



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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Registrar

No. NEPRA/TRF-72/EEL-2007/2226-2228
April 01, 2011

Subject: Decision of the Authority in the matter of Motion for Leave for Review filed by Engro Powergen Qadirpur Ltd. (formerly Engro Energy Ltd.) against the Authority's COD Decision Dated November 03, 2010 - Intimation of Decision of Tariff pursuant to Section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997)

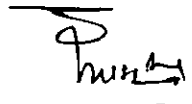
Dear Sir,

Reference is made to this office letter No. NEPRA/R/TRF-72/EEL-2007/3542-3544 dated November 03, 2010 whereby decision of the Authority in the matter of Engro Powergen Qadirpur Ltd. Tariff Adjustments at Commercial Operation Date was sent. Please find enclosed herewith the decision of the Authority along with Annexes-I & II (20 pages) in the matter of Motion for Leave for Review filed by Engro Powergen Qadirpur Ltd. against above referred decision of the Authority in Case No. NEPRA/TRF-72/EEL-2007.

2. The decision is being intimated to the Federal Government for the purpose of notification of adjustment in the approved tariff through the official Gazette pursuant to Section 31 (4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997) and Rule 16(11) of the National Electric Power Regulatory Authority (Tariff Standards and Procedure) Rules, 1998.

3. Please be informed that the Reference Tariff earlier intimated vide para 13 of the Authority's decision dated November 03, 2010, stands revised to the extent as detailed in para 4 of the subject decision of the Authority along with Annexes-I & II. Please note that Order of the Authority at para 4 along with Annex-I & II is required to be notified in the official Gazette.

Enclosure: As above


(Syed Safeer Hussain)

Secretary
Cabinet Division,
Government of Pakistan
Cabinet Secretariat
Islamabad

CC:

1. Secretary, Ministry of Water & Power, Islamabad.
2. Secretary, Ministry of Finance, Islamabad.

**DECISION OF THE AUTHORITY IN THE MATTER OF MOTION FOR
LEAVE FOR REVIEW FILED BY ENGRO POWERGEN QADIRPUR LIMITED
(FORMERLY ENGRO ENERGY LIMITED) AGAINST THE AUTHORITY'S DECISION
AT COD STAGE DATED NOVEMBER 03, 2010**

1. Background

- 1.1 Engro Powergen Qadirpur Limited (formerly Engro Energy Limited) [hereinafter "EEL"] vide letter dated November 15, 2010 filed motion for leave for review (hereinafter the "review motion") in pursuance of Rule 16(6) of the NEPRA Tariff Standards and Procedure Rules, 1998 (hereinafter the "Tariff Rules") against the decision of the Authority dated November 03, 2010 regarding tariff adjustments at the Commercial Operations Date (COD) (hereinafter the "COD decision"). EEL subsequently vide letter dated December 31, 2010 retracted some of the submissions made in the review motion.

2. Proceedings

- 2.1 The review motion was admitted by the Authority on November 25, 2010. The hearing in the matter was held on December 13, 2010 at NEPRA, main office, Islamabad. EEL, Private Power and Infrastructure Board (PPIB), National Transmission and Despatch Company Limited (NTDC) through WAPDA Privatization Power Organization (WPPO) and other stakeholders participated in the hearing. Written comments were also received from PPIB and NTDC.

3. Issues

The review motion was based on the following grounds:

- a) Matters relating to EPC cost and non-EPC costs (tariff true up – limited scope)
- b) Internal Rate of Return (IRR)/ Return on Equity (ROE) zero terminal value of the plant
- c) IRR / ROE compounding request
- d) Delay in impugned tariff ruling, petitioner's loss
- e) Reduction in ROE/IRR

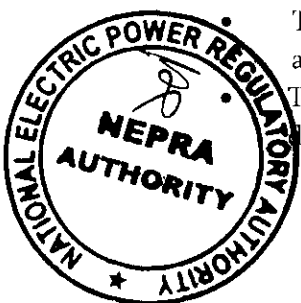
After hearing the parties including stakeholders and other participants in the hearing, the perusal of documents submitted by EEL, and based on the EEL's submissions and comments of the stakeholders, issue wise discussion and decisions are given in the proceeding paragraphs.

3.1 Matters relating to EPC cost and non-EPC costs (tariff true up -- limited scope)

- 3.1.1 EEL while referring to the Authority's determination dated July 18, 2007 (hereinafter the "original tariff determination") and paragraph 1.2 of the Authority's COD decision has submitted as under:

The original tariff determination was a legally binding document and is also referred to as an applicable document under the NEPRA laws.

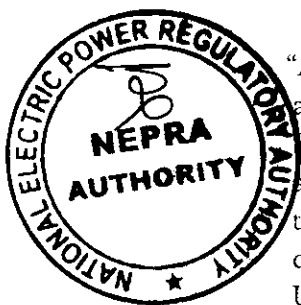
The Authority unilaterally assailed the original tariff determination and proceeded to determine the tariff afresh. The Authority exceeded the scope of COD adjustments.



- In the case of EEL scope of tariff true-up at COD stage has been enlarged in an arbitrary and capricious manner compared to other IPPs (i.e. Atlas Power, Attock Gen and Nishat Power) where tariff true up scope was limited to the matters mentioned in their tariff ruling.
- Authority's COD decision is against the letter and spirit of law and contravenes the constitutional protections available and tariff ruling is therefore illegal and liable to be reviewed and reconsidered.
- Without prejudice to the argument that the original tariff determination was binding and could not be modified except as provided therein, the Authority had only one of following two options while considering tariff true-up:
 - a) The Authority could have treated the EPC cost and the non-EPC costs as "non-openable items" (as in the case of Atlas Power, Attock Gen and Nishat Power)
 - OR
 - b) The Authority may have determined all the costs afresh based on documentary evidence and the 'prudence test', as mentioned in Rule 17 of the tariff rules.
- EEL may be constrained to claim "Change in Law" and/or "Lapse of Consent" under the Implementation Agreement and seek recourse provided thereunder including compensation where such agreement is terminated in accordance with the provisions thereof.
- The Authority was and is not constrained by the guidelines to allow a cost that has been prudently incurred and or which the Authority considers just and equitable to allow.

