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ORDINANCE NO. II OF 2014

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ORDINANCE

*to provide for prosecution of cases of gas theft and other offences relating to gas and to
provide a procedure for recovery of amounts due*

WHEREAS it is expedient to prosecute cases of gas theft and other offences relating to gas and to provide for a procedure for expeditious recovery of amounts due, value of gas, fines, penalties and other outstanding amounts payable and sums due to Gas Utility Companies and for matters ancillary and related thereto;

AND WHEREAS the Senate and the National Assembly are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance.

1. **Short title, extent and commencement.**—(1) This Ordinance may be called the Gas (Theft Control and Recovery) Ordinance, 2014.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions.**—(1) In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) “auxiliary pipeline” includes all gas pipeline and fittings from the distribution lines to the property line of the consumer up to the outlet coupling of the gas meters.

(b) “consumer” includes a person who receives a supply of gas under a gas sales agreement for the specific purpose of consumption and a premises that is connected to a gas pipeline for the purposes of obtaining supply of gas and includes a successor-in-interest and assignees of a consumer and also includes Compressed Natural Gas (CNG) Stations which receive gas for their own consumption or resale for vehicular use;

(c) “distribution pipeline” includes a gas pipeline used for transportation of natural gas at a pressure not exceeding 300 Psig or such pressure as the Authority may prescribe from time to time for transportation of gas downstream of the Sales Meter Stations to the end consumers including all equipment installed on the Distribution Pipeline;

(d) “domestic consumer” means a consumer who receives a supply of gas for domestic purposes;

(e) “gas” includes natural gas, liquefied petroleum gas, air mix liquefied petroleum gas, liquefied natural gas, regasified liquefied natural gas and compressed natural gas.

- (f) "gas pipeline" means any recognized pipe or system or arrangement of pipes which transports gas and includes right of way/land strips, compressor stations, repeater stations and all equipment of any kind used for the purpose of or in connection with, or incidental to the operation of a pipeline in transporting, transmitting, distributing, supplying and handling gas;
- (g) "gas sales agreement" means an agreement executed between a Gas Utility Company and a consumer for sale and purchase of gas.
- (h) "Gas Utility Company" means a Gas Utility Company as defined in this Ordinance;
- (i) "Gas Utility Company" mean Sui Southern Gas Company Limited, Sui Northern Gas Pipelines Limited and such other companies, government agencies or persons licensed by the Authority, that the Authority may, from time to time, determine and publish in the official Gazette;
- (j) "Gas Utility Court" means a Gas Utility Court established under section 3;
- (k) "informer" means any person who brings or provides specific information in writing to a Gas Utility Company regarding an offence under this Ordinance.
- (l) "main pipeline" shall mean and include a transmission line with gas at a pressure of not less than 300 Psig or such pressure as the Authority may prescribe from time to time used for transmission/transportation of gas from the gas fields to the various distribution centers upstream of the Sales Meter Station(s) including the Sales Meter Station(s);
- (m) "meter" means an instrument that measures gas delivered to consumers for consumption;
- (n) "person" means any individual or a legal entity, authority, statutory body or government department and includes a partnership firm, company, group, trust, society, corporation, body or association of persons, a public servant or an employee of a Gas Utility Company;
- (o) "successor-in-interest" includes a person who either by inheritance or by transfer by way of sale, lease, mortgage, gift, exchange, assignment or other mode of transfer, happens to succeed to, acquire any share or interest in, benami or otherwise, the property or premises for which any charge for gas was or has become due, an ostensible owner of

any such property or premises, but does not include a person who occupies such premises merely as a tenant;

- (p) "sums due" means any or all such amount, inclusive of applicable Government taxes, recoverable from a person who purchases or receives gas for self consumption or sale for vehicular use or a person whose premises is connected with the network of the Gas Utility Company, lawfully or unlawfully including but not limited to arrears of gas charges, meter rental, late payment surcharges or any other incidental charges for services including fixed and variable charges, gas theft claims determined in accordance with the Gas Utility Companies' laid down procedures, and any amount recoverable on account of any land dispute, rentals, damages, fines, penalties, violation charges and or on account of any other dispute;
- (q) "Sui Northern Gas Pipelines Limited" means the Sui Northern Gas Pipelines Limited, a public limited company incorporated under the Companies Ordinance, 1984 (XLVII of 1984);
- (r) "Sui Southern Gas Company Limited" means the Sui Southern Gas Company Limited, a public company incorporated under the Companies Ordinance, 1984 (XLVII of 1984);
- (s) "tampering" or "tamper" includes interfering or creating hindrance in flow or metering of gas power by unauthorized entry or access into metering system or transmission and distribution lines either by breaking the seals or damaging or destructing the same or in any manner interfering with the gas meter or transmission line or distribution line or interfering with its original condition;
- (t) "unauthorized use of gas" includes the acts of receiving, consuming or providing a supply of gas from a pipeline or a meter of a Gas Utility Company other than that contracted for by any person, the unauthorized receipt of more gas than is registered by the meter or other measurement device, tampering to increase metering pressure, unauthorized enhancement of gas loads other than contracted for, consuming gas through by-passing of a meter or other measurement device and gas usage by direct tapping to the gas supply of a Gas Utility Company.

