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# National Electric Power Regulatory Authority

## Islamic Republic of Pakistan

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**Vice Chairman**

No. NEPRA/R/LAG-72/73/Tariff-2005/1290-93  
August 31, 2005

**Subject: DETERMINATION OF THE AUTHORITY IN THE MATTER OF REFERENCE OF RECONSIDERATION MADE BY THE MINISTRY OF WATER AND POWER REGARDING TARIFF DETERMINATION IN THE CASE OF ORIENT POWER COMPANY (PVT.) LTD. (CASE NO. NEPRA/LAG-72/TARIFF) AND STAR POWER GENERATION LTD. (CASE NO. NEPRA/LAG-73/TARIFF)**

My dear Secretary,

In continuation of this office letters No. NEPRA/R/LAG-72/Tariff-2005/561-564 dated June 12, 2005, No. 929-32, dated 20.07.2005 and No. 1130-33 dated 26.07.2005, whereby determinations of the Authority on Orient Power Company (Pvt.) Ltd. were sent. In continuation of this office letters No. NEPRA/R/LAG-73/Tariff-2005/339-41 dated June 1, 2005, No. 920-23, dated 19.07.2005 and No. 936-39 dated 20.07.2005 whereby determinations of the Authority on Star Power Generation Ltd. were sent. Please find enclosed herewith determinations of the Authority (04 pages) in the matter of reference of reconsideration made by the Ministry of Water and Power regarding tariff determinations in the cases of Orient Power Co. (Pvt.) Ltd. (Case No. NEPRA/LAG-72/TARIFF) and Star Power Generation Ltd. (Case No. NEPRA/LAG-73/TARIFF).


2. Subsequent to the culmination of proceedings in the subject reference and the issuance/announcement of the determination of the Authority (04 pages) is being intimated to the Federal Government for the purpose of notification of the approved tariff, in the official Gazette pursuant to Section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997) read with Rule 16(11) of the National Electric Power Regulatory Authority Tariff (Standards and Procedure) Rules, 1998.

3. Please be informed that para 24 of the final decision of the Authority dated 20.07.2005 in respect of Orient Power Company (Pvt.) Ltd. stand amended to the extent as detailed in the attached determination (04 pages). "On page 16 CPI be replaced with WPI and reference value of 126.53 be replaced by 114.91"

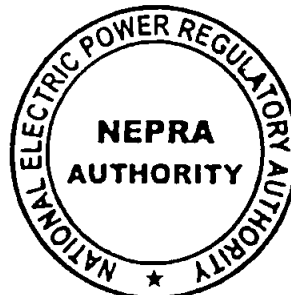
4. Please be informed that para 28 of Authority's final decision dated 19.07.2005 in respect of Star Power Generation Ltd. stand amended to the extent as detailed in the attached determination (04 pages). On page 11 CPI be replaced with WPI and reference value of 126.53 be replaced by 114.91.

DA/As above.

Yours sincerely,

  
(Fazlullah Qureshi)

The Secretary,  
Cabinet Division,  
Government of Pakistan  
Cabinet Secretariat,  
Islamabad



CC:

1. Advisor to the Prime Minister on Energy, Prime Minister's Secretariat, Islamabad.
2. Secretary, Ministry of Water & Power, Islamabad.
3. Secretary, Ministry of Finance, Islamabad.

**DETERMINATION OF THE AUTHORITY IN THE MATTER OF REFERENCE OF RECONSIDERATION MADE BY THE MINISTRY OF WATER AND POWER REGARDING TARIFF DETERMINATION IN THE CASE OF ORIENT POWER COMPANY Ltd. (CASE NO. NEPRA/LAG-72/TARIFF) AND STAR POWER GENERATION Ltd. (CASE No. NEPRA/LAG-73/TARIFF).**

