



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

*Case No. OGRA-6(2)-2(3)/2015-Review*

**IN THE MATTER OF**  
  
**SUI SOUTHERN GAS COMPANY LIMITED**  
**MOTION FOR REVIEW FOR FINAL REVENUE**  
**REQUIREMENT, FY 2012-13**

**UNDER**

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

**DECISION**

**DECEMBER 21, 2016**

Before:

Ms. Uzma Adil Khan, Chairperson

Mr. Aamir Naseem, Member (Gas)

Mr. Noorul Haque, Member (Finance)

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## 1. BACKGROUND

- 1.1. Sui Southern Gas Company Limited (the petitioner) is a public limited company, incorporated in Pakistan, and is listed on Pakistan Stock Exchanges Ltd. The petitioner is operating in the provinces of Sindh and Balochistan under the license granted by Oil & Gas Regulatory Authority. It is engaged in construction and operation of gas transmission and distribution pipelines, sale of Natural Gas, Liquefied Petroleum Gas (LPG) Air-Mix, LPG, Gas Condensate, Natural Gas Liquids (NGL) and manufacture and sale of gas meters. The petitioner is currently also engaged in the business of Re-gasified Liquefied Natural Gas (RLNG) in accordance with the decision of the Federal Government (FG/GoP).
- 1.2. The petitioner had filed a petition on August 15, 2013 under Section 8(2) of the Oil and Gas Regulatory Authority Ordinance, 2002 (the Ordinance) and Rule 4(3) of the Natural Gas Tariff Rules, 2002 (NGT Rules), for determination of its Final Revenue Requirement (FRR) for FY 2012-13 (the said year) on the basis of the accounts as initialed by its statutory auditors. The Authority, vide its decision November 05, 2015 determined a shortfall of Rs. 13,409 million (the amounts have been rounded off to the nearest million here and elsewhere in this document). The Authority allowed an increase of Rs. 38.31 per MMBTU in the average prescribed price w.e.f July 01, 2012.
- 1.3. Being aggrieved by this determination, the petitioner has submitted a review motion (the petition) on December 03, 2015 under Rule 16 of the NGT Rules seeking average increase in prescribed price of Rs. 9.24 per MMBTU over and above the current average prescribed price w.e.f July 01, 2012.
- 1.4. The petitioner has submitted the following comparative statement of cost of service:

**Table 1 : Comparison of Cost of Service for FY 2012-13 per the petition with FRR**

Particulars	Rs. / MMBTU	
	FY 2012-13	
	FRR	The Petition
Units sold (BBTU)	350,048	350,048
Cost of gas sold	387.55	387.55
UFG disallowance	(5.49)	-
Transmission and distribution cost	41.55	45.17
Shortfall of previous year	6.67	6.67
Depreciation	11.46	11.51
Return on net average operating fixed assets	21.01	21.09
Other operating income	(19.59)	(19.59)
Subsidy for LPG Air-Mix Project	1.32	1.32
Cost of service / prescribed price	444.49	453.73
Current average prescribed price	444.49	444.49
Increase / (Decrease) requested in average prescribed price	0.00	9.24

- 1.5. The Authority issued a notice of pre-admission hearing on August 02, 2016 to the petitioner.
- 1.6. The Authority notes that the petitioner, at the time of DERR for the said year, had challenged the Authority's determination in the honorable Sindh High Court with respect to UFG, non operating income, Human Resource (HR) cost benchmark and provision for doubtful debts. Accordingly, Sindh High Court granted interim relief against the Authority's determination and directed on May 28, 2012 to treat Meter Manufacturing Profit (MMP), Late Payment Surcharge (LPS), sale of gas condensate and royalty from M/s Jamshoro Joint Venture Ltd. (JJVL) as non-operating income. Moreover, UFG adjustment was directed to calculate at 7%.
- 1.7. The matter in respect of revenue requirements from FY 2010-11 onwards was sub-judice, and interim stay granted by the honorable Sindh High Court was in field. The honorable Court has now issued a comprehensive and detailed judgment on November 25, 2016 covering all the contentions raised by the petitioner including UFG benchmarking, disallowance vs penalty, guaranteed rate of return, treatment of other operating incomes and provision for doubtful debts. The honorable Sindh High Court also concluded that its jurisdiction, in the light of applicable legal provisions, is a judicial review to ascertain whether







the procedural requirement has been followed in true letter and spirit of law. The honorable Sindh High Court further ruled out that the specialized performance assigned to OGRA could hardly be undertaken by the Court in exercise of their judicial discretion. The honorable Sindh High Court, after minutely examining the submissions on account of all the contentious issues, the procedural requirements and hearing both the parties on merit, has given a verdict that no reason is drawn to interfere with the statutory powers exercised by OGRA while fixing tariff and Annual Revenue Requirements, and dismissed all the petitions including OGRA JM no. 01/2011, OGRA JM no. 02/2011, OGRA JM no. 01/2012, OGRA JM no. 02/2013, OGRA JM no. 01/2014 and OGRA JM no. 09/2016 for FY 2010-11, FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15 and FY 2015-16 respectively.

