



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department- I

### Adjudication Division

Before

Shahzad Afzal Khan- Director/Head of Department-

Adjudication Department-I

*In the matter of*

**Sui Southern Gas Company Limited**

Show Cause Notice No. & Date                      No. CSD/ARN/530/2018-378 dated August 28, 2024

Dates of Hearings:                                      October 7, 2024

Hearing attended by:                                      Mr. Fawad A. Khan, Company Secretary, as Authorized Representative, Mr. Ayaz Dawood, Director, Mr. Amin Rajput CFO, and Mr. Tahir, DGM Finance

### ORDER

#### Under Sections 148 and Section 479 of the Companies Act, 2017

This Order shall dispose of the proceedings initiated through the Show Cause Notice number CSD/ARN/530/2018-378 dated August 28, 2024 (SCN), under Sections 148 and Section 479 of the Companies Act, 2017 (**the Act**) read with Circular No. 7 of 2024 against the Sui Southern Gas Company Limited (**the Company**) and its Board of Directors (**BoDs**), herein after, referred to as **the Respondents**. The SCN was issued to the Respondents as per their names available in last available accounts for the period ended March 31, 2023.

2. The brief facts of the case are that the record of the Company available with the Securities and Exchange Commission of Pakistan (**the Commission**), *inter alia*, transpired that:

- The Company through its letter dated September 28, 2023 applied to the Securities and Exchange Commission of Pakistan (**the Commission**) under Section 132 the Act and Sections 233 and 147 thereof for direction to hold its AGM for the year ended June 30, 2023 till September 30, 2024.
- The Commission through its letter dated November 17, 2023 allowed the Company to hold the AGM latest by March 31, 2024. It was also stated that: "*this direction is issued with the approval of the competent authority and any non-compliance in this respect shall result in initiation of the Adjudication Proceedings under Section 148 of the Act.*"



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- The Company through its letter dated March 5, 2024 again approached the Commission to seek direction under Section 147 of the Act to hold its overdue AGM for the year ended June 30, 2023 latest by September 30, 2024. In this regard, the Commission through its letter dated May 7, 2024 stated that: *"in this respect, please note that your application is under review of the Commission."*
- The Company thereafter through letter dated July 26, 2024 applied in which reference was made to its earlier application of March 5, 2024. The Company sought direction of the Commission u/s 147 of the Act to hold its overdue AGM of 2023 by October 31, 2024. In this regard, the Commission through letter dated August 7, 2024 stated that: *"the request of the Company cannot be acceded to and is hereby disposed of."*

3. Keeping in view the aforesaid and the Company's inability to hold the overdue AGM within the stipulated time i.e. by March 31, 2024 in non-compliance with the Commission's directions given on November 17, 2023 under Section 147 of the Act, *prima facie*, the violation of Section 147 of the Act is attracted. Hence, the proceedings were initiated against the Respondents and they were advised to furnish a written reply to the SCN within the fourteen days from the date of the SCN. In this regard, the Company Secretary, through letter dated September 9, 2024 sought an extension of three weeks to furnish a reply. The Commission through its email dated September 4, 2024 allowed to furnish a reply latest by September 27, 2024.

4. Thereafter, in response to the aforementioned SCN, a written reply dated September 24, 2024, was received from the Company Secretary and acting Managing Director on behalf of the Respondents. The said reply, *inter alia*, stated that:

- It is pertinent to mention that the Company had approached the Commission on multiple occasions for seeking extension in the period for holding Annual General Meetings and laying therein Financial Statements and it is appreciated that the Commission had acceded to our requests based on reasons beyond the control of the Company, by granting us extension in time period for holding Annual General Meetings and laying therein Financial Statements.
- The Last AGM for FY 2021-22 was held on December 29, 2023 which was well within the extension acceded by the Commission via letter dated June 20, 2023.
- With respect to holding of AGM and laying therein Financial Statements for FY 2022-23, it is submitted that the Commission in response to Company's letter dated September 28, 2023, had granted Company extension to convene the Annual General Meeting for laying therein Financial Statements till March 31, 2024.
- Due to reasons of delay in holding of AGM for FY 2022-23 which are explained in detail in the following paragraphs, Company approached the Commission multiple times vide its letter dated March 5, 2024 and letter dated July 26, 2024 for an extension to convene AGM for laying of Financial Statements for FY 2022-23 therein till October 31, 2024.



