



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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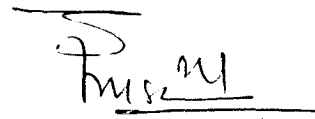
No. NEPRA/TRF-338/FEL-2015/3349-3351
February 27, 2019

Subject: **DECISION OF THE AUTHORITY IN THE MATTER OF REVIEW FILED BY THE CPPA-G REGARDING DETERMINATION OF MARGINAL COST/INCREMENTAL PRICE FOR MERIT ORDER IN CASE OF TAKE & PAY ARRANGEMENT FOR FATIMA ENERGY LIMITED**

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (3 pages) in the matter of review filed by the CPPA-G regarding determination of marginal cost/incremental price for merit order in case of take & pay arrangement for Fatima Energy Limited for information.

Encl: As above


27 02 19
(Syed Safeer Hussain)

Secretary
Ministry of Energy
'A' Block, Pak Secretariat
Islamabad

CC:

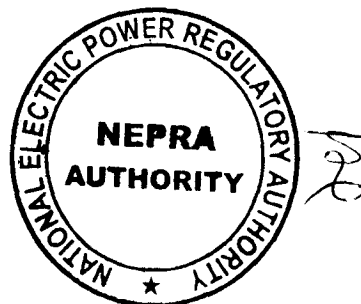
1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.

DECISION OF THE AUTHORITY IN THE MATTER OF REVIEW FILED BY THE CPPA-G REGARDING DETERMINATION OF MARGINAL COST / INCREMENTAL PRICE FOR MERIT ORDER IN CASE OF TAKE & PAY ARRANGEMENT FOR FATIMA ENERGY LIMITED

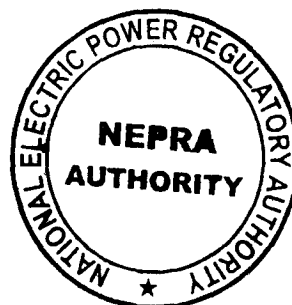
1. CPPA-G has filed a review petition against the tariff granted by the Authority to Fatima Energy Limited (FEL) on 18-01-2018. The said tariff was granted to FEL on 'Take & Pay' basis, i.e. payment on the basis of energy dispatched (as opposed to 'Take or Pay' basis where Capacity Payments are payable for availability of plant for dispatch, irrespective of energy dispatched).
2. Through the instant review, CPPA-G has sought clarification regarding dispatch criterion of FEL. CPPA-G is of the view that FEL's place in the Merit Order should be determined taking into account both the energy and capacity charges of FEL's tariff as opposed to the Authority's determination whereby it was held that "dispatch criterion will be based on the Energy Charge". CPPA-G is further of the view that if FEL and other power plants are compared on the basis of energy prices alone (without taking into account capacity payment obligations) it would result in an increase in the overall basket price.
3. The hearing in the matter was held on 18th September 2018 at NEPRA Tower Islamabad. During the hearing, the representative of the CPPA-G made a presentation and requested to review the merit order criteria and revise it in accordance with the grid code. The representative of FEL also made a presentation and challenged the review filed by CPPA-G, inter alia, on maintainability of the review due to delayed filing. FEL requested the Authority to dismiss the Review Motion and direct the CPPA to sign a power purchase agreement with FEL on the basis of the tariff determination. The Authority directed both the parties to file written comments in the matter, which were submitted by the CPPA-G (vide letter dated 29th September 2018) and by FEL (vide letter dated 26th September 2018).
4. FEL was granted its first generation tariff on 17-06-2016 on 'Take & Pay' basis. FEL filed a Motion for Leave for Review against the above decision which was decided by the Authority on 18-10-2016. FEL challenged the above decisions before the Islamabad High Court which, vide order dated 14-09-2017, remanded the matter back to NEPRA for tariff determination afresh. Accordingly, the Authority re-determined FEL's on 18-01-2018; again on 'Take & Pay' basis. It is also to be noted that all three tariffs were identical in terms of dispatch criterion as well, i.e. dispatch will be made on the basis of Energy Charge.
5. It has been observed that CPPA-G never challenged the earlier 2016 FEL's tariff determinations and has now challenged the identical 2018 tariff determination.

