OIL & GAS REGULATORY AUTHORITY (OGRA)

Case No. OGRA-6(10)-(RLNG)/2015

Determination of Re-gasified Liquefied Natural Gas (RLNG) Price

UNDER

Petroleum Products (Petroleum Levy) Ordinance, 1961
And
Petroleum Products (Petroleum Levy) Rules, 1967

Decision on

March 18, 2016

By the Authority:

Mr. Saeed Ahmad Khan, Chairman
Mr. Aamir Naseem, Member (Gas)
Mr. Noorul Haque, Member (Finance)

Saeed

1. BACKGROUND

1.1. In order to mitigate the energy shortfall, the Economic Coordination Committee of the Cabinet (ECC) on July 2, 2013 authorized Ministry of Petroleum & Natural Resources (MP&NR) to engage in negotiations with Qatar Gas Company Limited on Government to Government (G to G) basis for importing LNG upto 500 MMCFD on Delivered Ex-Ship (DES) basis. Subsequently, ECC and the Cabinet approved "Fast Track LNG Services Project" on February 28, 2014 and decided as under;

> ***MP&NR has nominated PSO as its designated entity for negotiating LNG Sale Purchase Agreement (LNG SPA) with state of Qatar's designated entity Qatar Liquefied Gas Company Limited (3). PSO & Qatargas Operating Company Limited have executed confidentiality agreement and have also exchanged draft Heads of Agreement (HoA) which shall form basis of LNG SPA. PSO and SSGCL will enter into a back to back agreement for RLNG off take under a commercial transaction structure.***

1.2. The Federal Cabinet on April 18, 2014, further decided as under;

(i) *The policy guideline regarding levellized tolling tariff of US $ 0.66 per MMBTU secured through a competitive bidding process shall be issued to OGRA in terms of OGRA Ordinance 2002: and*

(ii) *All other commercial aspects of the import of LNG agreement shall be settled between the respective parties to the contract.*

1.3. Moreover, ECC on August 15, 2014 constituted "LNG Price Negotiation Committee" comprising Secretary Ministry of Finance, Secretary MP&NR, Secretary Ministry of Water & Power and Secretary, Ministry of Industries & Production, to negotiate LNG price and other important aspects with Qatar Gas Company Limited.

1.4. Federal Government (FG) also approved pricing components and pricing parameters thereof, which have been conveyed by MP&NR on July 27, 2015, as under;

i) ***LNG DES Price*** *including any take or pay volumes, losses on account of Net Sale Proceeds and relevant adjustments due to exchange rate. In case of FOB cargoes, the price should include FOB price plus freight charges.*
ii) ***PSO's other import related actual costs***
iii) ***PSO's Margin*** *upto 4% of LNG DES Price, subject to review after three months.*
iv) ***Terminal Charges*** *under LNG Service Agreement (LSA)*
v) ***SSGCL/SNGPL cost of service*** *(to be determined by OGRA)*
vi) ***SSCGL/SNGPL administrative margin upto $ 0.05/ MMBTU*** *(to be paid in Pak Rupees) for each company (to be treated as non-operating income), subject to review after three months.*
vii) ***Transmission losses at 0.5% and distribution losses,*** *if any (to be determined by OGRA).*

1.5. In compliance of ECC decision, OGRA was advised to determine the price of RLNG, under Petroleum Products (Petroleum Levy) Ordinance, 1961 (PL Ordinance), on monthly basis in line with other Petroleum Products.

1.6. Accordingly, the Authority, on the basis of the information provided by MP&NR, PSO, SNGPL and SSGCL, and keeping in view the mutual agreements governing the supply chain, ECC decisions in the matters and the legal mandate given to it, had provisionally determined RLNG price on October 07, 2015 for the consumers of gas utilities on transmission network at US$ 8.63682/MMBTU. The breakup is under:

Table 1: Breakup of RLNG Price

Particulars	**USD/MMBTU**	
LNG DES Price	7.72578	
PSO other import related costs Total	0.00884	
Terminal Charges	0.66000	
		8.39462
Retainage (0.75 % of total cost.)		0.06296
Transmission losses (0.5% of DES price)		0.03863
PSO Margin @ 1.82% of DES Price		0.14061
Total RLNG Price without GST		**8.63682**

1.7. In case of consumers on distribution network, the provisional RLNG price was determined at US $ 8.9458/MMBTU.

1.8. Being aggrieved by the determination, PSO (petitioner-1), SSGCL (petitioner-2) & SNGPL (petitioner-3), *collectively hereinafter referred to as "Petitioners"* have submitted review motions (the petition) under Section 13 of the OGRA Ordinance, 2002 (the Ordinance) on the following items:-

Petitioner-1:

(i) Inclusion of four LNG FOB Cargos price, sourced from Qatar Gas

(ii) PSO Margin at 4%

(iii) Inclusion of Infrastructure Cess

Petitioner-2:

(iv) Terminal Charges

(v) Retainage

Petitioner-2 & 3:

(vi) Administrative Margin

(vii) Cost of Service

1.9. The Authority admitted the petition for consideration, as a prima facie case for evaluation existed and it was otherwise in order.

1.10. A notice intimating the date, time and place of public hearing, was published in two daily combined newspapers (The Dawn & Daily Jang), and two local Urdu newspapers in Peshawar and Karachi on December 16, 2015.

2. AUTHORITY'S JURISDICTION AND DETERMINATION PROCESS

2.1. The petitioners have invoked the jurisdiction of the Authority under Section 13 of the Ordinance. Section 13 provides the grounds on which a review petition can be filed, and is reproduced below:-

> *"**13.Review of Authority decision.-** The Authority may review, rescind, change, alter or vary any decision, or may rehear an application before deciding it in the event of a change in circumstances or the discovery of evidence which, in the opinion of the Authority, could not have reasonably been discovered at the time of the decision, or (in the case of a rehearing) at the time of the original hearing if consideration of the change in circumstances or of the new evidence would materially alter the decision."*

3. PROCEEDINGS

3.1. *PUBLIC HEARINGS*

3.1.1. Public hearings were held on December 28, 2015 & January 04, 2016 at Karachi & Lahore respectively, participated by the following:

Petitioner:

1. Petitioner-1 team led by Mr. Babar Chaudhry, General Manager Corporate Planning.
2. Petitioner-2 team led by Mr. Amin Rajput, Chief Financial Officer.
3. Petitioner-3 team led by Mr. Amjad Latif, Deputy Managing Director (Operations).