3.1.2 EEL submitted during the hearing that it was allowed EPC cost of US\$ 160.335 million in the original tariff determination. However, in the Authority's COD decision its EPC cost has been slashed by US\$ 8.335 million inspite of the fact that there was overrun in its overall project cost. EEL further submitted that its actually incurred EPC cost works out to US \$ 154.413 million. According to EEL the ECC decision referred to by the Authority was for the protection of investors and is meant for cases where EPC cost exceeds the originally determined cost. However, in the case of EEL, EPC cost did not exceed EPC cost allowed in the original tariff determination.

3.1.3 PPIB during the hearing submitted that they are forwarding a proposal for approval by the competent Authority that treatment already allowed for the exchange rate variation of US dollars, Euros, Japanese Yen and Pound Sterling should also be extended to the Chinese currency. PPIB vide their letter No. 6(618)/PPIB/10/Fin of December 2010 submitted its written comments. PPIB's comments on the instant issue are as follows:



"As per decision of the ECC in the meeting held on 15th May, 2007, one time adjustment in EPC cost due to exchange rate parity between RMB/US\$ is not allowed. However, PPIB has pointed out during the tariff hearing held on 13th December, 2010 at NEPRA main office that the Authority may look into the matter with the view that the EPC cost US\$ 160.335 million has been allowed to the company in the tariff determination whereas the company has actually incurred and claimed EPC cost of US\$ 154.413 million for true-up cost at Commercial Operation Date."

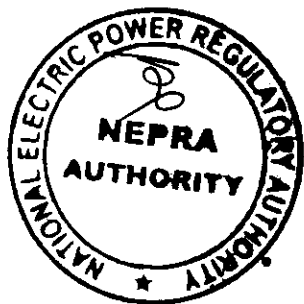
3.1.4 WPPO of NTDC, during the hearing, submitted that EEL project was commissioned three months earlier than the required commercial operations date and made savings on account of interest during construction and other heads. He submitted that the Authority may consider actually incurred cost in this case.

3.1.5 WPPO written comments on behalf of CPPA (both of NTDC) given vide their letter No. GM(WPPO)/DGMF/664 dated January 14, 2011 in the matter of adjustments in EPC cost of EEL are as follows:

- "The EPC cost US \$ 160.335 million not based on firm EPC contract has been allowed to the Company in the tariff determination.
- The Company has actually incurred and claimed EPC cost of US \$ 154.413 million for true-up cost at Commercial Operation Date.
- Authority allowed US \$ 152.00 million disallowing US \$ 2.90 million on the plea that exchange rate parity between RMB/US\$ has not been mentioned in the ECC decision 65/5/2007 dated 23-05-2007.
- The project is under cost plus regime and the EPC of US\$ 160.335 million allowed by the Authority in the original determination can be reviewed/reduced on the actual cost at the time of COD.
- It is also a fact that cost incurred due to variation in US\$ and RMB is also a contractual cost. The company very transparently presented it to the Authority, meaning thereby that if the Company shifts the exchange risk to EPC Contractor without any shadow of doubt the EPC contract will rise by certain proportion but this risk was borne by the Company and overall cost of the EPC remains lower than allowed in the original determination.

Authority may look into the matter with the view that Engro managed to complete its project three months ahead of RCOD. This factor distinguish Engro's project from others. Sponsors of such projects merit appreciation.

Therefore Authority may review the decision of disallowing the cost incurred due to exchange variation in RMB and US\$ and may allow this cost as EPC."



3.1.6 The Authority has considered the submissions of EEL as well as of the stakeholders and observed that the following submissions merit consideration:

- The EPC cost claimed by EEL US \$ 154.413 million (including compensation payable in accordance with the EPC contract owing to difference in exchange rate parity between RMB/US\$) is lower than the EPC cost of US\$ 160.335 million allowed in the original tariff determination.
- EEL took the risk of exchange rate fluctuation between RMB/US\$ in the case of EPC contract. Had EEL shifted this risk to the EPC contractor, the amount of EPC contract would have been higher than US\$ 152.000 million.
- EPC cost of US\$ 154.413 million has been actually incurred by EEL.
- ECC decision no. ECC-65/5/2007 dated: 23 May, 2007 relied upon by the Authority in arriving at the decision of disallowing compensation payable in accordance with the EPC contract owing to difference in exchange rate parity between RMB/US\$ would have been relevant if there had been overrun in the EPC cost. In the instant case the EPC cost actually incurred (including compensation payable in accordance with the EPC contract owing to difference in exchange rate parity between RMB/US\$) is lower than the EPC cost allowed in the original tariff determination.

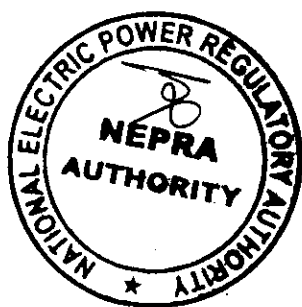
3.1.7 Keeping in view the submissions of EEL and stakeholders including NTDC and PPIB, the Authority hereby allows compensation payable in accordance with the EPC contract owing to difference in exchange rate parity between RMB and US\$. The total EPC cost after incorporating



exchange rate parity as claimed by EEL, now stands at US\$ 154.413 million excluding duties and taxes and inclusive of access road, and is hereby allowed.

3.1.8 EEL, with regard to its request for allowing EPC cost of US\$ 160.335 million as allowed in the original tariff determination, has not submitted any new ground or evidence. The Authority has already discussed, in detail, the reasons for rejecting EEL's request in the COD decision. The Authority also observed that EEL has wrongly stated some of the facts regarding tariff true-up of other IPPs. In the absence of any new ground or evidence, EEL's request to allow US\$160.335 million cannot be accepted, and is therefore rejected.

