

PETROLEUM NATURAL GAS REGULATORY BOARD

File no: PNGRB /AWH/2- NGPLK (09) /2017

M/s GSPL India Transco Limited

Order
19.03.2020

PERTAINING TO M/S GSPL INDIA TRANSCO LIMITED FOR LAYING OF
18"X 363 KM PIPELINE INSTEAD OF 42"AS A PART OF MBBVPL
PROJECT

GSPL India Transco Limited (Hereinafter to be referred as "GITL") filed an Appeal no. 265 of 2019, before APTEL, challenging the para 4 & 7 of the impugned letter No. Infra/PL/Monitoring /MBBVPL/05 dated 21.06.2019 through which the Board conveyed their decision in the matter of the Mallavaram- Bhopal-Bhilwara-Vijaypur Natural Gas Pipeline (Hereinafter to be referred as "MBBVPL") to GITL.

1. Vide para 4 and 7 of the impugned letter dated 21.06.2019, the Board has disposed of the GITL's application for laying of 29 kms long dedicated pipeline from MBBVPL to RFCL and in terms of the provisions of Regulation 21 (3) has treated the same as a part of the common carrier and further observed that the laying of 18" x 363 km pipeline without PNGRB's permission is in the violation the MBBVPL authorization. The said paras of the impugned letter are extracted as under:

"Para 4: The Board disposed of GITL's application for laying of 29 km long dedicated pipeline from MBBVPL to RFCL on the basis of the fact that if the same is accepted as dedicated pipeline, the consumer will lose flexibility to source gas from a common carrier, other customers (like CGD entity) will not get gas from this pipeline. Further, as per the provision given in regulation 21 (3) and 2 (1) (h) of Authorization Regulations, the Natural Gas Pipeline Tariff for transport of natural gas (a common carrier) from the same source shall be uniform for all the customers located within the tariff zone.

Therefore, in terms of the provisions of Regulation 21 (3), pipeline of 29 km length will be treated as part of common carrier and not the dedicated pipeline."

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"Para 7: The Laying of 18" x 363 km pipeline without PNGRB's permission violated the term & condition subject to which authorization was granted. Therefore, the Board reserves the right to initiate action under relevant provisions of the PNGRB Act and Regulations framed thereunder for contravention of directions given by the Board."

2. Subsequently, The APTEL vide its order dated 15.11.2019, dismissed the appeal to the extent of para 4 of the impugned letter dated 21.06.2019, on laying of 29 km dedicated pipeline from MBBVPL to RFCL by upholding the said pipeline as a spur line and consequently a part of common carrier. However, to the extent of para 7 of the impugned letter dated 21.06.2019, regarding the laying of the 18" x 363 km pipeline by the GITL, the APTEL has remanded the matter to the Board with a directive to hear the GITL afresh and pass an order in accordance with law.
3. The APTEL, while referring back the above issue regarding impugned decision of the Board in para 7, recorded following observations as hereunder:
 - a. The impugned order does not carry much reasons as to why action can be taken against the GITL, and
 - b. The Board has not issued any decisive order as to which action it would take for violating the terms and conditions of authorization granted for MBBVPL.
4. In compliance with the APTEL's Order dated 15.11.2019, the GITL vide PNGRB's communication dated 24.12.2019, was advised to submit their written submissions along with additional documents (if any) to the Board. In response to the above, the GITL vide its letter dated 08.01.2020, has submitted the written submissions to the Board. The contentions of the GITL are as follows:
 - i. On the genesis of development of MBBVPL Pipeline in phased manner, GITL contended that GITL has made continuous and sincere efforts for obtaining all statutory permissions & clearances with a view to develop entire MBBVPL since its authorization granted in 2011. The GITL through its quarterly progress report for the quarter ended on 31st March, 2017, also informed PNGRB about the

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balance permissions pending before any work can be commenced in respect of MBBVPL. Meanwhile, during e-pragati meeting, held on 22.02.2017, the GITL was asked to take up the pipeline for connecting RFCL at the earliest, keeping in view the techno-commercial viability of MBBVPL project and the scheduled commissioning date of RFCL. Taking consideration of all factors, the GITL decided to implement the initial phase of 18" x 363 km pipeline from RGTL interconnection point at village Kunchanapalli, West Godavari, Andhra Pradesh to RFCL Plant at Ramagundam, Telangana. The EPC contract for the initial phase was approved by the Board of Directors at its meeting held on 4th July, 2017. If GITL would have decided to develop the pipeline from Mallavaram, then they would have not been able to connect the sole anchor load like RFCL on time due to various reasons and constraints as mentioned in its submissions. Further, with the estimated CAPEX for 363 km of initial phase i.e. 42" mainline and 18" spur line to RFCL Plant, at this demand of 2.0 to 2.5 MMSCMD, the project would have negative equity & returns making it un-bankable. Hence, resizing from 42" to 18" was the best techno-commercial feasible option to take care the requirement of RFCL and future demands en-route the pipeline.

