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HYDROCARBON PRODUCTION SHARING CONTRACTS

[Action Taken by the Government on the Observations/Recommendations of the Committee contained in their Forty-Seventh Report (16th Lok Sabha)]

MINISTRY OF PETROLEUM & NATURAL GAS

PUBLIC ACCOUNTS COMMITTEE (2018-19)

ONE HUNDRED AND THIRTIETH REPORT

SIXTEENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

PAC NO. 2169

ONE HUNDRED AND THIRTIETH REPORT

PUBLIC ACCOUNTS COMMITTEE
(2018-19)

SIXTEENTH LOK SABHA

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MINISTRY OF PETROLEUM & NATURAL GAS

Presented to Lok Sabha on: 19.12.2018

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L O K S A B H A S E C R E T A R I A T
N E W D E L H I

December, 2018/ Agrahayana, 1940 (Saka)

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* Not included to the cyclostyled copy of the Report
** To be appended at the time of Printing

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2018-19)

Shri Mallikarjun Kharge - Chairperson

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri Sudip Bandyopadhyay
4. Shri Prem Singh Chandumajra
5. Shri Gajanan Chandrakant Kirtikar
6. Shri Bhartruhari Mahtab
7. Smt. Riti Pathak
8. Shri Ramesh Pokhriyal "Nishank"
9. Shri Janardan Singh Sigriwal
10. Shri Abhishek Singh
11. Shri Gopal Shetty
12. Dr. Kirit Somaiya
13. Shri Anurag Singh Thakur
14. Shri Shivkumar Chanabasappa Udasi
15. Dr. Ponnusamy Venugopal

RAJYA SABHA

16. Prof. M. V. Rajeev Gowda
17. Shri Bhubaneswar Kalita
18. Shri Shwait Malik
19. Shri Narayan Lal Panchariya
20. Shri Sukhendu Sekhar Roy
21. Shri Bhupender Yadav
22. Shri C.M. Ramesh

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2017-18)

Shri Mallikarjun Kharge - Chairperson

MEMBERS
LOK SHABHA

2. Shri Sudip Bandyopadhyay
3. Shri Subhash Chandra Baheria
4. Shri Prem Singh Chandumajra
5. Shri Nishikant Dubey
6. Shri Gajanan Chandrakant Kirtikar
7. Shri Bhartruhari Mahtab
8. Smt. Riti Pathak
9. Shri Neiphiu Rioh[1]
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11. Prof. Ram Shanker
12. Dr. Kirit Somaiya
13. Shri Anurag Singh Thakur
14. Shri Shivkumar C. Udasi
15. Dr. P. Venugopal

II.

III. RAJYA SABHA

16. Shri Naresh Agrawal
17. Shri Satyavrat Chaturvedi
18. Shri Bhubaneswar Kalita
19. Shri Mohd. Ali Khan[2]
20. Shri Sukhendu Sekhar Roy[3]
21. Shri Ajay Sancheti
22. Shri Bhupender Yadav

[1] Ceased to be a Member of Committee consequent upon acceptance of his resignation from Lok Sabha w.e.f. 22 February, 2018.
[2] Elected w.e.f. 29 December, 2017 in lieu of vacancy caused due to retirement of Shri Shantaram Naik.
[3] ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 18 August, 2017 and re-elected w.e.f. 29 December, 2017.

COMPOSITION OF THE SUB COMMITTEE VIII OF THE PUBLIC ACCOUNTS COMMITTEE (2017-18)

Sub-Committee – VIII (Follow up Audit of Hydrocarbon Production Sharing Contract for KG-DWN-98/3 Block for the Financial Years 2012-13 and 2013-14)

Convenor	:	1.	Shri Sukhendu Sekhar Roy
Alternate Convenor	:	2.	Shri Nishikant Dubey
Members	:	3.	Shri Bhartruhari Mahtab
		4.	Dr. P. Venugopal
		5.	Shri Ajay Sancheti[*]
		6.	Shri Bhubaneswar Kalita

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[1] Ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 2 April, 2018.

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2018-19), having been authorised by the Committee, do present this One Hundred and Thirtieth Report (Sixteenth Lok Sabha) on Action Taken by the Government on the Observations/Recommendations of the Committee contained in their Forty-Seventh Report(Sixteenth Lok Sabha) on **'Hydrocarbon Production Sharing Contracts'** relating to the Ministry of Petroleum and Natural Gas.

2. The Forty-Seventh Report was presented to Lok Sabha/laid in Rajya Sabha on 28 April, 2016. The Sub-Committee VIII of PAC (2017-18) took oral evidence of Ministry of Law & Justice (Department of Legal Affairs) on 13 March, 2018 on the delay in submission of action taken replies in respect of observations/ recommendations pertaining to the Ministry of Law & Justice. The final replies of the Government to the observations/recommendations contained in the 47th Report were received on 18 April, 2018, 9 May, 2018 and 2 November, 2018. The Public Accounts Committee (2018-19) considered the draft Report at their sittings held on 30 July, 2018 and 9 August, 2018 and thereafter adopted the One Hundred and Thirtieth Report at their sitting held on 14 December, 2018. Minutes of the Sittings form appendices to the Report.

3. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

5. An analysis of the Action Taken by the Government on the Observations/Recommendations contained in the Forty-seventh Report (Sixteenth Lok Sabha) is given at Appendix-V.

NEW DELHI;
18 December, 2018
27 Agrahayana, 1940 (Saka)

Mallikarjun Kharge
Chairperson
Public Accounts Committee

CHAPTER - I

REPORT

This Report of the Public Accounts Committee deals with the Action Taken by the Government on the Observations and Recommendations of the Committee contained in their Forty-seventh Report (16th Lok Sabha) on "Hydrocarbon Production Sharing Contracts".

2. The Forty-seventh Report which was presented to Lok Sabha on 28th April, 2016 contained 31 Observations/Recommendations. The Action Taken Notes on all the Observations/Recommendations have been received from the Ministry of Petroleum and Natural Gas and are categorized as under:

(i) Observations/Recommendations which have been accepted by the Government:

Para Nos. 1, 2, 4, 6, 13, 15, 16, 18,19, 21, 24, 25, 26, 27, 28, 29 & 30

Total: 17
Chapter – II

(ii) Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from the Government:

NIL

Total: NIL
Chapter – III

(iii) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:

Para Nos. 3, 7, 8, 9, 10, & 31

Total: 06
Chapter – IV

(iv) Observations/Recommendations in respect of which Government have furnished interim replies/no replies:

Para No. 5, 11, 12, 14, 17, 20, 22 & 23

Total: 08
Chapter -V

3. The detailed examination of the subject by the Committee, inter-alia, included detailed examination of Production Sharing Contracts (PSCs) under New Exploration Licensing Policy (NELP) particularly with respect to KG-DWN-98/3 (KG-D6) Block, Panna-Mukta and Mid & South Tapti Fields and RJ-ON-90/1 Block. The examination of the subject had revealed certain shortcomings/deficiencies and the Committee had accordingly given Observations/Recommendations in their Forty-seventh Report. As regards KG-DWN-98/3, the Committee had recommended on the various issues including Non- relinquishment of contract area, Award of Contracts on the basis of a single financial bid, Review of Declaration of Commerciality (DoC) in respect of three discoveries, viz. D29, D30 and D31, Contract for Engineering, Procurement, Installation and Construction (EPIC) of offshore facilities, Classification of Start-up and Production Bonuses as part of recoverable costs and Piece-meal hiring of drilling rig. In respect of Panna-Mukta and Mid & South Tapti Fields, the observations were on non-signing of Crude Oil Sales Agreement (COSA), Cost Recovery of Unconsumed Production Inventory, Delay in Water Injection (WI) Project in Panna field resulting in declining production, Sale of gas in contravention to MOPNG's directives and in case of RJ-ON-90/1 Block the main observations were related to delay in submission of Work Programme & Budget (WP&B), adjustment of shipping cost beyond delivery point, inability of Government nominee to lift crude, pricing of RJ crude and delay in finalizing optimization concept.

4. The Action Taken Notes furnished by the Ministry of Petroleum and Natural Gas have been reproduced in the relevant chapters of this Report. The Committee will now deal with action taken by the Government on their Observations/Recommendations which either need reiteration or merit comments.

5. The Committee desire the Ministry of Petroleum and Natural Gas to furnish Action Taken Note in respect of Observations/Recommendations contained in Chapter I and final/conclusive action taken replies in respect of the Observations/Recommendations contained in Chapter V for which interim reply had been given by the Government within six months of the presentation of the Report to the House.

6. The Committee deplore the inordinate delay in submission of final Action Taken Replies by the Ministry of Petroleum and Natural Gas (on 18 October, 2017 and thereafter on 18 April, 2018, 9 May, 2018 and 2 November, 2018) on the Observations/ Recommendations contained in the 47th Report (16th Lok Sabha) of the Public Accounts Committee presented to the House on 28 April 2016, which, regardless, should have been furnished within six months from the aforesaid date. It is worth mentioning here that the Sub-Committee VIII of Public Accounts Committee (2017-18) at their sitting held on 8 February, 2018 were pained to note the non-furnishing of opinion/clarification by the Ministry of Law and Justice on Observations/Recommendations pertaining to them. The Sub-Committee VIII of PAC (2017-18), therefore, decided to call Ministry of Law and Justice (Department of Legal Affairs) for evidence on 13 March, 2018. The final replies after incorporating the advice of Department of Legal Affairs were sent vide OM dated 18 April 2018, 9 May, 2018 and 2 November,2018. The Committee are dismayed to note the callous attitude of both Ministry of Petroleum and Natural Gas and Ministry of Law and Justice in delayed submission of Action Taken Replies and opine that instances of such nature should definitely be obviated in future. It is needless to say that suitable instructions be issued to all concerned to adhere to Committee's timelines.

7. <u>Roles and functions of Directorate General of Hydrocarbons (DGH)</u>
(Recommendation Para No. 3)

Audit had highlighted that technical advisory and related functions should be discharged by a body completely subordinate in all respects to MoPNG and functions of regulatory nature should be discharged by an autonomous body, with an arm's length relationship with GoI. The Committee noted that the Ashok Chawla Committee on Open and Competitive Mechanism for Allocation, Pricing and Utilization of Natural Resources in its Report on PSCs had also observed that transparency in the management of contracts and associated considerable financial implications should be enhanced by increasing the independence of the regulatory mechanism, clarifying the separation of the policy maker, regulator and the operator and bringing the decision making process into the open. The Committee took note of the reply of the MoPNG that regulatory functions are demarcated and laid down by way of contract terms, Act and Rules; DGH ensuring compliance of regulations by Contractors and role of technical advisory

discharged by DGH under the direct control of MoPNG and a separate study by Boston Consulting Group (BCG) was done by MoPNG before taking future course of action. The Committee in their original Report had noted that DGH encompass two sets of functions with potential conflict of interest - an upstream regulatory function and a function of rendering technical advice to the GoI. The Committee observed that long delays in operational decision making, budget approvals, huge administrative burden of conducting cost audits, disputes arising between the government and operating companies on matters of cost recovery, information asymmetry and the potentially misaligned incentives were affecting the management of the PSCs by the Government. The Committee were of the opinion that the first step towards better management and effective implementation of the provisions of the PSCs would be to strengthen DGH and instead of filling places with deputationists for 3-5 years, a separate cadre of technical experts should be constituted for the technical and advisory functions of DGH. Further, the Ministry would have to consider separating regulatory functions as technical experts cannot be strained to double up as regulators and also policy makers cannot possibly be effective regulators. The Committee were of the opinion that the mandate of extant Petroleum and Natural Gas Regulatory Board (PNGRB) "to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country" may be extended/ strengthened to include the exploration, development and production of crude oil and natural gas for regulating the PSCs . The Committee had recommended that since a large number of PSCs have already been signed and RSCs will be signed in future, the Ministry should take the decision in this regard at the earliest.

8. The Ministry of Petroleum and Natural Gas in their Action Taken Note have stated as under:-

"DGH was set up by a Resolution dated 8th April, 1993 by the Government of India, in the Ministry of Petroleum & Natural Gas, consequent upon approval of Cabinet. As per the Resolution, the objective of DGH is to promote sound management of Indian petroleum and natural gas resources, having a balance regard for environment, technological and economic aspects of petroleum activity. DGH provides support to the Ministry of Petroleum and Natural Gas on technical and regulatory aspects of Exploration & Production (E&P) activity.

To implement these objectives of DGH, technical experts from various disciplines of E & P Industry, including from National Oil Companies (NOCs) and Public Sector Units (PSUs) have joined DGH. Financial powers have been delegated to DGH and other measures are also being taken to strengthen the DGH so that they help in promoting E&P activities in the country. DGH has also taken several

initiatives in the recent past such as creation of National Data Repository, coordinating the survey of un-appraised areas in various sedimentary basins, nodal agency for Discovered Small Field Rounds etc. DGH is also taking steps to make Hydrocarbon Exploration Licensing Policy (HELP) operational.

The staffing pattern of DGH gives it flexibility in sourcing different skill sets from various PSUs. It also gives DGH flexibility in terms of period of deputation in consultation with PSUs. Creating a separate cadre of technical experts may not be desirable for a small organization such as DGH as it may not offer career advancement opportunities in long term.

The establishment of upstream regulator has been deliberated in the past also and it was felt that normally a regulator in any field is required when level playing field to all the parties (private, foreign and public) needs to be provided. In the upstream sector, policies such as NELP, CBM and newly formulated HELP provide a level playing field to the companies. Further, there is no inter se competition between different operators once the blocks have been allotted following competitive bidding, and each operator focusses on his field for production. Therefore, the Ministry is of the view that a separate independent upstream regulator is not required at this stage.

Petroleum and Natural Gas Regulatory Board (PNGRB) was constituted under The Petroleum and Natural Gas Regulatory Board Act, 2006 (NO. 19 OF 2006) notified vide Gazette Notification dated 31st March, 2006. It regulates the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets. The current form of PNGRB Act, 2006 exclude the upstream sector and for bringing the Exploration & Production activity under the ambit of PNGRB, there will be a need to make significant amendments in the PNGRB Act.

From the experience on functioning of PNGRB, it is noted that PNGRB regulatory framework for midstream and downstream sector is under evolution at present and need more focussed approach to regulate effectively in long run to see the results as envisaged in its creation."

9. While vetting the above ATNs, the Audit made the following comments:-

"The fact, however, remains that the Ministry has not given an action plan for separation of regulatory and technical functions, as recommended by the PAC.

Audit has no further comments to offer."

10. In their further comments to the above said audit observation, the Ministry stated as under:-

"No further comments."

11. The Committee had observed long delays in operational decision making, budget approvals, huge administrative burden of conducting cost audits, disputes arising between the Government and operating companies on matters of cost recovery, information asymmetry and the potentially misaligned incentives affecting the management of the PSCs by the Government. They, therefore, had opined that in order to strengthen the implementation of the provisions of PSCs, a separate cadre of technical experts should be constituted for the technical and advisory functions of DGH. Further, the Committee had recommended that the mandate of PNGRB be extended/strengthened to include the exploration, development and production of crude oil and natural gas for regulating the PSCs. The Committee, however, note from the reply of the Ministry that the Directorate General of Hydrocarbons (DGH) was set-up by a Resolution of 1993 to promote sound management of Indian petroleum and natural gas resources and provide support to the Ministry of Petroleum and Natural Gas (MoPNG) on technical and regulatory aspects of Exploration and Production (E&P) activity. The Ministry further stated that technical experts from various disciplines of E & P Industry, including from National Oil Companies (NOCs) and Public Sector Units (PSUs) have joined DGH, financial powers have been delegated to DGH and hence creating a separate cadre of technical experts may not be desirable for a small organization such as DGH as it may not offer career advancement opportunities in long term.

As regards strengthening PNGRB, the Ministry stated that In upstream sector, policies such as NELP, CBM and newly formulated HELP provide a level playing field to the companies and there is no *inter-se* competition between different operators once the blocks have been allotted and, therefore, a separate independent upstream regulator is not required at this stage. The Ministry further submitted that its current form exclude the Upstream sector and for bringing the Exploration & Production activity under the ambit of PNGRB, significant

amendments in the PNGRB Act will be a needed. Also, from the experience on functioning of PNGRB, its regulatory framework for midstream and downstream sector is under evolution at present and need more focussed approach to regulate effectively in long run to see the results as envisaged in its creation.

The Committee find that the reply of the Ministry only indicate steps taken by it to broaden the technical base of the DGH and clearly, no specific steps have been taken for effective regulation of the E&P activities by the DGH. The Committee opine that PSCs are agreements between an Operator and the MoPNG and DGH cannot regulate PSCs effectively since it is functioning under the auspices of one of the parties i.e. the MoPNG. The Committee feel that with the advent of Revenue Sharing Contracts (RSCs) and constantly expanding E&P activities, sooner or later, an effective regulator would be needed. Further, as disputes and conflicts are on the increase, referring them to a neutral authority would be better received by the affected parties. It would also help to fast track settlements and lessen referring of cases to the arbitrators. The Committee while opining that a single regulatory body should regulate the activities in the P&NG sector, reiterate that the mandate of PNGRB may be broadened to include exploration and production of crude oil and natural gas for regulating the PSCs/ RSCs. The Committee desire that the role of DGH may be confined to giving advice in technical matters and can be institutionalized to boost research activities and technical expertise in E&P sector. Further, the Committee are of the view that E&P activities including research and development are long term ones and hence the technical staff should not be short term deputationists. The Committee, while reiterating that a separate cadre with technical expertise be constituted to strengthen the system, feel that with so many PSCs and the advent of RSCs, promotional opportunities will automatically open up for the cadre.

12. <u>Award of Contracts on the basis of a single financial bid</u>
(Recommendation Para 7)

The Committee in their original Report observed the Audit's scrutiny of payments made by the operator between 2006-07 and 2007-08 revealed instances of huge procurement contracts where it could not derive assurance as to the reasonableness of

the costs incurred, primarily due to lack of adequate competition i.e. award on single financial bids; major revisions in scope/ quantities/ specifications; post price bid opening; substantial variation orders- with consequential adverse implications for cost recovery and GoIs financial take. The Committee noted the observation of the Audit that since any commercially prudent private acquisition would have also attempted to generate competition and thereby obtained the most competitive price which was not perceptible in the aforementioned process. The Committee recommended the MoPNG to carefully review in depth the award of 10 specific contracts (of which 8 were awarded to Aker Group companies) on the basis of single financial bid. The Ministry in their reply, however, instead of conducting any review, stated that the Operating Committee monitored the contract award as per Appendix F of PSC and C&AG did not quantify the impact and also did not find any affiliated transaction or fraud to invalidate the integrity of procurement. While taking a serious view of the MoPNG's reply the Committee opined that since MoPNG have been vested with the resources of the country in fiduciary capacity and therefore have the inherent responsibility to ensure that the resources are exploited in the interest of the country and accordingly, keeping a check on the outflow of resources in the form of Cost Petroleum is an inseparable part of such responsibility. The Committee, therefore, recommended that the Ministry should develop robust monitoring mechanism within the existing PSC framework to ensure that, henceforth, a fully transparent and cost-effective process adopted by the Operator which gives assurance to the Government that costs have indeed been competitive.

13. In this regard, the Ministry of Petroleum and Natural Gas in their Action Taken Note stated as under:-

> "Ministry of Petroleum and Natural Gas agrees with the above recommendation of PAC that contractors have to follow a transparent bidding process. Normally, the contractors' interest is also in minimizing the costs so that revenue from the blocks are maximized. However, considering the exceptions brought out by the audit in these contracts, DGH has been directed vide letter dated 14th September, 2016 to do the following:
>
> (i) The work programme and budget to be approved by the Management Committees (MC) of the Blocks / Fields to be scrutinized by DGH in-depth, for having robust initial estimates.
>
> (ii) The terms of reference of the MC appointed auditors and the Government auditors for conducting audit and bringing out audit exceptions may be amended and enhanced to include a certificate from them that they have satisfied themselves regarding procurements having been made competitively and as per the PSC provisions.

Any deviations in the procurement procedures brought out by the auditors would be considered by the Government and necessary adjustments would be made in the books of accounts including disallowing costs, if the explanations given by the contractors are not satisfactory."

14. While vetting the said ATNs, Audit made the following comments:-

"The fact, however, remains that for development of a robust monitoring mechanism, as recommended by the PAC, apart from the fact that the Ministry has devolved the entire responsibility of ensuring the competitiveness of the cost on Audit (the MC appointed auditors and the Government auditor), the Ministry has not suggested any additional mechanism for monitoring the cost effectiveness at their (Ministry's) level."

15. In their further comments to the above said audit observation, the Ministry stated as under:-

"Apart from the fact that the non-operating partners at Operating Committee Level are part of Decision Making Process at the time of procurement, various reports in prescribed formats as per PSC are required to be submitted by Operator on periodical basis to DGH/MoPNG. Hence in addition to various Audits, the procurement process is under constant review.

While agreeing to the Committee's views that a fully transparent and cost-effective process is adopted by the Operator which gives assurance to the Government that costs have indeed been competitive, it is submitted that the existing PSC provisions are sufficient to take care of Audit's/PAC concerns. Nevertheless Government representatives on MCs and DGH would be advised to keep in mind the Audit's/PAC concerns and if any deviation from PSC is observed, the same would be reported to MoPNG for appropriate action as per PSC."

16. The Committee note that in pursuance of their recommendation, the Ministry directed DGH to undertake approval of Work Programme and Budget (WP & B) of the Blocks/Fields by the Management Committees (MCs) and also desired to amend and enhance the terms of reference of the MCs appointed auditors and the Government auditors for conducting audit and bringing out audit exceptions where procurements are not in consonance with the PSC provisions. Further, any deviations in the procurement procedures brought out by the auditors would be considered by the Government and necessary adjustments would be made in the books of accounts including disallowing costs wherever

the explanations given by the contractors are not satisfactory. The Committee find that although the Ministry has issued instructions to DGH thereby asking MC to scrutinize the estimates in-depth and certifying the procurements by the Auditors appointed by the MC and the Government, neither a robust monitoring mechanism within the PSC framework nor any additional mechanism for monitoring the cost effectiveness at its level has been provided for. The Committee are of the view that a timeline within which estimates are to be approved by the MC and scrutinized by the DGH may be prescribed to ensure that work programmes are actually useful and further, providing for auditor's certificate on the deviations again is a step which would be taken after the transaction has taken place. Therefore, the Committee are of the view that internal controls should be adequately strengthened and a mechanism be developed where the DGH/ Ministry are simultaneously intimated about major deviations or contracts beyond a threshold value. Action taken by the Ministry, on this aspect, be intimated to the Committee within three months of the presentation of this Report.

