



Registrar

National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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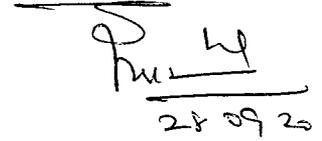
No. NEPRA/R/SA(Tariff)/TRF-443/TAEL-2017/32574-32576
September 28, 2020

Subject: **Decision of National Electric Power Regulatory Authority in the matter of Motion for Leave for Review filed by M/s. Trans-Atlantic Energy (Private) Ltd. against the Tariff Determination dated November 19, 2018 [Case # NEPRA/TRF-443/TAEL-2017]**

Dear Sir,

Enclosed please find herewith Decision of the Authority (05 Pages) in the matter of Motion for Leave for Review filed by M/s. Trans-Atlantic Energy (Private) Ltd. against the Tariff Determination dated November 19, 2018 for information, in Case No. NEPRA/TRF-443/TAEL-2017.

Encl: As above



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(Syed Safeer 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 NATIONAL ELECTRIC POWER REGULATORY AUTHORITY IN THE MATTER OF MOTION
FOR LEAVE FOR REVIEW FILED BY M/S TRANS-ATLANTIC ENERGY (PRIVATE) LIMITED AGAINST
THE TARIFF DETERMINATION DATED NOVEMBER 19, 2018**

1. M/S Trans-Atlantic Energy (Private) Limited ("TAEPL", "the petitioner", "the company") vide letter dated November 14, 2019 filed subject motion for leave for review ("review motion") with National Electric Power Regulatory Authority ("NEPRA", "the Authority") under rule 16(6) of the NEPRA (Tariff Standards and Procedure) Rules, 1998 read with Regulation 3(2) of NEPRA (Review Procedure) Regulations, 2009 and other applicable provisions of NEPRA law. In the instant review motion, the petitioner has requested the Authority to extend the time of achieving Financial Close ("FC") as specified in the Tariff Determination issued by NEPRA on November 20, 2018 ("the Tariff Determination" or "the Impugned Determination") for a period of six (06) months with effect from November 20, 2019 and also extend the validity and applicability of Tariff Determination.

2. TAEPL is a company setup to develop and operate 48.3 MW Wind Power Project ("Project") at Jhimpir, Sindh. For this purpose, the company was granted Letter of Intent ("LOI") by the Alternative Energy Development Board ("AEDB") on April 13, 2016. The petitioner was granted Generation License by the Authority on April 18, 2017. The Tariff Determination was issued on November 20, 2018 whereby a levelized tariff of US Cents 4.3464/kWh (Rs. 5.2157/kWh) was approved for TAEPL. Following term, which is relevant to the subject case, was approved in the Impugned Determination:

"The company will have to achieve financial close within one year from the date of issuance of this tariff determination. The tariff granted to the company will no longer remain applicable/valid, if financial close is not achieved by the company in the abovementioned timeline or its generation license is declined/revoked by NEPRA"

3. In view of the above term, the petitioner was required to achieve FC by November 19, 2019; failing which it is given that its tariff would have expired.

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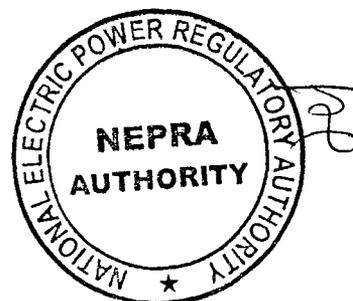
4. TAEPL in the subject review motion has stated that as per paragraph 50 (C) of Impugned Determination, the deadline to achieve FC was November 19, 2019. The petitioner informed that the Government of Pakistan ("GOP") and the Alternate Energy Development Board ("AEDB") did not proceed further with the Project through issuance of Letter of Support ("LOS") due to which it could not execute Project Agreements, including but not limited to, Implementation Agreement (IA), Energy Purchase Agreement (EPA) and Financing Documents with the lenders. The petitioner submitted that the achievement of FC was beyond its reasonable control and that it was actually precluded from achievement of FC.
5. TAEPL has referred to the decision of Cabinet Committee on Energy ("CCoE") dated March 29, 2019 which provides following:

All projects that have been issued LOIs and have been granted tariff by NEPRA Authority and issued generation license will be allowed to proceed ahead towards the achievement of their requisite milestones as per the RE Policy 2006. However, if the tariff validity period has elapsed, NEPRA will be requested for review of the same to make it consistent with the current market environment/conditions and consumer interest. Such review will include appropriate time extension to reach financial close.

Based on NTDC's confirmation of evacuation and the timeline decided for completion of the projects, the CPPA-G will consider granting of consent

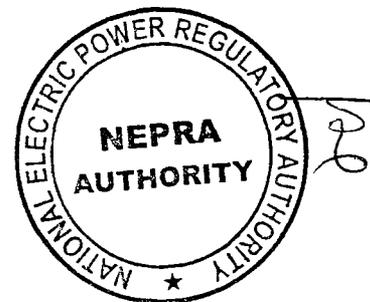
6. According to the petitioner, pursuant to above CCoE's decision, the National Transmission and Despatch Company Limited ("NTDCL") confirmed evacuation and thereupon the Central Power Purchasing Agency Guarantee Limited ("CPPAGL") on October 25, 2019 issued consent to purchase power from the Project. Thereafter, AEDB on November 7, 2019 conveyed the petitioner to submit Performance Guarantee and processing/legal fee for the issuance of LOS, i.e. after lapse of nearly one year. TAEPL submitted that it was left with only nine (9) days to achieve FC including but not limited to negotiations and execution of the IA, EPA and Financing Documents. It stated that provision of nine (09) days for achievement of FC is unprecedented, discriminatory, unreasonable and irrational.

