions or the same are contrary to any provisions contained in the tender documents by the respondent consortium. It is reiterated that the technical bid was awarded to both the bidders and on the opening of the financial bid, the same has been found to be lower than the appellant's bid.

E-F. Grounds E F as stated are wrong and are denied. The interpretation given to the provisions of the tender documents is completely wrong and the same is not tenable. The reference to the words Originating point and the termination point as given in the documents refers to the pipeline and not the gas as such. It only suggests that the pipeline will originate at one point and terminate at another however the gas in the same pipeline can be carried from any side or on the way from any points. None of the documents or the regulations support the singular/uni directional flow of gas to be carried through the said pipeline, as misunderstood by the appellant herein. The interpretation of the appellant is therefore completely misplaced and unsupported in the facts and circumstances. Rest of the Para is argumentative and shall be responded at the time of hearing before the learned Tribunal.

G. Para G as stated is wrong and is denied. It is denied that the terminating point was considered as originating point after the bidding event was over on 15.7.2010 as alleged by the appellant. It is reiterated that as per the bid document of the appellant itself, the concept had been clear and it mentions "the pipeline could take natural gas injection from several sources thereby forming a ring network". In view of the stand of the appellant itself the allegations are false and misleading. The allegation with regard to the Gas find only at the KG basin is very myopic and restrictive and leaves no room for the situation, when the Gas is found in other areas, along the route, at any point in time. It is denied that allowing Bhilwara or Vijaipur as Originating point would frustrate the very purpose for which the

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.205 of 2010

Dated: 06 Feb, 2012

Present: **Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson,**
Hon'ble Mr.M.B. Lal, Technical Member (P&NG),

Appeal No.205 of 2010
I.A. No.280 of 2010

GAIL (India) Limited,
GAIL Bhavan,
16, Bhikaji Cama Place,
New Delhi-110 066

... Appellant(s)

Versus

1. Petroleum and Natural Gas Regulatory Board,
   1st Floor, World Trade Centre,
   Babar Road,
   New Delhi-110 007

2. Gujarat State Petronet Limited,
   GSPC Bhavan, Behind Udyog Bhavan,
   Sector-11, Gandhinagar,
   Gujarat-382 011

3. Indian Oil Corporation Limited,
   3079/3, J.B. Tito Marg,
   Sadiq Nagar, New Delhi-110049

4. Hindustan Petroleum Corporation Limited,
   7th Floor, North Tower,
   Scope Minar,
   Laxmi Nagar, Delhi-110092

point refers to the point at which the gas is injected at the beginning of the pipeline i.e. the starting point for gas flow. If we accept that 'originating point' refers to the first point of injection of gas, then 'terminating point' would as a corollary, refer to the terminal or last point of gas flow. In the notice inviting Expression of Interest for participating in GAIL's pipeline projects by Government of India, the term Originating point refers to the first gas injection point and this has been the practice for several years in the past.

52. As indicated above Section 19 of the Act, contemplates the laying of pipelines from one point to another point since originating point has been merely mentioned as a point of origin. This point of origin as referred to in Regulation 2008 has not been defined either in the Act or in the Regulation of the bid documents. Therefore, the Originating Point as referred to in the bid documents only refers to the point from where the pipelines will begin. Similarly, the termination point mentioned as end point as referred to in Regulation 2008 has also not been defined either in the Act or in the Regulation or bid documents. Hence, the termination point as referred to in the bid documents only refers to the point where the pipeline will end. Thus, neither originating point nor terminating point can mean injection point. As a matter of fact, the injection point can be in the pipelines

provisions of the Act and also the relevant regulations notified by the Board.

(b) From the perusal of the Regulations framed by the Board and clarifications issued by the Board for various queries, it is clear that the originating point and termination point with respect to pipelines refers to the construction of the physical pipeline only. If the concept of one injection point is accepted, then it would destroy very purpose of common gas grid infrastructure which links various sources of supply to various customers at various locations on the pipelines which would enable efficient use of natural gas from any source along the pipeline. Therefore, the contention of the Appellant that the Respondent Board made substantial deviation in the specifications of the pipeline after the bids were submitted, has no basis.

(3) The next issue is in relation to the introduction of condition subsequent to the bid to the effect that bidders shall be required to create 33% of the capacity for their own use. According to the Appellant, the modification has been made by the Petroleum Board through letter dated 8.10.2010 and as such the same

(a) The Petroleum Board has not clearly mentioned or defined the concept of originating point and terminating point in their bid documents. This has created confusion whether pipeline is unidirectional or bidirectional. Both the kind of pipelines are in practice. Therefore, the Board could have specified it in tender documents clearly to have created an understanding among the bidders.

(b) The Board has not clarified the above concept before inviting or opening the financial bid if they missed to explain the same in the tender documents. In that event, the Board could have given all the bidders some time for resubmission of the bids as this concept largely affect the operating philosophy of pipelines and thereby bids.

93. Both these aspects as referred to above require consideration of the Board. Of course, we have decided this case on the strength of both bid documents and Regulation. However, the Petroleum Board is directed that in future they should make all attempt to keep the tender out of such conceptual ambiguity without giving any room for confusion, while maintaining competitive bid won by Gujarat State Petronet Limited (R-2) in this case.