



SAIF GROUP

SAIF POWER LIMITED

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The Registrar
National Electric Power Regulatory Authority
2nd Floor, OPF Building
Islamabad

May 26, 2008

Dear Sir

Petition under Section 31 of the National Electric Power Regulatory Authority Act, 1997 read with Rule 3 of the NEPRA Tariff Standards and Procedures Rules, 1998 (the 'Rules') for Revision/Modification of the Generation Tariff Determination dated October 1, 2007 ('the Determination') of Saif Power Limited (the 'Company').

This refers to the National Electric Power Regulatory Authority's letter No. NEPRA/R/TRF-80/SPL-2007/3981 dated October 1, 2007 conveying the Authority's decision in respect of the Company's Motion for Leave for Review pursuant to the Rules (the "Tariff Determination").

We would like to respectfully submit this Tariff Petition under Section 31 of the NEPRA Act, 1997 read with Rule 3 of the NEPRA (Tariff Standards & Procedures) Rules, 1998 for the Revision/Modification of the Tariff Determination.

It is important to point out that the scope of this Petition is strictly limited. It relates to only a few elements of the Tariff Determination. The Company has since then gathered certain material and data concerning these elements which was not available with the Company at the time of the Tariff Determination. [Note: The onus will be on you to satisfy why such material and data was not available earlier.] The Company submits that this material has a direct and substantial bearing on the Tariff Determination and would have been taken into consideration had it been available at the relevant time. In addition, the Company respectfully submits that the Tariff Determination with respect to these elements also suffers from certain fundamental legal lacunae which go to the root of the matter. Accordingly, the Company submits that these elements (which relate largely to the Non-EPC Costs) ought to be revisited and revised. The relevant details of these elements and other material facts are set forth comprehensively in the Petition. In total six (6) copies of the Petition are being submitted.

In accordance with Rule 3(9) of the Rules, the factual assertions in the petition are supported by an affidavit attached to the Petition.

Notwithstanding its reservations with regard to certain components of the Tariff Determination, the Company, following issuance of the Tariff Determination in October 2007, used all of its energies to make substantial progress on the Project. The Company

Registrar
No. S.70.8
dated 27-05-08



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desired, and is now in a position, to demonstrate to the Authority its seriousness in implementing the Project without delay. We are happy to report that:

- Financial Close with a syndicate of nine banks was achieved on September 11, 2007 on a debt equity ratio of 75:25
- The first gas turbine has arrived at Karachi port and would reach Site in early June while all other machinery and equipment would arrive as per Schedule.
- So far, US\$41.11 M and Euro 37.54 have been paid to the EPC Contractor/s
- The Construction work is in full swing at Project Site.
- The Scheduled COD is very much on target.

Having achieved substantial progress, as indicated above, the Company is pleased to submit this Petition for the kind consideration of and favourable approval by the Authority, and shall be pleased to assist the Authority in clarifying any aspect of the Petition or its basis. In this regard, the Company also submits and requests that if the Authority so deems appropriate, the assigned Case Officer in the Authority may be directed to hold a separate meeting with the Company for purposes of this Petition before the Authority takes it up for formal hearing.

We humbly request the Authority that this cover letter may kindly be treated as an integral part of the attached Petition.

Thanking you.

Yours sincerely

Sohail H. Hydari
Chief Operating Officer

Copy # 03

SAIF POWER LIMITED

Rule 3

PETITION

Petition under Sections 31 of the National Electric Power Regulatory Authority Act, 1997 read with Rule 3 of the NEPRA Tariff Standards and Procedures Rules, 1998 (the "Rules") for Revision/Modification of the Generation Tariff Determination dated September 28, 2007 of Saif Power Limited (the "Company/Petitioner").

