

BEFORE:

Mr. Masroor Khan, Chairman

Mr. Muhammad Arif, Member (Gas)

Mr. Zainulabideen Qureshi, Member (Oil)

In the matter of

Case No. OGRA-26-3(270)/2021

**REVIEW FILED BY M/S SUI NORTHERN GAS PIPELINES LIMITED AGAINST
AUTHORITY'S DECISION DATED 13-07-2021 IN RESPECT OF THE
EXTENSION IN THE LICENSE GRANTED FOR CONSTRUCTION OF LPG AIR-
MIX PLANT AND DISTRIBUTION OF LPG AIR-MIX THROUGH PIPELINE AT
GILGIT.**

PRESENT:

Representatives of the Petitioner:

- i. Mr. Faisal Iqbal, Chief Financial Officer
- ii. Mr. Imran Yousaf Khan, Senior General Manager (ES/C)
- iii. Syed Shoukat Hussain, General Manager (LNG-LPG)
- iv. Mr. Liaqat Ali Nehra, In-charge (Regulatory Affairs)
- v. Mr. Irfan Baig, Chief Engineer (LNG-LPG)
- vi. Mr. Saulat Rasheed Lone, Chief Engineer; (P&D)

Date of Hearing:

11-11-2021

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DECISION

Background of the Case:

1. In the titled Review, M/s SNGPL (the petitioner) vide letter dated 11th August, 2021 has filed a review petition under Section 13 of OGRA Ordinance, 2002 against Authority's Decision dated 13th July, 2021.
2. The petitioner was granted a Licence for Construction of LPG Air-Mix Plant at Gilgit on 28th June, 2019 for two (02) years with the validity of Licence till 27th June, 2021 for the LPG Storage Capacity of 2 x 50 MT.
3. The Petitioner, before expiry of Construction Licence, filed a request in OGRA on 20th May, 2021 for extension in Construction Licence with the reasons briefed below:

"NOC from DC, Gilgit was obtained on 14th May, 2019 and NOC from Gilgit Baltistan EPA was obtained on 15th July, 2019, however the project activities could not be initiated without obtaining prior approval of the Authority to allow capital cost of project in SNGPL's Revenue Requirement and the same was granted by OGRA on 03rd October, 2019 after which design was initiated. The Civil and electrical construction tender was advertised on 22nd March, 2020 and due to covid-19 lockdown the bid submission was extended till 05th May, 2020. The Election Commission of GB issued a notification on 18th May, 2020 that no development scheme shall be awarded, tendered or otherwise till the time next elections are held and new Provincial Government is established. The Company took up the matter with Election Commission of GB and was granted permission on 08th July, 2020 in the larger interest of the public to proceed with the project. The construction activities at site were started by the contractor on 24th October, 2021 and expected completion dated in 27th February, 2020. The Company stated that they had spent Rs. 268/- Million so far and that the construction activities may slow down during winters. The Company has therefore requested to grant extension in Construction Licence for 1 year and has submitted Rs. 100,000/- as extension fee."

Proceedings of the LPG Department and Decision of the Authority dated 13-07-2021:

4. The petitioner's request was examined and considered by the Authority and it was informed to the petitioner vide OGRA's letter dated 13th July, 2021 that the same was found unjustified and contrary to the facts by the Authority on the basis that DC, Gilgit granted NOC on 14th May, 2019, EPA granted approval on 15th July, 2019, OGRA's Decision of ERR (FY 2019-20) for approval of Rs.454Million for said project was issued on 03rd October, 2019. The petitioner, as per its own statement, did not start construction works till 24th October, 2020 and that the pictures submitted alongwith its request also exhibit that project is still at initial stage. The petitioner mis-reported project progress status to GOP/ECC of Cabinet and the later only allowed those Air-Mix Plants which were near completion in its meeting held on 26th March, 2020 in Case No. ECC-98/12/2020 conveyed to Petitioner vide letter No. LG-16(1)/2019-LPG Air Mix Plants dated 09th April, 2020 while the Construction was not even started in April, 2020, hence the company got ECC approval on misrepresentation to the Federal Governments Highest Forum. SNGPL did not even submit the quarterly progress reports to OGRA on regular basis, hence committing breach of Licence Condition No. (xix) of the Construction Licence. Even the pictures of the project submitted by Petitioner vide its letter dated 20-5-2021 shows that the project is in its initial stage. However, the Petitioner claimed that it has already spent Rs.268Million on the project vide its application for extension dated May 20, 2021.





