National Electric Power Regulatory Authority
Islamic Republic of Pakistan

Registrar

NEPRA Tower, Attaturk Avenue (East), G-5/1, Islamabad
Ph: +92-51-9206500, Fax: +92-51-2600026
Web: www.nepra.org.pk, E-mail: registrar@nepra.org.pk

NEPRA/R/ADG(Trf)/TRF-299/PQEPCPL-2015/ 2295-99 February 12, 2025

Chief Executive Officer,
Port Qasim Electric Power Company (Pvt.) Limited,
House No. 63, Street No. 5, Sector F-8/3,
Islamabad

Subject: **Decision of the Authority in the matter of motion for leave for review filed by Port Qasim Electric Power Company (Private) Limited against the Decisions of the Authority in the matter of Fuel Price Adjustments**

Enclosed please find herewith the subject Decision of the Authority along with Decision of Ms. Amina Ahmed, Member (NEPRA) (total 08 pages) regarding motion for leave for review filed by Port Qasim Electric Power Company (Private) Limited against the Decisions of the Authority in the matter of Fuel Price Adjustments in Case No. NEPRA/TRF-299/PQEPCPL-2015.

Enclosure: **As above**

Wasim Anwar

(Wasim Anwar Bhinder)

Copy to:

1. Secretary, Ministry of Energy (Power Division), 'A' Block, Pak Secretariat, Islamabad
2. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad
3. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad
4. Chief Executive Officer, Central Power Purchasing Agency Guarantee Limited (CPPA-G), Shaheen Plaza, 73-West, Fazl-e-Haq Road, Islamabad

DECISION OF THE AUTHORITY IN THE MATTER OF MOTIONS FOR LEAVE FOR REVIEW FILED BY PORT QASIM ELECTRIC POWER COMPANY (PRIVATE) LIMITED AGAINST DECISIONS OF THE AUTHORITY IN THE MATTER OF FUEL PRICE ADJUSTMENTS

1. BACKGROUND

1.1. Port Qasim Electric Power Company (Private) Limited (PQEPCL) has set up a 2x660MW coal power plant at Port Qasim, Karachi. The Authority approved Upfront Coal Tariff of PQEPCL vide its decision dated February 13, 2015. The Authority revised the fuel price adjustment mechanism determined in the Upfront Coal Tariff vide its decision dated September 23, 2016. PQEPCL achieved Commercial Operation Date (COD) on April 24, 2018. The decision in the matter of tariff adjustment at COD was issued on September 27, 2019.

1.2. In pursuance of the approved mechanism, the Authority has been issuing monthly fuel price adjustment decisions since November 2017. PQEPCL filed Motions for Leave for Review against decisions of the Authority in the matter of fuel price adjustment for the months of November 2017 to January 2020. Decision of the Authority in the matter was issued on March 03, 2020.

2. FILING & ADMISSION OF MOTION FOR LEAVE FOR REVIEW

2.1. Argus/McCloskey's published coal price index also specifies price differentials to API 4. It has been provided in the index report that to calculate a fixed price, apply the differential to the API 4 contract. Accordingly, price differentials have been applied since October 2021 which was part of January 2022 fuel price adjustment.

2.2. Being aggrieved of the application of price differentials, PQEPCL filed motions for leave for review (MLR) against decisions of the Authority in the matter of fuel price adjustments (FPA). The Authority admitted the motions for leave for review filed by PQEPCL. The details of filing of motions for leave for review are provided hereunder:

FCC Month	Date of Decision	Date of Review	Date of Admission
January 2022	February 16, 2022	February 28, 2022	March 31, 2022
February 2022	February 24, 2022	March 01, 2022	March 31, 2022
March 2022	April 05, 2022	April 19, 2022	May 19, 2022
April 2022	May 16, 2022	May 27, 2022	June 22, 2022
July 2022	August 10, 2022	August 17, 2022	September 29, 2022
December 2022	January 11, 2023	January 23, 2023	February 20, 2023
March 2023	May 12, 2023	May 22, 2023	June 16, 2023
April 2023	June 9, 2023	June 15, 2023	July 26, 2023
May 2023	July 25, 2023	July 31, 2023	September 05, 2023
June 2023	August 8, 2023	August 11, 2023	September 28, 2023
July 2023	August 22, 2023	August 24, 2023	September 28, 2023
August 2023	September 22, 2023	October 9, 2023	November 23, 2023

2.3. Hearing in the matter was held on May 10, 2022 which was attended by the representatives of the Petitioner, CPPA-G, Sierra Vista Resources Pte Ltd, Bestway Cement, and Mr Asim

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Khawas, the coal commodity expert. Re-hearing in the matter was held on September 21, 2023.