Interveners / Participants:

1. Mr. Tariq Ali Shah, Director, Energy Department, Government of Sindh.
2. Mr. Ghiyas Abdullah Paracha, All Pakistan CNG Association.
3. Engr. G. A. Sabri, Ex-Secretary, MP&NR, All Pakistan Textile Mills Association.
4. Mr. Razi Uddin, Chief Executive Officer, Khyber Pakhtunkhwa Oil & Gas Company Limited, Government of Khyber Pakhtunkhwa.
5. Mr. Salman Akram Raja, Legal Counsel, Pak Arab Fertilizers Limited & Fatima Fertilizer Limited.
6. Mr. Khateeb-ur-Rehman, Information Secretary, Pakistan CNG Owner's Association.
7. Mr. Saadat Umar Pirzada, Anwar Kamal Law Associates.

8. Mr. Ghulam Qadir Awan, Consumer.

Representative of General Public/Participants:

1. Muhammad Ejaz Chaudhry, Ex-Secretary Petroleum
2. Mr. Javed Hussain, Ex-MD, SNGPL
3. Mr. Tahir Abbas, Dy. General Manager, APTMA
4. Mr. Kashif Tahir, General Manager (Engg), APTMA
5. Mr. Kamran Jamshed, Sr. General Manager, (Finance), Rouch Power
6. Mr. Intizar Ali Rana, Manager Power Services, Ahmad Textile, Multan
7. Mr. Aamir Naveed Siddiqui, GM Finance, Kohinoor Mills Ltd.
8. Mr. Aftab Ahmed, Mahmood Group, Multan
9. Mr. Muhammad Asif, Manager, Imp/Exp, North Star Textile Ltd.
10. Mr. Irfan Shouri, AP CNG Association
11. Mr. Rana Rehman Khan, Arslan CNG, Okara
12. Mr. Muhammad Ahmad, Asst. Advisor Electricity
13. Mr. Muhammad Azhar Nisar, CFO, Dawood Spinning
14. Mr. Muhammad Khurram Khan, Shell Pakistan
15. Mr. Taha Mehrabi, Shell Pakistan
16. Mr, Iftikhar Baig, DIR – BD , Fatima Group
17. Mr. Arsalaan Khalid, CFO, Sajjad Textile Mills, Multan Road
18. Mr. Shahid Najmi, Chief Accountant, Shahzad Textile Mills, Lahore
19. Mr. Zubair Ahmed, Plant Manager, Crescent Cotton
20. Mr. Muhammad Faisal Muzammil, COO, Agri Tech Ltd.
21. Mr. Ahsan Qadir, General Manager, Monnoowal Textile Mills
22. Mr. Amir Shahzad, General Manager, Monnoowal Textile Mills
23. Rao Abdul Ghani, Manager, Margalla Textile, Hassanabdal
24. Syed Mujahid Hussain, General Manager, The Lahore Textile Mills
25. Mr. Azhar Farooq Chd. Executive Director, Monnoowal Textile Mills
26. Mr. Umer Akram Chaudhry, Lawyer, RMA & Co, Lahore
27. Mr. Saqib Aziz, Deptt. Manager, Pakarab Fertilizer
28. Engr. Jabir B. Cheema, Advisor (Energy), APTMA
29. Engr. Muhammad Khalid, Director APTMA
30. Mr. Khalid Mahmood, General Manager, Janhhoor Textile
31. Mr. Bilal Qadir, Consumer
32. Mr. Mehmood Elahi, Ex-Sui Gas Contractor
33. Mr. Khalid Bashir, Advocate
34. Miss. Rohi Shah, Advodate
35. Mr. Muhammad Ashiq, Admn Manager, Crescent Cotton, Faisalabad
36. Mr. Shahid Khan, Advisor, Engro Power Gen, Karachi
37. Mr. Muhammad Ishaq, Idrees Mills, Sheikhupura
38. Mr. Mumtaz Ahmed Rana, Bright Day CNG, Sheikhupura
39. Mr. Faisal Khalil, Sr. General Manager, Shafi Textile Ltd, Raiwind
40. Chd. Zulfiqar Ali, General Manager (Power) Colony Textile Mills
41. Mr. Abdul Waheed, Ex- Sui Gas Contractor, Faisalabad
42. Shiekh Faizan, Owner, CNG Power Station, Lahore
43. Mian M. Ajmal, Executive Director, Hi-Noon CNG, Okara
44. Mr. Athar Ehsan, Orbit CNG, Lahore
45. Col. Ehsanul Haq, Sine Tech, Lahore
46. Mr. Nasir Saleem, Owner, Best CNG, Lahore
47. Mr. Zafar Iqbal, Adman Manager, US Demin Mills, Lahore
48. Chief Financial Officer, US Demin Mills, Lahore

49. Capt. (R) Raja Shuja Anwar, Member CEC, APCNGA, Lahore
50. Mr. Mehboob Elahi, Ex-Member (Finance), OGRA
51. Mr. Muhammad Ali Khan, Ex-General Manager, SNGPL
52. Mr. Zulfiqar Ali, Consumer
53. Mr. Naseer Ahmed, Consumer

3.1.2. During the hearing, the petitioners were given full opportunity to present their petitions. The petitioners made submissions in detail with the help of multi-media presentation.

3.2. ***INTERVENERS/PARTICIPANTS COMMENTS***

i. The substantive points made by the interveners and participants during hearings in Karachi & Lahore are summarized below:

3.2.1. Import of RLNG as a short term measure, in order to mitigate the energy shortfall, is a big milestone of the current Government. The industrial sector particularly the CNG sector has always supported LNG import and now appreciated this achievement.

