

K-ENERGY (PRIVATE) LIMITED

Islamabad Office: House Number 1, Street 7, F-8/3, Islamabad, Pakistan
Lahore Office: Daewoo Pakistan Building, 231-Ferozepur Road, Lahore, Pakistan
Telephone: +92-42-3588-1717, Fax: +92-42-3588-4021

December 18, 2015

Syed Safeer Hussain
Registrar, National Electric Power Regulatory Authority
NEPRA Tower, Attaturk Avenue (East)
G5/1, Islamabad

Subject: **MOTION FOR LEAVE FOR REVIEW AGAINST THE TARIFF DETERMINATION #NEPRA/TRF-311/KEPL-2015 /17525-17527 DATED 09 DECEMBER 2015**

Dear Sir:

K-Energy (Pvt.) Ltd. (the "Company" or "KEPL" or the "Petitioner"): Motion for Leave for Review KEPL Tariff Determination # NEPRA/TRF-311/KEPL-2015 /17525-17527 dated 09 December 2015 received on 10 December 2015 (the "Determination").

The Authority through a tariff determination # NEPRA/TRF-311/KEPL-2015 /17525-17527 dated 09 December 2015 communicated its decision on KEPL Tariff Petition, which was also sent to the Ministry of Water & Power for Notification in official gazette (the "Impugned Determination"). KEPL holds a generation license granted by NEPRA #IGSPL/48/2015.

The Company hereby submits with the learned Authority, through this letter and the attachments hereto, its Motion for Leave for Review of the Impugned Determination in terms of, inter alia, Rule 16(6) of the Tariff Standards & Procedure Rules, 1998 read with NEPRA Review Procedure Regulations, 2009 (the "Review").

Thank you and with kind regards,

Yours sincerely,

Shaheryar Chishti
For and on behalf of KEPL
Shaheryar Chishti
Chief Executive

Cc:
Chairman NEPRA
Member Sindh, NEPRA
Member Punjab, NEPRA
Member KPK, NEPRA
Member Baluchistan, NEPRA
CEO, K-Electric

For information & mfa #
NRG-I/SAR
SAC (Tech)
SAC-IV
LA (KEP)
DW (L&E)
M/F
21.12.15
cc: chairman
vc/m(a)
m(T)
m(M&E)
m(L&E)
29/12

Registrar
Dy No. 13306
Dated 21-12-15

11728
23-12-15

K-ENERGY (PRIVATE) LIMITED

K-ENERGY (PVT.) LTD

**421.909 MW (Gross) Coal Conversion Project of
Unit 3 & 4 of Bin Qasim Power Station-I at Bin Qasim, Karachi**

Name of Petitioner:

K-Energy Private Limited

Islamabad Office: House Number 1, Street 7, F-8/3, Islamabad, Pakistan.

Lahore Office: Daewoo Pakistan Building, 231-Ferozepur Road, Lahore, Pakistan

Telephone: +92-42-3588-1717, Fax: +92-42-3588-4021

Legal Basis:

The Motion for Leave for Review by KEPL (the "**Review Petition**") is filed against the Tariff Determination # NEPRA/TRF-311/KEPL-2015 /17525-17527 dated 09 December 2015 (the "**Impugned Determination**") under, *inter alia*, the National Electric Power Regulatory Authority ("NEPRA") Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of) 1997 (the "**NEPRA Act**"), Rule 16(6) of the Tariff Standards & Procedure Rules, 1998, NEPRA Review Procedure Regulations, 2009 and other applicable provisions of NEPRA laws.

Incorporation by Reference: On 21 April 2015, KEPL filed its tariff petition for coal conversion of unit # 3 and 4 of Bin Qasim Power Station -I from RFO to coal. The Authority through its Impugned Determination has determined the aforesaid tariff petition of KEPL.

The Company would like to incorporate by reference the contents of tariff petition, Impugned Determination and related correspondence, letters etc. exchanged with NEPRA and requests the learned Authority that the same may kindly be read as integral part of this Review Petition.

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GROUND AND THE FACTS FORMING THE BASIS FOR FILING THE MOTION FOR LEAVE FOR REVIEW BEFORE THE LEARNED AUTHORITY

At the very outset, on behalf of the members of Board of Directors and management team of the Petitioner I would like to express our thanks for the time and effort expended by the Authority and the NEPRA staff in evaluating our Petition. However, after our thorough review of the Determination we can safely conclude that the determined tariff renders the project unviable if attempted to be implemented without further adjustment.

