



National Electric Power Regulatory Authority Islamic Republic of Pakistan

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Registrar

No. NEPRA/ADG(Trf)/TRF-591/GAEL-2022/ 36703-07

November 15, 2023

Subject: Decision of the Authority in the matter of Motion for Leave for Review Filed by Gul Ahmed Energy (Pvt) Limited against Decision of the Authority dated February 22, 2023 in the matter of Approval of Generation Tariff [Case # NEPRA/TRF-591/GAEL-2022]

Dear Sir,

Enclosed please find herewith the subject Decision of the Authority (total 06 Pages) in the matter of Review motions filed Gul Ahmed Energy (Pvt) Limited against the Decision of the Authority dated February 22, 2023 in the matter of Approval of Generation Tariff in Case No. NEPRA/TRF-591/GAEL-2022.

2. The Decision is being intimated to the Federal Government for the purpose of notification in the official Gazette pursuant to Section 31(7) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 within 30 days from the intimation of this Decision. In the event the Federal Government fails to notify the subject tariff Decision or refer the matter to the Authority for reconsideration, within the time period specified in Section 31(7), then the Authority shall notify the same in the official Gazette pursuant to Section 31(7) of NEPRA Act.

Enclosure: As above

(Engr. Mazhar Iqbal Ranjha)

Secretary
Ministry of Energy (Power Division)
'A' Block, Pak Secretariat
Islamabad

Copy to: (alongwith copy of subject Decision):

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.
3. Chief Executive Officer, Central Power Purchasing Agency Guarantee Limited (CPPA-G) Shaheen Plaza, 73-West, Fazl-e-Haq Road, Islamabad
4. Chief Executive Officer, Gul Ahmed Energy Limited 7th Floor Al-Tijarah Centre, 32-I -A, Block-6, P.E.C.H.S, Main Shara-e-Faisal, Karachi

**DECISION OF THE AUTHORITY IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW
FILED BY GUL AHMED ENERGY LIMITED AGAINST DECISION OF THE AUTHORITY
DATED FEBRUARY 22, 2023 IN THE MATTER OF APPROVAL OF GENERATION TARIFF**

1. INTRODUCTION

- 1.1. Gul Ahmed Energy Limited (GAEL), has been operating a RFO based power generation facility of 136.17 MW gross (net 127.5 MW) at Korangi Industrial Township, Karachi, Sindh. The project was established under 1994 Power Policy. The Project has been selling electricity to K-Electric. The company was granted a generation license in 2003 bearing license No. IPGL/09/2003 dated August 26, 2003 and vide Modification I extended the term of the generation license up to August 25, 2029.
- 1.2. The first PPA ~~was~~ expired on November 02, 2019. Keeping in view the energy shortage in the KE area and on the request of GAEL endorsed by KE, new tariff was approved for a term extension of 3 years with effect from November 03, 2019 vide decision dated November 21, 2019 which was reviewed on June 03, 2020 with a reference tariff of Rs. 15.8463/kWh. The indexed tariff as per invoice for the month of April 2023 is Rs. 27.46/kwh which is based on RFO price of Rs. 108,560/ton.
- 1.3. Before the expiration of the aforementioned term of 3 years referred above, GAEL requested for a further term extension of 2 years on new tariff w.e.f. November 03, 2022. The Authority vide its decision dated February 22, 2023 extended the term of the tariff till April 30, 2023 or lifting of the moratorium period before the stipulated date, whichever comes earlier, on the same terms & conditions approved vide decision dated June 03, 2020. It was further provided that GAEL may sell electricity under CBTCM after April 30, 2023.

2. FILING & ADMISSION OF MOTION FOR LEAVE FOR REVIEW

- 2.1. Being aggrieved with the decision dated February 22, 2023, GAEL vide letter No. F-L23-NEPRA-00353 dated March 8 2023 filed a motion for leave for review. The Authority admitted the motion on April 14, 2023.

3. GROUNDS OF MOTION FOR LEAVE FOR REVIEW

- 3.1. GAEL filed a motion for leave for review on following grounds:
 - i. The decision of the Authority does not account for the prayers sought and contentions raised by the company in the tariff petition.
 - ii. The Authority's decision is bereft of any analysis and evaluation of the facts and grounds established by the company in the Tariff Petition as well as in the hearing

