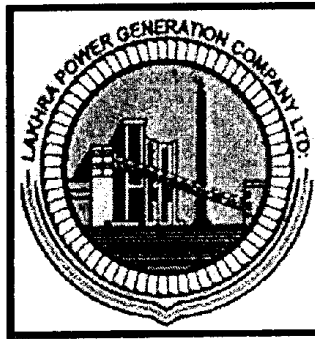


LAKHRA POWER GENERATION COMPANY LIMITED



MOTION FOR LEAVE TO REVIEW

AGAINST NEPRA's DETERMINATION FOR FY 2014 – 15

DECEMBER 18, 2015

Counsels

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BEFORE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

*Motion for Leave to Review against the
Determination in Case # NEPRA/TRF-295/LPGCL
dated 6.10.2015 by NEPRA of the Tariff of Lakhra
Power Generation Company Limited*

A. REVIEW MOTION

I. Summary and Background

1. Lakhra Power Generation Company Limited (hereinafter referred as "LPGCL") is registered under the Companies Ordinance 1984 on 21.02.2002 and has been granted the Generation License (#GL/06/2005) by NEPRA on 18.02.2005.
2. For the first time, the Generation Tariff for LPGCL was determined by NEPRA through Determination dated 21.02.2005. LPGCL impugned said Determination by filing Motion for Leave to Review which was decided by Authority on 06.05.2005. The Determination dated 21.02.2005 and Review Determination dated 06.05.2005 hereinafter collectively shall be called as "2005-Determination".
3. Later on, in line with methodology and approach of NEPRA adopted in 2005-Determination, LPGCL filed another Tariff Petition in 2010 for the financial years 2010-11 to 2013-14. This Petition was decided by NEPRA through its Determination dated 25.07.2011 ("2011-Determination") by modifying the methodology and adopting a new approach of 'Take & Pay' in lieu of 'Take or Pay'.



4. LPGCL has now filed the Tariff Petition for Determination of its Tariff for FY 2014-15 (Case # NEPRA/TRF-295/LPGCL) on 26th December 2014 which was admitted on 15.01.2015. After the process due under the law, Public Hearing was conducted on 14.04.2015. The Authority determined the tariff for LPGCL by its Determination dated 6th October 2015 (hereinafter called as "**Impugned Determination**") that was received by LPGCL on 9th October 2015 vide letter No.NEPRA/TRF-295/LPGCL-2014/14693-14695 dated 6th October 2015.
5. The LPGCL is aggrieved of the Impugned Determination, hence is filing this Motion for Leave to Review ("**Review Motion**") under the NEPRA Tariff (Standards & Procedure) Rules, 1998 ("**Tariff Rules**"), along with the application for condonation of delay wherein the reasons for the apparent delay has been explained.
6. Being aggrieved by the impugned Determination of the Authority, LPGCL with approval of its Board of Directors and through authorized officer is filing, this Review Motion under Rule 16 (6) of Tariff Rules read with other enabling provisions of law.

Copy of the BoD Resolution is **Appendix – A**.

II. Legal Grounds

7. On the basis of its understanding of the impugned Determination, LPGCL is constrained to file the Review Motion for kind consideration of worthy Authority, inter alia, on the grounds as detailed hereinafter.
8. There are sufficient grounds, including non observance of Rule 17 (3) of Tariff Rules as shall be enlarged during hearing / proceedings, for



review by Authority that may modify the earlier Determination on the points of:

- a. **Reduction in Capacity Price** owing to determination on Net Dependable Capacity, Fixed O&M (Salary & Wages, Administrative Expenses, Repair & Maintenance, Other Income), Financial Charges, Depreciation & Return on Equity, without taking in to account the impact of Take & Pay basis of Tariff vide 2011-Determination;
 - b. **Heat Rate Test;**
 - c. **Issue of Karkey Karadeniz; and**
 - d. **Miscellaneous**
9. It is incorrect to say (*Refer Para.6.3.4 of Impugned Determination*) that the 2011-Determination was applicable to a Financial Year only. NEPRA Act does not provide the Determination of Tariff for any specific financial year (though used only for purposes of accounting and audit etc.). Under 16 (11) of Tariff Rules, NEPRA has to intimate its determination of Tariff for Notification in the Official Gazette to the Federal Government who may file the Reconsideration Request seeking determination 'anew'. Tariff determined by the process of Determination (including Determination on Tariff Petition, Review Motion and Reconsideration Request) shall, under Rule 18 of Tariff Rules, become effective only once notified in the Gazette and shall remain effective unless next Notification is issued. As such, the Notified 2011-Determination would remain applicable, subject to indexation, unless superseded by next Notification. This reasonably



covers the situation where the process of Determination cannot be completed within the relevant financial year.