5. The Petitioner was further informed that its request for extension in Construction Licence cannot be acceded to by the Authority as it is not being justified in the light of the applicable Rule 8(2) of LPG Rules 2001 and based on the mis-statement of facts and incorrect reporting by the petitioner to the highest forum i.e. ECC of Cabinet and considering that the petitioner did not timely start the Construction works despite availability of project funding and NOC's.

Review Petition filed by the Petitioner:

6. Being aggrieved, the Petitioner filed a Review Petition in OGRA on 11th August, 2021 against aforesaid decision and submitted that after necessary approvals from the Authority in October, 2019, design works and preparation of tender documents were initiated immediately. Design drawings and specifications for civil works were prepared considering the hilly terrain and site verifications along with testing were done for soil investigations and geotechnical surveys for which considerable time was required. Tender was advertised on 22.03.2020.
7. That delay in opening of the tender was due to Covid-19 pandemic. However, the Election Commission of Gilgit-Baltistan ECGB had issued notification on 18.05.2020 that no development scheme, community-based initiative or announcement-based projects shall be awarded, tendered or otherwise in any form whatsoever till next elections are held and new Government of Gilgit-Baltistan is established. Nevertheless, ECGB on request of the petitioner allowed to start construction work as petitioner intended to complete the project at the earliest in favour of larger public interest. Further, construction work hindered due to restriction in supply of material in Gilgit-Baltistan.
8. The Petitioner has stated that following is the current status of the project:
- i. LPG Air Mix Plant equipment worth Rs. 309 million has been procured and its shifting to site is in process.
 - ii. Civil construction works of Rs. 348 million have been awarded and is near concluding phase.
 - iii. Gas distribution network of worth Rs. 150 million (approx.) have been executed.
 - iv. Rs. 20 million (approx.) have been incurred on purchase of land, plant vehicles, approval/licenses.
 - v. Expected completion/commissioning date is 30th June, 2022.
9. The petitioner had never communicated to ECC or any other forum of Government that the project was near completion. MoEPD was last informed on 22.10.2019 that plant for installation of LPG Air Mix Project at Gilgit-Baltistan had been procured and possession of land was obtained thru letter. Even after decision of the ECC, the petitioner portrayed true picture of the status of the project on 17-07-2020.
10. The Petitioner was not given opportunity of hearing, while disallowing the extension. Further, if the decision is not reviewed the petitioner shall bound to suffer irreparable loss and GoP agenda will not implemented for provision of gas to residents of Gilgit-Baltistan to avoid deforestation.
11. The petitioner has requested Authority to review its earlier decision and grant extension in construction licence of LPG Air Mix Plant at Gilgit till 30-06-2022.
12. The petitioner further submitted soon after approval of LPG Air Mix Project at Gilgit by the ECC on 31.10.2016, it started work to achieve the different milestones of the project as per following details:

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Procurement of Land

- a. After technical surveys by SNGPL team to find a suitable land in Gilgit city, the Government of Gilgit-Baltistan had allotted 40 kanals of land first on 25.05.2017 and then on 17.10.2018. However, the possession of both lands could not be handed over to petitioner by the Government of Gilgit-Baltistan due to certain communal issued.
- b. Finally, a third land was allotted and handed over to petitioner by Government of Gilgit-Baltistan on 15.01.2019.