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- The requests of Company were not acceded by the Commission vide its letter dated August 7, 2024 drawing an attention to the Circular No. 07/2024 dated 7 March 2024 which states that an application under Section 147 of the Act shall not be entertained by the Commission if such application has been filed by or on behalf of the Company.
- Company again approached the Commission vide its letter dated August 13, 2024 to seek exemption from Circular No. 07/2024 dated 7 March 2024 of the Act which was not granted by the Commission vide its letter dated August 23, 2024.
- Simultaneously, a joint meeting was arranged of both Sui Companies with SECP officials on August 29, 2024 to deliberate and address the circumstances being faced by both Sui Companies which are beyond their control in convening AGM within timeline prescribed under the Act.
- In the above backdrop, we would like to state that Company operates in a regulated regime under the OGRA Ordinance, 2002 which require the Company to finalize its Financial Statements based on the Determination of Final Revenue Requirements (FRR) by OGRA. As per Clause 15(3) of the Natural Gas Tariff Rules, 2002. (Reproduced below), FRR to be determined by OGRA in 90 days which may further be extended for another 90 days.

*Quote*

*15(3) The Authority shall decide a petition, filed pursuant to sub-rule (3) of rule 4, within three months of the date of filing of the petition:*

*Provided that the Authority may, only for causes beyond its control, extend the aforesaid three months period by a further period of fifteen days:*

*Provided further that the Authority shall not extend the time for its final determination in such proceedings beyond an aggregate period of three months. The reasons for such extension in time shall be recorded in writing.*

*Unquote*

- Among the key factors in determination of FRR by OGRA, Return on Assets (ROA), UFG benchmark and HR Benchmark are the critical components, which can materially affect the financial results of Company. The FRR petition was submitted on February 29, 2024; however, OGRA decision on Company's FRR petition is still pending and beyond the control of Company. Finalization of Financial Statement of FY 2022-23, in absence of awaited OGRA decision, would not suffice the purpose as per Section 249 of the Companies Act, 2017. For instance, if the Financial Statements of FY 2021-22 had been finalized in absence of OGRA Decision on FRR petition, the impacts would have been as follows:

Description	Finalization of Financial Statements for FY 2021-22	
	As per petition	As per decision/ determination
Profit/(Loss) after tax (000)	81,155,190	(11,444,115)
EPS	92.13	(12.99)



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- The above table depicts that Company's Financial Statements would not reflect true and fair view of financial position in absence of OGRA decision on FRR. Thus, the FRR determination serves as the base document for making critical adjustments to the Financial Statements, which can materially affect the financial results. This may provide misleading information to the stakeholders. Additionally, we cannot assess ROA and other disallowances with precision due to various considerations incorporated by OGRA in determination.
- In a joint meeting held at SECP Head Office on August 29, 2024, Company as a public sector listed Company reaffirmed their commitment to adhering to statutory timeline for holding AGMs and obtaining Fs approvals. SECP was also briefed by both Sui Companies regarding
- OGRA's timeframe of determination of FRR i.e., 180 days after submission of FRR Petition which is not aligned with requirements of the Companies Act, 2017 i.e. convening AGM within 150 days of close of financial year (inclusive of 30 days extension period) whereas even the aforesaid 180 days' timeline is also not been complied by OGRA
- Accordingly, SECP suggested that both Sui Companies should seek intervention from their respective Boards to urge OGRA for timely determination of FRRs, ensuring better alignment with statutory requirements. SSGC and SNGPL jointly also requested SECP's intervention to engage with OGRA requesting to expedite FRR determination process enabling the Sui Companies to meet the statutory timelines for holding of AGMs and laying of Financial Statements therein.
- The present Board of Directors elected on October 28 2019, has been diligently working to clear the backlog of financial statements. To date, the Board has finalized the financial statements for the fiscal years ending June 30, 2018 through June 30, 2022. The financial statements for the fiscal year ending June 30, 2023 are currently on hold and will be finalized upon determination of FRR by OGRA.
- Keeping in view of the above narrated facts, it should be noted that delay in finalization of Financial Statements for FY 2022-23 is purely delayed for want of OGRA decision on Final Revenue Requirement (FRR) filed on February 29, 2024. Furthermore, due to above explained circumstances which are beyond the control of Company, the finalization of interim financial statements (Quarterly / Half yearly) of subsequent periods are also delayed. We would like to ensure that said pending interim financial statements will be finalized and circulated to shareholders after finalization of Financial Statements for FY 2022-23.
- A bona fide attempt to protect the interests of Company being State Owned Enterprise (SOE) performing functions of paramount national importance, and not due to any willful default on part of Company's Management or Board of Directors.



