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Oil & Gas  
Regulatory Authority

Case No. OGRA-6(2)-2(1)/2018-REVIEW

IN THE MATTER OF

SUI SOUTHERN GAS COMPANY LIMITED  
REVIEW AGAINST DETERMINATION OF MOTION FOR REVIEW OF  
FINAL REVENUE REQUIREMENT, FY 2016-17

UNDER

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

DECISION

ON

DECEMBER 24, 2018

Before:

Ms. Uzma Adil Khan, Chairperson

Mr. Noorul Haque, Member (Finance)

Dr. Abdullah Malik, Member (Oil)

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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 Baluchistan 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 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 26, 2017 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 2016-17 (the said year) on the basis of the accounts as initialed by its statutory auditors. The Authority, vide its decision October 26, 2017 determined a shortfall of Rs. 11,502 million and allowed an increase of Rs. 31.25 per MMBTU in the average prescribed price w.e.f July 01, 2016. The above said increase also includes Rs. 18,359 million being recovery arising out of the decision of hon'ble Sindh High Court (SHC) dated November 25, 2016 in respect of revenue requirements for the periods FY 2010-11 to FY 2014-15.
- 1.3. The petitioner has submitted a motion for review on November 24, 2017 under Rule 16 of NGT Rules, seeking average increase in prescribed price of Rs. 75.92 per MMBTU (i.e. Rs. 27,941 million) over and above the current average prescribed price w.e.f July 01, 2016. The Authority, vide its decision May 10, 2018 determined a shortfall of Rs. 2,566 million and allowed an increase of Rs. 6.97 per MMBTU in the average prescribed price w.e.f July 01, 2016.
- 1.4. Being aggrieved by this determination, the petitioner has now submitted a review petition against the Authority decision on motion for review on June 7, 2018 under Section 13 of the Ordinance, seeking average increase in prescribed price of Rs. 72.19 per MMBTU (i.e. Rs. 26,570 million) over and above the current average prescribed price w.e.f July 01, 2016. The petitioner has explained that review under

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Section 13 of the Ordinance is being necessitated owing to the issuance of policy guidelines by Economic Coordination Committee (ECC) in respect of treatment of provisional UFG determination in the light of UFG benchmark study conducted by OGRA, RLNG volumes handled and its impact on UFG and staggering of financial impact of hon'ble SHC.

- 1.5. The petitioner filed its amended petition (the petition) on July 09, 2018, and requested to allow Rs. 15 million being made as advance payment to Inter State Gas Systems Pvt. Ltd. (ISGSL). The petition has sought average increase in prescribed price of Rs. 72.23 per MMBTU (i.e. Rs. 26,586 million) over and above the current average prescribed price w.e.f July 01, 2016.
- 1.6. The petitioner has submitted the following comparative statement of cost of service:

Table 1 : Comparison of Cost of Service for FY 2016-17 per the petition with FRR  
Rs. / MMBTU

Particulars	FY 2016-17	
	DMFRR	The Petition
Units sold (BBTU)	368,049	368,049
Cost of gas sold	390.80	390.80
UFG adjustment	(33.39)	(33.37)
Prior years adjustment in line with retrospective effect of UFG study report upto 2015-16		30.59
UFG Determined on Volume Handled Basis (from FY 2012-13-FY2016-17)		11.51
Prior years impact on UFG disallowance due to change in GCV due to RLNG mix	1.98	1.98
Transmission and distribution cost including Other	50.97	52.69
Depreciation	15.89	15.89
Return on net average operating fixed assets	32.77	32.77
Other operating income	(34.29)	(45.80)
Financial impact of SHC order	(49.88)	(9.98)
Subsidy for LPG Air-Mix Project	1.25	1.25
Cost of service / prescribed price	376.10	448.34
Current average prescribed price	376.10	376.10
Increase requested in average prescribed price	-	72.23

## 2. AUTHORITY'S JURISDICTION AND DETERMINATION PROCESS

- 2.1. The petitioner has invoked the jurisdiction of the Authority under Section 13 of the Ordinance. 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 petitioners 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 impugned decision.

### 3. PROCEEDINGS

- 3.1. The Authority issued notice of hearing on July 16, 2018 to the petitioner. Accordingly, the hearing was held on July 19, 2018 at Islamabad, where the petitioner's team, led by Mr. Amin Rajpoot, Acting Managing Director along-with legal counsel, who were given full opportunity to present the petition and the merits of the case with the help of multi-media presentation.
- 3.2. The petitioner has sought review of the Authority's decision on the following items:-
- A. UFG**
- (i) Treatment of provisional UFG determination in the light of OGRA's final UFG benchmark study
  - (ii) RLNG impact on UFG - swapping indigenous gas to SNGPL & supplying RLNG to Karachi consumers through distribution network
- B. Transmission & Distribution (T&D) Cost:**
- (iii) Financial Impact of Hon'ble SHC Judgment
  - (iv) SSGCL Share in ISGSL Expenses
  - (v) RLNG Transportation Income

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#### 4. DISCUSSION

i. **Unaccounted for Gas (UFG) - Treatment of provisional UFG determination in the light of OGRA's final UFG benchmark study**

- 4.1. The petitioner filed a review against determination of motion for review of FRR for the said year. The petitioner informed the Authority that the Ministry of Energy, Petroleum Division, vide its letter No DGO (AC)-5(26)/16-17 dated May 31, 2018, had informed that the ECC of the Cabinet, in its meeting held on May 17, 2018 and vide case number ECC-45/10/2018 dated May 17, 2018, had approved the summary of the policy guidelines under section 21 of the Ordinance, extract of which is as under: -

*Quote:*

*"10. Petroleum Division is of the considered view that the very purpose of the UFG Study is not only to provide realistic UFG benchmark linked with efficiency but it also has to address the adjustments/provisional determinations of UFG disallowances which were to be reconciled and adjusted subsequently. The Authority (OGRA) from FY-2012-13 onwards had provisionally allowed volumes in the light of policy guidelines to be reconciled with the results of UFG study since no independent expert opinion was available as required by law. Accordingly, this Division proposes that OGRA may reconcile and finalize/adjust the provisional UFG benchmarks set from FYs 2012-13 to 2016-17 in pending / next determinations of revenue requirements of the Sui companies in line with the recommendations of the UFG Study i.e. the benchmark set i.e. 7.6% (fixed benchmark of 5% UFG plus 2.6% for local conditions) so as to ensure that the gas companies continue to remain financially viable and sustainable."*