Procurement of LPG Air Mix Equipment

- a. First tender of LPG Air Mix Equipment was floated on 18.02.2017, however, prices quoted by the technically qualified bidders were extraordinarily high as compared to market rates. Therefore, the management decided to cancel the tender enquiry.
- b. Another tender inquiry for procurement of equipment was advertised on 18.08.2017 and opened on 19.09.2017.
- c. purchase order for procurement was placed on 02.03.2018.
- d. Equipment was delivered at SNGPL store, Lahore on 02.01.2019.

NOCs/Approvals

- a. NOC from DG (Gilgit) was obtained on 14.05.2019.
- b. NOC from Gilgit-Baltistan Environmental Protection Agency was obtained on 15.07.2019.
- c. OGRA construction license was issued on 27.06.2019 with validity upto 27.06.2021.
- d. OGRA allowed the capital cost of the project in Petitioner's Revenue Requirement on 03.10.2019.

Civil Works

- a. Tender for civil works advertised on 22.03.2020 for installation of already procured LPG Air Mix equipment.
- b. Tender opening delayed due to ban on development schemes by the Election Commission of Pakistan of Gilgit-Baltistan and pandemic of Covid-19.
- c. Tender was opened on 05.05.2020.
- d. Expected date of completion of civil works is 27.02.2022.
- e. Expected date of commissioning of plant is 30.06.2022.

Hearing by the Authority:

13. The Authority considered the matter and fixed the case for hearing on 28-10-2021 and 04-11-2021, however, hearings were adjourned by the Authority due to other important official meetings. The case was re-fixed for hearing on 11-11-2021 and the notice was issued on 09-11-2021 to the petitioner. The hearing was attended by the representatives of the petitioner through Zoom video link. They reiterated the same stance as taken in their written submission.


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Findings and Observations of the Authority:

14. Arguments heard. Record perused. The Authority observes that the Petitioner was granted a licence on 28 June, 2019 for the construction of LPG Air Mix Plant at Mouza Konodass, Gilgit, which was valid till 27 June 2021. The Petitioner did not undertake construction works within the stipulated period of 02 years and requested OGRA for its extension on May 20, 2021. However, the request of the petitioner was not acceded-to by the Authority vide its decision conveyed to the petitioner on 13 July, 2021 based on the grounds that the project is at its initial stage as per the pictorial evidence submitted by the petitioner despite the fact NOCs were issued and funds were approved by the Authority, further the Petitioner also misreported the progress status to the GOP's highest forum, i.e. ECC of the Federal Cabinet. SNGPL also did not submit any single progress report in utter violation of its licence condition (xix) of the aforesaid license which requires from licensee to submit quarterly report. Hence, grant of extension in construction licence was not justified as per Rule 8(2) of LPG Rules, 2001.
15. Despite grant of NOCs from the DC Gilgit and EPA in 2019 and approval of funds of Rs 454 million by OGRA vide its decision of Review of ERR for FY 2019-20 dated 30 October 2019, the petitioner could not kick start construction works at the site up till the end of 2020, which is evident from petitioner's "Letter of Intent for Civil Works dated 27 August 2020". The ECC meeting was held on 26th March 2020 and the ECC was given a false picture that SNGPL's Air-mix Plant in Gilgit was near completion in March 2020, whose Letter of Intent to start civil works was not even issued in March 2020 and the same was awarded by SNGPL on 27 August 2020
16. The Regulator is obligated under Rule 13 of LPG Rules, 2001 to exercise the power of granting extensions only under special circumstances and that too when such circumstances are proved by the project developer to be beyond his control. Rule 13 of LPG Rules 2001 is reproduced as under:
- “Rule 13 Execution of works after grant of license: -** (1) A licensee shall, after grant of a licence, execute his works in accordance with the LPG standards to the satisfaction of the Authority within a period of two years or such further period as the Authority may allow **under special circumstances proved by the licensee to be beyond his control.”**
17. It is, therefore, established that grant of extensions is not a routine function rather only exercised by the Regulator in special circumstances only, when the reasons are beyond the control of the Project Developer to complete project within the time frame of 2 years.
18. The petitioner is also OGRA's licensee under NGRA (Licensing) Rules, 2002, whereby it is obligated by virtue of said licence to show prudence while making expenditure for executing projects as required under Rule 20 (xix) of the Rules which reads as under:
- “Rule 20 Obligations of licensees:-** All licensees shall be required:
.....
.....
(xix) to ensure prudence, cost effective, and economic efficiency in its capital expenditure programme.”
19. The petitioner, being public sector utility company, operates on a cost plus return based tariff regime for natural gas sector, where financial impact of instant project undertaken by it under the LPG Rules, 2001, is also separately included in the Revenue Requirement Determinations, in compliance of the policy guidelines issued by the Federal Government under Section 21 (2) (d) of the OGRA Ordinance, 2002. Hence, the Petitioner's slackness on execution of this project is not only violation of licence issued under LPG Rules, 2001 but has far reaching financial implications on the natural gas consumers, who by virtue of Federal Government policy guidelines are paying for the project cost as included in relevant