17. <u>Review of Declaration of Commerciality (DoC) in respect of three discoveries viz. D29, D30 and D31</u>
(Recommendation Para 8)

As required under PSC, the Operator submitted in February 2010 a DoC (Declaration of Commerciality) proposal for D29, D30, D31 and D34 discoveries for review by the MC and the DGH in June 2010 informed Operator that the discoveries were marginal and not viable at US$4.2/ mmbtu since the Modular Dynamic Test carried out by the operator did not provide individual testing rates to demonstrate sustainable production levels. The DGH, again, in October 2010 communicated to the operator that the DoC could not be reviewed. However, in November 2011, DoC in respect of D34 discovery was reviewed after the Operator submitted related additional test data/ information. But, in respect of D29, D30 and D31, DGH stated that commerciality of discoveries could not be evaluated in the absence of production tests which provide sustainable production levels from the reservoir as no appraisal wells were drilled in the pools of discovery wells to substantiate the production rates considered by the Operator. DGH felt that the profile generated without considering MDT/ (Drill Stem Test) DST data in the wells was not on a sound technical basis. In May 2012, the Operator again requested MC to complete review of DoC for D29, 30

and D31 and submitted a proposal in October- November 2012 to undertake DST in only one well out of the three discoveries and DGH while agreeing to the proposal asked the Operator to submit a plan for surface flow test for other two discovery wells also. However, the Operator did not carry out the same and later argued that, as per PSC, a) the DST was not mandatory, b) the Contractor has the right to determine requirement for DST based on its technical judgment and c) it was not the only test. Subsequently, DGH, in April 2013, proposed that the area pertaining to these three discoveries be relinquished as the Operator could not keep a part of the Contract Area for an indefinitely long period in the garb of an incomplete DoC proposal. In October 2013, the matter was referred to CCEA (Cabinet Committee on Economic Affairs) for its information fully explaining the facts and circumstances of the case and the Contractor was allowed to retain 298 sq km. contract area as the matter was being considered. The Committee noted from the reply of the Ministry that the issue was reopened for review in view of the petroleum potential of the discoveries in an energy starving country for an appropriate decision by competent authority in terms of the PSC provisions and the interest of energy security. The Committee further noted from the reply of the MoPNG that the CCEA has, in April 2015, given relaxation for conducting DST by capping such test cost recovery up to US $ 15 m per test and, accordingly, the operator had then completed DST for D29 and D30 discoveries and had relinquished D31 discovery and had to submit revised DOC for D29 and D30 by 28th April 2016. The Committee were of the view that Government took around 5 years in taking a decision on the issue. The Committee observed that the long delays in clearances and operational decision making results in huge cost overruns and eventually affects the Government's share of PP. The Committee were of the view that energy starving country needed regular supply of the resources which is hindered by such delays. The Committee while noting that the CCEA has relaxed the provisions by providing that Operator should either relinquish or carry out DST and pay penalty for delays or develop the discoveries on his own in ringfenced manner, had recommended that a comprehensive policy may be brought out allowing alternative tests for confirming commerciality of the discoveries to ensure that the policy does not get redundant with introduction of new technologies.

18. In this regard, the Ministry of Petroleum and Natural Gas in their Action Taken Note have stated as under:-

> "DST is a conventional testing method available as on today for measuring the petroleum recovered at the surface. Hence, DST was considered as a basis of accepting the DOC. Government considers technological upgradations in the upstream sector and policies are brought out/modified after considering the issues in a holistic manner."

19. The Committee has taken note of the fact that long delays in clearances and operational decision making resulted in huge cost overruns that eventually affected the Government's share of Profit Petroleum (PP). The Committee had, therefore, recommended that a comprehensive policy be drafted allowing alternative tests for confirming commerciality of the discoveries to ensure that the policy does not get redundant with introduction of new technologies. The Committee note from the reply of the Ministry that the technological upgradations in the upstream sector are considered by the Government and policies brought out/ modified after considering the issues in a holistic manner. Evidently, the process of consideration of issues by the Government takes time as in this case Government took 5 years to bring out a policy. The Committee had, therefore, recommended for a dynamic policy to contain delays which result in huge cost overruns. The Committee while reiterating their earlier recommendation that in order to contain delays and subsequent cost escalation a comprehensive policy be brought out, again desire that constant efforts may be made to cut down procedural delays especially wherever huge financial implications are involved.

20. <u>Optimized Field Development Plan (OFDP) for four satellite discoveries</u> (Recommendation Para 9)

The Committee noted that Contractor in July 2008 submitted a Development Plan (DP) in respect of 9 Satellite Gas Discoveries (SGD) for approval of MC which was found non -viable at the gas price of US$4.2 per mmbtu. The Contractor submitted in December 2009, an Optimized Field Development Plan (OFDP) for four satellite discoveries. Initially, the OFDP was not techno-economically viable; however it was made marginally viable by devising different scenarios and changing assumptions e.g. exclusion of royalty as expenditure, variation in capex etc and was eventually approved by the DGH. The Committee noted that MoPNG had directed DGH to engage a third party for validation of capex but no third party could be engaged and the MC approved OFDP without waiting for the decision of MoPNG in this regard. The Committee noted that Audit had recommended that MoPNG may consider fixing norms/ criteria for working out techno-economic analysis of a FDP. The Ministry in its reply had submitted that the economic viability was evaluated at different scenarios so as to optimize the decision making in order to avoid non- development of any discovery and since techno economic evaluation is guided by the principle of economics and application of mind,

setting separate norms may not be possible. However, the Ministry in their written replies had then submitted that the team constituted for framing the "Good International Petroleum Industries Practices" has identified the best practices being followed for all technical and commercial activities under the PSC and the report has been submitted for adoption and notification. The Committee while appreciating that the Good International Petroleum Industries Practices were being identified desired to be apprised of the practices as soon as they are notified and further desired the Ministry to ensure that decisions were taken by the MC after getting views from all the stakeholders, as in the instant case, in the absence of validation of capex by third party, the reasonability and justification of capex and GoI share of PP could not be assured. The Committee also desired that MoPNG seek explanation of the representatives of MoPNG i.e. Chairman of MC, and the representative of DGH in the MC who did not wait for MoPNG's decision.

21. In this regard, the Ministry of Petroleum and Natural Gas in their Action Taken Note have stated as under:-

1. "Good International Petroleum Industries Practices (GIPIP) have been proposed by the Committee constituted for the purpose and the same has been accepted by the Government. These guidelines are available on MoP&NG's web site. The GIPIP guidelines provide a detailed account on various practices being followed in the upstream sector and would be used along with PSC in the interpretation of PSC provisions. GIPIP brings out good practices in the area of Exploration, Discovery, Declaration of Commerciality, Development, Production etc. and would help the contractors in standardizing and streamlining the operations and would also help them to know the details of submissions to be made to DGH. However, the contractual provisions would be paramount in taking decisions on various issues and GIPIP supplements the decision making in the sector.

2. Vide MCR dated 03.01.2012, Optimized Field Development Plan (OFDP) of four satellite discoveries was approved by MC in respect of the Development Strategy that included reserves, number of wells, production facilities, delivery point, date of first gas and development area. The Capex was not part of the MC approval. The cost recovery for development and production operations will be the actual as per audited expenditure. The actual CAPEX gets independently validated when the annual accounts are audited and cost recovery is restricted to actual expenditure irrespective of the estimates projected by the Contractors as part of OFDP.

3. MoP&NG has asked DGH to seek explanation of Chairman of the Management Committee and representative of DGH in MC as recommended by the PAC."

22. While vetting the said ATNs, the Audit made the following comments:-

"As recommended by the PAC, explanation given by the Chairman of the Management Committee and representative of DGH in MC may be given to the PAC."

23. In their further comments to the above said audit observation, the Ministry stated as under:-

"As commented by CAG, explanation of MC Chairman-cum-representative of DGH was sought and is attached at Annexure-9A for perusal of PAC. The MC was to approve the development plan as per PSC time lines and since no third party could be appointed, the FDP was approved without Third Party validation based on consensus decision of DGH."

24. **The Committee while noting that Good International Petroleum Industries Practices (GIPIP) are being identified for all technical and commercial activities under the PSC had desired to ensure that decisions are taken by the MC after taking views of all the stakeholders as in the case pointed out by the Audit, the MC approved the Optimized Field Development Plan (OFDP) without waiting for the decision of the Ministry. The Committee expect that MoPNG will identify GIPIP for all technical and commercial activities in the Revenue Sharing Contract (RSC) era soon. The Committee note from the submission of the Ministry that actual Capital Expenditure (CAPEX) gets independently validated when the annual accounts are audited and the cost recovery is restricted to actual expenditure irrespective of the estimates projected by the Contractors as part of Optimized Field Development Plan (OFDP). The Committee are astonished to note the casual reply of the Ministry since actual expenditure whether capital or revenue gets independently validated when the annual accounts are audited. In the opinion of the Committee the reply of the Ministry renders the whole process of validation of estimates, plans etc. redundant. Further, when the Ministry had asked for an**

independent validation, the direction should have been followed scrupulously and the Ministry instead of accepting its lackadaisical monitoring and taking action against the MC is giving lame excuses. The Committee further note from the explanation of the Chairman-cum- representative of the DGH that the Development Plan was to be approved as per PSC timelines and since no third party could be appointed, the FDP was approved without Third Party validation based on consensus decision of DGH. The Committee are dismayed to note that the representative of DGH being accountable to the Ministry did not consult the Ministry before the approval of the FDP. The Committee feel that the decision for not appointing third party for validation could be deliberate so that the Ministry gets flexibility in the decision making. The Committee further desire that the decision for not appointing third party for validation may be inquired into and disciplinary action taken against the officers found responsible.

25. <u>Contract for Engineering, Procurement, Installation and Construction (EPIC) of offshore facilities</u>
(Recommendation Para 10)

"*The Committee noted that the Operator awarded contract for Engineering, Procurement, Installation and Construction (EPIC) of offshore facilities for development of D1-D3 fields to M/s Allseas Marine Contractors S.A. (AMC) in October 2006 consisting of three milestones to be achieved by July 2008. However, AMC was not able to achieve the milestones and informed the Operator in June 2008 that various factors attributable to Operator, AMC and sub-contractors were preventing it from performing its obligations under the contract, rendering it inoperable both in delivery and contract administration. AMC asked the Operator to pay for the extra expenses to achieve the earliest possible First Gas date and also the additional expenses already incurred in the past months due to deviations in the suggested scheme. The Committee noted that the Operator initially refuted the claims made by AMC asserting that the AMC should acknowledge and accept responsibility for its lack of performance, but, eventually after discussions with AMC submitted a proposal before the OC requesting it to grant some concessions demanded by the AMC. The Committee found that the OC gave concessions which included providing additional resources for expediting the works without any cost to AMC, substituting the subsea construction vessel by paying mobilization fee, additional diving spread free of cost, additional amount for delays not attributable to AMC, relaxation in levy of LD, incentive for achieving first gas by specified date and assistance and paying for resources for expediting jumper*

*fabrication. As per Audit, Appendix C of PSC provides that " amounts paid with respect to non-fulfillment of contractual obligations are not recoverable and not allowable" and , therefore, should not be recoverable from the block. As per Operator, " ..the options before the Operator were not only limited but would have carried dubious legal credibility in view of the fact that it could insist on imposing liquidated damages knowing fully well that certain reasons for delay not being on account of AMC such a decision would have been contested and would have only led to the AMC halting work on the project and getting into prolonged litigation with the Operator." MoPNG in its reply stated that the post vendor contractual agreements between the Operator and the vendor validly amended the original vendor-contract and the audit report did not point out any legally tenable ground for cost disallowance such as affiliated transactions to the undue advantage of Contractor, any incidence of fraud and costs not supported by payment evidences. Audit further observed that these concessions granted by the Operator were not in line with EPIC contract including provisions relating to change in contract price. The Committee after carefully considering the audit opinion and the replies of both Operator and Ministry were of the view that in order to ensure transparency in post vendor contractual agreements, in future, the Ministry should prescribe a threshold amount for the change orders above which the Operator should invariably approach it for clearance.***"**

26. In this regard, the Ministry of Petroleum and Natural Gas in their Action Taken Note have stated as under:-

> "The PSC prescribes a procurement procedure which needs to be followed by all the contractors operating under the PSC regime. Any deviation in the procedure would need to be pointed out by the audits envisaged under the PSC. Once the audit notifies these exceptions and quantifies the financial effect for such procurements, necessary adjustments can be made in the books of accounts of the contractors of the block after considering their response to the audit exceptions.
>
> The audit exceptions brought out by the auditors are considered by the Government and necessary adjustments are to be made in the books of accounts. It is agreed that the concern expressed by PAC and recommendation made by PAC are valid and need to be addressed within the existing PSC framework.
>
> It is therefore imperative that the role of audit as envisaged in the PSC is strengthened and also scrutiny of budget estimates is also made more rigorous. Therefore, as mentioned in the reply to the recommendations no. 7 instructions have been issued to DGH for more rigorous assessment of budget proposals and

also to take a certificate from the auditors that they have satisfied themselves that all the procurements have been made through competitive process."

27. While vetting the said ATNs, the Audit made the following comments:-

"PAC has observed that to ensure transparency in post vendor contractual agreements, in future, the Ministry should prescribe a threshold amount for the change orders above which the Operator should invariably approach it for clearance. Ministry's reply, however, does not specifically address PAC's observation regarding prescribing of the threshold amount for the change orders."

28. In their further comments to the above said audit observation, the Ministry stated as under:-

"The PSC prescribes a procurement procedure which needs to be followed by all the contractors operating under the PSC regime. These matters are reviewed and monitored by MCs.

While agreeing to the Committee's views regarding transparency in post vendor contractual agreements, it is submitted that prescribing a threshold amount for the change orders above which the Operator should invariably approach Ministry for clearance at this juncture is not being considered. Cases where change order exceeds 25% of cost estimate/original order, then the same may be discussed more rigorously in MC and get approved from it since MC is the competent forum to deliberate and decide on such issues."

29. The Committee after taking note of the fact that the concessions granted by the Operator were not in line with Engineering, Procurement, Installation and Construction (EPIC) contract (including provisions relating to change in contract price) were of the view that in order to ensure transparency in post vendor contractual agreements, in future, the Ministry should prescribe a threshold amount for the change orders above which the Operator should invariably approach it for clearance. The Ministry in their action taken reply, have stated that prescribing a threshold amount for the change orders above which the Operator should invariably approach Ministry for clearance at this juncture is not being considered. Further cases where change order exceeds 25% of cost estimate/original order may be discussed more rigorously in Management Committee (MC) and get approved from it since MC is the competent forum to deliberate and decide on such issues. The Committee while stressing upon their

earlier recommendation and in view of the Ministry's reply opine that concessions/ deviations from the provisions of the PSC should, in order to be transparent, be made only after intimating all stakeholders. The Committee are of the view that the responsibility to apprise the Ministry on any concessions/deviations from the PSC may lie on the representatives of the Government in the MC.

30. <u>Payment of compensation on Free Issue Materials (FIMs)</u>
(Recommendation Para 15)

The Committee noted that the Operator had awarded four contracts relating to construction of OT, construction of Jetty and infrastructure facilities near the OT on cost -plus basis to L&T Ltd and M/s AFCONS Infrastructure Ltd (AI Ltd). These contracts contained provisions for FIMs (Free Issue Materials) which were to be arranged by the Operator at its own cost and, therefore, different clauses of the contracts excluded various FIMs supplied by the Operator from the purview of payment of compensation to the vendor. But, a percentage of the value of FIMs of some categories supplied by the Operator was included in the payment of compensation to the vendor. The Operator submitted that in order to incentivize the contractors to bid for supply of labour & provision of construction equipment contract, Operator had to agree for a reasonable mark-up on FIMs and that these FIMs were not capital items and were related to day to day construction materials which require project execution skills, planning and co-ordination to meet construction schedule and if procurement were kept in the Contractor's scope directly then this would have resulted in double taxation with respect to VAT and Service Tax and increased compensation on this account. MoPNG in its reply had stated that the post vendor contractual agreements between the Operator and the vendor validly amended the original vendor-contract and the audit report did not point out any legally tenable ground for cost disallowance such as affiliated transactions to the undue advantage of Contractor, any incidence of fraud and costs not supported by payment evidences. The Committee were of the view that the Ministry should call for a comparative statement of costs incurred due to such provisioning and costs incurred if the materials were directly procured by the vendor before taking a decision on the allowance of the costs.

31. In this regard, the Ministry of Petroleum and Natural Gas in their Action Taken Note stated as under:-

"As per the PAC recommendation, DGH was asked to get the comparative statement from the Contractors. DGH took operator's response which can be summarized as:

"Due process as per PSC was followed for executing the contracts and payments were made as per contract. Contractor has agreed to pay a reasonable markup on civil FIMs like cement, steel, welding rods, GI pipes and other consumables which is usual practice in turn-key construction contracts in order to incentivize vendors to bid or supply of labour and provision of construction equipment. No mark-up was paid on cost of projects, capital items like equipment, bulks etc. and on HSD supplied by the Contractor. The payments were made pursuant to a valid contract which was finalized through a competitive bidding process. The Contractor has ensured overall savings to the project by avoiding payment of double taxation by buying the construction materials directly."

The purchase price which would have been borne by the vendor is not known since the contractor had procured the construction materials and not the vendor. As per operator's statement, the cost of supplies would have been higher because of mark-up even if the purchase price of the free supplies remaining same for both the contractor and vendor. There would have been higher incidences of taxes by way of VAT and Services Tax on account of mark-up which could be avoided by the contractor as per their response. Cost is supported by payment evidences.

The allowance of cost is in accordance with Article 15 on 'Recovery of cost Petroleum'. The sub-Article 15.1 stipulates. "The Contractor shall be entitled to recover Contract Costs out of a percentage of the total value of Petroleum produced and saved from the Contract Area in the Year in accordance with the provisions of this Article."

32. While vetting the said ATNs, the Audit made the following comments:-

"The Ministry has yet to clarify whether amendments can validly be made which change the basic principles of the contract and whether such mark-ups are usually charged by the vendors in similar contracts. Clarifications in this regards may be submitted to PAC for their perusal."

33. In their further comments to the above said audit observation, the Ministry stated as under:-

"While appreciating the Committee's view that the Ministry should call for a comparative statement of costs incurred due to such provisioning and costs incurred if the materials were directly procured by the vendor before taking a decision on the allowance of the costs, it is worth mentioning that since vendor

did not procure the material, no purchase price (of vendor) is available for cost comparisons.

Article 8.3 of the PSC puts an obligation on the Contractor to conduct all Petroleum Operations within the Contract Area diligently, expeditiously, efficiently and in a safe and workman like manner. Therefore, the operator is under contractual obligations to take operational decision in discharge of its responsibility. Contractors are expected to take decisions which are in the best interest of the field and also for maximizing gains for all the stakeholders.

Keeping in view the Committee's concerns, Government representatives on MC and DGH are being advised to keep in mind the Audit's/PAC concerns and if any deviation from PSC is observed, the same would be reported to MoPNG for appropriate action as per PSC. "

34. The Committee note the Operator's submission that a reasonable mark-up of Free Issue Materials (FIMs) were agreed to in order to meet the construction schedule and avoid double taxation. The Ministry were asked to obtain a comparative statement of costs incurred due to such provisioning and costs incurred if the materials were directly procured by the vendor before taking a decision on allowance of costs. The Committee further note from the reply of the Ministry that the payments were made pursuant to a valid contract and also ensured overall savings to the project. Further, as per the Operator the purchase price which would have been borne by the vendor is not known since the contractor had procured the construction materials directly and not the vendor. The Committee are unable to comprehend as to how the Ministry have subscribed to the claims of the Operator regarding overall savings in absence of a comparative data. The Committee, therefore, reiterate their earlier recommendation that the Ministry should ask for a comparative statement of costs incurred by the Operator and costs incurred if materials were directly procured by the vendor before taking a final decision on allowance of cost as it has a direct bearing on Government of India's take on Profit Petroleum. The Committee further desire to be apprised of action taken in this regard within two months of presentation of this Report to Parliament.

35. <u>Non-signing of Crude Oil Sales Agreement (COSA)</u>
Recommendation Para No. 19

The Committee noted that despite elapse of more than 21 years (since 1994), COSA has not been formalized by the Panna-Mukta JV with IOCL (GoI nominee) due to non-resolution of issues such as delivery point, storage charges, dead freight, voyage costs/ losses, terminal charges, measurement conversion table, dollar rupee exchange rate, lay time in monsoon and delayed payments and interests thereon. The non-signing of COSA for Panna-Mukta PSC has previously also been commented and highlighted in C&AG audit reports of 1996, 2005 and 2011. Thus, non-signing of COSA led to non-resolution of storage and voyage expenses and are shown as recoverable by PMT JV from GoI/GoI's nominee i.e., IOCL. The Ministry and ONGC while deposing before the Committee and in their written submission had stated that various correspondences and meetings were held between PMT JV & IOCL since the commencement of crude oil sales in 1994-95. However, the issues could not be resolved. Subsequently, in 2014 a Task Force was constituted which has so far held seven meetings, the last one being on 08.03.2016. As per the Minutes of the 5th meeting of Task Force held on 20.04.2015, the settlement of issue related to sale of crude oil for Panna – Mukta had agreed on along with agreement that the PMT JV shall prepare a draft settlement agreement on the basis of these signed minutes within 15 days. The PMT JV were to share a draft of the more detailed COSA within 90 days from the date of execution of the Settlement Agreement. The Parties had agreed that post signing of the settlement agreement and until such time that the COSA is executed, the settlement agreement shall be binding agreement between the Parties and shall be basis on which all future sale and purchase of crude oil from Panna-Mukta area occurs. The Committee were shocked to find that even though 21 long years have passed, the PMT JV could not resolve the pending issues resulting in non-signing of COSA and loss to the exchequer. This showed the non-serious approach of the PMT JV as well as IOCL. The Committee also desired the Ministry of Petroleum and Natural Gas to look into the reasons for inordinate and inexplicable delays and failure of the monitoring mechanism of the Ministry, fix responsibility by taking appropriate punitive action against the concerned officials and apprised on the matter within four months of the presentation of the Report.