The loss to consumers of Karachi from continuing to operate these units on oil has been extremely severe. Already hundreds of millions of dollars more in electricity cost (based on difference between oil and coal tariff) have been paid by the consumers of Karachi while waiting for the coal conversion project to come to fruition. And discontinuation of this project, if it happens, will add further misery to the lives of ordinary Karachi consumers who were expecting some relief in the shape of cheaper, coal based electricity.

We are confident that the Authority would like to protect consumers of Karachi from the curse of load shedding and high priced electricity. Accordingly, we implore the Authority to consider all of the following points which are being made in good faith to restore the technical and financial viability of this project. Enough time has been spent and now is the time to deliver solutions to alleviate the suffering of the people of Karachi.

We humbly request the Authority to approve the following points and review the Impugned Determination accordingly:

1. Capital cost

We thank the Authority for acknowledging a few basic facts in our petition, namely:

(a) that the K-Energy project is a coal conversion PLUS replacement / overhauling / rehabilitation project;

(b) that capital costs for a coal conversion project plus replacement / overhauling / rehabilitation project would by definition need to be greater than a simple coal conversion project; and

(c) that additional costs of US\$120 million would be required for replacement / overhauling / rehabilitation in addition to the US\$0.57 million per MW allowed for simple coal conversion.

We are grateful that the Authority's own findings have validated our own technical assessment on this topic and our proposed cost levels have also now been acknowledged by the Authority in paragraph 47 of the Impugned Determination whereas the same has not been allowed as part of project cost.

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The fact remains that NEPRA vide its determination No. NEPRA/R/DL/LAG-05/3866-71 dated March 13, 2015 in the Licensee Proposed Modification ("LPM") of K-Electric Limited ("K-Electric") has already excluded the subject Units 3 & 4 of Bin Qasim Power Station - I from the K-Electric Generation Facilities and the same modification stand incorporated in the Generation License of K-Electric. Firstly, K-Electric after the LPM has no obligation whatsoever towards the project after such exclusion. Secondly, in the contract between KEPL and K-Electric, there is no such clause whereby K-Electric is under obligation to fund this project in any manner, rather, they have demanded lease money of US\$29.4 million per year, meaning thereby that besides the lease contract K-Electric will not have any stake whatsoever with the project.

Further, a significant portion of this rehabilitation cost is required to increase the useful remaining life of these units by another 20 years in addition to bringing back de-rated capacity and efficiency of existing units with enhanced reliability. The O&M component allowed to K-Electric under MYT Regime for the said Units 3 & 4 relates mainly to routine maintenance and overhauls to maintain the project up till project life. Such O&M cost allowed to K-Electric was never intended nor sufficient for K-Electric to carry out life extension activities for the project. Hence, K-Electric is neither obligated nor motivated to invest in such life extension rehabilitation which is not going to bring any direct benefit to it in the tariff. NEPRA can further pursue K-Electric as its regulator without any recourse to KEPL project as it is likely to render the project financially unviable despite the project's successful completion being in the best interest of the electricity sector of Pakistan and of electricity consumers.

On the other hand in case NEPRA declines to allow such cost of US\$120 million to KEPL, the project will be rendered unviable. Considering above, it is requested that NEPRA may kindly re-consider and allow the full cost of US\$120 million to KEPL for replacement / overhauling / rehabilitation to achieve the life extension in order to make this project viable.

Detailed justification for the above has already been provided as part of our tariff petition.

2. Efficiency and Auxiliary Consumption

We note that the Authority has allowed 34% flat net thermal efficiency at LHV for the life cycle without allowing any adjustment for annual heat rate degradations and partial load adjustments. Heat rate of a power plant will be degraded due to aging and fouling over the life of the power plant. Yearly heat rate degradations are allowed by the Authority to green-field coal fired projects under upfront tariff. Therefore in same manner, we request the Authority to allow annual heat rate degradation on the same basis as being allowed to green-field coal IPPs. Fact to be considered that the EPC guaranteed performance numbers are not the average numbers of the project life rather these would be the initial parameters at COD along with annual degradation curve. This is also important for the bankability of the Project.

