

CLARUS LAW ASSOCIATES

पी एन जी आर बी / 8385
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... 20/05/2019
Secy... 20/05/2019
दिनांक... 7/5
Dt.

07.05.2019

ep 7/5
Del (T.C.)
BAC (T.C.)

JAF/RCS

V
7/5

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.

May also like to see for information pl.
V
7/5

Dear Madam,

1. We are concerned for our client Gujarat State Petronet Limited ("Our Client"/"GSPL") in respect of the above referred Public Notice Dated 16.04.2019 on the proposed amendment to the Tariff Regulations.
2. GSPL had filed two review petitions before this Hon'ble Board on 10th December 2018 and 17th December 2108, in respect of the two tariff orders issued for GSPL under the Tariff Regulations (Case No. Legal /281/2018 and Case No. Legal/282/2018). These two review petitions had been heard on 11.01.2019. These review petitions are pending before the Hon'ble Board after the initial hearing on 11.01.2019. .
3. The Hon'ble Board vide Orders dated 15.03.2019 in the matter of Reliance Industries Limited (Case No. PNGRB/Legal/BC-1/4/2019) and in the matter of Pipeline Infrastructure Pvt. Ltd. (Case No. PNGRB/Legal/BC-1/3/2019); without providing notice to GSPL or giving it any opportunity to be heard; granted an interim stay against invoices issued by GSPL to RIL and PIPL under their relevant Gas Transmission Agreements, wherein both RIL and PIPL had agreed with GSPL to pay invoices raised based on the tariff orders issued by the Hon'ble Board.

Chairperson

Member (Law)

Our Client had been therefore constrained to file a writ petition before the Hon'ble High Court of Delhi viz., *Gujarat State Petronet Limited v. PNGRB & Ors (WP(C) 3128/2019)* and the Hon'ble High Court of Delhi vide Order dated 03.04.2019 was pleased to set aside the Orders dated 15.03.2019 in the matter of Reliance Industries Limited (Case No. PNGRB/Legal/BC-1/4/2019) and in the matter of Pipeline Infrastructure Pvt. Ltd. (Case No. PNGRB/Legal/BC-1/3/2019) and had stated as follows:

"3. In view of the above, the impugned orders are set aside and the PNGRB is directed to pass fresh orders after issuing notice to the petition and all concerned parties and after affording them an opportunity of being heard."

4. Pursuant to the above, we received a copy of the review petition of Reliance Industries Limited (Case No. PNGRB/Legal/BC-1/4/2019) on the evening of 16th April 2019 and received copy of the review petition of Pipeline Infrastructure Pvt. Ltd. (Case No. PNGRB/Legal/BC-1/3/2019) in the afternoon of 17th April 2019.



CLARUS LAW ASSOCIATES

5. Upon a review of the review petitions received we have found that Prayers of the review petition of Reliance Industries Limited (Case No. PNGRB/Legal/BC-1/4/2019) is as follows:

"5. Prayer:

- A. Review the Order Ref No. TO/05/2018 dated 27.09.2018 and Tariff Order Ref No. TO/09/2018 dated 10.12.2018 and modify the Levelised Tariff computation to make it effective prospectively from 01.04.2019 onwards,
- B. To modify zonal tariff apportionment of the Levelised Tariff considering the point of origin for GSPL's HP Gas Grid as Mora, with the result that Zone 1 Tariff will be applicable for transportation of gas from Moda/Bhadbhut to Naroda, and
- C. Pass any other appropriate order or direction as the Hon'ble Board may see fit in the facts and circumstances of the case."

6. Upon a review of the review petitions received we have found that Prayers of the review petition of Pipeline Infrastructure Pvt. Ltd. (Case No. PNGRB/Legal/BC-1/3/2019) is as follows:

"5. Prayer:

- A. Review the Order Ref No. TO/05/2018 dated 27.09.2018 and Tariff Order Ref No. TO/09/2018 dated 10.12.2018 and modify the Levelised Tariff computation to make it effective prospectively from 01.04.2019 onwards.
- B. To modify zonal tariff apportionment of the Levelised Tariff considering the point of origin for GSPL's HP Gas Grid as Mora, with the result that Zone 2 Tariff will be applicable for transportation of gas from Moda/Bhadbhut to Jamnagar, and
- C. Pass any other appropriate order or direction as the Hon'ble Board may see fit in the facts and circumstances of the case."

Both the review petitions, raise the challenge to said tariff orders, on the unfounded basis that the same are being made applicable "in retrospective manner" and are seeking that revised tariff be implemented only "prospectively" for periods after the date of the tariff orders.

