

CLARUS LAW ASSOCIATES

पी एन जी आर बी / 8384
PNGRB /
दिनांक 7/5/19
Dt:

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

सचिव...
Secy. 7/5/2019
दिनांक 7/5
Dt:

07.05.2019

Subject: Public Notice Dated 16.04.2019 on Proposed Amendment to PNGRB (Determination of Natural Gas Pipeline Tariff) Regulations, 2008 ("Tariff Regulations").

Ref: Request to Withdraw above referred Public Notice and Proceedings.

Dear Madam,

1. We are concerned for our client GSPC Energy Limited ("Our Client"/ "GEL") in respect of the above referred Public Notice Dated 16.04.2019 on the proposed amendment to the Tariff Regulations.
2. GEL is Respondent No.3 in the case of *Deepak Fertilizers and Petrochemicals Corporation Limited v. Union of India & Ors. (W.P.(C) 927/2019*. The said matter is tagged with another case namely *Deepak Fertilizers and Petrochemicals Corporation Limited v. Union of India & Ors. (W.P.(C) 248/2019*).
3. In the said matter Deepak Fertilizers and Petrochemicals Corporation Limited ("**Deepak Fertilizers**") has wrongly alleged that the present Tariff Regulations provide for a "retrospective application" of tariff. Deepak Fertilizer is seeking to wrongfully seek a stay on invoices issued by GEL under a Gas Sales Agreement that it has executed with Deepak Fertilizers.
4. Our Client is not a gas transporter but a gas trader and does not provide gas transportation services but arranges for gas transportation services from authorised entities on a back to back basis, which customers agree to under their contractual obligations.

The case filed by Deepak Fertilizers namely *Deepak Fertilizers and Petrochemicals Corporation Limited v. Union of India & Ors. (W.P.(C) 927/2019*, is wrongly seeking a stay on invoices raised by GEL under the gas supply agreement entered into between GEL and Deepak Fertilizers for supply of gas, by wrongly alleging that the Tariff Regulations provide for a "retrospective applicability", and by filing a writ to erroneously challenge the same.

5. However, on 16th April 2019 itself, the Hon'ble Board issued a Public Notice dated 16.04.2019 making its decision to amend the Tariff Regulations and notifying the draft amendment to the Tariff Regulations, which for all material purposes has prejudiced the case of Our Client by indicating that PNGRB itself now believes that the Tariff Regulations provide for retrospectivity, and severely prejudicing Our Client's case in the above referenced pending dispute.
6. The actions of a statutory authority cannot be undertaken only to benefit one party in an on-going dispute and matters that are pending determination, including matters pending before the same authority in its regulatory capacity. The present Public Notice dated 16.04.2019 and the proposed

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May like to see for information pl.

Chairpersons
Members (Com)




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amendment only benefit one party to the ongoing disputes, to the severe prejudice to the other parties to the said pending disputes before various adjudicatory authorities.

7. It is our submission that: (i) there is no legal infirmity in the Tariff Regulations as they presently exist and Our Client's arguments before the Hon'ble High Court of Delhi would provide details thereof; (ii) a decision as to whether to undertake any amendments of the Tariff Regulations and the nature and extent of the amendments required should be undertaken only after the proceedings before the Hon'ble High Court of Delhi in the case of *Deepak Fertilizers and Petrochemicals Corporation Limited v. Union of India & Ors. (W.P.(C) 927/2019* are completed.
8. The issue of alleged retrospective application of tariff under the Tariff Regulations, is therefore a matter that is presently *sub-judice* before the Hon'ble High Court of Delhi and the unilateral decision taken by the Hon'ble Board to undertake amendment of the Tariff Regulations, severely prejudices the rights and interests of Our Client in the above referenced matter presently pending before the Hon'ble High Court of Delhi.
9. It is submitted that the Hon'ble Board has, in all other previous instances of any challenge brought against regulations framed by the Hon'ble Board in any court, defended and supported the Regulations framed by the Hon'ble Board. Even in relation to the earlier challenge to the Tariff Regulations brought before Hon'ble Appellate Tribunal of Electricity (P&NG Bench) in the matters of Appeal No. 222 of 2012 (*Reliance v PNGRB & Anr.*) and Appeal No. 251 of 2012 (*Torrent v PNGRB & Anr.*), the Hon'ble Board had defended and supported the Tariff Regulations as then applicable. Our Clients have a legitimate expectation of the Hon'ble Board abiding by and defending its own regulations, and the present Public Notice dated 16.04.2019 is a violation of the legitimate expectations of Our Client.
10. We would therefore request the Hon'ble Board to withdraw the said Public Notice dated 16.04.2019 since the subject matter thereof is presently *sub-judice* before the Hon'ble High Court of Delhi.
11. This communication is without prejudice to the rights of our client GEL.

Sincerely

Clarus Law Associates


Piyush Joshi
Partner