3. GROUNDS OF APPEAL

3.1. PQEPCL filed subjects MLRs on following grounds:

i. The application of price differentials is in violation of Fuel Price Adjustment Mechanism dated September 23, 2016. It is against the PQEPCL's Coal Supply and Transportation Agreements. The application of price differentials before finalization of the Proceedings of Revision in Coal Pricing Mechanism is not justified. The Application of price differential does not reflect actual market conditions.

ii. Omission of Marine Insurance cost by PQEPCL in FPA request of December 2021

iii. Benchmark/Ceiling price of spot coal

4. ANALYSIS, DISCUSSION & DECISION OF THE AUTHORITY

4.1. Analysis, discussion and decision of the Authority on each of the grounds is provided in the succeeding paragraphs.

Application of Price Differentials

4.2. According to PQEPCL, NEPRA's contention to calculate fixed price by applying price differential to API 4 is in direct contradiction and violation of Clause 2 of the Order part of the Authority's decision dated September 23, 2016 in the matter of Suo Moto Review Proceedings in the Fuel Price Adjustment Mechanism, which is reproduced hereunder:

FCC = (((CP(RB) + Ft(m) + MI + OC — Discount) x HR/HV(RB)) x FC(Exch))		
Where:		
CP(RB)	=	Actual Weighted Average Richard Bay (South Africa) Coal Prices (CP) in US$/kg on the basis of Opening Inventory of coal and purchases of coal till the month immediately preceding the invoice month indicated in Argus/McCloskey's Coal Price Index (API 4) 6000 kCal/kg NAR
HV(RB)	=	Actual Weighted Average Heating Value (HV) (LHV) in Btu/kg of the coal imported from South Africa
HR	=	Heat Rate in Btu/kWh
Ft(m)	=	Actual marine freight computed on the basis of approved mechanism in US$/kg
OC	=	Other Charges to include all port and terminal charges etc. in US$/kg
MI	=	Marine Insurance in US$/kg
FC(Exch)	=	Average PKR to US$ exchange rate for the month

4.3. According to PQEPCL, NEPRA in its FPA decisions applied price differentials to the CP(RB) i.e. actual weighted average Richard Bay Coal prices. According to PQEPCL, it is clear that for the calculation of the FCC, the value required for the above component is the Actual Weighted Average Richard Bay (South Africa) Coal Prices (CP) in US$/kg indicated in Argus/McCloskey's Coal Price Index (API 4) 6000 kCal/kg NAR

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4.4. The Petitioner further submitted that FPA decisions were made without taking into consideration the Order dated September 23, 2016 and without applying the judicial mind. Therefore, the application of price differentials to calculate a fixed price of the API-4 has resulted in unjustified deductions in the Fuel Cost Component.

4.5. According to PQEPCL, the company negotiated and signed Coal Supply and Transportation agreements (CSA) on the basis of decision of the Authority dated September 23, 2016. According to PQEPCL, neither Argus nor the Order dated September 23, 2016, explicitly implied application of price differentials to API-4 contracts to calculate a fixed price.

4.6. According to the Petitioner, opinions of PQEPCL, coal suppliers, Argus agency and other relevant parties should have been considered before application of price differentials which has impacted its operations and aggravated its loss.

4.7. According to PQEPCL, issue of application of price differential has been included in the proceedings of revision of fuel price adjustment mechanism. NEPRA conducted Hearing in the matter on February 28, 2022. According to PQEPCL at this point application of price differential to API-4 contract is not justified as currently Order dated September 23, 2016 shall prevail which does not include application of differentials.

4.8. According to PQEPCL, coal suppliers have confirmed that application of price differentials by NEPRA are not in line with the actual market conditions, therefore, they cannot supply coal in case price differentials are applied to coal price index.

4.9. The Petitioner further submitted that for some shipments, application of 5500 price differentials resulted in higher price than the calculated coal price based on liner adjustment as per decision dated September 23, 2016. However, NEPRA did not approve the higher price.

4.10. The submissions of the Petitioner have been examined. The Authority vide its decision dated September 23, 2016 revised the fuel price adjustment mechanism determined in the Upfront Coal Tariff. The fuel price adjustment formula provided in the decision has been reproduced above.