*Unquote*

- 4.2. The petitioner stated that it would like to draw the attention of the Authority towards recent Supreme Court's decision in Suo Moto case No. 1 of 2013 and Civil Misc. Applications No. 66, 2041 and 3168 of 2016 and 7462 and 7463 of 2017 and

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Civil Petition No. 1395 of 2015, in which the Apex court has categorically stated the following in Para-2 of the judgment: -

*"The language of section 21 of the Ordinance is very clear in that the Federal Government can issue guidelines and there is no check on the power of the Federal Government to that effect. It is also absolutely clear that OGRA, in terms of such guidelines, has to perform its functions, however the only condition is that the guidelines should not be inconsistent with the provisions of OGRA. If that being so, OGRA shall comply with the same."*

- 4.3. The Authority has been requested, vide the aforesaid review petition, to allow Rs. 11,257 million being the excess amount deducted on account of UFG adjustment for the period from FY 2012-13 to FY 2016-17 in line with the above referred ECC guidelines.
- 4.4. The Authority conducted the hearing in the matter on July 19, 2018 and also considered the stance of petitioner in the preceding paragraphs. The Authority observes that it had fixed the UFG Benchmark as 4.5 % for financial years from FY 2012-13 to FY 2016-17 in line with the Licence Condition No. 21 of the licensee and the same was neither provisional nor linked with the UFG Study.
- 4.5. The Authority, in its decisions in respect of FRRs for FYs from 2012-13 to the said year, allowed certain volumes in respect of Law and Order Affected Areas and the Non Consumers provisionally as per the then policy guidelines of the ECC of the Cabinet and stated that they shall be reconciled with the results of the UFG Study and any variation(s) shall be adjusted accordingly.
- 4.6. It is also mentioned that as per clause 2(a) of the Contract and Para-2 of the TORs, the Consultant i.e. M/s KPMG was required to determine UFG benchmarks for next five years (considering the base year as FY 2016-17) and develop a formula for the period thereafter. Moreover, the Consultant was required to review and provide comments on the Benchmark given by the Authority for FY 2012-13 to FY 2015-16. In this regard, the comments of the consultant on benchmarks given by the Authority for FY 2012-13 to FY 2015-16 are reproduced below: -

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*"For prior years, the Authority may issue directives to close the provisional FRRs as evaluating Sui Companies' performance against the proposed KMIs for those periods may not be practicable. FRR for FY 2017 may also be evaluated based on prevailing criteria due to the above mentioned reason."*

- 4.7. In the light thereof, the Authority, in its decisions for FRR for the said year for the petitioner concluded and finalized the FRRs for FY 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 on the same basis as was done provisionally and decided that the FRRs stand settled as the KMIs cannot be applied retrospectively.
- 4.8. The Authority, vide its letter No. OGRA-9 (156)/2018 dated March 13, 2018, furnished its views/ comments to DG (Gas)'s Office, Ministry of Energy which were reflected in the Authority's determination for FRR for the said year as mentioned at para 4.7 above.
- 4.9. It is mentioned that the Authority considered it appropriate to seek clarification from the GoP regarding the above policy guidelines to best protect the interest of all the stakeholders in accordance with the law. Moreover, the Khyber Pakhtunkhwa Oil and Gas Company Limited, through a letter dated 30-07-2018, also called upon OGRA to ensure compliance with Article 154 of the Constitution of Pakistan that requires formulation of policies with respect to matters in Part-II of the Federal Legislative List by the Council of Common Interests (CCI).
- 4.10. The case was referred to the GoP vide OGRA's letter dated August 03, 2018, also stating therein that mineral oil and natural gas as well as all regulatory authorities established under a Federal law are subject areas contained in Part-II of the Federal Legislative List and that it may kindly be clarified that whether the above referred policy guidelines have been approved by the appropriate/competent forum as per Article 154 of the Constitution of the Islamic Republic of Pakistan, or otherwise, enabling OGRA to proceed further as per law. The distinction between policy and a factual determination may also be kept in view.
- 4.11. In response thereto, Director Technical, DG (Gas)'s office, Ministry of Energy, vide its letter No. DGO (AC)-5(235)/15-16-Pt-III dated August 29, 2018, stated that he has been directed to refer to OGRA's letter No. OGRA-9(487)/2018 dated 3.08.2018

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on the above subject and to clarify that matter of issuance of policy guidelines to OGRA from time to time is in vogue since establishment of OGRA under the Ordinance. The policy guidelines are issued to OGRA pursuant to Section 21 of the Ordinance which explicitly empowers the FG to issue guidelines to the Authority on matters of policy not inconsistent with the provisions of OGRA Ordinance or the rules made there-under and that Section 2(xxvi) of the Ordinance defines 'policy guidelines' as policies of the FG covering or related to any or all the regulated activities which are issued in writing pursuant to a decision of the Cabinet of the FG or any committee thereof.