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With respect to auxiliary consumption, we noted that the Authority allowed 9% auxiliary consumption in line with upfront tariff. We also noted that in Paragraph 95 of the Impugned Determination, the Authority has used an Indian reference of 12% auxiliary for plant size less than 200MW and 9% for plants more than 200MW. Please note that the Project consists of two units of 211 MW (Gross Capacity) each which is right at the border of the given reference and it is not safe to assume a sudden drop of auxiliary number from 12% to 9% just beyond the benchmark size of 200MW. It is a matter of fact that firstly the project is a conversion and retrofitting / rehabilitation project instead of a green-field project and secondly the equipment and plant was designed / installed back in 1980s which require higher amount of auxiliary to consume as compared to current technology and design. Further, use of Lignite coal as fuel increases size of boilers and all the related auxiliaries including coal and ash handling equipment resulting in higher auxiliaries in the range of 10%-15% as against the hard coal which was also confirmed by KEPL's world renowned Owners' Engineer vide their letter dated 26 June 2015 (a copy of the letter was already submitted).

Further, the claimed auxiliary consumption is in line with the guaranteed number of 39,653 kW (9.4%) auxiliary consumption provided by EPC Contractor for new equipment whereas an estimated 10,000 kW for the existing equipment of Units 3 & 4 which will be retrofitted / overhauled / rehabilitated and for which EPC Contractor has not provided any guarantee. Hence, the claimed auxiliary consumption is justified and much required to address project risk for both investor and lenders. It is therefore requested to allow the claimed net output of 372.256 MW with an upward adjustment based on Initial Dependable Capacity at COD.

Detailed justification for our requested heat rate, efficiency and auxiliary consumption has already been provided through our earlier submission and can be shared and discussed again as required.

3. K-Electric's Lease Rentals

Petitioner requests Authority to reconsider its stance on allowing lease payments to KEL on the grounds that treating conversion units as purchases without KEL getting any lease rentals will pass through all cost reductions arising due to switching the fuel (from oil to coal) to consumers without retaining any benefit with KEL. It is further to be noted that there will be no additional units/sale in case of conversion because if these units are not converted on coal, they will be used as K-Electric's own generation under their license on oil to its full capacity as overall demand is much higher than supply. Low utilization of these units during past few years was due to hold put on rehab investments mainly on existing oil boilers in waiting for commencement of coal conversion project that has been delayed due to regulatory approvals mainly.

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DETERMINATION SOUGHT

In light of the aforesaid, it is respectfully prayed that the learned Authority may kindly:

- (i) accept the Review Petition; and
- (ii) accordingly modify the Impugned Determination

Any other relief which is just, proper & better may also be awarded.



For and on behalf of K-Energy (Pvt.) Limited
Shaheryar Chishty
Chief Executive

K-ENERGY (PRIVATE) LIMITED

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December 18, 2015

Syed Safeer Hussain
Registrar, National Electric Power Regulatory Authority
NEPRA Tower, Attaturk Avenue (East)
G5/1, Islamabad

Subject: **CLARIFICATIONS SOUGHT UNDER THE TARIFF**
DETERMINATION #NEPRA/TRF-311/KEPL-2015 /17525-17527
DATED 09 DECEMBER 2015

Dear Sir:

The Authority through a tariff determination # NEPRA/TRF-311/KEPL-2015 /17525-17527 dated 09 December 2015 communicated its decision on K-Energy (Pvt.) Limited ("KEPL") Tariff Petition, which was also sent to the Ministry of Water & Power for Notification in official gazette (the "Impugned Determination"). KEPL holds a generation license granted by NEPRA #IGSPL/48/2015.

KEPL hereby seeks the Authority's clarification on the following matters and requests an audience with the Authority with respect to the same:

1. Insurance Premium

The Authority has disallowed KEPL's request for an IRR of 21% vs the normal 17% allowed to other coal IPPs. It may be mentioned here that all other coal IPPs which supply electricity to NTDC are covered by an Implementation Agreement ("IA") i.e., a sovereign Government of Pakistan guarantee protecting their investment. Whereas, in KEPL's case, KEPL does not have any such guarantee / protection available. A Higher IRR was requested in order to compensate for the lack of IA / sovereign guarantee. Now, since the Authority has disallowed KEPL's request for a higher IRR, KEPL would need to purchase insurance to cover the risks which are not covered due to lack of IA /sovereign guarantee.

We therefore, agree to the Authority's decision in this regard, provided that we are allowed to purchase insurance on the similar basis. The decision of the Authority on page 38, Para II of the Order, sub-para (v) will be adhered to and KEPL's project would also be able to charge such insurance cost on foreign debt servicing and ROE / ROEDC based on actual cost subject to the limits set under the upfront coal tariff i.e. 7% of insured amount.

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2. Adjustments at COD

KEPL will undertake its best efforts to achieve COD of the project based on the financing plan submitted. However, given the significant time elapsed between signing of our EPC Contract (in November 2013) and the delays in final tariff determination and volatility in international financial markets, the actual financing structure as of COD may differ from the proposed financing plan. However, we will adhere to the principle outlined in paragraph 72 of the Impugned Determination, and interest during construction and financing fees will be adjusted as per the Impugned Determination.

