



National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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Registrar

No. NEPRA/R/TRF-157/CPGCL-2010/1660-1662

March 10, 2011

Subject: Decision of the Authority with respect to Motion for Leave for Review filed by Central Power Generation Company Ltd. against the Determination dated 26.11.2010 in the matter of 50 MW Rental Power Project, Naudero-II, Sindh

Dear Sir,

Enclosed please find herewith the Decision of the Authority (09 pages) in the matter of Motion for Leave for Review filed by Central Power Generation Company Ltd. (CPGCL) against the Authority's Determination dated 26.11.2010 in the matter of 50 MW Rental Power Project, Naudero-II, Sindh in Case No. NEPRA/TRF-157/CPGCL-2010, for information please.

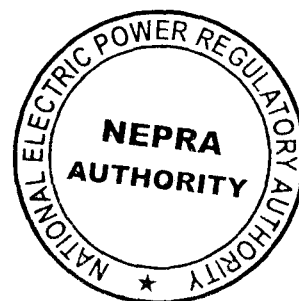
Encl: As above

(Syed Safeer Hussain)

Secretary
Ministry of Water & Power
'A' Block, Pak Secretariat
Islamabad

CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, Islamabad.





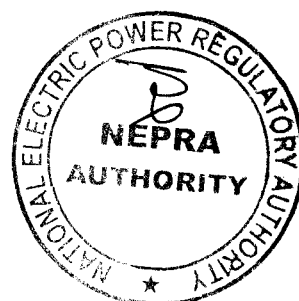
**DECISION OF THE AUTHORITY WITH RESPECT TO MOTION FOR LEAVE FOR
REVIEW FILED BY CENTRAL POWER GENERATION COMPANY LIMITED (CPGCL)
AGAINST THE DETERMINATION DATED 26.11.2010 IN THE MATTER OF 50 MW
RENTAL POWER PROJECT, NAUDERO-II SINDH.**

In October, 2009, Central Power Generation Company Limited (hereinafter referred as CPGCL) filed a tariff petition for determination of tariff for a rental power project in the name of Naudero-II (45 MW capacity) which was processed by NEPRA and decided vide determination dated 26.11.2009, whereby the Authority assessed a lump sum contract price of US\$ 70.956 million or US Cents 3.60/kW/hr (US Cents 3.91/kWh on notional plant factor of 92%) with an adjustment to the extent of US\$ 3.95 million on account of financing cost of 14% advance rent of entire rental term. CPGCL filed a motion for leave for review which was declined by the Authority for the reasons that no fresh grounds were agitated and that the same was barred by time by 34 days.

2. On 20th April, 2010, CPGCL filed a fresh tariff petition for determination of power generation tariff for Rental Power Plant at Naudero-II with 50 MW (net) capacity. In this petition, it was categorically stated that the previous determination by NEPRA became "in-fructuous" because the originally planned generation equipment was no longer available. It was further maintained by CPGCL that since the configuration of the plant has been changed and the new equipment being offered has different specifications, price, operation and maintenance costs as well as the heat rate than the equipment which was previously offered. Para 2 of the petition read as follows:-

"This Tariff Petition is being submitted by Central Power Generation Company Limited, a company incorporated under laws of Pakistan and registered under the Companies Ordinance 1984 and having its principal place of business at thermal power station, Guddu, district Kashmor at Kandkot, Sindh, Pakistan. (hereinafter referred to as the "Petitioner" or the "Buyer"). Earlier the petitioner filed a tariff petition which was accordingly determined by NEPRA. However, the previous determination by NEPRA became in fructuous because the generation equipment which was planned to be originally used was no longer available. Accordingly, the configuration of the plant had to be changed. The new equipment which has now been offered has different specifications, price, operation and maintenance costs as well as the heat rate than the equipment which was previously offered.

This instant Tariff petition may kindly be treated as fresh Tariff Petition in terms of Rule-3 of the Tariff Rules, read with the applicable provisions of the Government of Pakistan's Power Policy for Power Generation Projects, 2002, as amended from time to time."





3. The petition was admitted for regular hearing by the Authority on 2nd of July, 2010, notice of admission was published on 6th of August 2010 in the leading newspapers, inviting comments/intervention request from interested persons within fifteen days. In response, Mr. Anwar Kamal, Advocate filed an intervention request. Said request was barred by time, nevertheless the Authority observed that contentions raised in the intervention request would be treated and considered as "comments" to the petition. The hearing into the matter was conducted on 7th of September, 2010 and after hearing the petitioner, perusal of the record and considering all material facts did not approve the request and accordingly vide decision dated 26.11.2010, the petition was declined.

