



(آئل اینڈ گیس ریگولیٹری اتھارٹی) OIL & GAS REGULATORY AUTHORITY
"SAY NO TO CORRUPTION"

OGRA-6(2)-1(3)/2015-Review

IN THE MATTER OF

SUI NORTHERN GAS PIPELINES LIMITED (SNGPL)

**MOTION FOR REVIEW AGAINST AUTHORITY'S
DETERMINATION OF FINAL REVENUE REQUIREMENT FOR
FY 2012-13**

UNDER


**OIL AND GAS REGULATORY AUTHORITY ORDINANCE, 2002 &
NATURAL GAS TARIFF RULES, 2002**

DECISION

October 26, 2016

Before:-

Ms. Uzma Adil Khan, Chairperson
Mr. Aamir Nasim, Member (Gas)
Mr. Noorul Haque, Member (Finance)


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(1)


TABLE OF CONTENTS

SECTIONS

PAGE NO.

1. BACKGROUND	1
2. AUTHORITY'S JURISDICTION AND DETERMINATION PROCESS	2
3. PROCEEDINGS	2
3.3. Un-Accounted for Gas (UFG)	15
3.4. Late Payment Surcharge and Interest on Arears (LPS)	16
3.5. Transmission and Distribution Cost (<i>Human Resource (HR) Cost, Legal and Professional Charges</i>)	17
3.6. Transmission and Distribution Cost - Provision for Doubtful Debts	17
3.7. <i>Other Operating Income and Prior Years Adjustment</i>	18
3.8. <i>Operating Fixed Assets</i>	18




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1. BACKGROUND

- 1.1. Sui Northern Gas Pipelines Limited (the petitioner) is a public limited company incorporated in Pakistan, and is listed on Pakistan Stock Exchange. It is engaged in the business of construction and operation of gas transmission and distribution pipelines, sale of natural gas and compressed natural gas, and sale of gas condensate (as a by-product). The petitioner is also engaged in the business of Re-gasified liquefied natural gas (RLNG), in accordance with the decisions of the Federal Government (FG).
- 1.2. The Authority, under Section 8(2) of OGRA Ordinance 2002, had determined the Final Revenue Requirement (FRR) of the petitioner for FY 2012-13 (the said year) on November 5, 2015 at Rs. 215,056 million and shortfall at Rs. 6,256 million translating into increase of Rs. 12.23 per MMBTU in the average prescribed price.
- 1.3. Being aggrieved by this determination, the petitioner filed motion for review on December 3, 2015 under Section 13 of OGRA Ordinance, wherein it has raised reservations in respect of certain capital and revenue cost components as under;

1. **Addition in Assets**

- i) *Plant, Machinery & Equipment and other Assets*

- a) *Motor Vehicles*

2. **Late Payment Surcharge and Interest on Arrears (LPS)**

3. **Other Operating income**

4. **Un-Accounted for Gas**

5. **Transmission and Distribution (T&D) Cost**

- i. *Human Resource (HR) Cost*
 - ii. *Legal and Professional Charges*
 - iii. *Provision for doubtful debts*

6. **Prior Year Adjustment**



2. AUTHORITY'S JURISDICTION AND DETERMINATION PROCESS

- 2.1. The petitioner has invoked the jurisdiction of the Authority under Section 13 of the Ordinance and Rule 16 of the NGT Rules. 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."

- 2.2. The issues brought forwarded by the petitioner must necessarily be evaluated with reference to the afore-said Section 13 of the Ordinance, and meet at least one of the two pre-conditions given therein referring to *change in circumstances* and *new admissible evidence* for admission of the motion. Further, the Authority may refuse leave for review if it considers that the review would not materially alter the decision under review.

3. PROCEEDINGS

- 3.1. The Authority issued notice of pre-admission hearing on February 2, 2016 to the petitioner and Federal Government. Accordingly, a pre-admission hearing was held on February 11, 2016 at Lahore, where the petitioner's team was led by Mr. Amer Tufail, Managing Director. The petitioner was given full opportunity to present its motion for review. The petitioner made submissions with the help of multi-media presentation and contended the merits of the case in detail as well. The decision on the same, however, could not be finalized due to lack of quorum of the Authority thereafter.
- 3.2. On completion of Authority quorum, a notice for pre-admission was again issued on August 4, 2016. The hearing was accordingly held on August 22, 2016 at Lahore.

