

IN THE MATTER OF
REMANDED CASE FROM HON'BLE
LAHORE HIGH COURT LAHORE IN WRIT
PETITION NO. 112909/2017 TITLED NOOR
LPG CO. (PVT.) LIMITED REGARDING
REGULAION OF SIGNATURE BONUS

UNDER

LPG (PRODUCTION & DISTRIDUTION)
RULES, 2001
LPG (PRODUCTION & DISTRIDUTION)
POLICY, 2016
&
SECTION 21 of OGRA ORDINANCE, 2002

DECISION

June 22, 2018

BEFORE:

Ms. UzmaAdil Khan, Chairperson
Mr. Noorul Haque, Member (Finance)
Dr. Abdullah Malik, Member (Oil)

Three handwritten signatures in blue ink are present at the bottom of the page. The first signature is a simple 'AZ' in cursive. The second is a more complex, stylized signature. The third is a signature that appears to be 'MA' with a long horizontal stroke extending to the right.

TABLE OF CONTENTS

1. Background.....	1
2. Relevant Rules & Regulations	1-3
3. Notice of Hearing.....	3
4. Stance of LPG Mktg. Co's and Producers	3-4
5. Authority's observation during Hearing.....	4
6. Proposals submitted by PPL.....	4
7. Proposals submitted by Petroleum Gas	5
8. Proposals submitted by Tez Gas/ LPGAP.....	5-6
9. Authority Decision	6-8

 



1. Background

1.1. Hon'ble Lahore High Court, Lahore vide judgment dated 27-02-2018 passed in Writ Petition No.112909/2012 titled "Noor LPG Co. Pvt. Ltd Vs OGDCL etc"., has decided the case, whereby the operating /relevant para. provides as under;

"Under the circumstances, it is held that charging of Signature Bonus needs to be regulated by OGRA, therefore, these petitions are transmitted to OGRA for necessary action."

1.2. In pursuance of the decision of the Hon'ble Lahore High Court, Lahore, OGRA conducted hearings on April 12, 2018, April 25, 2018 and May 03, 2018 in OGRA office Islamabad, which were attended by representatives of LPG producers, marketing companies, consumers, Government Holdings Private Limited and Ministry of Energy, etc.

1.3. The facts leading to this issue is that a dispute has arisen between the seller and the buyer i.e; LPG producers mostly in public sector and LPG marketing companies, on account of charging of signature bonus during the auction of LPG, in view of LPG price regulated regime after promulgation of LPG Policy 2016 and amendment in LPG Rules 2001,

2. Relevant Laws, Rules & Regulations

2.1. Ministry of Energy (the then Ministry of Petroleum and Natural Resources) vide letter dated March 24, 2016 forwarded LPG Policy 2016, approved by the CCI, to OGRA for implementation with the direction that OGRA will amend the rules and regulations to give effect to the Policy 2016. In LPG policy 2016, it has been provided to regulate LPG prices. This is a major shift from deregulation to regulation. Prior to Promulgation of LPG Policy 2016, LPG producer and consumer prices were deregulated.

2.2. The implementation of the LPG Policy 2016 required certain amendments in OGRA LPG (Production and Distribution) Rules 2001 as a legal requirement as per Section 4.2 of LPG Policy 2016 in order to give effect to LPG Policy 2016 in its true letter and spirit. Cabinet Division vide its letter dated 19th September, 2017 furnished gazette



notification S.R.O.68(KE)/2017 regarding amendments in LPG production and Distribution Rules, 2001 for necessary action. Section 21 of OGRA Ordinance 2002, relevant sections of LPG Policy 2016 and LPG rules 2001 are reproduced below:

2.3. Section 21 of OGRA Ordinance 2002

“Powers of the Federal Government to issue policy guidelines. -(1) 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 the exercise of its powers and functions and in making decisions.”

2.4. LPG Pricing: Section 3.4.1 of LPG Policy states; Subject to Policy Guidelines of the Federal Government, the Oil and Gas Regulatory Authority will regulate and notify the prices of indigenous LPG including Producers’ Price, Margins of Marketing and Distribution Companies and Consumer Prices.

2.5. Section 3.4.5 of LPG Policy 2016 states that LPG prices will be regulated with a Maximum Price at all levels of the supply chain however producer, marketing companies and distributors may sell below the maximum price determined from time to time.