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prescribed price for the FY 2019-20, being determined under Natural Gas Tariff Rules, 2002 and NGRA (Licensing) Rules, 2002. Therefore, as per the relevant legal domain under the ibid Rules, license conditions No. 2, 9 and 29 of SNGPL's license granted under NGRA (Licensing) Rules, 2002 obligates it as under:

- "2. **Compliance with Laws:**
- 2.1 *The Licensee shall ensure that it complies at all time with the applicable laws of Pakistan and in particular with the provisions of the Ordinance and the Rules.*
- 2.2 *The Breach of any law, including the breach of any provision of the Ordinance or any Rules or Regulations framed thereunder shall be deemed to be a breach of the terms and conditions of the Licence.*
- 2.3
9. **Continuing Obligations:**
- 9.1 *Time shall be of essence in respect of any obligation which is required to be performed by the licensee within a specified time period.*
- 9.2 *Where the Licensee is required to perform an obligation within a specified time limit and fails to do so, the licensee shall be in breach of its licence even if such obligation is subsequently complied with.*
29. **Enforcement:**
- 29.1 *If the Authority is of the opinion that the licensee has contravened any condition of the Licence, the Authority shall take such action as prescribed in the Rules.."*

20. Further, SNGPL obtained ECC approval through falls information of the completion status of the project, hence the SNGPL has been in violation of Licence condition no. xvii of its Licence No. OGRA- LPG-17 (799)/19 dated June 28, 2019, which is reproduced as under:
"In case any information/ document or undertaking provided at any stage by the licensee is found incorrect, the license or permission granted on the basis of such information/ document or undertaking shall be cancelled/ revoked/ withdrawn in addition to any other legal action, penalty which the OGRA is empowered to initiate/ impose under the law."
21. SNGPL has failed to comply with the abovementioned condition No.9 of the said licence despite allowance of the project in its RERR for FY 2019-2020. The petitioner also failed to show prudence while making expenditure on the project without surety of the extension in its license and further also not sought any express approval of the Authority before making expenditure on unduly delayed project.
22. Meanwhile, the OGRA has also received a request from MoE (PD) Directorate of Liquefied Gases dated December 27, 2021, wherein the Ministry has requested OGRA that in order to implement socio-economic agenda of Government of Pakistan (GOP) for supplying of gas to residents of remote and hilly area (i.e. Gilgit) and to evade deforestation, OGRA may facilitate/consider extension in the license granted to petitioner for construction of LPG storage, construction of LPG Air-Mix plant and distribution of LPG through pipeline in Gilgit.
23. The Authority observes that the petitioner was unable to show any strong justifications for completing the project in time and rather exhibited neglectful and lethargic approach to execute the project. Thus, the Petitioner could not satisfy the requirement under Rule 13 of LPG Rules, 2001, hence is liable to be penalized under Rule 29 of LPG Rules, 2001, which read as under:

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"29. Penalty for breach of these rules: - Whoever commits a breach of these rules shall without prejudice to any other action that may be taken against him, be punishable for every such breach with fine which may extend to five hundred thousand rupees."