10. There was no issue framed by Authority on 'Control Period' however determined that one year as per 2011-Determination shall be the base period and indexations have also been denied. 2011-Determination was on basis of "Take & Pay" after switching from 'Take or Pay' regime that itself evidences the ground realities including legacy issues beyond control of LPGCL for various reasons, including but not limited to, (i) pending litigation up to Supreme Court, (ii) financial constraints of LPGCL, (iii) non availability of capital to rehabilitate and to conduct major repair and overhauling, (iv) the provision of liquidated damages in PPA, (v) non provision of capacity due to non operation of Unit # 2, and (vi) later on, the non availability of Unit # 3. As a matter of fact, unlike other kinds of determination, under Take & Pay regime there is no fiscal space for rehabilitation etc unless the plant was already delivering up to maximum of the contracted capacity.
11. To add, the circumstances of LPGCL are quite distinguishable from other Ex-WAPDA Generation Companies (GENCOs) and Independent Power Producers ("IPPs"). To ensure that LPGCL could improve its availability, NEPRA may reconsider in light of these ground realities and allow sufficient capital by revising Impugned Determination.
12. As known by the Authority, owing to the long litigation over lease of the plant, the repair and maintenance could not have been carried that resulted in non operation of two Units. The Supreme Court of Pakistan decided the dispute in August 2013 where-after LPGCL succeeded to operationalize Unit # 2 -- which was non functional even at time of



grant of Generation License to LPGCL in 2005 — though still not reliable. Had there been no legacy issue, changed ground realities, and availability of the plant while had there been Take or Pay regime, the LPGCL believes that it would be in a far better position to comply with the instructions of the Regulator. To add, despite the legacy issues, even in earlier Determinations, NEPRA has allowed the recovery of Capacity Price apparently to allow LPGCL to meet the prudently incurred cost, streamline the cash flow, and to rehabilitate and improve its Units; however the impact of the facts narrated above may please be considered.

13. NEPRA has curtailed the cost / expenses for manpower on basis of certain benchmarks those are not shared with LPGCL; therefore, reserving stance on such benchmarks, it is submitted that since its incorporation pursuant to the Restructuring Plan approved by the Council of Common Interest in 1993, LPGCL has an in-built legacy of employees. The manpower transition under the Restructuring Plan continued within LPGCL during which the terms and conditions of the employees were secured by law. LPGCL could neither enter into downsizing nor afford unwanted long litigation particularly when the numbers of working employees are far below the then sanctioned strength. On basis of the particular case of LPGCL and the methodology applied by NEPRA in 2011-Determination, the manpower claimed by LPGCL is fully justified and prudent.
14. To add, LPGCL has been condemned unheard to the extent that the benchmarks forming basis of the Impugned Determination has not been shared either during course of, nor even after, the Impugned Determination. Undoubtedly, it is the fundamental right of the



Petitioner to rebut or response any statement, material, information etc that has been considered and relied upon in determination. Failure to provide such legal right, will be in violation of the Constitution as well as the principles of natural justice.

15. In absence of the Comments or Intervention, the Authority was required to determine in light of the material before it and could have asked for information for proper and well reasoned determination. Such information howsoever was required to be extended to LPGCL under Article 10-A of the Constitution of Pakistan as well as the applicable laws.
16. The direction to adjust the employees of LPGCL in other public sector project cannot be applied by LPGCL who is the employer as a corporate entity and has no domain to issue posting and transfer orders of its employees beyond its jurisdiction.
17. The instructions to initiate legal proceedings against LPGCL for non compliance of directions by the Authority regarding Heat Rate are without determination of the factual position and may please be reviewed in light of submissions made herein.
18. In addition to the above, grounds and contentions as mentioned in this Review Motion or those as shall be enlarged during presentation, shall find support from following assumptions:
 - a. The Authority shall not disallow a legitimate and prudent cost merely on basis of non filing of tariff petition. In such a case, the licensee has a legal and natural right of indexation & adjustments. There can be no *estoppel* against law.



