



National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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Web: www.nepra.org.pk, E-mail: registrar@nepra.org.pk

No. NEPRA/R/SA(Tariff)/TRF-489/AWPL-2019/18810-18812
July 23, 2020

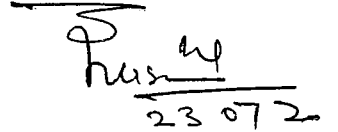
Subject: **Decision of the Authority in the matter of Tariff Modification Petition filed by Act 2 Wind Power (Pvt.) Ltd. for its 50 MW Wind Power Project [Case No. NEPRA/TRF-489/AWPL-2019]**

Dear Sir,

Please find enclosed herewith the subject decision of the Authority (07 Pages) in Case No. NEPRA/TRF-489/AWPL-2019.

2. The Decision is being intimated to the Federal Government for the purpose of notification in the official gazette pursuant to Section 31(7) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.
3. The Order part of the Authority's Decision is to be notified in the official Gazette.

Enclosure: As above


23 07 20

(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.



Registrar

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No. NEPRA/R/SA(Tariff)/TRF-489/AWPL-2019/18813

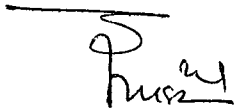
July 23, 2020

Director
Act 2 Wind Power (Pvt.) Ltd.
Office No. 1002, 10th Floor,
Emerald Tower, Near 2 Talwar,
Karachi
Tele: 021 – 3514 7573 – 3514 7574

Subject: **Decision of the Authority in the matter of Tariff Modification Petition filed by Act 2 Wind Power (Pvt.) Ltd. for its 50 MW Wind Power Project [Case No. NEPRA/TRF-489/AWPL-2019]**

The Authority has made its Decision on the subject matter. The Decision has been sent to Ministry of Energy (Power Division) for notification in the official Gazette vide letter No. NEPRA/R/SA(Tariff)/TRF-489/AWPL-2019/18810-18812 dated 23.07.2020. A copy of the Decision is served herewith.

Enclosure: As above


23 07 20
(Syed Safer Hussain)



Registrar

National Electric Power Regulatory Authority Islamic Republic of Pakistan

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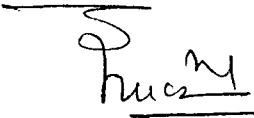
July 23, 2020

Chief Executive Officer
Central Power Purchasing Agency Guarantee Limited (CPPA-G)
Shaheen Plaza, 73-West, Fazl-e-Haq Road,
Islamabad

Subject: **Decision of the Authority in the matter of Tariff Modification Petition filed by Act 2 Wind Power (Pvt.) Ltd. for its 50 MW Wind Power Project [Case No. NEPRA/TRF-489/AWPL-2019]**

The Authority has made its Decision on the subject matter. The Decision has been sent to Ministry of Energy (Power Division) for notification in the official Gazette vide letter No. NEPRA/R/SA(Tariff)/TRF-489/AWPL-2019/18810-18812 dated 23.07.2020. A copy of the Decision is served herewith.

Enclosure: As above


23 07 20
(Syed Safer Hussain)

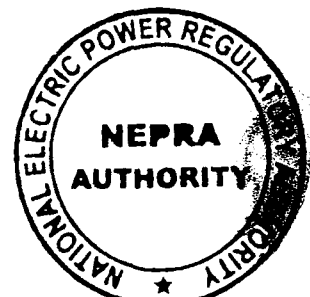
**DECISION OF THE AUTHORITY IN THE MATTER OF TARIFF MODIFICATION PETITION FILED BY ACT 2 WIND (PVT)
LIMITED FOR ITS 50 MW WIND POWER PROJECT**