- ii. The respondent further contended that the Pipeline is accordance with NGPL Authorization Regulation and not in contravention of the same as there is no provision in the PNGRB Act, 2006 or the Natural Gas Pipeline Authorization Regulations that limits the operational flexibility of the authorized entity to lay an authorized pipeline in phases or select the appropriate inch diameter of the pipes comprising the pipeline looking into gas demand and techno-commercial viability of the project. They further contented that, MBBVPL is a pipeline for which a Bid document had been issued and competitive bid process had been followed. The inch diameter of the pipeline was not a bid parameter. The requirement of MBBVPL authorization is to achieve the authorized capacity and that can be achieved through adoption of optimum configuration of pipelines of required sizes/loop lines and compressors based on demand over a period of 25 years. Further, as required by the Board, GITL undertake to achieve the authorized capacity based on the demand en-route the pipeline in future.

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The GITL also asserted that they had always informed and kept the Board fully aware that it was laying an 18" x 363 km pipeline through letters dated 29.06.2017, 26.07.2017, 07.11.2017, 05.02.2018, presentation dated 09.01.2018 and various quarterly reports, communications made to the Board. Further, GITL had also informed the Board that the immediate requirement of RFCL will be met with 18" diameter pipes and capacity will be enhanced by adding higher diameter loop lines as required based on the available gas demand in phased manner. Therefore, development of 18" x 363 km pipeline is not in violation of terms and conditions of the MBBVPL Authorization.

- iii. In regard with the drastic change in Gas demand and supply, citing various reductions and uncertainties in present gas supply position in comparison to future gas supply projection done in 2010, the GITL stated that the future gas demand en-route MBBVPL also looks bleak as there is no new planned gas based power plant, fertilizer plant or any other gas based anchor customer which can significantly improve the prospects of MBBVPL project.
 - iv. The GITL further contended that vide its letter dated 07.01.2020, requested the Board to determine the tariff of MBBVPL for the initial phase up to Ramagundam, in which GITL had demanded sustainable returns to recover its capex/opex and run the pipeline operation to avert any adverse impact on the promoters and banks.
5. The GITL was given an opportunity to be heard by the Board on 13.02.2020 wherein GITL primarily asserted that they have been asked by the Ministry and in e-pragati meeting to lay the pipeline as soon as possible. Therefore, in order to meet the available demand, the resizing of MBBVPL pipeline has been implemented in phased manner as per the terms & conditions of authorization. However, neither the Bid document nor the Authorization letter mentions the diameter of the pipeline to be laid, therefore development of 18"x 363 km pipeline is not in violation of the terms & conditions of MBBVPL authorization.

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6. During the hearing, in a query raised to GITL by the Board that whether they have the approval of PNGRB for laying of 18" x 363 km pipeline in place of 42" diameter. GITL replied that they have not deviated from the terms and conditions of the Bid and in fact the said change of diameter is carried out within the Bid parameter. Further that PNGRB's own clarification dated 01.04.2010 issued at the time of bidding process, mentions that the authorized capacity can be achieved through phased manner providing flexibility to the bidder to build up the capacity as and when required in future. GITL referred to para 6 of the PNGRB's clarification dated 01.04.2010 which states as follows:

Query	Clarification
Is it acceptable if the bidder undertakes that it shall build the desired system capacity between originating point and termination point as and when required to achieve the annual volume targets quoted in the bid i.e. in a phased manner?	"The bidder may build the desired system capacity between originating point and termination point in a phased manner but the undertaking for the same shall be submitted at the time of bid submission along with complete year-wise and phase - wise capacity built-up plans".

