



OGRA-9(247)/2021

October 1, 2021

Managing Director
SSGCL, St-41B,
Block 14, Sir Shah Suleman Road,
Gulshan-e- Iqbal,
KARACHI

Managing Director,
SNGPL, 21 Kashmir Road,
Gas House,
LAHORE

Subject: - **DETERMINATION OF UFG IN RESPECT OF PROVISIONAL RLNG PRICE**

Dear Sir,

Please find enclosed herewith a certified copy of the decision of the Authority dated October 1, 2021 (*consisting of 10 page*) for compliance, please.

Best Regards,

(Dr. Abdul Basit Qureshi)
Registrar
(For & on behalf of the Authority)

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Oil & Gas
Regulatory Authority

No. OGRA-9(247)/2021

IN THE MATTER OF

DETERMINATION OF UFG IN RESPECT OF
PROVISIONAL RLNG PRICING

DECISION

October 01, 2021

Before:

Mr. Masroor Khan

(Chairman)

Mr. Muhammad Arif

(Member Gas)

Mr. Zain-Ul-Abideen Qureshi

(Member Oil)

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1. **BACKGROUND:**

- 1.1. Import of LNG/ RLNG started in Pakistan in the year 2015. In this respect all the stakeholders including Federal Government and Regulator have implemented various policies and taken initiatives to efficiently deliver the energy to prospective consumers.
- 1.2. In order to facilitate monthly notification of the RLNG prices, which is not covered under the OGRA Ordinance, the Federal Government, declared RLNG as a petroleum product vide S.R.O. 405 (I)/2015 dated 7th May, 2015 under Petroleum Product (Petroleum Levy) Ordinance, 1961 and Petroleum Products (Petroleum Levy) Rules, 1967 and delegated OGRA to determine RLNG prices on a monthly basis similar to pricing of other petroleum products through Economic Coordination Committee (ECC) decision dated 06.05.2015. Moreover, ECC decisions dated 27.07.2015 and 27.06.2016 are referred for RLNG pricing besides other relevant ECC decisions, where principles/ parameters decided thereupon by the Federal Government form the basis of monthly RLNG price determination by OGRA under ringfenced mechanism so as to recover all directly attributable costs from RLNG consumers.
- 1.3. Monthly RLNG prices have to be initially determined on provisional basis and are subject to actualization based on final and authentic actual figures in respect of all pricing components. UFG is one of the components of RLNG pricing for which relevant extracts of different ECC decisions as under:
- 1.3.1. ECC of the Cabinet on case No. ECC 52/07/2015 dated 09.04.2015 and Case No. ECC-62/08/2015 dated 23.04.2015 respectively approved following along with other proposals:
“vii The volume and prices of RLNG sold to consumers may be ring fenced and considered separately for UFG benchmarking/ disallowance purpose only.”
- 1.3.2. ECC of the Cabinet on Case No. ECC-6/2/2016 dated 28.01.2016 approved following along with other proposals:
(ii)..... that RLNG pricing will be ring fenced and all directly attributable costs will be charged/ recovered from RLNG consumers without affecting the consumer relying on domestically produced gas.
- 1.3.3. ECC of the Cabinet on Case No. ECC-87/11/2015 dated 06.06.2015 approved following along with other proposals:
(vii) Transmission losses at 0.5 % and distribution losses, if any (to be determined by OGRA)”
- 1.3.4. ECC of the Cabinet on Case No. ECC-72/12/2016 dated 14.06.2016 approved following along with other proposals:
“vii. Transmission loss to be determined and charged at actual subject to a maximum of 0.5 % (to be shared by gas companies based on length of Transmission line involved).

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viii. *Distribution Loss to be determined and charged at actual. The said loss for the customers located on high pressure transmission lines as well as those customers who are willing to lay their dedicated line from SMS/ TBS at their own cost shall also be determined and charged at actual. However, for other customers on distribution lines, an actual average UFG for the last financial year will taken in determination."*

