



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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Registrar

No. NEPRA/R/TRF-106/NPGCL-2008/1790-1792
March 14, 2011

Subject: Decision regarding Fuel Price Adjustments in the Tariff of Northern Power Generation Company Ltd. (150 MW Summundri Road, Faisalabad) (Case No. NEPRA/TRF-106/NPGCL-2008)

Dear Sir,

Enclosed please find herewith the Decision of the Authority (06 pages) regarding fuel price adjustments in the tariff of Northern Power Generation Company Limited (150 MW MW Power Station at Summundri Road, Faisalabad) in Case No. NEPRA/TRF-106/NPGCL-2008, for information please.

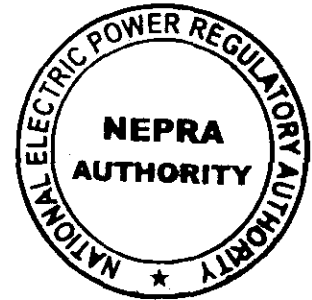
Encl: As above

(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 REGARDING FUEL PRICE ADJUSTMENTS IN THE TARIFF OF NORTHERN
POWER GENERATION COMPANY LTD (150 MW SUMMUNDRI ROAD FAISALABAD)
(CASE NO. NEPRA/TRF-106/NPGCL-2008)**

1.1 Northern Power Generation Company Ltd. (hereinafter referred as NPGCL) had entered into a Rental Contract (RSC) dated 14.2.2008 with M/s Techno Engineering Services (hereinafter referred as Sponsor) for setting up a 150 MW Power Station at Sammundri Road Faisalabad. As per Clause 4.4(b) of the said RSC, the Sponsor was required to achieve its Commercial Operation Date (COD) within 135 days from the issuance of Letter of Award (LOA) and was allowed 7% down payment. On 7th March 2009 RSC was amended requiring NPGCL to pay additional amount of 7% in lieu of Confirmed SBLC and the Sponsor to achieve Commercial Operation on 30th June 2009 for 60 MW and for the remaining 90 MW to install within next 30 days, i.e., till 30th July, 2009. NPGCL in accordance with the RSC paid advance of 7% on 26-2-2008 whereas the remaining 7% was paid on 1st April 2009. According to NPGCL, the said Rental Plant claimed its partial COD of 60 MW on 11th June 2010 and remained operational till 11th August 2010 but thereafter it was never operated. The Authority gave its determination on 30th October 2009 which was notified on 20th July 2010. Considering the financial implications of the thermal efficiency, the Authority vide Para 14 of the determination dated 30th October 2009 directed NPGCL to carry out heat rate test at the time of Commercial Operation Date (COD). Based on the heat rate test the fuel cost component was required to be revised accordingly. For the purpose of calculation of tariff, a reference fuel cost component was determined based on the given information. The relevant portion of Authority's determination is to the following effect:-

"The Authority considers that the thermal efficiency is the major consideration for accepting any technology. The Authority also considers that through its determination it has already established benchmark efficiencies for different technology and any deviation from these benchmarks needs to be justified through provision of verifiable documentary evidence from the manufacturer. This becomes even more important in view of scarce foreign currency resources, volatility in the oil prices in the international market, more dependence on oil based generation and continuous decline in the purchasing power of a common man. The Authority further considers that the induction of capacity with lower efficiency will adversely affect the efforts being made towards bringing in the efficiency in the power sector as envisaged in NEPRA Act. According to the analysis the thermal efficiency of the reciprocating engine technology on open cycle operation is around 42% as against 33-35% efficiency of the rental power plants, which means that the fuel cost component of the rental power plants would be about 17% higher if calculated on the basis of reference fuel price of Rs. 26,000/M.Ton. This gap would further increase with

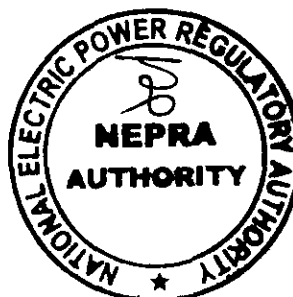


increase in oil prices. In view of the aforementioned financial implications the Authority cannot ignore the issue of thermal efficiency. The Authority therefore decides to carry out heat rate test at the time of COD. In case a higher efficiency as against the proposed efficiency is established subsequent to the heat rate tests the reference fuel cost component will be adjusted and the revised fuel cost component will be considered as the reference for further adjustments for fuel price variation."