3.2.2. The LNG/RLNG suppliers are giving weight to some irrelevant factors like "Take or Pay" etc; and pleading to increase the RLNG price on mere assumptions of "Risk factor". The arguments advanced on this score have no factual grounds in view of existing high demand for gas/RLNG as well as advance payments by consumers particularly CNG stations to secure the LNG procurement. Therefore risk on account of take or pay etc; are even out of assumption.

3.2.3. RLNG provisional price determined by OGRA is reasonable and provides rationale in respect of each component. This price is affordable by the end consumers and shall in turn bring investment in LNG sector in terms of construction of new LNG terminals, pipelines, etc. Conversely, the increase in RLNG price shall defeat the very purpose of LNG import.

3.2.4. PSO's stance for allowing margin in line with other petroleum products has no rationale, as the two businesses have no similar grounds. In LNG, PSO is involved only to the extent of ship to ship LNG transfer, no operation is involved. Whereas in case of petroleum product, complete supply chain has to be managed across the country. Further, petrol is credit based commodity while in LNG, advance LCs are established by the LNG buyers.

3.2.5. CNG stations are paying advances to financially support import of LNG, but the same is allocated to other sectors. This is totally unfair treatment.

3.2.6. Political involvement in the LNG allocation and distribution should be avoided.

3.2.7. Tax on Margin is not a pass through item. Accordingly, the same should not form part of price and may be adjusted by PSO against its tax liability.

3.2.8. LNG agreement, tripartite agreement, RLNG agreements with end consumers has not yet been finalized. LNG supply is therefore badly suffered.

3.2.9. PSO must arrange LNG for the paying buyers and not to power sector as it exposes credit risk to PSO.

3.2.10. Sindh Government tax, in principle, must be reimbursed. Further, cess is already applicable on gas. PSO must, therefore, coordinate with the Federal and Provincial Governments and resolve the issue amicably.

3.2.11. RLNG price determined by OGRA is around US$ 9. CNG sector however is paying around US$ 13 per MMBTU. The petitioner was questioned for legal basis for recovery of different prices.

3.2.12. The price charged from CNG station on account of RLNG is unfair and without any legal basis. This practice should therefore be stopped immediately. OGRA was urged to take action against such overcharging.

3.2.13. LSA charges @ 0.66 US $ is hallmark of SSGCL LSA with EETL. The interveners vehemently opposed to increase the LSA charges and pleaded that SSGCL default to utilize the capacity may not be passed onto consumers. If it is exposed to any risk owing to mistake of some persons, entire nation may not be penalized. Also, LSA charges can be lowered down on optimum supply of LNG.

3.2.14. Retainage is not a phenomenon. If the same is allowed, it shall inflate the RLNG prices and shall disturb price parity with alternate fuels thereby defeating the very purpose of LNG import. It was, therefore, demanded to slash the retainage.

3.2.15. Cost of service is based on the unutilized assets, cost of which is already provided to gas companies. The admissibility of the same in RLNG price shall invite double treatment.

3.2.16. Administrative charges were also opposed based on the plea that no additional facility/expenses are incurred in this regard by the Sui companies.

3.2.17. Sindh province is getting no RLNG on the premise that its indigenous supplies are sufficient to meet its demand. Contrarily, in the same province, gas is curtailed for CNG on account of supply constraints. This is clearly a contradiction which needs to be addressed.

3.2.18. SSGCL must ensure supply of 400 MMCFD, which shall result in decreased terminal capacity charges. It was, however, highlighted that schedule of supply is not part of LSA.

3.2.19. In the light of 18th amendment, the approval of FG under Article 90(1) of the Constitution of Pakistan implies approval of Prime Minister / Cabinet and not ECC only. Almost all the decisions related to LNG/RLNG framework including RLNG pricing components needs to be presented before the FG, as defined in Constitution, for ratification/approval.

3.2.20. Provincial Governments of Sindh & Khyber Pakhtunkhwa also pointed out that LNG once re-gasified is natural gas and is subject matter of CCI. 15% LNG be allocated to province of Khyber Pakhtunkhwa.

3.2.21. The representatives from the Sindh Government stated that Provincial Government is cognizant of energy shortfall in the country and supports all necessary mitigation measures, be it in the form of RLNG, cross border import, and development of conventional and unconventional fuels such as shale or tight gas. The Provincial Governments, however, urge that all such deals should be patently transparent and duly approved by the competent forums including CCI.

3.2.22. Neither the ECC of the Federal Cabinet nor the Cabinet Committee on Energy has the constitutional mandate to decide the policy matters on natural gas whether indigenous or RLNG. The unilateral decisions of the ECC whereby OGRA has determined the RLNG price have seriously jeopardized the legitimate constitutional rights of Sindh. ECC has overstepped its role and transgressed into the domain of CCI.

3.2.23. Highly controversial Swapping Arrangement is carried without the knowledge and concurrence of Government of Sindh. This commercial action is clearly violation of Article 158 of the Constitution which provides precedence of natural gas over provinces in utilization. This arrangement has compromised the energy security of Sindh which produces almost 69% of total gas of country.

3.2.24. The representative from Sindh province applauded that holding of public hearing to obtain view of stakeholders is not easy decision in view of FG positions and unilateral and arbitrary decisions of declaring natural gas as petroleum product coupled with continuous intransigence of the interested groups, including public sector companies.

3.2.25. OGRA has determined the price of RLNG under Petroleum Products (Petroleum Levy) Ordinance 1961 and Petroleum Products (Petroleum Levy) Rules 1967. There is no provision for review of decision under the above mentioned Ordinance and the Rules. Also, SNGPL and SSGCL review petitions under Section 13 of OGRA Ordinance are not relevant.

3.2.26. FG has issued policy guidelines whereby Cabinet has approved US $ 0.66 per MMBTU being levellized tolling tariff. FG has not approved LSA. Therefore, OGRA is not competent to deviate from the decision of the Cabinet in the matter of payment of terminal charges and allow more than 0.66 US $ per MMBTU.