- 1.8. Accordingly, the consequential financial impact arising due to the honorable Sindh High Court's decision is to be reflected in the revenue requirement for the said year. However, the Authority notes that FY 2012-13 has now been closed. Annual accounts for the said year has already been issued, and reached finality. Therefore, adjustment amounting to Rs. 36,719 million as tabulated below, arising on account Sindh High Court judgment shall be made in the forthcoming determination of FRR FY 2015-16.

**Table 2 : Financial Impact Arising from honorable Sindh High Court's Judgment**

Particulars	Rs. in Million					Total
	2010-11	2011-12	2012-13	2013-14	2014-15	
Differential Impact of UFG	2,414	2,940	3,366	3,646	3,886	
Differential Impact of Incomes	4,534	4,891	4,597	4,404	2,099	
Adjustment on account of Return on MMP Assets	(7)	(6)	(6)	(14)	(25)	
<b>Total</b>	<b>6,941</b>	<b>7,825</b>	<b>7,957</b>	<b>8,036</b>	<b>5,960</b>	<b>36,719</b>

## 2. AUTHORITY'S JURISDICTION AND DETERMINATION PROCESS

- 2.1. The petitioner has invoked the jurisdiction of the Authority under Rule 16 of the NGT Rules, and Section 13 of the Ordinance, which ought to be read together to reach correct interpretation of legal framework. Section 13 provides the grounds on which a review petition can be filed, and is reproduced below:-

*"13.Review of Authority decision.- The Authority may review, rescind, change, alter or vary any decision, or may rehear an*





*application before deciding it in the event of a change in circumstances or the discovery of evidence which, in the opinion of the Authority, could not have reasonably been discovered at the time of the decision, or (in the case of a rehearing) at the time of the original hearing if consideration of the change in circumstances or of the new evidence would materially alter the decision."*

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

### 3. PROCEEDINGS

- 3.1. A pre-admission hearing was held on August 16, 2016 at Karachi, which was participated by the following:

**Petitioner:**

- i. Petitioner's team led by Mr. Amin Rajpoot, Acting Managing Director.
- ii. Mr. Mehmood Mirza, the Legal Counsel

- 3.2. The petitioner was given full opportunity to present its motion for review. The petitioner made submissions in detail with the help of multi-media presentation.

- 3.3. The petitioner has sought review of the Authority's decision on the following items:-

- (i) Unaccounted for Gas (UFG)
- (ii) Gas Distribution system - new towns
- (iii) Vehicles
- (iv) Reclaimed items
- (v) Human Resource (HR) Cost Benchmark
- (vi) Provision for doubtful debts
- (vii) Advertising Expenses
- (viii) Legal Charges
- (ix) Other expenses



#### 4. DISCUSSION & DECISION

##### 4.1. Unaccounted for Gas

4.1.1. The petitioner has referred to the decision of the Authority of FRR for the said year in respect of UFG and stated that it had submitted the FRR petition to the Authority to allow UFG after taking into account allowance against following heads:

- i. Unbilled pilfered volume in law & order affected areas
- ii. Pilfered volume detected against non-consumers
- iii. Bulk - Retail Ratio

4.1.2. The petitioner has stated that the Authority only allowed 75% of the volumes claimed in respect of law & order affected areas; and 80% of the volumes claimed in respect of non-consumers. The company has requested that 100% volume may be allowed against the above stated sub-heads of UFG and has brought following arguments in support of its stance:

- a) With respect to the volumes pilfered in law & order affected areas, the petitioner has submitted that the basic premise on which the ECC had allowed these volumes to the company is the non-controllability factor and the Authority had also acknowledged this fact that the law & order is Federal or Provincial Government's domain and situation is beyond the control of gas utilities that is why the Authority has allowed 75% of the volumes but the allowance of just 75% of the volumes seems illogical/unjustified owing to the fact that the situation is not in the entire control of the company, therefore, bifurcation seems without any basis and rationale. The petitioner has also added that although they have approached the FG on the matter of 25% volumes, but the funding from the FG's resources or royalty of the concerned province would eventually mean that its burden would be passed on to the general public as against the fact that the volumes pertain to the users of natural gas, therefore, the proposal to pass the burden to the general public needs to be revisited.
- b) In respect of theft of gas by non-consumers, the petitioner has submitted that the Authority provisionally allowed 80% of claimed volumes for the said year and decided to cap the maximum limit at 6,387 mmcf for the said year and onwards. The petitioner has added that while making the disallowance of 20% volumes





and capping it at the same level for subsequent financial years the Authority emphasized the company to initiate legal proceedings against the criminals involved in theft of gas, register FIRs, file criminal suites for recovery etc. The petitioner has stated that they fully endorse and acknowledge the Authority's position emphasizing the company to take above remedial measures, however they also like to submit that initiation of criminal proceedings would lead to the punishments to the culprits, however, the final outcome of the recovery suits, if could be filed, is a long process. The petitioner has added that the end result of such legal proceedings is quite un-certain, therefore, based on these cavaliers disallowing/capping the volumes for UFG calculations needs to be revisited/reconsidered and the petitioner should be allowed all the volume detected and booked against these gas pilferers, moreover, the decision of ECC dated 20.11.2014 was also very clear in which no capping on the allowance of these volumes was provided.

- c) The petitioner has requested to allow the volumes claimed in respect of Bulk - Retail Ratio in UFG calculations keeping in view the fact that these are in line with the decision of ECC of the Cabinet.

4.1.3. The Authority observes that the details provided by the petitioner w.r.t. gas theft by non-consumers e.g. lodging of FIRs, recovery/civil suits, and volume acknowledged etc. is unsatisfactory. Only 82 No. FIRs have been lodged out of the total 4,546 No. of cases for the period FY 2011-12 to FY 2014-15. Moreover, only 4.8 mmcf volume has been acknowledged till date out of claimed volume of 27,897 mmcf against 152,849 no. of non-consumers/persons. The Authority also notes that FG has recently promulgated Gas (Theft Control and Recovery) Act, 2016 which is meant to provide for prosecution of cases of gas theft and other offences relating to gas and to provide a procedure for recovery of amounts due, value of gas, fines, penalties and other outstanding amounts payable and sums due to Gas Utility Companies and for matters ancillary and related thereto. The Authority believes that the said Act will help the petitioner company to expeditiously prosecute cases of gas theft and recover amounts due to it.

4.1.4. The Authority reiterates that since law & order is a Federal / Provincial subject, therefore, the FG may:





- i. specify the law & order affected areas, if any, and
- ii. arrange funding from its own resources or from the royalty of the concerned province for the remaining 25% of the volume claimed by the petitioner w.r.t law & order affected areas for the said year.

4.1.5. The Authority is of the considered view that it is the obligation of the petitioner to take all possible steps to cope up with the problems affecting its business including initiation of legal proceedings under Pakistan Penal Code and recovery proceedings before the court of competent jurisdiction to recover the value of pilferage or stolen gas/ losses. The petitioner must make concrete efforts to resolve the issue. Further the FG may also direct the petitioner to come up with practical solution of the problem to get rid of this menace as referred to above.

4.1.6. As regards the volumes claimed by the petitioner in respect of bulk retail ratio, the Authority reiterates that it has not allowed any volume in this head in any of its earlier determinations; however, it would consider the same once the UFG Study gets completed.

4.1.7. *The Authority, considered the view point of the petitioner and keeping in view the fact that there is no change in circumstances and no new tangible justifications have been tendered by the petitioner, decides that the balance volumes pilfered by non consumers, gas losses in law and order affected areas and impact of change in bulk retail ratio may be considered in the light of UFG Study, once the report is finalized in consultation with all the stakeholders and accordingly decided by the Authority, any adjustments will be passed in the subsequent FRRs accordingly.*

#### 4.2. Gas Distribution Systems

4.2.1. The petitioner has submitted that it had claimed Rs. 5,113 million gas distribution system capitalization in the FRR for the said year including Rs. 2,053 million related to new towns & villages. The Authority, however, restricted the same at the level of Rs. 1,696 million and disallowed the remaining Rs. 357 million capitalized over and above the amount provisionally allowed in DERR for the said year.