2.6. Rule 18(I) & 18(2) of LPG (Production and Distribution) Rules, 2001

“Subject to Policy Guidelines of the Federal Government, the Oil and Gas Regulatory Authority shall regulate and notify the prices of indigenous LPG including Producers’ Price, Margins of Marketing and Distribution Companies and Consumer Prices as may be revised by Ministry of Petroleum & Natural Resources from time to time. Moreover, Rule 18(2) states “A license shall charge from another licensee or a consumer, price of LPG base-stock and LPG as notified by the Authority in pursuance of prevailing LPG policy of the Federal Government. The Licensee shall also publicize such prices in the media for information of the public and shall also inform about such prices to the Authority. LPG prices shall be regulated with a maximum price as notified by OGRA at all levels of the supply chain. However, Producers, marketing companies and distributors may sell below the maximum notified price. In case licensee intends



to sell below the notified prices, the same shall be intimated to the authority forthwith and licensee shall re- publicize such prices in the media without delay.”

3. Notice of Hearing

3.1. OGRA, in compliance to the Judgment/Order decision of the Hon’ble Lahore High Court’s dated February 27,2018 in Writ Petition No. 112909/2012 titled Noor LPG vs OGDCL along with other identical petitions and in accordance with Section 9 of OGRA Ordinance, 2002, provided opportunity of hearing to LPG public producers and LPG marketing companies on 12th April, 2018, 25th April 2018 and 3rd May, 2018 at OGRA office Islamabad with a direction to make formal presentation along-with submissions / proposals regarding LPG pricing / Signature Bonus issue for consideration of the Authority to take appropriate action/decision.

4. Stance of LPG Marketing Co.’s& LPG Producers during hearing

4.1. During the hearings, LPG marketing companies were of the view that LPG producers were charging hefty signature bonus over and above the notified price of OGRA and the same cannot be charged in a regulated price regime as it is against the spirit of LPG Policy 2016. The Legal Counsel for marketing companies pleaded that article 153 of the Constitution of Pakistan 1973 and LPG Policy 2016 are binding for regulator. It was also suggested the Authority to constitute committee comprising of experts, lawyers, professionals in order to review the entire bidding process and find workable solution. The Authority however disagreed with the proposal since it was not relevant to legal framework and the Hon’ble Court judgment.

4.2. LPG producers were of the view that the role of OGRA is not limited to issue LPG price notification but it has to regulate margin of companies. Since signature bonus is a part of LPG marketing Company’s margin, therefore the same has to be regulated by OGRA. Producers were also of the view that as per section 3.1.1 of LPG Policy 2016, LPG has to be disposed off in a transparent manner and without adopting competitive bidding process, there will be not only a violation of section 3.1.1 of LPG Policy 2016 but it can promote a culture of favoritism w.r.t LPG quota allotment. LPG producers were also of the view that signature bonus has no relation with notified price of OGRA and the same is charged for securing long term contract from buyers as LPG producers have limited

AL  



storage capacity therefore the same has to be disposed on urgent basis. Representative of producing companies made distinction between proviso 3.41 and 3.45 of LPG policy, expressed about the maximum price, notifying price, and discussed in detail the bidding process.

5. Authority's observation during Hearing

5.1. After hearing all concerned parties, the Authority observed that since all parties are agreed to resolve the matter with joint consultation. Therefore it was decided to constitute a committee comprising of representatives from LPG marketing companies, i.e., Noor LPG , Petroleum Gas and LPGAP and LPG producers i.e. OGDCL. GHPL, PPL with the direction to come up with concrete proposals on the next date of hearing i.e. 03-05-2018 before the Authority.

5.2. The proposals were submitted by the stakeholders are as under;

6. Proposals submitted by Pakistan Petroleum Limited

6.1. Competitive bidding on signature bonus to be paid by marketing companies out of their margin for 3 plus years with yearly payment of signature bonus. This will reduce the financial exposure of the buyers. In order to reduce the chances of one high quoting spoiler in the bidding, PPL suggested that the top 5 bidders average will be taken as the highest quoted price for price matching purpose. Bidders who have quoted higher price will be offered the LPG on their quoted price. Lot size and number of lot restriction will apply.

6.2. It was also suggested that OGRA may allow producers to hold spot bidding exercises for a period of six months on signature bonus to be paid out of the margin of the marketing / distribution companies over and above the OGRA notified producer price. The bid will be for 5 MT lot size and a bidder can quote up to a maximum of 5 lot size.