3.1.9 The Authority also examined EEL's request to allow over-runs in the cost of colony and non-EPC costs. The net cost over-runs claimed by EEL which have not been allowed by the Authority are as follows:



	Allowed by the Authority in the original tariff determination US \$ in million	Actual expenses incurred as claimed by EEL US \$ in million	Cost overruns/ (savings) according to EEL US \$ in million
Colony	3.500	5.183	1.683
Administrative cost of project company	1.940		
Construction management	2.743		
Utilities during construction	0.500		
Fuel cost during testing	0.500		
First fill of lubes & chemicals	0.500		
	6.183	10.564	4.381
Financing fees	2.504	3.098	0.594
	12.187	18.845	6.658
Less: savings in other non-EPC costs	8.696	8.166	(0.530)
	20.883	27.011	6.128

3.1.10 The Authority observed with respect to overruns in the cost of colony, that at the time of original tariff determination EEL had stated that due to rise in the prices of steel and other construction materials the cost for residential colony be assessed at US\$ 4.100 million as against US \$ 3.000 million given in the feasibility report. However, the Authority considered that US \$ 3.500 million was reasonable cost for housing colony and therefore allowed the same in its original tariff determination. Hence it was established at the time of original tariff determination that only US \$

3.500 million will be allowed by the Authority. EEL is now claiming overruns in colony cost primarily on the same grounds i.e. increase in construction cost, which were already considered by the Authority at the time of original tariff determination and decision of the Authority on this subject was already known to EEL before actually incurring the expenditure. The Authority cannot allow exorbitant colony costs which in the opinion of the Authority are not prudent.

- 3.1.11 EEL vide letter dated February 14, 2011 (received on February 15, 2011) submitted further evidences of non-EPC costs. The Authority observed that these further evidences should have been submitted earlier along with the tariff adjustments request at COD stage on April 19, 2010. Further, EEL failed to submit these evidences at the time of filing its review motion on November 15, 2010 or at the latest at the time of hearing of the said review motion on December 13, 2010. These evidences were not even submitted by January 28, 2011 in accordance with the submission made in EEL's letter dated January 20, 2011. The Authority observed that submission of further documentary evidences at this belated stage should not be entertained by the Authority. However, with a view to give a fair chance to EEL, and to comply with the principles of natural justice, the Authority decided to analyze the additional evidence submitted by EEL. The delay in finalization of Authority's decision in the matter of review motion is, however, solely attributable to EEL.
- 3.1.12 The Authority has noticed that the nature of non-EPC costs is such that no change from the determined costs is allowed in them. The Authority also found that in its decisions at COD stage of other IPPs, no change in the amount of non-EPC costs as originally determined was allowed, unless mechanism for change had already been provided in the relevant tariff determination, irrespective of the actual expenses incurred. Based on the same principle no cost over runs in non-EPC costs are allowed to EEL.
- 3.1.13 Notwithstanding the already established principle as stated above, for arguments sake even if the Authority was to allow recovery of all costs, after analyzing the latest evidences submitted by EEL it has been observed by the Authority that number of expenses have been claimed by EEL as construction management, etc. which could not be considered as prudent by the Authority such as costs of a dinner and party boat hiring, gifts, expensive club subscriptions, purchase of LCD TV sets, purchase of expensive mobile sets and cameras, purchase of expensive vehicles like Toyota Camry, Toyota 2.0 D for security purposes, cost of trip to India for renewable energy conference and field visit to Thar which obviously do not relate to the current project of EEL, etc. The Authority as a matter of principle cannot allow extravagant expenses like those stated above.
- 3.1.14 It was also observed by the Authority that at the time of original tariff determination EEL had requested for allowing cost of construction management, etc. of US\$ 10.030 million. However, it was assessed by the Authority as US\$ 6.183 million in the original tariff determination. Thus the request of EEL for allowing costs of US \$ 10.030 million on this account was not considered appropriate by the Authority at the time of original tariff determination. The Authority cannot change its earlier assessment of the same cost at COD stage solely on the ground that this cost has now been actually incurred.

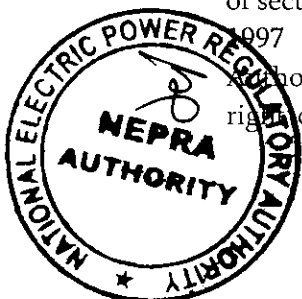
- 3.1.15 The Authority observed with respect to financing fee that at the time of original tariff determination EEL had requested for allowing financing fee of US\$ 3.330 million. However, it was assessed by the Authority as US\$ 2.504 million at the time of original tariff determination and was allowed as such while deciding COD tariff adjustments. In the absence of any new ground the Authority maintains its original decision on this cost.
- 3.1.16 The Authority further observed that EEL has been changing its submissions regarding the non-EPC costs incurred. For instance, security charges were claimed as US\$ 0.693 million in detail submitted on October 28 2010 while the same were claimed as US \$ 1.074 million in the documents submitted in February, 2011.
- 3.1.17 WPPO's written comments on behalf of CPPA (both of NTDC) given vide their letter No. GM (WPPO)/DGMF/664 dated January 14, 2011 in the matter of adjustments of non-EPC costs read as follows:

"The Authority's decision is in line with other tariff determinations and as per standard practice."

- 3.1.18 The Authority after giving all the reasonable opportunity to EEL to substantiate its claim and after considering all the evidences submitted by EEL (including 99 files of supporting documents submitted on February 15, 2011); in the light of grounds detailed above and in the Authority's COD decision; maintains its decision of not allowing cost over-runs in the cost of colony and non-EPC costs.

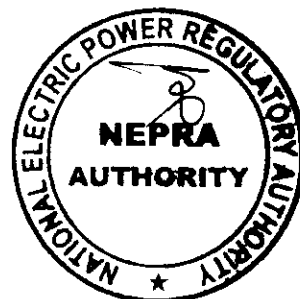
3.2 IRR/ROE zero terminal value of the plant

- 3.2.1 EEL has submitted in its written comments that return on equity component was calculated using zero terminal value in the original tariff determination which decision has been revised in the Authority's COD decision. EEL has further submitted that the Authority has not complied with the applicable procedural law in relation to the change in IRR calculation. EEL has also sought special incentive/return on early commissioning of the project.
- 3.2.2 EEL during the hearing held on December 13, 2010 submitted that the power purchase agreement of EEL is for 25 years and on its completion they would not be able to use terminal value and secondly when the determination was done no terminal value was assumed. PPIB has supported view point of EEL on this ground, whereas WPPO has submitted that they fully agree with the revision of the return on equity already determined by the Authority at the time of COD adjustments.
- 3.2.3 The Authority in its COD decision has observed that in the original tariff determination EEL was erroneously allowed treatment of a BOOT project and was allowed redemption of its equity. The Authority considers that in the original tariff determination while calculating IRR the terminal value of equity was erroneously omitted. This was not only against the GOP Guidelines for Determination of Tariff for IPPs as are being followed by the Authority pursuant to sub-section 6 of section 7 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the NEPRA Act) but also inconsistent with other tariff determinations given by the Authority to other IPPs. The Authority understands that this calculation error does not create any right of EEL. The Authority also considers that it is within its jurisdiction to rectify any error



