



Registrar

# National Electric Power Regulatory Authority Islamic Republic of Pakistan

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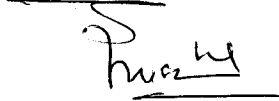
No. NEPRA/R/PAR-60/27986-27988  
December 19, 2019

Subject: **Decision of the Authority in the matter of Motion for Leave for Review filed by Sitara Energy Ltd. (SEL) against the Decision of the Authority regarding Power Acquisition Request of Faisalabad Electric Supply Company Ltd. for Purchase of 25±5 MW RFO Based Power from Sitara Energy Limited [Case # PAR-60]**

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (03 Pages) in the matter of Motion for Leave for Review filed by Sitara Energy Ltd. (SEL) against the Decision of the Authority regarding Power Acquisition Request of Faisalabad Electric Supply Company Ltd. for Purchase of 25±5 MW RFO Based Power from Sitara Energy Limited in Case No. NEPRA/R/PAR-60 for information.

Enclosure: As above

  
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( Syed Safer Hussain )

Secretary  
Ministry of Energy (Power Division)  
'A' Block, Pak Secretariat  
Islamabad

CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.



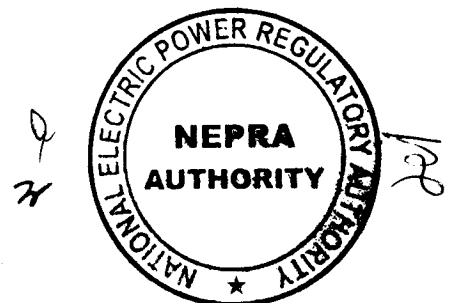
**DECISION OF THE AUTHORITY IN THE MATTER OF MOTION FOR LEAVE FOR  
REVIEW FILED BY SITARA ENERGY AGAINST THE DECISION OF THE AUTHORITY  
REGARDING POWER ACQUISITION REQUEST OF FESCO FOR PURCHASE OF 25±5  
MW RFO BASED POWER FROM SEL**

1. **Background**

- 1.1. Faisalabad Electric Supply Company (FESCO) vide letter No. 127/CSD dated 17<sup>th</sup> August 2011 filed Power Acquisition Request (PAR) in respect of purchase of 25±5 MW HFO based power from Sitara Energy Limited (hereinafter referred as "SEL", or "Sitara" or the "Petitioner") under NEPRA's Interim Power Procurement (Procedures & Standards) Regulations 2005 (hereinafter "the Regulations"). According to FESCO it was already purchasing power from SEL under an agreement which was going to expire on 7<sup>th</sup> September 2011 and it intended to regularize the power purchase as per NEPRA Rules & Regulations before renewal of the agreement. FESCO had also submitted the copy of proposed Power Purchase Agreement as per PEPCO approved sample PPA.
- 1.2. The Authority vide its decision dated 14<sup>th</sup> April 2017 (hereinafter "Impugned Order") approved the subject PAR with the following tariff:

Description	Requested	Approved
	Rs./kWh	Rs./kWh
Reference Fuel Cost Component (Ref. RFO Price Rs. 22,096/ton)	5.41	5.09
Fixed Cost Component	1.53	1.53
<b>Total Generation Cost of delivered unit</b>	<b>6.94</b>	<b>6.62</b>

- The fuel cost component is subject to adjustment for variation in the furnace oil price from time to time.
- The reference fuel cost component is based on reference calorific value of 40,486 BTUs/Kg. (18364 BTUs/lb.). The actual calorific value might vary, therefore, SEL shall submit information for adjustment of calorific value and increase/decrease on account of calorific value shall also be adjusted against the revised energy bill. The adjustment in calorific value shall not be allowed below 18,200 BTUs/lb.
- All invoices raised w.e.f. 8-9-2011 shall be recalculated on the basis of revised fuel cost component and FESCO shall recover the excess amount in accordance with the undertakings provided by SEL dated 18-12-2012 and 7-6-2013.