6.3. Bidding exercise has to be held with the intervention of OGRA. The terms and condition of the bid document shall be pre-approved by OGRA based on signature bonus to be paid out of the margin of the marketing / distribution companies over and above the OGRA notified producer price. If the signature bonus is unreasonably excessive, OGRA may reject any or all bids. Lot size and number of lot restriction will apply.



7. Proposals submitted by Petroleum Gas (Pvt) Ltd

- 7.1. The criteria for allocation of petroleum products includes the strength of the OMC, its physical infrastructure as well as its ability to off- take product, not its ability to deposit the highest Signature Bonus.
- 7.2. As per Petroleum Gas understanding that the ex-Refinery price for petroleum products is arrived at after equating their prices with those of the landed cost of imported product.
- 7.3. A proposal is under consideration to pool RLNG and natural gas in one basket and arrive at a weighted average cost of gas price. A similar model can be adopted in the case of LPG price, especially if the GOP aims to subsidize the cost of imports through the PL collected.
- 7.4. Reverse auction or bidding at or below the maximum price as notified by the Authority. This mode of auction was actually used by PPL in 2011.
- 7.5. A profit sharing mechanism with LPG producers subject to transparent and non premium based allocations can be worked out as a good will gesture to producers.
- 7.6. Through a technical competitive bidding process where parties qualifying can have product distributed based on market share e.g. 10% of the product to companies having market share in excess of 5%,10% to those with a share of more than 3% and so on.

8. Proposals submitted by Noor LPG / Tez Gas / LPGAP

- 8.1. That Producer invite all licensed marketing companies to compete for 10 year supply contracts against monthly advance payment of the maximum notified price in a tender process where each of the interested parties submits a sealed offer of discount on maximum consumer price in percentage terms. By way of illustration if 150 marketing companies compete for lots of 10 MT to be sold at the maximum notified price and best proposal is 10% discount on the maximum consumer price then the bid of 10% will be declared the highest and the marketing company submitting the bid will be entitled to a contract for supply of a lot of 10 MT/day. If the quantity offered for sale is in excess of 10 MT/day, the next highest bidder can be allotted a further lot of 10 MT/day and the proposed process can continue until the tendered quantities have been sold. Elimination of the matching process in the method proposed above will help to avert the possibility



of the process being rigged by or at the behest of a competing industry, such as oil marketing company to frustrate the policy of making LPG available at affordable prices.

- 8.2. Tez Gas / LPGAP had also submitted two proposals with regard to competitive bidding on the basis of capacity and competition subject to maximum price are given below:-
- 8.3. **Proposal 2:** Tender process on the basis of capacity of LPG marketing company (LPG storage plant/ Number of LPG cylinders).
- 8.4. **Proposal 3:** Tender process on the basis maximum supply of LPG to underdeveloped areas (LPG price will not exceed the notified price).
- 8.5. Moreover, the proposal No 4. has been withdrawn by Noor LPG/ Tez Gas and LPGAP.

9. Authority Decision

- 9.1. Authority thoroughly examined all relevant data/information, legal provisions and carefully heard the proposals/suggestions/input forwarded (verbal/written) by all concerned parties i.e. LPG Marketing Companies, LPG Producing Companies, Consumers and Representative of Federal Government, Ministry of Energy, and GHPL.
- 9.2. The Authority observes that the charge of signature bonus results in increase in the producer's LPG base stock price, escalate the market and may exceed maximum producer price notified by OGRA. This impairs the consumers' interests and policy provisions which focus that LPG is a poor man's fuel, accordingly it must be at affordable price limits. *The Authority therefore decides that LPG producers, in public or private sector, cannot charge Signature Bonus, in compliance to LPG policy in letter & spirit.*
- 9.3. The Authority further considers that the proposal No. 1 submitted by of Noor LPG/ Tez Gas / LPGAP (at Para 8.1) and a similar proposal submitted by Petroleum Gas), calls for disposal of LPG to the marketing companies on the basis of highest discount offer (reverse competitive bidding) in terms of percentage of LPG consumer price. The Authority considers the proposal as workable.
- 9.4. *The Authority, after considering all aspects of the case, considers that the proposal of reverse competitive bidding in transparent manner is in line with the legal framework since it fulfills the requirement of section of 3.1.1 & 3.4.5 of LPG Policy 2016 as well as rule 18(2) of LPG (Production and Distribution) Rules 2001."* In this regard, the Authority considered and analyzed various proposals submitted by the stakeholders.