committed in the calculation of any tariff component which is inconsistent with the guidelines given by the GOP for determination of tariff for IPPs. It is understood in the sector/industry that the first determination which is given at the feasibility stage is for reference and all the adjustments are made at the COD stage. The status of the original determination is that of "provisional", as the determination at the COD stage settles and adjusts all the components of tariff in the definite manner. The view is also supported by the verdict of the superior courts and a decision of the Lahore High Court, Lahore in the Haj case reported as 2007 PLD 550 whereby it was held that "Authorization having been given by the authorities for Haj 2007 were provisional, therefore, no vested right of nominees could arise with respect thereto; in any event such provisional nominees could conveniently compete in a selection process of the Organization for Hajj 2007 that was framed by authorities strictly in accordance with law".

- 3.2.4 Based on the above judgment of the Honourable High Court, it is clear that no vested rights arise pursuant to a provisional authorization/decision of the Authority. EEL knew that the Authority shall make all adjustments at the time of COD through its determination which has now been made, *inter alia*, in accordance with the guidelines issued by the Government of Pakistan for Determination of Tariff for IPPs.
- 3.2.5 The Authority also finds that the principle of "estoppel" does not apply against the provisions of law. Reliance in this regard could be placed on the judgments of superior courts cited as, PLD 2005 SC 819, PLD 2006 Karachi 10 and 2003 CLC 18.
- 3.2.6 Furthermore, the Authority also cannot discriminate among the investors by giving different treatment to different investors. The Authority is obliged to apply the law correctly, and in case of any error in applying the law due to any mistake or omission, the same shall be rectified by the Authority on suo motto basis or on the application of any party. In this regard the Authority has placed its reliance on 2009 PTD 1187 Income Tax Tribunal and 2007 MLD 1858 Sindh High Court, Karachi.
- 3.2.7 Keeping in view the principle of correct application of law, principles of natural justice & fairness and while performing its functions under the Act generally and under sub-section 6 of section 7 of the NEPRA Act in particular read with the Tariff Rules and GOP Guidelines, the Authority has revised the erroneous treatment given in the original tariff determination allowing redemption of equity to EEL.
- 3.2.8 Keeping in view the above mentioned facts, the facts stated in the Authority's COD decision and the fact that neither there is any error on the face of record nor any new/additional ground has been submitted by EEL, the Authority maintains its earlier decision.



3.3 IRR/ ROE compounding request

- 3.3.1 EEL has submitted that paragraph 7.2 of the Authority's COD decision does not correctly state the factual position as pre-COD return should be compounded on monthly basis as happens in the case of post COD return.
- 3.3.2 The Authority observed that EEL has misstated the facts regarding compounding of return on equity. The factual position is that post COD return on equity is computed assuming annual recovery of return. Further, even in the case of debt, monthly recovery of interest after COD is not allowed. The Authority furthermore observed that annual compounding for pre COD return on equity has been allowed by the Authority to all IPPs' including EEL. In view of these facts the Authority maintains its original decision of allowing annual compounding for pre COD return on equity.

3.4 Delay in impugned tariff ruling, petitioner's loss

- 3.4.1 EEL has submitted that delay in issuance of the impugned tariff ruling has cost EEL Rs. 13.5 million in the form of delayed CPP. EEL has requested that this cost be allowed in the form of pass through item under the PPA.
- 3.4.2 The Authority has already communicated to EEL vide letter No. TRF-72/3768-78 dated November 05, 2010 that EEL is not representing factual position with regard to delay in issuance of the Authority's COD decision. The main reason for delay in issuance of the said decision is that complete information was not provided by EEL along with its tariff adjustment request. The Authority started issuing reminders to EEL seeking further information from May 11, 2010. However, the information sought by the Authority was provided by EEL in bits and pieces, without following the formats prescribed by the Authority. During the processing of case last information / clarification was provided by EEL on October 14, 2010. Upon receipt of final information/clarification the Authority decided the case on November 03, 2010. The Authority had made all out efforts to decide the COD adjustment request of EEL at the earliest. However, the unnecessary delay in providing requisite information by EEL resulted in some delays. In view of this fact EEL's request for allowing the said cost of Rs. 13.5 million as a pass through is not at all justified. Hence EEL's request is hereby rejected.

3.5 Reduction in ROE/IRR

- 3.5.1 EEL has stated that the consequence in aggregate of the Authority's COD decision is that IRR of EEL has been reduced to mere 13% which is injustice to the most efficient sponsors in the Pakistan's power industry.
- 3.5.2 The Authority observed that EEL is basing its computation of IRR on project cost inclusive of cost overruns which have not been allowed by the Authority. EEL's basis for computation of IRR is therefore flawed. The Authority ensures IRR on the basis of costs allowed by it, and not on the basis of costs claimed by EEL. In view thereof, this ground raised by EEL does not merit any further consideration. Hence it is hereby rejected by the Authority.

4. ORDER

Pursuant to Rule 16(11) of the NEPRA Tariff Standards & Procedures Rules, 1998 Engro Powergen Qadirpur Limited (formerly Engro Energy Limited) [EEL] is allowed to charge, on the basis of revised net dependable capacity established on the basis of test jointly carried out by the Central Power Purchasing Agency (CPPA) of the National Transmission and Despatch Company Limited (NTDC) and EEL at the time of COD, the following tariff for delivery of electricity to the CPPA of the NTDC:

REFERENCE TARIFF

Tariff Components	Year 1 to 10	Year 11 to 25	Indexation
Capacity Charge (PKR/kW/Hour)			
Fixed O&M - Foreign	0.0096	0.0096	US\$/PKR & US CPI
- Local	0.1366	0.1366	WPI
Insurance	0.0630	0.0630	Nil
Cost of working capital	0.0537	0.0537	KIBOR
Debt service	0.7422	-	LIBOR
Return on equity	0.3438	0.3438	US\$/PKR
Return on equity during construction	0.1265	0.1265	US\$/PKR
Total Capacity Charge	1.4754	0.7332	
Energy Charge Rs./kWh			
Fuel cost component (Gas)	2.7628	2.7628	Fuel price
Variable O&M - Foreign	0.1917	0.1917	US\$/PKR & US CPI
- Local	0.0381	0.0381	WPI

Note:

- Capacity Charge Rs./kW/hour is applicable to dependable capacity at the delivery point.
- Dispatch criterion will be the Energy Charge.
- The above tariff is applicable for a period of 25 years commencing from the date of the Commercial Operations.
- Component wise tariff for operation on permeate gas is indicated at Annex-I and Debt Service Schedule at Annex-II.