- iii. The Authority has merely reproduced the issues framed by it for the hearing and has completely disregarded the respective responses presented by the company to such issues.
- iv. It was adequately established in the petition that the previous tariff was resulting in short recovery of revenues due to high dispatch factor, incorrect plant efficiency, etc.
- v. The Authority approved dispatch factor of 64.2% in its decision dated June 03, 2022 and did not consider the requested dispatch factor of 40% for two year term.
- vi. The company locked all maintenance and insurance cost for the next one year in accordance with KE's power acquisition request.
- vii. If the company operates under June 2022 decision, it will not be able to recover fixed costs and other revenue components at a tariff determined at high dispatch factor.
- viii. The company is severely aggrieved by the Authority's decision to extend the tariff on previously approved terms & conditions.
- ix. Recovery of costs incurred by the company was not accounted for in the tariff.
- x. The Authority did not consider the requested capacity factors which are crucial for company's operations under take and pay regime.
- xi. The decision fails to take account of demand forecast of KE. In order to meet its demand, KE agreed to purchase power for another two years. Due to unviable tariff, the power producers may be compelled to discontinue their operations which hinder KE's capacity to meet peak demand in summers.
- xii. The critical importance of the company can be gauged from following financial and technical reasons:
 - a) Owing to RLNG shortage, the gas supply to gas power plants is reduced by 50%. The price of RLNG is further likely to increase due to PKR's devaluation against USD. Moreover, due to reduced water flows in the dams, hydel power output is only at 30% of the installed capacity whereas, the 969 MW Neelum Jhelum hydroelectric project is non-operational in the last 09 months. For the next few months, the national power demand is estimated to be between 17,000MW -18,000 MW whereas the May - July energy shortfall is expected to go up to about 7,500MW. Power outages lasting up to 10-12 hours have already started in Karachi.
 - b) During the coming summer months, KE's energy intake from the national grid allocation would be reduced, however, GAEL's supply to KE network would be intact. It may also be

noted, that during recent power breakdowns the Company provided substantial stability to the grid by supplying power to KE by remaining on island mode.

- c) In addition to the two year term extension, GAEL is part of KE's investment plan for the next few years.
 - d) GAEL serves as a black start unit for the KE grid during power and system outages. More importantly, it is placed consistently at 08th or 09th (out of 23 power plants) under KE's merit order lists
- xiii. Pursuant to Section 22(2) of the NEPRA Act, "*Where a bulk power consumer intends to stop purchase of electric power from a distribution company, it shall convey its intention by notice in writing [one year] before such stoppage*". As per the interpretation of this Section, the company will not be able to sell electricity to any bulk power consumer (BPC) for a year till the BPCs' notice of discontinuation to KE.
- xiv. The decision refers to IGCEP 22-31, however, KE vide letter dated October 18, 2022 has submitted its reservations/comments that the timelines for KE projects in the draft IGCEP 2022-31 were inconsistent with KE submissions and that the submitted timelines be considered.
- xv. It was also highlighted by KE that "since the data compilation exercise for the draft IGCEP 2022-31 was conducted in March 2022, certain information submitted by KE for IGCEP has been modified including but not limited to extension in supply from Tapal and Gul Ahmed which have now requested two year extension till 2024". However, the Authority did not consider KE submissions while approving IGCEP 2022-31.
- xvi. The Authority mentioned in the decision that GAEL has the option to sell energy under the CTBCM regime post expiry of the tariff control period. However, the following impediments make the implementation of the CTBCM regime impracticable in such a short span of time:
- a) The CTBCM mechanism has been placed theoretically. Moreover, instead of dry run of upto one year, the Authority has undertaken a dry run of CTBCM for six months. However, the reports of trial run of CTBCM have not been issued by the Authority. Due to the lack of access of historical values of the analytical data, the company cannot ensure the bankability of the B2B contracts under the CTBCM regime.
 - b) Since the marginal price will come into play, there is no fuel component hedging available i.e., the fluctuation or devaluation of the USD/PKR pertaining to fuel prices
 - c) As per distribution license, KE has exclusive rights of distribution in its service area, therefore, implementation of CBTCM in KE's service area shall be effected from July 2023.

- d) Use of system charge (USOC) under CTBCM lack final determinative assessment by the Authority. Also, the UOSC may vary or re-establish every six (6) months to one (1) year and there are no price caps or ceilings available given that the B2B contracts would be long-term under the CTBCM regime. The wheeling charges do not include the UOSCs, the cross subsidy and the standard cost, and are still under discussion between KE and the Authority.
- e) Various regulations pertaining to CTBCM regime are very new, legal gaps or clarifications may also surface during the regime's implementation phase. The Authority's draft connection agreements are still silent or unclear on concerns regarding the relevant stakeholders. Moreover, no liability apportionment is defined for failure of system to despatch electric power to bulk power consumers (BPCs). The settlement of transmission and distribution losses mechanism is also unclear and updated grid code for smooth implementation of CTBCM has not been updated yet.
- f) BPCs are required to provide one year notice to KE to be able to purchase electric power under the CTBCM. Recent amendments for a hybrid model are still under discussion which will also include BPCs' power purchasing from suppliers of last resort.

3.2. In view of the above, GAEL requested the Authority to:

- i. Review and reverse the tariff determination in light of the above stated grounds.
- ii. Approve the generation tariff in line with KE's consent for a 40% dispatch factor until November 2024.
- iii. Grant the Company two year tariff extension to enable the implementation of the CTBCM model in light of the practical exigencies.