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7. According to the Petitioner, the similarly placed other ten (10) wind power projects were initiated and supported by the Government of Sindh ("GOS") through various assurances that have ultimately led to their achievement of FC. TAEPL stated that it is entitled for the extension in FC as it was not provided similar facilitation by the AEDB. The petitioner also submitted that the timelines for the achievement of the Commercial Operations Date (COD) of the Project shall remain at par with above mentioned other wind power projects. It also stated to agree irrevocably and unconditionally to waive any liquidated damages/carrying cost that may be payable by the NTDCL/PPAGL in case there is delay to provide grid interconnection and evacuation prior to December 31, 2021.
8. Given the above, the petitioner prayed that the Authority may extend the timelines for achievement of FC for a period of six (6) months with effect from November 20, 2019 and that the validity and applicability of the Tariff Determination may also be extended up to May 20, 2020.
9. The Authority admitted the subject review motion on December 11, 2019 and decided to hold hearing on this matter. The petitioner vide letter dated January 28, 2020 submitted that Chief Executive Officer of the company will not be available in the country due to his personal engagements and requested to schedule the hearing in the matter after March 7, 2020. The hearing was fixed and adjourned multiple times, during March-June 2020 due to COVID-19 and sometimes upon the request of the petitioner and then finally was scheduled for June 23, 2020. Notices of hearing were sent to the petitioner and relevant stakeholders on June 09 & 11, 2020. The hearing in the matter was held on June 23, 2020 (Tuesday) at 12: 15 P.M. via zoom which was attended by the petitioner and representatives of AEDB. In response to notices of hearing, CPPAGL and AEDB submitted their comments
10. During the hearing, the petitioner presented its submissions given in the review motion and requested for the extension in the time to achieve FC as specified in the Tariff Determination. CPPAGL submitted that TAEPL has been enlisted in Category-II of the CCOE decision dated March 29, 2019 which states that if the tariff determination has been done since more than one year or if the tariff validity period has elapsed, NEPRA would be requested for review of

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the same to make it consistent with the current market environment/conditions and consumer interest. AEDB also referred the decision of CCOE and requested the Authority to review the tariff determination of TAEPL considering the technology advancement and cost reductions. After discussions during the hearing, the legal representative of the petitioner submitted that it is also willing to get its tariff rationalized based on current market conditions by filing tariff modification petition, however, while doing so NEPRA should also rationalize Project's technical parameters that are currently very aggressive.

Analysis and Decision of the Authority

11. The only ground the petitioner has put forth for the extension of FC is the delay caused by Government Entities for the issuance of LOS. It is noted that similar time was allowed to other eleven (11) Nos. wind power projects whose tariff determination were issued one day earlier than TAEPL, i.e. November 19, 2018. All those eleven wind power projects have achieved FC in the given timeline, however, TAEPL could not meet that timeline. On this point, the petitioner argued that it was not facilitated by AEDB as much as GOS facilitated the other wind power projects which led them to achieve FC. AEDB did not support this view of the petitioner and asked for the redetermination of the tariff for the Project.

12. The Authority has considered these submissions and is of the view that the extent of facilitation by the relevant agencies may not be considered a cogent reason for the extension in FC. Further, the Authority has also noted that the prices of solar and wind technologies have been decreasing continuously over the last few years. This is the reason that the Authority specifies the time of achieving FC in the tariff determinations (wind and solar) in order to ensure that projects are developed on prevailing prices of equipment. The projects being developed lately should be on the reduced prices of equipment prevalent at that point of time. Extension of FC time would be tantamount to granting tariff to TAEPL based on the equipment prices of 2018 which may not be considered prudent. As commented by CPPAGL and AEDB and also agreed by the TAEPL during the hearing, the Authority is of the view that the petitioner may consider filing a tariff petition with NEPRA for the determination of new tariff.



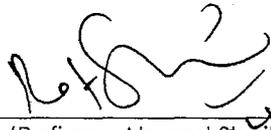


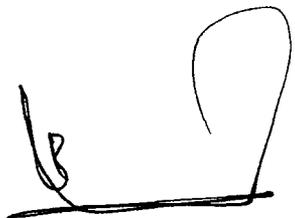
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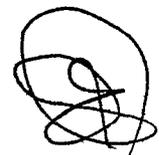
13. The Authority considers that the request of the petitioner for the extension in the timeline of achieving FC is not maintainable. In view thereof, the instant review motion is hereby disposed of as dismissed.

AUTHORITY


(Saif Ullah Chattha)
Member 11.9.2020


(Rafique Ahmed Shaikh)
Member 11/9/20


(Eng. Bahadur Shah)
Member


(Rehmatullah Baloch)
Vice Chairman 2/14/9/2020


(Tauseef H. Farooqi)
Chairman


28.09.20