- 1.2 On 29th May 2010 NPGCL filed another petition wherein the Authority was requested to review its determination dated 30th October 2009. The Petitioner in its petition prayed for allowing financial charges and removal of the requirement of conducting the Heat Rate Tests at the time of the commissioning of the project.
- 1.3 On consideration of all the relevant aspects of the case, Authority issued its determination regarding heat rate test and financial charges on 26th November 2010. The operative part of the Authority's determination regarding Heat Rate Test at Page 6 thereof is to the following effect:-

"The Authority while determining the generation tariff of Sammundri observed that the efficiency indicated by the RPP was the lowest as compared to other RPPs to whom 14% advance was paid. The Petitioner during the course of proceedings was unable to satisfy the Authority the rationale for removal of the requirement of heat rate test. The Authority considers that the lower efficiency will increase the generation tariff which will ultimately affect the end-consumer and it is Authority's responsibility to protect the consumers' interest. In view thereof, to protect the consumers from the additional burden due to lower efficiency of the plant the condition for conducting heat rate test at the time of COD was imposed. The Authority still feels that the requirement of conducting heat rate test is justified and therefore it finds no reason to review its earlier decision in this respect."

- 1.4 The Authority observed that the sponsor failed to achieve crucial milestones as per the agreement for timely project completion. In Authority's opinion, non-achievement of the target COD is violation of the ECC's decision in Case No. ECC-146/14/2008 dated September 10, 2008 which states that *"Such a project which fails to achieve crucial milestones is required to be immediately cancelled with penalties."*
- 1.5 NPGCL has now requested the Authority for adjustment of the fuel cost component based on fuel price variation.
- 1.6 While considering the request, the Authority observed the following inconsistencies/ discrepancies:-



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- i) The fuel price indicated by NPGCL for its Rental Power Project for the same period was higher as compared to SPS Faisalabad Block.
- ii) The fuel price adjustment request was not duly supported with the verifiable documentary evidence.
- iii) The payments were made to the Sponsor, which were not duly approved by NEPRA which is violation of the Sub-Section 3(a) of Section (7) of the NEPRA Act, and Rule 6(1) of NEPRA Licensing Generation Rules 2000.
- 1.7 For seeking necessary clarification regarding the above noted discrepancies, the Authority held a hearing to discuss the matter on 13th July 2010. During the hearing NPGCL could not provide satisfactory reply to the above queries. As requested, NPGCL was allowed three weeks time to submit report in the matter. Instead of submitting the report, NPGCL forwarded a copy of e-mail allegedly received from BYCO Petroleum along with the comparative table of fuel prices giving comparison of BYCO prices Vs. PSO prices without any documentary evidence in support thereof. NPGCL was again advised to provide detailed break-up of the furnace oil price along with documentary evidence.
- 1.8 The Authority noted that NPGCL had not responded to the Authority's observation regarding payment to the Sponsor without prior approval of NEPRA, hence an Explanation under Rule 4(1)(2) of the NEPRA (Fines) Rules, 2002 was called for on November 16, 2010 from NPGCL. The operative part of said explanation was of the following effect:-
- “Whereas the tariff in respect of 150MW Rental Project of Summundari Road was determined by the Authority on 30.10.2009 and was notified in the official gazette on 20.7.2010.
- Whereas, it has come to the notice of the Authority that the licensee has made the payments to Techno-E-Power (Pvt) Limited prior to the decision of the Authority regarding adjustments pursuant to the determination dated 30.10.2009.
- Whereas, the additional amounts of “financial charges” and “adhesive stamps” were also included in the amounts for “fuel charges” which were also never approved by the Authority.
- 1.9 While attempting to justify the payments made to the Sponsor without approval of the Authority, NPGCL vide letter dated December 15, 2010 stated that the payments