- 1.4. UFG figure of the indigenous gas supply system as per last available FRR of the gas companies was being included in the provisional RLNG price computations upto July, 2020. However, on the basis of comprehensive review of all the relevant ECC decisions, it was held that UFG as claimed by the gas companies for the domestic gas was not relevant, as is elaborated elsewhere in this decision. The matter was reviewed by the Authority in the light of relevant policy guidelines and through majority decision, the Authority observed that both the companies do not have separate RLNG measurement mechanism at their Transmission & Distribution network and indigenous gas and RLNG are commingled. Moreover, determination of actual UFG separately for indigenous supply and RLNG requires independent and in-depth review, verification, analysis, due diligence to segregate the actual purchases, sales, GIC, free gas facility etc. and ascertain the respective UFG and its components, which can only then be taken as 'determined' by OGRA.
- 1.5. In view of the above, the Authority for the purpose of provisional RLNG prices for FY 2020-21, allowed UFG percentage at 0.12 % and 0.38 % for transmission system of SSGC and SNGPL respectively. In case of distribution loss, it has been decided that since separate actual average UFG on RLNG for the last financial year was not available, distribution loss similar to UFG % allowed in respect of indigenous supply as per DERR for last FY 2019-20 at 6.3 % be adopted for RLNG prices on provisional basis.
- 1.6. Although after classification of RLNG as "petroleum product" and monthly price notifications, the requirement of hearing has been dispensed with, however, it is on the basis of recent Lahore High Court (LHC) decision in WP # 63814/2020 and Islamabad High Court (IHC) decision in WP # 3064/2021, that the Authority held hearings in respect of UFG component in RLNG price and representatives including lawyers of the two companies were heard. Hence, this decision.

2. ADJUDICATION IN HONOURABLE HIGH COURTS

2.1. WRIT PETITION No. 63814/2020-LAHORE HIGH COURT, LAHORE

- 2.1.1. SNGPL filed WP No. 63814/2020 titled SNGPL Vs FOP etc before Honourable Lahore High Court, Lahore against OGRA's decision dated 11.11.2020 of RLNG (Provisional Price) for the months of August till November, 2020. The Honourable Court vide Judgment dated 19-07-2021 accepted the petition with the following directions given at para 19 of the decision:

"In conclusion, this petition is allowed. The Decision of 11.11.2020 is null and without lawful authority. Consequently, OGRA shall determine the UFG for the consumers on RLNG network at actual average UFG of last financial year and policy guidelines dated 27.06.2016 issued by the Federal Government for the period in dispute"

- 2.1.2. It is pertinent to mention that in Para-3 of the aforementioned Judgment the period in dispute has been mentioned till May 2021 with no specific directions for the subsequent months. The relevant extract from para-3 of the judgement is given as under:
".....The computation was initially made for the month of August 2020 and according to the learned counsel for the petitioner, the basis for

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computation for the said month has been followed for subsequent months till May, 2021. Thus, pendente lite the period has stretched to May 2021 which is in dispute (period in dispute)..."

2.2. WRIT PETITION No. 3064/2021-ISLAMABAD HIGH COURT, ISLAMABAD

2.2.1. SSGCL filed WP No. 3064/2021 titled SSSGC Vs FOP etc before Honourable Islamabad High Court, Islamabad against OGRA's decision dated 11.11.2020 of RLNG (Provisional Price) for the months of August till November, 2020. The Honourable Court vide interim order dated 01-09-2021 has directed as follows:

"Till the next date of hearing OGRA is restrained from determining the UFG while determining the sale price of RLNG for the petitioner in a manner otherwise than specifically provided in the policy guidelines dated 27.06.2016 issued by the Federal Government."

2.3. WRIT PETITION No. 49178/2019- LAHORE HIGH COURT, LAHORE

2.3.1. Vide judgment dated 13-12-2019 passed in Writ petition No. 49178/2019 titled Ejaz Textile Mills Ltd Vs FOP & others, the Honourable Lahore High Court, Lahore accepted the petitions and held as following:

"(i) The RLNG price determinations by OGRA, at the time of actualization of the prices, for a given financial year, should be done after holding a public hearing in terms of Section 9 of the 2002 Ordinance;

(ii) Where a determination is made after granting a public hearing, in the event that OGRA reviews or re-hear any portion of that determination, which will directly and adversely impact the rights of the petitioner, it will grant a right of hearing before making a decision under Section 13 of the 2002 Ordinance;

(iii) For the purpose of the impugned determination of 7.10.2016, 2.6.2017 and 20.6.2017, interim orders have been passed by this Court on account of which adjustments are required to finalize the amount due from the Petitioners. OGRA is directed to fix a public hearing before issuing revised bills, in order to hear and determine on the objections raised by the Petitioners with reference to UFG, cost of services and transmission and distribution losses.

2.3.2. OGRA has filed ICA No. 3443/2020 against the above referred judgement, which is pending before Honourable Divisional Bench of Lahore High Court, Lahore.