36. In this regard, the Ministry of Petroleum and Natural Gas in their Action Taken Note stated as under:-

> "GOI had appointed IOCL as its nominee to purchase entire crude oil produced from the Panna-Mukta field in accordance with Article 18.1 of the PSC in which

ONGC and RIL are Indian consortium partners. Signing of Crude Oil Sales Agreement (COSA) is a commercial practice between buyer and seller and Ministry does not have a direct role in this. The non finalization of COSA is mainly because of non-acceptance by PMT JV of the terms and conditions insisted by IOCL regarding applicable period for dollar to rupee conversion in respect of the crude oil sold by PMT JV.

To resolve this long pending issue, the Ministry has taken initiative to intervene to finalise the COSA. A meeting was held on 23rd May, 2016 to bring all the stakeholders together. Ministry is collating the information regarding practices being followed in other PSCs and by other Indian companies in respect of such payments for crude oil produced under the Pre-NELP and NELP PSCs to get the COSA finalized at the earliest."

37. While vetting the said ATNs, the Audit made the following comments:-

"Signing of Crude Oil Sales Agreement (COSA) is an essential event which will provide finality to the commercial transactions (including GoI share of Profit petroleum).

In this regard it was observed that section 1.6 of Accounting procedure on 'Currency Exchange Rates', mentions that

'For translation purpose between USD and INR or any other currency, the previous month's average of the daily means of the buying and selling rates of exchange as quoted by SBI (or any other financial body as may be mutually agreed between the parties) shall be used for the month in which the revenues, costs, expenditure receipts of income are recorded'.

Hence the conversion issue needs to be addressed accordingly at the earliest so as to settle the financial implications well before expiry of the PSC term in December 2019.

A copy of the minutes of the meeting held on 23 May 2016 may be provided to the PAC."

38. In their further comments to the above said audit observation, the Ministry stated as under:-

"As per vetting comments of CAG, a copy of the minutes of the meeting held on 23 May 2016 is attached at Annexure-19A and copy of Settlement Agreement is attached at Annexure-19B for perusal of PAC."

39. The Ministry, in their further reply/update, has furnished following:-

" Crude Offtake and Sales Agreement (COSA) between IOC and PMT JV Partners has been signed and executed on 27.10.2017."

40. The Committee, in their original Report, were shocked to find that even though 21 long years had passed, the Panna-Mukta-Tapti Joint Venture (PMT JV) could not resolve the pending issues resulting in non-signing of Crude Oil Sales Agreement (COSA) and loss to the exchequer. The Committee desired the Ministry of Petroleum and Natural Gas to look into the reasons for inordinate and inexplicable delays and failure of the monitoring mechanism of the Ministry and fix responsibility by taking appropriate punitive action against the concerned officials. The Committee on perusal of the reply furnished by the Ministry are unhappy to note the evasive and casual reply of the Ministry that signing of COSA is a commercial practice between buyer and seller and Ministry does not have a direct role in this. The Committee are of the considered view that the failure to take timely action for the last 21 years which resulted in continuous loss to the GoI exchequer, the onus automatically shall fall on the Ministry concerned. Moreover, the Operator (ONGC) and GoI nominee (IOCL) both being PSU's, the Ministry cannot absolve itself of its responsibility in bringing them on common platform for an amicable resolution of the issues involved. The Committee has serious doubt that the Ministry do not want to settle the financial implications as the period of contract will automatically end in December, 2019. The Committee while noting that COSA between IOC and PMT JV Partners has been signed and executed on 27.10.2017 only after being repeatedly pointed by the Audit and intervention of the Committee desire that disciplinary action be taken against those responsible for the delay in execution of the COSA which has resulted in irreparable loss to the Government exchequer for the last 21 years.

41. **<u>Sale of Gas in contravention to MoPNG's directives</u>**
Recommendation Para No. 23

In their earlier report, the Committee observed that ONGC ignored MoPNG's directives of March 2006 and entered into a long term contract for 12 years and signed GSPA in June 2006 with M/s Torrent Power Limited (TPL) for supply of 0.9 mmscmd of gas at the rate of US$ 4.75 / mmbtu with a provision to review the price

after expiry of 3 years from the date of first supply. At the same time, contrary to GoI's decision the other two partners, RIL and BGEPIL, also sold gas at the rate of US$5.58 per mmbtu (i.e. higher by US$0.01 per mmbtu of revised PSC price of Tapti field). Supply to TPL commenced from 30 May 2008 and continued at the lower rate of US$ 4.75 per mmbtu till May 2011 and it was made at PSC price only from June 2011. The gas sold to TPL was at a price lower than the price prescribed in the PSC (Panna-Mukta revised PSC price of US$ 5.73 / mmbtu and Tapti revised PSC price of US$ 5.57 / mmbtu). Further, the Committee observed that ONGC also did not reduce the sale of gas proportionate to the decline in production in the Tapti and Panna-Mukta fields during the year 2008-09 to 2011-12 and on the contrary sold more gas to TPL during 2009-10 to 2010-11 vis-a-vis 2008-09. The Ministry had submitted, since GAIL was unable to lift gas at a higher PSC formula based price, ONGC entered into agreement in June 2006 with TPL. Further, the Ministry had stated that the notional revenue loss was on account of the fact that the PSC formula based price was above the prevailing market price and in the absence of GAIL lifting the entire gas quantity, the Ministry permitted the constituents of JV to sell gas at rates ranging from US$ 3.86 to US$ 5.58. The Committee were in agreement with Audit that the argument of ONGC on Article VIII of Tripartite Agreement i.e. the GAIL was fully responsible for the performance of the existing contract is not tenable as ONGC was selling its share of gas to TPL below the PSC price and it was obligatory on the part of ONGC to periodically inform GAIL about the drop in level of production for making proportionate reduction in supply to TPL. The Committee were of the firm view that the Ministry, should have been proactive in monitoring the dispensation of additional gas production (over and above 10.8 mmdcmd) by the PMT JV when it had issued clear instructions. The Committee strongly deprecated the casual approach of the Ministry in protecting the interest of the government and desired that the failure of ONGC first to find a buyer at PSC price and later on to curtail on pro rata basis the supply of gas to TPL be enquired into and responsibility be fixed. The Committee also desired the Ministry to look into whether the competitive prices were not obtained by the other two JV partners while supplying the gas to their affiliates.

42. In this regard, the Ministry of Petroleum and Natural Gas in their Action Taken Note stated as under:-

> "MoP&NG decisions to allow 'direct marketing' of gas by PMT Contractors, and also allow GAIL and other buyers to pay prices different from PSC prices were consequent to circumstances not envisaged in PSC. The GAIL was unwilling to accept the PSC price arrived with TPL through a competitive bidding process.
>
> Consequent to MOP&NG's decisions to allow 'direct marketing' of gas, other two partners supplied the gas to their affiliates at different prices ranging from US $

3.96 to US $ 5.58 per mmbtu during the year 2006-07 & 2007-08, which being affiliate transaction cannot be considered as competitive prices.

The following actions have been taken in compliance with PAC's observations:

(i) In respect of the issue regarding ONGC obligation on selling its share of gas to TPL below the PSC price, it has been referred to DGH for identifying the magnitude of its impact on GOIPP, if any, and make recommendations on loss of revenue to the government.

(ii) DGH has been directed to recover with interest the Loss of government revenue ofUS $ 0.52 million in the form of Profit Petroleum (PP) and royalty due to sale to affiliates of Panna gas in contravention to PSC."

43. While vetting the said ATNs, the Audit made the following comments:-:-

"The final course of action is awaited. The amount is yet (January 2017) to be recovered. As the PSC term is expiring in 2019, same needs to expedited Status of recovery may be submitted to PAC."

44. In their further comments to the above said audit observation, the Ministry stated as under:-

(i) The issue regarding ONGC obligation on selling its share of gas to TPL below the PSC price has been referred to DGH for identifying the magnitude of its impact on GOI share of Profit Petroleum, if any, and make recommendations on loss of revenue to the government. DGH has sought legal advice from Senior Government Counsel, which is awaited. After obtaining legal advice, the further course of action would be decided. ATN in the matter would be submitted to PAC as soon as comments/replies/ATN are received from DGH.

(ii) Directives have been issued to GAIL on 30.08.2017 for recovery of US $ 0.52 million from Sale Proceeds towards Profit Petroleum (PP) and Royalty due to sale to affiliates of Panna gas in contravention to PSC. M/s RIL & BGEPIL have requested the Ministry to revoke its directions as this issue is already under the consideration of ongoing Arbitration. This matter has also been referred to DGH on 26.09.2017 for obtaining legal opinion from Government Counsel. ATN in the matter would be submitted to PAC as soon as comments/replies/ATN are received from DGH.

44. The Ministry in their further reply/update has furnished following information:-

" (i) The magnitude of impact of ONGC obligation on selling its share of gas to TPL below the PSC price, on GOI share of Royalty and Profit Petroleum due to sale of gas quantity to TPL at lower rater (US$ 4.75 per mmbtu) from 30th May 2008 to May 2011 in respect of PMT PSCs separately has been calculated by DGH and additional amount of Royalty and Profit Petroleum due from ONGC is as under:

Sl.No.	Field Name	GoI Take – Royalty (in USD)	GoI Take – PP (in USD)
1.	Panna-Mukta	807,175	3,036,864
2.	Mid & South Tapti	1,155,673	3,655,480
	Total	**1,962,848**	**6,692,344**

DGH has been requested to make recommendations on loss of revenue to the government.

(ii) MoPNG has recovered US$ 0.52 Million through GAIL form the sale proceeds from PMT PSC."

45. The Committee had strongly deprecated the casual approach of the Ministry in protecting the interest of the government and desired that the failure of ONGC first to find a buyer at PSC price and to curtail, on pro rata basis, the supply of gas to M/s Torrent Power Limited (TPL) be enquired into and responsibility be fixed. The Committee also desired the Ministry to look into whether competitive prices were not obtained by the other two JV partners (RIL and BGEPIL) while supplying the gas to their affiliates. The Committee on perusal of the Ministry's submission are baffled to observe that the decision to allow 'direct marketing' of gas by PMT Contractors at prices different from PSC prices were consequent to circumstances not envisaged in PSC. Logically, PMT partners should have approached the Ministry for a decision in a situation that was beyond the purview of the PSC. The Committee are unable to comprehend the Ministry's silence all these years in taking effective steps to prevent the violation of PSC by the JV partners resulting in huge loss to the nation and seeking legal advice/opinion only after being pointed by the Committee. Now, w.r.to ONGC selling gas to TPL, the magnitude of impact on GoI share of Royalty

and PP has been computed to USD 1.962 million and USD 6.692 million respectively for which DGH has been asked to recommend on loss of revenue to the Government. As regards JV partners (RIL and BGEPIL) sale of gas to affiliates, MoPNG has recovered USD 0.52 million through GAIL from the sale proceeds from PMT PSC. The Committee in view of both the outcomes are of the considered view that an independent inquiry be initiated by the Ministry into the sale of gas in contravention of the provisions of PSC and the Committee be apprised of the findings thereof within three months of the presentation of the Report to the House.

46. <u>Delay in finalizing optimization concept</u>

Recommendation No. 31

The Committee noted that an optimization concept for Bhagyam field was presented to MC in August 2010 to which the final approval of MC was communicated in December 2010 which resulted in delayed commencement of the activities. The Operator reasoned that after MC review of the proposal, substantial deliberation took place on the concept optimization and the minutes were got signed by circulation. MoPNG in their reply stated that the MC first deliberated on the concept in July 2010 and in October 2010 passed the resolution and it took two more months for all the representatives to sign the resolution. The Committee also noted that due to delay in execution of the activities, the budget for the year also remained under utilized. The Committee observed that the MC took unduly long time i.e. four months in approving the proposal and the lackadaisical approach eventually affected the commencement of activities. The Committee were of the view that delays invariably lead to cost overruns which ultimately adversely impacted the Government's share of profit petroleum. The Committee desired that a time frame may be prescribed for signing of such resolutions of the MC and the Committee be apprised thereof.

47. In this regard, the Ministry of Petroleum and Natural Gas in their Action Taken Note stated as under:-

> "Normally, the management committee resolutions are signed the same day reflecting the discussions and approvals accorded in the meeting. However, sometimes there is a difference of opinion on an issue between the contractors or between the Government and the Contractor, then the Resolutions / Minutes get delayed. The system of MC meeting has been streamlined to ensure that delays in signing MCR are avoided."

48. While vetting the said ATNs, the Audit made the following comments:-

"To assess the time taken in signing of MC meetings, details of 10 MC meetings held from January 2014 to August 2016 as furnished (February 2017) by the Operator and ONGC were reviewed. It has been observed that time taken in the final sign off of MC minutes from date of MC meetings ranged from 32 to 121 days. Further, the minutes of MC meeting held on 4 August 2016 were still awaiting sign off (10/02/2017) in MOPNG. This was on the higher side despite the assurance by MOPNG that the system of MC meeting has been streamlined.

The Ministry has stated that the system of MC meeting has been streamlined to ensure that delays in signing MCR are avoided. In this regard measures taken may be submitted to PAC."

49. In their further comments to the above said audit observation, the Ministry stated as under:-

"Copy of Minutes of MC Meeting No. 45 held on 4th August 2016 signed by all the MC Members, is attached at Annexure-31A. As it has been submitted earlier that endeavours are made to sign the MCR on the day of MC Meeting itself as far as possible/practical though in certain cases due to disagreement on exact coverage of the issue in MCRs or MCRs initiated through Circulation, the MCRs may not be signed on the day of MC Meeting itself. However, as observed by Audit against Observation/Recommendation No. 26, there has been overall improvement in the process of approval of work programme and budgets by the MC as compared to the previous years. Nevertheless Government representatives on MCs and DGH are being advised to keep in mind the Audit's/PAC concerns and expedite signing of Minutes of Meetings."

50. The Committee were of the view that delays invariably lead to cost overruns which ultimately adversely impacted the Government's share of profit petroleum. The Committee, therefore, desired that a time frame be prescribed for signing of such resolutions of the Management Committee (MC) and the Committee be apprised thereof. The Committee note from the reply of the Ministry that the system of MC meetings have been streamlined to ensure that delays in signing MCR are avoided. However, they are shocked to note that out of the sample 10 MC meetings, it has been seen that delays in final signing of MC minutes ranging from 32 to 121 days. The Committee are unable to pardon the delay in signing of minutes of MC meetings for months together i.e. even upto

four months. It has been, further, observed that the copy of the MC meeting minutes held on 4 August, 2016 furnished by the Ministry have actually signed by all the MC Members only after being pointed out by the Audit. This clearly shows utter failure of the Ministry in monitoring the implementation/streamlining of MC meetings and signing of the Resolutions timely. The Committee while noting from the reply of the Ministry are dismayed to observe the lackadaisical approach of the Ministry to the specific issue addressed by the Committee. The Committee, therefore, take a serious view on the failure of the Government representatives in the MC and for delay in signing of minutes even after introduction of streamlined procedure and desire that the prescribed procedures be followed in letter and spirit and a mechanism for monitoring may also be developed by the Ministry for overseeing execution of the directions on the issue. The Committee, further, desire that definite and concrete measures be put in place by the MC to get timely approval and signing of the resolutions thereby eliminating cost over-runs and protecting the Government of India's share of Profit Petroleum (PP).

CHAPTER II

OBSERVATIONS/RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Observation/Recommendation

Introductory:

The Committee note that with the reforms in the economy, the Government decided to liberalize the framework governing the oil and gas Exploration and Production Sector hitherto the preserve of the Government Sector. In early 1990s, Government of India invited foreign and domestic Private Sector Companies to participate in the development of discovered oil and gas fields, and in some cases, fields partially developed by the National Oil Companies (NOCs)-Oil and Natural Gas Corporation Limited (ONGC) and Oil India Limited (OIL). During pre-NELP exploration bid round, National Oil Companies (NOCs) were licensees of the blocks and had right to take participating interest upto 30% in development phase. Government awarded small and medium sized discovered and producing oilfields as well as some exploratory blocks to foreign and domestic Private Sector Companies in this round. In 1997, the Government formulated a New Exploration Licensing Policy (NELP) which was notified in 1999 with the objective of not only attracting private capital but also introducing the technical expertise and efficiency of global players in the field. Under the NELP regime, both NOCs and private companies were allowed to participate in the bidding of acreages on a level playing field and blocks were awarded through open international competitive bidding and after award, the PSC(Production Sharing Contract) was signed between Contractor parties and the Government of India . The PSCs for specific fields/ blocks laid out the roles and responsibilities of all parties, stipulated the detailed procedures to be followed at different stages of exploration, development and production and also indicated the fiscal regime (cost recovery, profit sharing etc) . Though, under both pre-NELP and NELP regimes, period of exploration was regulated by the terms and conditions of PSC and Petroleum Exploration License (PEL) and petroleum mining was regulated by terms and conditions of PSC and Mining Lease (ML), the content of PSCs varied substantially among those for discovered fields, pre NELP exploratory blocks and NELP blocks and even within different NELP rounds. The principle underlying the PSC (Production Sharing Contracts) model, under the NELP, involved a sliding scale for profit sharing between the Government of India and the Contactor based on the Pre Tax Investment Multiple (PTIM) i.e. an index of the accumulated net cash flow to the contractor relative to the accumulated expenditure on exploration and development activities. The exploration risk viz. the costs incurred in

searching for oil and natural gas, without certainty of discovery, were to be borne by the Contractors as they incurred capital expenditure towards the discoveries and it was only when hydrocarbons were discovered and assessed to be commercially viable, the Contractor had the right to recover costs from the revenue streams accruing from sale of oil and gas. The balance revenue, termed as Profit Petroleum (PP) after the Contractor had recovered all his costs was to be shared between the Contractor and the Government. The Government share of revenues became significant only when the production reached substantial levels and the Contractor had recovered his accumulated costs. Further, PSC also contemplated a Management Committee (MC), chaired by a Government of India representative, with the responsibility to approve field development plans, as well as annual work programmes and budgets for development and production operations to ensure that the expenditure proposed to be incurred as well as actually incurred by the Operator did not adversely affect the Government's revenue interests.

Article 25 of the PSC stipulated 2 levels of Audit by independent auditors viz. a) Appointed by the Management Committee; b) Appointed by the Government. The C&AG undertook a Special Audit (2nd level audit) of four blocks viz. Panna-Mukta, Tapti, KG-DWN-98/3 and RJ-ON-90/1 out of the eight blocks on the request of Secretary, MoPNG made in the wake of large stakes of the Government in the form of royalty and profit petroleum, and concerns voiced in some quarters about the capital expenditure being incurred by some Contractors in the development projects awarded under NELP. The C&AG Audit included scrutiny of the records of the MoPNG and DGH for the period 2003-04 to 2007-08 and supplementary scrutiny of the records of four operators for the period 2006-07 and 2007-08. The findings of the C&AG Audit have been incorporated in their Report No 19 of 2011-12 on "Performance Audit of Hydrocarbon Production Sharing Contracts". C&AG accepted the request of MoPNG to audit 8 blocks and undertook Audit of four blocks PY-1, PY-3, Kharsang and CB-ON-7 for the years 2007-09 and initiated Performance Audit of the implementation of the Hydrocarbon PSCs at the MoPNG and DGH and financial and propriety audit at the Operator's premises in respect of the rest of the four blocks viz. KG-DWN-98/3, Panna-Mukta, Tapti and RJ-ON-90/1 for 2008-12.The observations emanating from the aforesaid Audit are contained in C&AG Report No. 24 of 2014. The Committee took up examination of both the Reports simultaneously as these are based on the Audit of the same blocks over different periods. The Committee note that the C&AG in their first Report had not quantified the costs to be disallowed as per their findings under the PSC provisions by the Operators. The Committee further note from the submission of the Secretary, MoPNG that in the absence of quantification of the deficiencies by the C&AG, it was not possible for them to act thereupon. However, in their second Report, C&AG have done the quantifications of the costs to be disallowed wherever price discovery was possible. The Committee's examination of the subject and their

observations / recommendations on the issues raised in both the Audit Reports are detailed in succeeding paragraphs.

(Sl. no. 1 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

Statement of Fact placed at Introduction to the Observation / Recommendations in Part – II of the Report.

Vetting Comments of Audit

No comments

Reply on Vetting Comments of Audit by MoPNG

No comments

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Production Sharing Contracts and the Cost Recovery:

The Committee note that the basis on which the share of the Government in Profit Petroleum is decided is called 'Pre-tax Investment Multiple' which is the ratio of cumulative net cash income to the cumulative exploration and development cost. The cumulative investment remains as a denominator and it helps to prevent the contractor to maneuver on annual basis i.e. by increasing the production in a year or increasing the cost in a year, the Contractor will not be able to take advantage. The Committee

note that whatever revenue comes in, the Contractor will recover his cost out of the first 90 percent; the 10 percent which remains with him is called profit petroleum and the sharing formula in that 10 percent is that the contractor will take ` 9 (90 percent) and the Government will get ` 1 (10 percent) i.e. the Government's profit will jump from 10 percent to 60 percent if the PTIM changes from 1.5 to 3.5. But the Audit has pointed out that Government's share comes down when the cumulative investment goes up and the investment multiple comes down. The Ashok Chawla Committee on 'Allocation of Natural Resources' had highlighted that the IM-based profit sharing system "gives incentive (to an operator) to increase his investment or front-end his work plan in order to see that the threshold where Government's profit take rises rapidly is not reached." The Chawla Committee had further pointed out that once the PTIM crosses 2.5, the Government's share of profit increases dramatically for which the operator may adopt all investment and strategies possible to ensure that the PTIM stays within the 2.5 limit. The Ministry submitted that based on experience, over so many years of NELP, it was seen that today 90 per cent of problems, which it was facing, and all arbitrations and litigations, were basically related to cost recovery. The Committee further note from the submission of the Ministry that the formula has been revised keeping in mind the C&AG's observations and the Ashok Chawla Committee's recommendation and its own experiences, and a revenue sharing model contract in place of the present profit sharing regime has been introduced, for future bidding rounds under new Hydrocarbon Exploration and Licensing Policy. The Committee while appreciating the switch over to a new model desire that, in case of already signed 249 PSCs, it becomes imperative that the contentious issues arising there from are resolved in an amicable manner with prospective application.