GITL stated that the Board has not prescribed the pipeline size and has only provided the authorized capacity to be built over a period. In support of the same, GITL relied on the Authorization letter of MBBVPL which comprises of the capacity build-up schedule as below:

	Year-1	Year-10	Year-13	Year-15	Year-17	Year-20	Year-23	Year-24
Pipeline Capacity (MMSC MD)	52.86	52.86	56.99	60.07	63.43	69.16	72.48	76.25

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The GITL stated that at the time of bid submission, it had submitted the capacity development plan as part of the bid and stated that the capacity development should not be seen in isolation without considering available demand on the route which is presently not there. The GITL has also provided a copy of Capex and Capacity Build Up Plan submitted in their Bid at the time of bidding, which was a part of Feasibility Report. The essence of the above said document is as below:

		Year-1	Year-10	Year-13	Year-15	Year-17	Year-20	Year-23	Year-24
	(km.)								
Trunk Line 42"	600	2882	0	0	0	0	0	0	0
Trunk Line 36"	300	1183	0	0	0	0	0	0	0
Trunk Line 30"	146	465	0	0	0	0	0	0	0
Trunk Line 24"	539	1398	0	0	0	0	0	0	0
Spur Line 18"	0	0	0	0	0	0	0	0	0
Spur Line 12"	103	103	0	0	0	0	0	0	0
Loop Line 36"	354	0	0	181	0	158	252	386	418
	(MW)								
C1 at 150 Km	32.70	0	0	0	119	43	57	53	72
C2 at 300 Km	30.30	0	0	0	0	141	0	72	76
C3 at 450 Km	19.97	116	0	68	0	0	26	0	0
C4 at 600 Km	13.80	0	0	0	0	71	46	0	27
C5 at 900 Km	33.60	34	0	18	17	42	312	0	0
Capex		6121	0	267	136	455	693	541	593
(Rs.Cr.)									
Cum Total		6121	6121	6388	6524	6979	7672	8213	8806
(Rs.Cr.)									
Design/installed #Capacity (MMSCMD)		52.86	52.86	56.99	60.07	63.43	69.16	72.48	76.25

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7. GITL further pointed out that the total available demand on the entire 363 km from Kunchanapalli to RFCL is only 2 MMSCMD. Against this demand, the GITL has developed 18" x 363 km pipeline which is having capacity of 4.5 MMSCMD that is more than double the demand on ground on this pipeline.

8. The Board after perusal of the above-mentioned documents and submissions, asked GITL whether the laying of the pipeline which has to be built up with diameter of 42" up to 600 km and capacity as 52.86 MMSCMD during 1st year of its commissioning as mentioned in bid application and Authorization letter, has been built up in accordance to the same or not?

GITL in reply to the same, admitted that the pipeline laid as 18" x 363 km is not as per the terms and conditions of their bid application and authorization granted for MBBVPL. They have further admitted that although they had informed to the Board about the laying of the pipeline with reduced diameter through various communications, presentation in project review meetings and quarterly progress reports but have not taken the necessary approvals from the Board to lay the same.

9. The issue which falls for our consideration is that whether 18" x 363 km pipeline laid by the GITL as part of MBBVPL has violated the terms and conditions of MBBVPL authorization, which would attract initiation of action by the Board against the GITL.

10. We have heard GITL in detail and after perusing the submissions made by the GITL have reached to the conclusion as follows:

i. The Board floated the bid with Bid No. BID/NGPL/02/2009/1/ MBBVPL on 23rd October 2009 under two bid systems, i.e Technical Bid and Financial Bid. The relevant portion of Application-cum-Bid Document (ACBD) is as under:

"17.2.2...."

Application-cum-Bids are invited for authorization for development of natural gas pipeline from Mallavaram (Kakinada, Andhra Pradesh) to Bhitwara (Rajasthan) & Vijaiapur (Guna, Madhya Pradesh) via Bhopal (Madhya Pradesh) spanning

approximately 1585 kilometers and with a design capacity of at least 30 MMSCMD."

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"17.2.3

It is the bidder's responsibility to obtain all information related to the present gas supply position and existing and future customers if any falling along the route of the proposed natural gas pipeline."

- ii. The bidding criteria for the above bid was in accordance with Regulation 7 of Authorization Regulations, 2008. The relevant portion of the same reads as under:

"7. Bidding criteria.

(1) *The Board shall tabulate and compare all financial bids meeting the minimum eligibility criteria, as per the bidding criteria given below, namely: -*

(a) Lowness of the present value of the unit natural gas pipeline tariff bid under this clause for the first tariff zone in the natural gas pipeline for each year of the economic life of the project. [natural gas pipeline tariff bid shall be for each year of the economic life of the project].

This shall have a weightage of forty percent:

Provided that this criterion shall have a weightage of seventy percent in case the length of natural gas pipeline is not more than three hundred kilometers.

(b)

(c)

(d) Highness of the present value of the natural gas volumes (in million standard cubic meters per day) proposed to be transported in the natural gas pipeline over the economic life of the project. [natural gas volumes bid for transporting in the natural gas pipeline shall be for each year of the economic life of the project].

This shall have a weightage of thirty percent.

.....