I) Adjustment in Insurance Component

Insurance component of reference tariff shall be adjusted as per actual on yearly basis upon production of authentic documentary evidence by EEL according to the following formula:

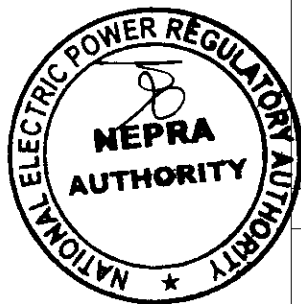
$$\text{Insurance Component (Revised)} = \text{Rs.0.0630 per kW per hour} / (1.35\% \times \text{US\$ 154.413 million}) \times \text{AP}$$

Where:

$$\text{AP} = \text{Actual Premium subject to maximum of 1.35\% of the adjusted EPC}$$

II) Pass-Through Items

No provision for income tax has been accounted for in the tariff. If EEL is obligated to pay any tax on its income, the exact amount paid by the company shall be reimbursed by NTDC to EEL on production of original receipts. This payment will be considered as a pass-through (as




Rs./kW/hour) hourly payment spread over a 12 months period in addition to the capacity purchase price proposed in the reference tariff. Furthermore, in such a scenario, EEL shall also submit to NTDC details of any tax shield savings and NTDC shall deduct the amount of these savings from its payment to EEL on account of taxation.

Withholding tax is also a pass-through item just like other taxes as indicated in the government guidelines for the determination of tariff for new IPPs. In revised tariff table withholding tax number is indicated as reference and NTDC shall make payment on account of withholding tax at the time of actual payment of dividend subject to maximum of 7.5% of 15% of reference equity i.e. hourly payment (Rs./kW/hour) spread over 12 months.

In case company does not declare a dividend in a particular year or only declares a partial dividend, then the difference in the withholding tax amount (between what is paid in that year and the total entitlement as per the net return on equity) would be carried forward and accumulated so that the company is able to recover the same in hourly payments spread over 12 months period as a pass-through from the power purchaser in future on the basis of the total dividend payout.

III) Indexations

The following indexations shall be applicable to reference tariff:

a) Indexation applicable to O&M

In future fixed O&M part of capacity charge shall be adjusted on account of local inflation as per wholesale price index (WPI) and variation in US CPI and dollar/rupee exchange rate parity. Quarterly adjustment for local inflation, foreign inflation and exchange rate variation shall be made on 1st July, 1st October, 1st January and 1st April based on the latest available information with respect to WPI notified by the Federal Bureau of Statistics, US CPI notified by the US Bureau of Labor Statistics and revised TT & OD selling rate of US dollar notified by the National Bank of Pakistan. The mode of indexation will be as under:

i) Fixed O&M

$$F O\&M_{(LREV)} = \text{Rs. } 0.1366 \text{ per kW per hour} * WPI_{(REV)} / 159.31$$

$$F O\&M_{(FREX)} = \text{Rs. } 0.0096 \text{ per kW per hour} * US CPI_{(REV)} / 216.741 * ER_{(REV)} / 84.20$$

Where:

$F O\&M_{(LREV)}$ = The revised applicable fixed O&M local component of the capacity charge indexed with WPI

$F O\&M_{(FREX)}$ = The revised applicable fixed O&M foreign component of the capacity charge indexed with US CPI and exchange rate variations

$WPI_{(REV)}$ = The revised wholesale price index (manufacturers)

$WPI_{(REF)}$ = 159.31 wholesale price index (manufacturers) of February 2010 notified by the Federal Bureau of Statistics

$US CPI_{(REV)}$ = The revised US CPI (all urban consumers)

$US CPI_{(REF)}$ = 216.741 US CPI (all urban consumers) for the month of February 2010 as notified by the US Bureau of Labor Statistics



$ER_{(REV)}$ = The revised TT & OD selling rate of US dollar as notified by the National Bank of Pakistan

Note:- The above revised reference O&M cost components of tariff shall be adjusted on quarterly basis for variations in WPI, US CPI and US\$/Rs. exchange rate variation.

ii) Variable O&M

The formula of indexation for variable O & M component will be as under:

$$V O\&M_{(LREV)} = \text{Rs. } 0.0381 \text{ per kW per hour} * WPI_{(REV)} / 159.31$$

$$V O\&M_{(FREV)} = \text{Rs. } 0.1917 \text{ per kW per hour} * US CPI_{(REV)} / 216.741 * ER_{(REV)} / 84.20$$

Where:

$V O\&M_{(LREV)}$ = The revised applicable variable O&M local component of the energy charge indexed with WPI
 $V O\&M_{(FREV)}$ = The revised applicable variable O&M foreign component of the energy charge indexed with US CPI and exchange rate variations
 $WPI_{(REV)}$ = The revised wholesale price index (manufacturers)
 $WPI_{(REF)}$ = 159.31 wholesale price index (manufacturers) of February 2010 notified by the Federal Bureau of Statistics
 $US CPI_{(REV)}$ = The revised US CPI (all urban consumers)
 $US CPI_{(REF)}$ = 216.741 US CPI (all urban consumers) for the month of February 2010 as notified by the US Bureau of Labor Statistics
 $ER_{(REV)}$ = The revised TT & OD selling rate of US dollar as notified by the National Bank of Pakistan

Note:- The above revised reference O&M cost components of tariff shall be adjusted on quarterly basis for variations in WPI, US CPI and US\$/Rs. exchange rate variation.

b) Adjustment for LIBOR variation

The interest part of fixed charge component will remain unchanged throughout the term except for the adjustment due to variations in interest rate as a result of variation in quarterly LIBOR according to the following formula:

$$\Delta I = P_{(REV)} * (LIBOR_{(REV)} - 1.16\%) / 4$$

Where:

ΔI = The variation in interest charges applicable corresponding to variation in LIBOR. ΔI can be positive or negative depending upon whether $LIBOR_{(REV)}$ is > or < 1.16%. The interest payment obligation will be enhanced or reduced to the extent of ΔI for each quarter under adjustment on quarterly basis.
 $P_{(REV)}$ = The outstanding principal (as indicated in the attached debt service schedule to this order) on a quarterly basis on the relevant quarterly calculations date.

