

آئل اینڈ گیس
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Oil & Gas
Regulatory Authority

OGRA-6(2)-1(1)/2018-(Review)

IN THE MATTER OF

SUI NORTHERN GAS PIPELINES LIMITED (SNGPL)

**REVIEW AGAINST AUTHORITY'S DETERMINATION OF MOTION
FOR REVIEW OF FINAL REVENUE REQUIREMENT FOR
FY 2016-17**

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

DECISION

December 24, 2018

Before:-

**Ms. Uzma Adil Khan, Chairperson
Mr. Noorul Haque, Member (Finance)
Dr. Abdullah Malik, Member (Oil)**

(Handwritten signatures)

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1. Background

- 1.1. Sui Northern Gas Pipelines Limited (SNGPL) is a public limited company incorporated in Pakistan and is listed on Pakistan Stock Exchange. It is engaged in the business of construction and operation of gas transmission and distribution pipelines, sale of natural gas and compressed natural gas, and sale of gas condensate (as a by-product). SNGPL is also engaged in the business of Re-gasified liquefied natural gas (RLNG), in accordance with the decisions of the Federal Government (FG).
- 1.2. The Authority, under Section 8(1) of the OGRA Ordinance, 2002 (the Ordinance) determined the Final Revenue Requirement of SNGPL for FY 2016-17 (the said year) vide order dated October 06, 2017 at Rs. 263,214 million and shortfall at Rs. 87,575 million translating into an increase of Rs. 211 per MMBTU in the average prescribed price.
- 1.3. Being aggrieved by the above determination, SNGPL (the petitioner) filed motion for review on November 3, 2017 under Section 13 of OGRA Ordinance, 2002 read with Rule 16 of Natural Gas Tariff Rules, 2002 (the NGT Rules) which has been disposed of vide Authority decision dated March 12, 2018.
- 1.4. The petitioner however, vide its letters dated April 17, 19 and July 12, 13, 2018, has again contended the matters and sought relief from the Authority pertaining to UFG and various cost components, as under;

a) UFG

b) Operating Expenses

1. Late Payment Surcharge payable to SSGCL
2. RLNG Shortfall in RLNG Revenue Requirement
3. Finance Cost of RLNG Borrowings
4. Human Resource Cost

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2. Authority's Jurisdiction and Determination Process



- 2.1. The petitioners have again referred/invoked the jurisdiction of the Authority under Section 13 of the Ordinance read with Rule 16 of the NGT Rules. 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. It is clear from the above, that the issues brought forwarded/contended by the petitioner must necessarily be evaluated with reference to the provisions of aforesaid Section 13 of the Ordinance.

3. Proceedings

- 3.1. The Authority issued notice of hearing on July 16, 2018 to the petitioner and hearing was held on July 19, 2018 at OGRA office, Islamabad accordingly.
- 3.2. The petitioner was represented at the hearing by a team of senior executives led by Chief Financial Officer, Mr. Saghir-ul-Hassan. The petitioner was given full opportunity to present their submissions. The petitioner as well as its legal counsel made submissions with the help of multi-media presentations and contended the merits of the case in detail.
- 3.3. The Authority heard the petitioner's submissions. Accordingly, the discussion and decision in respect of issues contended by the petitioner is made in the following manner.

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4. Un-Accounted for Gas (UFG Benchmark)

4.1. The petitioner filed a Review against Determination of Motion for Review of Final Revenue Requirement for FY 2016-17 under Section-13 of the OGRA Ordinance, 2002 read with Rule-16 of the Natural Gas Tariff Rules, 2002, vide its letter dated July 13, 2018. 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 OGRA Ordinance 2002, 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 6,588 million being the excess amount deducted on account of UFG disallowance 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 19-7-2018 and also considered the stance of the petitioner in the preceding paragraphs. In this connection, it is mentioned that the Authority fixed the UFG Benchmark as 4.5 % from FY 2012-13 to FY 2016-17 in line with the Licence Condition No. 21 of the licensees and the same was neither provisional nor linked with the UFG Study.
- 4.5. The Authority, in its Decisions in respect of FRR's for FY's from FY 2012-13 to FY 2016-17, 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: -

"For prior years, the Authority may issue directives to close the provisional FRRs as evaluating Sui Companies' performance against