Background

1. Act 2 Wind Power Private Limited (hereinafter referred to as "AWPL", the "Project Company" or the "Petitioner" is formed to establish a 50 MW wind power project (the "Project") to be located in Jhimpir, Sindh. National Electric Power Regulatory Authority ("NEPRA" or the "Authority") awarded Generation License to AWPL dated April 04, 2017. On November 19, 2018, the Authority vide its determination approved a levelized tariff of Rs.5.6655/kWh (US Cents 4.7212/kWh) for AWPL ("Tariff Determination") under NEPRA (Tariff Standards & procedure) Rules, 1998.
2. While determining the aforesaid tariff, the Authority noted that the State Bank of Pakistan (SBP) had issued a Refinancing Scheme for Renewable Energy in June 2016 (SBP Scheme 2016). Under the said Scheme, SBP was offering concessionary debt at 6% interest (fixed rate comprising of 2% share of SBP and 4% share of relevant commercial banks) for renewable energy projects having capacity of up to 50 MW. The amount of loan to be provided to any eligible project under that Scheme was fixed up to the limit of Rs.6 billion for the debt servicing tenor of ten years. Since the Project was eligible to avail the referred financing (having fixed concessionary rate), so the Authority computed and approved the aforesaid tariff of AWPL based on the terms of SBP Scheme 2016 and directed the petitioner to secure financing under the said Scheme. The provision of tariff adjustment on commercial local/foreign loan was also given in the Tariff Determination, subject to non-availability of the partial/whole financing under SBP Scheme 2016. The exchange rate of Rs.120/USD was used in the Tariff Determination.

Tariff Modification Petition

3. The petitioner vide letter dated October 02, 2019, filed the subject Tariff Modification Petition (hereinafter referred to as "Modification Petition"). The said Modification was filed by the petitioner under Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 ("NEPRA Act") and the rules and regulations made thereunder, including Rule 3 of NEPRA Tariff Standards and Procedure Rules, 1998 ("NEPRA Tariff Rules"). In the instant Modification Petition, the petitioner has requested the Authority to modify the Tariff Determination due to the following two reasons/grounds:
 - a) debt financing mix and repayment terms
 - b) reference exchange rate
4. Making changes on account of the above grounds, the petitioner requested a levelized tariff of Rs.7.5233/kWh (US Cents 4.7021/kWh) and prayed that the Authority may modify its tariff and debt servicing schedules accordingly.



Proceedings

5. The Authority considered the aforesaid Modification Petition and admitted the same to deliberate upon its grounds/merits. Hearing in the matter was scheduled to be held on January 8, 2020. A notice regarding hearing was published in the newspapers with nationwide circulation on December 27, 2019. Subsequently, individual notices were also sent to the petitioners and stakeholders, considered relevant in this case, on January 02, 2020. The hearing was held as per schedule on January 8, 2020, at NEPRA Tower which was attended by the representatives of the petitioner, Central Power Purchasing Agency Guarantee Limited ("CPPAGL") and others.

6. In response to the notice of hearing, CPPAGL vide letter dated January 7, 2020, provided its consolidated comments in respect of Modification Petitions filed 12 wind power projects, including of AWPL, which are reproduced hereunder:

"It is submitted that, in the due process of subject tariff modification in respect of 12 wind power plants, the Authority should also review/revisit other pertinent parameters, inter-alia, declining trends of project costs, timelines, etc. in view of the prevailing market conditions which has direct impact on the tariff of the 12 wind power projects in order to strike a balance between the consumers and the investors, as envisaged in the Tariff (Standard and Procedures) Rules 1998."

7. The comments of CPPAGL were forwarded to the petitioner on May 28, 2020, for its response thereon. The petitioner vide letter dated June 3, 2020, submitted its response. Following is the summary of the submissions put forth by the petitioner during the proceedings of Tariff Modification as well as the response it submitted on the comments of CPPAGL.

- i. **Debt Financing Mix & Repayment Terms:** AWPL submitted that the Authority in Tariff Determination computed tariff on the basis of 100% financing under SBP Scheme 2016 while recognizing circumstances where the company might not be able to secure the whole of the required financing under that Scheme. For such situations where 100% SBP financing was not available, a provision of adjustment of the tariff at the time of COD on commercial local or foreign debt with spreads of 2.25% over KIBOR and 4.25% over LIBOR respectively was also approved. The petitioner submitted that SBP Scheme 2016 could be availed for the whole of the debt requirement of renewable energy projects achieving Financial Close ("FC") on or before June 30, 2019. However, SBP Scheme 2016 expired in June 2019 and the same has been renewed/extended, with some changes, by SBP on July 26, 2019 ("SBP Scheme 2019"). According to the petitioner, SBP Scheme 2019 provides for the financing of up to 50% of their debts requirement to eligible renewable energy projects. In addition, AWPL has submitted a letter of its lender namely Bank AL Habib Limited dated September 18, 2019, stating that financing of only up to 50% of the debt portion of the