3.2.27. Government always offers incentives while introducing any new commodity / business line in the form of tax exemptions / other fiscal measures. Contrary to this, consumers of RLNG in the initial year are being burdened with higher terminal charges as per LSA. Even otherwise, LSA is a contractual arrangement between two commercial entities and cannot be assumed as binding on OGRA.

3.2.28. Additional capacity available at T&D network of gas companies be operated under TPA and RLNG price deregulation regime.

3.2.29. The shareholder of PSO highlighted that PSO is a corporate entity having major GoP shareholding. The interests of minority shareholding are not protected. No reasonable return is granted. PSO is undertaking activities on the direction of FG. No business consideration in terms of NPV/IRR is carried out. It must be granted a reasonable margin or it should not undertake such activities.

3.2.30. RLNG in no way is "Petrol". Therefore, notification of FG terming it petroleum products is ultra-vires and thus declared to be null & void. In view of the same, all the matters related to RLNG should be dealt under the existing natural gas framework and OGRA Ordinance and necessary amendments must be brought in its legal framework on immediate basis.

3.2.31. G to G agreement and other mutual agreements does not exist which is serious flaw in the LNG arrangement and framework. Australia and other countries are also opening their energy avenues for LNG. Further, LNG potential shall loose after the successful commissioning of TAPI. Such ground realities / latest economic situations should be considered while entering long term LNG agreement with Qatar.

3.2.32. Sindh have been put on highly unreliable supply chain of LNG carriers and dedicated up country consumers are signing GSA. Sindh is already feeling the pinch of this callous decision, witnessing in the form of frequently extended closure of CNG from 3 to 5 days a week, load shedding to industries and supply of low pressure gas to domestic consumers. Despite repeated requests, SSGCL is not ready to share any data about daily RLNG intake and regular swapping with SNGPL.

3.2.33. The Government of Sindh urged to defer entire process till final decision of CCI.

3.2.34. The maximum boil-off gas for the proposed FSRU is generally within 0.3% and 0.5%. If the fuel consumption was to be more than 0.5%, the additional cost for fuel would have been borne by the terminal operator. The French regulator has determined the retainage of three regulated terminal which ranges from 0.2% to 0.5%.

3.2.35. Necessary arrangements have not been carried out at Port. Resultantly it is not capable to bring and handle Q flex or Q Max LNG carriers. Therefore, LNG import has to be relied on small carriers whose ocean freight rates are 40% to 45% higher than the Q flex. Failure of Government to bring larger vessels to the terminal despite assurance of the same at the time of tendering and issuing of license has resulted in additional transportation charges estimated to be about 20% per MMBtu. The additional cost should be disallowed as a pass through to the consumers.

3.2.36. Different terminal capacity levels were quoted thereby creating ambiguity. It was pointed out that there are conflicting reports on the transparency of terminal award. Terms of RFP were changed while signing LSA between SSGCL & EETL.

3.2.37. Terminal tariff has been allowed at $ 0.66/MMBTU, which is very high & unreasonable. In India, it hovers around $ 0.44/MMBTU for its 10 terminals out of 14 terminals.

3.2.38. Pay back period of EETL is less than 1 year, keeping in view its higher tolling tariff. The same is unprecedented.

3.2.39. Retainage claimed at 1.5%, is quite higher owing to oversized FSRU.

3.2.40. Expensive LNG was imported touching 21% of brent in the month of December, 2015. In year 2009, landed price finalized/negotiated was in range of 13-15%. In view of the same, it was emphasized that long term LNG purchases should be finalized without further delay in a very transparent manner, However, price review clause be added after 05 years.

3.2.41. PPRA rules were not followed in bidding process.

3.2.42. Public hearing is venue which provides opportunity to offer view point of stakeholders and have meaningful information. The same was therefore appreciated. Further, the participants urged that necessary information should be uploaded on the website so that interested parties should get the facts and advance valuable input.

3.2.43. Petroleum products margin can not be compared with LNG. The marketing of petroleum products require mega capital intensive infrastructure, huge marketing network etc., however, in case of LNG, there is no such requirement. No capital investment has been made by PSO, therefore, allowing 4% margin as a return to its shareholders defies logic

3.2.44. Financial risk on account of capacity charge is irrelevant as companies should have performance guarantees from each other in case of any default. Also, back to back supply agreements related to payments be in place in order to avoid default situation

3.2.45. No amount on account of infrastructure cess be allowed to PSO. It has been in POL business since decades and hence should not have paid it, rather sought exemption. Since all expenses are pass through, therefore, PSO is not making any effort in this respect.

3.2.46. Handling margin on POL imports is 0.15% & the same should be allowed to PSO instead of 0.50% as determined by the Authority

3.2.47. ECC on 9.2.2010 approved terminal charges of 4.5 MTPA project at $ 0.49/MMBTU for year 1-7, based on 18% IRR.

3.2.48. SSGCL in year 2009 declared terminal tariff of $ 0.80 MMBTU to $ 1/MMBTU higher for 2 MTPA project & stated that it should not be more than $ 0.60/MMBTU

3.2.49. It was appreciated that OGRA has correctly applied levellized tariff.

3.2.50. SSGCL has recently stated that there are no losses in its transmission network. Therefore allowance of 0.5% of transmission losses is unjustified.

3.2.51. High percentage of tax has been imposed on LNG sector, thereby making its price high and uncompetitive for industries.

3.2.52. CNG sector has been paying a higher tariff of $ 12.97/MMBTU to $ 13.50/MMBTU. One commodity, but different rules and different prices, is unjustified.

3.2.53. Companies have always agreed that high UFG is mainly due to theft, leakages in Balochistan, Karak, etc. LNG is not being supplied to these areas, therefore, high UFG for RLNG consumers is entirely un-justified, and therefore, not acceptable.