Rules 3(2)(a):

PETITIONER'S NAME AND ADDRESS

Saif Power Ltd., through
Mr. Sohail H Hydari
Chief Operating Officer

4th Floor, Kulsum Plaza, 2020 Blue Area, Jinnah Avenue,
Islamabad
Tel: +92 51 282 9415, 282 3924
Fax: +92 51 220 1110

Rules 3(2)(a):

GENERATION LICENSE

Generation License No. IGSP/L/04/2006 dated June 21, 2006

Rules 3(2)(b):

GROUND

Non EPC Costs

Grounds forming the basis for Revised Petition are elaborated in Section 3 hereof

Rules 3(2)(c)

RELIEF SOUGHT

Relief sought is mentioned in Section 6 of this Revised Tariff Petition.

Rules 3(2)(f)

SUMMARY OF EVIDENCE

Attached herewith as Annexes of the Tariff Petition.

Registrar
By: No. 5708
Date: 27-05-08

AD(R)

27.05.08

Signed by or on behalf of the Petitioner

Attached:

- (1) Annex 1 on Article 25 of the Constitution, Tariff Rules and NEPRA Act
- (2) Annex 2: Evidence in support of submissions made in the Petition
- (3) Annex 3: Affidavit in accordance with Rule 3(8)
- (4) Annex 4: Evidence of Fee
- (5) Annex 5: Board Resolution

Section 1

Annex I

PROGRESS OF THE PROJECT

1. Financial Close with a syndicate of nine banks was achieved on September 11, 2007 on a debt equity ratio of 75:25.
2. All major equipments are in the pipeline for delivery at Site; the first gas turbine is arriving in June 2008 while all other major equipment will arrive as per the Schedule.
3. So far, US\$ 41.11 M and Euro 37.54 have been paid to the EPC Contractor.
4. Construction work has started at Site; piling work has been completed and foundations of gas turbines are near completion as well.
5. Two teams from EPC Contractor have been mobilized at Site and many more such teams are to follow.
6. The COD is scheduled on or about December 2009, i.e. no later than the Required Commercial Operations Date under the PPA.

Section 2

SUMMARY OF EPC COSTS & NON EPC COSTS

ENGINEERING, PROCUREMENT AND CONSTRUCTION

EPC CONTRACTS WITH CMEC AND CERICO, CHINA

PORTION OF EPC CONTRACT IN CHINESE SCOPE = \$ 156.90M

PORTION OF EPC IN SPL'S SCOPE (PILING) = \$ 2.12M

TOTAL EPC = \$ 159.02M

COMPARATIVE ANALYSIS

<u>COSTS</u>	<u>SAPPHIRE</u>	<u>HALMORE</u>	<u>SAIF</u>
EPC	\$ 158.80 M	\$ 172.00 M	\$ 159.0 M
NON EPC	\$ 16.71 M	\$ 18.83 M	\$ 12.53 M
FINANCIAL	\$ 2.93 M	\$ 21.55 M	\$ 2.94 M
DUTIES AND TAXES	TO BE ON ACTUALS		
IDC	TO BE ON ACTUALS		
TOTAL OF NON EPC AND FIN COSTS	\$ 19.64 M	\$ 40.38 M	\$ 15.47 M
PER KWH LEVELLIZED TARIFF IN US CENTS	6.1714	6.273	6.0925

As the Authority is aware, Sapphire, Halmore and Saif projects are identical in every material respect, i.e., size of plant (225 MW), turbine manufacturer (General Electric) and O&M operator (General Electric). The locations are also in proximity to each other and the development timelines of the three projects are also essentially coincident. The disparity is therefore striking, and in the submission of the Petitioner unsustainable on the facts and in law. All that the Petitioner seeks is equality of treatment and the application in the Petitioner's case of the non-discriminatory and transparent treatment which has always been the hallmark of the Authority's determinations.

(It is interesting to note further in this context that the fifth CCPP i.e Foundation Power (whose project is also a similar Combined Cycle Power Project) has a Levellized tariff of 7.24 US Cents while they have put in petition for further increase in cost).

It is also pertinent to mention that non-EPC costs of US \$ 19m were allowed to M/s Orient Power Limited.

