



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

Case No. OGRA-6(2)-2(5)/2015-Review

IN THE MATTER OF

SUI SOUTHERN GAS COMPANY LIMITED
MOTION FOR REVIEW FOR FINAL REVENUE
REQUIREMENT, FY 2014-15

UNDER

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

DECISION

ON

DECEMBER 21, 2016

Before:

Ms. Uzma Adil Khan, Chairperson

Mr. Aamir Naseem, Member (Gas)

Mr. Noorul Haque, Member (Finance)

TABLE OF CONTENTS

| SECTIONS | PAGE NO. |
|---|----------|
| 1. BACKGROUND | 1 |
| 2. AUTHORITY'S JURISDICTION AND DETERMINATION PROCESS | 3 |
| 3. PROCEEDINGS | 4 |
| 4. DISCUSSION & DECISION..... | 4 |
| 4.1. Unaccounted for Gas (UFG) | 4 |
| 4.2. Gas Distribution Systems - New Towns & Villages..... | 7 |
| 4.3. Transmission and Distribution Cost & Income..... | 8 |





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 28, 2015 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 2014-15 (the said year) on the basis of the accounts as initialed by its statutory auditors. The Authority, vide its decision November 27, 2015 determined a shortfall of Rs. 23,468 million (the amounts have been rounded off to the nearest million here and elsewhere in this document). The Authority allowed an increase of Rs. 66.11 per MMBTU (i.e. Rs. 23,468 million) in the average prescribed price w.e.f July 01, 2014.
- 1.3. Being aggrieved by this determination, the petitioner has submitted a review motion (the petition) on December 23, 2015 under Rule 16 of the Natural Gas Tariff Rules, 2002 (NGT Rules) seeking average increase in prescribed price of Rs. 75.99 per MMBTU over and above the current average prescribed price w.e.f July 01, 2014.
- 1.4. The petitioner has submitted the following comparative statement of cost of service:



Table 1 : Comparison of Cost of Service for FY 2014-15 per the petition with FRR

| Particulars | Rs. / MMBTU | |
|--|---------------|---------------|
| | FY 2014-15 | |
| | FRR | The Petition |
| Units sold (BBTU) | 354,984 | 354,984 |
| Cost of gas sold | 439.54 | 439.54 |
| UFG disallowance | (28.97) | - |
| Transmission and distribution cost | 44.47 | 50.06 |
| Shortfall of previous year | 50.07 | 91.32 |
| Depreciation | 13.31 | 13.39 |
| Return on net average operating fixed assets | 22.17 | 22.46 |
| Other operating income | (28.55) | (28.73) |
| Subsidy for LPG Air-Mix Project | 1.55 | 1.55 |
| Cost of service / prescribed price | 513.61 | 589.60 |
| Current average prescribed price | 513.60 | 513.60 |
| Increase / (Decrease) requested in average prescribed price | 0.00 | 75.99 |

- 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 and non operating income. Accordingly, Sindh High Court granted interim relief against the Authority's determination and directed on July 17, 2014 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. T 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 2014-15 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 forth coming 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) | |
| Total | 6,941 | 7,825 | 7,957 | 8,036 | 5,960 | 36,719 |

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 Systems - New Towns & Villages
 - (iii) Human Resource (HR) Cost Benchmark
 - (iv) Rent Rates and Taxes
 - (v) Provision for doubtful debts
 - (vi) Advertising Expenses
 - (vii) Transportation Income

4. DISCUSSION & DECISION

4.1. Unaccounted for Gas (UFG)

- 4.1.1. The petitioner has referred to the decision of the Authority for final revenue requirements for the said year in respect of UFG and stated that it had submitted FRR petition to the Authority to calculate 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 FY 2012-13 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 volume pilfered by Non Consumers, 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 – New Towns & Villages

4.2.1. The petitioner has submitted that it had claimed Rs. 4,949 million gas distribution system capitalization in the FRR for the said year including Rs. 857 million related to new towns & villages for which the Authority disallowed Rs. 395 million for gas development schemes not meeting ECC per customer cost criteria and not in accordance with the policy of FG.