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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 DFRR for FY 2016-17 for SNGPL concluded and finalized the FRR 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 FRR's stands settled as the KMI's cannot be applied retrospectively.
- 4.8. It is pertinent to mention here that 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 DFRR 2016-17 as mentioned at Para 4.7/above.
- 4.9. It is also 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 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 OGRA




Ordinance, 2002. The policy guidelines are issued to OGRA pursuant to Section 21 of the OGRA Ordinance, 2002 which explicitly empowers the Federal Government 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 OGRA Ordinance, 2002 defines 'policy guidelines' as policies of the Federal Government covering or related to any or all the regulated activities which are issued in writing pursuant to a decision of the Cabinet of the Federal Government 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 OGRA Ordinance, 2002 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 Federal Government with the condition that guidelines are not inconsistent with the provisions of OGRA Ordinance, 2002. Lastly it has been stated that Council of Common Interests (CCI), in its 34th meeting held on 24.11.2017, considered the Summary submitted by IPC

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Division and agreed that 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 Federal Government.

- 4.15. It is also mentioned that SNGPL has filed Petitions in LHC No. (OGRA Appeal No. 226873/2018 and 226874/2018) challenged/ raised objections on UFG Study and fixation of the benchmarks in addition to other points.

DECISION OF THE AUTHORITY

i. Member (Oil):

- 4.16. Member (Oil) stated that OGRA's objective is to safeguard the interest of all stakeholders including ^{general public.} 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.

ii. Chairperson

- 4.17. 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 finalization of the UFG study for FY 2012-13 to 2016-17. At the time of finalization

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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 FFRs 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 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."

4.18. 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 Hon'ble 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."

4.19. 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 Hon'ble 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.

4.20. 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. 1,114 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.

- 4.21. 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.
- 4.22. The Authority also decided, in majority, that the differential of the variable allowance (2.6 %) on account of claimed and allowed by the Regulator be granted in the revenue requirement, however, the impact of this, if any, should be staggered in proceeding five years to be recovered from the consumers so as not to burden the consumers in one go.
- 4.23. Moreover, the basic UFG benchmark shall remain at 4.5 % which has never been provisional from FY 2012-13 to FY 2016-17. The FRR for the said period had also been finalized on the same basis. The differential of the variable allowance of 2.6 % is given below: -

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Year	Claimed Volume (Law & Order 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./MCF)	Impact (Million Rs)
2012-13	18260	14202	635074	2.86	2.23	6.73	42915	45303	2388	320.24	763
2013-14	18209	14027	581961	3.13	2.41	6.91	40213	41319	1104	347.14	353
2014-15	18783	13461	521533	3.6	2.58	7.08	36930	37029	99	344.75	34
2015-16	17421	13361	506444	3.44	2.64	7.14	36130	35958	-193	307.07	(59)
2016-17	16721	12778	490338	3.41	2.61	7.11	34843	34814	-29	311.63	(9)
Total									3,369		1,114