- 4.12. It has also been stated that "Supreme Court of Pakistan Court vide its decision dated 18.08.2016 in Cases C.A No. 1428 to 1436 has laid down the definition of 'Federal Government' as collective entity described as the Cabinet consisting of the Prime Minister and Federal Ministers and that foregoing in view, the requirement of Section 21 of the Ordinance is duly met with respect to issuance of policy guidelines with the approval of ECC of the Cabinet (Committee of the Cabinet) or the Federal Cabinet. Thus OGRA should decide the matters while remaining within the ambit of its Ordinance, 2002 unless and until the same is amended by the Parliament.
- 4.13. It has further been stated that the Hon'ble Supreme Court of Pakistan, in its decision in Suo Moto Case No. 1 / 2013 dated 26.06.2018 while referring the Section 21 of the OGRA Ordinance, 2002 decided as under: -

*"The Language of Section 21 of the Ordinance is very clear in that the Federal Government can issue guidelines and there is no check on the power of the Federal Government to that effect. It is also absolutely clear that OGRA, in terms of such guidelines, has to perform its function; however, the only condition is that the guidelines should not be inconsistent with the provisions of OGRA. If that being so, OGRA shall comply with the same."*

- 4.14. In addition to other points, the Director states that the aforesaid decision implies that OGRA has to comply with the policy guidelines of the FG with the condition that guidelines are not inconsistent with the provisions of the Ordinance. Lastly, it has been stated that Council of Common Interests (CCI), in its 34<sup>th</sup> meeting held on 24.11.2017, considered the Summary submitted by IPC Division and agreed that

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without reopening the past decisions of ECC, Ministry of Energy would initiate a Summary on oil, gas and power sectors to delineate 'day to day' and 'policy matters' of these sectors. The matter will be further processed after formation / constitution of CCI by the FG.

### DECISION OF THE AUTHORITY

#### i. Member (Oil):

*AK*

4.15. Member (Oil) stated that OGRA's objective is to safeguard the interest of all stakeholders including <sup>general public</sup> utility companies. OGRA has certain powers but we need to remain within the ambit of Policy Guidelines/Ordinance/ Laws. He opined that this UFG study should have been conducted earlier to set a benchmark instead of allowing it on provisional basis. In his point of view, this point should be clear in the future study and that the process of conducting that study should be started at least 02 years earlier i.e, in year 2019. Member (Oil) decided to allow the company the differential on account of Law & Order / Theft as demanded against partial allowance by OGRA for FY 2012-13 to FY 2016-17. However, Member (Oil) noted that in the case of SSGCL the distribution of dividends during stay period should not have been offered and funds should have been kept aside until final decision/ policy had been put in place.

#### ii. Chairperson

4.16. Chairperson stated that OGRA had submitted detailed comments on the summary submitted to ECC on which policy guidelines with respect to treatment of provisional UFG determination in the light of OGRA's final UFG study have been issued. ECC despite considering the OGRA's comments has given the policy guidelines. In her viewpoint, 5% part of the decision of ECC was not in question as the benchmark of 4.5% was imposed earlier and was not the subject of review. She stated that ECC policy guideline stipulates two conditions, one relates to the base benchmark and the second to the variable component. OGRA in FRR decisions pertaining to previous year clearly maintained its stance as base benchmark figure of 4.5% however as regards Law & Order / Theft allowances it links the same with

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finalization of the UFG study for FY 2012-13 to 2016-17. At the time of finalization of the FFRs for previous years and based on the UFG study the Authority had taken a conscious decision in the light of the UFG study which stipulated "For prior years, the Authority may issue directives to close the provisional FRRs as evaluating Sui Companies' performance against the proposed KMLs for those periods may not be practicable. FRR for FY 2017 may also be evaluated based on prevailing criteria due to the above-mentioned reasons." In the Authority's view the Consultant's report advised this measure. Later on, when the company filed reviews against this decision of OGRA and stressed on the fact that the Consultant's report does not bear the words "as is" hence OGRA can review its earlier decision in the light of this interpretation. However, OGRA maintained its stance and the matter was submitted to ECC of the Federal Government. The ECC considered the summary and approved the Petroleum Division's view contained in Para-10 of the summary as policy guidelines which stipulated:

*"Petroleum Division is of the considered view that the very purpose of the UFG Study is not only to provide realistic UFG benchmark linked with efficiency but it also has to address the adjustments/provisional determinations of UFG disallowances which were to be reconciled and adjusted subsequently. The Authority (OGRA) from FY 2012-13 onwards had provisionally allowed volumes in the light of policy guidelines to be reconciled with the results of UFG study since no independent expert opinion was available as required by law. Accordingly, this Division proposes that OGRA may reconcile and finalize/adjust the provisional UFG benchmarks sets from FYs 2012-13 to 2016-17 in pending/next determinations of revenue requirements of the Sui Companies in line with the recommendations of the UFG Study i.e. the benchmark set i.e. 7.6% (fixed benchmark of 5% plus UFG plus 2.6% for local conditions) so as to ensure that the gas companies continue to remain financially viable and sustainable."*

- 4.17. Chairperson stated that in her view, the policy guideline has two parts, one relates to realistic UFG benchmark, the second relates to adjustments of provisional determinations of UFG allowances. The fixed benchmark of 4.5% has never been provisional and under the provisions of OGRA Ordinance, the right of determination of various constituent elements of the tariff and UFG allowance is to

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be done by the Authority as also opined by OGRA's legal expert. However, OGRA had allowed UFG, on account of Law & Order / Theft, on the basis of certain percentages for various years against the recommendations of the ECC and these were linked to the finality of the UFG study. Since both interpretations of the UFG study on treatment of variable factors beyond control have been examined by the ECC, and the fact that Honourable Supreme Court of Pakistan, in the Suo Moto Case No. 1/2013 dated 26.06.2018, while referring the Section 21 of the OGRA Ordinance decided as follows: -

*"The language of Section 21 of the Ordinance is very clear in that the Federal Government can issue guidelines and there is no check on the power of the Federal Government to that effect. It is also absolutely clear that OGRA, in terms of such guidelines, has to perform its functions, however, the only condition is that the guidelines should not be inconsistent with the provisions of OGRA. If that being so, OGRA shall comply with the same. Disposed of accordingly."*

- 4.18. Therefore, Chairperson concedes to the policy guideline issued by ECC even after considering OGRA's comments thereon that the allowance on account of Law & Order/ Theft should be the same as recommended by the ECC for FY 2012-13 to FY 2016-17. This is based on the fact that the highest forum of the Country i.e. the Honourable Supreme Court of Pakistan has upheld the supremacy of the policy guidelines therefore OGRA is bound to comply with the same barring any inconsistency with OGRA Ordinance.
- 4.19. The Chairperson also placed on record her views regarding the financial viability and sustainability of the gas companies. She stated that in case of SNGPL there is no issue of not remaining a going concern. However, in case of SSGC, the company's equity shall be wiped out due to the impact of vacation of the stay order earlier obtained by the company against OGRA's determination of revenue requirement. Since the company was already recognizing the impact on this account and albeit its equity had mainly eroded due to wrong decisions taken by the Board of Directors in distributing dividends out of their reserves whilst the case was subjudice, the Company was already penalized on this account. If at this stage SSGCL's equity is eroded and it fails to remain a going concern, its consumers will mainly suffer as it is a public utility company, furthermore the Government would