(Sl. no. 2 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

Government of India has taken several initiatives recently to ensure transparent and policy based administration. Several policy initiatives have resolved existing disputes and have also helped in taking decisions where there were potential disputes. The policy initiatives such as Policy Framework for Relaxations, Extensions and Clarifications at the Development and Production stage under PSC regime for early Monetization of Hydrocarbon Discoveries, Policy on Testing Requirements, Policy for Extension of PSCs of Small and Medium Sized Discovered Fields have helped in taking decisions in uniform, transparent and clear manner which have helped in resolution of

disputes and moving ahead with discoveries which were stuck on account of difference of opinion between the contractors and the Government.

Government is focusing on policy based administration with clear and transparent decision making to ensure smooth operation of PSCs.

Vetting Comments of Audit

No further comments are offered

Reply on Vetting Comments of Audit by MoPNG

No comments.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

New Gas Pricing Policy:

The Committee note that CCEA approved a new gas pricing policy in 2014 based on the modification of gas pricing formula proposed by the Rangarajan Committee with prospective application and as per the formulation approved ,upward revision in gas prices would be approximately 75% less as compared to the price arrived at using Rangarajan formula, approximately 80% of the additional revenue due to revision in gas price would go to the Government companies and Government would get additional revenue of approximately Rs. 3800 crore per annum on account of higher royalty, higher profit petroleum and higher taxes. The Committee further note the Government is considering incentivizing gas production from deep-water, ultra deep-water and high pressure-high temperature areas, which are presently not exploited on account of higher cost and higher risks and a proposal is under consideration for new discoveries and areas which are yet to commence production, first, to provide calibrated marketing freedom; and second, to do so at a pre-determined ceiling price to be discovered on the

principle of landed price of alternative fuels. The Committee while appreciating that the Government has already initiated steps to provide marketing and pricing freedom in a calibrated manner to be produced from the difficult areas such as deep water, ultra deep water, high pressure and high temperature reservoirs with a upper cap on pricing and also pricing and marketing freedoms for the fields to be auctioned under the Discovered Small Fields Policy and blocks to be offered under new Hydrocarbon Exploration and Licensing Policy are of the view that care should be taken to ensure that gas is neither sold at very high prices as the ceiling price is dependent on prices of alternative fuels and nor at very low prices to benefit some parties on the pretext that it is being sold below the ceiling price.

(Sl. no. 4 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

The Committee has recommended that *care should be taken to ensure that gas is neither sold at very high prices as the ceiling price is dependent on prices of alternative fuels and nor at very low prices to benefit some parties on the pretext that it is being sold below the ceiling price.* The government has notified that the ceiling price of natural gas to be produced from discoveries in deepwater, ultra deepwater and High Pressure-High Temperature areas shall be calculated as lowest of the (i) landed price of imported fuel oil, (ii) weighted average import landed price of substitute fuels and (iii) landed price of imported LNG. Thus, a mechanism has been built in to ensure that the natural gas sold under the marketing including pricing freedom is at reasonable prices to the satisfaction of all the stakeholders.

The gas price ceiling for the period from April to September, 2016 has been computed by Petroleum Planning and Analysis Cell (PPAC) of the Ministry as US $ 6.61 / mmbtu on GCV basis. The domestic natural gas prices for the corresponding period have been worked out to be US $ 3.06 / mmbtu. Similarly, for the period 1st October 2016 to 31st March, 2017 the ceiling price is US$ 5.30/mmbtu and the domestic natural gas price is US$ 2.50 mmbtu. The price movements are aligned to prevailing prices in the international hubs. Thus, there is a transparent enabling policy framework for the upstream players for making investment decisions; while gas prices worked out through pricing guidelines, 2014 protect user industries.

Further, the landed price based ceiling would be calculated once in six months. Thus, the gas prices would be monitored regularly by the government.

Vetting Comments of Audit

No comments

Reply on Vetting Comments of Audit by MoPNG

No comments.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated:18th October, 2017**

Observation/Recommendation

Non- relinquishment of contract area:

The Committee note that since the Contractor was allowed to enter the second and third exploration phases without relinquishing 25 percent each of the total contract area and to retain the entire Contract Area by treating it as 'discovery area' at the end of Phase-I and Phase-II, Audit had recommended that MoPNG should review determination of the entire contract area as discovery area strictly in terms of PSC provisions as contained in Article 4.1 and 4.2 and delineate the stipulated 25% relinquishment area at the time of the conclusion of the 1st and 2nd exploratory phases and then correctly delineate the discovery area, linked to wells or wells drilled in that part, without considering any subsequent discoveries. The Committee also note from the reply of MoPNG that it has applied appropriate provisions as deemed fit as per Article 4 that deals with the Contractor's right to retain and relinquish the Contract Area in phases and permits the retention of the 'discovery area' by the Contractor at the end of exploration phase I and II for further exploration and appraisal operations and Article 3.11 that deals with retention of portions of Contract Area beyond the exploration phases on account of development operations . Further, MoPNG in its reply have submitted that the discoveries made in phase-I were in plio-pleistocene zone and the discovery area demarcated is related with the plio-pleistocene stratigraphic level. However, the area demarcated separately in subsequent phase i.e. 5445 sq. km. is related with different stratigraphic level, therefore, discovery area was related with the discovery made at specific stratigraphic level and retention of discovery area was in

accordance with article 1.39 of PSC. The Committee also note that Audit in its latest report have recommended that pragmatically, MoPNG should accept sharing of exploration cost of only those of the wells which resulted in a commercial discovery and disallow the cost recovery already effected by the Operator on the remaining wells. The Committee take note of the MoPNG's concurrence, though delayed, to the retention of the entire Contract Area as Discovery Area by the Contractor till the conclusion of Phase III which was based on 3D seismic surveys of the Block insisted upon by the DGH, which was technically qualified to take such decisions. The Committee also note that though under NELP-I to NELP-VII, the provision of relinquishment of 25 percent contract area was there but from NELP-VIII onwards, the operator(s) need not relinquish any area. The Committee after taking into consideration the observations of C&AG, the submissions of the operator and the Ministry and the provisions of the PSC particularly Article 4.1 of the PSC which states that "..in the event Development Areas and Discovery Areas exceed 75%, the Contractor shall be entitled to retain to the extent of Development Areas and Discovery Areas" are of the opinion that delineating Development and Discovery Areas require technical expertise and accordingly the MC and DGH on the request of the Contractor allowed the contractor to retain the 'Contract Area' as the 'Discovery Area' and ,therefore, the exploration costs incurred by the Contractor on unviable discoveries cannot be disallowed as the Contractor is entitled to recover Contract Costs out of a percentage of the total value of petroleum produced and saved from the "Contract Area" as per the PSC.

(Sl. no. 6 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

MoP&NG has taken similar stand and agrees with the observation of PAC.

Vetting Comments of Audit

Audit has no further comments to offer.

Reply on Vetting Comments of Audit by MoPNG

No comments.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Fabrication and installation of living quarters:

The Committee note that as per the agreement relating to functional requirements in FPSO, the general facilities / requirements for operations include air-conditioned living quarters with configuration of one bed, two beds and four beds cabins to accommodate 104 people and the contract price was based on creation of additional living quarters of 40 beds and re use on an as-is basis of 64 existing living quarters on the FPSO with minimum refurbishment. However, extensive refurbishment and upgradation with modifications and re-design of the 64 existing living quarters was done on the request of the Operator which resulted in additional compensation to the vendor. The Operator explained that the personnel working offshore are subjected to hard life and harsh working conditions and upgraded and extensively refurbished living quarters would not only mitigate some of the hardships but also improves productivity , safety and alertness. MoPNG in its reply has stated that the post vendor contractual agreements between the Operator and the vendor validly amended the original vendor-contract and the audit report did not point out any legally tenable ground for cost disallowance such as affiliated transactions to the undue advantage of Contractor, any incidence of fraud and costs not supported by payment evidences. Audit observed that it was the responsibility of the vendor to depute personnel on the FPSO and the existing contract with additional 40 quarters had met the requirements of the FPSO charter contract and also the harsh working conditions were always known and could have been finalised at the time of procuring FPSO. The Committee also note that the development plan for the MA field included the cost of purchase of FPSO but the Operator chartered the FPSO. The refurbishment was also guided by the option of purchase at any time during the charter period which has not been exercised so far. The Committee observe that refurbishments could have been negotiated at the initial stages as the harsh conditions and existing layouts were available at that time. The Committee, however, are surprised to note that the Ministry, in its presentation to them, has bunched all the expenditure related issues and given a single reply to all of them without any issue related reasoning, clarification or explanation. The Committee, therefore,

desire to be apprised of the MoPNG's reply on the need, necessity and level of the refurbishment undertaken at the request of the Operator.

(Sl. no. 13 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

As per the principles of PSC the contractor's and the Government's interests are aligned in minimizing the cost and maximizing the gain from the petroleum operations. Accordingly, contractors are expected to take decisions which are in the best interest of the field and also for maximizing gains for all the stakeholders. The procurements are handled by the Operating Committees in all the PSCs. Government/DGH may not be in position to go into individual procurements and same is to be done by the auditors. Government considers the exceptions provided by the auditors and take a view on them. The basic aspect to be seen in the procurement is that they are made competitively and there is no fraud or related party transactions so that contractors may not be able to siphon off the revenues from the fields.

DGH was directed to look into the need and necessity of refurbishment of quarters. DGH had sought response from the contractors. The operator has brought out that the refurbishment was needed for providing basic amenities for operating personnel to work efficiently and safely. The operator has highlighted that the refurbishment was necessitated for safe, efficient operation and maintenance, for better reliability, for alleviation of harsh offshore conditions on FPSO, for improving working conditions and in the overall interest of the project. The compensation paid by the contractor was on actual expenditure incurred.

In this regard, it is stated that it is the responsibility of the operator to improve the working conditions in the overall interest of the project. Therefore, the operator is authorized to take operational decision to discharge its responsibility. The contractor is required to ensure safety and acceptable working conditions.

Vetting Comments of Audit

Ministry has endorsed the views of operator that the refurbishment was needed for providing basic amenities for operating personnel to work efficiently and safely. The Ministry has not given its own views on the need, necessity and level of the refurbishment undertaken at the request of the Operator, as recommended by the PAC.

Reply on Vetting Comments of Audit by MoPNG

Article 8.3 of the PSC puts an obligation on the Contractor to conduct all Petroleum Operations within the Contract Area diligently, expeditiously, efficiently and in a safe and workman like manner. Thus, to improve the working conditions in the overall interest of the project, the operator is under contractual obligations to take operational decision in discharge of its responsibility and is required to ensure safety and acceptable working conditions.

Contractors are expected to take decisions which are in the best interest of the field and also for maximizing gains for all the stakeholders. If any HSE (Health, Safety and Environment) issue occurs, it would not only result in loss of manpower and resources but overall disruption to operations & production.

FPSO is a comparatively new facility being used in India. Hence anticipating and envisaging everything at planning stage may not have been feasible. If some extra requirements emerged during implementation or after usage, the same have to be met keeping safety and other operational requirements in view. It is also an industry practice that any subsequent requirements are tried to be met through existing/original vendor as looking for new vendor is not only time consuming but may be costly and may not be compatible. Moreover, the Operator is required to ensure safety and acceptable working conditions not only as per PSC requirements but other statutory requirements also.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Payment of compensation on Free Issue Materials:

The Committee also note that the Operator had awarded four contracts relating to construction of OT, construction of Jetty and Infrastructure facilities near the OT on cost -plus basis to L&T Ltd and M/s AFCONS Infrastructure Ltd (AI Ltd). These contracts contained provisions for FIMs (Free Issue Materials) which were to be arranged by the Operator at its own cost and, therefore, different clauses of the contracts excluded various FIMs supplied by the Operator from the purview of payment of compensation to the vendor. But, a percentage of the value of FIMs of some

categories supplied by the Operator was included in the payment of compensation to the vendor. The Operator submitted that in order to incentivize the contractors to bid for supply of labour & provision of construction equipment contract, Operator had to agree for a reasonable mark-up on FIMs and that these FIMs were not capital items and were related to day to day construction materials which require project execution skills, planning and co-ordination to meet construction schedule and if procurement were kept in the Contractor's scope directly then this would have resulted in double taxation with respect to VAT and Service Tax and increased compensation on this account. MoPNG in its reply has stated that the post vendor contractual agreements between the Operator and the vendor validly amended the original vendor-contract and the audit report did not point out any legally tenable ground for cost disallowance such as affiliated transactions to the undue advantage of Contractor, any incidence of fraud and costs not supported by payment evidences. The Committee are of the view that the Ministry should call for a comparative statement of costs incurred due to such provisioning and costs incurred if the materials were directly procured by the vendor before taking a decision on the allowance of the costs.

(Sl. no. 15 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

As per the PAC recommendation, DGH was asked to get the comparative statement from the Contractors. DGH took operator's response which can be summarized as:

"Due process as per PSC was followed for executing the contracts and payments were made as per contract. Contractor has agreed to pay a reasonable markup on civil FIMs like cement, steel, welding rods, GI pipes and other consumables which is usual practice in turn-key construction contracts in order to incentivize vendors to bid or supply of labour and provision of construction equipment. No mark-up was paid on cost of projects, capital items like equipment, bulks etc. and on HSD supplied by the Contractor. The payments were made pursuant to a valid contract which was finalized through a competitive bidding process. The Contractor has ensured overall savings to the project by avoiding payment of double taxation by buying the construction materials directly."

The purchase price which would have been borne by the vendor is not known since the contractor had procured the construction materials and not the vendor. As per operator's statement, the cost of supplies would have been higher because of mark-up even if the purchase price of the free supplies remaining same for both the contractor and vendor. There would have been higher incidences of taxes by way of VAT and

Services Tax on account of mark-up which could be avoided by the contractor as per their response. Cost is supported by payment evidences.

The allowance of cost is in accordance with Article 15 on 'Recovery of cost Petroleum'. The sub-Article 15.1 stipulates. "The Contractor shall be entitled to recover Contract Costs out of a percentage of the total value of Petroleum produced and saved from the Contract Area in the Year in accordance with the provisions of this Article."

Vetting Comments of Audit

Ministry has yet to submit the comparative statement of costs incurred due to such provisioning and costs incurred if the materials were directly procured by the vendor. This may be submitted to PAC for their perusal.

Reply on Vetting Comments of Audit by MoPNG

While appreciating the Committee's view that the Ministry should call for a comparative statement of costs incurred due to such provisioning and costs incurred if the materials were directly procured by the vendor before taking a decision on the allowance of the costs, it is worth mentioning that since vendor did not procure the material, no purchase price (of vendor) is available for cost comparisons.

Article 8.3 of the PSC puts an obligation on the Contractor to conduct all Petroleum Operations within the Contract Area diligently, expeditiously, efficiently and in a safe and workman like manner. Therefore, the operator is under contractual obligations to take operational decision in discharge of its responsibility. Contractors are expected to take decisions which are in the best interest of the field and also for maximizing gains for all the stakeholders.

Keeping in view the Committee's concerns, Government representatives on MC and DGH are being advised to keep in mind the Audit's/PAC concerns and if any deviation from PSC is observed, the same would be reported to MoPNG for appropriate action as per PSC.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Classification of Start-up and Production Bonuses as part of recoverable costs:

As per Audit, during the period 2008-09 to 2009-10, the Operator charged long term bonus (LTB), productivity linked incentives (PLI), start-up bonus and production bonus paid to its employees in proportion to number of hours they were engaged in the work relating to this block. The Operator has been paying LTB as a retention bonus and PLI to its E&P employees. In addition the start-up and production bonuses were given to the E&P employees on the occasion of starting first gas production. Audit had stated that PSC provides for payment of bonus to those assigned personnel who are directly and necessarily engaged in the conduct of the petroleum operations and allows recovery of eligible costs related to the Contractor's locally recruited employees who are directly engaged in the conduct of petroleum operations under the contract in India and assigned personnel and includes salaries, wages and other costs which are as per the personnel policy and are of a regular nature. Audit had observed that since start-up and production bonus are one-time and of an ad-hoc nature, these should not be paid from the revenue earned from the sale of gas. According to Operator, the PSC nowhere stipulates such restrictions and the opinion of the audit is not in line with the provisions of the PSC as it is clear that the cost of employee benefits, including bonus are eligible for cost recovery and the start-up and production bonus was paid to employees as a performance bonus for completion of activities directly concerned with the project to improve employees morale and productivity. Audit further stated that Operator has been paying LTB as a retention bonus and PLI to its E&P employees for improving morale and productivity and retaining the experienced employees. MoPNG in its reply has stated that the post vendor contractual agreements between the Operator and the vendor validly amended the original vendor-contract and the audit report did not point out any legally tenable ground for cost disallowance such as affiliated transactions to the undue advantage of Contractor, any incidence of fraud and costs not supported by payment evidences. The Committee are of the view that as the disagreement between the parties involves correct interpretation of the provisions of PSC, MoPNG may seek the views of Ministry of Law thereon and apprise the Committee thereof.

(Sl. no. 16 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

Para 3.1.2 of PSC brings out that:

"3.1.2 Labour and Associated Labour Costs

(a) Contractor's locally recruited employees based in India

(a) Costs of all Contractor's locally recruited employees who are directly engaged in the conduct of Petroleum Operations under the Contract in India.

Such costs shall include the costs of employee benefits and Government benefits for employees and levies imposed on the Contractor as an employer, transportation and relocation costs within India of the employee and such members of the employee's family as per the personnel policy of the employer as required by law or customary practice in India. If such employees are engaged in other activities in

India, in addition to Petroleum Operations, the cost of such employees shall be apportioned on a time sheet basis according to sound and acceptable accounting principles.

(b) Assigned Personnel

Costs of salaries and wages, including bonuses, of the Contractor's employees directly and necessarily engaged in the conduct of the Petroleum Operations under the Contract, whether temporarily or permanently assigned, irrespective of the location of such employees, it being understood that in the case of those personnel only a portion of Whose time is wholly dedicated to Petroleum Operations under the Contract only that pro rata portion of applicable salaries wages and other costs as specified in Sections 3.1.2©, (d), (e), (f) and (g) shall be charged and the basis of such pro rata allocation shall be specified

(c) The Contractor's costs regarding holiday, vacation, sickness and disability benefits and living and housing and other customary allowances applicable to the salaries and wages chargeable under Section 3.1.2(b) above.

(d) Expenses or contributions made pursuant to assessments or obligations imposed under the laws of India which are applicable to the Contractor's cost of salaries and wages chargeable under Section 3.1.2(b) above.

(e) The Contractor's cost of established plans for employees group life insurance, hospitalization, pension, retirement and other benefit plans of a like nature customarily granted to the Contractor's employees provided however, that such costs are in accordance with generally accepted standards in the international petroleum industry, applicable to salaries and wages chargeable to Petroleum Operations under Section 3.1.2(b) above.

(f) Personal incomes taxes where and when they are paid by the contractor to the Government of India for the employees of the Contractor, including those made for travel and relocation of the expatriate employees, including their dependent family and personal effects, assigned to India whose salaries and wages are chargeable to Petroleum Operations under Section 3.1.2(b) above.

(g) Reasonable transportation and travel expenses of employees of the Contractor, including those made for travel and relocation of the expatriate employees, including their dependent family and personal effects, assigned to India whose salaries and wages are chargeable to Petroleum Operations under Section 3.1.2(b) above.

Transportation cost as used in this Section shall mean the cost of freight and passenger service and any accountable incidental expenditures related to transfer travel and authorized under Contractor's standard personnel policies. Contractor shall ensure that all expenditures related to transportation costs are equitably allocated to the activities which have benefits from the personnel concerned."

As per the recommendations of PAC, views of MOLJ have been sought on, **"***Whether booking of payment of US$ 12.48 million on Start-Up and Production Bonuses to the revenue earned from the sale of gas is covered under Section 3.1.2 of the Accounting Procedure Appendix C of PSC?".* Views of MOLJ are awaited.

Vetting Comments of Audit

Ministry has stated that views of MOLJ have been sought on, *"Whether booking of payment of US$ 12.48 million on Start-Up and Production Bonuses to the revenue earned from the sale of gas is covered under Section 3.1.2 of the Accounting Procedure Appendix C of PSC?*", which are still awaited. The PAC may be apprised of the views of the MOLJ.

Reply on Vetting Comments of Audit by MoPNG

As per recommendation of PAC, MoPNG has referred the matter to MoLJ on 14.10.2016 for their comments. Subsequently, the matter was discussed with MoLJ from time to time to address their queries. MoLJ returned the file on 15.09.2017 seeking some documents, additional information and clarifications. DGH has been requested to provide these documents, information/clarifications vide letter dated 19.09.2017. PAC would be apprised as soon as the views of MoLJ are received by this Ministry.

Further Reply on Vetting Comments of Audit by MoPNG

Ministry of Law & Justice (MoLJ) has advised as under:

"A combined reading of clause (b) and clause (d) of Section 3.1.2 indicates that contractor's costs of salaries and wages including bonuses chargeable to be determined in accordance with the applicable laws of India. It is relevant to mention that bonuses to be given to the employees directly and necessarily engaged in the conduct

of petroleum operations are the part of wages. Therefore, the same has to be determined in accordance with applicable laws of India. In view of this, it may not be correct to say that provisions of Bonus Act, 1965 are irrelevant to determine the bonuses said to be given to the employees especially in the circumstances when the Operator is declining to provide employment contract.