- 9.5. The Authority, for the sake of simplicity, advises that the marketing companies should bid for a particular lot in terms of discount quoted in Rs. /MT and the company offering highest discount from their marketing margin to the consumer should be awarded the lot.
- 9.6. Further, in order to ensure equal opportunity and avoid cartel, the Authority decides that producers to offer bids for 5 M.T lots for one year.
- 9.7. In order to ensure ease of implementation/enforcement of the proposal and ensure availability of cheaper indigenous LPG to consumers, the Authority further directs that the LPG marketing companies to apply the highest discount among its winning bids from all the public and private producers to its consumer price the tenure of the contract of supply. For example, if the company secures supply of three lots at the discount of Rs. 1,000/ton, Rs. 1,500/ton and and Rs. 2,000/ton from three different producers, then the LPG marketing company will apply 2,000/ton to its consumer price for its indigenous LPG price. This shall create a competitive market in the sector.
- 9.8. In view of above, the Authority disposed off the matter remanded to OGRA.

Dr. Abdullah Malik
(Member Oil)

Uzma Adil Khan
(Chairperson)

NoorulHaque
(Member Finance)

The Islamabad,
June 22, 2018



Abbreviations

CCI	Counsel of Common Interest
CCP	Competition Commission of Pakistan
FG	Federal Government
GHPL	Government Holding Private Limited
GST	General Sales Tax
KPOGCL	Khyber Pakhtunkhwa Oil and Gas Company Limited
LPG	Liquefied Petroleum Gas
LPGAP	LPG Association of Pakistan
MOE	Ministry of Energy
OGRA	Oil & Gas Regulatory Authority
OGDCL	Oil & Gas Development Company
PPL	Pakistan Petroleum Limited
WP	Writ Petition

Hearing date 12-4-2018, 25-4-2018 and 03-5-2018

Sr. No.	Name	Company
1.	Sardar Qasim Farooq Ali, Legal Counsel	
2.	Muhammad Umer Qureshi, Legal Counsel	Gold Gas, Noor LPG, Tez Gas
3.	Ms. Sara Seerat, Barrister at Law	Petroleum Gas Pvt. Ltd
4.	Jam Omair Ahmad, DGM	GHPL
5.	Muhammad Arif, ACFO	GHPL
6.	Ali Jaffar, SM	PPL
7.	Umair Majeed Malik, Barrister at Law	OGDCL
8.	Riaz Mirza	
9.	Atta Mohammad Khakwani	
10.	Syed Muhammad Ahsen, Dy. Director	Petroleum Division
11.	Munawar Ahmed	
12.	Hassan Ahmed	
13.	Ahmed Omer Khan	OK Gas
14.	AamirMughin	Azhar Associates
15.	Hassan Ahmed	
16.	Muhammad Rizwan	
17.	AbidAshfaque Malik, GM	PPL
18.	Syed Ijaz Ali Shah, Law Officer	OGDCL
19.	Riaz Mirza, M (Commercial)	OGDCL
20.	Dr. Syed Ahmad Nadeem, GM (Com)	OGDCL
21.	Mujtaba Hameed, Director	Petroleum Gas
22.	Farooq Iftikhar, Chairman/CE	LPGAP/TEZ Gas
23.	Mahmood Azam Awan, Counsel	Petroleum Gas
24.	Muhammad Arif, CEO	GHPL
25.	Ms. HabibaAlvi, Counsel Tariq Aziz	
26.	Azhar Siddique	
27.	Representative	Gold Gas
28.	Muhammad Uzair Khalid	
29.	OwaisShakeel Khan, CE	GoKP
30.	M. RizwanulHaq, ED (Legal/Litigation)	OGRA
31.	Atif Sajjad, JED (F-1)	OGRA
32.	Imran Akhtar, JED (LPG)	OGRA
33.	Abdul Basit Qureshi, Registrar	OGRA
34.	Kamran Jamshaid, JED	OGRA
35.	Aziz Ullah Khan, DED	OGRA
36.	KhurramNaeem Khan, Sr. Economist	OGRA

AL  AA