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have to provide a subsidy to it since being a public utility company it cannot be shutdown. The subsidy so provided will be borne by the people of Pakistan in the form of additional taxes and even those who are not the company's consumers shall have to bear the additional burden which is not an equitable and judicious decision. She stated that the per MMBTU impact on price will be minimal in case of SNGPL whose amount is only Rs. 1,112 million whereas in case of SSGC the same may form part of GDS and hence not passed on to consumers. The Chairperson stated that hence she supports the proposal of allowing a maximum of sui companies claim on account of Law & Order/Theft for FY 2012-13 to FY 2016-17 as per their claim. However, this may be allowed in the Revenue Requirement for FY 2016-17 but its recovery, if any, should be staggered from consumers in the proceeding five year as this is based on the previous five years i.e. FY 2012-13 to FY 2016-17. She stressed that by taking this decision, she is also protecting OGRA's reputation as a judicious and fair Regulator.

4.20. *Keeping in view the above, the Authority decided, in majority, that variable allowance of upto 2.6 % (subject to maximum of Sui Companies Claim) and its adjustment is allowed in line with the ECC's decision and in light of the decision of the Supreme Court relating to policy guidelines, however, no dividends should be paid to shareholders till recovery of the loss staggered in forthcoming years in order to build their equity.*

4.21. *Moreover, the basic UFG benchmark shall remain at 4.5 % which has never been provisional from FY 2012-13 to FY 2016-17. The FRRs for the said period had also been finalized on the same basis. The differential of the variable allowance of 2.6% on account of claimed by the petitioner and allowed by regulatory is given below: -*

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Review Against Authority's Determination of  
Motion for Review of Final Revenue Requirement of SSGCL Financial Year 2016-17



**Table 2 : Differential of the Variable Allowance of 2.6 %**

F.Y.	Claimed Volume (Law & Order and Non Consumers)	Allowed Volume (Law & Order & Non Consumers)	Gas Available for sale	Claimed (%)	Allowed (%)	(%) of UFG already Allowed	UFG Volume already allowed MMCF(A)	UFG Allowance at 7.1% MMCF(B)	Volume Differential (B-A) MMCF	WACOG (Rs./MMCF)	Financial Impact (Rs. in Million)
2012-13	8,337	6,572	418,396	1.99	1.57	6.07	25,400	27,165	1,765	322.52	569
2013-14	11,053	6,819	422,735	2.61	1.61	6.11	25,842	30,014	4,172	351.13	1,465
2014-15	12,775	6,876	433,798	2.94	1.59	6.09	26,397	30,800	4,403	352.37	1,551
2015-16	9,157	6,960	468,299	1.96	1.49	5.99	28,033	30,230	2,197	315.07	692
2016-17	11,872	7,006	436,509	2.72	1.61	6.11	26,649	30,992	4,343	320.08	1,390
								MMCF	16,880		5,668

**Table 3 : UFG Sheet**

Particulars	MMCF	
	The Petition	Determined by the Authority
Gross Purchases	438,389	438,389
Gas Consumed Internally - metered	1,482	1,482
(Inc.) / Dec. Gas in pipeline	367	367
Loss due to sabotage activity / ruptures / unmetered	31	31
Sub-total	1,880	1,880
Available for Sale (A)	436,509	436,509
Gas Sales	362,313	362,313
Additional Gas Delivered to SNGPL under SWAP arrangement, on account of BTU Equivalence, as per GoP decision	5,844	5,844
Add: Unbilled pilfered volume in law & order affected areas	1,896	1,896
Add: Pilfered volume detected against non-consumers	5,110	5,110
Add: Gas Shrinkage at LPG/NGL Plant (JJVL)	3,274	3,274
Add: Gas Shrinkage at Condensate (LHF)	62	62
Total Gas Sales (B)	378,499	378,499
Gas Unaccounted For (A-B)	58,010	58,010
Gas Unaccounted For (%)	13.29	13.29
Benchmark 4.5%	19,643	19,643
Disallowed Volume	38,367	38,367
<b>UFG Allowance / Adjustment from FY 2012-13 to FY 2016-17</b>		
UFG Target (Fixed) from FY 2012-13 to FY 2016-17 (In %age)	5.0	4.50
Local condition/variable allowance from FY 2012-13 to FY 2016-17 as per UFG Study (In %age)	2.6	2.35*
UFG Benchmark from FY 2012-13 to FY 2016-17 (In %age)	7.6	6.85
Average UFG Allowance in %age already allowed from FY 2012-13 to FY 2016-17		6.07
Adjustment / Differential of UFG allowed from FY 2012-13 to FY 2016-17 (In %age)		0.78
Adjustment / Differential of UFG allowed from FY 2012-13 to FY 2016-17 (In MMCF)		16,880

\*subject to maximum of the claim in the head of Law and Order and Non-Consumer Cases

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4.22. In view of above, the Authority allows Rs. 5,668 million (16,880 MMCF as appearing in Table no. 2 and 3) as part of revenue requirement for the said year. The Authority further decides to charge entire allowance in the same financial year owing to the cushion available in the current prescribed price vis-à-vis sale price of gas.

ii. Unaccounted for Gas - Impact of handling RLNG on UFG

4.23. The petitioner has claimed an amount of Rs. 4,238 million (12,616 MMCF) for FY 2014-15 to the said-year against "handling of RLNG in its distribution network at Karachi". The petitioner has stated as under:

4.23.1. The pricing of RLNG is governed under ECC's decision dated 14 June, 2016 whereby the costs as well as revenue of RLNG related gas have been Ring Fenced. The said ECC decision interalia allowed distribution losses to be determined and charged at actual to RLNG consumers. The pricing model adopted by the ECC vide above referred decision did not address the situation of swap arrangement between the companies, wherein additional UFG losses are being suffered by SSGCL in its distribution system due to physically handling the RLNG.