24. Moreover, in the light of discussions at para 18-21 above, the Authority further observes that the petitioner has also failed to comply with conditions No. 2 and 9 of its licence granted under NGRA (Licensing) Rules, 2002 and Rule 20 (xix) of the said Rules, hence liable to be penalized under the licence condition No. 29 read with Rule 28 of NGRA (Licensing) Rules 2002, as well.

Decision:

25. In view of above discussion, examination of all the facts/record of the case and after hearing the Petitioner at length, the Authority has considered the Ministry of Energy (Petroleum Division) letter No.LG-16(1)/2019-LPG Air Mix Plants dated December 27, 2021, wherein the Ministry has requested OGRA that in order to implement socio-economic agenda of Government of Pakistan (GOP) for supplying of gas to residents of remote and hilly area (i.e. Gilgit) and to evade deforestation, OGRA may facilitate/consider extension in the licence granted to Petitioner for construction of LPG Air-Mix plant and distribution of LPG through pipeline in Gilgit. The Authority also considered the Petitioners submission that an amount of Rs 847Million has already been incurred on the said project from the public money by the Petitioner, despite the fact Petitioner earlier claimed investment of Rs.268Million on the project so far vide its application for extension dated May 20, 2021. The Authority takes serious notice of non-completion of the project by the Petitioner within initially granted period vide its licence, who was also unable to justify prudent reasons beyond its control, including the others as explained in the preceding paragraphs. In view thereof, the Authority hereby decides to impose a penalty of Rs.0.5 Million under Rule 29 of LPG Rules, 2001. Further on account of non-compliance of Licence conditions No. 2 & 9 read with Rule 20 (xix) of NGRA (licensing) Rules, 2002, a penalty of Rs.19.5 Million is imposed under Rule 28 of NGRA (licensing) Rules, 2002, with the directions that the imposed penalty shall be borne by the petitioner out of its own profits and the said amount shall neither be passed on to other consumers nor it shall be made part of the Annual Revenue Requirements due to following reasons/ violations:

- i. The Petitioner mislead the ECC about the status of the project.
- ii. Petitioner's slackness on execution of the project despite the fact NOCs were granted and Funds were approved by the Authority in RERR for FY 2019-2020. This slackness on part of the management will result in cost escalation of the project.
- iii. Later on, deliberate execution of the project keeping aside Authority's cognizance of mis-statement by Petitioner to ECC and written refusal of extension in construction licence.
- iv. Spending public money without clear roadmap and no prior approvals of the Authority.
- v. No Progress as well as funds spendings were shared with the Authority.

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26. Management of SNGPL is advised to take disciplinary action against all relevant executives on following grounds:

- a) Undertook the project despite the fact the Regulator specifically decided not to grant extension in the licence and the same was conveyed in writing vide letter No. OGRA-LPG-17(799)/19 dated 13th July, 2021.
- b) Wilful defiance of the Authority's directions.
- c) Mismatch ECC and the Authority about completion status of the project.
- d) Undue delays resulting in escalation of project cost.

27. In view of the above and in the larger interest of public as highlighted by the Federal Government, the Authority hereby decides to grant an extension of two (02) years in the Petitioner's licence No. OGRA-LPG-17 (799)/19 dated 28-06-2019 till 26-06-2023 for the construction of LPG Air-Mix Plant located in Gilgit, after deposit of penalties imposed hereinabove.


Zainulabideen Qureshi
Member (Oil)


Muhammad Arif
Member (Gas)


Masroor Khan
Chairman

Islamabad

~~10.03.2021~~