7. The above-said Prayers have no basis in applicable law as the present Tariff Regulations in sub-clause (4) of Clause 9 of Schedule A stipulates :

"Adjustment on account of variation in the provisional initial unit natural gas pipeline tariff and final initial unit natural gas pipeline tariff shall be made in the DCF calculations and the derived tariff shall be charged from the customers on prospective basis till next review, that is, in case tariff order is issued before 30th September, tariff shall be applicable from 1st April of the financial year in which Tariff Order is issued, otherwise tariff shall be applicable from 1st April of the next financial year."

Thus, since GSPL's Tariff Order Ref No. TO/05/2018 dated 27.09.2018, was issued prior to 30th September 2018, it was applicable under the said Tariff Regulations with effect from 1st April 2018 and not 1st April 2019 as being sought in Prayer A of both the above mentioned review petitions.



CLARUS LAW ASSOCIATES

Some of the relevant invoices of GSPL that had been stayed were: (i) invoice of Rs. 14,11,148/- raised against RIL (for period from 1st April 2018 to 30th November 2018) and an invoice of Rs. 5,52,80,421/- raised on East West Pipeline Limited (for period from 1st April 2018 to 30th November 2018). Hence there is no valid ground under the applicable Tariff Regulations for Prayer A of the said Review Petitions filed by RIL and PIPL.

8. 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 pre-determined the outcome of the said review petitions of Reliance Industries Limited (Case No. PNGRB/Legal/BC-1/4/2019) and in the matter of Pipeline Infrastructure Pvt. Ltd. (Case No. PNGRB/Legal/BC-1/3/2019), since :
 - a. vide the said Public Notice dated 16th April 2019, the Hon'ble Board is already declaring its intention to amend the Tariff Regulations to modify sub-clause (4) of Clause 9 of Schedule A of the Tariff Regulations. This clearly indicates that the Hon'ble Board has already pre-determined, that there is a need to amend the Tariff Regulations specifically sub-clause (4) of Clause 9 of Schedule A of the Tariff Regulations, and that this determination has been done by the Hon'ble Board erroneously and without providing the required opportunity to be heard to GSPL in the review petitions filed by RIL and PIPL and to the prejudice to GSPL;
 - b. the Public Notice dated 16.04.2019 already indicates that the Hon'ble Board has accepted the erroneous stand being taken by consumers such as RIL and PIPL, which GSPL is opposing and in respect of which determination, the Order dated 03.04.2019 of the Hon'ble High Court of Delhi had mandated that Our Client be provided a due and reasonable opportunity of being heard;
 - c. The proceedings initiated by the Hon'ble Board vide Public Notice dated 16.04.2019 therefore defeat the directions issued to the Hon'ble Board vide the Order dated 03.04.2019 of the Hon'ble High Court of Delhi.
9. The proposed amendments effectively grant Prayer A and Prayer C of RIL and PIPL review petitions without providing any opportunity to GSPL to be heard and negate the directions given by the Hon'ble High Court of Delhi vide its Order dated 03.04.2019 in *Gujarat State Petronet Limited v. PNGRB & Ors (WP(C) 3128/2019)* and cause prejudice to GSPL in the said review petitions of Reliance Industries Limited (Case No. PNGRB/Legal/BC-1/4/2019) and in the matter of Pipeline Infrastructure Pvt. Ltd. (Case No. PNGRB/Legal/BC-1/3/2019).
10. It is our submission that: (i) there is no legal infirmity in the Tariff Regulations as they presently exist and Our Client's submissions before the Hon'ble Board in the said review petitions of Reliance Industries Limited (Case No. PNGRB/Legal/BC-1/4/2019) and in the matter of Pipeline Infrastructure Pvt. Ltd. (Case No. PNGRB/Legal/BC-1/3/2019) would provide details thereof; (ii) a decision 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 said pending review petitions of Reliance Industries Limited (Case No. PNGRB/Legal/BC-1/4/2019) and Pipeline Infrastructure Pvt. Ltd. (Case No. PNGRB/Legal/BC-1/3/2019) have been duly heard and considered and decided upon.
11. In addition to causing severe prejudice to Our Client in relation to the proceedings of the said review petitions of Reliance Industries Limited (Case No. PNGRB/Legal/BC-1/4/2019) and Pipeline