4. CPGCL has now filed the subject motion for leave for review against decision dated 26.11.2010 under rule 16(6) of NEPRA Tariff (Standards and Procedure) Rules, 1998 and other NEPRA laws.

5. CPGCL has contended inter-alia that the Rental Project is not developed by CPGCL and that an-other entity, with whom the petitioner has a contractual relationship is setting up the project; that the rental service provider should have been allowed to plead its case before NEPRA; that all rental matters should be re-opened by NEPRA; that there was an admission on part of NEPRA that it lacks the understanding and ability to determine the tariff of the rental power projects; that the submissions in the tariff petition were made in representative capacity on behalf of the sponsor; that for the change of plant and technology, the petitioner was not officially involved in any such decision making process relating to change in technology; that for de-commissioning of the project, the approval of NEPRA was required but the equipment in Guddu was never commissioned and that the determinations containing the directions of NEPRA; deviation wherefrom has been held; were not officially received by the petitioner.

6. As per rule 16(6) of the NEPRA (Tariff Standards and Procedure) Rules, 1998 read with regulation 3(2) of the NEPRA (Review Procedure) Regulations, 2009, a motion for leave for review 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. With a view to examine the maintainability or otherwise of the motion for leave for review and also its merits, the Authority considered it just and appropriate to provide an opportunity of hearing to the parties which was accordingly held on 19th of January, 2011.

7. At the time of hearing, CEO of CPGCL, alongwith its learned Counsel, Khawaja Ahmad Tariq Rahim, Senior Advocate Supreme Court was present. The representatives of

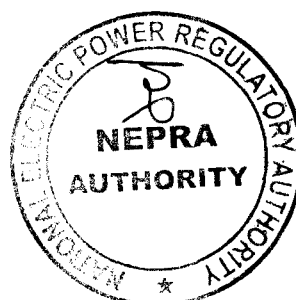




Walters Power International namely Hammad Hashmi and Muhammad Khalid Javed, were also present.

8. It was argued inter-alia on behalf of the petitioner that rule 8(3) (g) of the Licensing Generation Rules 2000 is relevant for the retirement or decommissioning of the plant but in the present case, there was no commissioning of the plant at Guddu rather the project was signed off. As per learned Counsel of the petitioner, it was not a case of de-commissioning or retirement but was a mutual arrangement to abandon the construction of the generation facility at Guddu in the larger national interest and at best the Authority could cancel the license pertaining to Guddu. Learned counsel for the petitioner also maintained that findings of the Authority in impugned determination relating to the life of the power plant and violation of the guidelines, i.e. 10 years of age and more than 60000 operating hours are erroneous. As per learned Counsel, it is the Ministry of Commerce which has to specify the machinery which can be imported and secondly after refurbishing and overhauling, the machinery/engine attains the status of a virtually new engine. Regarding the findings of the Authority in the impugned determination with respect to the payment of advance for two times for the same machinery, it was argued by the learned Counsel for petitioner that the advance for Guddu Project was given to Pakistan Power Resources whereas for Naudero-II project, the advance was given to Walters Power International. It was added that the two companies are totally independent and that since the Guddu project had been signed off, Walters Power International had made arrangement for acquiring the machinery from Pakistan Power Resource and the Guddu Project was not undertaken due to non-availability of the gas as the same was to be utilized by PEPCO's own Project and therefore, the sponsors of Walters Power International made a prudent decision to purchase the equipment. While challenging the findings of the Authority in the impugned determination that the tariff for machinery intended to be installed at Guddu site which was later shifted to Naudero-II could not be different, learned Counsel for the petitioner argued that for Naudero-II, the facts and conditions are different than those applicable at Guddu. Learned Counsel for the petitioner was of the view that the word "in-fructuous" used in the impugned determination should be deemed to mean that no decision has taken place on facts and in law.