- b. The Authority, in light of the NEPRA Act and Rules, shall strike the balance between the right of purchasers & the service providers / generators.
- c. The Authority strictly follow the provisions of NEPRA Act, Rules, Regulations and the judgements, on question of law, of the High Courts and the Supreme of Court of Pakistan while issuing the Determinations.

III. Key Aims and Features

19. Review Motion is being filed with aim to:-

- a. Request the Authority to reconsider its Impugned Determination, after affording opportunity of hearing, on the issues raised in this Motion and review the impugned portions of the Determination as indicated in Section II hereof;
- b. Enable LPGCL to recover the justified cost incurred in meeting its demonstrated needs for the business;
- c. Enable LPGCL to recover, in future, the cost as shall be required for improving its performance and thereby to comply with the directions of the Authority;
- d. Further, pending decision of the Review Motion, operation of the Impugned Determination may please be kept suspended.

IV. Subject for Review

- 20. This Review Motion is on the issues as mentioned at Section II ibid and detailed hereinafter.



B. ISSUES

21. The Authority has declined certain submissions made by LPGCL in its Tariff Petition despite the fact that those were totally based on its sheer requirements. The denial, as submitted before, shall adversely impact ability of LPGCL as per the requirements of future market as well as the reliable and persistent supply of electricity to its buyers and also to meet with the other regulatory instructions issued by NEPRA from time to time.
22. The Review Motion is limited in its scope to the extent as mentioned in 'Section A', hereinbefore and the grounds whereof are elaborated hereinafter:

I. Reduction in Capacity

a. Net Dependable Capacity

23. While deciding Issue # 1, Authority referred to its decision of Take & Pay in 2011-Determination, but has not taken into consideration the impact thereof. Actually the decision has limited the ability of LPGCL to undertake rehabilitation or major repair and maintenance whereby the maximum of its capacity could be on the bar. It could also not be considered that due to Take & Pay regime, which lasted for years, (a) there were financial constraints for the licensee; (b) the revenue required for rehabilitation or major repairs could not have been recovered rendering LPGCL unable to combat with its crunches including compliance of the directions by Authority and to make itself available up to the optimal. It is firmly believed that on consideration of the impact of Take & Pay, the Authority shall allow LPGCL for



sufficient amount for rehabilitation and improvement and also shall consider the addition of Unit # 2.

b. Salaries & Wages

24. As already discussed, the 'parameters' at time of grant of Generation License and subsequent Tariff Determinations were similar; after taking into consideration those facts, Authority opted methodology for allowing the cost of salaries etc. By addition of Unit # 2, the required strength has increased while the third unit has not been decided to be decommissioned rather the Government of Pakistan, as the Policy, is making efforts to bring into the coal based power plants. At present, LPGCL is already understaffed.

25. The analysis, made on basis of some benchmarks from India & Bangladesh, by NEPRA cannot be commented upon unless said benchmarks and relevant proper details are not provided. However, while reserving right to comment upon those benchmarks, question for determination of Authority may include:

- i) Whether the plants used as benchmark for analysis are on take and pay basis, have similar fuel (coal), similar factual situation as of LPGCL, and same law and order situation as in interior Sindh; thus inter comparable with LPGCL?
- ii) Whether those plants have an inherent legacy of employees due to its creation where the rights of employees are protected under the law?
- iii) Whether fixation of the benchmark (though not conceded) at this stage can be made effective with retrospective effect and



such employees be denied continuation of jobs particularly when LPGCL is not in a position to transfer / post an employee, with or without his consent, in any other Company and apprehends litigation?