4.11. The petitioner's contention that the application of price differentials violates the aforementioned fuel pricing mechanism is incorrect. According to the mechanism, the actual weighted average Richard Bay coal price, as indicated in the Argus/McCloskey Coal Price Index, is used for each month. The API-4 Index and price differentials are published in the same section of the Argus/McCloskey Coal Price Index Report. The report clearly specifies that price differentials should be applied to API-4 and then adjusted for actual heat value. This adjusted price, referred to as CP(RB) in the formula, represents the actual price of the lower quality coal, not the negotiated or voluntary trade discount a user may receive from the supplier, mentioned as 'Discount' in the formula.

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4.12. The application of price differentials was also recommended by the coal expert to determine a coal price reflective of its actual quality. During the hearings, the coal expert submitted that a linear price adjustment alone is insufficient. The expert highlighted that the cement industry imports coal based on the API-4 index but with discounts. Furthermore, Argus Media, the publishing agency of the coal price index, in its comments dated February 22, 2022, supported the application of price differentials for lower quality coal. The recently negotiated CSAs by the coal power plants include the application of price differentials on API 4 for lower quality of coal. Therefore, it is evident that price differentials are accepted in the market.

4.13. Regarding non-issuance of notice before incorporating price differentials of API-4, it is clarified that monthly FPA requests are processed without a hearing based on available information about the price of consumables/fuel. Accordingly, when the Authority became aware that Argus Media is publishing price differentials for low quality coal to API-4, these differentials were applied from January 2022. The Authority did not change the fuel price adjustment formula but simply applied the published puce of low-quality coal, for which no notice is required.

4.14. The Authority also rejects the contention that the application of differentials or discounts is not covered in the Coal Supply Agreement and should not be applied. The differential application reflects the actual price of low-quality coal, not a negotiated trade discount between the Independent Power Producer (IPP) and the supplier. The Tariff Rules clearly bind the Authority to pass prudent cost inputs to consumers, and in this case, the prudent cost is the published price of low-quality coal priced with differentials for API-4.

4.15. Considering the above, the Authority has decided to maintain its earlier decision in the matter.

Omission of Marine Insurance cost by PQEPCL in FPA request of December 2021

4.16. According to PQEPCL, it has omitted marine insurance cost of Rs. 111,039 of Shipment No. 202150 (MV Newport Eagle) from FPA request of December 2021. PQEPCL requested to include the omitted insurance cost in FCC of January 2022.

4.17. The submission of the Petitioner has been examined. The mistake is on part of PQEPCL and needs revision of December 2021 FPA decision which was not sought and instead requested to include in the FPA of January 2022 which was not allowed. Moreover, the Petitioner still has the opportunity to file review motion against FPA decision for the month of December 2021. Accordingly, the Authority has decided to maintain its earlier decision in the matter

Benchmark/Ceiling price of Spot Coal

4.18. According to PQEPCL, in FPA for the months of March - August 2023, NEPRA has capped the prices according to benchmark prices which are significantly lower than the prices of

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delivered coal as per the Guidelines for Procurement of Coal on Spot Basis dated January 02, 2023.

4.19. PQEPCL further submitted that the Guidelines themselves impose an unfair ceiling/benchmark price on the price of coal purchased on a spot basis. The regime propounded by the Guidelines and the FPA Decision unfairly place the burden on PQEPC of bearing the difference between the tendered spot price and the ceiling/benchmark price. The Guidelines are internally contradictory, as the procurement mechanism for spot purchase is discovery of market price through tendering; however, once the tendered market price is available, an artificial 'ceiling' on the price is imposed by the Guidelines contrary to the market price as discovered. This is directly in violation of the basic principle of the Tariff, i.e pass-through of fuel costs, which has been proved through actual tendering procedure conducted.

4.20. According to the petitioner, it specifically asserts and claims that, for spot purchases under the Guidelines, the full amount of the tendered price should be allowed to be recovered as fuel cost component to place PQEPC in the same position as it would have been under the normal regime as elaborated above. Failure or refusal to do so is already resulting in, and is sure to cause further, financial loss.

4.21. The submissions of PQEPCL have been examined. It is pertinent to mention that the Guidelines were prescribed after due process of law and providing opportunity of hearing to all coal power plants including PQEPCL, coal suppliers, coal consultant, CPPA-G and other stakeholders. The mechanism for calculation of benchmark/ceiling price of imported coal prescribed under Para XV of the Guidelines was finalized after consultation with the IPPs and none of them objected or filed review. Para XV provides that the delivered coal price of local spot coal in Rs./MMBTU should remain lower than the delivered imported coal price. In case, delivered price of spot coal is more than the imported coal price then the price of imported coal shall be used for allowing fuel cost component. Alternatively, IPPs can import coal as per existing mechanism.

