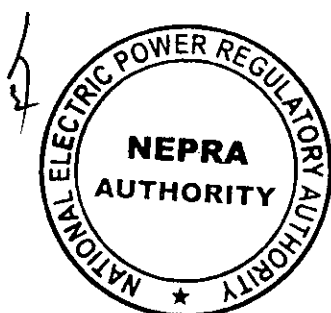




**Decision of the Authority with respect to Motion for Leave for Review  
filed by Tapal Energy Limited (TEL) under Rule 16(6) of the Tariff  
Standards and Procedure Rules - 1998**

1. Government of Pakistan (GOP) through Private Power & Infrastructure Board (PPIB) invited the Independent Power Producers (IPPs) operating in Pakistan, to bid for additional power generation capacity, on fast-track basis. It was considered that these IPPs have the required infrastructure and the requisite experience of development and operation of power plants in Pakistan and the GOP expected that they would be able to offer lower tariff as compared to new upcoming projects.
2. Consequently, a Request for Proposal (RFP) was prepared and issued by PPIB to the bidders who were required to propose annual and levelized tariff and its various components along with the required details in its bid in accordance with the prescribed format and assumptions set out in RFP.
3. The RFP explicitly stated that bid which are either conditional or are modified after the submission of bid shall be rejected outrightly and, no change in the tariff would be permitted after submission of the bid. It further stated that where in PPIB's sole opinion the offered tariff is found to be unreasonable, PPIB will have the right to either negotiate with the lowest bidder to arrive at a reasonable tariff level.
4. Based on the aforesaid bidding parameters and GOP Guidelines for the Determination of Tariff for IPPs, issued in November 2005 (Tariff Guidelines), PPIB received three (3) bids.
5. On the pretext that the tariffs quoted in the bids were higher than the NEPRA's announced Upfront Tariff of US Cents 11.97/kWh dated 14<sup>th</sup> September 2006, PPIB, after elaborate process entailing three rounds of bidding agreed to a tariff of US 11.38/kWh which was offered and accordingly accepted by the other IPPs. However, in doing so, the set of assumptions prescribed under the RFP were changed by PPIB to those of Attock Generation Limited (AGL) tariff assumptions. The comparison of tariff provided by PPIB in the ECC summary was not based on uniform set of assumptions; therefore was not realistic. The

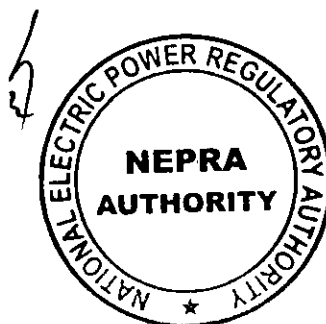


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tariff of Leading Business Houses was determined after incorporating the adjustment for Euro/\$ parity prevailing at the time of tariff determination. Moreover the fuel cost component also included the inland freight, which in the case of AGL was not applicable.

6. Later, the aforesaid tariff was got approved from PPIB Board and subsequently through its decision # ECC-40/03/2007 dated 10<sup>th</sup> April 2007, the Economic Coordination Committee (ECC) of the Cabinet also approved the tariff.
7. Since PPIB claimed that the tariff of US Cents 11.97/kWh based on AGL's assumptions has been arrived at through competitive bidding and is substantially less than the NEPRA's announced Upfront Tariff, NEPRA ordered the formal approval of the tariff, determined by the ECC in accordance with the Tariff Guidelines, without going in to extensive detail and scrutiny.
8. Tapal Energy Limited (TEL) with a net capacity of 161.2 MW through its motion for leave for review against the aforesaid tariff has sought the following adjustments in their tariff:-
  - Adjustment in engineering, procurement and construction (EPC) contract for foreign exchange rate variation Euro/US\$ during construction at Commercial Operation Date (COD)
  - Adjustment for custom duties and Taxes as per actual at COD
  - Adjustment in interest during construction (IDC) as per actual at COD
  - Adjustment in tariff due to revision in project cost after incorporating terms and conditions of the loan agreement.
  - Adjustment in Operation & Maintenance (O&M) cost/kWh as per the company's request according to its own tariff assumptions.
9. Considering it to be of public importance, TEL's motion for review was admitted to afford it an opportunity to present its arguments in support of the petition, particularly in the absence of provisions in NEPRA Act and Rules on the tariffs arrived at through competitive bidding.