4.24. On the basis of above the UFG sheet is given as below: -

MOTION FOR REVIEW ON REVIEW OF FINAL REVENUE REQUIREMENT FY 2016-17				
UFG CALCULATION SHEET SNGPL				
FY 2016-17				
		As per petition		As per OGRA
		Indigenous gas (UFG)	UFG on RLNG Supplied to Transmission and Distribution consumers	Indigenous gas (UFG)
				RLNG Supplied to Transmission and Distribution consumers
Gas Purchases				
Metered gas purchased		501,523	179,701	501,523
Line Pack		719		719
Less RLNG Volume for Sale				
Less RLNG Carried for Third Party				
Energy Equivalence		-6,111	6,111	-6,111
Gas carried for PPL, PCL		-123		-123
Gas Available for Sale		494,109	185,812	494,109
Gas Internally Consumed (Metered)		3,842	2,109	3,842
Transmission		2,853	2,109	2,853
(i) Compression		2,210	2,109	2,210
(i)(a) Compression for RLNG				
(ii) Residential Colonies		93		93
(iii) Coating Plant		133		133
(iii) Ruptures/Leakage		199		199
(iv) Other usage Depressurization purging etc		252		252
Distribution		989		989
(i) Free Gas Facility		509		509
(ii) Co-Generation		103		103
(iii) Sabotage		343		343
(iv) Purging		31		31
Net Gas Available for Sale	C=A-B	490,267	183,703	490,267
Gas Sold (Billed)	D	494,674	171,338	494,674
Unrecovered Pilferage volume reversed		-11,271		-11,271
Less RLNG Swap Sale				
RLNG Stock A/C (additional sales of RLNG)		-3,390	3,390	-3,390
On billed Vol due to lower order in KPK (Gujjar/Kohat)		11,982		11,982
Under measured Vol. in respect of min cases/domestic		13,773		13,773
Pilfered Vol detected against non-consumers		4,739		4,739
Impact of Bulk to Retail Ratio		5,133		5,133
Total Sales net of RLNG sales	E	476,664	174,743	476,664
UFG Volume	F=C-F	13,674	6,960	13,674
UFG %	I=(F/C)*100	2.79	3.79	2.79
UFG allowance/Adjustment from FY 2012-13 to FY 2016-17				
UFG Target (Fixed) from FY 2012-13 to FY 2016-17	K	4.00%		4.30%
Local condition/variable allowance from FY 2012-13 to FY 2016-17 as per UFG study/ECC	L	2.60%		2.60%
UFG Bench Mark (%) from FY 2012-13 to FY 2016-17	M=(K-L)	7.60%		7.10%
Avg. UFG allowance in % already given from FY 2012-13 to FY 2016-17	N	6.99%		6.99%
Adjustment/Differential (%) of UFG allowed from FY 2012-13 to FY 2016-17	(M-N)			0.11%
Adjustment/Differential Volume of UFG allowed from FY 2012-13 to FY 2016-17 (MMCF)				3,369

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5. Operating Expenses

5.1. Late Payment Surcharge payable to SSGCL

- 5.1.1. The petitioner has submitted that the Authority has disallowed the Late Payment Surcharge (LPS) expense of Rs. 779 million payable to SSGCL on the ground that as per audited accounts, no such income has been contended by SSGCL as operating income.
- 5.1.2. The petitioner has explained that LPS payable to SSGC is as per agreement of Inward Uniform Price Adjustment (IUPA) and the Authority in the past also used to allow this operating expense.
- 5.1.3. The petitioner has further highlighted that the consumer will not be affected as the net affect will be nil after treating this as operating expense for SNGPL and operating income for SSGC.
- 5.1.4. The Authority, in view of above, observes that SNGPL is claiming the above expense since it has booked the same in its audited accounts in compliance to the mutual agreement; otherwise, it has no impact on the consumers as well as petitioner/SSGCL, if the same is treated as operating or non-operating.
- 5.1.5. *In view of the above, the Authority accedes the petitioner' claim and allow Rs. 779 million under this head as operating expense.*

5.2. RLNG Shortfall in RLNG Revenue Requirement

- 5.2.1. The petitioner has submitted that Authority did not entertain the petitioner' request regarding inclusion of shortfall in RLNG activity in the cost of service/transportation charges on the grounds that RLNG is included in Petroleum Products and its price is strictly determined in accordance with ECC decision and any shortfall in RLNG activity has no logic to be included in the cost of service/transportation charges.



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5.2.2. In this regard, the petitioner has referred the extract of the policy guidelines approved by the ECC of the Cabinet in its meeting held on 11.05.2018 vide case number ECC-37/09/2018 dated 11.05.2018 is as under:

"ii) M/s SNGPL and SSGCL be allowed to manage gas loads on their system through RLNG-System gas swap mechanism for which necessary provision of volumetric adjustment and financial impact may be made on cost neutral basis in the sale price of RLNG on a multi-year and ongoing basis through setting up of a deferral account by OGRA"

5.2.3. The petitioner has highlighted that although OGRA determines RLNG prices on monthly basis yet the shortfall in our revenue requirement at the end of the year may arise and has arisen due to different reasons including (i) lesser re-tainage, (ii) wrong treatment of re-tainage and UFG factors by OGRA while calculating / determining monthly RLNG prices from Apr-15 to Jun-16 (iii) Timing difference of LNG purchases and sales etc;

5.2.4. In view of the above, the petitioner has mentioned ECC policy Guidelines and Supreme Court Judgment dated 26.06.2018, and requested Authority to allow the shortfall in RLNG revenue requirement.