- 2 -

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The petitioner's team led by Mr. Amjad Latif, Managing Director presented the case. The petitioner made submissions with the help of multi-media presentation and contended the merits of the case in detail as well. The petitioner's legal counsel also pleaded the case and advanced following arguments on the legal aspects of the petition for the said year.

i. Implementation of Policy Guidelines

3.2.1. The legal counsel contended that in the impugned determinations under review, the Authority has failed to implement the policy guidelines dated November 20, 2014 issued by the Economic Coordination Committee of the Federal Cabinet. Policy guidelines are defined under section 2 sub section (xxvi) of the OGRA Ordinance as :

"Policy guidelines" means policies of the Federal Government covering or related to any or all the regulated activities which are issued in writing pursuant to decision of the Cabinet of the Federal Government or any committee thereof;

3.2.2. Furthermore, Section 21 states:

"The Federal Government may, as and when it considers necessary, issue policy guidelines to the Authority on matters of policy not inconsistent with the provisions of this ordinance or the rules and the Authority shall comply with the policy guidelines in exercise of its powers and functions and in making decisions."

3.2.3. Lastly, Section 7 of the OGRA Ordinance, under which the Authority undertakes the exercise of tariff determination starts as follows:

"Subject to policy guidelines, the Authority shall determine or approve tariff for regulated activities whose licences provide for such determination or such approval or where authorized by this Ordinance".

3.2.4. A reading of the above provisions of law shows that the Authority is bound to determine the tariff of SNGPL keeping in view policy guidelines, if any, issued by the Federal Government. Once policy guidelines have been received by the



Authority, the only considerations that it may have in this regard are:

- Have the policy guidelines been issued in writing in pursuance of a decision of the Federal Cabinet, or a committee thereof; and
- Are such policy guidelines consistent with the OGRA Ordinance and the rules and regulations framed there under;

3.2.5. If the answer to both the above is yes, the Authority has no choice but to implement the policy guidelines so issued.

Discussion and Decision

3.2.6. The Authority observes that main issue contested by the petitioner is that the Authority is bound to determine the tariff of the petitioner keeping in view the policy guidelines issued by the FG.

3.2.7. The Authority observes that policy or policy guidelines issued by the Government to the autonomous regulatory authorities that are in consonance and conformity with the constitution, laws and rules framed thereunder may be complied with. However, policy guidelines or decisions do not have statutory force, and such directions/decisions cannot be termed to be the "laws" for the simple reason that if they had been the "laws", no such declaration or policy decision was required. Furthermore, policy cannot be placed on higher pedestal than a binding law.

3.2.8. The Authority in view of above observes that it has to decide the matters contained in the impugned policy guideline in accordance with OGRA Ordinance, 2002 and the rules made there under and exercise its discretion with full authority. Further the very facts in this regard have been deliberated and cleared in the reported judgment (PLD-2013, SC 224) of Apex Supreme Court of Pakistan in Constitution petitions Nos. 33, 34/2005, which is discussed in detail in later paras.



ii. Confusion Regarding the Recent Judgment Dated 18.08.2016 of the Hon'ble Supreme Court

- 3.2.9. The legal counsel pleaded that there appears to be some confusion regarding a recent judgment of the Supreme Court of Pakistan, which, in a levy related matter, held that the Prime Minister cannot singly take over any powers vested with the Federal Government. At the outset, it is submitted that the said judgment does not apply to the policy guidelines issued under the OGRA Ordinance since the judgment only discusses laws which attempt to define Federal Government as any entity other than the Federal Cabinet. Since the OGRA Ordinance talks about policy guidelines issued by the Federal Cabinet, or a committee thereof, it is in line with the judgment. With regards to the committees of the Federal Cabinet, it is submitted that the said judgment considered the Rules of Business 1973 read with the Constitution of Pakistan. While considering the Rules of Business 1973, the judgment gave a sacrosanct importance to them and appears to endorse Rule 17 of the Rules of Business which talks about the Federal Cabinet and the committees thereof. If the Hon'ble Supreme Court had intended that the Federal Government shall always mean the FULL CABINET, it would have referred to Rule 17 and struck down the same as being ultra vires to the Constitution.
- 3.2.10. The counsel contended that in any case, the above discussion has now become academic since, vide recent decisions, the full Federal Cabinet has endorsed the ECC decision dated 20.11.2014.