CLARUS LAW ASSOCIATES

Infrastructure Pvt. Ltd. (Case No. PNGRB/Legal/BC-1/3/2019), the Public Notice dated 16.04.2019 also causes severe prejudice to Our Client in two ongoing pending cases before the Hon'ble High Court of Gujarat namely: (i) *Torrent Power Limited v. PNGRB & Anthr.* (SCA No. 14604 of 2014); and (ii) *Torrent Power Limited v. PNGRB & Anthr.* (SCA No. 19028 of 2018), wherein one of the grounds raised by Torrent Power Limited is an allegation that the tariff is being imposed retrospectively (which allegation is without any legal basis). In fact the Public Notice dated 16.04.2019 is contrary to this Hon'ble Board's own Affidavit-In-Reply dated 29.01.2019 that has been submitted before the Hon'ble High Court of Gujarat in the case of *Torrent Power Limited v. PNGRB & Anthr.* (SCA No. 19028 of 2018) in Para 25 of which the Hon'ble Board has stated as follows:

- "25. *That it is further submitted that the application of tariff of Rs. 34 per MMBTU, with effect from 01.04.2018 is in accordance with the provisions of sub-clause 4 of clause 9 of Schedule A of the Tariff Regulations. The Petitioner has not challenged the validity of the said provision of the Tariff Determination Regulations and the same is thus binding on the Petitioner. Clause 9 of Schedule A of the Tariff Regulations stipulates that the initial unit natural gas pipeline tariff shall be fixed on a provisional basis first and then finalised in the manner specified under the Clause. Clause 9 further provides that adjustment on account of variation in the provisional initial unit natural gas tariff and final initial unit natural gas pipeline tariff shall be made in the DCF calculations and the derived tariff shall be charged from the customers on prospective basis till next review, that is, in case tariff order is issued before 30th September, tariff shall be applicable from 1st April of the financial year in which Tariff Order is issued, otherwise the tariff shall be applicable from 1st April of the next financial year. By way of Impugned Tariff Order, the Board has notified the final initial unit natural gas pipeline tariff and the date of application of the same has been fixed in accordance with the Tariff Regulations. Thus, the contention of the Petitioner regarding retrospective effect having been given to the Tariff order is completely baseless and unfounded. It is relevant to point out that the calculation of tariff cannot be made on real time basis. Data and information related to various aspects is to be furnished by the entity to the Board so as to enable the Board to calculate and declare the tariff, in accordance with the process prescribed under the Tariff Regulations."*

In light of the above referenced affidavit already submitted by the Hon'ble Board before the Hon'ble Gujarat High Court, the Hon'ble Board is estopped from taking a different position when the said matters are still pending final determination before the Hon'ble High Court of Gujarat.

12. The issue of alleged retrospective application of tariff, is therefore a matter that is presently *sub-judice* and the unilateral decision taken by the Hon'ble Board to undertake amendment of the Tariff Regulations, pre-judges the matters, is against the stated position of the Hon'ble Board before the Hon'ble High Court of Gujarat, and severely prejudices the rights and interests of Our Client as not only a natural gas transporter but also as a respondent to the various matters that are pending determination.
13. 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



CLARUS LAW ASSOCIATES

its own regulations, and the present Public Notice dated 16.04.2019 is a violation of the legitimate expectations of Our Client.

14. 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 in the said review petitions of Reliance Industries Limited (Case No. PNGRB/Legal/BC-1/4/2019) and in the matter of Pipeline Infrastructure Pvt. Ltd. (Case No. PNGRB/Legal/BC-1/3/2019) and also because it effectively negates the directions of the Hon'ble High Court of Delhi in its Order dated 03.04.2019 wherein the Hon'ble Board had been directed to give a reasonable opportunity to Our Client to be heard before deciding on the issue in the said review petitions. The said Public Notice dated 16.04.2019 pre-determines the issues raised in the said review petitions and effectively grants RIL and PIPL the main prayers they were seeking.

Furthermore, the subject matter of the said Public Notice dated 16.04.2019 is also sub-judice before two ongoing pending cases before the Hon'ble High Court of Gujarat namely: (i) *Torrent Power Limited v. PNGRB & Anthr. (SCA No. 14604 of 2014)* (ii) *Torrent Power Limited v. PNGRB & Anthr. (SCA No. 19028 of 2018)* and the issuance of the said Public Notice dated 16.04.2019 causes irreparable harm and prejudice to Our Client in those cases and is also against the Affidavit in Reply dated 29.01.2019 submitted by the Hon'ble Board before the Hon'ble High Court of Gujarat *Torrent Power Limited v. PNGRB & Anthr. (SCA No. 19028 of 2018)*.

In light of the above submissions, it is humbly requested that the Hon'ble Board withdraw the said Public Notice dated 16.04.2019 and not take any further actions pursuant thereto.

15. This communication is without prejudice to the rights of Our Client, GSPL.

Sincerely,

Clarus Law Associates


Piyush Joshi
Partner