(2) Words used and not defined in this Ordinance shall carry the same meaning as are assigned to them in the Oil and Gas Regulatory Authority Ordinance, 2002 (XVII of 2002).

3. **Constitution of Gas Utility Courts.**—(1) The High Court having territorial jurisdiction, may by notification in the official Gazette, establish as many Gas Utility Courts in a District as it may deem necessary for the purposes of this Ordinance and appoint a Judge for each of such courts from amongst the District and Sessions Judges in that District.

Explanation.—For the purpose of this sub-section District and Sessions Judge includes Additional District and Session Judge.

(2) Where more Gas Utility Courts than one have been established to exercise jurisdiction in the same territorial limits the High Court concerned shall define the territorial limits of each such court.

(3) Where more Gas Utility Courts than one have been established in the same or different territorial limits, the High Court may, if it considers it expedient to do so in the interests of justice or for the convenience of parties or of the witnesses, transfer any case from one Gas Utility Court to another.

4. **Exclusive Jurisdiction of Gas Utility Court.**—(1) A Gas Utility Court shall have exclusive jurisdiction with respect to all matters covered by this Ordinance.

(2) A Gas Utility Court shall exercise jurisdiction in respect of a case in which the claim, fine, penalty, sum due or matter in dispute does not exceed five million rupees or for the trial of offences under this Ordinance and, in all other cases, the High Court.

(3) The Court having jurisdiction under this Ordinance shall be a Gas Utility Court having jurisdiction in the place in which the Gas Utility Company, consumer, gas producer or offender, as the case may be, is situated.

5. **Powers of the Gas Utility Court.**—(1) Subject to the provisions of this Ordinance, a Gas Utility Court shall,—

- (a) in the exercise of its civil jurisdiction have all the powers vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), and
- (b) in the exercise of its criminal jurisdiction, try offences punishable under this Ordinance and shall, for this purpose have the same powers as are vested in a Court of Sessions under the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) Notwithstanding anything to the contrary contained in this Ordinance, a Gas Utility Court shall not take cognizance of any offence punishable under this Ordinance except upon a complaint made in writing by a person authorized, in this behalf by a Gas Utility Company in respect of which the offence was committed.

(3) A Gas Utility Court shall in all matters with respect to which the procedure has not been provided for in this Ordinance, follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908) and the Code of Criminal Procedure, 1898 (Act V of 1898);

(4) All proceedings before a Gas Utility Court shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and a Gas Utility Court shall be deemed to be a court for the purposes of the Code of Criminal Procedure, 1898 (Act V of 1898).

(5) Subject to sub-section (6), no court or authority, shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Gas Utility Court extends under this Ordinance.

(6) Nothing in sub-section (5) shall be deemed to affect:—

- (a) the right of a Gas Utility Company to seek any remedy before any other court, tribunal or forum including official liquidator or receiver that may otherwise be available to it under the law; or
- (b) the powers of the Gas Utility Company, or jurisdiction of any Gas Utility Court as is referred to in clause (a) to require the transfer to a Gas Utility Court of any proceedings pending before any such court immediately before the coming into force of this Ordinance.

(7) All proceedings pending in any other court, including suits for recovery, shall stand transferred to, or be deemed to be transferred to, and heard and disposed of by, the Gas Utility Court having jurisdiction under this Ordinance. On transfer of proceedings under this sub-section, the parties shall appear before the Gas Utility Court concerned on the date previously fixed.

(8) In respect of proceedings transferred to a Gas Utility Court under sub-section (7), the Gas Utility Court shall proceed from the stage which the proceedings had reached immediately prior to the transfer and shall not be bound to recall and re-hear any witness and may act on the evidence already recorded or produced before the Court from which the proceedings were transferred.

(9) The Gas Utility Court may, if it so requires, be assisted in technical aspects of the natural gas sector involved in any case by an amicus curiae who has at least ten years experience in the relevant field.

(10) Remuneration of the amicus curiae, and the party or parties by whom it will be payable will be determined by the Gas Utility Court keeping in view the circumstances of each case.

6. Procedure for complaints and suits for default before Gas Utility Courts.—(1) Where a person is involved in an offence under this Ordinance or where there are sums due or recoverable from any person, or where a consumer has a dispute regarding billing or metering against a Gas Utility Company, a consumer or Gas Utility Company, as the case may be, may file a complaint or suit, as the case may be, before a Gas Utility Court as prescribed by the Code of Civil Procedure, 1908 (Act V of 1908) or the Code Criminal Procedure, 1898 (Act V of 1898).