Discussion and Decision

- 3.2.11. The Authority observes that there is no confusion in the judgment passed by the Honorable Supreme Court of Pakistan. However, in clear terms OGRA or the company are not competent or have the jurisdiction to comment on any confusion/ambiguity if it is construed from the contents of judgment of Hon'ble Supreme Court of Pakistan, unless it is reviewed by the August Court.



iii. Misconception Regarding SC Order in Suo Moto Case No. 1

- 3.2.12. The legal counsel argued that there exists a misconception regarding an order dated 20.12.2012 of the Honorable Supreme Court regarding the binding nature of policy guidelines. It should be noted that the said order dated 20.12.2012 was passed by an Honorable two-member bench of the Supreme Court and appears to be a preliminary observation regarding the scope of Section 21. This is so because vide order dated 09.04.2014, an Honorable three-member bench of the Hon'ble Supreme Court (SC) reopened the issue of policy guidelines. Therefore, it is clear that the earlier observation of the Honorable two-member bench has been superseded and policy guidelines, insofar as they are consistent with the Ordinance, the rules and regulations made there under, and, issued in writing pursuant to a decision of the Federal Cabinet or a committee thereof, they are binding on the Authority. The questions formulated vide the aforementioned order dated 09.04.2014 are still pending adjudication before the Supreme Court.

Discussion and Decision

- 3.2.13. The Authority observes that the issue of policy guidelines under Section 21 of OGRA Ordinance has been deliberately discussed in the reported judgment (PLD-2013, S.C 224) of August Supreme Court of Pakistan in Constitution Petitions Nos. 33, 34/2005. The relevant part of the said judgment is reproduced below:

5. "It is correct, therefore, that the policy guidelines issued by the Federal Government are to be given consideration by OGRA, Section 21 of the OGRA Ordinance also states in similar vein that." The Authority (OGRA) shall comply with the policy guidelines [issued by the Federal Government]. If read out of context, these provisions could create the impression that in matters such as price determination, the Federal Government enjoys co-extensive powers with OGRA; or that, at least its policy guidelines trump any other consideration which OGRA may have before it. However, this reading of the text runs against the overall scheme and text of the OGRA Ordinance. Policy guidelines are exactly what they purport to be i.e. guidelines at most. The statute envisages that the



regulatory functions are to be performed by an Authority which is "independent in the performance of its functions", (S3 (2). This independence is actualized by laying down stringent objective appointment criteria of "eminent professions of know integrity and competence" for key decision makers (Section 3), vesting them with security of tenure (S 3 (8) and S.5) and funding OGRA through its own statutory fund (S.18). Clearly all of these measures were taken by the legislature to provide OGRA with strong measure of independence from the Federal Government. The measures would be rendered entirely superfluous if we construe Section 21 of the Ordinance and Rule 14 in a manner which makes OGRA bound by the directives of the Federal Government. Since the general principal of statutory interpretation is that the language of the legislature must not be rendered superfluous, we take it that Section 21 and Rule 14 imply only that OGRA must include the policy guidelines of the Federal Government in its consideration and decision making process; it is not, however, bound by the same. That the legislature chose the term "policy guideline" instead of "directive" or "order", corroborates this interpretation.

3.2.14. In view of above recorded decision of the Apex Court, the Authority observes that the petitioner contention is misleading and irrelevant.

iv. Rate of Return:

3.2.15. The legal Counsel referred Section 8(6)(h) of the OGRA Ordinance which states:

3.2.16. *"total revenue requirement" means for each financial year, that total amount of revenue determined by the Authority for each licensee for natural gas so as to ensure it achieves the rate of return provided in its license for natural gas*

3.2.17. Reading the above with Condition 5.2 of the License, it is clear that the OGRA Ordinance stipulates that the petitioner is to receive a rate of return of 17.5% of its net operating assets in operation in each financial year (before financial charges and taxes). The words "Subject to adjustments..." used in 5.2 can only mean that if in a given financial year, the Authority determines that the economic climate of Pakistan requires a higher rate of return, that higher return may be made subject to efficiency benchmarks to the floor of 17.5%. Any other interpretation of 5.2 will

- 7 -

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make the same ultra vires the OGRA Ordinance since the word “ensure” as used in Section 8(6)(h) creates a guaranteed floor of 17.5%.