It is gathered from the papers made available by the administrative Ministry that Stand-up and Production bonuses were one time bonuses and *ad hoc* nature. To claim that talented and experienced employees are retained by such start-up and production bonuses does not appear tenable."

As advised by MoLJ, DGH has been directed to disallow US$ 12.48 million incurred on Start-up and Production Bonus paid to employees engaged in the block.

Further Vetting Comments of Audit

PAC may be apprised of the recoveries effected from the Operator in this regard.

Reply on Further Vetting Comments of Audit by MoPNG

Operator has been advised to reverse an amount of USD 12.48 million and remit to the Government consequential Government share of Profit Petroleum. The contractor, however has not either paid the additional profit petroleum on account of disallowance of cost or reversed the amount of USD 12.48 million despite reminders from DGH. Therefore DGH has been directed to take action as per PSC provisions.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 2nd November, 2018**

Observation/Recommendation

Bonus paid for time saved during rig movement:

The Committee further note from the observation of the Audit that the Operator paid M/s Transocean bonus for time saved during the rig movement between wells with hanging Blow Out Preventor (BOP) which were not covered under the terms and conditions of the contracts and hence should be disallowed. According to the Operator, the vendor was entitled to performance incentive in accordance with the provision of the contracts for completing the wells ahead of the target number of days and the incentive scheme was to be mutually agreed and payment modalities were to be separately worked out as per the contracts. But Audit contended that the incentive should have been accordingly paid for completion of wells rather than a single activity of rig movement. According to MoPNG, the amount involved was actual expenditure incurred

in petroleum operations in a transaction not reported by audit to be an affiliate transaction or transaction unduly benefitting the Operator/ Contractor. The Committee are of the view that as the disagreement between the parties involves correct interpretation of the provisions of PSC, MoPNG may seek the views of Ministry of Law thereon and apprise the Committee thereof.

(Sl. no. 18 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

The views of MOLJ have been sought on, **"***Whether the bonus payments for time saved during the rig movement between wells with hanging Blow Out Preventor (BOP) should be disallowed for cost recovery?"* Views of MOLJ are awaited.

Vetting Comments of Audit

Ministry has stated that views of MOLJ have been sought on, *"Whether the bonus payments for time saved during the rig movement between wells with hanging Blow Out Preventor (BOP) should be disallowed for cost recovery?"* which are still awaited. The PAC may be apprised of the views of the MOLJ.

Reply on Vetting Comments of Audit by MoPNG

As per recommendation of PAC, MoPNG has referred the matter to MoLJ on 14.10.2016 for their comments. Subsequently, the matter was discussed with MoLJ from time to time to address their queries. MoLJ returned the file on 15.09.2017 seeking some documents, additional information and clarifications. DGH has been requested to provide these documents, information/clarifications vide letter dated 19.09.2017. PAC would be apprised as soon as the views of MoLJ are received by this Ministry.

Further Reply on Vetting Comments of Audit by MoPNG

Ministry of Law & Justice (MoLJ) has advised on this issue as under:

"With regard to the Bonus Payment for time saved during the rig movement between wells with hanging Blow Out Preventor (BOP) should be disallowed for cost recovery, it may be appreciated that this is a pure question of facts to determine the aspects of time which was claimed to be saved and whether there was any provision in the PSC to provide incentive in that regard, if there is any provision in the PSC to impart bonuses and there was exclusive benefit then the same to be determined accordingly."

As advised by MoLJ, DGH has been directed to review the matter in light of provisions of PSC and take appropriate action for allowance/ disallowance of costs depending upon any efficiency achieved in time saving or exclusive benefits during rig movement with the BOP in hanging position.

Further Vetting Comments of Audit

Further progress in this regard may be apprised to PAC.

Reply on Further Vetting Comments of Audit by MoPNG

An amount of USD 2.83 million paid as bonus to M/s Transocean has been disallowed on the ground that no time efficiency has been achieved by paying the bonus in the instant case. The Operator was advised to reverse an amount of USD 2.83 million paid to M/s Transocean in the audited accounts for the FY 2017-18 vide DGH's letter dated 31.05.2018. However, the reversal has not been reflected in the audited accounts for the financial year 2017-18. Therefore DGH has been directed to take action as per PSC provisions.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 2nd November, 2018**

Observation/Recommendation

Non-signing of Crude Oil Sales Agreement (COSA)

The Committee note that despite elapse of more than 21 years (since 1994), COSA has not been formalized by the Panna-Mukta JV with IOCL (GoI nominee) due to non-resolution of issues such as delivery point, storage charges, dead freight, voyage costs/ losses, terminal charges, measurement conversion table, dollar rupee exchange rate, lay time in monsoon and delayed payments and interests thereon. The non-signing of COSA for Panna-Mukta PSC has previously also been commented and highlighted in C&AG audit reports of 1996, 2005 and 2011. Thus, non-signing of COSA led to non-resolution of storage and voyage expenses and are shown as recoverable by PMT JV from GoI/GoI's nominee i.e., IOCL. The Ministry and ONGC while deposing before the Committee and in their written submission have stated that various correspondences and meetings were held between PMT JV & IOCL since the commencement of crude oil

sales in 1994-95. However, the issues could not be resolved. Subsequently, in 2014 a Task Force was constituted which has so far held seven meetings, the last one being on 08.03.2016. As per the Minutes of the 5th meeting of Task Force held on 20.04.2015, the settlement of issue related to sale of crude oil for Panna – Mukta have agreed on along with agreement that the PMT JV shall prepare a draft settlement agreement on the basis of these signed minutes within 15 days. The PMT JV were to share a draft of the more detailed COSA within 90 days from the date of execution of the Settlement Agreement. The Parties have agreed that post signing of the settlement agreement and until such time that the COSA is executed, the settlement agreement shall be binding agreement between the Parties and shall be basis on which all future sale and purchase of crude oil from Panna-Mukta area occurs. The Committee are shocked to find that even though 21 long years have passed, the PMT JV could not resolve the pending issues resulting in non-signing of COSA and loss to the exchequer. This shows the non-serious approach of the PMT JV as well as IOCL. The Committee also desire the Ministry of Petroleum and Natural Gas to look into the reasons for inordinate and inexplicable delays and failure of the monitoring mechanism of the Ministry and fix responsibility by taking appropriate punitive action against the concerned officials. Accordingly, the Committee may be apprised on the matter within four months of the presentation of the Report.

(Sl. no. 19 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

GOI had appointed IOCL as its nominee to purchase entire crude oil produced from the Panna-Mukta field in accordance with Article 18.1 of the PSC in which ONGC and RIL are Indian consortium partners. Signing of Crude Oil Sales Agreement (COSA) is a commercial practice between buyer and seller and Ministry does not have a direct role in this. The non-finalization of COSA is mainly because of non-acceptance by PMT JV of the terms and conditions insisted by IOCL regarding applicable period for dollar to rupee conversion in respect of the crude oil sold by PMT JV.

To resolve this long pending issue, a meeting was held on 23rd May, 2016 to bring all the stakeholders together. The information regarding practices being followed in other PSCs and by other Indian companies in respect of such payments for crude oil produced under the Pre-NELP and NELP PSCs is also being collected to get the COSA finalized at the earliest.

Vetting Comments of Audit

Signing of crude oil sales agreement (COSA) is an essential event which will provide finality to the commercial transactions (including GoI share of Profit petroleum).

In this regard it was observed that section 1.6 of Accounting procedure on 'Currency Exchange Rates', mentions that

'For translation purpose between USD and INR or any other currency, the previous months average of the daily means of the buying and selling rates of exchange as quoted by SBI (or any other financial body as may be mutually agreed between the parties) shall be used for the month in which the revenues, costs, expenditure receipts of income are recorded'.

Hence the conversion issue needs to be addressed accordingly at the earliest so as to settle the financial implications well before expiry of the PSC term in December 2019.

A copy of the minutes of the meeting held on 23 May 2016 may be provided to the PAC.

Reply on Vetting Comments of Audit by MoPNG

As per vetting comments of CAG, a copy of the minutes of the meeting held on 23 May 2016 is attached at Annexure-19A and copy of Settlement Agreement is attached at Annexure-19B for perusal of PAC.

Further Reply/Update by MoPNG

Crude Offtake and Sales Agreement (COSA) between IOC and PMT JV Partners has been signed and executed on 27.10.2017.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 2nd November, 2018**

Observation/Recommendation

Award of Contract for Installation of Platforms

The Committee note that PMT JV entered into a settlement agreement with M/s Swiber for relocating the PK and SWP platforms on a nomination basis in March 2010 rather than on a tender basis as mandated in the PSC. The actual cost for transportation and installation far exceeded the estimates. It was astonishing to find that against the estimated cost, the actual contracted price was more than double. The PMT JV's contention that the estimate was merely on early estimate of likely cost was objected to by the Audit. The Audit pointed out that the estimates for PL project had been prepared in August 2008 and the contract was awarded merely a month later in September 2008 to M/s Swiber for SWP and PK platforms based on quotes received in the tender for SWP and PK platform. Audit, therefore, concluded that the cost incurred for the transportation and installation under PL project was comparatively very high vis-a-vis the original estimates. The PMT JV in their explanation submitted that they engaged Swiber to undertake the modifications to minimize the time for award of contract as the material was under care of Swiber and there was concern that there might be a dispute under the existing contract with Swiber regarding incomplete scope and also there was no desire to incur extensive storage costs from Swiber.

*The Committee are not satisfied with the MoPNG's observation that audit exception has been notified to the contractor. The Committee while deprecating the lackadaisical attitude of the MoPNG recommend that the Ministry should look into the issue of award of contract to M/s Swiber on settlement basis rather than on tender basis as mandated in the PSC and also see if it has adversely affected the GoI's share***.**

(Sl. no. 21 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

DGH has been advised to constitute an internal committee comprising of the representatives with technical and financial background to look into the entire process for award of contract on nomination basis. If on the basis of this scrutiny, it is found that loss has been accrued to the Government, the same may be quantified and cost regarding award on nomination basis may be disallowed.

Vetting Comments of Audit

Scrutiny by the internal committee needs to be expedited so that the action can be taken well before the expiry of the PSC term in 2019.

The finding of internal committee and action taken thereon may be submitted to PAC.

Reply on Vetting Comments of Audit by MoPNG

The internal committee has reviewed the following three issues and after examining, proposed no action on account of the following reasons:

Issue No. 1: Award of Contract on nomination basis

The successful bidder was awarded the contract after following the due procurement process and there was adequate completion in the procurement process to ensure rate reasonability. The contract for installation of PL platform was an extension of the original contract awarded after due process. 'Repeat order' and 'change order' are common practices in E&P industry. The Committee considering the time, cost and risk factors, found it prudent on the part of contractor to extend the existing Contract after negotiating a lump sum rate, considering the prevailing critical circumstances that might lead to more uncertainties with regard to costs and time as well.

Issue No. 2: The cost incurred for the transportation and installation under PL project vis-à-vis the original estimates

The Committee after considering the cost of alterative new contract concluded that had the contract been awarded on a variation day rate basis, the cost of installation have been much higher.

Issue No. 3: Loss to GOI

The Committee noted that the profit computation for sharing with GoI under PSC provisions is akin to computation of taxable profit under the Indian Income Tax Act (Section 42) and Article 15.2.2 of PSC equate PSC with Income Tax Act. The Committee's view on the instant issue is in line with the Income tax regime in India that does not penalize the Contractor in these circumstances. PSC does not contain provisions whereby costs can be disallowed under the instant circumstances. The Committee does not find any basis under PSC for proposing cost disallowance.

As per vetting comments of Audit, the findings of internal committee of DGH are attached at Annexure-21A for perusal of PAC.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation No. 24

The Committee note that although the PSC for Mid and South Tapti was silent on the disposal of condensate, i.e. whether it is gas or crude oil, PMT JV was treating the condensate as gas till December 2005. Further, the transportation and processing of PMT gas was undertaken by ONGC through its South Bassein - Hazira offshore trunk pipeline and onshore Hazira facilities respectively and was governed by a Settlement Agreement of December 2005 between ONGC and PMT JV. In the Settlement Agreement, the condensate transportation losses from the Tapti delivery point to ONGC's Hazira Plant were to be determined by a Condensate Expert to be jointly appointed by ONGC and PMT JV. Pending determination of such losses, it was agreed to treat the Tapti condensate losses provisionally as 'zero'. The Audit further noticed that while ONGC was considering internally 6 per cent as transportation and processing loss from condensate, the PMT JV was considering the loss as 'zero' from 2005. The ONGC's submission that with the appointment and submission of the report by the Condensate Expert (M/s Worley Parsons Consulting) both parties have agreed to consider a shrinkage of 3.6 per cent. Further, the proposed amount payable to ONGC at US$7.943 million has to be adjusted against pending PMT JV invoices of US$13.08 million up to 30.09.2015. In view of the differential consideration of condensate losses ranging from 'zero' (PMT JV) to 6 percent (ONGC) and subsequent calculation of shrinkage as 3.6 percent (Condensate Expert) clearly shows that the validity of observation made by the Audit. The Committee are of the view that the issue of fixation of transportation losses of condensate should not have been kept pending for so long and therefore desire that the Ministry may take appropriate steps to look into the non-serious attitude of the PMT JV for not appointing the Expert although the Settlement Agreement was reached in 2005. The Committee further desires that all issues related to approvals and final settlement of the matter may be pursued expeditiously and the Committee apprised accordingly.

(Sl. no. 24 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

The records pertaining to delay in fixation of transportation losses of condensate have been sought from ONGC and DGH. Further action would be taken by Ministry on the basis of scrutiny of these records.

Audit in their vetting comments have observed as under:-

"As the PSC term is expiring in December 2019, the issue needs to be resolved expeditiously."

Ministry's comments on audit's above observations

ONGC has informed that the matter has been resolved amicably and final settlement has been arrived with JV-PMT and payments were made by ONGC (which were withheld earlier) to JV-PMT in July 2016 after adjustment of its own dues.

It has also been informed that delays occurred due to specialized nature of the job, finalization of scope of work and selection of suitable expert took time. Moreover, being joint responsibility of all three concerned parties (ONGC, RIL and BGEPIL) as a whole to agree and appoint such an expert, it took more time. Further, even after submission of report by condensate expert, more time lapsed on account of discussions/deliberations to arrive at a mutually acceptable decision and further approvals by respective managements of all three partner companies.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Matters Related to Arbitration

The Committee find that the two JV partners namely RIL and BGEPIL served Arbitration notices to GoI and have raised claims pertaining to i) Cost Recovery provisions under Panna-Mukta and Tapti PSC, ii) Calculation of IM, iii) Amount of royalty payable under PMT PSC, iv) Amount of cess payable by Contractor to GoI, v) Amount of service tax payable under PSC, and vi) Meaning and effect of Accounting and Audit provisions. It has been further noted that on the directions of the Ministry, ONGC has not participated in the Arbitration and ONGC has agreed that they shall abide by the arbitral award. The Committee further note that majority of the problems in the PSCs over the NELP regime are related to cost recovery. While appreciating the Government's move for doing away with micro-management or day-to-day operations and moving from profit sharing towards the revenue sharing model, the Committee hope

that this will help the prospective PSCs for lesser disputes and thereby early settlement of issues between the parties. The Committee desire that an effective mechanism should be developed for speedy resolution of cases so that the aggrieved parties need not spend long years for redressal of their grievances.

(Sl. no. 25 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

The future contracting model would be on Revenue Sharing basis which will not involve cost recovery and many of the disputes related to the present PSC regime will not occur in it as cost recovery has been a major contention between the contractors and the Government. The future models would also not involve micro management by the Government and the contractors will be given more freedom to take decisions.

In order to make high risk E & P Industry attractive and investor friendly, arbitration as dispute resolution mechanism, has been provided in all contracts in line with the global practice. With the recent amendment of Indian Arbitration and Conciliation Act, the arbitration process in future is expected to redress the disputes more speedily.

Further, PSC also provides for dispute resolution mechanism through sole experts and conciliation. The resolution of disputes through sole experts and conciliation are speedy mechanism and would be considered as and when such issue arises.

Vetting Comments of Audit

As no further action is expected in current PSC, the issue need not be pursued. Compliance in future agreements would be seen in audit.

Reply on Vetting Comments of Audit by MoPNG

No comments.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Delay in Submission of WP & B:

Audit observed that there were delays in submission of annual WP&B in each of the years from 2008-09 to 2011-12 on the part of OC ranging from 91-111 days and on the part of MC ranging from 70-239 days which meant that the WP&B for a financial year was actually approved after the beginning of the financial year and, shockingly, the WP&B for 2011-12 was submitted to the MC in April 2011 and approved by MC in December 2011. The Committee note from the reply of the Operator that ".annual WP&B merely reflect phasing of the expenditure on year to year basis …what was more critical was the project sanction which existed by means of MC approved FDPs.." and, further, from the reply of the MoPNG that the "PSC provides that the Contractor should submit the annual work programme and budget to the MC by 31st December of the previous year. Though there is no time limit for grant of approval by the MC, presumably the MC has three months (90) days for approval of the annual work programme & Budget before the year commences. With this background, the time taken by MC for approval of the budget is not found to be materially different and the PSC timelines were generally adhered to". The Committee are shocked to note that a Ministry of Government of India that is well versed with the budgeting process and its benefits is undermining its importance. The Committee are of the view that it is obvious, the budgets are to be approved before the onset of the financial year, hence, there are no timelines prescribed in the PSC. The Committee also do not approve the Operator's contention that budgets merely reflect phasing of expenditure on year to year basis and observe that besides estimating, as realistically as possible, the cost to be incurred in the ensuing year, they provide a means to monitor how closely the actual progress toward achieving the objectives is being made relative to the proposed budget. The Committee while appreciating that the WP&B for 2015-16 was approved by MC before 31.3.2015 desire that the same practice be followed every year as the WP&B authorizes a particular activity within the approved budget.

(Sl. no. 26 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

The recommendation of the Committee regarding timely approval of Work Programme and Budget is accepted and all the endeavours would be made to get the same approved within the stipulated timelines. Sometimes there are delays on part of the contractors to submit the WP & B. However, DGH and Ministry are making efforts to get these approved timely so that E & P activities may move ahead. For the current year also the timely approval of WP & B was a priority for the ministry / DGH and the same was done in a time bound manner.

Vetting Comments of Audit

To assess the time taken in submission of Work Programme & Budget (WP & B) by Operating Committee (OC) to Management Committee (MC) and its approval by MC, details relating to WP&B as furnished (February 2017) by Operator-Cairn India Limited and ONGC, for the yeas 2013-14 to 2016-17 were reviewed. It has been observed that there was improvement in time taken in submission of WP&B by OC to MC as compared to the submissions during 2008-12 and consequently, the MC had also approved the WP&B for 2013-14 on 04 April 2013, for 2014-15on 20 May 2014, for 2015-16 on 16 March 2015 and 2016-17 on 12 March 2016. However, the signing of minutes of MC meetings in which the WP& B for 2013-14 to 2016-17 were approved took time ranging from 47 to 94 days. This needs to be reduced so as to avoid adverse impact/delays on execution of approved agreed activities pending receipt of signed minutes of respective MC meetings. Further, remarks against point No 13: **Delay in finalizing optimization concept** in succeeding paragraphs may also be pursued.

Reply on Vetting Comments of Audit by MoPNG

As observed by C&AG, there has been overall improvement in the process of approval of work programme and budgets by the MC as compared to the previous years. It may be seen from the WP&B for the Financial years 2015 – 16 and 2016 – 17 that the WP & B were approved before commencement of the relevant FY, as desired by PAC.

Presently, DGH is conducting Quarterly review meetings in respect of each block/ field for review of the approved agenda. Thus, MCRs are approved by MC before onset of the FY. Nevertheless Government representatives on MCs and DGH are being advised to keep in mind the Audit's/PAC concerns and expedite signing of MoMs.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Adjustment of Shipping Cost beyond Delivery point:

As per PSC, the Contractor would be responsible for all costs prior to the delivery point (DP) and the GoI or its nominee would be responsible for all costs beyond the delivery point and as an interim arrangement, the GoI had allowed delivery point at Kandla Port for transporting crude to HPCL & MRPL. The Committee note that as HPCL did not take any crude against its allocation and the Operator transported crude from October, 2009 to June 2010 to MRPL and RIL through the delivery point at Kandla and adjusted the expenditure (for oil supply beyond the DP towards shipping of crude to MRPL & RIL) against the revenue which resulted in short payment of Profit Petroleum to GoI. As per the Operator, since HPCL did not eventually buy crude oil and MRPL refused to lift the crude oil from Kandla Port, sales to RIL and MRPL were made through marine vessels and the costs so incurred were charged from the revenue as per Artcle 19.3 of PSC which provides that in case of Arm's length sales, the delivery point shall be the outer flange of the export terminal or the customer's facility in India or as the case may be. The Committee, however, note from the reply of the Ministry that the Contractor was advised by DGH in August 2012 disallowing cost recovery followed by a reminder in January 2014. The Ministry has again in March - April 2016 reiterated that "the Contractor has been advised disallowance of cost and differential profit petroleum will be collected". The Committee are not able to comprehend as to why after lapse of around 4 years Ministry has not been able to collect the differential profit petroleum when the C&AG had quantified the costs in 2012 itself. The Committee desire that the differential profit petroleum may be collected at the earliest and the Committee apprised thereof.

(Sl. no. 27 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

The amount of differential profit petroleum has been remitted by the Contractor.

Vetting Comments of Audit

Information/documents furnished (February 2017) by the Operator, Cairn India Limited and ONGC indicated that differential profit petroleum of USD 1912817 (Operator: USD 1338972 on 22 July 2016 and ONGC: USD 573845 on 13 July 2016) has been remitted to the Government towards for shipping cost which was not allowed by GOI for cost recovery.

Taking note of the above, no further action is proposed.