Project can be secured under SBP Scheme 2019. As a result, thereof, the petitioner submitted that it has arranged the remaining debt from International Finance Corporation ("IFC") in foreign currency. The Term Sheet of the same was provided by AWPL along with the Modification Petition. According to said Term Sheet as provided by the petitioner, the debt repayment period of the foreign loan portion shall be 13 years after the COD and shall be repaid on a quarterly basis while the applicable spread over LIBOR shall be 4.25%. The petitioner submitted that as the remaining portion of the loan is being financed in foreign currency so IFC has requested AWPL to seek an adjustment of the Tariff Determination so that the approved tariff should reflect the components of both financings (i.e., local and foreign) separately with their applicable repayment terms (10 years for financing under SBP Scheme and 13 years for foreign financing). AWPL also highlighted that representatives of IFC met the Authority on April 04, 2019, for this purpose and submitted its formal request to the Authority vide letter dated April 25, 2019. Stating above, the petitioner requested to revise its Tariff Determination to reflect the financing 50:50 mix of foreign financing and SBP financing being availed by AWPL.

- ii. **Reference Exchange Rate:** The petitioner submitted that the Tariff Determination is based on an exchange rate of Rs. 120/USD, however, the prevailing exchange rate has reached to Rs. 160/USD and PKR is expected to fall further by the time the Project will achieve COD. The petitioner stated that due to (a) the unprecedented devaluation of the PKR, (b) the competitive tariff awarded to the Project, (c) the high debt to equity ratio, and (d) payment delays from the power purchaser, the company will face extreme hardship in payment of its USD financing obligations immediately upon achievement of COD, until the tariff trued up decision is issued by the Authority, which as per the precedent is expected to take considerable time. The petitioner also submitted that its foreign lender has also requested for this adjustment. Stating above, the petitioner has requested to modify the Tariff Determination based on the most recent exchange rate.
- iii. **SBP Debt Repayment Structure:** Subsequent to the hearing, the petitioner vide letter dated April 20, 2020, submitted that it has been advised by its local lenders that SBP, while approving the financing under SBP Scheme 2019 for other wind power projects, has based the repayment on equal principal repayment basis instead of equal annuity repayment structure as approved in the Tariff Determination. In view thereof, AWPL requested to revise local debt payment schedule in respect of SBP financing on equal principal installment basis. The petitioner also requested to treat the said request as an addendum of subject Modification Petition.
- iv. **Response on CPPAGL Comments:** The petitioner submitted that pursuant to Tariff Determination, it has successfully achieved FC on 18th November 2019. It stated that Tariff Determination was based on certain assumptions which were allowed adjustment/revision on prevailing circumstances and the Modification Petition has been filed to get those adjustments. It also submitted that CPPAGL has not raised any specific objections or comments in respect of the grounds of the Modification Petition. AWPL also submitted that the comments of CPPAGL are utterly unsubstantiated and without merits and not a single ground or basis

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has been provided by CPPAGL to support of its comments, hence, the company is not aware what case it has to answer and the basis thereof. Furthermore, the petitioner submitted that unsubstantiated comments of CPPAGL are contrary to the well-settled principles of due process, non-prejudice, equity, fairness, level playing field, vested rights, promissory estoppel and non-discriminatory treatment. Based on these submissions, the petitioner prayed that the comments of CPPAGL may kindly be rejected being irrelevant to the subject petition and ignoring the fact that the company has already achieved FC based on the tariff allowed by the Authority.

Analysis and Decision of the Authority

8. The Authority has considered the submissions put forth by the petitioner. It was noted that the Authority in the Tariff Determination allowed the provision for the adjustment of tariff on commercial local/foreign financing, or a mix of both, subject to submission of the proof (issued by either SBP or commercial bank) providing that the petitioner first exhausted the option of availing 100% financing under SBP Scheme. For this purpose, the petitioner during the proceedings of the Modification Petition informed about SBP Scheme 2019 that allows up to 50% debt financing for eligible renewable energy projects of more than 20 MW. Further, the petitioner also submitted a letter dated September 18, 2019 from Bank AL Habib Limited which provides that under SBP financing the maximum amount available to be arranged is capped at PKR equivalent to 50% of the debt amount. The Authority considered both of these filings and is of the view that apparently the petitioner seems to have fulfilled the documentary requirements as stated in the Tariff Determination for the adjustment/revision of its tariff on a mix of foreign and local loan under SBP Scheme. The Authority also noted that the Term Sheet as provided in respect of foreign loan includes the conditions (financing cost, repayment period etc.) which are in line with the Tariff Determination. Nevertheless, the Authority noted that Tariff Determination states the provision of requested adjustment at the time of COD of the Project and the petitioner has not achieved that milestone. The requirement of its foreign lenders has been stated as the reason by AWPL to seek this adjustment before the FC. The Authority deliberated in detail on these submissions, however, decided to maintain its earlier decision that the required adjustment shall be made in the tariff at the time of COD of the Project.