3.2.18. The word “ensure” as used in the afore-quoted Section is defined as:

- P RamanathaAiyar in “The Advance Law Lexicon”: “To make secure; make sure... That which is secure is safe from danger; intact, not liable to be altered or removed. That which is ensured is free from uncertainty, fixed, not liable to prevention, frustration, defeat... that which is ensured will become so.
- The Oxford English Dictionary: “Ensure- verb...Make certain that (something) will occur or be the case:... 1.1 Make certain of obtaining or providing (something):legislation to ensure equal opportunities for all”
- Merriam Webster: “to make sure, certain, or safe : guarantee”
- Cambridge English Dictionary: “to make something certain to happen”
- Collins English Dictionary: “to make certain or sure; guarantee...to make safe or secure; protect” Synonyms: make certain, guarantee, secure, make sure, confirm, warrant, certify, protect, defend, secure, safeguard, guard, make safe

3.2.19. However, despite the clear mandate of the law, the Authority treats the rate of return as a ceiling item rather than a floor item and proceeds to make deductions from the same. It is submitted that as a consequence of this faulty interpretation, the Company has received an abysmal effective rate of return over the years which decreased from 14.11% in FY 2005-06 to (1.76%) loss in FY 2014-15.

3.2.20. In light of the requirements of Section 8(6)(h) and the meaning of the word “Ensure” as elaborated, it is requested that the Authority review its determinations so that SNGPL may achieve the rate of return of 17.5% as provided for in its license.



Discussion and Decision

- 3.2.21. The Authority observes that the contention of petitioner is not relevant and denied vehemently. Under section 8(6)(h) of OGRA Ordinance, 2002 "total revenue requirement" is defined as under:-

"Means for each financial year, that total amount of revenue determined by the Authority for each licensee for natural gas so as to ensure it achieves the rate of return provided in its licence for natural gas."

- 3.2.22. The statute refers the licence granted by the Authority to undertake the regulated activities. Accordingly, the rate of return is specifically provided in the licence condition No. 5.2 of the licence granted to the petitioner and states as follows:

"5.2. Subject to such adjustments as required under condition 21 or other efficiency related benchmarks fixed by the Authority from time to time in accordance with the rules, the Authority shall determine total revenue requirement of the Licensee to ensure it achieves 17.5 % return (before financial charges & tax) on the value of its average net fixed assets in operation for each financial year. For the purpose of calculating the above return the prevailing methodology and procedure shall continue to be in force unless the Authority may otherwise approve."

- 3.2.23. It is abundantly clear and legally established that the governing statute i.e; OGRA Ordinance provides guiding principles, the licence granted by OGRA however stipulates the detailed terms of doing business including; nature of regulated activities, code of conduct, business ethic, commitments & obligations, operating indicators, *performance targets and rate of return* etc; . License is complete piece of legal document measuring the extent of responsibilities & rewards and is capable of enforcement. The same therefore is pivotal in the understanding of commercial matters.

- 3.2.24. Section 6 of the Ordinance elaborates "the powers and functions of the Authority". Sub-clause 2(t) of said Section guides about the rate of return and provides as under;

"The Authority shall in consultation with the Federal Government and licensees for natural gas determine for each such licensee a reasonable rate which may be earned by such licensee in undertaking of its regulated activity pertaining to natural gas, keeping in view all circumstances." (emphasis added).