(2) The plaint shall be supported by a gas sales agreement or such other documentation that evidences such contract or obligation. Copies of the plaint, statement of dues and other relevant documents shall be filed with the Gas Utility Court in sufficient numbers so that there is one set of copies for each defendant and one extra copy.

(3) The plaint, in the case of a suit for recovery instituted by a Gas Utility Company, shall specifically state:—

- (a) the quantity of gas consumed or extracted by the defendant from the Gas Utility Company;
- (b) the amounts, if any, paid by the defendant to the Gas Utility Company and the dates of payment, and
- (c) the total dues relating to the supply, consumption or extraction of gas and all other dues by the defendant to the Gas Utility Company up to the date of institution of the suit.

(4) On a plaint being presented to the Gas Utility Court, a summons in Form No.4 in Appendix 'B' to the Code of Civil Procedure, 1908 (Act V of 1908) or in such other form as may, from time to time, be prescribed by rules, shall be served on the defendant through the bailiff or process server of the Gas Utility Court, by registered post acknowledgement due, by courier and by publication in one English language and one Urdu language daily newspaper, and service of summons duly effected in any one of the aforesaid modes shall be deemed to be valid service for purposes of this Ordinance. In the case of service of the summons

through the bailiff or process server, a copy of the plaint shall be attached therewith and in all other cases the defendant shall be entitled to obtain a copy of the plaint from the office of the Gas Utility Court without making a written application but against due acknowledgement. The Gas Utility Court shall ensure that the publication of summons takes place in newspaper with a wide circulation within its territorial limits.

7. **Leave to defend.**—(1) In any case in which the summons has been served on the defendant, the defendant shall not be entitled to defend the suit unless he obtains leave from the Gas Utility Court as hereinafter provided to defend the same and in default of his doing so, the allegations of fact in the plaint shall be deemed to be admitted and the Gas Utility Court may pass a decree in favor of the plaintiff on the basis thereof or such other material as the Gas Utility Court may require in the interests of justice.

(2) The defendant shall file the application for leave to defend within fourteen days of the date of first service, provided that where service has been validly effected only through publication in the newspapers, the Gas Utility Court may extend the time for filing an application for leave to defend if satisfied that the defendant did not have knowledge thereof.

(3) The application for leave to defend shall be in the form of a written statement, and shall contain a summary of the substantial questions of law as well as fact in respect of which, in the opinion of the defendant, evidence needs to be recorded.

(4) The application for leave to defend shall also specifically state the following, where applicable:—

- (a) the amount of gas supplied by the Gas Utility Company and consumed by the defendant, the amount paid by the defendant to the Gas Utility Company for such consumption and the dates of payments;
- (b) the amount of dues and other amounts relating to the supply and consumption of gas paid by the defendant to the Gas Utility Company up to the date of institution of the suit;
- (c) the amount of outstanding dues and other amounts relating to the supply and consumption of gas by the defendant to the Gas Utility Company up to the date of institution of the suit;
- (d) the amount, if any, which the defendant disputes as payable to the Gas Utility Company and fact in support thereof;

(e) a statement specifically admitting or denying the documents relied upon in the plaint.

(5) The application for leave to defend shall be accompanied by all the documents which, in the opinion of the defendant, support the substantial questions of law or fact raised by him.

(6) An application for leave to defend which does not comply with the requirements of sub-sections (3), (4) and, where applicable, sub-section (5) shall be rejected, unless the defendant discloses therein sufficient cause for his inability to comply with any such requirement.

(7) The plaintiff shall be given an opportunity of filing a reply to the application for leave to defend in the form of a replication and such replication shall also specifically accept or deny any documents relied upon in the application for leave to defend.

(8) The Gas Utility Court shall grant the defendant leave to defend the suit if, on consideration of the contents of the plaint, the application for leave to defend and the reply thereto, it is of the view that substantial question of law or fact have been raised in respect of which evidence needs to be recorded.

(9) In granting leave under sub-section (8), the Gas Utility Court may impose such conditions as it may deem appropriate in the circumstances of the case, including conditions as to deposit of cash or furnishing of security.

(10) Where the application for leave to defend is accepted, the Gas Utility Court shall treat the application as a written statement, and in its order granting leave shall frame issues relating to the substantial question of law or fact, and subject to fulfillment of any conditions attached to grant of leave fix a date for recording of evidence thereon and disposal of the suit.

(11) Examinations in chief shall be on affidavit and cross examination may be allowed by a local commission appointed by a Gas Utility Court where the party seeking to cross examine a witness or witnesses bear the expenses of the local commission. The expenses so borne by a party shall be factored into the costs to be awarded, if any, on the disposal of the case.

(12) Where the application for leave to defend is rejected or where a defendant fails to fulfill the conditions attached to the grant of leave to defend, the Gas Utility Court shall forthwith proceed to pass judgment and decree in favour of the plaintiff against the defendant.

8. **Power to set aside decree.**—In any case in which a decree is passed against a defendant under sub-section (1) of section 7, he may, within twenty-one days of the date of the decree, or where the summons was not duly served