4.23.2. Subsequently, the ECC of the Cabinet vide its recent decision dated 11<sup>th</sup> May, 2018 partially modified its earlier decision dated 14-06-2018 by allowing SSGCL to calculate UFG based on RLNG Volume handling basis (volumetric basis) and claim the same as distribution loss in the sale price of RLNG.

4.24. The Authority observes that, as informed by Director (Technical), Directorate General of Gas, Petroleum Division, Ministry of Energy, vide its letter No. DGO(AC)-5(235)/15-16-Pt dated 25th May, 2018; ECC of the Cabinet in its meeting held on 11.05.2018 while considering a summary submitted by the Petroleum Division on the subject Case No. ECC-37/09/2018 dated 11.05.2018 approved the proposals contained in para 7(i), (ii) & (iii) of the summary with the direction that

  



proposal in para 7(i) & (ii) shall be effective retrospectively from 1<sup>st</sup> March, 2015.

Para-7(i) of the Summary is reproduced as under:

"M/s SSGC may be allowed UFG based on RLNG handling basis (volumetric basis) in the Sale Price of RLNG in the form of distribution loss due to swapping arrangements and consumption of RLNG in its franchise area in partial modification of Para-3(viii) of the Summary approved by ECC vide ECC-72/12/2016 dated 14.06.2016 as under:

*"Distribution loss to be determined and charged at actual including the losses due to swapping arrangements and consumption of RLNG in SSGC franchise area (determined on volume handled basis i.e. metered system gas in and metered gas out). The said loss for the customers located on high pressure transmission lines as well as those customers who are willing to lay their dedicated line from SMS/TBS at their own cost shall also be determined and charged at actual. However, for other customers on distribution lines an actual average UFG for the last financial year will be taken in determination."*

The ECC also decided that OGRA can come back to the Government in case it has any reservations about the implementation of the decision taken.

4.25. The Authority observes that the concerned departments of FG had not forwarded the draft summary to OGRA before placing the same before ECC and the above noted policy guidelines have been issued without taking comments of OGRA on the summary. Furthermore, the Authority presumably feels that the ECC was not guided on technical aspect of the issue through proper facts, as illustrated below:

4.25.1. The method used by the petitioner for ascertaining the impact of leakage loss etc. due to RLNG is not supported by any scientific study. The company might have carried out a comparative study to determine/quantify the impact of GCV and low specific gravity on leakage loss, measurement errors and other UFG contributing factors on account of both the gases i.e. System Gas and RLNG, having different specific gravities and GCV. Moreover, the issue, if it exists, may be prevalent to specific areas ONLY whereas in other franchise areas of the petitioner, in which only the system gas is being used,

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a different trend in UFG/Gas loss might have been established by the company through an independent study.

4.25.2. The Authority notes that as per the petitioner 'under the swap arrangement, SSGCL has to consume high BTU RLNG in its distribution system, while swapping its low BTU indigenous gas to SNGPL. Due to handling of the RLNG, which has high BTU and low specific gravity, SSGCL had experienced more UFG in its RLNG consuming area i.e. Karachi.' In this regard, the Authority has noticed that RLNG supplies to SNGPL through swapping arrangement were started during last quarter of FY 2014-15 which kept on increasing in the succeeding years. The comparative analysis of UFG trend of the petitioner for the last couple of years is as below:

**Table 4 : Comparative Analysis of UFG Trend of the Petitioner**

Period	RLNG Volume handled by SSGCL (in MMCFD)	UFG of Karachi Region where RLNG was distributed by SSGCL		Company wide UFG as Determined by the Authority		Analysis
		(in MMCF)	(in %age)	(in MMCF)	(in %age)	
July, 2013 to June, 2014	0	29,323	9.72	58,417	13.82	Reference Year before injection of RLNG
July, 2014 to February, 2015	0	29,229	9.75	59,063	13.62	Decrease in Company wide UFG of 0.2% as compared to FY 2013-14
March, 2015 to June, 2015	200					
July, 2015 to February, 2016	200	31,889	10.50	64,281	13.73	Decrease in company wide UFG of 0.09% as compared to FY 2013-14
March, 2016 to June, 2016	400					
July, 2016 to January, 2017	400	29,512	9.94	58,010	13.29	Decrease in company wide UFG of 0.53% as compared to FY 2013-14
February, 2017 to June, 2017	600					

4.25.3. The Authority observes that UFG of the petitioner before the injection of RLNG was 13.82% and after the injection of RLNG Volumes of upto 200 MMCFD, 400 MMCFD and 600 MMCFD it was 13.62%, 13.73% and 13.29% respectively which means that UFG of the company has slightly decreased after the injection of RLNG in petitioner's system which is contrary to the stance of the company that its UFG has increased due to RLNG swapping arrangements. Furthermore, if the petitioner's claim is translated into %age terms, the allowance in UFG as per the said policy guidelines comes out to be 0.46% for FY 2014-15; 2.25% for FY 2015-16 and 3.79% for FY 2016-17. The

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Authority is of the view that if the handling of RLNG had any negative impact on UFG of SSGCL, its UFG for FYs 2014-15, 2015-16 and 2016-17 should have an increase of 0.46%, 2.25% and 3.79% respectively viz-a-viz the UFG of FY 2013-14 (when the injection of RLNG was Nil), however this is not the case.