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- Considering the facts narrated above and the submissions, we respectfully request that Show Cause Notice dated August 28, 2024, be withdrawn.

5. In order to provide opportunity of hearing, the matter was fixed for hearing to be held on October 7, 2024. On the date of hearing, Mr. Fawad A. Khan, Company Secretary, as Authorized Representative, Mr. Ayaz Dawood, director, appeared whereas Mr. Amin Rajput Acting MD, and Mr. Tahir, DGM Finance joined through Zoom link. During the hearing, it was, *inter alia*, submitted that:

- (i) the response as was given in writing through letter dated September 24, 2024 was reiterated.
- (ii) subsequent to election of directors, the catch up plan to prepare the accounts was made.
- (iii) the Company is also regulated by OGRA and it needs to submit the FRR for determination of tariff. Once, the petition for FRR is submitted, the law gives 90 days time to OGRA to determine the tariff. OGRA may take further 90 days. In case of the Company, OGRA has taken more than 180 days for determination of FRR.
- (iv) the petition was filed before OGRA on February 29, 2024. OGRA has determined the FRR on October 2, 2024. After the receipt of the FRR the audit process would be completed in next 30 days.
- (v) if OGRA determine the tariff within 30 days from the date of filing of petition, the regulatory compliance to hold AGM within the time can be ensured, however, OGRA has taken extended time to determine FRR which was beyond control.

6. Subsequently, the Company through email dated October 9, 2024, *inter alia*, submitted that the board by circulation on October 8, 2024 approved catch up plan for finalization of financial statements for FY 2023 and scheduling AGM in the following manner:

*The following decision has been approved by the Board of Directors through Circular Resolution No. 93/2024 dated 08 October 2024:*

*The Board of Directors, after considering the discussions and commitments made during the hearing with SECP on October 07, 2024, resolves as follows:*

- Finalization of financial statements for the FY 2022-2023 by the External Auditors by November 12, 2024.
- Presentation of the audited financial statements to the Board Audit Committee and the Board of Directors by November 20, 2024.
- The Annual General Meeting (AGM) for the FY 2022-2023 will be held on or before December 14, 2024 to present and approve the financial statements, by the shareholders of the Company in accordance with the relevant provisions of the Companies Act, 2017.

7. Following are the key points to be discussed in the instant matter:

- (i) Whether due to cascading impact of previous AGM of 2022 it was practicable for the Company to comply with the direction given on November 17, 2023?



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- (ii) Whether the Company was eligible for exemption from Circular No. 07/24 of the Commission?
- (iii) What if the accounts were prepared without the determination of final FRR?
- (iv) What are the notable efforts made to hold AGM for the FY 2023?

8. I have gone through the facts of the case, replies of the Respondents and submissions made by the Respondents. The case is summarized in the following manner:

(i) **Whether due to cascading impact of previous AGM of 2022 it was practicable for the Company to comply with the direction given on November 17, 2023?**

The following points are relevant in this regard:

- a. As stated above, the Company through its correspondence dated September 28, 2023 sought time till September 30, 2024 to hold AGM for the FY 2023. In this regard, the Commission on November 17, 2023 directed under Section 147 of the Act to hold AGM latest by March 31, 2024.
- b. As per the available information, the petition for determination of FRR was filed by the Company on February 29, 2024 and the decision on FRR was received on October 2, 2024.
- c. The Company, vide letters dated March 5, 2024 approached the Commission for seeking a direction to hold AGM till September 30, 2024. However, the Commission through letter dated May 7, 2024 corresponded that the application dated March 5, 2024 was under review.
- d. The Company again vide letter dated July 26, 2024 approached the Commission for seeking a direction to hold AGM till October 31, 2024. In this regard, the Commission through letter dated August 7, 2024, it was stated that: *"the attention of the Company is invited to Circular No. 7/2024 dated March 7, 2024 in terms thereof an application under Section 147 of the Act shall not be entertained by the Commission if such application has been filed by or on behalf of the company as the Company cannot seek direction again itself. In view thereof, the request of the company cannot be acceded to and is hereby disposed of."*
- e. It is also noted that the AGM of the Company for the year ended June 30, 2022 was held on December 29, 2023.
- f. Section 43 of the OGRA Ordinance specifically provides that: *"the provisions of this Ordinance, the rules and the regulations and the licenses issued hereunder shall have effect notwithstanding anything to the contrary contained in any other law, rule or regulation."*