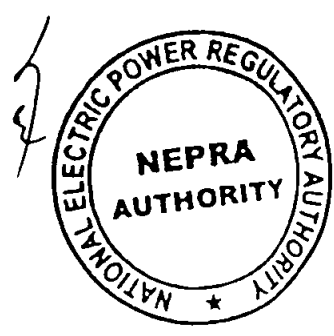
The Authority considered the communication of the Ministry of Water and Power made vide No. DS(P)/Misc/2004 dated 04.08.2005 and No. DS(P)/Misc/2004 dated 08.08.2005 (Reference) of reconsideration and the proceedings in case pursuant to the communication. Decision in the matter is given in the following paragraphs:

1. The expectation from the Authority to comply with the policy for power generation projects 2002 needs to be considered in the backdrop of Section 7(6) of the Act which provides that: *In performing its functions under this Act, the Authority shall, **as far as practicable**, protect the interests of consumers and companies providing electric power services in accordance with guidelines, not inconsistent with the provision of this Act, laid down by the Federal Government.* Section 7(6) of the Act thus envisages the possibility that some or a particular portion of the guidelines laid down by the Federal Government may be inconsistent with the NEPRA Act, however the Authority is to follow only those guidelines which are consistent with the NEPRA Act.
2. All stake holders are required to be aware of the fact that where a guideline of the Federal Government is inconsistent with the NEPRA Act (either explicitly or by implication) the law overrides the policy and the assumption that NEPRA should adhere to the policy inspite of an inconsistency with the NEPRA Act is not a legitimate expectation.
3. In deference to the desire of the Federal Government to reconsider the specific points (i) to (v) mentioned in the "Reference", the same are being reconsidered in their own merit to examine whether the decision made respecting these points can be further improved in the public interest to achieve a more just, fair and equitable balance between protection of the interest of the consumers and the service providers in accordance with the NEPRA Act and the rules and regulations made thereunder and decide as follows:

(i) Indexation of Local Expenses

While allowing indexation for inflationary increase in the O&M cost, the Authority considered the nature of O&M expenses and considered 50% of the O&M cost as based on local currency and further considered the CPI as notified by the State Bank as the most appropriate factor to cater for inflation of the local component of O&M expenses. The decision was made in consideration of the fact that the composition of the basket of commodities on which CPI is based most closely represents the local O&M expenses incurred by the generation companies among all the indicators recorded for inflation by the Federal Bureau of Statistics

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The matter of indexation of local expense has as such already been considered and decided in the original determination. As regards the request for replacing CPI with WPI (manufacturing) made by representative of Ministry of Water & Power in the hearing on August 18, 2005, this has been examined. The CPI and WPI indicators are both published by the Federal Bureau of Statistics. Comparison of the historical data of the two indicators reveals that there is no significant variance in the effective increase of the two indicators, rather the annual rate of change in WPI has generally remained marginally lower than CPI during the years 2002 to 2005. Star Power Generation Ltd. [SPGL] and Orient Power Company Ltd. [OPCL] have indicated their willingness and no objection to the application of WPI as local inflation indexation. The consumers are also not expected to be adversely affected with the replacement of CPI with WPI, therefore in the instant case the balance of the interest of the consumers and service providers is equally protected even with the proposed change. The local indexation in the instant case is therefore allowed to be on the bases of WPI and the final determinations made pursuant to the review motions filed in the two cases, SPGL and OPCL respectively made by the Authority on July 18, 2005 and July 19, 2005 stand amended to this extent.

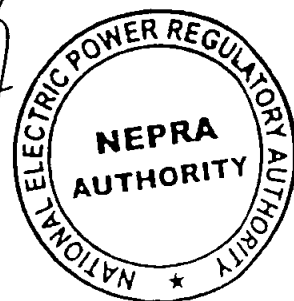
(ii) Indexation of variable operation and maintenance cost (O&M)

The Authority, in its final order/determination, has considered the total O&M cost of the generating companies while deciding on indexation/escalation. The Authority has assessed the variable portion of the O&M cost to be comprising of spare-parts, annual maintenance, hot gas path and major overhaul, which are likely to be incurred in foreign currency and has allowed foreign exchange (FX) indexation on the same.