5.2.5. The Authority observes that RLNG pricing as per legal framework provided by the Federal Government is carried out under Petroleum Product (Petroleum Levy) Ordinance 1967. Further, as per decision of the Federal Government regarding "RLNG pricing, allocation & allied matters" expenses on this account is a ring-fenced activity, separately maintained and entirely recovered from RLNG consumers. Thus, for all practical purposes the expenses on account of RLNG does not impact the revenue requirement inter-alia the natural gas consumers. The Authority, keeping in view the ECC decisions mentioned above and taken earlier, observes that the same are relevant to RLNG pricing carried out on monthly basis. Accordingly, petitioner contention shall be addressed while determining the RLNG pricing. As RLNG pricing is ring fenced activity, any shortfall on this account, if arisen, is adjustable in RLNG pricing. Such shortfall has no nexus to be in cost of transportation or parked in the revenue requirement



of gas companies and impact natural gas consumers. *The Authority therefore maintains its earlier decision.*

5.3. Finance Cost of RLNG Borrowings

- 5.3.1. The petitioner has submitted that it has disallowed the finance cost in respect of RLNG borrowings/loans for creation of RLNG assets. The petitioner has submitted that finance cost in respect of loans obtained for creation of RLNG assets has to be treated as operating cost and consequently should be made part of the RLNG consumer price, in line with ECC policy guidelines
- 5.3.2. The Authority observes that under the existing tariff regime as well as ECC decision, financial costs incurred in creation of RLNG infrastructure is already allowed to be included in the cost of the asset.
- 5.3.3. The Authority further observes that the matter contended by the petitioner has already been addressed, exhaustively deliberated and decided in the light of relevant ECC decision.
- 5.3.4. *In view of the above, the Authority maintains its earlier decision on the matter.*

5.4. Human Resource Cost

- 5.4.1. The petitioner has submitted that the Authority while determining the HR benchmark cost has included the cost of Gas Internally Consumed (GIC) amounting to Rs. 184 million in respect of free gas facility in the actual HR cost, thereby increasing the HR disallowance. Further, owing to typo error in sale volume of previous years, HR benchmark cost has been determined downward by Rs. 23 million.
- 5.4.2. The Authority observes that, as per discussion made at the time of hearing, GIC is part of employees' perks; accordingly, it has been included in actual HR cost for the said year. Consequently, free gas facility is not part of GIC.
- 5.4.3. The Authority further observes that it is the matter of concern that free gas facility being offered to the employees of SNGPL is on quantified basis and no monetary






limit has ever been fixed on use of free gas. In the current scenario, where the gas prices have been increased, inefficient use of gas raises the HR cost which subsequently increases the revenue requirement of the petitioner, ultimately, burdening the end consumers. The Authority therefore advises that the Board of Directors should be apprised that free gas facility is being offered to the employees / staff on quantitative basis and simultaneously CBA agreements being entered into have huge exponential impact. The BOD may revisit their policy of allowing free gas on quantitative basis in view of exorbitant increase in gas prices from the time it was first offered till to-date or at-least put a cap on the value of free gas facility. This allocation in quantitative terms leads to highly inefficient use of a valuable resource.

5.4.4. Furthermore, typo error on account of sale volume has been rectified, accordingly, the HR cost for the said year computes to Rs. 12,857 million as against Rs. 12,846 million determined at the time of FRR for the said year. Consequently, the HR cost / revenue requirement increased by Rs. 11 million for the said year.


6. Conclusion/decision

6.1.1. In view of the foregoing, the review against the Authority determinations of motion for review of final revenue requirement for said year is hereby disposed of. The financial impact of adjustments decided above shall form part of upcoming determination(s).


*Subject to dissenting note
at Annexure A*



(Dr. Abdullah Malik)
Member (Oil)



(Noorul Haque)
Member (Finance)



(Uzma Adil Khan)
Chairperson

Islamabad, December 24, 2018.



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. 4.16 to 4.24 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 KMIs 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.

- 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

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of SNGPL for Financial Year 2016-17

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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C: List of Abbreviations

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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