3. HEARING PROCEEDINGS

3.1. First hearing opportunity with respect to UFG component in RLNG price determination in the light of directions of Honourable High Court, was given to the gas companies on 14.09.2021, however, the companies neither timely informed nor appear for hearing on the said date. Thereafter, another notice for hearing was issued on 16.09.2021 wherein it was clearly mentioned that hearing is being conducted to determine monthly price of RLNG inline with Federal Government Policy as re-enforced by judgement of Lahore High Court to assist the Authority in reaching provisional determination as close to parameters of the governing policy. Accordingly, hearing was held on 21.09.2021 where opportunity was given to SNGPL

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& SSGCL to submit their point of view in the matter. In response to the second notice, hearing was attended by the following:

SNGPL

- i. Mr. Qaisar Masood (SGM)
- ii. Mr. Liaquat Nehra (I/C RA)
- iii. Mr. Faisal Naqvi (Legal Counsel)

SSGCL

- i. Mr. Saeed Rizvi (SGM)
- ii. Mr. Syed Fasihuddin Fawad (GM RA)
- iii. Mr. Faisal Naqvi (Legal Counsel)

i. Stance of SNGPL:

- 3.2. During the hearing proceedings before the Authority, SNGPL's legal counsel stated that for the purpose of RLNG pricing till July 2020, OGRA had been applying UFG percentage as per last available FRR determined by the Authority. However, the Authority deviated from previous practice since August 2020 onwards which is against the policy guidelines of Federal Government dated 27.06.2016.
- 3.3. He added that ECC policy guidelines are clear in respect of actual average UFG of last financial year as determined by the Authority, that is to be applied for the purpose of RLNG pricing. The legal counsel further submitted that plea of SNGPL was also acknowledged by the August Lahore High Court vide its decision on WP 63814 titled SNGPL Vs FoP.
- 3.4. The legal counsel during the hearing pleaded that such decisions are required to be made after giving opportunity of hearing to the respective stakeholders by clearly defining the agenda of the proceedings. However, OGRA while revisiting its earlier practice did not provide the opportunity of hearing to both the companies. It was added that August Lahore High Court at Para 16 of the judgement on WP 63814 titled SNGPL Vs FOP has also supported the contention of the company as stated in relevant extract reproduced below:
"... if the past practice had to be abandoned or changed, it could only be done after prior notice and hearing...".
- 3.5. On query by OGRA officers, Mr. Liaquat Nehra from SNGPL during the meeting confirmed that the company has no separate mechanism for calculating separate UFGs of Indigenous gas and RLNG since both the gases are commingled and passed through same network. Moreover, in response to another question of OGRA, SNGPL stated that in the absence of separate measurement/ dedicated infrastructure, the actual UFG of RLNG system cannot be determined therefore various assumptions and estimates are adopted by the company for the purpose of computation of UFG in case of RLNG supplies while taking into account the UFG percentage of indigenous system as per last FRR.
- 3.6. The company while referring to the UFG audit being initiated by the Authority added that OGRA intends to revise the provisional prices of RLNG since 2015 onwards whereas, figures till FY 2017 has been actualized by the Authority already. The company further requested clarification in this respect.
- 3.7. The company also added that any decision of the Authority for revision in RLNG pricing mechanism should not be on retrospective basis but should be applicable from the date when decision has been made.
- 3.8. The company also showed its reservation on the approach being followed by the Authority for calculation of RLNG pricing and added that OGRA has applied 6.3 % UFG for distribution consumers only while calculating RLNG pricing. Since large number of consumers are being fed gas through transmission system, therefore, if past practice has to be changed, it should be made applicable for consumers on transmission consumers as well.

3.9. In view of the above submissions, the company requested that since FRR petition of SNGPL for FY 2019-20 has been determined by the Authority, therefore, in the light of judgement of August Court, the RLNG price from August, 2020 onwards may please be carried out as per earlier practice of OGRA.

ii. Stance of SSGCL:

3.10. SSGCL was also represented by the same legal counsel, Mr. Faisal Naqvi, who submitted that SSGCL stance in the matter is similar to SNGPL. Therefore, SSGCL adopted the submissions made by SNGPL during the hearings.

iii. Written Submissions of SNGPL & SSGCL:

3.11. During the hearing both the companies were also given an opportunity to submit written comments to the Authority highlighting their stance. Bhandari Naqvi Riaz on half of SNGPL and SSGCL responded vide its letter dated 23.09.2021, reiterating earlier verbal submissions and added as follows:

3.12. It is settled law that the requirement of natural justice is only met when a notice issued to a party is sufficient to give the affected party adequate opportunity to defend themselves. However, in the instant case, the notice issued did not specify the change in pricing policy.

3.13. The Authority did not expressly issue the impugned notifications on the basis of any stated policy, rather used a different UFG in contrast to earlier policy without giving any explanation or reasons. The absence of reasons is particularly significant because parawise comments filed by OGRA also do not contain any reasons.