Reply on Vetting Comments of Audit by MoPNG

No comments.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) Dated: 18th October, 2017

Observation/Recommendation

Inability of Government Nominee to lift crude:

According to Audit, as per Article 18.2 of PSC, the GoI or its nominee is under obligation to purchase the entire crude from the contract area and, accordingly, GoI designated MRPL as its nominee for RJ crude as ONGC and HPCL both had confirmed their ability to process the entire crude indicating that a pipeline would be laid from Barmer to Mundra port for taking the crude to their existing refineries viz. MRPL and HPCL. However, MRPL informed GoI that it could not take full allocation because of peculiar characteristics of RJ crude which resulted in nomination of multiple refineries by GoI for purchasing the crude; shifting of DP from Barmer to Salaya to Bhogat; and delaying of commencement of production from Q4 2007 to H2 2009. GoI approved in April 2008 shifting of delivery point from Barmer to Salaya, a location suitable for nominated refineries, but in December 2008, when the work had already started, the Operator requested for shifting it to Bhogat in view of ecological considerations and the pipeline from Barmer to Salaya was completed after a delay of 10 months in May 2010 and from Salaya to Bhogat scheduled to be completed in Q22010 was completed in June 2014. The Committee note that the delays resulted in rescheduling of drilling of wells and sale of crude through tankers which caused the controlled/ moderated

production during the delayed period. Further, the GoI nominated refineries could not lift their allocated crude as MRPL discontinued its off-take till the installation of its Coker unit, HPCL did not lift any crude and IOCL had confirmed uplifting subject to commercial viability. Two spur lines built to facilitate delivery of crude to IOCL also remained underutilized as IOCL did not lift its full allocation. The Committee note that the inability of the refineries nominated by the GoI to lift RJ crude led to various delays and had huge cost implications. The Committee feel that the Ministry should have been extra cautious while nominating other refineries once MRPL failed to lift the allocated crude despite confirmation by the ONGC at the beginning. The Committee are also shocked to note that the Ministry only followed the Operator and its advice and did not take adequate measures before sanctioning the pipeline from Barmer to Salaya as ecological clearances should have been insisted upon by the Ministry itself before sanctioning the first pipeline. Also, since IOCL had only agreed to lift crude subject to commercial viability, the Ministry should have undertaken a cost-benefit analysis before approving the two spur lines for IOCL. The Committee while observing that the lackadaisical approach of the Ministry and unprofessional attitude of the PSUs like ONGC , HPCL etc. led to delays and cost overruns which adversely affected the GoI share of Profit Petroleum and expect the Ministry to be pro-active and more professional in its approach in future.

(Sl. no. 28 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

Crude oil from the Rajasthan Block RJ-ON-90/1 is challenging not only in terms of transportation, but also processing. Its distillate yield percentage is low when compared to other indigenous crudes. Complex refinery configuration is required for maximizing the distillate yield. GOI nominated refineries could not lift the crude oil earlier mainly on account of technical limitation of their refineries. MRPL, after initial inability to lift the crude oil, has started to off-take crude during the FY 2015-16. IOCL, which has been lifting the crude oil during earlier years is further in the process of upgrading its infrastructure like heated crude oil pipeline from Viramgam to Koyali. The government nominated PSU refineries are taking requisite steps for meeting logistics and processing challenges for such complexity, which was not faced earlier in the country. Further follow up would be taken up with the PSU refineries on increasing their off-take from the Block.

Vetting Comments of Audit

Information submitted (February 2017) by the Operator-Cairn India Limited and ONGC indicated that during 2013-14 to 2016-17 (till January 2017) the off take by private refineries (RIL and Essar) registered a declining trend from 83 % to 70 % of the total off take of crude from the RJ block, yet, the actual off take by the PSU refineries (IOCL and MRPL) was still below actual allocation by the Government. The PSU refineries are still required to increase their off take at least to the extent of allocated quantity.

PAC may be apprised of the action taken by the Government in this regard.

Reply on Vetting Comments of Audit by MoPNG

The Government Nominees have started off-taking much higher amount of crude oil, as observed by C&AG as well. However, exact amount of crude off-take may vary on year to year basis due to operational exigencies. Further, PSU Refiners are being advised to adhere to increase their off take at least to the extent of allocated quantity.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Pricing of RJ crude:

As per PSC, the calculation, the basis of calculation and the price of crude oil determined would be subject to agreement before it was finally determined and pending final determination, the price determined by the Contractor would be used. Since the price formula for working out the price is yet to be agreed by the MoPNG, the term sheets executed by the Operator with the private operator refineries were based on agreed price with no provision of revision from retrospective effect. MoPNG in June 2010 while informing the Operator that the position taken by private refineries with regard to revision of price was not acceptable and advised that sales made to these refineries be on provisional prices until final decision was arrived at by the GoI. The Committee note the contention of the Operator that basic pricing formula agreed upon with the IOCL is being used with the private refiners also and that formula was finalized

with IOCL at arm's length. MoPNG in their reply have stated that PSC provides Government intervention when price is not at arms' length. The Committee find that Ministry has taken contradictory stands, firstly, it informed the Operator that the price charged was to be provisional and that the sales to the domestic private refineries were not to be construed as arms' length saleshowever, in their presentation to the Committee it stated that Government intervention was not required. The Committee take serious view of the misleading responses given by the Ministry and desire that since the pricing of crude requires interpretation of the PSC, opinion of Ministry of Law may be sought and the Committee apprised thereof.

(Sl. no. 29 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

As Recommended by PAC, views of MOLJ have been sought on, **"***Whether the intervention of Government on pricing of crude oil produced from the Block was required as per the PSC in absence of any issue of affiliated transaction?"* Views of MOLJ are awaited.

Vetting Comments of Audit

As brought out in the audit observation, the price of RJ crude is still (February 2017) provisional as stated by ONGC and the Operator in their reply dated 09 and 10 February 2017 respectively. Further, as indicated in the reply of Ministry, the matter has been referred to MOLJ (the Ministry of law and Justice).

In view of above, it is proposed that the Government may intimate the decision regarding RJ price to Audit as and when taken.

The views of MOLJ on, "Whether the intervention of Government on pricing of crude oil produced from the Block was required as per the PSC in absence of any issue of affiliated transaction?" may be submitted to PAC.

Reply on Vetting Comments of Audit by MoPNG

(i) As per vetting comments of Audit, the decision of the Government regarding RJ price would be intimated to the Audit as and when taken.

(ii) As per recommendation of PAC, MoPNG has referred the matter to MoLJ on 22.09.2016 for their comments. Subsequently, the matter was discussed with MoLJ from time to time to address their queries. They

have also been requested for an early advice in the matter. PAC would be apprised as soon as the views of MoLJ are received by this Ministry.

Further Reply on Vetting Comments of Audit by MoPNG

Ministry of Law & Justice (MoLJ) has given their advice on the provisions of Article 19 of PSC relating to "Valuation of Petroleum" as under:

"1. On perusal of the provisions of Article 19 of the PSC, it may be seen that Articles 19.3, 19.4 and 19.8 provide basis of valuation of crude oil in case sale is made at Arms-length, to the Government or the Government Company and sales made other than to the Government or the Government Company or Arms-length sales respectively. They do not provide about the price determination.

2. Article 19.6 and Article 19.7 are the Articles that provide by whom the relevant price shall be determined and finalized. Therefore, it may be mentioned that in any type of sale as per Article 19.6, price determined by the contractor shall be subject to agreement by the Government or the Government Company before it is finally determined. In case of default of agreement between the parties within 30 days, or such longer period as may be mutually agreed between the parties, from the date of commencement of commercial production or the end of each delivery period thereafter, then price shall be finally determined under Article 19.7 by sole expert appointed under Article 33 and his decision shall be final and binding on the parties. Pending final determination, the price determined by the contractor for crude oil shall be used, unless the Government or the Government Company has raised an objection to such price, in which case the last established price, if any shall be used.

3. In view of above, it may be concluded that the price shall be finally determined only with the agreement of Government or Government Company, and in case of default of agreement between parties, the price shall finally be determined by the sole expert. However, till the price is finally determined by the sole expert, the price determined by the contractor for the crude oil shall be used, if the same is not objected by the Government or Government Company and in case of objection, last established price, if any, shall be used, which would be valid only of that period for which it is determined (Article 19.2)."

As advised above by MoLJ, the price is to be determined with the agreement of Government or Government Company under Article 19.6 of PSC, and in case of default of agreement between parties, the price is to be determined by a sole expert under Article 19.7 of PSC. In thepresent case, the Contractor has entered into agreement with GovernmentCompanyfor price determination of crude oil,and usedthe same basic pricing formulafor selling the crude oil to private operator refineries. In view of the

agreement between the Contractor and Government Company, intervention of Government is not envisaged at this stage.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 9th May, 2018**

Observation/Recommendation

Award of contracts beyond PSC provisions:

The Committee note that Audit, while reviewing 41 contracts, in respect of which payment was made during the years 2006-07 and 2007-08, found that 3 contracts were awarded on nomination or on single financial bid basis, 1 was awarded without assessing reasonability of rates and in 2 cases, extensions beyond contractual provisions were allowed without availing economies of scale. The Operator in its reply stated that the tendering process is resorted to by the Operator, however, approval for award is endorsed by the OC and during this period initial phase of field development was in progress with efforts to commence early production and the OC endorsed contracts in the best interest of the Contractor and also, in some cases only one bidder was technically qualified and some contracts were extended in the operational interest. MoPNG stated that OC consisting of members from ONGC and Cairn Energy monitors the award of procurement contracts and the interests of the Government are well protected by ONGC as Government nominee and licensee in the consortium. Audit, however, pointed out that in most of the procurement cases, ONGC approval for award proposal to the OC came much after placement of Letter of Awards by the Operator. The Committee while noting the presence of ONGC as Government nominee in OC find that ONGC is only ratifying contracts and not involved actively while awarding the contracts. The Committee, therefore, desire that, henceforth, ONGC be more resolute in its role as the protector of Government's interest and any deviation from the provisions of the PSC may be brought into the notice of MoPNG invariably.

(Sl. no. 30 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

ONGC was asked to provide its comments on the observations of PAC by DGH. ONGC vide its letter date 24.08.2016, has stated that they are carrying out due diligence, both on technical and commercial issues of various projects prior to endorsement of Operating Committee Resolutions (OCRs) of various contracts and making all efforts to protect the commercial interest of ONGC and GOI.

Considering the recommendations of the Committee, DGH has been asked to take following actions:

(i) DGH has been advised to look into the contracts and recommend whether cost recovery is to be considered for these contracts.

(ii) ONGC has been directed to be more proactive in Joint Venture (JV) procurements and ensure that all the procedures prescribed in the PSC are being followed.

Vetting Comments of Audit

Information furnished (February 2017) by ONGC indicated that DGH sought the details of these contracts in reference vide letter dated 12 August 2016 which was replied by ONGC vide letter dated 24 August 2016. Subsequently, MoPNG also intermittently sought (02/06/26 September 2016) (03 days) the clarification/details on the subject from ONGC which were replied by ONGC. Further, vide letter dated 16 January 2017, MoPNG asked ONGC to submit the details to DGH, the reply to which was under finalization in ONGC.

ONGC further stated (February 2017) that ONGC is carrying out due diligence both on technical and commercial issues of various projects prior to endorsements of OCRs of various contracts and make all efforts to protect the commercial interests of ONGC and GoI. The Operator is advised time and again to follow laid down JV procurement procedures as prescribed in the PSC.

It is evident from above that MoPNG/DGH and ONGC were now seized of the issues brought out by audit. Therefore, it is proposed that the Government may intimate the impact of these actions on procurement process for RJ block.

The outcome of advices/directions given to DGH and ONGC as stated in ATN may be submitted to PAC for their perusal.

Reply on Vetting Comments of Audit by MoPNG

The findings of internal committee of DGH are attached at Annexure-30A for perusal of PAC. As per findings of the internal committee of DGH, comments/replies/ATN on certain issues have been asked for from operator through DGH and ONGC. ATN in the matter would be submitted to PAC as soon as comments/replies/ATN are received from DGH and ONGC.

Further Reply/Update by MoPNG

Final report of internal committee of DGH has been received and is attached at Annexure-30B for kind perusal of PAC. Findings of the internal committee of DGH are summarized below:

1. Award of contract on nomination basis or on single financial bid basis- Contract to M/s J.P. Kenny

i) **Pre-Feed Contract**-The Committee has recommended not to disallow the cost as the contract was awarded after competitive bidding.

ii) **Supply of Project Personnel (M/s JP Kenny)**-In absence of information from ONGC regarding unreasonable expenditure, the Committee has recommended to disallow entire cost of USD 10 million.

2. Procurement of High capacity pump packages

   The OCR was not signed by ONGC but ONGC has confirmed the payment of cash call by them. Therefore, the Committee is of the view that the operator's stand that OCR is deemed approved, is valid.

3. Contracts extended beyond contractual provisions, without availing economics of scale

   a) **Contract to M/s John Energy**-In absence of providing OC approval by Contractor, the Committee has recommended to disallow an amount of USD 4.92 million towards hiring of workover/ services rigs.

   b) **Contract to M/s Baker Hughes**- In absence of providing OC approval by Contractor, the Committee has recommended to disallow the costs for excess amount of USD 7.79 million towards hiring of work over/ services rigs

In view of the recommendations of Internal Committee of DGH, the following actions have been taken:

i) DGH has been advised to take further action of cost disallowance in the following cases:

   a) Supply of Project Personnel (M/s JP Kenny)- To disallow entire cost of USD 10 million.

b) Contract to M/s John Energy-To disallow an amount of USD 4.92 million towards hiring of workover/ services rigs.

c) **Contract to M/s Baker Hughes**- To disallow the costs for excess amount of USD 7.79 million towards hiring of work over/ services rigs

ii) ONGC has been advised to be vigilant in Joint Venture (JV) procurements and ensure that all the procedures prescribed in the PSC are complied with.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 2nd November, 2018**

CHAPTER III

OBSERVATIONS/RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES RECEIVED FROM GOVERNMENT

- NIL -

CHAPTER IV

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH GOVERNMENT OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Observation/Recommendation

Roles and functions of DGH:

The Committee note that the roles and functions of DGH encompass two sets of functions with potential conflict of interest - an upstream regulatory function and a function of rendering technical advice to the GoI. Audit had, therefore, observed that technical advisory and related functions should be discharged by a body completely subordinate in all respects to MoPNG and functions of regulatory nature should be discharged by an autonomous body, with an arm's length relationship with GoI. The Committee note that Committee on Open and Competitive Mechanism for Allocation, Pricing and Utilization of Natural Resources (Ashok Chawla Committee) in its Report on PSCs had also observed that transparency in the management of contracts and associated considerable financial implications should be enhanced by increasing the independence of the regulatory mechanism, clarifying the separation of the policy maker, regulator and the operator and bringing the decision making process into the open. The Committee take note of the reply of the MoPNG that regulatory functions are demarcated & laid down by way of contract terms, Act and Rules; DGH is ensuring compliance of regulations by Contractors and role of technical advisory is discharged by DGH under the direct control of MoPNG and a separate study by Boston Consulting Group (BCG) was done by MoPNG before taking future course of action. The Committee observe that long delays in operational decision making, budget approvals, huge administrative burden of conducting cost audits, disputes arising between the government and operating companies on matters of cost recovery, information asymmetry and the potentially misaligned incentives are affecting the management of the PSCs by the Government. The Committee are of the opinion that the first step towards better management and effective implementation of the provisions of the PSCs would be to strengthen DGH and instead of filling places with deputationists for 3-5 years, a separate cadre of technical experts should be constituted for the technical and advisory functions of DGH. Further, the Ministry will have to consider separating regulatory functions as technical experts cannot be strained to double up as regulators and also policy makers cannot possibly be effective regulators. The Committee are of the opinion that the mandate of extant Petroleum and Natural Gas Regulatory Board (PNGRB) "to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as and to ensure uninterrupted and adequate

supply of petroleum, petroleum products and natural gas in all parts of the country" may be extended/ strengthened to include the exploration, development and production of crude oil and natural gas for regulating the PSCs . The Committee opine that since a large number of PSCs have already been signed and RSCs will be signed in future, the Ministry should take the decision in this regard at the earliest.

(Sl. no. 3 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha

Action Taken

DGH was set up by a Resolution dated 8th April, 1993 by the Government of India, in the Ministry of Petroleum & Natural Gas, consequent upon approval of Cabinet. As per the Resolution the objective of DGH is to promote sound management of Indian petroleum and natural gas resources, having a balance regard for environment, technological and economic aspects of petroleum activity. DGH provides support to the Ministry of Petroleum and Natural Gas on technical and regulatory aspects of E & P activity.

To implement these objectives of DGH, technical experts from various disciplines of E & P Industry, including from National Oil Companies (NOCs) and Public Sector Units (PSUs) have joined DGH. Financial powers have been delegated to DGH and other measures are also being taken to strengthen the DGH so that they help in promoting E&P activities in the country. DGH has also taken several initiatives in the recent past such as creation of National Data Repository, coordinating the survey of un-appraised areas in various sedimentary basins, nodal agency for Discovered Small Field Rounds etc. DGH is also taking steps to make Hydrocarbon Exploration Licensing Policy (HELP) operational.

The staffing pattern of DGH gives it flexibility in sourcing different skill sets from various PSUs. It also gives DGH flexibility in terms of period of deputation in consultation with PSUs. Creating a separate cadre of technical experts may not be desirable for a small organization such as DGH as it may not offer career advancement opportunities in long term.

The establishment of upstream regulator has been deliberated in the past also and it was felt that normally a regulator in any field is required when level playing field to all the parties (private, foreign and public) needs to be provided. In the upstream sector, policies such as NELP, CBM and newly formulated HELP provide a level playing field to the companies. Further, there is no inter se competition between different operators

once the blocks have been allotted following competitive bidding, and each operator focuses on his field for production. Therefore, the Ministry is of the view that a separate independent upstream regulator is not required at this stage.

Petroleum and Natural Gas Regulatory Board (PNGRB) was constituted under The Petroleum and Natural Gas Regulatory Board Act, 2006 (NO. 19 OF 2006) notified via Gazette Notification dated 31st March, 2006. It regulates the refining, processing, storage transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entitles engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets. The current form of PNGRB Act, 2006 exclude the Upstream sector and for bringing the Exploration & Production activity under the ambit of PNGRB, there will be a need to make significant amendments in the PNGRB Act.

From the experience on functioning of PNGRB, it is noted that PNGRB regulatory framework for midstream and downstream sector is under evolution at present and need more focused approach to regulate effectively in long run to see the results as envisaged in its creation.

Vetting Comments of Audit

The fact, however, remains that the Ministry has not given an action plan for separation of regulatory and technical functions, as recommended by the PAC.

Audit has no further comments to offer.

Reply on Vetting Comments of Audit by MoPNG

No further comments.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Award of Contracts on the basis of a single financial bid:

Audit found that the payments during 2006-07 and 2007-08 revealed instances of huge procurement contracts where it could not derive assurance as to the reasonableness of the costs incurred, primarily due to lack of adequate competition i.e. award on single financial bids; major revisions in scope/ quantities/ specifications; post price bid opening; substantial variation orders- with consequential adverse implications for cost recovery and GoIs financial take. The Committee note the observation of the Audit that since any commercially prudent private acquisition would have also attempted to generate competition and thereby obtained the most competitive price which was not perceptible in the aforementioned process, MoPNG may carefully review in depth the award of 10 specific contracts (of which 8 were awarded to Aker Group companies) on the basis of single financial bid. The Ministry in their reply, however, instead of taking up any review, have stated that the Operating Committee monitored the contract award as per Appendix F of PSC and C&AG did not quantify the impact and also did not find any affiliated transaction or fraud to invalidate the integrity of procurement. The Committee while taking a serious view of the MoPNG's reply that in absence of any quantification, action cannot be taken opine that MoPNG has been vested with the resources of the country in fiduciary capacity and therefore has the inherent responsibility to ensure that they are exploited in the interests of the country and accordingly, keeping a check on the outflow of resources in the form of Cost Petroleum is an inseparable part of that responsibility. The Committee, therefore, desire that the Ministry should develop robust monitoring mechanism within the existing PSC framework to ensure that, henceforth, a fully transparent and cost-effective process is adopted by the Operator which gives assurance to the Government that costs have indeed been competitive.

(Sl. no. 7 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

Ministry of Petroleum and Natural Gas agrees with the above recommendation of PAC that contractors have to follow a transparent bidding process. Normally, the contractors' interest is also in minimizing the costs so that revenue from the blocks are maximized. However, considering the exceptions brought out by the audit in these contracts, DGH has been directed vide letter dated 14th September, 2016 to do the following:

(i) The work programme and budget to be approved by the Management Committees (MC) of the Blocks / Fields to be scrutinized by DGH in-depth, for having robust initial estimates.

(ii) The terms of reference of the MC appointed auditors and the Government auditors for conducting audit and bringing out audit exceptions may be amended and enhanced to include a certificate from them that they have satisfied themselves regarding procurements having been made competitively and as per the PSC provisions.

Any deviations in the procurement procedures brought out by the auditors would be considered by the Government and necessary adjustments would be made in the books of accounts including disallowing costs, if the explanations given by the contractors are not satisfactory.

Vetting Comments of Audit

The fact, however, remains that for development of a robust monitoring mechanism, as recommended by the PAC, apart from the fact that the Ministry has devolved the entire responsibility of ensuring the competitiveness of the cost on Audit (the MC appointed auditors and the Government auditor), the Ministry has not suggested any additional mechanism for monitoring the cost effectiveness at their (Ministry's) level.

Reply on Vetting Comments of Audit by MoPNG

Apart from the fact that the non-operating partners at Operating Committee Level are part of Decision Making Process at the time of procurement, various reports in prescribed formats as per PSC are required to be submitted by Operator on periodical basis to DGH/MoPNG. Hence in addition to various Audits, the procurement process is under constant review.