## 2. Filing of Motion for Leave for Review

2.1. Aggrieved by the above decision of the Authority, SEL, vide letter dated May 13, 2017, filed motion for leave for review against the decision of the Authority inter alia on the basis of following grounds:

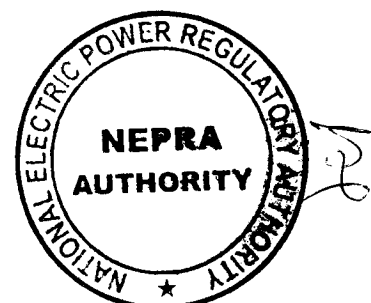
- The composition of Authority before which the matter was heard has completely changed, meaning thereby that the matter was determined by the learned Authority without hearing which violates the fundamental principle of 'audi alteram partem'.
- The tariff components have been drastically revised downwards and the resultant tariff became unviable.
- Retrospective application of tariff is ultra vires of NEPRA laws.
- The efficiency benchmark of 38.43% determined by NEPRA is completely unreasonable.
- It is pertinent to mention that the correlation between the benchmark efficiency with fixed and variable O&M cost component has to be drawn in order to reach just, fair and reasonable decision.
- The fixed cost component of Rs. 1.53/kWh is not sufficient.
- SEL do not possess any record of calorific value, therefore, the adjustment of fuel cost component with calorific value should not be made retrospectively.

## 3. Hearing

3.1. The Authority while admitting the motion for leave for review decided to give an opportunity of hearing to SEL. Accordingly, hearing in the matter was scheduled on 11<sup>th</sup> July 2017. After rescheduling of hearing on request of both SEL and FESCO several times, 1<sup>ST</sup> hearing in the matter was held on 25<sup>th</sup> January 2018.

3.2. During the hearing the Council of SEL raised the objection that since the composition of the Authority before which the matter was heard have completely changed and the learned Authority who has rendered the impugned order has never heard this matter or afforded any opportunity to the Petitioner to present its position before it, meaning thereby that the matter was determined by the learned Authority without hearing and the Petitioner was condemned unheard which violates the fundamental principle of audi alteram partem.

3.3. The Authority asked legal counsels for FESCO and SEL to submit written comments specifically on this issue and that the Authority shall decide on this issue first and then proceed further on the other grounds raised in the review motion. Accordingly, a letter



was also sent to FESCO and SEL directing to submit written comments on the subject issue raised in the hearing. Both parties filed written comments in the matter.

- 3.4. The Authority considered the comments of both the parties and decided that since a question of non-hearing by the present Authority has been raised, therefore, it would be appropriate and in the fitness of things that due opportunity of hearing is provided to both the parties. The Authority is also of the view that since review motion is pending before it in which the petitioner may raise all the issues pertaining to the facts and merits of the case, therefore, in order to provide due opportunity as requested by the Petitioner, hearing was scheduled on April 3, 2019. Notice of hearing were sent on March 25, 2019. The hearing was held as per schedule and was participated by representative of SEL, legal counsel of SEL, FESCO, legal counsel of FESCO and CPPA. During the hearing, the Petitioner could not produce any additional evidence in support of its review motion nor could point out any error in the Impugned Determination.

#### 4. Decision of the Authority

- 4.1. Keeping in view of the above stated facts, the Authority is of the view that in terms of Regulation 3(2) of the NEPRA (Review Procedure) Regulations, 2009, a motion seeking review of any order or decision of the Authority is competent only upon discovery of new and important matter of evidence or on account of some mistake or error apparent on the face of record or for any other sufficient reasons. The perusal of the Impugned Determination sought to be reviewed clearly indicated that all material facts and issues were examined in detail and there is no occasion to amend or modify the Impugned Determination. Therefore, the Authority is convinced that the Review Motion shall not result in the withdrawal or modification of the Impugned Determination, hence the Review Motion is hereby dismissed.

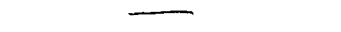
#### AUTHORITY



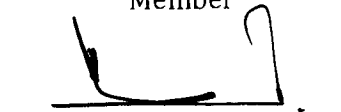
Saif Ullah Chattha  
Member 13.12.2019



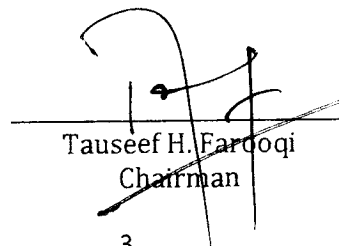
Rafique Ahmed Shaikh  
Member



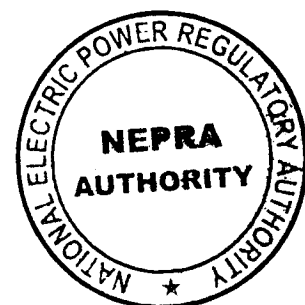
Rehmatullah Baloch  
Member



Engr. Bahadur Shah  
Member



Tauseef H. Fardooqi  
Chairman



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19/12/19