- 4.25.4. As far as UFG of Karachi Region is concerned it has been observed that it has no direct relationship with the injection of RLNG because when RLNG was zero the UFG of Karachi Region was 9.72%, when injection of RLNG was in the range of 0-200 MMCFD the UFG was 9.75%, when RLNG was in the range of 200-400 MMCFD the UFG was 10.50% but when the RLNG was in the range of 400-600 MMCFD the UFG was 9.94% which means that injection of RLNG has no direct nexus with the variation of UFG in Karachi Region.
- 4.26. As regards the treatment of RLNG as "Gas Handled" by the company for UFG calculation purposes, the Authority notes that under the swapping arrangement the petitioner had been distributing RLNG to its consumers while transporting / swapping an equivalent volume of indigenous gas to SNGPL under Third Party Access Arrangement. In this case, one volume (i.e. RLNG) was being consumed/distributed and other volume (i.e. indigenous gas equivalent in volume to RLNG) was being transported/swapped to SNGPL under GTA for which the petitioner is entitled to claim transportation charges as well as the transmission loss, if any, under respective GTA.
- 4.27. Since the financial impact of distribution loss, as claimed by the petitioner in pursuance of the said policy guidelines, was required to be passed on to the RLNG consumers on SNGPL network, therefore, SNGPL was also asked to furnish its comments on technical and financial aspect of additional UFG/gas loss due to handling of High BTU & Low Specific gravity RLNG as compared to indigenous gas. In response thereto, SNGPL vide its letter dated September 05, 2018 stated that "RLNG consumers are already in litigation w.r.t. the RLNG prices and SNGPL is of the view that increase in RLNG prices will make RLNG non-competitive, therefore, increase in RLNG prices due to the above may also result in further litigation from RLNG consumers." Furthermore, in various discussions held with

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SNGPL on the issue, SNGPL supported the observations as noted at para 4.25 above, nevertheless, they were of the view that since RLNG was being consumed both in SNGPL's and SSGC's network so the decision applicable on petitioner's motion for review of FRR may be replicated in case of SNGPL.

- 4.28. Nevertheless, if financial gain as per the said policy guidelines is provided to the petitioner, this will set a precedent for all the transporters (including SNGPL) under Third Party Access Regime, for handling of RLNG in future. Moreover, such a provision may create complications in future for gas transmission and distribution companies since the heating value of indigenous gas purchased from the producers/different well heads may not be the same viz-a-viz the gas delivered by gas distribution companies to their consumers.
- 4.29. *Keeping in view the observations/findings noted at paras 4.25 to 4.28 above, the petitioner's stance regarding additional UFG loss due to handling of RLNG volume is found technically unjustifiable. The Authority based on technical analysis regarding additional UFG loss due to handling of RLNG volume does not agree with the petitioner's stance, therefore disallows the claim of Rs 4,238 million (12,616 MMCF) to be added to revenue requirement. Moreover, the dedicated pipeline to transport RLNG from terminals to SNGPL network is now operational w.e.f FY 2018-19, therefore, the issue of handling of RLNG (of SNGPL) by SSGCL in its distribution system and its impact on UFG, if any, does no longer prevail.*
- 4.30. *However, as stipulated in the said Policy Guidelines at para 2 of M/o Energy's letter dated 25-05-2018, the matter may, if required, again be referred by the Ministry of Energy (Petroleum Division) to the Government based on the facts as per the OGRA's determination.*

iii. **Financial Impact of Hon'ble Sindh High Court Judgment**

- 4.31. The petitioner has submitted that ECC of the Cabinet, while considering the serious financial crunch of the petitioner, in its meeting held on May 17, 2018 has directed Securities and Exchange Commission of Pakistan (SECP) to allow staggering of the remaining financial impact i.e. Rs. 18 billion arising out of the decision of Hon'ble SHC over a period of five financial years effective from FY-2016-17 and onwards.

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The decision was made to save the equity of the petitioner besides ensuring the status of the Company as a "going concern".

- 4.32. Accordingly, the petitioner approached SECP for implementation of above said ECC decision. In response thereon, SECP has clarified that the preparation of financial statements with appropriate disclosures, giving true and fair view of the state of affairs of the company, in terms of Section 223 and 225 of the Companies Act, 2017 is the responsibility of the Board of Directors and management of the Company. In view of the same, the above said treatment, in the light of ECC decision, does not require departure from International Financial Reporting Standards and therefore, does not fall within the jurisdiction of SECP.
- 4.33. Accordingly, the petitioner, in the light of decision of the Federal Cabinet and SECP clarification, has requested the Authority to include the revenue requirement for the said year by Rs. 3,672 million and requested to stagger remaining balance adjustment of Rs. 14,687 million over next four financial years effective from FY 2017-18 to FY 2020-21.
- 4.34. The Authority notes with concern that the petitioner, as per international best practices and accounting standards, did not create contingent liability in respect of sub-judice matters contended by it in the Hon'ble SHC, and distributed dividends out of the profits for such financial years. However, upon the decision of the Hon'ble SHC, the financial impact of said contended items had to be reversed in two years per the request of the petitioner. The same was allowed by the SECP, being competent Authority.
- 4.35. The Authority observes that the current predicament of the petitioner finds itself i.e erosion of equity due to adjustment of financial impact due to its own making, and Board of Directors had to be cognizant whilst taking decisions pertaining to distribution of profits.
- 4.36. *Therefore, the Authority, considering permission granted by the competent authority, endorses staggering of the remaining financial impact i.e. Rs. 18 billion over a period of five proceeding years w.e.f FY 2016-17. Accordingly, the Authority, hereby recovers Rs. 3,672 million from the petitioner by reducing the final revenue requirement/prescribed prices for the said year, as determined through this Order.*

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*The Authority further directs the petitioner to vigilantly review its dividend payout policy for future years till such time the above adjustment impact is dispelled.*

**iv. SSGCL Share in ISGSL Expenses**

- 4.37. The petitioner has submitted that it had paid Rs. 15 million to ISGSL as an advance payment during the said year before the decision of the ECC in respect of financing arrangement of ISGSL.
- 4.38. The Authority notes that ECC of the Cabinet in its meeting held on December 15, 2016 has decided that all project activities of ISGSL shall be funded by M/s Government Holding Pvt. Ltd (GHPL), being 100% subsidiary company. The Authority further notes that the petitioner has paid Rs. 15 million in first quarter of the said year. *In view of the same, the Authority, in the light of existing scenario where all future funding of ISGSL's projects shall be made by M/s GHPL, decides to allow Rs. 15 million, being final payment in respect of ISGSL through revenue requirement determination.*

**v. RLNG Transportation Income**

- 4.39. The petitioner has offered Rs. 8,384 million as RLNG transportation income as against the earlier determination of Rs. 4,261 million for the said year. The petitioner has explained that it has claimed distribution loss at actual including the losses due to swapping arrangements and consumption of RLNG in franchise area in the light of decision of ECC in its meeting held on May 11, 2018. Accordingly, an equal amount in respect of UFG has been offered as an income as part of revenue requirement for the said year. The petitioner has further submitted that the same shall be recovered as part of RLNG price through setting up deferral account by OGRA.
- 4.40. The Authority notes that the petitioner had offered additional transportation income based on its claim of additional UFG allowance due to swapping of system gas with RLNG in its franchise area. The Authority has considered the issue in detailed in paras 4.29 and 4.30 above and has not acceded to petitioner's request.