- 3.2.25. The above section makes it further clear that "rate of return", is something which has to be earned by the licensee. Certainly, it involves licensee conscious efforts in terms of strategic planning and controls to efficiently operate the network and receive the same. The very intent of above legal provision clearly stipulates that there can not be like such a return or reward which automatically burgeons and does not consider the operating efficiency. Thus the onus is on the licensee to earn the return as much as it effectively performs.
- 3.2.26. The joint reading of section 8(6)(h), Section 6(2)(t) of OGRA Ordinance, 2002, and licence condition 5.2 of the licence granted to SNGPL reveals that subject to the efficiency related benchmarks adjustment, the Authority shall determine total revenue requirement of the licensee to ensure that it achieves 17.5% return on its average net fixed assets in operation for each financial year. The use of term "subject to" in the start of the licence condition 5.2 as per statutory interpretation has limited the scope of achievement of 17.5% return by licensee subject to the efficiency benchmarks as set by the Authority while determining the total revenue requirement. Therefore, if the licence condition 5.2 was started without this term, then the meaning would be otherwise.
- 3.2.27. Further, return is relevant to the petitioner's efforts to earn it. The very intent of the law therefore clearly leads to the operating efficiency and optimum endeavors to deliver the services. It does not put the shareholders in heavenly place to enjoy guaranteed return even if operating activities are inefficiently undertaken. Thus return by any stretch of imagination can not be isolated or exempted from performance yardsticks.
- 3.2.28. The Authority further notes that petitioner has been allowed 17.5% return strictly in accordance with the license conditions, It is however due to the petitioner's own inefficiencies and business conduct that it could not retain the return allowed to it. The petitioner is incorrectly contending that guaranteed return of 17.5% is not being provided to it, as effectively it is getting much lower rate of return and has been referring to some legal provisions in isolation. The Authority terms this



argument as baseless and against the legal scenario. Apparently, the petitioner has been pleading that it is entitled for guaranteed return irrespective of control of gas losses/theft, operational efficiency and effectiveness of capital expenditure incurred to undertake the regulated activities. If the petitioner contentions are assumed true, it shall be contrary to the regulatory setup established by GoP, violate the legal and regulatory framework as a whole and tantamount to dysfunctional the mandate of regulator. This shall impair the consumer interests and result into economic distortion for each segment of the society which can never be, by any stretch of mind, the intent of legislature.

- 3.2.29. The Authority further observes that regulatory framework/setup has a built in /inherent mechanism of performance accountability, checks and balances and application of independent and collective wisdom which makes the whole process of decision making transparent. Effective regulation is implemented mainly through efficiency related benchmarks which protects the interests of all stakeholders particularly the consumers. If the effective regulation is misconceived for the purpose of desired return only, it shall defeat very purpose of establishment of Regulator.

v. UFG Benchmarking

- 3.2.30. The petitioner has submitted that OGRA's power to set UFG benchmarks comes from Rule 17(1)(c) of the NGTR which, in its operating part states:

"tariff should include a mechanism to allow licensees a benefit from and penalties for failure to achieve, benchmarks set by the Authority...for unaccounted for natural gas"

- 3.2.31. The petitioner has submitted that it is clear from the above that the Authority has to set UFG Benchmarks for the Company and if the Company fails to meet the same, penalties are to be imposed. Condition 21.3 mimics the above Rule 17(1)(c) when it states, in its operative part, that "...if the Licensee fails to meet the UFG target the loss on that account shall be borne by the Licensee...". This loss being



referred to is clearly the loss on account of imposition of penalty in terms of Rule 17(1)(c). Furthermore, such a loss, i.e. penalty, can only be in terms of Rule 20 of NGTR, which, in its relevant calculation, fixes a maximum amount of Rs. 752 million.

- 3.2.32. The petitioner has pleaded that it was also submitted before the Hon'ble court that, UFG Disallowance, by whatever name called, is, in light of a recent judgment of the Hon'ble Supreme Court of Pakistan, in fact, a penalty. The said judgment was announced on 26.10.2015, i.e. after the last hearings on the revenue requirements of the Company; therefore, the same has to be considered by the Authority in this review. The Hon'ble Supreme Court, in Civil Petition No. 2093 of 2015, after considering various definitions of what constitutes a penalty, concluded that penalty implies "...loss, disability or disadvantage of some kind visiting a person or his property on account of his own actions or omissions..."
- 3.2.33. The petitioner argued that since UFG disallowance is a loss and disadvantage in the form of revenues being taken away from the Company, the same are nothing but a penalty and would therefore have to be restricted to the limits prescribed by Rule 20 of NGTR. Therefore, the Authority is requested to review its determinations and cap the penalty termed as UFG Disallowance to Rs. 750 Million.

