



**National Electric Power Regulatory Authority**  
Islamic Republic of Pakistan

2nd Floor, OPF building, G-5/2, Islamabad  
Ph: 9206500,9207200, Fax : 9210215  
E-mail: registrar@nepra.org.pk

Registrar

No. NEPRA/TRF-70/NCPL-2007/2040-2042  
March 24, 2011

Subject: **Decision of the Authority in the matter of Motion for Leave for Review filed by Nishat Chunian Power Ltd. against the Authority's Decision at COD Stage Dated December 31, 2010**

Dear Sir,

Enclosed please find herewith the Decision of the Authority (05 pages) in the matter of Motion for Leave for Review filed by Nishat Chunian Power Ltd. against the Authority's decision at COD stage dated December 31, 2010 in Case No. NEPRA/TRF-70/NCPL-2007, for information please.

Enclosure: As above

Secretary  
Cabinet Division,  
Government of Pakistan  
Cabinet Secretariat  
Islamabad

CC:

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

  
( Syed Safeer Hussain )





**DECISION OF THE AUTHORITY IN THE MATTER OF MOTION FOR LEAVE  
FOR REVIEW FILED BY NISHAT CHUNIAN POWER LIMITED AGAINST THE  
AUTHORITY'S DECISION AT COD STAGE DATED DECEMBER 31, 2010**

**1. Background**

- 1.1 Nishat Chunian Power Limited [hereinafter referred to as the "NCPL"] vide letter dated January 12, 2011 filed motion for leave for review (hereinafter referred to as the "review motion") in pursuance of Rule 16 (6) of the NEPRA Tariff Standards and Procedure Rules, 1998 (hereinafter referred to as the "Tariff Rules") against the decision of the Authority dated December 31, 2010 (hereinafter referred to as the 'impugned decision') regarding its tariff adjustments at the Commercial Operations Date (COD).

**2. Proceedings**

- 2.1 The review motion was admitted by the Authority on January 26, 2011 and letters were sent to the key stakeholders requiring them to attend the hearing. The hearing in the matter was held on February 15, 2011 at NEPRA, main office, Islamabad. NCPL, Private Power and Infrastructure Board (PPIB) and National Transmission and Despatch Company Limited (NTDC) participated in the hearing.

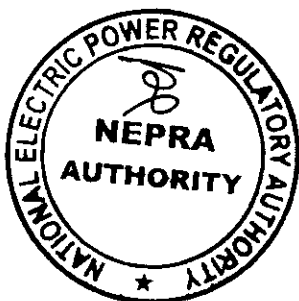
**3. Issues**

- 3.1 The review motion was based on the following grounds:
- a) Piling cost
  - b) Interest during construction and return on equity during construction
  - c) Delay in COD due to Force Majeure
  - d) Debt equity ratio
- 3.2 After hearing the parties including stakeholders, the perusal of documents submitted by NCPL, and based on the NCPL's submissions and comments of the stakeholders, issue wise discussion and decisions are given in the proceeding paragraphs.

**4. Piling cost**

- 4.1 The Authority in its impugned decision had observed that the piling cost was not subject to adjustment at COD stage and hence the same was not allowed. Paragraph 2.4 of the Authority's impugned decision on this subject reads as follows:

*"NCPL has also requested for allowing piling cost of Rs. 83.047 million (US \$ 1.039 million) actually incurred, which was not claimed in the original petition and accordingly was not considered by the Authority in the determination. The Authority while considering NCPL's request to allow this cost, decided that this cost is not subject to adjustment at COD stage and hence did not allow the same."*



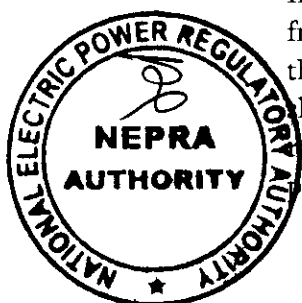


4.2 NCPL in its review motion has requested the Authority to allow piling cost actually incurred. NCPL has stated that the amount of piling cost was not certain at the time of filing of original tariff petition, because at the time of filing the original petition in January 2007, NCPL had merely estimated the cost of its land purchase and had not even gained possession of the subject land. The proposal/quotation submitted by Wartsila, NCPL's EPC contractor, on which NCPL's original tariff petition was based excluded piling cost because it was not possible to arrive at any educated estimate of the same without properly entering upon and examining the subject land. The associated land purchase was completed around December 2007. The EPC contract with Wartsila was also signed in December 2007 and Wartsila received the final geotechnical survey report (which would enable pile design) in January 2008. Thereafter NCPL received pile designs from Wartsila in June 2008. NCPL has requested the Authority that its inability to present this cost component to the Authority at the time of original petition should not be allowed to work to NCPL's disadvantage as they could not possibly have had any plausible information to present to the Authority in relation to these costs at the time of filing of tariff petition.