9. With respect to adjustment of tariff on current/prevaling exchange rate, the Authority noted that it is cognizant of the fact that since the issuance of Tariff Determination, the Pakistan Rupee has devalued significantly. However, the Authority noted that there is a mechanism already prescribed/available in the Tariff Determination to address variations in the exchange rate which provide for such adjustment at the time of COD. The argument the petitioner has taken for this ground is that tariff adjustment decision by NEPRA at the time of COD typically takes a few months which, inter alia, may pose hardship for the company to service its foreign debt obligations. The Authority considered these submissions of the petitioner and is of the view that presumption of the petitioner of delay in COD adjustment, based on certain precedents, by NEPRA cannot form the basis of this adjustment before the stated time. Hence, the Authority decided that the required adjustment shall be made in the tariff at the time of COD of the Project as given in the Tariff Determination.



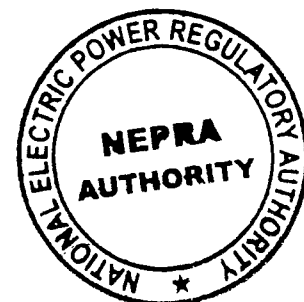
10. The Authority has also considered the request of the Petitioner regarding the repayment structure (equal principal instead of equal annuity) of the financing under SBP Scheme. In this regard, the Authority has noted that it has been approving tariffs on both equal annuity as well on equal principal structures. Therefore, the Authority has decided to approve the provision of equal principal based debt repayment structure for financing under SBP Scheme. The same shall be incorporated in the tariff at the time of the COD based on the documentary evidence to be submitted by the company.
11. The Authority deliberated in detail on the comments advanced by CPPAGL and the response thereon as submitted by the project company. The Authority agrees with the petitioner that under the Modification Petition it has actually asked for certain adjustment that were allowed in the Tariff Determination. However, CPPAGL has commented for the redetermination of tariff. The Authority considers that Tariff Determination was approved based on certain technology and with the timeline of achieving FC. The petitioner has not made any changes in the approved technology and has achieved FC in the given timeline. Therefore, it does not warrant any revision in tariff merely because the allowed adjustments have been sought by the petitioner before the stated time.

Revision of O&M Cost

12. The Authority noted that during the proceedings of the Tariff Determination, the petitioner submitted an O&M Contract for the initial 2 years of operations amounting to USD 38,000 per MW per annum. The Authority carried out due diligence and approved an annual O&M cost of USD 23,000 per MW per year. This approved cost was equally divided in local and foreign portions.
13. It is noted that NEPRA on September 06, 2018 sent a letter to a number of the power generation companies stating, inter alia, that the Authority has decided in principle for all the power generation projects which have not achieved COD that their sponsors shall be required to conduct a transparent and competitive bidding process for the claim of the O&M cost.
14. The Authority also noted that the tariff determination of one wind power project namely Master Green Energy Limited ("MGEL") was issued in August, 2018. In the case of MGEL, the Authority approved the O&M cost as USD 23,000 per MW per year and also decided the following:

"The petitioner is hereby directed to conduct a transparent and competitive bidding process for the selection of the O&M contractor while following the procedure given in the EPC Guidelines, 2017. The O&M cost approved in this determination shall be considered as ceiling for that purpose. Approved O&M cost shall be adjusted on the basis of bidding results at the time of COD considering the approved amount as the maximum limit."