Cost of working capital component will be adjusted on the basis of quarterly variation in reference KIBOR (12.36%) with spread (200 basis points) remaining the same.

c) Fuel Price Variation

The variable charge part of the tariff relating to fuel cost shall be adjusted on account of the fuel price variations. In this regard, the variation in EEL's allowed rate relating to fuel cost shall be revised according to the following formula:

$$FC_{(Rev)} = (Rs. 2.7628 \text{ per Kwh} * FP_{(Rev)}) / Rs. 368.67 \text{ per MMBTU}$$

Where:

$$FC_{(Rev)} = \text{Revised fuel cost component of variable charge on permeate gas}$$

$$FP_{(Rev)} = \text{Revised fuel price}$$

d) Adjustment in Return on Equity (ROE)

ROE component of tariff shall be adjusted on account of exchange rate variation according to the following formula:

$$ROE_{(Rev)} = Rs.0.3438 \text{ per kW per hour} * ER_{(Rev)} / ER_{(Ref)}$$

Where:

$$ROE_{(Rev)} = \text{The revised ROE component of the capacity purchase price}$$

$$ER_{(Rev)} = \text{The revised TT \& OD selling rate of US\$ as notified by the National Bank of Pakistan}$$

$$ER_{(Ref)} = \text{The reference exchange rate of PKR 84.20 = 1 US\$}$$



e) Adjustment on Return on Equity during Construction (ROEDC)

ROEDC component of tariff shall be adjusted on account of exchange rate variation according to the following formula:

$$ROEDC_{(Rev)} = Rs.0.1265 \text{ per kW per hour} * ER_{(Rev)} / ER_{(Ref)}$$

Where:

$$ROEDC_{(Rev)} = \text{The revised ROEDC component of the capacity purchase price}$$

$$ER_{(Rev)} = \text{The revised TT \& OD selling rate of US\$ as notified by the National Bank of Pakistan}$$

$$ER_{(Ref)} = \text{The reference exchanges rate of PKR 84.20 = 1 US\$}$$

Adjustments on account of local inflation, foreign inflation, exchange rate variation, KIBOR/LIBOR variation and fuel price variation will be approved and announced by the Authority for immediate application in accordance with the requisite indexation mechanism stipulated herein.



IV) Terms and Conditions of Tariff:

- i) Use of permeate gas will be considered as primary fuel.
- ii) Dispatch criterion will be based on the energy charge.
- iii) General assumptions of EEL, which are not covered in this and earlier determinations, may be dealt with according to standard terms of PPA.

Dissenting note is attached

AUTHORITY

(Zafar Ali Khan)
Member

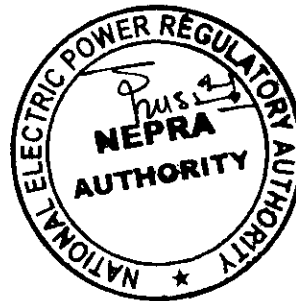
[Signature]
29/3
(Ghiasuddin Ahmed)
Member

(Maqbool Ahmad Khawaja)
Member

** Dissent note on admission of Motion for leave for Review is annexed, which is dated 10.12.10*
(Shaukat Ali Kundi) *Shaukat Ali Kundi*
Vice Chairman/Member
18.03.2011

Note attached

[Signature]
(Khalid Saeed) 11/4/2011
Chairman



ENGRO POWERGEN QADIRPUR LIMITED
Tariff Table at COD

Year	Variable Charge (PKR/kWh)				Capacity Charge (PKR/kW/Hour)									
	Fuel	Variable O&M Local	Variable O&M Foreign	Total	Fixed O&M Local	Fixed O&M Foreign	Insurance	Financing Cost on Working Capital	Return on Equity	Return on Equity for Construction Period	Withholding Tax @7.5%	Loan Repayment	Interest Charges	Total
1	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.4986	0.2436	1.5105
2	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.5196	0.2225	1.5105
3	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.5416	0.2006	1.5105
4	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.5644	0.1778	1.5105
5	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.5882	0.1539	1.5105
6	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.6131	0.1291	1.5105
7	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.6389	0.1032	1.5105
8	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.6659	0.0763	1.5105
9	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.6940	0.0482	1.5105
10	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.7233	0.0189	1.5105
11	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
12	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
13	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
14	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
15	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
16	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
17	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
18	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
19	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
20	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
21	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
22	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
23	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
24	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
25	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
Levelized Tariff (1-25 Years)				2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.3964	0.1060	1.2708

Net Capacity at COD

217.298 MW

Exchange Rate at COD

84.20 Rs./US \$

Fuel Price (Inclusive of Freight)

368.67 Rs./MMBTU

US CPI

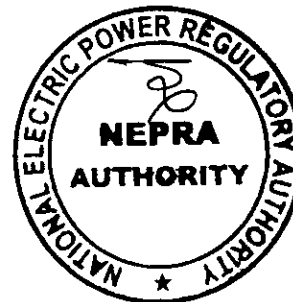
216.74

WPI (Manufacturers)

159.31

Levelized Tariff at 60% plant factor

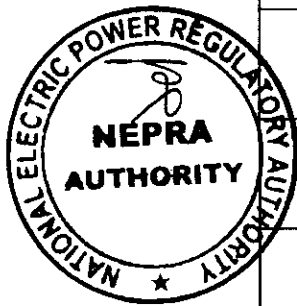
Rs.5.1106 per kWh (or US Cent 6.0696)