3.2.54. CNG sector is not being provided consistent supply of LNG, despite advance payments made to SNGPL.

3.2.55. OGRA should play its role in protecting CNG sector & same price be offered to all sectors including CNG, Power & Textile.

3.2.56. Burden of defective commercial decision/agreements should not be transferred to RLNG consumers.

3.3. The Authority has carefully considered all the submissions and arguments of the parties made in writing and at the public hearing and proceeds to discuss the same and make its determination as follows:

4. RLNG PRICING

4.1. LEGAL & COMMERCIAL FRAMEWORK

4.1.1. The Authority notes that while determining RLNG provisional price, it has observed a number of tasks necessary to be finalized for the legal and commercial framework to operate the LNG supply chain. Accordingly, it was highlighted and advised as under;

i) PSO should expeditiously take up the matter with FG for finalization of long term LNG contracts as well as mutual agreements.
ii) The matters with PQA must be resolved on urgent basis. Accordingly, the charges should be included on actual basis.
iii) LNG procurement should be planned in a way that terminal capacity should be optimally utilized to avoid unnecessary burden.
iv) FG in consultation with parties to the agreement should develop a mechanism to ensure commercial prudence and transparency in the entire process particularly the LNG procurement under the short term arrangement.
v) LNG supply chain be governed under one set of law i.e; OGRA Ordinance. Necessary amendments have already been submitted. Accordingly, the same may be proceeded for approval of the competent forums.
vi) PSO through FG should expeditiously take up the matter with the concerned quarters for not imposing infrastructure cess on LNG similar to other petroleum products.

4.1.2. The Authority also conducted public hearings and forwarded the view point/reservations of the interveners and participants to the FG on January 11, 2016, and sought its comments as well as necessary approvals as required under the law. As provided in para. 3.2, the interveners contention regarding legality of LNG framework was conclusively focused on the following;

(i) RLNG is natural gas. Accordingly the policy related matters are subject of CCI as per provision of Article 158 of Constitution of Pakistan.

(ii) As per provision of OGRA Ordinance, FG can issue policy guideline to OGRA, however, after 18th Amendment, Prime Minister or his Cabinet is now the competent body to issue the policy guidelines. However, all the decision related to LNG/RLNG have been taken at the level of ECC of the Cabinet and has been conveyed to OGRA. Accordingly, such decisions should be ratified by the FG.

(iii) All the activities related to RLNG should be governed under one set of Law i.e; OGRA Ordinance. Accordingly, legal framework may be reviewed.

4.1.3. The Authority has forwarded reservations / policy issues to MP&NR so that appropriate decisions as required under the Law may be taken by the FG. Thereafter, various decisions have been conveyed by MP&NR forwarding therewith the decisions of ECC in respect of LNG/RLNG. The Authority further observes that long term LNG Sale Purchase Agreement with Qatar Gas on G to G basis, which is a hallmark of LNG arrangement, has now been finalized/signed. ECC in its meeting held on January 29, 2016 has also approved said agreement as well as LNG pricing formula. Also, exemption w.r.t signing of agreement with M/s EETL has been granted to public sector organizations while amending LNG Policy, 2011. Tripartite agreement between PSO, SNGPL and SSGCL has been initialed and is in final stages. Also, agreements with the end consumer are in process. The Authority, in this respect, has also conveyed its firm view that mutual agreements executed between the parties are based on their commercial considerations whereby the matters of terms of payments, cost obligations, commitments, compliance to the financial contingencies etc; have to be governed/settled between the parties. OGRA, as per decision of the FG, is obligated to determine RLNG price independently in accordance with provision of applicable law. The terms of mutual agreements, therefore, have no bindings on OGRA.

4.1.4. The Authority further observes that it has determined LNG DES price and terminal charges as per the decision of ECC/FG. OGRA determination mandate is, therefore, relevant to the extent of PSO margin, cost of service, administrative margin, and transmission /distribution losses. The Authority, therefore, examines the expenses at the touchstone of prudence, rationality and effectiveness. Accordingly, due weightage is given to the views, comments and arguments advanced by all stakeholders.

4.1.5. The Authority also observes that FG response on the intervener's legal contentions has not been conveyed yet, despite the same have been in discussion during the meetings held on associated issues. The Authority notes that RLNG related issues have already been taken up by Federal/Provincial Governments at the competent forums including CCI/ECC. Therefore, legal hitches, if any, in view of intervener's contentions, shall be resolved by the FG. Accordingly, the same shall be considered by the Authority.

4.2. DISCUSSION & DECISION

*i. **Inclusion of 04 FOB Cargos Sourced from Qatar Gas Company Ltd.***

4.2.1. The petitioner-1 has submitted that the Authority had excluded the cost of first four cargos sourced in April, June and July, 2015 from Qatargas as the same were procured on spot purchase basis and were not presented before the FG for approval. However, the petitioner-1 has now informed that ECC has granted post facto approval of these four cargos procured by it. The decision in this regard is reproduced below;

> ***"….to satisfy OGRA's requirement the post facto approval in respect of 06 cargoes arranged by PSO from Qatargas under Government to Government arrangement on FOB basis, on board FSRU as LNG carrier may be granted."***

4.2.2. In view of the same, the petitioner-1 has requested to determine RLNG price for the month of April, June and July, 2015 so as to recover its full cost.

