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No. NEPRA/R/ADG(Trf)/TRF-100/Laraib-2009/8071-8073

May 26, 2022

Subject: **Decision of the Authority in the matter of Motion for Leave for Review against the Authority's Decision in the matter of Quarterly Indexation/Adjustment of Tariff for Laraib Energy Limited [Case No. NEPRA/TRF-100/2009]**

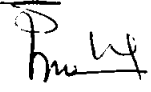
Dear Sir,

Please find enclosed herewith the subject decision of the Authority (07 pages) of Laraib Energy Limited in Case No. NEPRA/TRF-100/2009.

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.

3. The order part of this MLR is to be notified in the official Gazette.

Enclosure: As above


26 05 22
(Syed Safeer Hussain)

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

CC:

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

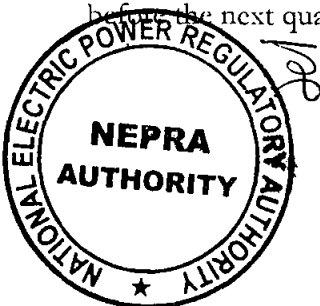
DECISION OF THE AUTHORITY IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW AGAINST THE AUTHORITY'S DECISION IN THE MATTER OF QUARTERLY INDEXATION/ADJUSTMENT OF TARIFF FOR LARAIB ENERGY LIMITED

1. Laraib Energy Limited (hereinafter referred to as “LEL”) set up an 84 MW hydropower project in Azad Jammu & Kashmir (hereinafter referred to as “AJK”). LEL successfully achieved its Commercial Operation Date (COD) on 23rd March 2013. The Authority approved LEL’s tariff vide its decision dated 14th April 2016 in the matter of adjustment at COD and also revised the tariff vide its decision dated 30th June 2016 in the matter of Motion for leave for Review filed by LEL against the Authority’s COD tariff adjustment decision. The LEL project being located in AJK falls under the purview of NEPRA Interim Power Procurement (Procedures and Standards) Regulations 2005, therefore it submits the tariff adjustments requests through its buyer i.e., Central Power Purchasing Agency Guaranteed Limited (CPPA-G).
2. The issue of saving in O&M by LEL as a result of a change in O&M contractor (from foreign to local HUBCO group owned contractor) was referred to the Authority by CPPA-G. The Authority after considering the request of CPPA-G decided that CPPA-G should renegotiate the O&M cost so that the future impact of any saving is redressed and accordingly submit the amended PPA for approval of the Authority under the Import of Power Regulations and the same was conveyed to CPPA-G vide Authority’s letter dated August 12, 2021.
3. Subsequently, CPPA-G vide letter No.CPPA/DGMF-I/MF-I/LEL/24696-98 dated October 18, 2021, requested NEPRA for approval of LEL’s quarterly indexation/adjustment of tariff for all the tariff components (Return on Equity, Return on Equity During Construction, Special Return on Equity, Debt Servicing, and Water Use Charges) excluding O&M components on account KIBOR/LIBOR exchange rate, US CPI and CPI General, for the quarter July to Sept 2021. The Authority considered the request of the CPPA-G and accordingly issued the indexation decision No: NEPRA/R/ADG/(Trf)/TRF-100/Laraib-2009/4327-43249 dated December 24, 2021 (hereinafter referred to as the “**impugned decision**”), and relevant extracts of the impugned decision are as reproduced hereunder:

“The tariff components for July to September 2021, excluding O&M components, have been indexed as per the request of the Central Power Purchasing Agency Guarantee Limited (CPPA-G), which had not sought O&M components indexation till the negotiation on the issue of savings due to change in O&M operator. The reference O&M components have been allowed provisionally till the conclusion of the negotiation between CPPA-G and LEL.

While considering the request of CPPA-G, the Authority also considers it prudent to direct the CPPA-G to conclude the negotiation with LEL at the earliest and accordingly revise the Power Purchase Agreement (PPA) and submit the same for approval of the Authority.”

4. The Authority also directed CPPA-G on January 12, 2022, CPPA-G to finalise the O&M negotiation before the next quarterly indexation i.e. Oct-Dec 2021.

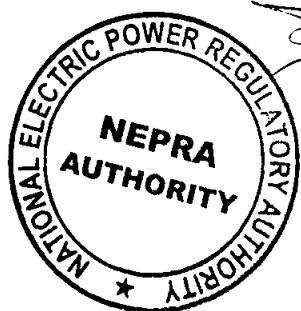




5. HUBCO being the parent company of LEL (hereinafter referred to as “**petitioner**”), submitted a Motion for Leave for Review (hereinafter referred to as “**MLR**”) on January 05, 2022, against the impugned decision.