4.3 The Authority observed that NCPL has failed to establish that allowing/adjustment of piling cost was within the scope of tariff adjustments at COD stage. The Authority while making adjustments at COD stage has a limited scope to remain within the boundaries set by it in the original tariff determination dated March 05, 2007 (original tariff determination) and its decision with respect to motion for leave for review dated April 13, 2007. The original tariff determination was made in accordance with the requests/prayers made in the original tariff petition filed by NCPL. The Authority will be going beyond the scope of its own tariff determination if such costs are allowed which were neither claimed in the original tariff petition nor were allowed, nor was any mechanism provided in the original tariff determination that these will be allowed at the time of COD. Hence the Authority did not allow the same at the time of COD adjustments. The Authority while examining this review motion has a further limited scope of scrutinizing the impugned decision in terms of any discovery of new and important matter of evidence or on account of some mistake or error apparent on the face of record or from any other sufficient reason as per sub-regulation (2) of regulation 3 of the National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009. The Authority finds that the grounds raised by NCPL have already been considered by the Authority in the impugned decision and no mistake or error committed by the Authority has been pointed out by NCPL in its review motion. The Authority, in view of the above, cannot allow this cost to NCPL and hereby maintains its earlier decision on this issue.

5. Interest during construction and return on equity during construction

5.1 NCPL has submitted that in the impugned decision, the Authority has not allowed Interest During Construction (IDC) and Return on Equity During Construction (ROEDC) from December 27, 2007 to April 02, 2008. NCPL has submitted that IDC and ROEDC for this period represents the actual cost incurred by NCPL in setting up its project and should be allowed as such. NCPL has further submitted that it remains entitled to any relief eventually allowed by NEPRA on this subject to any and all other independent power producers (IPPs) comprised of inter alia allowance of IDC and ROEDC.



5.2 The Authority observed that NCPL has been allowed IDC and ROEDC for the construction period worked out in accordance with the terms and conditions of power purchase agreement (PPA) executed between NCPL and the power purchaser. The PPA clearly provides that it can be extended by the parties in terms of the agreement. The Authority is not a party to the contract. It has no powers to change, amend, vary or alter the terms and conditions of the agreement. Since no change or amendment in the PPA is made between the parties, the Authority has restrained itself to the RCOD and construction start date as given in the PPA. In view of these facts, the facts detailed in the impugned decision and the fact that neither there is any error on the face of record nor any new/additional ground has been submitted by NCPL, the Authority maintains its earlier decision on this subject.

5.3 NCPL has also submitted that in the pre COD period it had arranged working capital facility for the procurement of residual fuel oil which is an essential requirement of the testing & commissioning phase and it has incurred Rs.36.877 million under the head of interest on working capital facility. NCPL has requested the Authority that interest on working capital may kindly be allowed.

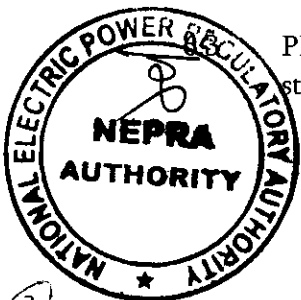
5.4 WAPDA Privatization Power Organization (WPPO) of NTDC & PPIB opposed this request of NCPL. The Authority noted that in the impugned decision of NCPL, it has been observed that IDC on working capital finances was not claimed in the original petition by NCPL and accordingly was not considered by the Authority in the determination. It was further noted by the Authority that IDC on working capital finances has not been allowed to any other IPP and working capital finances were not required for building up the project. The Authority therefore decided to disallow IDC on working capital finances. The Authority further observed that NCPL has neither submitted any new/additional ground nor pointed out any error on the face of record in its review motion, the Authority therefore maintains its earlier decision on this issue.

6. Delay in COD due to Force Majeure

6.1 According to the PPA, RCOD of NCPL was June 30, 2010; however, NCPL commenced commercial operations with effect from July 21, 2010. The Authority in its impugned decision has allowed the construction period of NCPL till RCOD as specified in the PPA.

6.2 NCPL has submitted that like several other IPPs, NCPL faced a delay in attainment of its COD by 20 days due to the occurrence of a continuing Force Majeure situation in the most critical commissioning phase of NCPL's power generation facility, and NCPL is entitled to appropriate relief in this regard. NCPL has submitted that it remains entitled to any relief eventually allowed by NEPRA and/or the Government of Pakistan on this subject to any and all other IPPs, comprised of inter alia allowance of IDC and ROEDC in respect of periods falling beyond the RCOD of June 30, 2010.

PPIB during the hearing of review motion pointed out that as per the PPA, circumstances stated by NCPL do not qualify to be categorized as Force Majeure. They further submitted





that the issue of Force Majeure of NCPL is not pending before the PPIB and Government of Pakistan.

- 6.4 The Authority considers that there is no mechanism available in tariff for condoning the delays through adjustment of tariff at COD. Primarily this is a contractual issue between the parties. Since a mechanism has been provided in the PPA to resolve such type of issues, NCPL may resort to relevant clauses of PPA. In view thereof, the Authority finds no justification to alter the impugned decision and hereby maintains its earlier decision.