9. The representatives of the Walters Power International argued on behalf of M/s Walters Power International (hereinafter referred as WPI) that the sponsor for the Project at Guddu was Pakistan Power Resources which is a distinct and separate corporate entity incorporated under a different law. Regarding shifting of machinery, it has been stated that keeping in view the ground realities and economic parameters of the two projects, it was decided that the machinery/equipment be permitted to be moved to Naudero-II as a part of



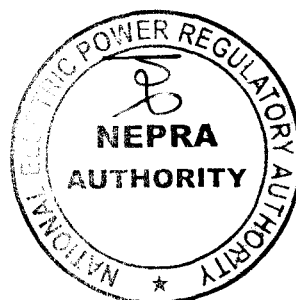


amicable resolution of the matter and that Guddu Rental Power Project may be signed off. As per WPI, the permission of the Authority, if required, for shifting of machinery from Guddu to Naudero-II could be given ex-post facto. It was alleged that in terms of section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, it is mandatory requirement that NEPRA "shall" determine the tariff, therefore, the refusal to determine the tariff would tantamount as failure to exercise jurisdiction. Regarding the age of the plant, it was the stance of WPI that the turbines/machines to be installed at Naudero is "0-Hour rated equipment" which is as good and efficient as a brand new. WPI also stated that the mobilization advances of both Guddu as well as Naudero-II projects had already been returned to the CPGCL alongwith interest and now the tariff needs to be determined.

10. While concluding his submissions, learned Counsel for the petitioner as well as the representative of M/s Walters Power International sought time to file written submissions as well, which were later filed before the Authority.

11. In the course of hearing, the Authority, in the first instance observed that in the petition, seeking leave for review of the determination, the petitioner had used inappropriate and derogatory language which was beyond the norms of the pleadings. Learned Counsel for the petitioner when confronted with the same admitted this as a fault on the part of his client and assured to amend the petition accordingly, but till date the needful was not done.

12. Be that as it may, the Authority considered the submissions made by the learned Counsel for the petitioner as well as the representatives of the WPI and minutely examined the record. As regards the plea that there was lack of understanding on the part of NEPRA to determine the tariff for rental projects, it is clarified that the plea is misconceived. In the tariff determination, it was mentioned that for the rental projects, the Act, Rules and Regulations of the Authority did not provide for any elaborate procedure or guideline for evaluation of the offers made and determination of tariff for rental project through unsolicited offers and accordingly, certain guidelines as benchmark were settled. It is a matter of record that on September 23, 2008, CPGCL had filed a petition for approval of generation tariff for 110 MW rental power project at Guddu. As per CPGCL, the project was approved by PEPCO through invitation of bids/proposals from international reputed and experienced companies. The petition was duly considered by the Authority and a determination into the matter was made on 15.12.2009 read with order dated 12.4.2010. In the said determination, the Authority observed inconsistencies in the bidding process organized by CPGCL/PEPCO. Due to those inconsistencies, the request for determination of tariff for Guddu Project could have been

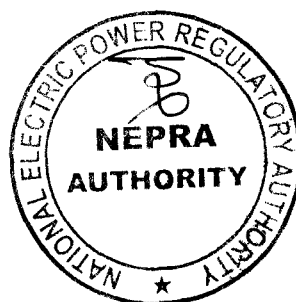




declined by Authority, however, considering the fact that denying the approval would deprive the consumers of electricity on a gas based project with a reasonable tariff structure, the Authority determined tariff of US cents 2.5552/kW/hour (Rs.2.1208/kW/hour) vide its decision dated 12.04.2010. It is a matter of record that despite lapse of a considerable time and despite receipt of 14% advance, the Guddu Project did not materialize. Now the machinery and plant supposed to be installed at Guddu for which 14% advance was paid over two years back is claimed to have been shifted to Naudero-II, with a fresh advance of 14%. This was alarming and against the public and consumers' interest in as much as, the advance of 14% for the same machinery was claimed, through two different parties but nevertheless the public exchequer was made to suffer twice without any beneficial returns. Similarly, the very objective of accelerated measure to meet the deficiency of electricity through rental projects frustrated and the sponsors availed the exchequer's revenue at the cost of public without offering anything in return.

13. In the petition seeking determination of tariff for Naudero-II, CPGCL did not disclose the shifting of machinery from Guddu to Naudero-II, rather it was pleaded that the generation equipment for which the tariff determination was originally secured in the matter of Naudero-II, was not available and that the plant and machinery to be installed was changed and there was new equipment with different specifications etc. Quite contrary to such stance, it had now been claimed by the petitioner as well as the sponsor of the project WPI that machinery of Guddu is being shifted to Naudero-II. In this regard, reference is made to para iii at page 7 of written submissions of CPGCL and para 7 of written submissions of WPI. It is thus manifest that the machinery/project for which the tariff was determined under Guddu Scheme at a lower rate, i.e., US cents 2.5552/kW/hour (Rs.2.1208/kW/hour) was sought to be re-determined for tariff purposes at an extremely higher rate, i.e., US cents 3.9891/kW/hour (Rs.3.4306/kW/hour) and with a view to conceal the real facts, a device was adopted to incorrectly represent in the petition that it was a new project, hence a new petition for tariff was filed. Obviously request for enhanced tariff determination for the same machinery was not deemed to be in the consumers' interest, which was one of the reasons to decline re-determination of tariff already made for the same machinery vide determination dated 15.12.2009.