ENGRO POWERGEN QADIRPUR LIMITED
Debt Servicing Schedule at COD


LIBOR 1.16%
 Premium 3.00%

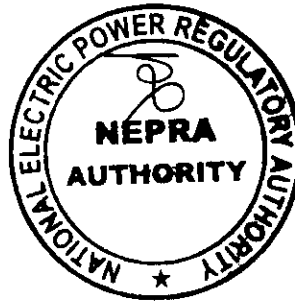
Period	Principal Million \$	Repayment Million \$	Mark-Up Million \$	Balance Million \$	Debt Service Millin \$	Annual Principal Repayment \$ Million	Annual Interest \$ Million	Annual Principal Repayment Rs. Million	Annual Interest Rs. Million	Principal Repayment Rs./kW/ Hour	Interest Rs./kW/ Hour	Annual Debt Service Rs./kW/Hour
1	136.7218	2.7745	1.4202	133.9474	4.1946							
2	133.9474	2.8033	1.3914	131.1441	4.1946							
3	131.1441	2.8324	1.3623	128.3117	4.1946							
4	128.3117	2.8618	1.3328	125.4499	4.1946	11.2719	5.5067	949.0958	463.6620	0.4986	0.2436	0.7422
5	125.4499	2.8915	1.3031	122.5584	4.1946							
6	122.5584	2.9216	1.2731	119.6368	4.1946							
7	119.6368	2.9519	1.2427	116.6849	4.1946							
8	116.6849	2.9826	1.2121	113.7023	4.1946	11.7476	5.0310	989.1494	423.6083	0.5196	0.2225	0.7422
9	113.7023	3.0136	1.1811	110.6887	4.1946							
10	110.6887	3.0449	1.1498	107.6439	4.1946							
11	107.6439	3.0765	1.1182	104.5674	4.1946							
12	104.5674	3.1085	1.0862	101.4589	4.1946	12.2434	4.5352	1,030.8934	381.8643	0.5416	0.2006	0.7422
13	101.4589	3.1407	1.0539	98.3182	4.1946							
14	98.3182	3.1734	1.0213	95.1448	4.1946							
15	95.1448	3.2063	0.9883	91.9385	4.1946							
16	91.9385	3.2396	0.9550	88.6988	4.1946	12.7601	4.0185	1,074.3991	338.3587	0.5644	0.1778	0.7422
17	88.6988	3.2733	0.9214	85.4255	4.1946							
18	85.4255	3.3073	0.8874	82.1182	4.1946							
19	82.1182	3.3416	0.8530	78.7766	4.1946							
20	78.7766	3.3764	0.8183	75.4002	4.1946	13.2986	3.4800	1,119.7407	293.0170	0.5882	0.1539	0.7422
21	75.4002	3.4114	0.7832	71.9888	4.1946							
22	71.9888	3.4469	0.7478	68.5419	4.1946							
23	68.5419	3.4827	0.7120	65.0593	4.1946							
24	65.0593	3.5188	0.6758	61.5404	4.1946	13.8598	2.9188	1,166.9959	245.7618	0.6131	0.1291	0.7422
25	61.5404	3.5554	0.6393	57.9850	4.1946							
26	57.9850	3.5923	0.6023	54.3927	4.1946							
27	54.3927	3.6296	0.5650	50.7631	4.1946							
28	50.7631	3.6673	0.5273	47.0957	4.1946	14.4447	2.3339	1,216.2454	196.5124	0.6389	0.1032	0.7422
29	47.0957	3.7054	0.4892	43.3903	4.1946							
30	43.3903	3.7439	0.4507	39.6463	4.1946							
31	39.6463	3.7828	0.4118	35.8635	4.1946							
32	35.8635	3.8221	0.3725	32.0414	4.1946	15.0543	1.7243	1,267.5732	145.1845	0.6659	0.0763	0.7422
33	32.0414	3.8618	0.3328	28.1796	4.1946							
34	28.1796	3.9019	0.2927	24.2776	4.1946							
35	24.2776	3.9425	0.2522	20.3352	4.1946							
36	20.3352	3.9834	0.2112	16.3518	4.1946	15.6896	1.0890	1,321.0672	91.6905	0.6940	0.0482	0.7422
37	16.3518	4.0248	0.1699	12.3270	4.1946							
38	12.3270	4.0666	0.1280	8.2604	4.1946							
39	8.2604	4.1088	0.0858	4.1515	4.1946							
40	4.1515	4.1515	0.0431	0.0000	4.1946	16.3518	0.4268	1,376.8188	35.9390	0.7233	0.0189	0.7422



**DISSENTING NOTE OF MR. ZAFAR ALI KHAN, MEMBER - NEPRA
IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW FILED BY
ENGRO POWERGEN QADIRPUR LIMITED (FORMERLY ENGRO
ENERGY LIMITED) AGAINST THE AUTHORITY'S COD DECISION
DATED NOVEMBER 3, 2010.**

I do not agree with the decision of the Authority and wish to record that my earlier dissenting judgment dated October 25, 2010 remains unchanged regarding the decision of the Authority in the matter of Engro Energy Ltd. Tariff Adjustments at Commercial Operations Date (COD).


Zafar Ali Khan
Member (Tariff) 14/3/11

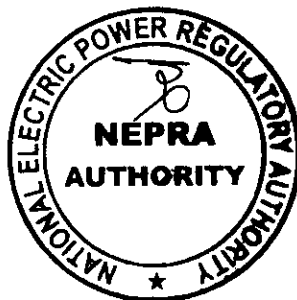


DISSENTING NOTE OF MAQBOOL AHMAD KHAWAJA, MEMBER ON
DECISION OF AUTHORITY, IN THE MATTER OF MOTION FOR LEAVE
FOR REVIEW FILED BY ENGRO POWERGEN QADIRPUR LIMITED
(FORMERLY ENGRO ENERGY LIMITED) AGAINST THE AUTHORITY'S
DECISION AT COD STAGE DATED NOVEMBER 03, 2010

I had dissented the decision of the Authority on tariff adjustment at COD date Case No.NEPA/TRF-72/EEL-2007 on 1-11-2010 and opined on the following points:

1. Exchange rate parity between RMB/US\$ which amounts to US\$2.903 Million which has not allowed, may be allowed to EEL as verified by the Case Officer as actual expenditure.
2. EEL may be allowed expenditures incurred on additional / extraordinary security due to law and order situation required for protection of Chinese experts actually incurred on this project.
3. IRR of 15% is allowed to thermal projects. Reduction of IRR below 15% will not be fare with project sponsors of EEL who were able to complete the project three months ahead of RCOD at substantially reduced cost using their competent skills on this project using permeate gas which otherwise was going as waste.