26. LPGCL firmly believes that Authority shall give a kind consideration to this aspect also. Admittedly, the employees are trained and experienced. The denial of cost for them may prejudice the performance of the Licensee and impede the development and privatization, which is the policy of the Government of Pakistan.
27. NEPRA has considered the impact of increase in cost of the employment due to the Policies of the Government of Pakistan however has not passed the complete impact of such increase.
28. The number of the employees and their payments benefits has been determined in slipshod manner in the Impugned Determination, which needs to be reviewed. Anticipated cost worked out by NEPRA i.e. Rs.527.83 Million has been divided on 546 employees (per head 0.97 Million) which is multiplied by 381 employees to allow approximately **Rs.368 Million**. In view of reconsideration by NEPRA, while keeping in consideration the ground realities, legacy issues and financial constraints of LPGCL, it would be justified that **Rs.527.83 Million** be allowed for salary, wages etc of 546 numbers of employees.

c. **Administrative Expenses**

29. The calculations of NEPRA in Para 6.6 needs revision since the working has been done on basis of the figures of FY 2010-11 and other audited figures. The Administrative Expenses allowed for 381



employees in 2010-11 turned out to be Rs.0.194 Million per employee. If NEPRA allows 546 employees to LPGCL then the Administrative Expenses now allowed i.e. Rs.106 Million shall be Rs.0.194 Million per employee. The inflation and other factors remained unconsidered. On other hand, if the amount of Rs.106 Million is divided on 381 employees, the figure will be Rs.0.27 Million that when multiplied by 546 employees shall be about Rs.152 Million. As per audited figures of 2013-14 the actual expense, in this head, met by LPGCL was Rs.155.22 Million. The actual expenses are therefore quite compatible with the requisite amount of Rs.155.22 Million along with impact of inflation etc.; hence the same may be allowed.

d. Repair & Maintenance

30. While relying upon the above mentioned justification regarding impact of insufficient cost for rehabilitation, overhauling, repair & maintenance on the performance of LPGCL, and reiterating, on basis of law, that merely due to non filing of tariff petition the prudently incurred cost cannot be denied, it is apprised that as per audited figures, actual expenditure for FY 2012-13 was Rs.103 Million that increased to Rs.140 Million in next Financial Year. The proposed increase in repair and maintenance is also due to availability of Unit # 2 that was not on bus bar till September 2014. To ensure reliable operation and to sustain the availability of the added Unit as well as to ensure that the cost incurred should not be wasted, it is essential that instead of Rs. 133 Million reasonable cost for Repair & Maintenance, along with capital expenditure of rehabilitation and repairs etc, which in calculation of LPGCL is Rs.345.65 Million, may please be allowed.



31. Indexation and adjustments, as already submitted, is essential to allow LPGCL to recover the prudently incurred cost in period from 2007 to onwards. For future period, unless LPGCL is able to meet with directions of the Authority or the new Schedule of Tariff is notified, indexation & adjustments may please be allowed. More particularly due to critical financial health of LPGCL.

e. Financial Charges

32. In view of the submissions made here in after on issue of Karkey Karadeniz, the Authority is requested to review its Determination on the perspective of 'financial charges'.

f. Depreciation

33. Without commenting on validity and correctness of the 'average figures' used by case officer throughout the Impugned Determination; it is apprised that in this particular head (where depreciation has to be calculated on an average) the calculation on basis of the average have been denied only on wrong premise that 2011-Determination was valid for one year only. Admittedly, LPGCL remained in existence even thereafter and prudently incurred certain cost including that on production of Net Electrical Output. It is firmly believed that Authority shall consider this aspect. The 'assets' involving depreciation is not limited to or directly proportionate to kWh. Therefore, the value for depreciation may please be revised accordingly.

g. Return on Equity

34. In Para # 6.11.3 the Authority has given reason for non-acceptance of the claim of LPGCL on ROE i.e. "LPGCL was not able to operate on



full capacity". Lot has already been submitted in this Review Motion by LPGCL. To add, the Units of LPGCL were commissioned in 1994. They are based on coal and have competitive performance as compared to any other coal-based power plant despite the issues related to water, litigation regarding lease of plant, shift to Take & Pay regime, financial constraints, legacy issues and other ground realities. The parameters, at time of grant of Generation License also remain similar.