to RPP were made pursuant to MD PEPCO's directions vide letter No. MD/PEPCO/4070-2 dated 1/4/2010 and in terms of Rental Service Contract (RSC). NPGCL further stated that in case of delay in payments it was required to pay 1% delayed payment interest rate. NPGCL also referred to the following extract from the letter No. MD/PEPCO/4070-2 dated 1/4/2010 of MD PEPCO:-

"..... to make Provisional Payment for the energy delivered by Techno during testing as recorded by the output energy meters in accordance with the Contractual Fuel Cost Component as per mechanism provided in Section 4.3 of RSC. Differential amount for Fuel Cost Component if any may be adjusted after performance of Heat Rate Test to be conducted at the time of Commercial Operation Date as per NEPRA Tariff Determination."

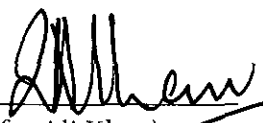
- 1.10 As per reply of NPGCL, the Authority has observed that NPGCL failed to justify the allegations of inclusion and payment of financing cost and adhesive stamps alongwith the cost of fuel to the Sponsor whereas NEPRA determination did not allow any additional cost as pass through item on account of financing cost for fuel arrangements. Further that no payment could be made to the Sponsor without prior approval of the Authority and the stance taken as to the "provisional payment" is not covered under any rules.
- 1.11 It is also observed that original RSC was signed by NPGCL on 14.2.2008 and the same was subsequently amended on 7.3.2009. As per amended RSC, the Sponsor had to start Commercial Operations of 60 MW capacity of Project till 30th June, 2009 and remaining 90MW by 30th July, 2009. The total contract price for a period of 36 months was agreed as US\$ 135 Million wherefrom US\$ 18.90 Million (PKR 1344 Millions) was paid by NPGCL to the Sponsor (7% on 26.2.2008 and other 7% on 1.4.2009) as advance rental. It is also observed with concern that despite amending the contract and by introducing the idea of partial commissioning, the Sponsor failed to achieve the crucial milestone as per contractual terms and conditions. Instead of 30th June, 2009, the Sponsor achieved the claimed COD of 60 MW on 11.6.2010, i.e., after a period of almost one year in terms of amended RSC and even that commissioning could remain operative only till 11th of August, 2010 and since then the plant is not operational.
- 1.12 The Authority is of the view that one of the pre-requisite for achieving COD in the instant case is the conducting of heat rate test, therefore, till the time heat rate test is carried out, the project cannot be said to have achieved any COD.