3.14. Reservations regarding interpretation of term 'actual' as used to mean 'independently audited' have been raised and it was added that there is no basis for this assumption since no monthly pricing regime can be followed if all the prices are subject to independent audit. Moreover, in case if such practice is being considered, previous prices for all years prior to current financial year must be considered past and closed transaction.

3.15. UFG percentage of 6.3% utilized by OGRA for RLNG pricing notification relating to UFG losses covers both transmission and distribution losses, as determined by the Authority through ERR. In pricing notification, this value is being applied to distribution losses since transmission losses are capped at 0.5 %. In weighted average term overall UFG being allowed to the licensees in relation to RLNG prices is around 2.63% which is considered less than 6.3 % permitted by the Authority in relation to indigenous gas supply.

3.16. The Authority has relied on KPMG report for adopting 6.3 % UFG, whereas, the KPMG study deals with the domestic gas only and does not deal with RLNG pricing.

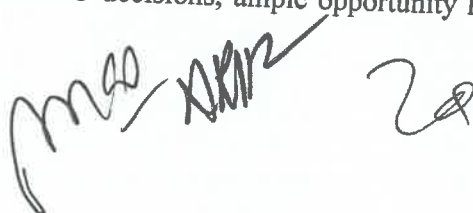
3.17. The impugned policy contradicts with the directions of the ECC that pricing was to be ring fenced. Moreover, the Authority is notifying the RLNG prices which do not take into account the actual distribution losses of the licenses which in turn means that the licensees are not being allowed to recover the full cost of providing RLNG to customers resulting in huge financial losses for the licensees.

4. AUTHORITY OBSERVATIONS ON LNG/RLNG POLICY FRAMEWORK AND DECISION-MAKING PROCESS

4.1. In order to mitigate the energy shortfall, the Federal Government in July, 2013 decided to import LNG from Qatar Gas. Since LNG import and its onwards supply as RLNG has been an evolving market, several policy decisions regarding LNG import, allocation, financing, pricing and other commercial /legal arrangements were taken by the Federal Government to materialize the LNG import transaction. The policy formulation has been kept under constant review by the Federal Government and are still underway and being developed keeping in view issues being practically encountered by different stakeholders in terms of practicability,

effectiveness and rationality. In the same perspective, OGRA also considered it prudent to review inclusion of UFG component as part of RLNG price based on assessment of the whole system practically transporting RLNG molecules to its customers. Hence the argument that "past practice" adopted by OGRA should remain implemented is totally illogical and such an argument is hit by the Authority's prerogative to review its own decisions under Section 13 of the OGRA Ordinance, 2002.

- 4.2. Monthly RLNG prices have to be initially determined on provisional basis and are subject to actualization based on final and actual figures in respect of all pricing components. In view of above and in the light of honourable Lahore High Court judgment dated 13-12-2019 passed in Writ petition No. 49178/2019 titled Ejaz Textile Mills Ltd Vs FOP & others, RLNG prices since April 2015 are subject to revision. Therefore, the contention of the companies that revision cannot be made on retrospective basis is not sustainable.
- 4.3. ECC decisions (policy guidelines) as briefly referred in para 1.3 above, provides the RLNG pricing framework whereby guiding and most significant principle is "Ring Fencing of RLNG Prices" so as to ensure charging all the directly attributable costs to RLNG consumers as well as to consider separate UFG benchmarking and disallowance. It is hence clearly established that RLNG has to be kept "Ring-Fenced" not only for cost allocation/bifurcation but also for UFG purposes. Moreover, ECC has also decided that in case of RLNG prices / supplies UFG in Transmission network is to be charged at 0.5% maximum and for distribution network "actual average UFG of last financial year is to be determined and charged".
- 4.4. In view of above stated position, OGRA has to separately determine "Actual average UFG of last Financial Year in respect of RLNG supplies" for inclusion in RLNG price. The gas companies have maintained that OGRA has determined their actual UFG as part of annual final revenue requirement decisions and the same be adopted for RLNG prices as well. This understanding is totally inconsistent with the ECC decisions and a misconception on part of gas companies as RLNG pricing framework has been separately defined by the Federal Government on ring fenced basis. OGRA has been determining the revenue requirements of gas companies whereby, in respect of UFG figures, the volumes claimed by the companies had been adjusted to arrive at their correct claims in respect of indigenous system. This correction cannot be construed as determination of "actual average UFG" for RLNG pricing purpose when gas companies themselves admit that no separate measurement mechanism is in place and volumes are being arbitrarily allocated to RLNG supplies, which is in total contrast to "Ring-fencing" as required per ECC decisions.
- 4.5. Moreover, on further analysis of gas companies' data it transpired that UFG volumes in case of RLNG are being booked by simple application of claimed UFG percentage of indigenous system, without any verification, authenticity and legitimacy of the claimed volumes. Such hypothetical figures, by any stretch of interpretation, cannot qualify as "Actual UFG" as required under ECC guidelines. In view of above position, OGRA is constrained not to consider the claimed UFG volumes as "Actual UFG" and include the same as part of RLNG prices.
- 4.6. In respect of opportunity of hearing to the Gas Companies, the Authority issued two notices in the matter of determination of UFG in respect of RLNG prices, clearly mentioning the purpose of the hearing and the agenda to be discussed. Accordingly, in order to assist the Authority in reaching provisional determination in respect of UFG as part of RLNG prices, as per relevant ECC decisions, ample opportunity has been provided to the Gas Companies to



