



गेल (इंडिया) लिमिटेड

(भारत सरकार का उपक्रम - महारत्न कंपनी)

GAIL (India) Limited

(A Government of India Undertaking - A Maharatna Company)

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GAIL/RA/GSPL LP Gas Grid Tariff/PCD/318232/2017/1670

Date: 17.02.2017

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

Sub: Public Consultation Document dated 27.1.2017 in respect of determination of Final initial unit natural gas pipeline tariff for the GSPL Low Pressure Gas Grid

Madam,

This has reference to the PNGRB's Public Consultation Document dated 27.01.2017 in respect of the subject matter.

In respect of the above, GAIL views are enclosed herewith (as **Annexure A**).

Thanking you.

Yours sincerely,

(Manoj Jain)

Executive Director (Gas Mktg.)

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Encl: a/a

GAIL's views on PCD Ref no. PNGRB/M(C)/43-Vol IV dated 27.01.2017 with respect to Final initial unit natural gas pipeline tariff of GSPL's Low Pressure Gujarat Gas Grid.

1. Para 1.1 of the PCD has stated that in terms of Section 22 of the PNGRB Act, 2006, the Board is entrusted with the responsibility of determining the “*natural gas pipeline*” tariff. However, as per Section 22 of the Act, subject to the provisions of this Act, the Board shall lay down, by regulations, the transportation tariffs for “*common carriers*” or “*contract carriers*”.
2. The issues as to whether a “*natural gas pipeline*” automatically means a “*common carrier*” or “*contract carrier*” and from when (i.e. with effect from which date) a “*natural gas pipeline*” become classified as a “*common carrier*” or “*contract carrier*” are important legal issues which needs to be settled as the same have gone into litigations before APTEL.
3. In this particular case, as per APTEL, the subject natural gas pipeline gas network got classified as a common carrier by the Board by way of “*authorization*” dated 19.03.2013. If one were to accept this position, in case any natural gas pipeline has already been authorized by the Central Government without prescribing usage of the same as common/contract carrier basis, then, such a pipeline would get classified as a common/contract carrier by the Board by way of “*declaration*” by the Board and accordingly, PNGRB's tariff for such a pipeline would be applicable only with effect from the date of such declaration and not from 20.11.2008 (date of notification of Tariff Regulations).
4. However, it is understood that the Board (PNGRB) had filed an appeal against the said APTEL Order before the Hon'ble Supreme Court. In the said appeal filed by the Board, what was the position held by the Board and whether the question of law has finally been settled has not been transparently shared by the Board.

It is imperative that the complete information and details in this regard need to be transparently shared by the Board so as to get clarity on the Board's position regarding the issues mentioned at Para Nos. 3.1 & 3.2 above. Differential positions by PNGRB would amount to discriminatory treatments between existing pipelines of GSPL and existing pipelines of GAIL (i.e. pipelines existing before the “*appointed day*” of the Board), which have significant adverse financial implications for GAIL.

5. Net Fixed Assets (NFA: Para 5.2.1)

- i) As per Tariff regulations, Capital Employed means “Gross fixed assets in the project less accumulated depreciation” and depreciation has been defined as “depreciation shall be calculated by applying the rates of depreciation as specified in schedule VI to the Companies Act, 1956.” Regulations provide for calculation of Depreciation as per Companies Act, 1956 and does not provide for considering NFA as per books of account. Regulations do not provide for matching accumulated depreciation with that as per the books of accounts.
- ii) Different entities charge different rate of depreciation in their books of account and in order to treat all pipelines at par, same rate of depreciation has to be accounted for in arriving at the total capital employed.
- iii) Different Acts provide for different rates of depreciation to be used for the specific purpose only. Depreciation Rate as per Income Tax Act, 1961 is a different rate and is for the purpose of working out Income Tax liability of the company.

- iv) In absence of no specific rate of depreciation for Pipeline assets, different entities consider different rate of depreciation for Oil and Gas Pipelines for the purpose of preparation of Account and reporting till March, 2005. In other words, these depreciation rates were not aligned with the actual economic life of the pipeline assets.
- v) It is also worthwhile to mention here that the Board in the Regulation framed by it considers the economic life of the pipeline as 25 years and the tariff is required to be calculated considering useful life of the pipelines accordingly.
- vi) Therefore, Board cannot consider the book value of Net Fixed Assets instead of calculating Accumulated Depreciation as on 20.11.2008 in line with the requirement of Clause 2 (footnote) of Schedule A to the Tariff Regulations.