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6. The FEL tariff determinations in 2016 and 2018 were granted by the Authority in light of the Federal Government Policy to promote bagasse based generation. However, the Authority granted tariff on 'take & pay' basis primarily in view of low efficiency of the plant. Further, the Authority felt that the 'take and pay' arrangement is in the interest of the consumers as they will not be burdened with fixed cost without the dispatch of energy. In addition the said arrangement is in line with the GoP policy shift for transitioning away from a regime of guaranteed payments, and towards a more liberalized, competitive market.
7. The Authority noted that the Grid Code talks about incremental price for determining the merit order. However, the definition of incremental price as given in the Grid Code does not explicitly specify whether it is "energy charge" or both "the energy and capacity charges". The Authority has observed that NTDC's SOPs on the Merit Order expressly outline the factors to be incorporated when determining the Merit Order, which include Fuel Price, Calorific Value of Fuel, Net Heat Rate, Variable O&M Cost, Indexed Premium(in accordance with PPA) and Ratio of Fuel Mix (Gas and Furnace Oil). On the subject of fixed costs, NTDC's SOPs provides that "fixed charges and capacity purchase price is not to be included in the Merit Order nor be considered for the purposes of economic dispatch". Further, it has also been noted that the Grid Code and NTDC's SOPs do not differentiate between generation units based on their payment disciplines (i.e. 'Take or Pay', or, 'Take & Pay').
8. Thus it is abundantly clear from NTDC's SOP's that fixed charges will not be considered for the purpose of the merit order. As such only the variable components of power generation are to be utilized for the purposes of the incremental price evaluations and determination of merit order, irrespective, whether the payment obligation is on 'take or pay' or 'take and pay'.
9. Therefore, the Authority decision regarding dispatch criterion based on FEL's energy charge seems applicable and relevant on the basis of available documents regarding economic merit order.
10. Further, the Authority considers that any person aggrieved by a provision of the grid code (or seeks any amendments thereto) is required to approach the Grid Code Review Panel. Therefore, CPPA-G (being the market operator and the power purchaser), in the first instance, may consider approaching the Grid Code Review Panel for amendment in the grid code regarding this matter. ✓
11. During the proceedings, it has also come to the attention of the Authority that a Paragraph 43 of the FEL Tariff determination includes a discussion on 'legitimate expectation'. The language of the said paragraph 43 may lead to misinterpretation and does not reflect the opinion of the Authority. Therefore, after considering the matter thoroughly, the Authority in exercise of its review powers under Section 7(2)(g) of the Regulation of Generation, Transmission and ✓




Distribution of Electric Power Act, 1997 read with regulation 3 of the NEPRA (Review Procedure) Regulations, 2009 has decided to review the said paragraph 43 of the FEL Tariff determination dated 18.01.2018, and to omit the said paragraph in its entirety.


Decision

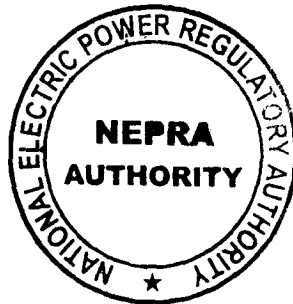
12. In the light of foregoing, the Authority has decided to uphold its earlier determination dated 18-1-2018 and accordingly instant review is hereby disposed of. CPPA-G, if it desires, may approach Grid Code Review Panel for the change in the Grid Code regarding the definition and application of economic Merit Order.


Authority


(Saif Ullah Chattha)
Member 26.2.2019


(Rafique Ahmed Shaikh)
Member


26/2/19
(Rehmatullah Baloch)
Vice Chairman




27.02.19