  



4.41. In view of above, the Authority excludes Rs. 4,238 million from revenue requirement for the said year, and maintains its earlier decision on this account.

vi. Late Payment Surcharge (LPS)

4.42. The Authority notes that the petitioner has not offered Rs. 888 million reported on account of interest income from Sui-Northern Gas Company Ltd. (SNGPL) as operating income for the said year. The Authority is of the firm view that any LPS expense or income booked by the petitioner relating to regulated activity shall be charged / offered as part of revenue requirement.

4.43. In view of above, the Authority includes Rs. 888 million as operating income for the said year.

4.44. In view of the foregoing, the instant petition is hereby disposed of.

*A. Malik*

Dr. Abdullah Malik,  
Member (Oil)

*Subject to dissenting note  
Annexure A*

*Noorul Haque*  
Noorul Haque,  
Member (Finance)

*Uzma Adil Khan*

Uzma Adil Khan,  
(Chairperson)

Islamabad, December 24, 2018

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REGISTRAR  
Oil & Gas Regulatory Authority  
Islamabad



Annexure-A

**DISSENTING NOTE OF MR. NOORUL HAQUE MEMBER FINANCE IN THE  
MATTER OF UFG - DIFFERENTIAL CLAIMS**

1. I, respectfully, differ with the decision of the Authority, to the extent of paras 4.15 to 4.22 in the matter of UFG differential claim on retrospective basis for the period FY 2012-13 to FY 2016-17, and has been of the view to maintain earlier decisions of the Authority taken in motions for reviews, keeping in view the following basis;

- i. After the UFG study was finalized by the Authority, the petitioner had filed motions for review for FY 2012-13 to FY 2016-17. The Authority has heard the said motions, applied its mind, and accordingly decided the matter. It is now the re-determination/ re-opening of the same having no additional evidence, reasons or logic.
- ii. The policy guideline state 2.6% UFG allowance as per UFG report, however, 2.6% allowance has not been recommended in the UFG report pertaining to past FRRs, thus the basis of policy guideline are not realistic.
- iii. During the discussion on the agenda, the Technical Committee almost unanimously recommended to uphold earlier decisions that were based on the recommendation of UFG consultant, which states that "the Authority may issue directives to close the provisional FRRs as evaluating Sui Companies' performance against the proposed KMLs for those periods may not be practicable. FRR for 2017 may also be evaluated based on prevailing criteria due to the above mentioned reason."
- iv. The UFG consultant has even recommended that FRR for FY 2017 may also be evaluated based on prevailing criteria due to the above mentioned reason, which mean that he recommended to use the prevailing criteria for past years also.
- v. The opinion of our legal department and our legal advisor Mr. Salman Akram Raja was sought on the policy guideline and the opinion of the legal advisor is summarized as under;

*"The key issue remains the scope of policy guidelines and the independence of the regulatory power vested in the Authority on the other hand. The distinction between the policy and determination of the facts remain of critical importance. The Federal Government may not determine and dictate the facts to be taken into account by the Authority in the discharge of its function."*

It is clear that the "Determination" is independently OGRA domain and is a technical job. Accordingly, the instant UFG treatment has to be decided by it under the Ordinance.

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- vi. Application of equal (2.6%) allowance for companies having different amount of claims has no rationale, whereas in earlier decisions of the Authority uniform treatment has been applied to both companies, by allowing uniform percentage of claims companies for Law and order and non-consumer.
- vii. If the Companies financial health is adversely impacted, it is due to its own inefficiencies. It is not the fault of the consumers. OGRA allows reasonable return in each financial year which has to be earned by companies as per license condition 5.2 of the licenses granted to both Sui Companies. The OGRA's stance has already been upheld by Hon'ble Lahore High Court as well as Hon'ble Sindh High Court. The decision of the Authority must be based on principle, efficient regulatory practice and not on the profitability of licensees. If the profitability is based, it contradicts the Authority own efficiency benchmarks as well as regulator role for the protection of consumer interest. Moreover it is to state that SNGPL in FY 2016/17 has reported profits after tax of Rs. 8.6 Billion on equity of 10.5 Billion (90% return on equity) and has paid dividends of 60% in that year. The loss of SSGC during FY 2016-17 is due to its own reason, as it has not created liability for court case and in the past had declared profits and dividends based on court stay orders and this burden may not be passed to consumers.