4.22. The deduction of PQEPCL is in line with the prescribed mechanism in the guidelines. PQEPCL was well aware of this deduction before making the subject coal procurement. Therefore, there is no justification to approve cost of expensive coal procured by PQEPCL. In pursuance of the above clause, some deductions were also made in case of other similar plants, however, they did not file review in this respect. Accordingly, the Authority has decided to maintain its earlier decision in the matter.

5. DECISION OF THE AUTHORITY

5.1. 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

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reasons. The perusal of the Impugned Decisions 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 Decision. Therefore, the Authority is convinced that the subject motion shall not result in the withdrawal or modification of the Impugned Decisions, hence all the motion for leave for review are hereby dismissed.

AUTHORITY

Mathar Niaz Rana (nsc)
Member

Engr. Maqsood Anwar Khan
Member

Engr. Rafique Ahmed Shaikh
Member

*

Amina Ahmed
Member

Waseem Mukhtar
Chairman

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(*) My decision is attached.

DECISION OF MS. AMINA AHMED (MEMBER LAW)

The majority view of the Authority appears to be to disallow all three claims. With utmost respect, I disagree with the reasoning and decision of my learned colleagues with regards to the manner/timing of application of price differential to API 4. The rationale supporting my divergence from the majority determination is set out below.

Whilst there is little doubt that price differentials to API 4[1] should be applied by NEPRA, NEPRA could not and should not have commenced applying such price differentials to API 4 from January 2022 onwards[2] and instead should have first amended the formula set out in its 2016 decision[3], making the revised formula effective after the term of the then valid coal supply agreements entered into by the imported coal projects (the **CSAs**) or at the very least after giving IPP a few months to renegotiate their CSAs.

The reasons why the formula should have been first amended are as follows:

(i) *Plain reading*: from plain reading of the Argus/McCloskey coal price index report (the **Report**) it is clear that the coal price differential to API 4 is not embedded in (and therefore not necessarily part and parcel of) API 4.

(ii) *Global practice*: the consultants confirmed (during the hearing on 21 September 2023) that the price differential is **not** embedded in / an integral part of API 4 and in response to a query on this matter stated that there are various instances where parties have chosen to use API 4 as the benchmark without necessarily applying the published differentials.

(iii) *NEPRA's own understanding / actions in relation to the matter*: the issues framed for hearing **on the revision in coal pricing mechanism** (which was held on 28 February 2022) include whether the application of price differentials to API4 is justified. It is interesting how NEPRA first started applying the differentials (on the basis that it is part and parcel of the API 4 index), then thought about whether the mechanism should be revised to apply the same.

As far as the reasons set out in the decision for disallowing the IPPs review motion on this matter is concerned, it is blatantly incorrect to state that "the Report clearly specifies that price differentials <u>should</u> be applied to API-4 and then adjusted for actual heat value, i.e. for lower quality coal."[4] The Report does not mandate the use of differentials; instead, it has to be interpreted to mean that in the event/where differentials are opted then the stipulation provided in the Report that "to calculate a fixed price, apply the price differential to the API4 contract and adjust for heat content" shall be applied. Further, the reasoning that differentials are published in the same section of the Report, so they must be used to compute the adjusted API4 index, is quite irrelevant. It is not the placement of the table that matters but rather the wording/intent of the Report. Had the differentials been set out on the next page of the Report, would NEPRA not have applied them?

With regards to the point in the decision stating that the consultants recommended that price differentials should be applied, I highly doubt that these consultants recommended such application without revision to the formula and without permitting some time to the IPPs to renegotiate their CSAs. Even if they did,

[1] As published by Argus/McCloskey in the coal price index report
[2] For coal procured in October 2021 onwards
[3] After reviewing its own decision as it did in 2016, especially since the 2016 decision provides for an opener which states that "*the pricing mechanism shall be reviewed after three years when the actual coal price, quality, quantity, source, etc., data is available. It can be reviewed earlier if it is noted that the current mechanism leads to a coal price that is unrealistic and detrimental to both the interest of consumers and the project sponsors*".
[4] Interestingly, if this is NEPRA's position on the matter, there is absolutely no justification for not applying the positive differentials.

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they are not the regulator. NEPRA is and NEPRA is responsible for regulating the sector in accordance with the law and it should not have, in its zeal to slash tariffs, forgone following the due process of law.

On the remaining issues, I agree with the reasoning and determination of my learned colleagues.

Amina Ahmed

Amina Ahmed
Member Law

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