Discussion and Decision

- 3.2.34. The Authority observes that petitioner has confused the meaning of penalty and disallowance/loss while quoting the provisions of OGRA Natural Gas Tariff (NGT) Rules, 2002, Licence condition 21.3 and meaning of penalty as defined vide Supreme Court's Judgment in Civil Petition No.2093/2015. The dictionary meanings of "disallowance" are to exclude, reject, or deny the force or validity of. Moreover, the aforesaid Judgment of Supreme Court has no nexus with the instant case as in former case matter pertains to show cause issued to the licensee for contravention of the applicable law and rules and imposition of penalty

- 12 -


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thereon by the regulator under the relevant provisions of the Act. Even otherwise, it is general principle of law that each case has its own facts and applicability of law depends on circumstances and factual aspects of that case therefore any observation given in any judgment or order cannot be ipso facto applied in another case. Therefore the term 'penalty' used in Rules 17(1)(c) may not be construed as the term 'penalty' mentioned in Rule 20.

- 3.2.35. The scope of Rule 20 of NGT Rules, 2002 was clearly explained and interpreted by the Hon'ble Lahore High Court, Lahore in OGRA Petition No.467/2012 titled SNGPL vs. OGRA etc. vide Order dated 15-02-2013. The petitioner's contentions vide the following para 10 of the judgment were same as contended in the instant legal arguments.

The other ground for challenge to the Decision is with regard to the quantum of penalty. The OGRA Ordinance under Section 6 (2) (p) authorizes the Authority to prescribe fines for contravention of the Ordinance, rules, regulation, terms and conditions of the license and the decisions of the Authority. A penalty has been specifically prescribed by the Authority in Rule 20 of the Tariff Rules which lays down that a maximum of Rs. 2 million per day for a continuing breach totaling Rs.730 Million for a financial year may be imposed. It was argued that Rule 20 is all encompassing and it includes violation of any Rules/Regulations as well as orders, determinations and even instructions passed by the Authority. The penalty which the Respondent No.1 has imposed on the Petitioner in the instant case is more than Rs. 11.782 Billion being fifteen times more than the maximum prescribed by the Rules. It is submitted that a penalty which exceeds the maximum prescribed by law is unlawful (1990 CLC 784, 2005 PTD 1663 & 1984 MLD 468). Even for the maximum of any lawful penalty to be imposed, it should be shown that the acts are such that they warrant that the maximum penalty be levied instead of any other lower figure. Penalty provisions are to be strictly construed in favour of the Petitioner (1998 CLC 1278, PLD 2005 Lahore 571 & 2001 PTD 19)."

- 3.2.36. The Hon'able Court observed and rejected the petitioner's stance vide para 31 of above referred judgment dated 15-02-2013 in the following terms:-

- 13 -


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"31. Finally on the issue of penalty, the Petitioner argues that due process was not followed when imposing the penalty and that the quantum of penalty is not in accordance with the rules. Under the Tariff Rules, Rule 20 provides for the imposition of a penalty. Any licensee who contravenes any provision of the OGRA Ordinance, Rules, Order, Determination, Decision, Direction or Instruction of the authority shall be punishable with a fine, which may extend to one quarter of one percent of the annual turnover of the licensee or 20 million rupees whichever is less. If the contravention is continuing with an additional fine, which may extend to one tenth of one percent of the annual turnover of the licensee or Rs.2 million, whichever is less for every day during which such contravention continue. As per clause 20 (3) a show cause notice is required so as to give the licensee an opportunity to show cause as to why the penalty should be imposed. The Respondent argued that no penalty had been imposed and that the Petitioner was interpreting UFG disallowance as a penalty. Hence there was no basis to this challenge. A review of the Decision shows that there is no finding on a penalty under Rule 20 of the Tariff Rule. In terms of para 8.2.6 a determination has been made on UFG disallowance. It is this disallowance factor which the Petitioner is interpreting to be a penalty imposed under Section 20 of the Tariff Rule. The Decision does not show any working related to imposition of penalty as stipulated by the Petitioner. Hence no ground is made out on this count."

Hence the petitioner has misinterpreted the UFG disallowance as imposition of penalty. Therefore, the stance of the petitioner is not maintainable on this score only.