If Authority reinstates and allows all the fixed and working capital costs now requested by the Company, the position in terms of Levellized tariff would be as follows;

<u>SAPPHIRE</u>	<u>HALLMORE</u>	<u>SAIF</u>
6.1714	6.273	6.2640

Section 3

REINSTATEMENT OF COSTS: The Authority is requested to positively consider and approve reinstatement of the following costs to the Company:

(1) NON EPC CONSTRUCTION COSTS

The learned Authority had originally allowed \$1.92 M to the Company under this head. Subsequently, this amount was reduced to \$1.5 M by the Authority, a deduction of \$0.42m. The Authority in its last determination stated that evidence in terms of quotations for the amount of \$0.42 M was missing and as such this amount had been withheld.

While the Company is confident that it had supplied all material information earlier, it defers to the Authority's views and has now attached herewith the particular evidence for the portion of \$0.4 M under this head. As such, Authority is requested to reinstate this cost.

Evidence in respect of following is attached:

- (a) quotation for installation of tube-wells;
- (b) quotation for construction of mosque, canteen and security barracks; and
- (c) drainage of treated water 4 kilometer outside the boundary wall in the Nala authorized by local authority through pipeline.

(2) ADMINISTRATION COSTS

Originally Allowed by Authority

Development phase = \$ 1.32 M

Construction phase = \$ 2.56 M

Total \$ 3.88 M

Second Determination

Development phase = \$ 1.32 M

Construction phase = \$ 1.0 M

Total = \$ 2.32 M

Actual Position:

In the Development phase, i.e. from the conception of the Project until the Finance Close, the Company's administrative expenses, as per audited accounts, are \$1.9 M. As the learned Authority and other stakeholders are aware, the development phase lasted longer than expected due to a variety of unanticipated factors, including delay in finalization of the project agreements and so this expenditure has already exceeded the budget by \$ 0.6m. All actual expenses are fully accounted for and audited, and a copy of Audited Financial Statements is attached. Therefore:

Total budget available as per
Authority's last determination = \$ 2.32 M

Expenditure till Financial Close = \$ 1.9 M

Remaining budget from
Financial Close to COD
(28 months) = \$ 0.4 M

While the Company is only left with \$0.4m, the projected administration costs for these 28 months are around \$ 2.75m which include:

- (a) Clearing agent charges – SPL has negotiated a contract with a clearing agent for the release of imported machinery at a bare minimum rate of 0.16% of the value of shipments. The cost under this head would be around \$220,000/-. Additionally, the Company has to pay port charges such as wharfage, THC, etc. to Port Authorities which cost is estimated to be around \$70,000/- for the Project.
- (b) Cost of the Petitioner's team of 19 people out of which 9 are senior professionals – salaries, benefits, etc. (Based on actual payroll of \$35,000/- per month, the estimated expenditure for 28 months is \$ 1 M; this in line with salaries and emoluments expenditures already incurred which are audited and available in the books of accounts of the Petitioner).
- (c) Travelling, boarding and lodging expenses – to different manufacturing facilities for witnessing tests; frequent traveling from Islamabad to Lahore, Sahiwal and Karachi; visits to China for meetings.
- (d) Special Security for Chinese Contractor – Significant number of guards of Frontier constabulary and their boarding and lodging, special security vehicles, special radio and hand sets and their monthly rentals (the cost of Security alone is estimated to be over \$350,000/-)
- (e) Guest house rentals at Sahiwal
- (f) Administration expense at head office – monthly office rentals, gas, electricity and water bills, janitorial services, security services, and other head office expenditures of a nature typically and usually incurred.
- (g) Routine replacement/turnover of office equipments like computers and other fixtures in the normal course of business and addition of new equipments like air conditioners, water coolers etc at Sahiwal buildings and guest houses; (projected expenses for points (d), (e) and (f) for 28 months are around \$ 1 M).
- (h) Newspaper advertisements.
- (i) Participation in workshops/seminars.