6. Future Capex/Opex (Para 5.2.3 & 5.3.2)

- i) As per the tariff regulations, tariff computation is to be done based on the DCF methodology considering all future expected cash flows during tariff determination period and for the past period, the variance between estimated and actual outflows has to be adjusted.
- ii) Therefore, future capital expenditure as included in the “total capital employed” as per the Regulations, whether towards replacement, overhaul, up-keep, up-gradation of equipment and systems or towards addition of network or equipment need to be factored.
- iii) PNGRB Act and regulations mandate that the pipeline entity earns a reasonable 12% post-tax return on the total capital employed over its economic life. There is no provision in the regulations that requires consideration of CAPEX purely based on the current set of customers. CAPEX is incurred by an entity considering current as well as future prospective customers.
- iv) Not considering the same while tariff computation shall result in loss to pipeline entity as it would result in not earning 12% post-tax return on total capital employed.

7. Interest During Construction (IDC)

- i) Regulations provide for consideration of Interest During Construction (IDC) in Tariff Determination in terms of Clause 4 of Attachment-2 to Schedule A of the Tariff Regulations and also as provided for in the Attachments 1, 1(f) and to the Regulations which was valid up to 07.01.2016
- ii) During construction period there is no generation of revenue. However, repayment of interest on loan drawn is required to be made.
- iii) In order to repay the interest, additional funds are required to be infused in to the project.
- iv) This shall provide return on actual capital employed (that includes additional funds infused during the construction period) required to build the asset.

- v) Amendment to tariff regulation, clause 4 of Attachment 2 to Schedule A was notified on 08.01.2016 & PNGRB has applied it retrospectively i.e. to period prior to 08.01.2016, whereas, Amendment to tariff regulation w.r.t. Volume, clause 6 of Schedule A was also notified on 08.01.2016 & PNGRB has applied it prospectively i.e., from the date notification of the Amendment (08.01.2016) while determining final tariff of NG P/L of GAIL. This shows the different treatment given by PNGRB for same Amendment issued on 08.01.2016.
- vi) Notification of this amendment to the regulation dated 08.01.2016 is testament to the fact that moderations done by PNGRB in respect of IDC in past tariff orders were not in sync with the regulations and in order to legalize its past actions, PNGRB has come out with this regulation.

8. **Inflation**

- i) As per DCF methodology, for calculation of Tariff all future outflows, i.e. Capex, Opex over the economic life needs to be projected.
- ii) All these futures outflows are required to be estimated on a reasonable basis including escalation in price factor.
- iii) Short term trend in the past for rate of inflation or any past practice should not give true picture in the fast changing economic scenarios. Therefore, it shall be appropriate to consider an average inflation based on historical long term basis of say 10-20 years.
- iv) Historically, rate of inflation based on CAGR of Wholesale Price Index (series 2004-05) is about 5% or over.
- v) The transportation entity has to make huge investments and considering low inflation rate for projections may not be appropriate for cash flows as the entity would be out of pocket until the next review.

9. **Unaccounted Gas (Para 5.4)**

- i) As per Regulation 2 (u) of NG Pipeline Access Code, "transmission loss" (TL) means the quantity of gas which is unaccounted for whatsoever reason including blow downs, venting or releases during regular operation and maintenance of the pipeline system or due to inaccuracy of custody meter.
- ii) Further, Regulation 6 of NG Pipeline Access Code, System Use Gas (SUG), Line Pack (LP) and Transmission Losses (TL). A shipper shall sell or provide the gas, if required by the transporter, for SUG, LP and TL at the prevailing market price in proportion to its capacity booking in the pipeline: Provided that, the transporter shall be free to arrange this gas from any other source.
- iii) Gas volume purchased/entered in to the pipeline system is measured at each entry point by installed flow meters and flow computers. Heating value of gas entering in to the system is determined by gas chromatographs (installed along with flow meters). Thus energy entering in to pipeline system at each entry point is derived from multiplication of gas volume measured by flow computer and heating value of gas per unit volume (measured by gas chromatographs). The responsibility of measurement at entry points is normally with the gas supplier and quantity is ascertained by joint ticketing.