Prayers of Review Motion:

6. Based on the contents of the MLR, the petitioner prayed the following:
- (i) The Authority may graciously admit the instant MLR.
 - (ii) The impugned decision may kindly be reconsidered and reviewed, to the extent that it excludes the O&M component from the indexation of the tariff components for the quarter of July-September 2021, in light of the facts, law and grounds stated above and keeping in view that the quarterly indexations/adjustments of the Petitioner Company's tariff are not contingent upon negotiations between the Petitioner Company and CPPA-G regarding any change in costs due to change in the O&M contractor.
 - (iii) The Authority may kindly allow the indexation for the O&M component of the Petitioner Company's tariff as sought in the Petitioner Company's Request for Quarterly Indexation for the quarter of July-September 2021.
 - (iv) The Authority may further kindly allow the indexation for the O&M component of the Petitioner Company's tariff as sought in the Petitioner Company's request for quarterly indexation for the quarter of October-December 2021, as well as all subsequent requests for quarterly indexations in accordance with the applicable law, rules and regulations.
 - (v) The Petitioner Company may please be afforded an opportunity of personal hearing before the Authority.
 - (vi) The Petitioner Company may please be permitted to make further written submissions with additional supporting documents.
 - (vii) The Petitioner Company may please be allowed to amend or add to the grounds stated herein.
 - (viii) By way of interim relief, it is requested that the Petitioner Company is suffering a huge financial loss due to the exclusion of the indexation for the O&M Component through the Impugned Decision. It is therefore prayed that quarterly indexation for the O&M component for the quarter July-September 2021 may be allowed to the Petitioner Company pending a final decision of the instant review petition.





- (ix) Any other relief deemed fit, appropriate and just by the Authority may also kindly be granted.

Proceedings:

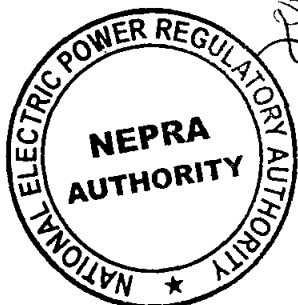
7. The instant MLR was admitted by the Authority, and to provide an opportunity of hearing to the aggrieved party a hearing in the matter was scheduled on March 17, 2022. Notices of hearing were also sent to the relevant stakeholders on March 09, 2022.

Hearing:

8. The hearing in the matter was held on March 17, 2022, at 11:00 am which was attended by the representative of the aggrieved party, CPPA-G and other stakeholders.
9. The submissions made by the parties to the proceedings are as under:

LEL's Submissions:

10. LEL during the hearing submitted that after the Authority letter dated August 12, 2021, which stated that *"CPPA-G should renegotiate the O&M cost so that the future impact of any saving is redressed and accordingly submit the amended PPA for approval of the Authority under Import of Power Regulations"* The following correspondences were made by LEL to CPPA-G demonstrating a willingness to negotiate.
- **04 October 2021:** Laraib writes to CPPA-G stating that LEL is willing to discuss the issue of the change in the O&M contractor.
 - **11 October 2021:** Laraib again submitted to CPPA-G the Summary of O&M Revenue & Costs along with supporting schedules for the period 23 March 2013 to 30 June 2020.
 - **04 January 2022:** Laraib (in response to CPPA-G's letter of 03.01.2022) stated *inter alia* that Laraib's representatives were available to meet at the date and time proposed by CPPA-G.
 - **11 January 2022:** Meeting between the Parties.
 - **24 January 2022:** Laraib communicated to CPPA-G *inter alia* that it is fully willing to engage in the negotiation process with CPPA-G.
 - **09 March 2022:** Laraib *inter alia* reaffirmed to CPPA-G its willingness to negotiate and stated that it was available for a meeting on a date that CPPA-G may suggest that is mutually convenient.
11. LEL submitted that allowing due to these factors, it faced hurdles in the negotiation process (i) Non-indexation of the O&M component for the July-September 2021 quarter and allowing only the reference O&M tariff having tremendous financial stress on LEL, (ii) pending of the subsequent two-quarters indexations i.e, October- December 2021 and January –March 2022 and (iii) the stance of CPPA-G in the meeting on January 11, 2022, that if LEL did not agree to share the alleged savings on



the O&M cost with CPPA-G, CPPA-G will proceed to adjust the savings (that it considers to have been accrued) against LEL's payables.