While agreeing to the Committee's views that a fully transparent and cost-effective process is adopted by the Operator which gives assurance to the Government that costs have indeed been competitive, it is submitted that the existing PSC provisions are sufficient to take care of Audit's/PAC concerns. Nevertheless Government representatives on MCs and DGH would be advised to keep in mind the Audit's/PAC concerns and if any deviation from PSC is observed, the same would be reported to MoPNG for appropriate action as per PSC.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated:18th October, 2017**

Observation/Recommendation

Review of DoC in respect of three discoveries, viz. D29, D30 and D31:

The Committee note that as required under PSC, the Operator submitted in February 2010 a DoC (Declaration of Commerciality) proposal for D29, D30, D31 and D34 discoveries for review by the MC and the DGH in June 2010 informed Operator that the discoveries were marginal and not viable at US$4.2/ mmbtu since the Modular Dynamic Test carried out by the operator did not provide individual testing rates to demonstrate sustainable production levels. The DGH, again, in October 2010 communicated to the operator that the DoC could not be reviewed. However, in November 2011, DoC in respect of D34 discovery was reviewed after the Operator submitted related additional test data/ information. But, in respect of D29, D30 and D31, DGH stated that commerciality of discoveries could not be evaluated in the absence of production tests which provide sustainable production levels from the reservoir as no appraisal wells were drilled in the pools of discovery wells to substantiate the production rates considered by the Operator. DGH felt that the profile generated without considering MDT/ (Drill Stem Test) DST data in the wells was not on a sound technical basis. In May 2012, the Operator again requested MC to complete review of DoC for D29, 30 and D31 and submitted a proposal in October- November 2012 to undertake DST in only one well out of the three discoveries and DGH while agreeing to the proposal asked the Operator to submit a plan for surface flow test for other two discovery wells also. However, the Operator did not carry out the same and later argued that, as per PSC, a) the DST was not mandatory, b) the Contractor has the right to determine requirement for DST based on its technical judgment and c) it was not the only test. Subsequently, DGH, in April 2013, proposed that the area pertaining to these three discoveries be relinquished as the Operator could not keep a part of the Contract Area for an indefinitely long period in the garb of an incomplete DoC proposal. In October 2013, the matter was referred to CCEA (Cabinet Committee on Economic Affairs) for its information fully explaining the facts and circumstances of the case and the Contractor was allowed to retain 298 sq km. contract area as the matter was being considered. The Committee note from the reply of the Ministry that the issue was reopened for review in view of the petroleum potential of the discoveries in an energy starving country for an appropriate decision by competent authority in terms of the PSC

provisions and the interest of energy security. The Committee further note from the reply of the MoPNG that the CCEA has, in April 2015, given relaxation for conducting DST by capping such test cost recovery up to US $ 15 m per test and, accordingly, the operator has now completed DST for D29 and D30 discoveries and has relinquished D31 discovery and has to submit revised DOC for D29 and D30 by 28th April 2016. The Committee are of the view that Government took around 5 years in taking a decision on the issue. The Committee observe that the long delays in clearances and operational decision making results in huge cost overruns and eventually affects the Government's share of PP. The Committee are of the view that energy starving country needs regular supply of the resources which is hindered by such delays. The Committee while noting that the CCEA has relaxed the provisions by providing that Operator should either relinquish or carry out DST and pay penalty for delays or develop the discoveries on his own in ringfenced manner are of the view that a comprehensive policy may be brought out allowing alternative tests for confirming commerciality of the discoveries to ensure that the policy does not get redundant with introduction of new technologies.

(Sl. no. 8 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

DST is a conventional testing method available as on today for measuring the petroleum recovered at the surface. Hence, DST was considered as a basis of accepting the DOC. Government considers technological up gradations in the upstream sector and policies are brought out/modified after considering the issues in a holistic manner.

Vetting Comments of Audit

Audit has no further comments to offer.

Reply on Vetting Comments of Audit by MoPNG

No comments.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Optimized Field Development Plan (OFDP) for four satellite discoveries:

The Committee note that Contractor in July 2008 submitted a Development Plan (DP) in respect of 9 Satellite Gas Discoveries (SGD) for approval of MC which was found non -viable at the gas price of US$4.2 per mmbtu. The Contractor submitted in December 2009, an Optimized Field Development Plan (OFDP) for four satellite discoveries. Initially, the OFDP was not techno-economically viable; however it was made marginally viable by devising different scenarios and changing assumptions e.g. exclusion of royalty as expenditure, variation in capex etc and was eventually approved by the DGH. The Committee note that MoPNG had directed DGH to engage a third party for validation of capex but no third party could be engaged and the MC approved OFDP without waiting for the decision of MoPNG in this regard. The Committee note that Audit had recommended that MoPNG may consider fixing norms/ criteria for working out techno-economic analysis of a FDP. The Ministry in its reply had submitted that the economic viability was evaluated at different scenarios so as to optimize the decision making in order to avoid non- development of any discovery and since techno economic evaluation is guided by the principle of economics and application of mind, setting separate norms may not be possible. However, the Ministry in their written replies has now submitted that the team constituted for framing the "Good International Petroleum Industries Practices" has identified the best practices being followed for all technical and commercial activities under the PSC and the report has been submitted for adoption and notification. The Committee while appreciating that the Good International Petroleum Industries Practices are being identified desire to be apprised of the practices as soon as they are notified and further desire the Ministry to ensure that decisions are taken by the MC after getting views from all the stakeholders, as in the instant case, in the absence of validation of capex by third party, the reasonability and justification of capex and GoI share of PP could not be assured. The Committee also desire that MoPNG seek explanation of the representative of MoPNG i.e. Chairman of MC, and the representative of DGH in the MC who did not wait for MoPNG's decision.

(Sl. no. 9 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken:

2. Good International Petroleum Industries Practices (GIPIP) have been proposed by the Committee constituted for the purpose and the same has been accepted by the Government. These guidelines are available on MoP&NG's web site. The GIPIP guidelines provide a detailed account on various practices being followed in the upstream sector and would be used along with PSC in the interpretation of PSC

provisions. GIPIP brings out good practices in the area of Exploration, Discovery, Declaration of Commerciality, Development, Production etc. and would help the contractors in standardizing and streamlining the operations and would also help them to know the details of submissions to be made to DGH. However, the contractual provisions would be paramount in taking decisions on various issues and GIPIP supplements the decision making in the sector.

2. Vide MCR dated 03.01.2012, OFDP of four satellite discoveries was approved by MC in respect of the Development Strategy that included reserves, number of wells, production facilities, delivery point, date of first gas and development area. The Capex was not part of the MC approval. The cost recovery for development and production operations will be the actual as per audited expenditure. The actual CAPEX gets independently validated when the annual accounts are audited and cost recovery is restricted to actual expenditure irrespective of the estimates projected by the Contractors as part of OFDP.

3. MoP&NG has asked DGH to seek explanation of Chairman of the Management Committee and representative of DGH in MC as recommended by the PAC.

Vetting Comments of Audit

As recommended by the PAC, explanation given by the Chairman of the Management Committee and representative of DGH in MC may be given to the PAC.

Reply on Vetting Comments of Audit by MoPNG

As commented by CAG, explanation of MC Chairman-cum-representative of DGH was sought and is attached at Annexure-9A for perusal of PAC. The MC was to approve the development plan as per PSC time lines and since no third party could be appointed, the FDP was approved without Third Party validation based on consensus decision of DGH.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Contract for Engineering, Procurement, Installation and Construction of offshore facilities:

The Committee note that the Operator awarded contact for Engineering, Procurement, Installation and Construction (EPIC) of offshore facilities for development of D1-D3 fields to M/s Allseas Marine Contractors S.A. (AMC) in October 2006 consisting of three milestones to be achieved by July 2008. However, AMC was not able to achieve the milestones and informed the Operator in June 2008 that various factors attributable to Operator, AMC and sub-contractors were preventing it from performing its obligations under the contract, rendering it inoperable both in delivery and contract administration. AMC asked the Operator to pay for the extra expenses to achieve the earliest possible First Gas date and also the additional expenses already incurred in the past months due to deviations in the suggested scheme. The Committee note that the Operator initially refuted the claims made by AMC asserting that the AMC should acknowledge and accept responsibility for its lack of performance, but, eventually after discussions with AMC submitted a proposal before the OC requesting it to grant some concessions demanded by the AMC. The Committee find that the OC gave concessions which included providing additional resources for expediting the works without any cost to AMC, substituting the subsea construction vessel by paying mobilization fee, additional diving spread free of cost, additional amount for delays not attributable to AMC, relaxation in levy of LD, incentive for achieving first gas by specified date and assistance and paying for resources for expediting jumper fabrication. As per Audit, Appendix C of PSC provides that " amounts paid with respect to non-fulfillment of contractual obligations are not recoverable and not allowable" and , therefore, should not be recoverable from the block. As per Operator, " ..the options before the Operator were not only limited but would have carried dubious legal credibility in view of the fact that it could insist on imposing liquidated damages knowing fully well that certain reasons for delay not being on account of AMC such a decision would have been contested and would have only led to the AMC halting work on the project and getting into prolonged litigation with the Operator." MoPNG in its reply has stated that the post vendor contractual agreements between the Operator and the vendor validly amended the original vendor-contract and the audit report did not point out any legally tenable ground for cost disallowance such as affiliated transactions to the undue advantage of Contractor, any incidence of fraud and costs not supported by payment evidences. Audit further observed that these concessions granted by the Operator were not in line with EPIC contract including provisions relating to change in

contract price' The Committee after carefully considering the audit opinion and the replies of both Operator and Ministry are of the view that to ensure transparency in post vendor contractual agreements, in future, the Ministry should prescribe a threshold amount for the change orders above which the Operator should invariably approach it for clearance.

(Sl. no. 10 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha

Action Taken

The PSC prescribes a procurement procedure which needs to be followed by all the contractors operating under the PSC regime. Any deviation in the procedure would need to be pointed out by the audits envisaged under the PSC. Once the audit notifies these exceptions and quantifies the financial effect for such procurements, necessary adjustments can be made in the books of accounts of the contractors of the block after considering their response to the audit exceptions.

The audit exceptions brought out by the auditors are considered by the Government and necessary adjustments are to be made in the books of accounts. It is agreed that the concern expressed by PAC and recommendation made by PAC are valid and need to be addressed within the existing PSC framework.

It is therefore imperative that the role of audit as envisaged in the PSC is strengthened and also scrutiny of budget estimates is also made more rigorous. Therefore, as mentioned in the reply to the recommendations no. 7 instructions have been issued to DGH for more rigorous assessment of budget proposals and also to take a certificate from the auditors that they have satisfied themselves that all the procurements have been made through competitive process.

Vetting Comments of Audit

PAC has observed that to ensure transparency in post vendor contractual agreements, in future, the Ministry should prescribe a threshold amount for the change orders above which the Operator should invariably approach it for clearance. Ministry's reply, however, does not specifically address PAC's observation regarding prescribing of the threshold amount for the change orders.

Reply on Vetting Comments of Audit by MoPNG

The PSC prescribes a procurement procedure which needs to be followed by all the contractors operating under the PSC regime. These matters are reviewed and monitored by MCs.

While agreeing to the Committee's views regarding transparency in post vendor contractual agreements, it is submitted that prescribing a threshold amount for the change orders above which the Operator should invariably approach Ministry for clearance at this juncture is not being considered. Cases where change order exceeds 25% of cost estimate/original order, then the same may be discussed more rigorously in MC and get approved from it since MC is the competent forum to deliberate and decide on such issues.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

The Committee note that an optimization concept for Bhagyam field was presented to MC in August 2010 to which the final approval of MC was communicated in December 2010 which resulted in delayed commencement of the activities. The Operator reasoned that after MC review of the proposal, substantial deliberation took place on the concept optimization and the minutes were got signed by circulation. MoPNG in their reply stated that the MC first deliberated on the concept in July 2010 and in October 2010 passed the resolution and it took two more months for all the representatives to sign the resolution. The Committee also note that due to delay in execution of the activities, the budget for the year also remained under utilized. The Committee observe that the MC took unduly long time i.e. four months in approving the proposal and the lackadaisical approach eventually affected the commencement of activities. The Committee are of the view that delays invariably lead to cost overruns which ultimately adversely impacts the Government's share of profit petroleum. The Committee desire that a time frame may be prescribed for signing of such resolutions of the MC and the Committee be apprised thereof.

(Sl. no. 31 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

Normally, the management committee resolutions are signed the same day reflecting the discussions and approvals accorded in the meeting. However, sometimes there is a difference of opinion on an issue between the contractors or between the Government and the Contractor, then the Resolutions / Minutes get delayed. The system of MC meeting has been streamlined to ensure that delays in signing MCR are avoided.

Audit in their vetting comments have observed as under:-

"To assess the time taken in signing of MC meetings, details of 10 MC meetings held from January 2014 to August 2016 as furnished (February 2017) by the Operator and ONGC were reviewed. It has been observed that time taken in the final sign off of MC minutes from date of MC meetings ranged from 32 to 121 days. Further, the minutes of MC meeting held on 4 August 2016 were still awaiting sign off (10/02/2017) in MOPNG. This was on the higher side despite the assurance by MOPNG that the system of MC meeting has been streamlined.

The Ministry has stated that the system of MC meeting has been streamlined to ensure that delays in signing MCR are avoided. In this regard measures taken may be submitted to PAC."

Ministry's comments on audit's above observations

Copy of Minutes of MC Meeting No. 45 held on 4th August 2016 signed by all the MC Members, is attached at Annexure-31A. As it has been submitted earlier that endeavours are made to sign the MCR on the day of MC Meeting itself as far as possible/practical though in certain cases due to disagreement on exact coverage of the issue in MCRs or MCRs initiated through Circulation, the MCRs may not be signed on the day of MC Meeting itself. However, as observed by Audit against Observation/Recommendation No. 26, there has been overall improvement in the process of approval of work programme and budgets by the MC as compared to the previous years. Nevertheless Government representatives on MCs and DGH are being advised to keep in mind the Audit's/PAC concerns and expedite signing of Minutes of Meetings.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

CHAPTER V

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH THE GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Observation/Recommendation

The Committee find that the Contractor has invoked arbitration in almost all the cases where Government has disallowed the costs. The Committee also note that the Ministry in their submission before the Committee agreed that there were anomalies in the provisions and the Ministry was learning over the process right from the pre-NELP stage. The Committee further find that a "policy framework for relaxations, extensions and clarifications at the development and production stage under the PSC regime for early monetization of hydrocarbon discoveries" was issued by the Ministry in November 2014 to rectify the anomalies noticed by them in practical implementation of the provisions of the PSCs. The representative of the Ministry, during the evidence, on a query regarding how to reduce litigations and arbitrations stated that "under the new policy where it has moved away from the production-sharing to revenue-sharing contract it will not look at the day-to-day management like cost recovery and other things. It would only be interested as to how much production operator is doing; how much revenue he is getting; and out of which how much he will share with the Government which he has to declare upfront in a formula while bidding and that will be followed". The Committee while appreciating that the Ministry has learnt its lessons are apprehensive about the status of issues between the Government and the Contractors that have been lingering on due to the original provisions which have now been relaxed. The Committee are of the view that a strong dispute resolution mechanism should be put in place to address the concerns of both parties and further desire that the Ministry decide its course of action in such cases and apprise them.

(Sl. no. 5 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

The Ministry has been formulating policies from time to time to address the gaps under the PSCs in order to reduce the possible litigation between the parties. A transparent and policy based administration would help in reducing the disputes.

The Government has brought out several policies to ensure a transparent policy based administration in the sector. These policy interventions have obviated many potential disputes by resolving underlying issues. Government is taking steps to ensure a good climate for investors in upstream sector. More than 30 cases have been resolved by the Policy Framework for Relaxations, Extensions and Clarifications at the Development and Production stage. Similarly, Policy on Testing Requirements has helped in moving ahead with several discoveries which were stuck because of lack of clarity on the issue. Policy for Extension PSCs for Small and Medium Sized Hydrocarbon Discoveries has also helped in providing a transparent mechanism for evaluating extension proposals.

In addition to above steps, the PSCs provide for alternate methods of Dispute Resolution. Alternate Methods of Dispute Resolutions are:

a. Through Sole Expert

b. Through Conciliation

c. Through Arbitration

Sole Expert can be appointed for the matter specifically referred in PSC or in any other matter which party may agree so to refer to Sole Expert. Other Disputes can be resolved through Conciliation or Arbitration. Prior to submitting a dispute to arbitration, the Parties may by mutual agreement submit the matter for conciliation in accordance with Arbitration and Conciliation Act, 1996.

In case, grievances still persist, then arbitration is a standard internationally accepted and acknowledged mechanism in respect of Dispute Resolution. MOP&NG is closely monitoring all the arbitration/legal cases arising out of disputes in PSCs for expeditious resolution. With the recent amendment of 'Arbitration and Conciliation Act', arbitration process is expected to be smoother, faster and cost effective.

Audit in their vetting comments have observed as under:-

"As recommended by the PAC, the Ministry may apprise the PAC regarding the status of the *'issues between the Government and the Contractors that have been lingering on due to the original provisions which have now been relaxed'*."

Ministry's comments on audit's above observations

The Government issued a Policy Framework for Relaxations, Extensions and Clarifications in November, 2014. The Policy aimed at addressing the issues between the Government and the Contractor which had been lingering on due to lack of clarity on extant PSC provisions. A copy of this Policy is placed at Annexure – 5A. The list of cases resolved under this policy in the various NELP blocks is placed at the Annexure – 5B.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated:18th October, 2017**

Observation/Recommendation

The Committee note that, in May 2007, Operator entered into an agreement with M/s Aker Contracting FP AS, Norway (ACFP/ vendor) for chartering of a Floating, Production, Storage and Offloading (FPSO) facility for ten years on lease rental basis for extraction, production, storage and offloading of oil & gas from MA oilfield, from the date of first production. However, within four months of signing the agreement, the Operator requested the vendor to extend the dry docking (a term used for repairs or when a ship is taken to the service yard so that the submerged portions of the hull can be cleaned and inspected) life of the FPSO from 10 to 15 years for a one -time compensation to the vendor. The Operator reasoned that the decision was taken to avoid interruption in production during the dry-dock period at the end of 10 years, additional costs due to increased scope of work, inflation, mob/ demob for dry-docking, potential loss of reserves due to uncertainty about revival of wells after closure and loss in value due to deferment of production. ." MoPNG in its reply has stated that the post vendor contractual agreements between the Operator and the vendor validly amended the original vendor-contract and the audit report did not point out any legally tenable ground for cost disallowance such as affiliated transactions to the undue advantage of Contractor, any incidence of fraud and costs not supported by payment evidences. Audit had observed that extension of dry-docking period from 10 to 15 years while keeping the FPSO charter period to 10 years, led to higher cost recovery and adversely affected GoIs share of PP and since the Operator has yet to renew the agreement after September 2018, it may not result in any expected benefit till the contract gets extension. The Committee are of the view that instead of asking for any legally tenable ground MoPNG should ensure that the benefits claimed by the Operator are

materialized by monitoring the implementation of the post vendor contractual agreement in letter and spirit. The Committee are of the view that the additional costs incurred for extending the contract to 15 years should be allowed to the contractor only when the utilization of FPSO exceeds 10 year under the PSC.

(Sl. no. 11 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

In pursuance to the above recommendation of PAC, DGH has been directed vide letter dated 26th September, 2016 regarding reversing and deferring the cost recovery of US $ 17.36 million till September, 2018.

The cost recovery for this amount would be considered only on renewal of the agreement of FPSO by the Contractor for further period of 5 years, beyond the existing 10th year period which is ending in September 2018.

Audit in their vetting comments have observed as under:-

"In view of Ministry's directions to DGH regarding reversing and deferring the cost recovery of US $ 17.36 million till September, 2018 and the assurance given by them that the cost recovery for this amount would be considered only on renewal of the agreement of FPSO by the Contractor for further period of 5 years, beyond the existing 10th year period, no comments are offered."

Ministry had no comments on audit's above observations

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated:18th October, 2017**

<u>Observation/Recommendation</u>

As per Audit, at the time of issue of ' Request for Proposal' RFP for FPSO, one of the eligibility conditions insisted upon by the Operator was that the Date of First Production of Oil (DFPO) be on or before 15.2.2008 which was changed and the final agreement stipulated that it could be between 7-27.4.2008 but was subsequently extended to 30.9.2008 in October, 2007. In July 2008, the vendor communicated that the work and delivery dates could be expedited by putting in place measures having cost consequences which were agreed to by the Operator and included payment for mobilizing its commissioning team and one-time compensation on account of expediting deliveries and timely installations. Audit observed that, in April 2008, MC had approved the DFPO on or before June 2009 and, therefore, there was no necessity for expediting deliveries, as the vendor was entitled to lease rental for FPSO from DFPO, it was in his interest to achieve that at the earliest and the vendor had actually missed his deadlines and was already working on extensions. As per the Operator, the execution of all the contracts were inter-linked and involved significant interfaces, delay in execution of one aspect could have had a cascading impact on the schedules resulting in far greater expenditures and that under the PSC, RIL had the right to make certain operational, technical and commercial decisions based on its best judgment and it was not appropriate to second-guess these judgments in hindsight. As per the Ministry, the post vendor contractual agreements between the Operator and the vendor validly amended the original vendor-contract and the audit report did not point out any legally tenable ground for cost disallowance such as affiliated transactions to the undue advantage of Contractor, any incidence of fraud and costs not supported by payment evidences. The Committee are of the view that though the Operator is the best judge of the operational and technical needs and decisions required therein, the commercial implications of such decisions directly affect the interests of the Government and the whole nation. The competitiveness of the transactions carried out by the Operator would therefore, always be open to public scrutiny. The Committee after considering the views of the C&AG, Operator and the Ministry opine that a cost-benefit analysis of the decision taken by the Operator to expedite the first gas date may be made before allowing the costs.

(Sl. no. 12 Para - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

On the recommendation of PAC, DGH was directed to get the cost benefit analysis from the Operator and validate / check it. DGH asked the operator its response on the issue. The response of the operator has been received.

The operator in its response for cost-benefit analysis has reaffirmed the benefit of its decision for earlier commencement of production of over 1 Million barrels of Oil and consequent saving of costs. DGH has been asked to get further details for actual cost-benefit analysis.