(3) *The bids for the natural gas pipeline tariff under clauses (a) to (c) of sub-regulation and the volume under clause (d) of sub-regulation (1) by the entity shall be consistent with the assumptions considered by the entity in its approved DFR of the project.*

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(4) Entity with the highest composite score considering the criteria under clauses (a) and (d) of sub-regulation (1) and as illustrated in Schedule C' shall be declared as successful in the bid."

- iii. As, 30 percent weightage in composite score is gas volume quoted by the bidder, the highness of this score has been achieved by making assumptions of capacity built up plan vis-a-vis proposed diameter of the pipeline in their DFR submitted at the time of bidding. Accordingly, volume quoted by the bidder under clause (d) of sub-regulation (1) of Regulation 7, is supposed to be in consistence with the assumptions considered by the bidder in its approved DFR which has to be submitted along with the Bid Application.

In the present matter two entities, GAIL and Consortium led by GSPL participated in the bid and after bid evaluations, the GSPL led consortium was declared as a successful bidder based on the highest composite score. It quoted the tariff and volume bid numbers considering the pipeline diameters and capacity built up plan. Later based on the above, Authorization Letter issued on 07.07.2011 was amended in favour of the consortium named as GSPL India Transco Limited (GITL) on 27.07.2012.

- iv. The capacity built up plan is also a part of the Authorization Letter of MBBVPL which is based on the diameter of the pipeline proposed in the DFR submitted along with the Bid Application. Hence, GITL has to ensure that the capacity of the pipeline should only be in accordance with the capacity proposed in year-1, which is 52.86 MMSCMD. Further, that the highest composite score based on which GITL was declared successful in the bidding process of MBBVPL would have not been achieved if their quoted tariff and volume numbers were considered with such reduced diameter as the GITL has laid currently. Therefore, any deviation from the agreed terms and conditions of authorization issued by the Board for MBBVPL must be approved by the Board else will amount to the violation of MBBVPL authorization. Therefore, GITL's contention on clarification issued at the time of bidding process that the authorized capacity can be achieved through phased manner providing flexibility to the bidder to

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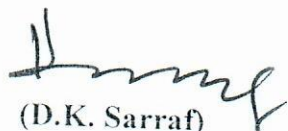
build up the capacity as and when required in future is not tenable in terms of the above mentioned observations.

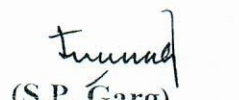
- v. The clarification referred by the GITL, itself is very clear that the bidder may build the desired system capacity between originating point and termination point in a phased manner but the undertaking for the same shall be submitted at the time of bid submission along with complete year-wise and phase-wise capacity built-up plans. Hence, the referred flexibility is only to firm up the capacity build plan at the time of preparing the bid and it will freeze once the bidder submit their bid along with DFR. In view of the above foregoing, it has been observed that the GITL has deviated from their capacity built-up plan as proposed in their bid, by reducing the diameter of the pipeline unilaterally without taking the necessary approval from PNGRB and in violation of the terms and conditions of MBBVPL Authorization.
- vi. Further, GITL has also requested the Board to determine the tariff of partially laid 18" x 363 km pipeline which is part of MBBVPL whose tariff has already been discovered through the bidding process. MBBVPL is not yet completed and the GITL has been granted time extension for completion of the project up to March 2020 and further extension up to September 2020 can only be granted if the satisfactory progress is achieved as per the conditions laid down in the impugned order dated 21.06.2019. Hence, the Board will consider all those aspects in totality in order to take necessary action once MBBVPL project is concluded. It is further observed that out of 1585 km. pipeline only 363 km. pipeline has been laid till date and that the Project was to be completed by 2014, which has not been completed till date in pursuance to which the Board reserves the right to take an action against the GITL. That apart from the infringement of the Act and regulations on the issue of unilaterally reducing the diameter of the pipeline which is leading to the reduced capacity with respect to its authorized capacity, the Board has to also examine the issue of the present status of non-completion of pipeline within time.

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ORDER

In view of the above mentioned facts and circumstances, we hereby hold that GITL has reduced the pipeline diameter by laying 18" x 363 km pipeline in place of 42" diameter unilaterally, leading to a reduced capacity with respect to its authorized capacity without seeking permission or approval of PNGRB, in violation of the bid and the terms and conditions of Authorisation granted to the GITL for MBBVPL. The Board will be initiating proceedings against the GITL under Section 28 and/or Chapter IX of the PNGRB Act, 2006.


(D.K. Sarraf)
Chairperson


(S.P. Garg)
Member(C&M)

(Dr. S.S. Chahar)
Member (Legal)
(Member (Legal)
neither signed nor
dissented)


(S. Rath)
Member (I&T)