One point of actual expenditure due to exchange parity RMB/US\$ amounting to 2.903 US\$ has been addressed and allowed by the Authority as part of EPC cost in the present decision. However, the two points (2&3 above) in my opinion need to be addressed to encourage sponsors to make efforts to complete projects ahead of schedule which ultimately is in the favour of consumers, as it helps in reduction of load shedding. I am also of the view that projects based on indigenous fuel specially like permeate gas etc. if used by any sponsor, need to be incentivized as it ultimately reduces overall basket rate of electricity and so the consumers will be benefited ultimately.



Maqbool Ahmad Khawaja
Member (S)
Date: 28-03-2011

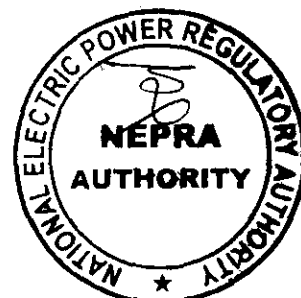
DISSENTING NOTE OF MR. SHAUKAT ALI KUNDI, VICE CHAIRMAN / MEMBER (CONSUMER AFFAIRS) IN THE MATTER OF RM 10-544 DATED 25-11-2010 REGARDING MOTION FOR LEAVE FOR REVIEW FILED BY ENGRO ENERGY LIMITED (EEL) AGAINST NEPRA TARIFF (TRUE UP) DETERMINATION DATED 03-11-2010

With due reverence I differ with the majority decision for the reason that the petitioner has not raised any fresh / additional grounds in the Motion for Leave for Review. The grounds mentioned in the Motion for Leave for Review by the petitioner have already been adjudicated upon in the determination order dated 03-11-2010. The petitioner in its Motion for Leave for Review has neither brought any new evidence before the Authority nor has identified / pointed out any error on the face of record.

In terms of Regulation 3(2) of NEPRA (Review Procedure) Regulations, 2009 any party aggrieved from any order of the Authority and who, from the discovery of new and important matter or evidence or on account of some mistake or error apparent on the face of record or from any other sufficient reason, may file a motion seeking a review of such order.

In view of the above provision, review against the order of the Authority is permissible provided the same is within the limits prescribed under the above regulation. It is incumbent upon a party applying for review motion under the aforesaid regulation that it should establish that the evidence or matter is relevant and of such a nature that if considered it will effect the order of the Authority. Non submission of any new/additional evidence will make the review motion non-entertainable under the law.

Secondly, a party may also prefer a review motion if there is mistake or error in the order of the Authority which should be apparent on the face of the record or which should be self evident from a perusal of the record itself. In other words, the errors should be flouting on the surface of the record. In absence of such error or mistake, no valid ground for review motion can accrue.



Thirdly, a party has a right to file a review motion on any other sufficient reason which in the opinion of the Authority, if known to it at the time of adjudication of the original petition, would affect its order. The superior courts in the country held that it will not be considered as a valid ground of review where review is sought to enable the raising points which could and ought to have been raised at the former hearing. The relevant excerpt of the decision of the Supreme Court is reproduced hereunder:

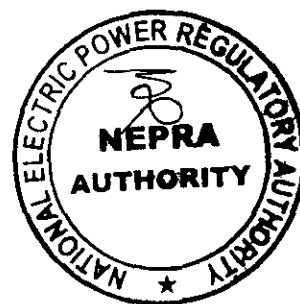
"Review of order passed in petition for leave to appeal---Ground raised in review was not raised by petitioner while arguing petition for leave to appeal---Effect---Such ground would not constitute either an error apparent on the face of record or discovery of new and important facts and evidence on record, which were sine qua non for exercise of review jurisdiction by Supreme Court---Petitioner could not raise such ground in review petition".

In view of the above requirements of law, since the instant Motion for Leave for Review does not reveal any new evidence or error on the face of the record, therefore in my judgment it does not merit consideration and admission.

Shaukat Ali Kundi
(Shaukat Ali Kundi)

Vice Chairman / Member (Consumer Affairs)

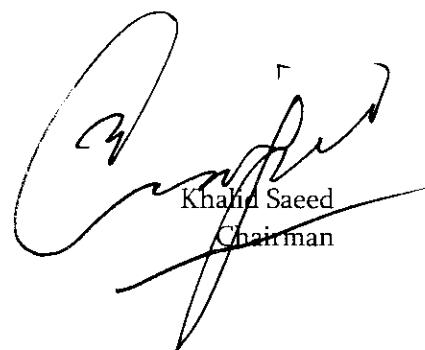
10.12.2010



01 April, 2011

NOTE OF MR. KHALID SAEED, CHAIRMAN NEPRA
IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW FILED BY
ENGRO POWERGEN QADIRPUR LIMITED (FORMERLY ENGRO ENERGY LIMITED)

1. The Authority vide its decision dated November 03, 2010 (hereinafter the "COD decision") determined the tariff adjustments at the commercial operations date of Engro Powergen Qadirpur Limited (formerly Engro Energy Limited) [hereinafter "EEL"]. The COD decision was considered by the full strength of the Authority. Two learned members of the Authority did not agree with some parts of the COD decision and accordingly dissented to those parts of the COD decision.
2. EEL vide letter dated November 15, 2010 filed motion for leave for review (hereinafter the "review motion") in pursuance of rule 16 (6) of the NEPRA Tariff Standards and Procedure Rules, 1998 against the COD decision of the Authority. The review motion was admitted by the Authority on November 25, 2010. A learned member of the Authority, who entirely agreed with the COD decision, dissented to the admission of review motion.
3. The Authority while deciding the review motion has allowed relief to EEL in the matter of compensation payable in accordance with the EPC contract owing to difference in exchange rate parity between RMB / US\$ and has maintained its COD decision on all other issues. Further, EEL's claim for allowing cost of Rs. 13.5 million due to delay in issuance of the COD decision has also not been allowed by the Authority.
4. The only change allowed by the Authority from its earlier COD decision (i.e. allowing of compensation payable in accordance with the EPC contract owing to difference in exchange rate parity between RMB / US\$) has been endorsed by me, Mr. Ghiasuddin Ahmed – member and Mr. Maqbool Ahmed Khawaja – member. The COD decision on all other issues remains unchanged in principle.


Khalid Saeed
Chairman