The aforesaid considered facts transpire that the AGM for the year ended June 30, 2022 had not been held on the date when direction under Section 147 of the Act was



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given on November 17, 2023 to hold the AGM for the year ended June 30, 2023. Moreover, the petition for determination of the FRR for the year 2023 had not been filed on the date of the aforesaid direction due to non-finalization of its previous accounts for the year 2022. It effectively illustrates that the cascading impact caused delays contributed to the inability to file the petition before OGRA in a timely manner. It also underscores the need for the Company to take appropriate measures to mitigate such issues in the future. Recognizing these challenges is important; however to ensure that similar situations do not arise again, the Company should implement robust planning and proactive measures to manage its timelines effectively and uphold regulatory requirements. This approach will not only enhance compliance but also reinforce accountability and transparency in its governance practices.

**(ii) Whether the Company was eligible for exemption from Circular No. 07/24 of the Commission?**

The Respondents' assertion regarding the Commission's approach to the Company's application for exemption from Circular No. 07/24 raises important points, but it overlooks some key aspects of the regulatory framework. The Commission has the authority to issue clarifications and directives within its jurisdiction, and after the issuance of Circular No. 07/24, the Respondents did not pursue any legal remedy regarding their concerns at the appropriate forums. Instead, they simply sought an exemption through letter dated August 13, 2024, which the Commission ultimately declined through letter dated August 23, 2024 in the interest of fairness and compliance. While the Respondents' arguments reflect their perspective, it is essential to recognize the Commission's role in maintaining regulatory integrity.

**(iii) What if the accounts were prepared without the determination of final FRR?**

In view of the Respondents, if the annual accounts for the year ended June 30, 2023 were prepared without the determination of FRR it would have material impact on the financial statements. The Respondents argued that if the accounts for the previous year ended June 30, 2022 were prepared on estimated FRR basis Profit would be of Rs. 81 billion, however, the said financial statements were prepared on actual FRR basis realizing a loss of Rs. (11) billion.

The Commission recognizes that preparing accounts without the determination of FRR could lead to a misrepresentation of financial information, potentially resulting in falsification. Such inaccuracies not only undermine the integrity of the financial statements but also diminish stakeholder trust and accountability. However, these considerations do not absolve of the Respondents from their responsibility to convene and hold the AGM within the timeline specified by the direction under Section 147 of the Act.



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(iv) **What are the notable efforts made to hold AGM for the FY 2023?**

The Board of Directors of the Company in its resolution dated October 8, 2024 have resolved to finalize the financial statements for the year ended June 30, 2023 latest by November 12, 2024 and to hold AGM for the year ended June 30, 2023 latest by December 14, 2024 to present and approve the financial statements for the said year. Moreover, the Company through its letter dated October 9, 2024 addressed to Pakistan Stock Exchange has given a planned date of December 6, 2024 to hold AGM for the FY 2023.

9. Considering the aforesaid and upon thorough examination of the facts and circumstances surrounding the matter, it is evident that the cascading impact of the Company's AGM held in 2022 significantly affected its ability to comply with the direction given on November 17, 2023. The unresolved issues stemming from the previous AGM, coupled time constraints involved in the determination of FRR, rendered it impracticable for the Company to fully meet the requirements within the stipulated timeframe of the direction given under Section 147 of the Act. Additionally, had the Company prepared its accounts without the determination of the final FRR, it would have risked serious non-compliance, potentially undermining the integrity and accuracy of its financial statements for the year ended June 30, 2023. Such an approach would have conflicted with statutory obligations and harmed stakeholder confidence. Finally, it is noted that the Company made substantial efforts to convene the AGM for the FY 2023, as evidenced by various measures taken to address operational hurdles, including consultations with regulatory authorities and efforts to resolve the issue of determination of FRR and holding of the AGM. In light of these considerations, I conclude the proceedings with advice to Respondents to exercise greater caution moving forward and ensure compliance with all relevant legal provisions, both in letter and spirit.

10. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission, violation of the Act.

**Shahzad Afzal Khan**  
HoD, Adjudication -I

**Announced:** October 11, 2024  
Islamabad