- 3.2.37. The Authority further notes that the petitioner is misconceiving the treatments in respect of gas price components, the tariff determination mechanisms and confounding the inadmissibility of inefficiencies/wastages, gas losses in the revenue requirement with penalty. The entire argument of the petitioner, including the interpretation of penal provisions is premised on the incorrect characterization of revenue requirement exercise and the same is also contrary with the regulatory practices carried out world over. The Authority, as per Section 8 of the Ordinance, carefully and independently evaluates / reviews the petitions submitted by the companies at the touchstone of reasonableness/ professional prudence. Accordingly, the inefficient and imprudent expenses pertaining to capitalization and operating costs are not allowed to form part of revenue requirement. The UFG disallowance is also part of the same exercise. Theft inadmissibility/deduction of such expenses including gas losses beyond limits/benchmark cannot be termed as penalty. If this was the case, then entire scheme of regulatory regime and process of determining/ reviewing the revenue requirement would be defeated.



3.3. Un-Accounted for Gas (UFG)

3.3.1. The petitioner requested that the entire volumes in respect of the following claimed by it be allowed in line with the decision of the ECC dated November 20, 2014:-

- i. Gas Theft by Non Consumers;
- ii. Losses in Law and Order affected areas of KPK Province; and
- iii. Impact of change in Bulk Retail on UFG.

3.3.2. The Authority while determining the petition for FRR for the said year decided to provisionally allow 80% of the claimed volume against Non-Consumers and 75 % of the claimed volume in respect of Losses in Law and Order affected areas of KPK province subject to certain conditions.

3.3.3. Regarding Minimum Billing, it has been stated that domestic consumer base has increased to 4.9 Millions in Year 2014-15. Due to vast gap in demand and supply of gas, continuous low pressures exist in network because of which installed domestic meters have encountered measurement issues. Low pressure results in increased rate of wear and tear of meter internal parts due to travel of dust particles and condensate in meter body. Measurement errors are resulting in minimum billing in domestic sector. Cabinet Committee on Policy Guidelines under Section 21 of OGRA Ordinance notified vide letter No. F.I(25)/2013-law-II dated 02-05-2013 has recommended to OGRA to give 50% allowance against minimum billed cases till final decision. OGRA is requested to implement the recommendation of Cabinet Committee, as it has done in case of Non-Consumers while determining the FRR of FY 2012-13.

3.3.4. Correct measurement is the prime responsibility of the petitioner and as such no relaxation can be allowed for this factor. If the petitioner considers it to be an important factor, it must aggressively work on it and the Authority shall support any such feasible project/ expenditure. The Authority has also disallowed the volumes under the head in all of its previous decisions on the rationale that the same

- 15 -

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arises due to petitioner's own equipment fault, which is not justified. The contention of the petitioner is thus denied.

- 3.3.5. The Authority, considered the view point of the petitioner and keeping in view the fact that there is no change in circumstances and no new tangible justifications have been tendered by the Petitioner, decides that the volume pilfered by Non Consumers, Losses in law and order affected areas of Khyber Pakhtunkhwa province and impact of change in bulk retail ratio may be considered in the light of UFG Study, once the report is finalized in consultation with all the stakeholders and accordingly decided by the Authority, any adjustments will be passed in the subsequent FRRs accordingly.

3.4. Late Payment Surcharge and Interest on Arears (LPS)

- 3.4.1. The petitioner has reiterated its stance that income on account of LPS is a non-regulated income as it is financial compensation for delayed payment of gas dues by defaulting consumers. It was contended that delayed /non-payment by the consumers results in the delay to the payment of gas producers and also requires to borrow additional funds to offset shortfall in cash flows. The expenses on this account however are not allowed in the revenue requirement. The petitioner contended that if the expense on this account is not part of tariff regime, equitably the income from the same source cannot be treated as operating income.
- 3.4.2. The Authority observes that LPS has been treated as operating income under the existing tariff regime implemented since long on the basis that same is generated while undertaking a regulated activity. Under the existing tariff regime, income from all sources associated with regulated activity is adjustable in the revenue requirement. Accordingly, the Authority maintains its decisions and treats the income on account of LPS as operating income.
- 3.4.3. The Authority however observes that the petitioner in the petition for FRR FY 2015-16 has claimed the costs on account of late payments to gas producers /circular debt and Gas development surcharge, with cumulative impact of previous years. The



same has been deliberated and in principle agreed in DERR FY 2016-17. The petition for FY 2015-16 is under consideration; accordingly adjustment on this account shall form part of determination of FRR for FY 2015-16.