3. Fuel Cost Formula

With respect to the various components used in calculating the fuel cost, we seek clarification of our understanding of the following:

- On top of the Spot Index price include a coal premium of US\$5 per ton for long term coal supply contract (explanation provided below)
- Coal losses at least in line with the percentage allowed in the upfront tariff will be allowed to KEPL.
- Freight of \$12 per ton will be allowed based on actual
- Other charges will include local port handling and clearance excluding transportation
- Inland transportation charges will be based on actual in line with a formal agreement
- Custom duties, taxes and charges on the import of coal and its transportation to the plant site will be allowed as pass-through based on actual
- All the coal price components will be subject to applicable indexation and adjustments in line with the relevant market practices and commercial arrangements with coal supplier and other service providers

The coal pricing formula allowed by NEPRA in the Impugned Determination is based on spot pricing. However, we require to enter into a long term supply contract for coal. The reasons for choosing long term supply over spot are manifold and include: (a) this will be among the first coal IPPs in Pakistan and Pakistan currently has zero coal IPPs, hence international coal suppliers have no experience in supplying coal on long term basis to Pakistan (the cement industry does purchase approximately 4 to 5 million tons of coal per annum, however, these are all under spot or very short term supply contracts); (b) lenders and equity holders do not want to take the risk of non-supply of coal and the consequent damages and loss of profit as a result; and (c) under our PPA we will be obliged to guarantee plant availability and as such are required to make our own arrangements for procuring coal including shipping, port handling and delivery to plant gate. This is a task which oil and gas based IPPs in Pakistan do not have to handle because they benefit from a state owned intermediary (PSO, SSGC, SNGPL, or OGDC as the case may be) to organize their entire fuel supply chain. For coal, the coal IPPs have to take the entire risk of supply chain. Therefore, we have no choice but to opt for long term supply contracts.

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Our coal supplier will be required to dedicate mine capacity to our project which would amount to approximately 40 million tons over 20 years. We have communicated to the coal supplier that we are not in a position to provide 20 year LC or SBLC and nor are we able to provide any fixed capacity payments or "take or pay" type provisions despite our requirement for long term supply commitment from the coal supplier. Accordingly, the coal supplier has agreed to our conditions and accepted a short term LC / SBLC but also has demanded a premium of US\$5 per ton to take into account Pakistan risk and counterparty risk for 20 years as well to cover their administrative arrangements and dedication of mine capacity to our project.

Thank you and with kind regards,

Yours sincerely,



For and on behalf of K-Energy (Pvt.) Limited
Shaheryar Chishti
Chief Executive

Cc:
Chairman NEPRA
Member Sindh, NEPRA
Member Punjab, NEPRA
Member KPK, NEPRA
Member Baluchistan, NEPRA
CEO, K-Electric

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EXTRACT OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF K-ENERGY (PRIVATE) LIMITED

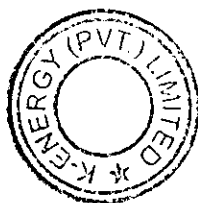
The Board of Directors in their Meeting held on 17 December 2015, at registered office of K-Energy (Private) Limited (KEPL) has passed following resolution to authorize Mr. Shaheryar Arshad Chishty, the Chief Executive Officer of K-Energy (Pvt.) Limited (KEPL) to file Motion for Leave for Review of the KEPL Tariff Determination # NEPRA/TRF-311/KEPL-2015 /17525-17527 dated 09 December 2015 of 421.90 MW Coal based thermal generation facility with NEPRA.

"Resolved that:

Mr. Shaheryar Arshad Chishty, the Chief Executive officer of K-Energy (Pvt.) Limited (KEPL) has been duly authorized to file Motion for Leave for Review of the KEPL Tariff Determination # NEPRA/TRF-311/KEPL-2015 /17525-17527 dated 09 December 2015 of 421.90 MW Coal Fired Power Project of KEPL with NEPRA. He is also authorized to make any amendment, alteration, addition, deletion, correction etc. as deem fit in the Motion for Leave for Review and all other related documents."



Muhammad Shahid Jamal
Company Secretary





I, the above-named Deponent, do hereby solemnly affirm and declare as under:-

- DEPONENT**

[Signature]
Chief Executive

Verified on oath this 18th day of December, 2015 that the contents of this affidavit are true and correct to the best of my knowledge and belief.

DEPONENT

St. Louis
Chief Executive