- iv) Similarly, gas volume supplied to customers at exit points are also measured by installed flow meters and flow computers and heating value is determined by gas chromatographs. Energy exiting from each exit point is also derived from multiplication of gas volume measured by flow computer and heating value of gas per unit volume (measured by gas chromatographs). The responsibility of measurement at exit points is normally with the pipeline operator Transporter and quantity is ascertained by joint ticketing.
- v) As per international practice, the unaccounted gas is considered by regulator worldwide.
- vi) It is requested that PNGRB should fix a loss percentage as benchmark for determining unaccounted gas based on industry-wide experience instead of considering 0% ignoring the practical issues faced by the transportation entities.

10. **Volume Divisor (Para 5.5)**

- i) It is mentioned in the PCD that as per the Grant of Authorization (GoA) dated 19.03.2013 issued for the subject pipeline, the total capacity is equal to 12 MMSCMD and common carrier capacity is equal to 3 MMSCMD.
- ii) However, as per T & C 3 and 4 of the said GoA, the said capacities are only “provisional” capacities. Needless to mention, as per the Regulation 6 of the PNGRB Capacity Determination Regulations, 2010, the Board shall declare the final capacity in the format Schedule C. In this regard, vide a letter dated 09.11.2012, maximum achievable capacity (2008-12) as declared by PNGRB, has been mentioned as 12 MMSCMD and for the Hazira-Mora section as 49 MMSCMD for the LP Network. For subsequent years (i.e. from 2012-2013 onwards) there is no information in respect of PNGRBs declared capacity for this pipeline.
- iii) The PCD has provided certain capacity figures as considered by M/s GSPL. But there is no information on the basis and how these capacities have been considered. More importantly, there is no information on what are PNGRBs views in respect of these volume divisor numbers. In the absence of such essential details, no specific comments are possible in respect of the said volume divisor figures.
- iv) Notwithstanding the above, it has been GAIL’s consistent submission that, as per the notified regulations, the volume divisor figures have to be derived from the volumes of natural gas estimated to be transported through the pipeline under the sum of (a) Normative Own requirement volumes + (b) Normative firm contracted volumes + (c) actual common carrier volumes.
- v) Regulation 8 of the PNGRB Guiding Principles Regulations dated 21.04.2009 provides for the Board to verify the Own Requirement volumes and the Contract Carrier volumes. So, the specified normative percentage utilization factors (i.e. 60%, 70%, 80%, 90% and 100% for the 1st, 2nd, 3rd, 4th and 5th year of operation respectively) shall be multiplied with the verified and applicable own requirement volumes and contract carrier volumes. Therefore, in accordance with the notified regulations, the Board is requested to consider the normative volumes (for own requirement and contract carrier volumes) and actual volumes (for common carrier volumes from 6th year onwards) as volumes divisors till 07.01.2016 after which amended regulations came into force in this regard.

- vi) As per the amendment dated 08.01.2016, divisor for the sixth and the subsequent years of operation of NG pipeline shall be equal to the firmed up contracted capacity and booked common carrier capacity or seventy five percent of the capacity of the NG pipeline as declared under the regulations, whichever is higher.
- vii) Therefore, the Board is once again requested to adhere to the notified regulations rather than adopting other unspecified methods. Otherwise, transporter entities shall not be able to realize the 12% post tax returns which have been specified to be ensured under Clause No. 3 of Schedule A of Tariff Determination Regulations, 2008. In this regard, it may not be out of place to reiterate the conclusion at Para 34 (D) of the APTEL Order dated 25.11.2014 that “.....ensuring a just and reasonable return permitted by the Petroleum Board’s own regulations to the tune of 12% post-tax on capital employed from transportation tariffis also in the interest of all the stake holders.”

11. Number of working days (Para 5.7)

- i) There is no mention of No. of Working Days in Tariff Regulations. However, it has been covered in PNGRB Pipeline Access Code Regulations, as follows: *“The planned maintenance period shall not exceed ten days in a year.”*
- ii) It is submitted that Transporter must be entitled for a shutdown period of 20 Days in a year as the shutdown period of downstream customers varies from one day to 30 days.