35. In view of the stated circumstances and fuel of the LPGCL, it cannot be compared with other GENCOs (as its working, revenue, cost and expenditures are different) but may be substantially compared with any other plant in similar situations and fuel. As per information, NEPRA has allowed the ROE to other coal fired generating units at about 15% or above worked out on basis of IRR at the rate of 17%, 18% & 20% for the imported, local and thar coal respectively. With those plants on similar conditions, LPGCL may not be discriminated.
36. To add, the ROE allowed in the existing state of affairs of LPGCL and take and pay regime, suffice is to say that the balance sheet of LPGCL would always remain in negative incapacitating it to rehabilitate and improve the capacity of the complex.
37. Despite all the above-mentioned facts, LPGCL requested to RoE on the parameters allowed by NEPRA in 2011-Determination therefore the denial of Rs.2.5477 per kWh and approval of Rs.2.1498 per kWh appears to be arbitrary and may please be reconsidered.

II. Heat Rate Test



38. In Para # 6.2.4 of Impugned Determination, the Authority has taken a serious note that despite the earlier directions, LPGCL has failed to conduct Heat Rate Test. The Authority has now directed LPGCL to get the Heat Rate Test in 6 months and allowed indexations in Para # 10.3 of Impugned Determination after the Heat Rate Test.
39. LPGCL ensures the Authority that it will put in all possible efforts to get the Heat Rate Test as early as possible. However, submits that in order to have a reliable, valid and proper heat rate, it is prerequisite that plant should be fully operational with optimization, full maintenance and may require modifications in the equipment. All this require finances. As have been explained time and again in the instant Review Motion that despite sincere desire and efforts the LPGCL faced certain adverse conditions. In view of the matter, the conduct of the Heat Rate may not represent the actual state of affairs. The Heat Rate Test without first bringing the plant in an ideal condition may also pave the way affecting the anticipated privatization.
40. It is therefore requested that the Authority may for the time being postpone its direction for indexation after Heat Rate Test to be conducted in 6 months.

III. Karkey Karadeniz

41. In Para # 6.9.4 of Impugned Determination, the Authority has denied to allow the amount of Rs.3 Million (approximate) being expanded in matter of Karakey Karadeniz.
42. LPGCL fully understands that the rental agreement has been rescinded by august Supreme Court of Pakistan however the fact of the matter



shall remain that NEPRA has allowed modification in the Generation License of LPGCL for which request was made pursuant to the Policy of the Federal Government. The Policy at given time was followed by all the stakeholders including NEPRA & LPGCL; although LPGCL was never in a position to make decisions on the said Policy. It is also a fact that Rs.3 Million approximate has been arranged by LPGCL and the liability is booked in its books. The cost was incurred prudently and pursuant to the Policy of GoP after approval of the Regulator. Therefore, the denial of the expense shall be an exception and penalty for LPGCL; hence requested to be reviewed.

43. Notwithstanding the above submissions, Karkey is in international arbitration where Government of Pakistan is defending the claim. Therefore, NEPRA is requested to review Impugned Determination and allow the cost to LPGCL.

IV. Miscellaneous

44. In Para # 7.2 of the Impugned Determination, NEPRA has not given decision as to Indexation for the reason that period of determination requested in the Tariff Petition was Financial Year 2014-15 and indexation, but which is not according to 2011-Determination where the Authority allowed the Tariff for only one Financial Year. For the reasons mentioned time and again *ibid*, it is requested that the denial of Indexation may please be reviewed.
45. In Para # 6.3.4 of the Impugned Determination, the Authority denied Indexation of Variable O & M treating it to be with retrospective effects as the 2011-Determination was for one year only and LPGCL has failed to file tariff petition for next year due to inefficiency, as held by