14. In the petition for tariff for rental plants, the cost of machinery is also to be taken into consideration and tariff would be dependent upon the cost of the machine. In this case, a tariff for a particular machinery to be installed at Guddu was already given, therefore, tariff for the same machinery after its allocation to some other place could not be given.

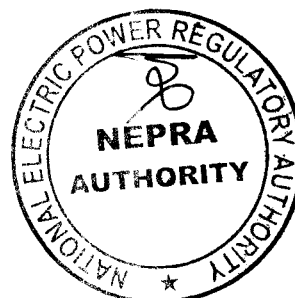




15. Much has been argued on behalf of the petitioner that the machinery at Guddu was yet to commission, therefore, the question of its de-commissioning or retirement does not arise, hence the approval of NEPRA was not required as per rule 8(3) (g) of the Licensing Generation Rules 2000. It is an established fact that tariff for the rental Project at Guddu was got determined by CPGCL on 15.12.2009. It is also an admitted position on record that Guddu Project was agreed by the petitioner to be signed off and given up. In the written submissions of petitioner, it is stated by the petitioner himself that it is not a case of de-commissioning or retirement and it was a mutual arrangement to abandon the construction of the generation facility at Guddu. If the referred rule, i.e., 8 is read as a whole then as per sub-clause (d) of sub-rule 3 of rule 8 of the Licensing Generation Rules, 2000, abandonment of the construction of the generation facilities is also one of the grounds whereupon the license of a licensee could be revoked or suspended. Further that the license could also be revoked or suspended pursuant to sub-clause (i) of the ibid rules for providing any information or making any statement by the licensee which is inaccurate or misleading in any material aspect. It has now been pleaded that the project was agreed to be signed off through a decision dated 6th of September, 2010. As a matter of fact, in its tariff petition, the petitioner never mentioned about signing off the project rather it was the stance that the machinery now being installed at Naudero-II is different from the earlier one. Interestingly, the hearing of the tariff petition was conducted in NEPRA Head Office on 7th of September, i.e., the day after the alleged decision for signing off the Guddu project, yet this very fact was not disclosed to the Authority. It is also observed that as yet no such written agreement to physically sign off the project of Guddu without any financial burden upon the public exchequer has either been placed on record or claimed to have been executed in pursuance to the decision dated 6th of September, 2010.

16. The argument that the word "in fructuous" was used in the order which shall be allegedly construed absence of decision, the argument is un-tenable. The order as a whole needs to be read, which will show that the petition was declined vide decision dated 26.11.2010 for a number of reasons.

17. As regards the other argument that in the event of request for fresh tariff is deemed to have declined vide determination dated 26.11.2010, then the previous determination dated 26.11.2009 for Naudero-II should be assumed to have been revived. The argument suffers from self contradiction. In para 2 of the application seeking determination of tariff, it was specifically pleaded by CPGCL as under:-





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This instant Tariff petition may kindly be treated as fresh Tariff Petition in terms of Rule-3 of the Tariff Rules, read with the applicable provisions of the Government of Pakistan's Power Policy for Power Generation Projects, 2002, as amended from time to time."

18. As per stance of petitioner, the alleged determination dated 26.11.2009 become ineffective, in-operative, in-consequential and deemed to have been abandoned, as it was based on the specifications of the project given in the tariff petition with specific machinery which was never installed nor the agreement in respect thereof was ever implemented. Instead a new rental agreement is being claimed with the representation that it relates to a different equipment though it is found by the Authority that it relates to the equipment of Guddu project for which determination was made on 15.12.2009 at a much lower rate~~s~~ in the consumers' interest. Being so, the petitioner's stance for the alleged revival of an in-operative tariff qua a machinery which admittedly was never installed cannot be deemed to be logical, fair, reasonable or acceptable. Had the petitioner raised the plea that the tariff determined for Guddu project for this machinery vide determination dated 15.12.2009 be applied or deemed to have re-activated as the same machinery was being used in Naudero-II, the Authority might have considered it for appropriate decision in accordance with law but this position was never taken. Ever otherwise, it is illogical that a higher tariff determination for the project based at Naudero-II in the earlier determination which was given up and never installed should be applied to the machinery claimed to have been shifted from Guddu for which the tariff determination was at a much lower rates. This can never be in the consumers' interest. The argument is, therefore, rejected being meritless.