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Review Against Authority's Determination of  
Motion for Review of Final Revenue Requirement of SSGCL Financial Year 2016-17



B: Final Revenue Requirement for FY 2016-17

Annexure-B

Particulars		The Petition	The Adjustment	Rs. in Million Determined by the Authority
Gas sales volume -MMCF		362,313	-	362,313
BHTU		368,049	-	368,049
<b>*A* Net Operating Revenues</b>				
Net sales at current prescribed price		138,424	-	138,424
Meter rentals		735	-	735
Amortisation of deferred credit		401	-	401
Sale of LPG		2,533	-	2,533
Sale of condensate		53	-	53
Sale of NGL		423	-	423
Late payment surcharge		3,187	888	4,075
Meter manufacturing plant		(2)	-	(2)
RLNG Transportation Income		8,384	(4,238)	4,146
Other operating income		1,142	-	1,142
<b>Total Operating Revenue *A*</b>		<b>155,281</b>	<b>(3,350)</b>	<b>151,930</b>
<b>*B* Less: Operating Expenses</b>				
Cost of gas		143,834	-	143,834
UFG Adjustment		(12,281)	-	(12,281)
Prior years adjustment in line with retrospective effect of UFG study report upto 2015-16		11,297	(5,589)	5,668
UFG Determined on Volume Handled Basis (from FY 2012-13-FY2016-17)		4,238	(4,238)	-
Prior years impact on UFG disallowance due to change in GCV due to RLNG mix		728	-	728
Transmission and distribution cost		15,233	-	15,233
Financial impact on account of SHC order		(3,672)	-	(3,672)
Gas internally consumed		208	-	208
Depreciation		5,848	-	5,848
Other charges including WPPP		2,969	(517)	2,452
<b>Total Operating Expenses *B*</b>		<b>168,363</b>	<b>(10,344)</b>	<b>158,019</b>
<b>*C* Operating profit (A-B)</b>		<b>(13,083)</b>	<b>6,994</b>	<b>(6,089)</b>
<b>Return required on net operating fixed assets:</b>				
Net operating fixed assets at beginning		61,947	-	61,947
Net operating fixed assets at ending		93,486	-	93,486
<b>Average net assets (I)</b>		<b>155,433</b>	<b>-</b>	<b>155,433</b>
Net LPG air mix project asset at beginning		862	-	862
Net LPG air mix project asset at ending		799	-	799
<b>Average net assets (II)</b>		<b>1,661</b>	<b>-</b>	<b>1,661</b>
Net EETPL asset at beginning		830	-	830
Net EETPL asset at ending		1,081	-	1,081
<b>Average net assets (III)</b>		<b>2,134</b>	<b>-</b>	<b>2,134</b>
Deferred credit at beginning - Assets related to Natural Gas Activity		1,067	-	1,067
Deferred credit at ending - Assets related to Natural Gas Activity		5,034	-	5,034
<b>Average net deferred credit (IV)</b>		<b>4,709</b>	<b>-</b>	<b>4,709</b>
<b>*D* Average (I-II-III-IV)</b>		<b>77,716</b>	<b>-</b>	<b>77,716</b>
<b>*E* 17% return required</b>		<b>12,061</b>	<b>-</b>	<b>12,061</b>
<b>*F* Shortfall / (Surplus) in return required (E-C) (Gas Operations)</b>		<b>25,144</b>	<b>(6,994)</b>	<b>18,150</b>
<b>*G* Additional revenue requirement for Air-Mix LPG Projects</b>		<b>461</b>	<b>-</b>	<b>461</b>
<b>Total Shortfall / (Surplus) H=(F+G)</b>		<b>25,604</b>	<b>(6,994)</b>	<b>18,610</b>
Inc/(Decr.) in average prescribed price effective (Rs./MMBTU) w.e.f July 01, 2016		69.57	(79.00)	50.56
<b>Shortfall related to prior years (I)</b>		<b>982</b>	<b>-</b>	<b>982</b>
<b>Total Shortfall in Revenue Requirement J=(H+I)</b>		<b>26,586</b>	<b>(6,994)</b>	<b>19,592</b>
Inc/(Decr.) in average prescribed price effective (Rs./MMBTU) w.e.f July 01, 2016		72.23	(19.00)	53.23
<b>Final revenue requirement (B+E+G+I)</b>		<b>181,867</b>	<b>(10,344)</b>	<b>171,522</b>
<b>Average Prescribed Price (Rs. per MMBTU)</b>		<b>448.34</b>	<b>(19.00)</b>	<b>429.33</b>

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**C: List of Abbreviations**

Annexure-C

DERR	Determination of Estimated Revenue Requirement
ECC	Economic Coordination Committee
FG	Federal Government
FRR	Final Revenue Requirement
GOP	Government of Pakistan
LPG	Liquified Petroleum Gas
LPS	Late Payment Surcharge
LNG	Liquified Natural Gas
MMBTU	Million Metric British Thermal Unit
MOE	Ministry of Energy
NGL	Natural Gas Liquids
NGT	Natural Gas Tariff Rules
OGRA	Oil and Gas Regulatory Authority
RLNG	Re-Gasified Liquefied Natural Gas
SSGCL	Sui Southern Gas Company Limited
UFG	Un-accounted for Gas
KPMG	Klynveld Peat Maewick Goodrdeler
KMI	Key Monitoring Indicator
DG	Director General
CCI	Council of Common Interests
GCV	Gross Calorific Value
BTU	British Thermal Unit
MMCFD	Million Cubic Feet Daily
GTA	Gas Transportation Agreement
SNGPL	Sui Northern Gas Pipeline Limited

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**D: List of Documents Referred in the Order**

**Annexure-D**

1. Review Petition of SSGCL against Decision of the Authority FRR FY 2016-17.
2. OGRA Ordinance, 2002
3. Natural Gas Tariff Rules (NGTR) 2002
4. Decision of FRR for FY 2016-17
5. Decision dated 26.10.2017 on FRR for FY 2016-17
6. Decision dated 10.05.2018 on MFRR for FY 2016-17
7. Decision of Economic Coordination Committee (ECC) dated 15.12.2016 in respect of ISGSL funding of the project
8. Decision of Economic Coordination Committee dated 17.05.2018 w.r.t staggering of accumulated losses of SSGCL owing to Court Decision in the matter of OGRA Determinations
9. Decision of ECC dated May 17, 2018 on Policy Guidelines with respect to treatment if Provincial UFG determinations in the light of OGRA's Final UFG Study in the revenue requirement of Gas Utility Companies.
10. Decision of ECC dated May 11, 2018 on Policy Guidelines with respect to Sale Price of RLNG.
11. Ministry of Energy, GoP's letter dated 29<sup>th</sup> August, 2018 on (i) policy Guidelines with respect to Sale Price of RLNG (ii) Policy Guidelines with respect to Treatment if Provisional UFG determination in the light of OGRA's Final UFG Study.

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