NEPRA. It is clarified that LPGCL has not claimed fresh determination of tariff for a period in past rather has only sought actualization of the justified cost with notional determination applicable at relevant period of time. Moreover, in recent Determinations the NEPRA itself has substantiated the contention that Law does not specify the period of Determination. Undoubtedly, the electricity is a commodity and the cost of generation has to be paid by the beneficiary / purchasers. It cannot be held that there was a period when no effective determination was in field otherwise the financial arrangements of the whole power sector shall fall down. In situations where cost borne was in the period that has already elapsed principle of "retrospectivity" cannot be applied unless the transactions become Past & Close. Indexation / Adjustment apply because determinations are on reference values. These were the moot submissions of NEPRA and the Ministry of Water & Power in cases of Fuel Price Adjustment and the same were appreciated by Lahore High Court Lahore as well as Divisional Bench of Islamabad High Court. These are the reasons that LPGCL has denied that 2011-Determination was effective for one year only. In view of the above, Authority is requested to review this portion of the Impugned Determination.

3. PRAYER / REQUEST

46. LPGCL, for reasons mentioned above and those to be enlarged during arguments, requests Authority:-
- a. To review Impugned Determination while considering ground realities including long pendency of case regarding lease of plant of LPGCL in Courts, impact of take and Pay regime,

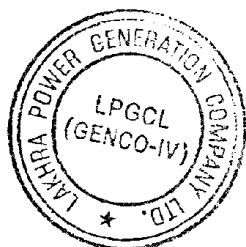


legacy issues, parameters, factual state of affairs, financial constraints, and law on period of validity of notified determination with purpose to allow Capacity Price as the justified cost whereby the operational hazardous can be rectified and the plant can be brought in a reliable situation and ready for the Heat Rate Test;

- b. Authority is further requested to review the impugned portions of the Determination as indicated in Section II hereof, after affording opportunity of hearing, on the issues raised in this Motion and thereby to:
- i. Re determine and allow Rs.527.83 Million as the salary, wages etc and also to pass the benefit of increases in salary etc as per notifications issued by Government of Pakistan;
 - ii. Re determine and allow Rs.155.22 Million as Administrative Expenses;
 - iii. Re determine and allow Rs.345.65 Million in head of Repair and Maintenance;
 - iv. Re determine and allow Rs.2.55 per kWh as the Return on Equity;
 - v. Re determine and allow Rs.3.18 Million as Financial Charges in case of Karkey Karadeniz;
 - vi. Re determine and revise the depreciation value;



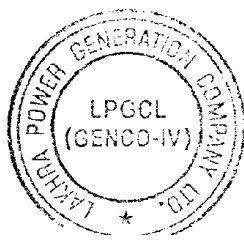
- vii. Exempt LPGCL from conducting Heat Rate Test in 6 months and allow the Indexation without caveat of Heat Rate Test until the conditions precedent are fully met;
- viii. Index and adjust the variable O &M and other escalable components of the capacity as well as the actual costs incurred prudently by LPGCL during Financial Years for 2011-12 to 2013-14.
- c. It is prayed also that LPGCL be allowed to recover, in future, the cost as shall be required for improving its performance and thereby to comply with the directions of the Authority
- d. It is further prayed that pending decision of the Review Motion, the operation of impugned Determination, including the targets set by NEPRA, may please be kept suspended and Federal Government be directed to refrain from notifying in Official Gazette.
- e. Any other relief that it is deemed necessary for equitable and legal disposal of the Review may also be granted.



Chief Executive Officer
Lakhra Power Generation Company Limited

Certificate:

It is certified that, in understanding of LPGCL, this Review Motion are on sufficient grounds those shall result in modification and withdrawal of impugned Determination.



Chief Executive Officer
Lakhra Power Generation Company Limited



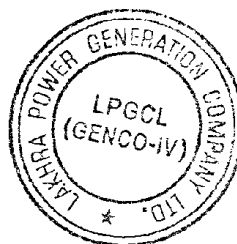
BEFORE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

In re: Motion for Leave to Review by LPGCL

AFFIDAVIT

I, Muhammad Jamal Khan, Chief Executive Officer of LPGCL hereby undertake on oath that:

1. This affidavit is being filed as the integral part of the Motion for Leave to Review being filed before the respected Authority (NEPRA)
2. The contents of the Review Motion are not repeated to avoid repetition
3. The contents of the Review Motion are true and correct to the best of my knowledge and belief and there is every likelihood that this Motion will result in review of the Impugned Determination of NEPRA
4. It is also verified that the contents of the Affidavit are verified to be true and correct to the best of my knowledge and belief