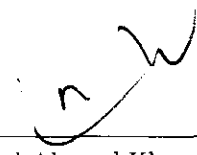
- 1.13 It appears that NPGCL failed to take action against the Sponsor in failing to complete the project in time. It is also observed that the sponsor was allowed by NPGCL 14% advance of US\$ 18.90 Million (PKR (1344 Millions) which remained with the Sponsor since 26.2.2008. Notwithstanding the same, the sponsor did not reciprocate by timely implementation of the project which frustrated the very idea of resorting to the rental projects. The object of allowing rental project was to meet the immediate deficiency and if its installation could not be achieved in the stipulated time, the Authority might have declined the tariff determination and insisted to resort for the normal IPP projects. It is also not explained by the NPGCL as to why instead of invoking penal clause in real spirit, a request for fuel adjustment is being floated. The proposal for seeking fuel adjustment of an amount which is a fraction of the advance already received by the sponsor cannot be justified on the touchstone of fairness and reasonableness. The Authority also fails to appreciate as to why the NPGCL has not as yet taken steps for the recovery of 14% advance, despite knowing well that the very purpose was not achieved. The sponsor did not utilize the amount for the purpose for which it was purportedly advanced.
- 1.14 As stated earlier, the NPGCL has already made payments to the Sponsor and that too, without getting the same determined and approved by the Authority. Proceedings under NEPRA (Fines) Rules in this regard are also pending adjudication before the Authority.
- 1.15 Another serious aspect of the matter is that vide its letter dated 18.12.2010, NPGCL had informed the Authority that it has encashed the performance guarantee of Rs. 20 Million and that liquidated damages of US\$ 1.2 Million also recovered. It was also informed that the rental term is reduced by 10 months and a reduction of US\$ 53.375 million is also made from the contract price. In this regard, it has now been brought to the notice of Authority by NPGCL vide its letter No. CEO/FD/NPGCL/TRF-106/1272-73, dated March 7, 2011 that the rental charges are being adjusted against the advance rental. The Authority considers that since the Project has not achieved COD therefore any such adjustment of rental charges is legally not sustainable. The Authority also finds no justification of the said adjustment because the plant is not operating since August, 2010. In this regard, it is noted with serious concern that payment of rental was un-warranted and impermissible as no COD has since been achieved. Any such payments or adjustments by NPGCL without prior approval of the Authority or claiming adjustment of the same from the amount of advance already paid would be illegal, hence considered to be entirely at the risk and cost of NPGCL. In Authority's opinion the adjustment of rental charges would add to the consumers' burden without getting any energy, which cannot be considered as a prudent cost and passing on such cost would be against the consumer interest.

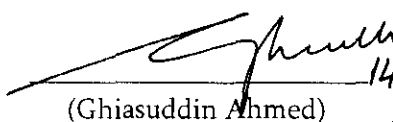


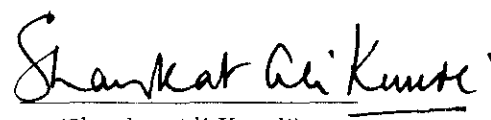
- 1.16 It is also a matter of record that the Sponsor failed to achieve crucial milestones as per RSC towards timely project implementation and despite ECC's decision in Case No. ECC-146/14/2008 dated September 10, 2008 to the effect that "Such a project which fails to achieve crucial milestones is required to be immediately cancelled with penalties". It appears that NPGCL has failed to follow the decision of ECC. It is a fact that neither at the time of entering into original RSC dated 14.2.2008 nor at the time of its amendment dated 7.3.2009, the permission/approval of the Authority was obtained by NPGCL. The sponsor has already received 14% advance to the tune of Rs. 1,344 Millions which is much higher than the amount being claimed towards fuel adjustments.
- 1.17 As far as the request for the determination for fuel adjustment, it is a matter of record that ultimate decision as to the fate of the Project has since not been taken by NPGCL as yet, hence any determination as to the subject adjustment can prejudice the course which NPGCL is entitled to take against the sponsor in the given circumstances. The Authority also expects that the NPGCL will keep in view the consumers' interest and ensure that no undue favour is extended to the Sponsor at the expense of consumers.
- 1.18 For the foregoing reasons, the request for fuel adjustment, cannot be entertained and considered at this stage.

AUTHORITY

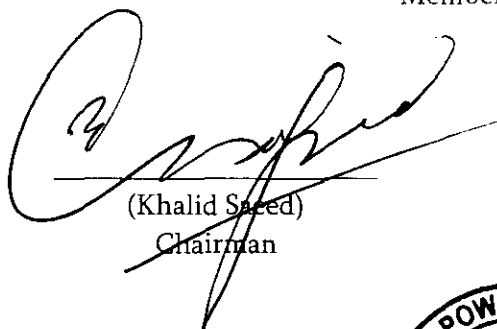

(Zafar Ali Khan)
Member


(Maqbool Ahmad Khawaja)
Member


(Ghiasuddin Ahmed)
Member


(Shaukat Ali Kundi)
Member / Vice Chairman

14.03.2011


(Khalid Saeed)
Chairman