Audit in their vetting comments have observed as under:-

"PAC may be apprised about the status of the cost-benefit analysis and the results thereof."

Ministry's comments on audit's above observations

DGH has sought details of the actual cost benefit analysis from the Operator vide letter dated 16.02.2017 and reminder dated 04.07.2017 with a note that non-resolution of audit exception due to inadequate clarification may result in disallowance of the corresponding costs. ATN in the matter would be submitted to PAC as soon as further comments/replies/ATN are received from DGH.

Further Reply/Update by MoPNG

The Operator in its letter dated 20.09.2016 had explained the benefits of expediting date of first production of oil and gas. In compliance with the recommendation of PAC, DGH advised Operator to provide cost benefit analysis of the expenditure incurred. In response to DGH's letters, Operator has re-iterated its earlier stand vide letters dated 09.08.2017 and 05.03.2018 and stated that it took operational decisions in the best interest of the project.

However, keeping in view the Committee's concerns and recommendations and non-providing desired details/information by Operator, DGH has been advised to carry out a cost-benefit analysis from the data/information available with DGH, in a time bound manner.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 2nd November, 2018**

Observation/Recommendation

Construction of Onshore Terminal:

The Committee note that the contract for construction of Onshore terminal (OT) was awarded on cost-plus basis to L&T Ltd. (vendor) and as per original contractual provisions " no compensation is payable to the vendor on account of the Plant & Equipment (P&E) provided by the Operator either owned or hired in the case of vendor being unable to mobilize the P&E. However, the said clause was amended to exclude cranes from its ambit and resultantly, the Operator, in addition to incurring expenditure on hiring of these cranes, had to pay top up compensation on them like other P&E supplied by L&T. The Operator in its reply submitted that since the suppliers of the crane were reluctant to accept the contract through L&T and due to shortage of such cranes in the market, it had to hire the cranes directly and as these cranes require a lot of handling by the L&T, the Operator was justified in the payment of compensation to the vendor. Audit had observed that the scarcity of the cranes in the market or reluctance of suppliers to deal with L&T could not be a justification for amending the contract and pay additional amount to L&T as the principle underlying such transactions was clear in the respect that it had already provided that no compensation is payable to the vendor in case of vendor being unable to mobilize P&E and, therefore, the cost recovery may be disallowed. MoPNG in its reply has stated that the post vendor contractual agreements between the Operator and the vendor validly amended the original vendor-contract and the audit report did not point out any legally tenable ground for cost disallowance such as affiliated transactions to the undue advantage of Contractor, any incidence of fraud and costs not supported by payment evidences. The Committee desire that Ministry look into the contract to see whether such amendments can validly be made which change the basic principles and whether such mark-ups are usually charged by the vendors in similar contracts and apprise the Committee thereof.

(Sl. no. 14 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

The role of the Ministry in the procurements made under the PSC has been highlighted in the above recommendation. The Ministry envisage the strengthening of the controls by having a strong audit mechanism and proper scrutiny of budget proposals. The same has already been complied as per the observations of PAC.

DGH was directed to get the comments of operator regarding procurement issues highlighted by PAC in the above recommendation. DGH has sought comments

from the operator. The response received from the operator can be summarized as "Charging of mark ups by the vendors in such contracts is usual. In the instant case, the contract was validly amended with mutual agreement of both parties. The contractual information in such contracts is kept confidential by the parties to the contracts. Therefore, instances in contracts executed by other companies may not be possible to collect and provide. "DGH has analysed the response and had mentioned that any contract validly amended is acceptable.

Ministry would ask DGH to further look into cases pertaining to other operators

Vetting Comments of Audit

The Ministry has yet to clarify whether amendments can validly be made which change the basic principles of the contract and whether such mark-ups are usually charged by the vendors in similar contracts Clarifications in this regards may be submitted to PAC for their perusal.

Reply on Vetting Comments of Audit by MoPNG

The matter of 'mark-ups' was taken up with the other major operators viz. Cairn, ONGC and OIL.

Cairn has confirmed that 'mark-up' charge is agreed in cost-plus contracts and in practice, cost variations may be necessitated due to various reasons of engineering maturity, constants and other execution challenges / changes and it would not be feasible to go through the approval process for each such change / variation.

OIL has informed that in Oil India Limited, if there is any deviation in scope of work or terms of reference during the execution of contract, the same is done with due approval of Competent Authority, keeping basic principle of the contract intact.

ONGC vide their letter dated 30.08.2017 has informed the following:

Quote

"As regards the Post Vendor Contractual Agreement between the Operator and the Vendor, there is no such provision in PSCs of Pre-NELP blocks.

However, it is to submit that, in line with the tender conditions in large LSTK/EPC contracts of Non PSC ONGC nominated Blocks, the mark ups are usually considered in the contract to be charged by the vendors for various plant and equipment to be provided by the Vendor. The Mark ups is used in ONGC for LSTK contracts on the

supply of additional material required for the project as mentioned in the tender document as a standard clause with mark-up of 7.5%."

Unquote

From the above replies of Cairn, OIL and ONGC, it can be seen that mark-ups are charged by Vendors, depending upon the circumstances of a particular contract and practices of a company. As commented by CAG, the views of other operators are submitted to PAC for their perusal.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Piece-meal hiring of drilling rig:

The Committee note that the Operator awarded charter hire of an off-shore deep water drilling rig to M/s Transocean Offshore International Ventures Limited (Transocean/vendor) in April 2005 for 24 months. In December 2005, seven months after awarding first contract, the Operator initiated the tendering process for charter hiring beyond 2007 as the Operator observed that availability of Deepwater drilling rigs had become scarce. The second contract was again awarded to Transocean for 36 month period commencing from August, 2008. Audit observed that despite having adequate drilling prospect and keeping in view the poor response received from the vendors for provisioning of the rigs, the Operator did not find it prudent to consider the option of long-term hiring and availing the firm rate advantage of such long term hiring which resulted in additional expenditure. The Operator submitted that approval for laying of pipelines to evacuate & market gas was delayed by the MoPNG by 17 months which delayed the project and considering the aforesaid uncertainty in execution of IDP, there was no rationale for contractor to commit drilling rigs on the basis of IDP. MoPNG in its action taken notes stated that "this can be at best considered as inadequate appreciation and lack of proper planning by the Contractors. The Contractors may not be aware of future behaviour of market for hiring of services. Audit may reconsider this disallowance". MoPNG in its latest reply has stated that the post vendor contractual agreements between the Operator and the vendor validly amended the original vendor-contract and the audit report did not point out any legally tenable ground for cost disallowance such as affiliated transactions to the undue advantage of Contractor, any

incidence of fraud and costs not supported by payment evidences. The Committee after taking into consideration the Audit observation, the submission of the Operator and the replies of the Ministry are of the view that costs cannot be disallowed as both the contracts were awarded on the basis of competitive tendering process in accordance with procedure prescribed in the PSC , moreover, whether additional costs have actually been incurred by the Operator and the extent of any such extra expenditure cannot be assumed in absence of per day rates that would have been quoted by the vendor for a five year contract instead of the two year contract that was awarded in 2005. However, the Committee do not appreciate the Ministry's passive role in such high value contracts and reiterate as recommended by them in the preceding paragraphs that a threshold amount for the orders/ contracts may be prescribed above which the Operator should invariably approach the Ministry for clearance.

(Sl. no. 17 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

Under Article 8.3 of PSC, the contractor shall conduct Petroleum operations at his sole risk, cost and expense, provide all funds necessary for the conduct of petroleum operations including funds for the purchase or lease of equipments, material and supplies required for petroleum operations as well as for making payments to employees, agents and sub-contractors. The procedure for acquisition of goods and services are provided in appendix F of PSC. The procurement decisions are taken by the Operating Committee comprising of representatives of contractors.

Ministry agrees with the concern expressed by PAC regarding high value of procurements made under PSC and ensuring competitiveness in such procurements. However, these would need to be regulated within the existing PSC frameworks. The role of auditors in such scenario becomes very important in bringing out exceptions related to various issues in general and procurement issues in particular. Ministry takes a view considering the observations of the audit and any excess cost recovery on account of discrepant procurements is disallowed.

The role of Ministry in getting into individual transactions and procurements may not be desirable as it may become intrusive for smooth operations and therefore monitoring would be through audit exceptions. Instructions would be issued to the auditors by DGH based on MoP&NG's directions for certifying competitive procurements, and all non-compliance and nomination procurements would come to the notice and will be acted upon.

Vetting Comments of Audit

PAC has observed that to ensure transparency in post vendor contractual agreements, in future, the Ministry should prescribe a threshold amount for the change orders above which the Operator should invariably approach it for clearance.

The Ministry's reply, however, does not specifically address PAC's observation regarding prescribing of the threshold amount for the change orders.

Reply on Vetting Comments of Audit by MoPNG

The PSC prescribes a procurement procedure which needs to be followed by all the contractors operating under the PSC regime. These matters are reviewed and monitored by MCs.

While agreeing to the Committee's views regarding transparency in post vendor contractual agreements, it is submitted that prescribing a threshold amount for the change orders above which the Operator should invariably approach Ministry for clearance at this juncture is not being considered. Cases where change order exceeds 25% of cost estimate/original order, then the same may be discussed more rigorously in MC and get approved in the MC since MC is the competent forum to deliberate and decide on such issues.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

Cost Recovery of Unconsumed Production Inventory:

The Committee note that Section 3.1.8 of the PSC stipulates that material and equipment held in inventory shall be charged to the accounts only when such material is removed from inventory and used in Petroleum Operations. However, contrary to the PSC provision, the contractor has charged production inventory to cost recovery on date of purchase irrespective of its actual usage in Petroleum Operations. It was also seen that some inventory was not used for more than four years. The cost recovery made by the contractor without actual usage for petroleum operations had adversely affected GoI share of PP. The PMT JV's contention that such production consumable items are maintained at reasonable levels so as to avoid any production downtime due to non-availability of such items was contested by the audit. Audit further pointed that PMT JV may ensure that production inventory is charged to accounts only when such material is removed from inventory and used in petroleum operations as provided in the PSC. The Committee while deprecating the PMTJV's violation of provisions of a mutually agreed PSC, desire that as agreed to by the Ministry, year wise inventory included by Operator in the contract cost should be corrected in the account for subsequent years.

(Sl. no. 20 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

The operator was advised by DGH to reverse the unconsumed inventory charged to cost recovery in each year and recast the account accordingly. The operator has not complied with the direction of DGH within the timeline of 2 months i.e by 20.12.2016. The operator has been directed again on 26.12.2016 to submit the compliance report at the earliest.

Vetting Comments of Audit

In view of non-compliance by the Operator, with the directions of MoPNG/DGH (in line with Committee recommendations), the issue persists. Further progress in the case may be intimated to PAC.

Reply on Vetting Comments of Audit by MoPNG

Compliance Report was sought by DGH vide letter dated 24.10.2016 and subsequent reminder on 26.12.2016 which has not been provided by the Operator.

The issue has been disputed by BGEPIL and RIL (Claimants) and identified in the list of audit exceptions for reference to and determination by the Tribunal in the ongoing arbitration between Claimants and Respondent-Government of India pursuant to Final Partial Award (FPA) dated 12th October 2016 and clarification Decision dated 28th December 2016 and subsequent direction of the Tribunal.

ATN in the matter would be submitted to PAC as and when arbitration proceedings are finalized and orders are issued.

Further Reply/Update by MoPNG

Arbitral Tribunal vide its Award dated 11th January 2018, accepting the Claimants' submission that it would not be practical to charge the costs and/or expenditure of certain production related items to Contract Costs on consumption, dismissed the category of audit exceptions relating to 'charging of unconsumed inventory to cost'. For example, it would not be practical to charge the cost of a bolt or a nut at the time when this is in fact used for Petroleum Operations. On that basis, the Tribunal found that the Contractor's classification of controllable movable assets and non-controllable movable assets as the latter being those contained in the 'production inventory', to be correct.

In view of the Award of Arbitral Tribunal, contention of audit is not agreed and no further action is required.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 2nd November, 2018**

Observation/Recommendation

Delay in Water Injection (WI) Project in Panna Field Resulting in Declining Production

The Committee are concerned to note that delay in implementing Water Injection (WI) in Panna field has resulted in decline in production. The DGH as well as the JV were aware of the continuous fall in reservoir pressure and consequent decline in production from Panna field from 2003 onwards (10-12 per cent in 2003 to 12-15 per cent in 2007-08 and to 18-20 percent in 2010-11). Keeping in view the decline in production the PMT JV submitted a 'Panna B Zone Water Injection Pre-Feasibility

Report' in 2011 and subsequently requested for extension of PSC term till economic life of the field. The Committee are shocked to know that DGH in March 2012 in response to the JV have stated that pressure maintenance should have been started as soon as it was evident that the reservoir pressure was falling below saturation point and that the Operators should have proposed WI in early 2000 if they were serious about good operational standards and reservoir management. The Committee further note that DGH is yet to approve the feasibility report and as on date there is no further progress on the decision on the PSC extension. The fact that Pre-Feasibility study report submitted by PMT JV in September 2011 for expeditious implementation of WI scheme and DGH taking six months (October 2011 to March 2012) to take a decision and communicate to the JV, puts question on the DGH role resulting in delay in Water Injection project and consequent decline in production from Panna field. The Committee desire that the Ministry to impress upon the DGH to complete the examination and subsequent implementation of the Report along with other measures to check declining trend in the production from Panna field. The Committee also desire the Ministry to take view on extension of PSC at the earliest.

(Sl. no. 22 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

As per the report of expert engaged by DGH, water injection project was not viable. No new technology has been suggested to make the project economically viable. In the expert report, it was suggested to continue with the existing reservoir recovery practice since the incremental production would not be cost effective. In such scenario, water injection project would have adversely impacted the economic profit.

GOI has notified PSC Extension Policy dated 28.03.2016 under which the Contractor can apply and get extension. PMT JV is yet to apply for any extension of PSC under the policy. Government would consider the extension request when received from the operator.

Vetting Comments of Audit

While the JV had submitted the pre- feasibility report on WI project in September 2011, the expert appointed by DGH had submitted its report in Oct 2011. DGH took six months to review the FR and communicated its comments in piecemeal even though it

had actively participated in the technical committee meetings/ workshops and had also advised the JV on the studies to be conducted.

PMT JV had submitted the pre-Feasibility study in Sep 2011. Considering that the returns on WI project were to accrue only after 4-5 years, the JV had also requested for PSC extension in September 2011. The GOI had notified the PSC extension policy only in March 2016. The PSC term is expiring in Dec 2019. As stated in the ATR, so far the JV has not applied for extension. With elapse of time the project has been rendered unviable.

Unless PMT JV applies for extension of the PSC term of Panna Mukta it cannot re-examine the viability of the project. Hence no remedial action is possible at this stage.

Reply on Vetting Comments of Audit by MoPNG

No comments.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas

O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 18th October, 2017**

Observation/Recommendation

The Committee observe that ONGC ignored MoPNG directives of March 2006 and entered into a long term contract for 12 years and signed GSPA in June 2006 with M/s Torrent Power Limited (TPL) for supply of 0.9 mmscmd of gas at the rate of US$ 4.75 / mmbtu with a provision to review the price after expiry of 3 years from the date of first supply. At the same time, contrary to GoI decision the other two partners, RIL and BGEPIL, also sold gas at the rate of US$5.58 per mmbtu (i.e. higher by US$0.01 per mmbtu of revised PSC price of Tapti field). Supply to TPL commenced from 30 May 2008 and continued at the lower rate of US$ 4.75 per mmbtu till May 2011 and it was made at PSC price only from June 2011. The gas sold to TPL was at a price lower than the price prescribed in the PSC (Panna-Mukta revised PSC price of US$ 5.73 / mmbtu and Tapti revised PSC price of US$ 5.57 / mmbtu). Further, the Committee observe that ONGC also did not reduce the sale of gas proportionate to the decline in production in

the Tapti and Panna-Mukta fields during the year 2008-09 to 2011-12 and on the contrary sold more gas to TPL during 2009-10 to 2010-11 vis-a-vis 2008-09. The Ministry have submitted, since GAIL was unable to lift gas at a higher PSC formula based price, ONGC entered into agreement in June 2006 with TPL. Further, the Ministry have stated that the notional revenue loss was on account of the fact that the PSC formula based price was above the prevailing market price and in the absence of GAIL lifting the entire gas quantity, the Ministry permitted the constituents of JV to sell gas at rates ranging from US$ 3.86 to US$ 5.58. The Committee are in agreement with Audit that the argument of ONGC on Article VIII of Tripartite Agreement i.e. the GAIL was fully responsible for the performance of the existing contract is not tenable as ONGC was selling its share of gas to TPL below the PSC price and it was obligatory on the part of ONGC to periodically inform GAIL about the drop in level of production for making proportionate reduction in supply to TPL. The Committee are of the firm view that the Ministry, should have been proactive in monitoring the dispensation of additional gas production (over and above 10.8 mmdcmd) by the PMT JV when it had issued clear instructions. The Committee strongly deprecate the casual approach of the Ministry in protecting the interest of the government and desire that the failure of ONGC first to find a buyer at PSC price and later on to curtail on pro rata basis the supply of gas to TPL be enquired into and responsibility be fixed. The Committee also desire the Ministry to look into whether the competitive prices were not obtained by the other two JV partners while supplying the gas to their affiliates.

(Sl. no. 23 Part - II of 47th report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken

MoP&NG decisions to allow 'direct marketing' of gas by PMT Contractors, and also allow GAIL and other buyers to pay prices different from PSC prices were consequent to circumstances not envisaged in PSC. The GAIL was unwilling to accept the PSC price arrived with TPL through a competitive bidding process.

Consequent to MOP&NG's decisions to allow 'direct marketing' of gas, other two partners supplied the gas to their affiliates at different prices ranging from US $ 3.96 to US $ 5.58 per mmbtu during the year 2006-07 & 2007-08, which being affiliate transaction cannot be considered as competitive prices.

The following actions have been taken in compliance with PAC's observations:

(i) In respect of the issue regarding ONGC obligation on selling its share of gas to TPL below the PSC price, it has been referred to DGH for identifying the magnitude of its

impact on GOI share of Profit Petroleum, if any, and make recommendations on loss of revenue to the government.

(ii) DGH has been directed to recover with interest the Loss of government revenue of US $ 0.52 million in the form of Profit Petroleum (PP) and royalty due to sale to affiliates of Panna gas in contravention to PSC.

Audit in their vetting comments have observed as under:-

(i) The final course of action is awaited.

(ii) The amount is yet (January 2017) to be recovered. As the PSC term is expiring in 2019, same needs to expedited.

Status of recovery may be submitted to PAC

Ministry's comments on audit's above observations

(iii) The issue regarding ONGC obligation on selling its share of gas to TPL below the PSC price has been referred to DGH for identifying the magnitude of its impact on GOI share of Profit Petroleum, if any, and make recommendations on loss of revenue to the government. DGH has sought legal advice from Senior Government Counsel, which is awaited. After obtaining legal advice, the further course of action would be decided. ATN in the matter would be submitted to PAC as soon as comments/replies/ATN are received from DGH.

(iv) Directives have been issued to GAIL on 30.08.2017 for recovery of US $ 0.52 million from Sale Proceeds towards Profit Petroleum (PP) and Royalty due to sale to affiliates of Panna gas in contravention to PSC. M/s RIL & BGEPIL have requested the Ministry to revoke its directions as this issue is already under the consideration of ongoing Arbitration. This matter has also been referred to DGH on 26.09.2017 for obtaining legal opinion from Government Counsel. ATN in the matter would be submitted to PAC as soon as comments/replies/ATN are received from DGH.

<u>Further Reply/Update by MoPNG</u>

(i) The magnitude of impact of ONGC obligation on selling its share of gas to TPL below the PSC price, on GOI share of Royalty and Profit Petroleum due to sale of gas quantity to TPL at lower rate (US$ 4.75 per mmbtu) from 30th May 2008 to May 2011 in respect of PMT PSCs separately has been

calculated by DGH and additional amount of Royalty and Profit Petroleum due from ONGC is as under:

Sl. No.	Field Name	GoI Take-Royalty (in USD)	GoI Take-PP (in USD)
1	Panna-Mukta	807,175	3,036,864
2	Mid & South Tapti	1,155,673	3,655,480
	Total	**1,962,848**	**6,692,344**

DGH has been requested to make recommendations on loss of revenue to the government.

(ii) MoPNG has recovered US$ 0.52 Million through GAIL from the sale proceeds from PMT PSC.

(Amar Nath)
Joint Secretary (E)

Ministry of Petroleum and Natural Gas
O.M. No. O-24012/1/2014-EO (Pt.1) **Dated: 2nd November, 2018**

NEW DELHI;
18 December, 2018
27 Agrahayana, 1940 (Saka)

MALLIKARJUN KHARGE
CHAIRPERSON
PUBLIC ACCOUNTS COMMITTEE

APPENDIX-II

(Vide Paragraph 5 of Introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE OBSERVATIONS/RECOMMENDATIONS OF THE PUBLIC ACCOUNTS COMMITTEE CONTAINED IN THEIR FORTY-SEVENTH REPORT (SIXTEENTH LOK SABHA)

(i)	**Total number of Observations/Recommendations**	**-**	**31**
(ii)	**Observations/Recommendations of the Committee which have been accepted by the Government:** **Para Nos. 1,2,4,6,13,15,16,18,19,21,24,25,26,27,28,29 & 30**	**-**	**Total : 17** **Percentage: 55 %**
(iii)	**Observations/Recommendations which the Committee do not desire to pursue in view of the reply of the Government:** **-Nil-**	**-**	**Total : 0** **Percentage:0%**
(iv)	**Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:** **Para Nos. 3,7,8,9,10 & 31**	**-**	**Total : 06** **Percentage: 19%**
(v)	**Observations/Recommendations in respect of which the Government have furnished interim replies/no replies:** **Para Nos. 5,11,12, 14, 17, 20, 22 & 23**	**-**	**Total : 08** **Percentage: 26%**