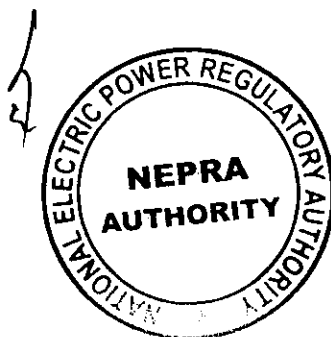


10. NEPRA is confronted with the provision 1.10 of the Tariff Guidelines which has been relied upon and referred to by TEL in its tariff petition and the Ministry of Water & Power's in its summary before the ECC. The provision 1.10 states that:

***"1.10 It is proposed that once a tariff has been arrived at through competitive biddings based on either of the processes mentioned at Para 1.9 above, it should not be subjected to further review by NEPRA. The bidding process be structured and administered by PPIB (Ministry of Water and Power) in consultation with the power purchaser (WAPDA/NTDC), Ministry of Finance and NEPRA. The bidding documents (including various formula, formats, etc.), alongwith evaluation criteria, be also finalized by PPIB in consultation with the same agencies. The lowest evaluated levelized tariff would be recommended to the GOP for acceptance".***

[Emphasis Added]

11. Arguments heard and record perused. In absence of any cogent ground NEPRA is convinced that the tariff cannot be reviewed pursuant to the provision 1.10 of Tariff Guidelines which purportedly has been arrived through competitive bidding.
12. Even on merits, TEL's request for adjustment in EPC for foreign exchange rate variation Euro/US\$ during construction at COD appears to be inconsistent with the ECC approved tariff assumptions. Annex-IV of the Ministry of Water & Power's Summary for the ECC titled 'Bids for Fast-Track Capacity Expansion by Existing IPPs' dated 26<sup>th</sup> March 2007 indicates the project cost in US Dollars and no further breakup has been indicated in the approved assumptions. The tariff approved for the IPPs expansion works out higher than the tariff determined by NEPRA for similar projects on the same set of assumptions. The Authority therefore considers that the future impact of Euro/US\$ parity variation has been already built-in/covered in the project cost and any further adjustment on this account will further increase the tariff. In Authority's considered opinion this will defeat the objective of procuring power on lower rates through utilization of existing facilities. Consequently, no further indexation can therefore be provided on this account.



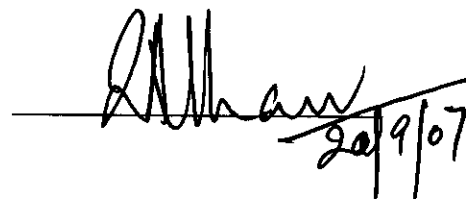


13. In absence of any express provision in the ECC decision TEL's request for adjustment of custom duties and taxes as well as IDC is not considered to be maintainable.
14. TEL's request for adjustment in tariff due to revision in project cost after incorporating terms and conditions of the loan agreement was considered and the Authority decided to rectify such omission through an addendum to keep it in accordance with the ECC's decision, where in case of foreign borrowing the benefit of low interest rate shall be passed on to the Power Purchaser.
15. The Authority considers that the adjustment in O&M cost/kWh allowed to TEL is in line with AGL's decision.
16. In view of the foregoing, the review petition is not maintainable and stands dismissed. The Petitioner may, if so desire, approach GOP/ECC.

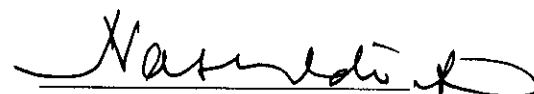
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**Authority**

Zafar Ali Khan  
Member

  
20/9/07

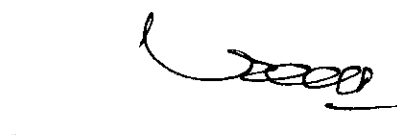
Nasiruddin Ahmed  
Member



Abdul Rahim Khan  
Member

  
On leave

Saeed uz Zafar  
Chairman





  
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