4.2.3. ***In view of above, the Authority observes that four cargoes out of six above are relevant to the procurement by gas companies. Two cargoes have been procured by private party which are not being made part of RLNG price determination. Accordingly, the Authority in view of above FG approval, decides to allow the cost of first four cargoes sourced by the petitioner-1 for petitioner-3 for the months of April, June and July, 2015. Accordingly, the Authority decides to adopt DES / FOB price applicable for the relevant months starting from April, 2015 till January, 2016, based on the information submitted by the petitioner-1, as part of RLNG price.***

*ii. **PSO Margin upto 4% of DES price***

4.2.4. The petitioner-1 has requested to allow PSO margin at 4% as part of RLNG price. The petitioner-1 has pleaded that it has to bear overhead costs and is exposed to financial risks owing to; cost of working capital, tax impact on margin, take or pay volumes, IPP capacity charge payment, and risk of procedural delays. The risk in terms of IPP capacity charge payments, take or pay volumes and procedural delays translates into insurance cost to the tune of 1.20% of DES price. Under the Tripartite Agreement, the petitioner-1 is required to supply volumes upto 4.5 mpta, thereby engaging its huge working capital (i.e. 1.79% of DES price, on the basis of four cargoes in a month, from March, 2016 onward). This requires that the petitioner-1 has to face sixty days credit (financing of approximately 8 cargoes) at all time for its debtors. The petitioner-1 has further added that it has been already facing severe liquidity crisis due to circular debt by the Power Sector. LNG is also being supplied to Power Sector, resulting in additional risks. The petitioner-1 has further submitted that LNG is expected to be significant component (around 1/3rd) of its total business portfolio and involves key resources. Around Rs. 880 million shall be allocated to LNG business out of total common administrative expenses of approximately Rs. 2.3 billion. LNG related cost, estimated to be around Rs. 110 million cumulatively, would be equivalent to 1.02% of DES price.

4.2.5. The Authority notes that margin is allowed to cover the cost of incremental overheads, if any, in undertaking the LNG business, compensate the risk and cost of capital employed to carry out the business activities and offset the tax impact. The Authority further notes that other directly attributable costs including bank charges, insurance premium, and exchange gain / loss are already being allowed as part of "PSO other import related costs" in RLNG price. Therefore, additional costs incurred in the procurement process are already being catered for so as to mitigate the financial risk, if any, to the petitioner-1. Moreover, the petitioner-1 is utilizing its existing resources in terms of management, goodwill and assets for import of LNG. Therefore, utilization / allocation / appropriation of existing resources for carrying out LNG activity is infact the effective utilization of existing resources by a public sector entity. The same may also reduce average cost under economies of large scale concept. There is as such no likelihood of measurable incremental cost incurrence at this point in time. Further, during the public hearings, it was stressed that PSO is not undertaking any kind of risk in this LNG venture. LCs are established in advance while any liability on account of Take or Pay is hedged through back to back agreements and such an eventuality is hardly to emerge in the energy starved country. The liquidity risk may arise only by the public sector procurement if the LC is not established by them in advance. Further, during the relevant period of procurement from March 2015 to February 2016, approximately 02 cargoes per month have arrived in Pakistan. Therefore, computation of margin on 04 cargoes also seems on higher side.

4.2.6. The Authority further observes that petitioner-1 plea on the premise of OMC's margin applicable for petroleum products which as per petitioner ranges from 2.05% to 4.03%, is irrelevant and out of context. In the case of petroleum products, PSO is operating huge infrastructure and managing a complete supply chain from ship to consumer. The margin allowed in that business covers the entire cost of supply chain and compensates the capital investment. The same in case of LNG procurement is not applicable.

4.2.7. The Authority, in view of above, notes that petitioner-1 has computed margin on the basis of assumptions/hypothetical figures. No working on the basis of actual figures has been submitted. The Authority, in view of detailed deliberations, however observes that some cost components including withholding tax under Sub-section 7 of Section 148 of Income Tax Ordinance 2001, cost of working capital owing to late payments from debtors and other finance related expenses, etc may be unavoidable cost. Accordingly the same is considered for the purpose of margin of petitioner-1 to be made part of RLNG price.

4.2.8. The Authority further observes that PSO on the average has made procurement of around US $ 46 million per month. If the petitioner plea is accepted that approximately 60 days are required to clear the credit account from public sector and current market dynamics are applied, the average cost of capital employed and tax impact tentatively comes to around 2.5% of DES price.

4.2.9. ***The Authority also observes that M/s PSO is designated buyer to undertake LNG supplies for gas companies and is therefore entitled to recover its legitimate and prudent costs in incentivized manner. The Authority therefore, striking a balance of interests of all stakeholders, decides to allow PSO margin at 2.50% of DES price subject to review based on actual figures on yearly basis. Accordingly, the petitioner-1 is directed to advance the details of actual expenses including taxes, paid in this regard on a 12-month basis, duly certified by the statutory Auditors.***

iii. ***Administrative margin of gas companies upto 0.05$ per MMBTU***

4.2.10. The petitioner-2 & 3 has claimed that administrative margin upto US $ 0.05/MMBTU be included as part of RLNG price. The petitioner-2 has submitted that the administrative margin has not been claimed to recover any specific cost element. It has been proposed by the FG as an incentive to the gas utilities which have been exposed to various risks while entering into this transaction. The associated additional risks/ expenses are LC charges and financial charges in case of late payment of dues as defined under LSA. The petitioner-2 has further argued that it is not getting any incremental return on existing assets, and, therefore, no benefit is accruing to the Company despite putting all efforts, utilizing its time and resources and carrying all the risks under the LSA.

4.2.11. The petitioner–3 has also submitted that it is exposed to upstream take or pay risk in respect of supply of gas from Qatar Gas and/ or PSO, due to non-recognition of the force majeure events of the gas companies.

4.2.12. In view of the above, both the petitioner companies have claimed administrative margin to the tune of US $ 0.05/MMBTU in the light of decision of the ECC, as additional costs as well as risks have no nexus to the previous revenue requirement mechanism.

4.2.13. The Authority notes that the petitioners have recognized that administrative margin has been proposed by FG to only incentivize them while carrying out this transmission and distribution activity of RLNG. The Authority notes that margin is built in the price of a commodity in order to cover overhead costs. However, in the instant case, no additional overheads have been incurred to supply this RLNG to its existing consumers rather the existing capacity and human resource shall be optimally utilized in this process. Supply of RLNG from petitioner-1 is similar to supply of natural gas received from wellhead situated in the country. Moreover, all the companies engaged in this business are public sector companies, not established for generating windfall gains. Also, additional supply of RLNG has already been included as sales volume in HR benchmark formula allowed by the Authority. Therefore, any request for additional benefit is not justified.