7. Debt equity ratio

- 7.1 NCPL has submitted that the Authority has allowed debt to equity ratio of 80:20 in the impugned decision, resulting in a loan of PKR 15.114 billion and equity of US\$ 47.481 million. NCPL has requested the Authority to reconsider the project cost worked out in paragraph 7.3 of the impugned decision on the grounds discussed in the preceding paragraphs and allow increase in the project cost, under the head of debt only and equity portion may be kept constant.

- 7.2 The Authority observed that since no increase in the project cost has been allowed by the Authority in its decision on the review motion, thus no adjustment in the debt and equity already allowed is required. Hence this request of NCPL has become infructuous.

AUTHORITY

*Naveed*

(Zafar Ali Khan)  
Member

*Maqbool*

(Maqbool Ahmad Khawaja)  
Member

*Ghiassuddin Ahmed*  
22/3

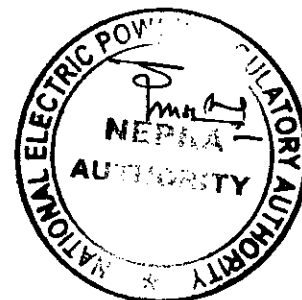
(Ghiassuddin Ahmed)  
Member

*Shaukat Ali Kundi*  
15.03.2011

(Shaukat Ali Kundi)  
Vice Chairman/Member

*Khalid Saeed*

(Khalid Saeed)  
Chairman

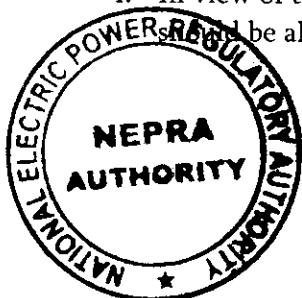


**NOTE OF DISSENT RECORDED BY MR. ZAFAR ALI KHAN, MEMBER NEPRA  
IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW FILED BY  
NISHAT CHUNIAN POWER LIMITED AGAINST THE AUTHORITY'S DECISION  
AT COD STAGE DATED DECEMBER 31, 2010 (Case No. NEPRA/TRF-70/NCPL-2007)**

1. Nishat Chunian Power Limited (NCPL) in its review motion, among other things, has also requested the Authority to allow piling cost actually incurred. NCPL has stated that the amount of piling cost was not certain at the time of filing of original tariff petition, because at the time of filing the original petition in January 2007, NCPL had merely estimated the cost of its land purchase and had not even gained possession of the subject land. The proposal/quotation submitted by Wartsila, NCPL's EPC contractor, on which NCPL's original tariff petition was based excluded piling cost because it was not possible to arrive at any educated estimate of the same without properly entering upon and examining the subject land. The associated land purchase was completed around December 2007. The EPC contract with Wartsila was also signed in December 2007 and Wartsila received the final geotechnical survey report (which would enable pile design) in January 2008. Thereafter NCPL received pile designs from Wartsila in June 2008. NCPL has requested the Authority that its inability to present this cost component to the Authority at the time of original petition should not be allowed to work to NCPL's disadvantage as they could not possibly have had any plausible information to present to the Authority in relation to these costs at the time of filing of tariff petition.
2. The Authority has decided to disallow piling cost and has observed that NCPL has failed to establish that allowing/adjustment of piling cost was within the scope of tariff adjustments at COD stage.
3. I am of the opinion that the following details should have been considered while deciding about piling cost:
  - a. Rule 17 (3)(i) of the National Electric Power Regulatory Authority (Tariff Standards & Procedure) Rules, 1998 requires that:  

“(i) tariffs should allow licensees the recovery of any and all costs prudently incurred to meet the demonstrated needs of their customers -----”

Accordingly the Authority is to allow recovery of all costs prudently incurred. In the case of NCPL piling cost was actually incurred and nature of piling cost is such that it was absolutely necessary for setting up the project therefore in my opinion piling cost has been prudently incurred.
  - b. Piling cost was not claimed in the original tariff petition and accordingly was not considered by the Authority in the original tariff determination. However, given the circumstances of the case, NCPL could not have assessed the exact quantum of piling cost at the time of filing its original tariff petition, although it could have asked for keeping the piling cost as a reopener. Had NCPL requested for keeping piling cost as a reopener in the original tariff petition or it had filed a separate petition for allowing piling cost prior to achieving COD, piling cost would have been allowed by the Authority; as has already been allowed to another IPP by the Authority on a separate tariff petition filed by that IPP subsequent to the original tariff determination.
  - c. Piling cost was not subject to adjustment at COD stage. However, the Authority has in the past, where considered justified, waived requirement of filing a separate tariff petition while deciding merits of the case. Further, sub-regulation (2) of regulation 3 of the National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009 allows any party to seek review of the Authority's decision for any sufficient reasons.
4. In view of the above mentioned details, I am of the opinion that piling cost, to the extent that it is verifiable, should be allowed and I disagree with the decision of the Authority on this issue.



*Zafar Ali Khan*  
Zafar Ali Khan  
Member (Tariff)