3.5. Transmission and Distribution Cost (*Human Resource (HR) Cost, Legal and Professional Charges*)

- 3.5.1. The Authority observes that review on subject matters has been claimed despite detailed elaboration and discussion made in the impugned decision. Further, no new evidence or plausible justification has been advanced to review the subject components. *Accordingly the Authority maintains its earlier decision and rejects the petitioner's claim on the subject matter.*

3.6. Transmission and Distribution Cost - Provision for Doubtful Debts

- 3.6.1. The Authority observes that it has made detailed discussions in the decision for Final Revenue Requirement for FY 2012-13 and has accordingly decided the matter on the basis of rationale and well defined benchmark. Further, the same issue has been extensively deliberated again in recently issued Determination of Estimated Revenue Requirement (DERR FY 2016-17) which conclusively follows Authority earlier decision. There are as such no new grounds or plausible justification to review the expenses under this head. The Authority therefore decides to maintain its earlier decision as follows;

Domestic Consumers (including bulk domestic):

- Unsecured debt having age up to three month Nil*
- Unsecured debt having age over three months and up to 12 month.....25%
- Unsecured debt having age over 12 month 100%.

All other (Commercial and Industrial Consumers):

- 25% of the total claimed by the petitioner as per its company's policy. However, the balance of provision can be considered in the following circumstances;



Cogent reasons exist for increase in provision for doubtful debt for commercial and industrial consumers; duly supported by consumer wise following details;

- (a) Name and category of consumer
- (b) Amount outstanding against the consumer
- (c) Reasons for creating provision
- (d) Amount of provision
- (e) Security held against the consumer/ adjusted against outstanding.
- (f) Age analysis

3.7. Other Operating Income and Prior Years Adjustment

- 3.7.1. The petitioner has submitted that Authority in FRR for the said year has treated the entire income on account of "liquidity damages", amounting to Rs. 41 million, as operating as against its earlier decision in FRR FY 2004-05 which includes such income as operating to the extent of 50% (i.e; 21 million).
- 3.7.2. Regarding the prior Year Adjustment, the petitioner has elaborated that during FY 2011-12 incomes on account of default gas from Rehmat Gas field amounting to Rs. 366 million, which is non-operating as per Authority decision, has been inadvertently credited to cost of gas thereby reducing the operating cost. The same now has been claimed as expense item in order to offset its impact in the revenue requirement.
- 3.7.3. *The Authority observes that petitioner contention is as per record. Accordingly, the same, amounting to Rs. 387 million, is acceded for the said year.*

3.8. Operating Fixed Assets

- 3.8.1. The petitioner has submitted that the Authority in its determination of FRR for FY 2012-13 dated November 5, 2015 allowed Rs. 213 million under the head

- 18 -

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"motor vehicles" as against Rs. 268 million requested by it. The Authority allowed Rs. 150 million under the said head at the time of ERR.

- 3.8.2. The petitioner has enclosed reconciliation of the amount capitalized under the said head during FY 2012-13 stating that it revealed that the capitalization is well within the amount approved by the Authority with reference to the amounts approved in this head in the last three fiscal years i.e. 2010-11 to 2012-13. The remaining amount of Rs. 50 million was capitalized during FY 2012-13. It has been requested that the said amount of Rs. 50 Million may be approved under the head "motor vehicles" during FY 2012-13.
- 3.8.3. *The Authority allows the amount of Rs. 50 million for the said year pertaining to previous years adjustments. The financial impact of the same in terms of depreciation and return computes to Rs. 10 million for the said year.*
- 3.8.4. In view of the foregoing, the petition is hereby disposed of and *the net adjustment of the instant petition shall form part of FRR FY 2015-16.*

(Noorul Haque)
Member (Finance)

(Aamir Naseem)
Member (Gas)

(Uzma Adil Khan)
Chairperson

Islamabad, October 26, 2016

REGISTRAR
Oil & Gas Regulatory Authority
Islamabad