19. In so far as the other contentions of the petitioner, it may be clarified that as per rule 3 of the NEPRA (Tariff Standards and Procedure) Rules, 1998, any licensee, consumer or person interested in the tariff may file a petition with the Authority. The petition before NEPRA was filed by CPGCL and it was the petitioner itself which has entered into rental service contract with private sponsor. Therefore, the stance taken by the petitioner that he acted as a representative of sponsor is without any justifications. Further that for the determination of tariff, a number of factors including but not limited to the cost of the services, plant and machinery etc are to be taken into account. It is incorrect to suggest that whatever petition is filed before the Authority, it needs to be granted and the Authority cannot decline such petition. As stated earlier, the tariff for the machinery/equipment sought to be determined stood already determined in the case of Guddu Rental Project and it is indeed an admitted position on the subject that the same machinery has been shifted to Naudero-II, therefore, a tariff for the same machinery could not be determined twice.

20. The stance of the petitioner that the findings of Authority contained in para 8.15 of the impugned determination is erroneous is also without any basis. As a matter of fact, the Authority had issued clear guidelines vide its determination dated April 13, 2009 in the case of Gulf and Independent Rental Power Plants that the rental plants more than 10 years old or more than 60,000 operating hours may not be accepted. Further vide the determination dated 26.11.2009 for Naudero-II, vide para 13 thereof, said directions were repeated to the effect that all the GENCOs should ensure that the directions contained in the determination dated April 13, 2009 are strictly adhered to and no agreement for any rental power projects should be entered into where the life of the plant was more than ten years or it had done more than sixty thousands hours. Therefore, the petitioner cannot agitate that the directions were not received by it in official capacity because in that case, the petition was filed by the present petitioner itself. It is also a matter of record that in sheer violations of the above quoted directions and guidelines of the Authority, the petitioner had entered into a Rental Service Contract dated 4th of March, 2010 for Naudero-II rental project.

21. With reference to the submissions made by the petitioner itself that the project at Guddu was agreed to be signed off and said machinery was agreed to be shifted to Naudero II and said machinery was acquired by Walters Power International (Sponsor of Naudero-II), it has already been established that the 14% advance (7% on 17.3.2008 and 7% on 12.3.2009) was given to the sponsor of Guddu and then 14% advance was given on 6.4.2010 to the sponsor of Naudero-II. Admittedly the machinery for both the projects remains the same and the change of sponsor for the project makes no difference at all because the entity which paid

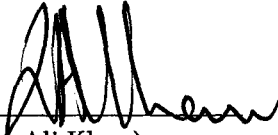


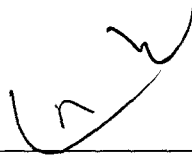


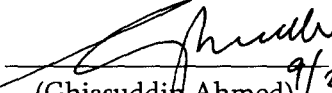
the advance on both the occasions is the same, i.e., the petitioner and said advance was paid twice in respect of the same machinery. It is also observed that till date, the petitioner did not produce any final agreement of signing off the project with the signatures of both side without any financial repercussions or burden to the public exchequer.

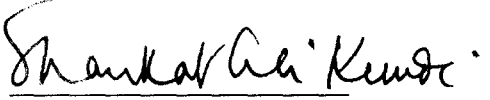
22. In view of the reasons noted above and the facts and circumstances taken care of in the order, the motion seeking leave for review of the determination dated 26.11.2010 is held to be without any merits which is accordingly declined.

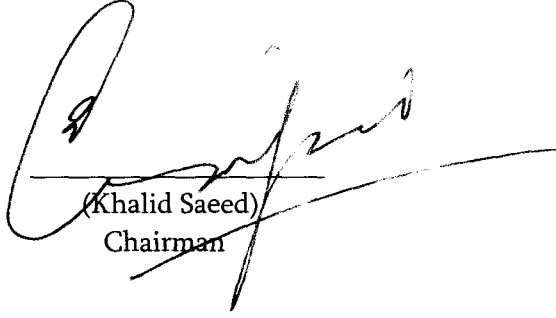
AUTHORITY


(Zafar Ali Khan)
Member
8/3/11


(Maqbool Ahmad Khawaja)
Member


(Ghiasuddin Ahmed)
Member
9/3


(Shaukat Ali Kundi)
Vice Chairman
09.03.2011


(Khalid Saeed)
Chairman