Muhammad Jamal Khan
18/12/15

DEPONENT

Date: 18/12/2015



BEFORE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

In re: Motion for Leave to Review by LPGCL

APPLICATION FOR CONDONATION OF APPARENT DELAY

Respectfully submitted,

1. The Review Motion against the Determination of worthy Authority for FY 2014 – 15 for LPGCL is being filed on the grounds as mentioned in the said Motion.
2. That captioned Application is being filed as the integral part of the Review Motion therefore the contents of the said Motion may please be read as integral part of this application.
3. Under NEPRA Act and Rules framed thereunder, the Authority determines the actual, legitimate and prudent expense to allow the Licensee to meet with its revenue requirements and demonstrated future requirements. In the process of determination, the Authority considers the material placed before it either by the Applicant/ Licensee or by the Commentator or Intervener. The Authority may also seek information for proper and well reasoned determination. During this process, the Constitution and applicable Law extend the fundamental right of being heard to the Licensee.
4. In instant case, on perusal of the Impugned Determination it revealed that while making the Impugned Determination NEPRA has relied upon certain analysis / benchmarks from India & Bangladesh.



5. NEPRA has curtailed the cost / expenses for manpower on basis of said benchmark/ analysis; howsoever, LPGCL was neither asked to reply those analysis or benchmarks nor were even provided even along with the Impugned Determination despite that they have adversely and materially affected its rights. Further, LPGCL is of view that owing to its particular circumstances including legacy issues and kind of machinery which is not state of the art, the benchmarks may not be applied in instant case. More particularly so when respected Authority has already determined the principle in earlier determinations. On basis of the particular case of LPGCL and the methodology applied by NEPRA in 2011-Determination, the manpower claimed by LPGCL appears to be fully justified and prudent.
6. Due to non provision of the benchmarks the LPGCL was not in position to address the point in issue except to contend that it has been condemned unheard. Non provision of the benchmarks, as stated above, has thus rendered the 'communicated' Impugned Determination insufficient for the purpose of filing the Review Motion. Therefore, LPGCL could not file the Review Motion rather by its Application dated 16.10.2015, LPGCL requested for provision of the copies of analysis/ benchmarks; however, no reply was received by LPGCL who issued the reminder dated 2.11.2015 but again no reply was been received. Eventually LPGCL submitted the request as Final Reminder by letter dated 3.12.2015. Finally by the letter bearing No.NEPRA/SAT-I/TRF-295/17688 dated 14.12.2015 has denied extension of time for filing of review motion on ground that the period for review is 10 days from date of determination given upon conclusion of tariff proceedings. Further that there is absolutely no



provision entitling a party to call for information from the Authority before filing of any such review petition. The Party may agitate its grievance, pertaining to some error apparent on the face of record or by providing any new evidence which was not considered at the time of passing of the impugned order. The orders of NEPRA have been received by LPGCL today on 18th of December 2015.

7. In circumstances, the LPGCL has been left with no other option but to file this Review Motion while reserving its grounds of submission to the extent of applicability of benchmarks / analysis in its case.
8. The Orders dated 14.12.2015 (received on 18.12.2015) are legally and factually flawed for many reasons. Through its letters under reference, LPGCL has requested Authority to provide the copies of the benchmarks and analysis because they were never provided to Petitioner at any stage nor were filed by any Intervener or Commentator with a copy to Petitioner. Therefore, to that extent, Petitioner was condemned unheard. However, instead of providing those benchmarks and analysis, the consequential request i.e. for extension of time has been rejected. No doubt the scope of Review has been well defined in NEPRA Act & Rules and established in earlier hearings where the worthy Authority has condoned delays in filing of Review Motion in limited time of 10 days. The Review Motion (to which this application in integral) is now before the Authority where certain grounds entitling review has been taken. To the extent of benchmarks and analysis, Petitioner (in absence of relevant information) cannot fully make its submissions. To add, the decision on the extension of time is to be made by worthy Court in light of laws and precedents, in view of the nature of the matter.