12. LEL submitted the following grounds in its presentation during the hearing for seeking review on the Authority's decision dated December 24, 2021, against which the MLR is submitted:

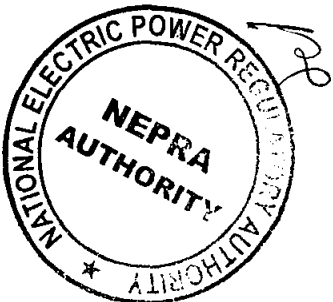
- The applicable laws or the PPA do not permit the CPPA-G to make unilateral and arbitrary changes to the approved tariff or indexation requests.
- CPPA-G has misinterpreted NEPRA's Letter of 12 August 2021, which does not direct exclusions of indexation of O&M component. The financial impact of exclusion of the indexation of the O&M component for LEL is approximately Rs. 86.5 Million for the relevant quarter.
- Neither the applicable law allows provisional determination with regards to indexation of a particular component, nor there is any precedent of NEPRA having withheld a request for indexation. Therefore, any modification in LEL's tariff has to be in line with the LEL's COD-stage tariff.
- Further, any amendments to the terms and conditions of the PPA affecting the tariff can only be made mutually. Even otherwise there is no provision in either the PPA or the COD tariff that envision revision or modification of the O&M components of the tariff

13. LEL submitted the request for the following relief:

- The Authority may kindly review its decision and allow the indexation for the O&M component of LEL's tariff as sought in LEL's Request for Quarterly Indexation for the quarter of **July-September 2021**.
- The Authority may further kindly allow the indexation for the O&M component of LEL's tariff as sought in LEL's request for quarterly indexation for the quarter of **October-December 2021**, as well as all subsequent requests for quarterly indexations in accordance with the applicable law, rules and regulations.

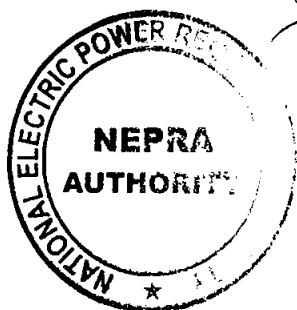
CPPA-G's submissions:

14. CPPA-G in its submission during the hearing stated that in 2009, both parties (NTDC & LEL) entered into an agreement and approached NEPRA for tariff determination. Accordingly, NEPRA determined a levelized tariff of Rs. 6.8362/kWh and which was revised by NEPRA at COD to Rs. 8.6416 Cents/kWh on June 30, 2016.



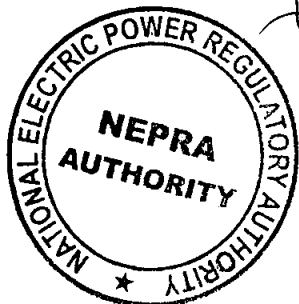
Handwritten initials or signature.

15. CPPA-G during the hearing presented that in Tariff Petition in 2009, LEL had provided a Fixed O&M cost estimate of **US\$ 4.71** million based on a **quotation** from O&M Energy, Spain including the owner's admin cost. In Power Purchaser's (NTDC at that time) opinion, the cost was too high compared with other hydropower projects. The Company, however, argued that:
- The O&M costs are based on quotations received from lenders approved by O&M operators.
 - Under non-recourse project finance, foreign lenders require that the O&M of the Company should be carried out by an internationally recognized O&M operator.
 - Fixed O&M Cost includes the Owner's admin/overhead cost of US\$ 1.53 million which is necessary for the efficient management of the project.
16. CPPA-G during the hearing further submitted that justifications provided by the Company were not sufficient to substantiate the claim of US\$ 4.71 million and only recommended a maximum of US\$ 3.91 million as Fixed O&M cost and the same was determined by the NEPRA while determining the tariff in 2009.
17. CPPA-G during the hearing stated that at the time of COD tariff adjustment in 2013 by LEL, the request for adjustment in the Fixed O&M component was based on the approved cost of US\$ 3.91 million and similarly for Rs. 0.0441/kWh was requested for Variable O&M component, whereas the contract for both the O&M contract was signed by LEL with M/s. TNB REMACO in **May 2011** for around US\$ 1 million for Fixed O&M and Rs. 0.01427/kWh for Variable O&M component, but this fact was willfully concealed by LEL in the 2013 COD stage tariff petition to mislead the Authority with *mala fide* intents.
18. CPPA-G raised certain points during the hearing that the LEL's submission made with regards to the COD tariff adjustment application in 2013 was based on misrepresentation therefore, a penalty may be imposed on LEL for willfully concealing the facts, misrepresentation, misleading the Authority with *mala fide* intents and fraudulently obtaining the O&M components. The CEO of HUBCO denied all the allegations during the hearing and also asked for the provisions of these allegations in writing from the CPPA-G for a proper response.
19. During the hearing, the Authority after deliberation on the issue directed CPPA-G and LEL to have a meeting on these allegations and report within two weeks to the Authority and in case of failure, a fresh petition may be submitted by CPPA-G regarding the issue so that the Authority may proceed accordingly as the current MLR is limited and only to the extent whether or not to continue to allow O&M indexation to the LEL or otherwise.