It is humbly submitted that the Company's administrative expenses are in fact expected to exceed the total of \$3.88m and may go up to \$4.5m. However, Company is only seeking the reinstatement of the original amount of \$3.88m

(3) OWNERS ENGINEER'S COST

At the time of applying for this cost, the relevant agreement was not in place. The same has been executed and signed subsequently (as attached). The cost is \$ 1.3 M. Two firms submitted their quotes for the defined scope of work; the quotes and the scope of work are attached for the Authority's kind perusal. The first firm is O&M Solutions, Mauritius while the other firm is Scott & Willson, UK. Their quotations were more or less the same around \$1.3m. The minimum benchmark established internationally for Owners Engineer cost is 1% of the overall EPC costs; so, in that respect, this particular cost is only 0.8% of the EPC cost. Appointment of Owners Engineer is a mandatory requirement from the syndicate of Lenders. The Authority has already allowed \$0.4m as the cost of the Owner's Engineer but now that the actual cost to the Company is available and documented in terms of an Agreement, the Authority is humbly requested to allow the remaining amount of \$0.9m.

(4) INITIAL SPARE PARTS COST

It is pertinent to note that Authority has allowed cost of Initial Spare Parts in other projects; for example, **Orient Power Limited, Atlas Power Limited, Attock Power Ltd.** In the case of Orient Power, that Company had filed a Motion for Leave for Review on June 22, 2005 which contained (as an attachment) a break up of the total Project Cost of US\$ 170m under which the spare parts cost was estimated at US\$ 5.5m. The Authority subsequently approved this Project Cost of US\$ 170m in its determination dated July 19, 2005 which means that Authority allowed the cost of the spare parts to Orient Power Limited. The relevant pages of Orient's review petition & learned Authority's determination are attached.

It is to be noted that the cost of parts for Unplanned / Unscheduled Maintenances is on the Company. Unscheduled Maintenance results from an accidental breakdown or premature failure of any component/part. If the unscheduled maintenance is due to an accident, the cost is ultimately recoverable under Company's insurance cover as long as all insurance policy parameters are being met. While unscheduled maintenances are typically accidental in nature, they have the potential, if not undertaken at once, to impose an immediate cost and revenue loss on the Company, and it is this aspect which is sought to be addressed under this head;

If the initial spare parts are not maintained by the Company and if an accident does occur resulting in an unscheduled maintenance, the time required to remedy the situation could easily be somewhere around 60-90 days (since that is how long it would typically take to procure spare parts if not immediately available) while the period allowed by Power Purchaser is only 15 days. After 15 days, Power Purchaser will stop paying the Capacity Payments since the Company will not be able to make its capacity available to the Power Purchaser. The resulting burden on, and significant loss to, the Company is self-evident. By keeping a stock, the Company will have immediate access to, and use the parts from the existing inventory to carry out the unscheduled maintenance, and when once payment is received from Insurance, Company will use this money to again replenish the inventory

so that the inventory would remain intact at all times. This is really speaking a case of "a stitch in time saves nine".

Therefore, to avoid losing Capacity Payments from the Power Purchaser, the syndicate of Lenders has made it mandatory to keep a stock of such Spare Parts. Company is financing this item 100% out of equity and it has already given an SBLC to the Lenders in this respect. The list of spare parts has been verified by General Electric and Lenders Engineer.

The cost of such spare parts is \$4.7m. Although, these parts are required to be kept for the entire 30 years period. However, the Company pleads to the Authority that it should allow such costs in terms of working capital for a period of at least 12 years which is the tenor of the loan from the Consortium of Lenders. Letters from Independent and renowned Engineering/Consultant Companies and from General Electric are again attached for Authority's perusal.