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15. However, MGEL filed the review motion on aforesaid determination requesting, inter alia, to remove the condition of competitive bidding for the selection of the O&M Contractor. The decision regarding the review motion was issued by NEPRA in February, 2019 while deciding the following:

"The Authority noted that it put the condition for O&M bidding in the tariff determinations of three wind power projects, including MGEL, issued on August 20, 2018. That condition was introduced to bring the best possible results for this particular component. A number of project companies opposed that condition while stating that lenders require getting O&M done through Original Equipment Manufacturer ("OEM") during the debt servicing period. Also, they submitted that the existing stage of wind industry in Pakistan is not at the stage where independent operators can take on the O&M of wind power plants to the satisfaction of the financiers. The Authority deliberated in detail about the submissions with respect to level of wind industry in Pakistan. Further, the Authority analyzed the approved benchmark level of O&M and found that the said cost is quite competitive and fairly similar to the cost being allowed in the comparable places. In view thereof, the requirement of bidding for O&M contractor was removed in the later twelve wind tariff determinations issued on November 19, 2018. Accordingly, the Authority has decided to take out this condition of bidding for O&M contractor introduced in the impugned determination. However, it is to be noted the Authority may consider revising the approved O&M cost after the completion of debt servicing period. For that purpose, the Authority may require the project company to carry out competitive bidding while considering the approved cost as ceiling."

16. As stated above, the Authority firstly required MGEL to carry out the process of competitive bidding for the selection of the O&M Contractor for the allowance of the O&M cost. However, later the Authority did not include this requirement in the tariff determinations of twelve wind power projects, including the petitioner, issued on November 19, 2018 and also removed that condition for MGEL in its review decision issued in February, 2019. As given above, the said condition was taken out while considering that the O&M cost approved is quite competitive and comparable as well as in view of the existing relatively less mature stage of wind industry in Pakistan. The requirement of lenders of getting O&M done through OEM during the debt servicing period was also given due consideration for the removal of this condition.
17. The Authority noted that back in 2013, it approved the O&M cost of more than around USD 45,000 per MW per year for wind power plants. Afterward, gradual reductions were made in that cost component and USD 23,000 per MW per year was approved in 2018, i.e. around 50% of the O&M expenses approved in 2013. This reduction was made in light of the decreasing O&M cost trends that occurred across the world primarily due to the increase in competition in this industry. The Authority noted that this decrease may continue in the future as well, therefore, it may not be considered appropriate and justified to let the approved O&M cost remain fixed for the whole tariff term. Besides, the Authority also understands that approved O&M cost, linked with prescribed indexation, may result in excessive savings, on top of the approved return, and therefore cannot be left unchecked for the whole control period of 25 years. In view thereof, it has been decided that the amount of O&M cost, its mix, and the corresponding mechanism thereof as approved in the Tariff



Determination shall be applicable for the first two years of operations. Afterward, the Authority may consider making revisions in the O&M cost, while capping the allowed prevailing level, anytime during the tariff control period. Those revisions may also entail changing the mix of the approved O&M cost (local and foreign) as well as the indexation mechanism (indices, frequency etc.). For that purpose, the Authority may direct/require the petitioner to carry out the competitive bidding to select the contractor for the provision of the O&M cost.

Order

18. The Authority has decided that the revision/adjustments of tariff on account of debt mix, repayments terms and exchange rate as requested by the petitioner in the subject Modification Petition shall be made at the time of COD of the Project. Further, the Authority has decided to modify the Tariff Determination to add therein the following condition:


"After two years of operations, the Authority may consider making revisions in the O&M cost, while capping the allowed prevailing O&M cost level, anytime during the tariff control period. Those revisions may also entail changing the mix of the approved O&M cost (local and foreign) as well as the indexation mechanism (indices, frequency etc.). For that purpose, the Authority may direct the petitioner to carry out the competitive bidding to select the contractor for the provision of the O&M cost."

19. The Order part is recommended for notification by the Federal Government in the official gazette in accordance with Section 31(7) of The Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.


AUTHORITY




(Rafique Ahmed Shaikh)
Member 16/7/20



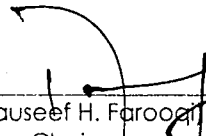
(Eng. Bahadur Shah)
Member



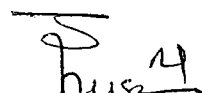
(Rehmatullah Baloch)
Member 15/7/2020



(Saif Ullah Chattha)
Vice Chairman
14-7-2020



(Tauseef H. Farooqi)
Chairman



23/07/20