4. ORDER PASSED BY NEPRA APPELLATE TRIBUNAL

4.1. The decision of the Authority was also challenged by GAEL in the NEPRA Appellate Tribunal vide Appeal No. 49/NT/2023 which was disposed by the Tribunal on April 12, 2023 by passing following order:

"The learned counsel for the parties on instructions have fairly agreed for disposal of appeal in terms referred in mark "A", salient features whereof, are reproduced for ready reference:

- i. That NEPRA shall decide all the pending issues raised in the Review Application in accordance with law.*

- ii. *That NEPRA shall additionally take into account the letter dated April 03, 2023 sent by KE to NEPRA and the Power Acquisition Program furnished by KE in determining the term of the Tariff being granted to the Appellant given the power shortage in the KE system.*
- iii. *The Appellant will continue to supply electricity to KE on the existing tariff and terms and conditions and KE shall also follow the same until a decision is made by NEPRA in the Review Application.*

The request being genuine is allowed and the appeal is disposed of accordingly. The Review Petition be decided at the earliest in accordance with Law, Rules after affording right of audience to all the stakeholders.”

- 4.2. KE vide letter dated May 10, 2023 submitted that in compliance with the above order, it is continuing to purchase power from TEL and GAEL as per the Economic Merit Order.

5. HEARING

- 5.1. Pursuant to the admission of the subject motion for leave for review and order of the NEPRA Appellate Tribunal dated April 12, 2023, hearing on the matter was scheduled on May 24, 2023. Notices of hearing were issued to the relevant stakeholders on May 15, 2023. Hearing was held as per schedule and was participated by the representatives from the Petitioner, Tapal Energy and KE.
- 5.2. During the hearing, KE reiterated its position that the current demand and supply situation requires retaining the subject plant in the KE system for two years. CEO GAEL in response to a question accepted that they are willing to operate the plant on the existing tariff for the two years term extension starting November 3, 2022.

6. DECISION OF THE AUTHORITY

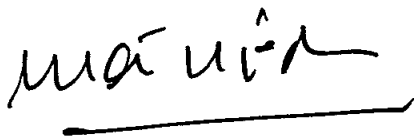
- 6.1. The submissions of the Petitioner and KE have been examined. The decision dated 22nd February 2023 was taken after considering the prayers sought and contentions raised by the Petitioner in the tariff petition. The main contention of the Petitioner was to calculate the revised tariff on the basis of 40% anticipated plant factor which was not accepted. Instead, the Authority extended the existing tariff, the basis of which was discussed and provided in the decision dated 3rd June 2020 and 21st November 2019. The Petitioner itself negated the majority of the grounds taken in the review by tendering its consent during the hearing for the acceptance of the existing tariff and terms & conditions for the proposed term extension of two years.
- 6.2. Comments were also sought from NTDC, CPPA-G and Ministry of Energy (Power Division) vide letter dated 13th September 2023. In response NTDC vide its letter dated 18th September 2023



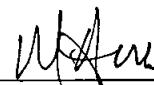
submitted that currently, national grid can only transmit 1,100 MW max to KE network, which it already is supplying to KE. Addition of Gharro plants will add to current 1,100 MW Capacity as these plants will be connected directly to the KE System. It should also be noted that if three (03) wind plants are settled at the CPPA-G pool price, they would be much cheaper than FO based Gul Ahmed Energy & Tapal Energy Limited. CPPA-G vide letter dated 26th October 2023 submitted that query regarding supply of Power to KE from National Grid is related to NTDC, therefore, CPPA-G has no comments to offer. No comments were received from MoE (PD).

- 6.3. Another crucial factor to consider is that GAEL currently holds a higher position in KE's merit order list as compared to less efficient units of BQPS-I and closure of GAEL plant at this point of time when the same cannot immediately be replaced by efficient power generation may result in net loss to the consumers by dispatching BQPS-I.
- 6.4. Keeping in view the demand supply situation in the KE region, inability of the national grid to provide additional equivalent power and better merit order listing of GAEL, the Authority has decided to extend the existing tariff and terms and conditions approved vide decision dated June 03, 2020 till 2nd November 2024. At the same time, GAEL shall also be entitled to sell the idle capacity and energy in the market under CTBCM regime.
- 6.5. The above decision of the Authority shall be notified in the Official Gazette in terms of Section 31(7) of the Regulations of Generation, Transmission and Distribution of Electric Power Act, 1997.

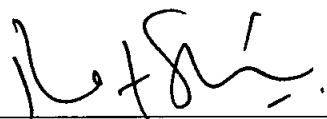
AUTHORITY



Mathar Niaz Rana (nsc)
Member



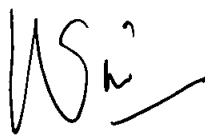
Engr. Maqsood Anwar Khan
Member



Engr. Rafique Ahmed Shaikh
Member



Amina Ahmed
Member



Waseem Mukhtar
Chairman