4.2.2. The petitioner has stated that they have checked the data/record and found that gas development schemes amounting Rs. 27 million meet per consumer cost criteria, are pre-moratorium and meet ECC guidelines, therefore, should not be disallowed by the Authority. The company has also stated that there are 59 Nos. schemes amounting to Rs. 364 million, which do not meet ECC's approved per consumer cost criteria, but they have received soft term loan from Govt. of Sindh for laying the said schemes, therefore the Authority has been requested to allow the said schemes in accordance with the provision of clause 6.2 of Natural Gas Allocation and Management Policy, 2005 which stipulates that "for supply of gas to those economically backward areas, which do not meet cost criteria determined by the FG for supply of gas, the Federal and / or Provincial Govt(s) make available the resources to the extent of the amount over and above criteria limit" and Rule 20(v) of Natural Gas Licensing Rules 2002 which states that ".....if any transmission or



distribution expansion or sale of natural gas in a particular area is not viable, the licensee shall not be obliged to provide such services in that particular area unless the FG makes special financial arrangements with the licensee.”

4.2.3. The Authority notes that the above stated provisions of Natural Gas Allocation and Management Policy, 2005 and Rule 20(v) of Natural Gas Licensing Rules, 2002 empower the company to regret the expansion of gas supply network in economically unviable areas until and unless Federal/Provincial Governments share the burden of such uneconomical expansion, with the company, to the extent of the amount over and above per customer cost criteria. These resources may include funds and grants provided by the above said Govts. on non-refundable basis.

4.2.4. *In view of above and after scrutinizing the data pertaining to gas development schemes furnished by the company, the Authority allows an additional amount of Rs 27 million for the said year. The Authority, however disallows an amount of Rs 368 million capitalized on gas development schemes which are not in accordance with the policy of FG and decision of the Supreme Court on the matter.*

Table 3 : Addition in Assets Allowed by the Authority

| Particulars | Determination of FRR | Additional Amount Claimed in the Petition | Rs. In million |
|--|----------------------|---|--|
| | | | Additional amount allowed by the Authority |
| Gas Distribution System - New Towns & Villages | 462 | 395 | 27 |

4.3. Transmission and Distribution Cost & Income

4.4. The Authority observes that review on HR cost benchmark, provision for doubtful debts and advertising 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. *In view of the same, the Authority maintains its earlier decision and rejects the petitioner's claim on the subject matter.*

4.6. Regarding petitioner's claim of Rs. 261 million in respect of rent, rate and taxes, the petitioner has submitted that the Authority disallowed Rs.60 million on account of provisional payment to Pakistan Railway relating to lease/rental based on the contention that rate per crossing is higher. The petitioner has explained that it was forced to make payments related to the period 2002 to 2015 on urgent basis for laying of 42 inch dia gas pipeline along with the railway track. Therefore, keeping in view the national importance of the LNG projects, and the time lines for its completion, the petitioner decided to pay entire outstanding amount in larger national interest.

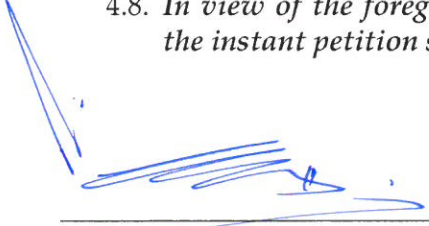
4.7. *The Authority, after scrutinizing the new evidences / record, decides to allow entire amount of Rs. 261 million as claimed by the petitioner during the said year..*

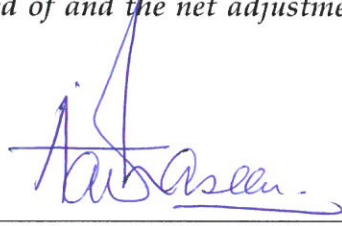
4.7.1. The petitioner has informed that Rs. 65 million being "Pipeline Rental Income" from Zarghun Gas Pipeline has not been reported/ recorded in the initialed accounts. However, the same have been subsequently recorded in the accounts of the said year. Accordingly, the same has been offered in the instant petition.


4.7.2. The Authority observes that the petitioner has later informed that Rs. 394 million has actually been recognized on account of Zarghoon pipeline contribution during the said year.

4.7.3. *In view of above, the Authority decides to include Rs. 394 million under head of transportation income for the said year.*

4.8. *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.*


Noorul Haque,
Member (Finance)


Aamir Naseem,
Member (Gas)


Uzma Adil Khan,
(Chairperson)

Islamabad, December 21, 2016