(5) O&M MOBILIZATION COST BEFORE COD

In relation to the Pre-COD phase, the Company had applied for and was initially allowed by the Authority (before Second determination) a cost of US\$ 3 M to cover the pre-COD portion of the O&M Agreement between O&M Contractor (General Electric) and the Company whereby the former will mobilize its team to the site not less than twelve (12) months before the COD and will work alongside the EPC Contractor. This is a one time cost which is not adjustable from the Post-COD portion of the Agreement. A letter from General Electric stating that it is a one time cost not adjustable to any other cost is again attached. Relevant pages of this cost from the Agreement are also attached.

As far as the Agreement itself is concerned, claims of confidentiality are respected universally by the Governments and regulators. This practice is based on sound commercial reasons. The international market for plant O&M services is highly competitive. Any disclosure of confidential terms (including those relating to pricing) which may result in the dissemination of such information to other projects can damage the position of the O&M contractor in relation to other contracts and may well result in the O&M contractor being locked-into such price for other projects as well. It is for this reason that O&M contractors insist on confidentiality being maintained. Additionally, prices agreed between the O&M Contractor and the project Owner include negotiated performance-linked payments, and the charging formulae for such payments are proprietary and constitute intellectual property of the O&M contractors for being developed after extensive experience in various markets. Disclosure of such proprietary charging formulae and performance parameters to competitors can have serious negative implications for the business interests of O&M contractors.

It is for these reasons that the Implementation Agreement and the Power Purchase Agreement for the IPPs did not require that copies of the O&M Agreements be submitted to the Government or to the Power Purchaser. This position of the Government is consistent with the international best practices, whereby the confidentiality of sensitive commercial aspects of like transactions are honoured.

The Company pleads to the learned Authority to reinstate this cost of US\$ 3m. **If this cost is not reinstated, Company's IRR will go below 15%.**

Section 4

INDEXATIONS AND ASSUMPTIONS

In this Tariff Petition, all assumptions and indexations (other than the one case noted below) remain the same as per the earlier determination and the Petitioner does not seek any re-evaluation of the same. The starting date and benchmark levels of such indexations also remain the same as determined earlier. Authority is requested to reconsider the following indexation which has been allowed to a similar project in recent past:

Working Capital Component on HSD Storage: The Authority has already allowed change in KIBOR on this component. However, the Component will also be affected by the change in price of HSD. As such, the Company requests that change in price indexation may also be allowed on this Cost Component.

Section 5

NEW DEVELOPMENT IN TERMS OF SPECIAL EXCISE DUTY AND SIND INFRASTRUCTURE CESS

- (a) In the year 2007, the Government of Pakistan has introduced Special Excise duty of 1% on the imported value of all shipments and no exemption is available for the IPPs. This new duty has been incorporated in Federal Excise Act, 2005 through Finance Act, 2007. SRO No. 655 dated June 29, 2007 is relevant in this regard. The Company has already paid this particular duty on its first shipment which arrived early April 2008.
- (b) Another levy named as Sind Infrastructure Cess is being applied on imported equipments @ 0.525% of the value of imported equipments.

The learned Authority is requested to submit its clarification allowing reimbursement of such duty costs on actual basis at the time of COD for which supporting evidence would be provided by the Company.

Section 6

PRAYER

The Company hereby prays to the Authority to:

- (1) Reinstate Company's Non EPC costs from \$12.53m to \$ 18.41m;
- (2) Allow working capital component for 12 years for Initial Spare parts;
- (3) Allow the price change of HSD as an indexation factor on the working capital cost component of HSD storage.
- (4) Submit its clarification on allowing the Federal Excise Duty of 1% and Sind Infrastructure Cess of 0.525% at COD stage.

COMPARISON BETWEEN EXISTING TARIFF & PROPOSED TARIFF

	Costs As Per Existing <u>Determination</u>	Prayer / Requested <u>Increase</u>
	<i>(USD in million)</i>	
- Non-EPC Capital Cost	12.530	18.410
- Spare Parts working capital component	Nil	On USD 4.7 million for 12 years at 3 months KIBOR + 2.5%

All other costs to remain the same.