submit their stance during the hearing as well as through written comments for which additional time was also provided. Therefore, the contention of the Gas Companies legal counsel regarding non provision of adequate opportunity to defend their stance is unjustified.

5. FINDINGS ON UFG DETERMINATION IN RLNG PRICES

5.1. In view of the discussions, deliberations and factual /legal position stated in preceding paras following has been concluded in respect of determination of UFG component of RLNG prices:

- 5.1.1. Both companies do not have separate RLNG measurement mechanism at their Transmission and Distribution Networks.
- 5.1.2. Indigenously produced gas and RLNG are comingled and supplied through the same distribution network and through the same/single consumer meters.
- 5.1.3. Both gas companies are arbitrarily allocating domestically produced gas and RLNG supplied to consumers.
- 5.1.4. RLNG is to be ringfenced in terms of accounts and systems sufficient to enable determination of actual distribution loss. Both the companies are not maintaining any mechanisms to effectively achieve objectives of ringfencing.

5.2. In view of above and under the prevailing circumstances, determination of actual UFG separately for indigenous supply and RLNG, requires independent and in-depth review, verification, analysis, due diligence and calculation of actual purchases, sales, GIC, free gas facility, amount claimed against rupture.

5.3. Furthermore, the gas companies have misinterpreted the decision of OGRA and termed it as deviation from the ECC policy guidelines. In this reference OGRA holds that it has not deviated from the relevant ECC policy guidelines, rather it is ensuring correct and strict implementation of the same for determination of actual distribution loss. Accordingly, OGRA through the services of international technical, commercial and management auditors, has initiated the process for determining actual UFG of gas companies in respect of indigenous gas as well as imported RLNG.

5.4. Subsequent to the finalization of the said audit and in strict compliance of ECC decision/policy guidelines, UFG values provisionally charged to RLNG consumers (including those impugned by Gas companies for the period August 2020-May 2021) shall be adjusted based on actual average UFG of RLNG for last financial year as determined by OGRA.

6. DECISION:

6.1 In view of the above observations, findings and after hearing the stance of SNGPL & SSGC, and considering the practical impediments, realities on grounds and prevailing circumstances, the Authority decides as follows:

- 6.1.1. Until RLNG ring fencing mechanism is actually implemented, UFG percentage allowed in Estimated Revenue Requirement of latest financial year shall be applied in respect of the commencing financial year on provisional basis for consumers on distribution network, subject to retrospective adjustment based on independent external audit.

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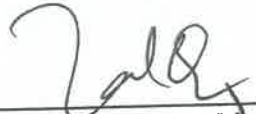
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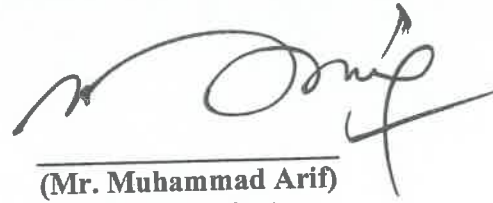
Determination of UFG in Respect of Provisional RLNG Pricing

6.1.2. For Transmission network, UFG shall be allowed @ 0.12 % for SSGC and 0.38 % for SNGPL for any fiscal year in progress on provisional basis, subject to actualization, in line with the ECC decision.


6.2. In case any party is aggrieved with this decision of the Authority, it may file review under Section 13 of OGRA Ordinance, 2002.



(Mr. Zain-ul-Abideen Qureshi)
(Member Oil)



(Mr. Muhammad Arif)
(Member Gas)



(Mr. Masroor Khan)
(Chairman)

Dated: October 01, 2021


REGISTRAR
Oil & Gas Regulatory Authority
Islamabad