4.2.14. ***In view of the general and insufficient justifications, the Authority disallows gas companies' claim in this regard.***

iv. *Cost of Service in respect of gas companies*

4.2.15. The petitioner- 2 & 3 has claimed cost of service on account of RLNG shipment through their network at the rate of US$ 0.13 per MMBTU and US$ 0.52 /MMBTU respectively, computed on the basis of actual results of FY 2014-15 as per the ECC decision as well as the applicable provisions of Third Party Access Rules. The petitioner– 2 & 3 has agreed that the disallowed cost of service in LNG prices may not financially affect it, if it be allowed as part of revenue requirement. However, as per the Generally Accepted Accounting Principles (GAAP), cost should be allocated to areas for which it was incurred. Under the existing arrangements, the cost of service associated with the operations should form part of RLNG price in line with the ECC decision dated September 29, 2012, in which it was stated that the cost of RLNG will not be passed on to other consumers.

4.2.16. The Authority agrees to the contention of the petitioners. The Authority, however, observes that cost of service in respect of gas companies is already allowed by the Authority through revenue requirement process of FRR for FY 2014-15. Therefore, allowance of the same as part of RLNG price shall invite double treatment. Regarding incremental cost, if any, incurred by gas companies in connection with RLNG arrangement shall be recovered through RLNG consumers thereby providing fairness between the consumers utilizing cheap natural gas vis-à-vis the consumers utilizing costly RLNG.

4.2.17. ***In view of the above, the Authority in the existing scenario wherein no additional cost has been incurred by gas utilities, and the cost of service has already been allowed to gas utilities, decides not to include cost of service as part of RLNG price.***

*v. **Terminal charges***

4.2.18. The petitioner-2 has requested to include terminal charges as per the actual volumes processed in accordance with the mutual agreement with M/s EETL. The agreement does not state that US$ 0.66 per MMBTU will be charged for LNG processed. US$ 0.66 / MMBTU is the average rate calculated based on the following facts:

1. Contract period of 15 years, and cumulative energy of 2,011,150 BBTU in a period of 15 years.
2. In the scenario when in year one the volumes are 200 MMCFD on continuous basis for full year at 95% guaranteed uptime.
3. Similarly from year 2 to year 15 volumes are 400 MMCFD on continuous basis for full year for a term of fourteen years (2-15) at 95% guaranteed uptime.
4. GCV is assumed at 1000 BTU per standard cubic feet.

4.2.19. The petitioner has further argued that it has not been selling RLNG; rather it is only providing service to SNGPL for its RLNG consumers. The Authority's decision of fixing US$ 0.66 per MMBTU in RLNG price is not only restricting the petitioner-2 to bill its consumers properly but is also exposing SSGCL to huge financial risk since the actual amounts billed by EETPL are not recovered from SNGPL. Besides the terminal charges, there are number of charges envisaged in the LSA (other LSA charges) for instance, cost incurred in case of acceptance of warm cargoes, charges incurred in cooling down of FSRU in the event of customer inventory falls below, LNG Heel etc. which may arise from time to time and are non recurring in nature. Therefore, the same may be included as part of RLNG price as and when they are incurred.

4.2.20. The Authority observes that Request for Proposal published by ISGSL reveals that a levellized tariff was sought from the companies interested in bidding process for the evaluation of price proposal. Accordingly, the FG has approved the levellized terminal tariff at US $ 0.66 per MMBTU and conveyed the same to OGRA as a policy guideline under Section 21 of OGRA Ordinance. Therefore, by any stretch of imagination, there can be no other interpretation of this levellized tariff.

4.2.21. The Authority also considers the intervener' specific comments that Federal Cabinet has approved levellized tolling tariff at US $ 0.66 per MMBTU and has conveyed the same to OGRA under section 21 of OGRA Ordinance. LSA however has not yet been approved by FG and referred to OGRA. Therefore, the Authority in accordance with the decision of the Cabinet, in the matter of payment of terminal charges cannot consider more than US $ 0.66 per MMBTU.

4.2.22. The Authority however notes that, as stated by the petitioner-2, in the initial year, payments to terminal operator in US $ per MMBtu term are higher than the levellized tariff of US $ 0.66 per MMBtu conveyed by the FG. Conversely in the subsequent years, the situation is reverse keeping in view the projected supplies by the petitioners. As per working forwarded by the petitioner-2, US$ 0.63/MMBTU terminal charges shall be applicable from year 2 to 15. The average rate of 15 years however works out to US$ 0.66/ MMBTU.

4.2.23. ***In view of the above, the Authority maintains its earlier decision and decides to include terminal charges at the levellized tariff of US$ 0.66/ MMBTU in accordance with the decision of the FG.***

4.2.24. ***Notwithstanding the above, the Authority observes that petitioner-2 /petitioner-3 may reduce terminal charges, if LNG procurement is effectively managed. The major chunk of terminal charges is fixed cost which, in terms of MMBTU, decreases with the increase in LNG supply. The Authority, therefore, advises that efforts should be undertaken to manage the supply smoothly as a win-win strategy rather than consumers be burdened, which is not justified.***

vi. ***Infrastructure Cess***

4.2.25. The petitioner–1 has requested to allow Infrastructure Cess as part of RLNG price. The petitioner has asserted that exclusion of Infrastructure Cess from the provisional price of RLNG is unjustified keeping in view the fact that the same has been levied by the Government of Sindh during the custom clearance of LNG cargoes from the unloading port. Accordingly, payments in this respect have already been paid by it. The petitioner –1 has now taken up the matter with the relevant Authorities for exemption of the same. It has, however, requested to allow Infrastructure Cess as part of price of RLNG until such exemption is granted.