4.2.2. The petitioner has stated that prime reason for capitalizing an amount of



Rs. 357 million in excess of the amount allowed in the DERR for the said year was the election year and there had been continuous follow up by the MNAs / MPAs / Prime Minister Secretariat etc. for the completion of schemes under review.

4.2.3. *The Authority notes that the petitioner has not brought any new evidence/justification in support of its stance and the arguments brought forward by it have already been considered at the time of FRR. The Authority further notes that scrutiny of the data pertaining to gas development schemes shows the company has laid a large no. of schemes, which do not meet FG's per customer cost criteria, hence are in violation of the FG's policy and Supreme Court's decision on the matter. The Authority, therefore, maintains its earlier decision and disallows an amount of Rs. 357 million under this head for the said year.*

#### 4.3. Vehicles

4.3.1. The petitioner has submitted that it has claimed Rs. 237 million on account of vehicles for the said year, however, the Authority disallowed Rs. 27 million capitalized over and above the amount provisionally allowed in DERR of the said year.

4.3.2. The petitioner has now stated that vehicles are an operational requirement and are needed to be used in various functions performed by the petitioner. Out of Rs. 237 million claimed under this head in the said year, the petitioner acquired 191 No. of vehicles i.e 143 additional vehicles and 54 replacement vehicles, for operational requirement. The petitioner has also provided department-wise details for vehicles capitalized during the said year. The petitioner has also stated that there is a sufficient cushion available considering the fact that the petitioner's actual capitalization, in the head of vehicles, remained on lower side in past e.g. it capitalized an amount of Rs. 395 million against provisionally allowed amount of Rs. 519 million during FY 2009-10 to FY 2011-12.

4.3.3. *In view of above, the Authority accedes to the request of the petitioner and determines expenditure under the head of vehicles at Rs. 237 million for the said year.*



**Table 3 : Addition in Assets Allowed by the Authority**

Particulars	FRR	Additional Amount per the Petition	Rs. in million
			Additional amount Determined by the Authority
Gas Distribution System - New Towns & Villages	1,696	357	-
Vehicles	237	27	27
<b>Total</b>	<b>1,933</b>	<b>384</b>	<b>27</b>

#### 4.4. Reclaimed Items

4.4.1. The petitioner has stated that under the head of re-claimed items, they claimed gas theft volumes for non-consumers and volumes related to law and order affected areas based on Authority's determination on motion for review for the FY 2011-12. However, as against the already allowed volumes of 59.14% and 63.25% of the claimed volumes in respect of gas theft by non-consumers and related to law and order affected areas respectively, the Authority restricted the same at 50% of the claim and changed its earlier decision by taking reliance on the policy guidelines received in June 2013.

4.4.2. The petitioner has requested that 100% volume claimed against the sub-heads of law and order affected areas and gas theft by non-consumers be allowed, on the basis of the policy guidelines of FG dated June 2013.

4.4.3. *The Authority notes that it has already complied with the above said policy guidelines of FG; therefore, the Authority maintains its earlier stance on the matter.*

#### 4.5. Transmission & Distribution Cost

4.5.1. The Authority observes that review on HR cost benchmark, provision for doubtful debts, advertising expenses, legal charges and other expenses have been claimed by the petitioner without presenting any new evidence or establishing change in circumstances, which is a mandatory requirement to qualify for review of the Authority's decision. The Authority notes that the petitioner has merely repeated its arguments without noting the detailed discussion made thereon in the FRR for the said year. The review petition is, therefore, rather flimsy in terms of

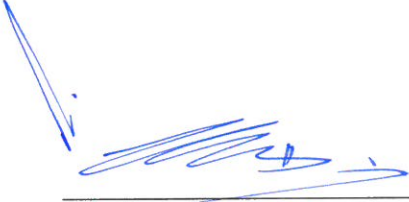




subject claims and contains no concrete evidence for review.

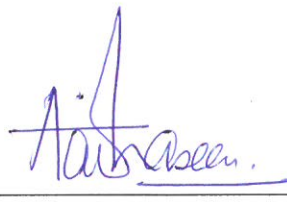
4.5.2. *In view of the same, the Authority maintains its earlier decision and rejects the petitioner's claim on the subject matter.*

4.6. *In view of the foregoing, the petition is hereby disposed of and the net adjustment of the instant petition shall form part of FRR FY 2015-16.*




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Noorul Haque,  
Member (Finance)



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Aamir Naseem,  
Member (Gas)



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Uzma Adil Khan,  
(Chairperson)

Islamabad, December 21, 2016