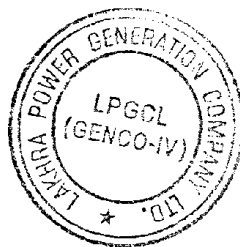


9. The Review Motion therefore cannot be said to be barred by time as provided under the Tariff Rules. As such, there is no delay on part of LPGCL from the date of delivery of complete Determination still to avoid any legal implication and in larger interest of justice this application for condonation of delay is being submitted.
10. That the affidavit is attached in support of the application.

Prayer:

LPGCL, for reasons mentioned above and those to be enlarged during arguments, requests Authority to condone the apparent delay in filing of this Review Motion.

Any other relief that it is deemed necessary for equitable and legal disposal of the Review may also be granted.



Chief Executive Officer
Lakhra Power Generation Company Limited



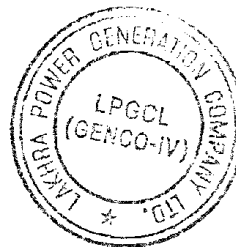
BEFORE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

*In re: Motion for Leave to Review by LPGCL
(Application for Condonation of Delay)*

AFFIDAVIT

I, Muhammad Jamal Khan, Chief Executive Officer of LPGCL hereby undertake on oath that:

1. This affidavit is being filed as the integral part of the Application for condonation of apparent delay in filing the Motion for Leave to Review
2. The contents of the Application are not repeated to avoid repetition
3. The contents of the Application are true and correct to the best of my knowledge and belief
4. It is also verified that the contents of the Affidavit are verified to be true and correct to the best of my knowledge and belief




DEPONENT

Date: 18.12.2015



BEFORE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

In re: Motion for Leave to Review by LPGCL

APPLICATION FOR INTERIM RELIEF

Respectfully submitted,

1. The Review Motion against the Determination of worthy Authority for FY 2014 – 15 for LPGCL is being filed on the grounds as mentioned in the said Motion.
2. That captioned Application is being filed as the integral part of the Review Motion therefore the contents of the said Motion may please be read as integral part of this application.
3. By this date of filing of the Review Motion, as per knowledge and intimation of LPGCL the Impugned Determination has not been notified and as such still not become effective. As such the balance of convenience tilts in favour of LPGCL.
4. For the reasons mentioned in Review Motion, LPGCL firmly believe that in *prima facie* it has a good arguable case with bright chances of the acceptance thereof.
5. For the humble submissions made in the Review Motion it is firmly believed by LPGCL that the Review Motion shall be accepted and the Impugned Determination will be materially changed. It is apprehended that if operation of the Impugned Determination is not suspended and if the tariff determined therein becomes effective it will render LPGCL unable to perform. The adverse affects include the



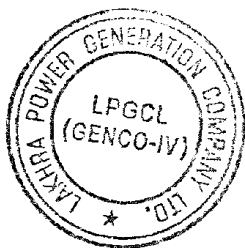
probable closure / shut down of the plant, increased maintenance issues and adverse affect on the policies of Government.

6. That the affidavit is attached in support of the application.

Prayer:

LPGCL, for reasons mentioned above and those to be enlarged during arguments, requests Authority to suspend the operation and thereby issuance of the Notification till determination of the Review Motion.

Any other relief that it is deemed necessary for equitable and legal disposal of the Review may also be granted.



Chief Executive Officer
Lakhra Power Generation Company Limited



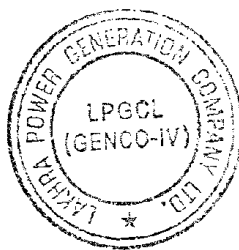
BEFORE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

In re: *Motion for Leave to Review by LPGCL*
(Application for Interim Relief)

AFFIDAVIT

I, Muhammad Jamal Khan, Chief Executive Officer of LPGCL hereby undertake on oath that:

1. This affidavit is being filed as the integral part of the Application for
• grant of interim relief
2. The contents of the Application are not repeated to avoid repetition
3. The contents of the Application are true and correct to the best of my knowledge and belief
4. It is also verified that the contents of the Affidavit are verified to be true and correct to the best of my knowledge and belief



DEPONENT

Date: 18.12.2015