The Authority is of the opinion that indexation of variable (O&M) expense has been appropriately and adequately allowed and find no ground or reason to revise the final determination of the Authority in this context.

(iii) Withholding tax of 7.5% on Dividends

The Authority has allowed reimbursement of withholding tax of 7.5% on dividend on actual cost occurrence basis such that this tax burden is considered a pass through item and the consumer end rate is affected only when the actual expense occurs. The interest of the investor is protected by allowing it to recover the tax expense on actual basis and the consumer interest is protected by not imposing a burden on this account unless the actual expense is made. Moreover, in the event that the said tax is withdrawn by the Government the reference tariff would not need a revision. The mechanism of withholding tax compensation has therefore adequately been addressed and the Authority does not find any cogent reason to revise its earlier decision made in this context with respect to the mechanism.



(iv) Transfer of assets to Government of Pakistan instead of NTDC/DISCO

Regarding SPGL.

The Authority in its earlier determination had observed that the only manner in which the benefit of the lower tariff can be passed on to the consumers who would have paid for substantially all the depletion of assets through rates over 25 years, is by allowing the utilization of the remaining useful life of the assets to the equity holders. However, the sponsor has offered the project on BOOT basis and is not willing to accept BOO arrangements. The Authority has further reconsidered the matter and observed that the transfer of generating assets to NTDC or a Distribution company after the service period may create complication in the handing over of the assets by the generating company as neither NTDC or any of the EXWAPDA DISCOs are allowed to own or operate a generation facility presently. There is no likelihood of NTDC being able or allowed to operate a generation facility. The activity of EXWAPDA DISCOs have been restricted to distribution business and the matter of allowing an EXWAPDA DISCO to be associated with a generating company by way of owning a part or whole of some generation assets directly or indirectly as an affiliate has as yet not been considered. Such decisions have to be considered on a case to case basis by the Authority. The Authority therefore considers that it would be appropriate to direct the transfer of the assets of the generating company at the end of 25 years period to the Federal Government so that the assets can be utilized in the most optimum manner in the public interest at that time.

SPGL shall transfer all the remaining assets at the end of 25 years period to GoP for further disposal as deemed fit at that time. Such a change would not result in any revision of the tariff already determined. The final determination of July 18, 2005, made by the Authority pursuant to motion for leave for review filed by SPGL stands amended to this extent.

(v) Build, Own, Operate (BOO) and Build, Own, Operate, Transfer (BOOT)

Regarding OPCL:


Orient had proposed to set up a power plant on BOO basis and requested for tariff to be determined for 25 years. The Authority in its original determination had given the consumers a credit for the five remaining useful years of the power plant. During the proceedings in the case of its motion for leave for review, OPCL had offered to increase the term of PPA to 30 years for removal of the salvage value credit. The Authority had agreed to such a revision of the tariff applicability period to 30 years. However, the Authority had also provided an option for NTDC to take over the plant by paying back the initial equity investment made by the sponsors so that the consumers can benefit from the lower tariff of a plant fully paid for.

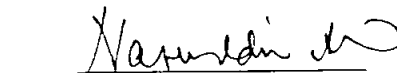
The Authority has reconsidered the matter of the inclusion of the option to NTDC for taking over the plant and agrees that the inclusion of the clause in effect creates a change over from BOO to BOOT arrangement, whereas the sponsor had requested for BOO arrangement. The Authority agrees that the





clause enabling NTDC to take over the assets of the plant at its option be removed and the words "at the end of 30 years period.....per dollar." in para 19 on page 10 of decision on Motion for Leave for Review be deleted. Such a change would not result in any revision of the tariff already determined. The final determination of July 19, 2005, made pursuant to review motion filed by OPCL stands amended to this extent.

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Abdul Rahim Khan  
Member

  
Nasiruddin Ahmed  
Member

  
Fazlullah Qureshi  
Member/VC

  
Lt Gen Saeed uz Zafar  
Chairman