4.2.26. The Authority appreciates the company's efforts for exemption of cess from RLNG price, and anticipates that the matter shall be resolved soon. ***In view of the same, the Authority decides not to allow Infrastructure Cess as part of price till the final outcome of the matter, and again directs the petitioner-1 to resolve the matter at the earliest.***

vii. ***Retainage***

4.2.27. The petitioner-2 has requested to allow retainage as per the terms agreed in LSA. The petitioner-2 has argued that the Authority has determined retainage @ 0.75% of total cost thereby ignoring basic concept as envisaged under clause 20 of LSA. The petitioner has explained that retainage is based on the volume processed by EETL. If it is lower than 200 MMCFD, the retainage factor will go up as per the formula. Retainage is a function of flow rates. Since the commissioning of the terminal, the flow rates have seen significant fluctuations between 100 to 300 MMCFD and there also have been days where re-gasification has not taken place. This has resulted in an average flow rate to-date of 166.5 MMCFD at which the allowable retainage would be around 1.7%. Any retainage in excess of the guaranteed retainage i.e. 1.50% shall be borne by EETPL and for that purpose annual adjustments are to be made after conducting audit. Accordingly, the petitioner has requested to incorporate retainage in RLNG price as per the terms of agreement.

4.2.28. The Authority observes that "Retainage" is typically handled on a pro rata basis; the volumetric accounting of the same is a continuous process. Practically, parties to the agreement undertake an audit for determination of retainage at the end of each contract year. Accordingly, the operator determines the aggregate amount of retainage and delivered quantities for all days in that particular contract year. The examination of various literatures available on the matter reveals that UFG, measurement errors, flare or vent are very low quantities since LNG regasification is done in a controlled environment and the FSRU / terminal is operated as per international code and practices. However, no such information has been reported by the petitioner.

4.2.29. The Authority observes that one of the significant factors of retainage is Boil-Off Gas (BOG). The BOG is dependent on the design and operating conditions of LNG tanks and ships, the type of vessel / FSRU / terminal, heat ingress in the storage tanks, ,fuel consumption of the regasification facility, etc. Therefore, the BOG cannot be clearly defined for a particular setup. However typical allowed BOG may vary from 0.5% to 0.75% of the total cargo handled by a terminal. A periodic audit of the accounts for

Retainage / BOG is the prudent method to determine the same for a particular period on accurate basis.

4.2.30. In view of above, the Authority observes that the figures of retainage provided by the petitioner-1 & 2 are unauthenticated and therefore, cannot be made part of RLNG price. Therefore, 0.75% of DES price as retainage is allowed in the RLNG price. This, however, shall be revised/scrutinized once the precise values of retainage/BOG are made available.

4.2.31. The Authority further observes that there is difference of quantity invoiced and quantity received in FOB cargos. The petitioner clarified that same is due to internal/fuel usage/BOG under Charter Party Agreement between the petitioner-1 and EETPL for the shuttling of FSRU for the four cargos on FOB basis. The BOG under the agreement for use during voyage is 0.155% per day of the total cargo capacity. Since this factor is inherent part of FOB cargos, the same is therefore allowed. Subsequent adjustment in the pricing shall be made along with retainage once audited figures are made available.

5. RLNG PRICE COMPUTATION

5.1. ***In view of above, the RLNG Price for consumers on transmission network since April, 2015 till January 2016 is computed as per Annexure- A. Accordingly, the petitions are disposed off.***

6. DIRECTIONS

6.1. From March 2016 onward, the petitioner-1 shall submit the data for provisional price as per SoP agreed between the parties in the meeting held on 21.8.2015. Further, application regarding RLNG price for the month of February 2016 should also be submitted based on actual data.

6.2. The petitioner-1 shall forward the detail of actual expenses paid in respect of PSO margin, duly verified by statutory auditors before April 30, 2016.

6.3. The matters with PQA must be resolved on urgent basis. Accordingly, the charges should be included on actual basis as per the decision of ECC.

6.4. LNG procurement should be planned in a way that terminal capacity should be optimally utilized to avoid unnecessary burden.

6.5. FG in consultation with parties to the agreement should develop a mechanism to ensure commercial prudence and transparency in the entire process of LNG procurement.

6.6. The petitioner-I shall submit, within 60 days of close of financial year, annual audit report with respect to actual payments made in respect of LNG procurement.

6.7. The Authority has already suggested that LNG supply chain be governed under one set of law i.e; OGRA Ordinance. Necessary amendments have already been submitted. Accordingly, the same may be proceeded for approval of the competent forums.

Noorul Haque
(Member Finance)

Aamir Naseem
(Member Gas)

Saeed Ahmad Khan
(Chairman)

Islamabad, March 18, 2016

Annexure A

Computation of RLNG Price

		US$/MMBTU						
Sr. #	Parictulars	Apr-15	Jun-15	Jul-15	Sep-15	Oct-15	Dec-15	Jan-16
	No of Cargos	1	2	3	2	1	2	1
	Quantity Received (MMBtu)	3,270,270	6,540,623	9,053,938	6,304,920	6,023,900	6,451,980	3,313,030
i	***LNG Price (DES)***	7.9459	7.9603	8.3217	7.7768	7.1283	7.4841	8.0103
ii	***PSO's other imports related actual costs***	0.0562	0.0567	0.0353	0.0227	0.0223	0.0223	0.0224
iii	***PSO margin***	0.1986	0.1990	0.2080	0.1944	0.1782	0.1871	0.2003
iv	***Terminal Charges***	0.6600	0.6600	0.6600	0.6600	0.6600	0.6600	0.6600
v	***Retainage***	0.0596	0.0597	0.0624	0.0583	0.0535	0.0561	0.0601
vi	***Transmission losses***	0.0397	0.0398	0.0416	0.0389	0.0356	0.0374	0.0401
RLNG Price without GST		**8.9600**	**8.9755**	**9.3290**	**8.7511**	**8.0779**	**8.4470**	**8.9931**

Note:

1 The above prices have been computed on the basis of data provided by M/s PSO including some provisional invoices. The parties shall scrutinize the same on the basis of evidences before making payments as per their mutual agreements.

2 Any adjustment upon audited figures/actuals of provisional expenses (Currency exchange gain/loss, PQA etc), may be carried forward in future prices.