Findings of the Authority:

20. The Authority observed and decided that the non-allowance of O&M indexation in the Jul-Sep 2021 quarterly indexation decision dated Dec 24, 2021, was based on the request of CPPA-G which is a petitioner in such adjustment's requests. In the same decision, CPPA-G was again directed to conclude the negotiation at the earliest and submit a revised PPA for approval of the Authority. A letter was also sent to CPPA-G on January 21, 2022, to conclude the negotiation before the next quarter i.e Oct-Dec 2021. It was observed that since August 12, 2021, more than 9 months have passed and CPPA-G is unable to reach any conclusion. The Authority noted with concern that CPPA-G is neither concluding negotiation nor requesting indexation of O&M components before the Authority. In the opinion of the Authority, this situation if continued for too long is not sustainable as it will further aggravate the LEL's cash flow problems. In view thereof, the Authority has decided to review its impugned decision by indexing the reference O&M component for the July-Sep 2021 quarter.
21. The Authority also showed displeasure regarding the inability of CPPA-G to conclude the negotiations despite the Authority's clear instruction to conclude it before the next quarter i.e Oct-Dec 2021 quarterly indexation. The Authority, therefore, decided to direct CPPA-G to explain its position in this regard. CPPA-G is to be further directed to conclude the negotiation within 3 months of issuance of the MLR decision failing which legal proceedings shall be initiated under the applicable law.
22. The Authority noted that CPPA-G raised certain points during the hearing that the LEL's submission made with regards to the COD tariff adjustment application in 2013 was based on misrepresentation therefore, a penalty may be imposed on LEL for wilfully concealing the facts, misleading the Authority with malafide intents and fraudulently obtaining the O&M components. Considering the gravity of the allegations, the Authority during the hearing directed CPPA-G and LEL to have discussions on these allegations and report this within two weeks to the Authority. Till today no written reply was received from CPPA-G on the issue of misrepresentation. Given the above, the Authority decided that due to the limited scope of MLR, the issue of misrepresentation by LEL as claimed by CPPA-G can't be entertained at this stage however, CPPA-G is to be directed to raise this issue separately before the Authority within two weeks backed by documentary evidence so that legal proceedings can be initiated if required.






Order:

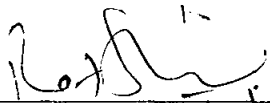
23. The revised O&M component for the July-September 2021 is as follows:

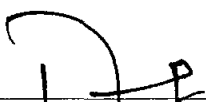
Quarterly O&M of Components Indexation		
Tariff Components	Reference	July-Sept 2021
	Rs./KWh	Rs./KWh
Variable O & M Local	0.0441	0.0685
Fixed O & M Local	0.5786	0.8982
Fixed O & M Foreign	0.4410	0.8317
Total	1.0637	1.7983
Indexation Values		
Exchange Rate Quarterly	96.13	155.08
CPI General	172.78	268.21
US CPI	230.38	269.315

24. CPPA-G is directed to explain its position on its inability to conclude the negotiations with LEL to date despite the Authority's clear instruction to conclude it before the next quarter i.e Oct-Dec 2021. The Authority further directs CPPA-G to conclude the negotiation within 3 months of issuance of this decision failing which legal proceedings shall be initiated under the applicable law.
25. The order part of this MLR is to be notified in the official gazette, in terms of Section 31(7) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.

Authority


Engr. Maqsood Anwar Khan
Member


Engr. Rafique Ahmed Shaikh
Member


Tauseef H. Farooqi
Chairman




26 05 22