



NATIONAL POWER PARKS MANAGEMENT COMPANY (PRIVATE) LIMITED

Ministry of Energy (Power Division), Government of Pakistan

Malik Plaza, 2nd Floor, 7-C/1, M.M. Alam Road, Gulberg III, Lahore

November 29, 2019

No. NPPMCL- HBS/CEO/2019/-15691

The Registrar

National Electric Power Regulatory Authority

NEPRA Tower, Ataturk Avenue (East) G-5/1

Islamabad

Subject: REVIEW UNDER SECTION 7(2)(G) OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 (THE "NEPRA ACT"), READ WITH RULE 16(6) OF THE NEPRA (TARIFF STANDARDS AND PROCEDURE) RULES, 1998 (THE "TARIFF RULES") AND REGULATION 3(2) OF THE NEPRA (REVIEW PROCEDURE) REGULATIONS, 2009 (THE "REVIEW REGULATIONS"), OF NEPRA'S DECISION DATED 18-11-2019, RECEIVED ON 20-11-2019, PERTAINING TO MODIFICATION OF TARIFF FOR RLNG BASED POWER PLANT AT HAVELI BAHADUR SHAH

Dear Sir,

Reference is made to NEPRA's Tariff Determination for Modification of Tariff in Case No. NEPRA/TRF-471/NPPMCL-2019/ dated November 18, 2019 whereby the Authority had determined the Tariff Modification of National Power Parks Management Company (Private) Limited (the "Company") for its 1230.54 MW (Gross) RLNG power plant located at Haveli Bahadur Shah, Jhang.

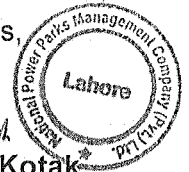
The Company hereby files Review under Section 7(2)(G) of the NEPRA Act, read with Rule 16(6) of the Tariff Rules and Regulation 3(2) of the Review Regulations, of NEPRA's decision dated 18-11-2019, pertaining to Modification of Tariff for NPPMCL's Power Project located at Haveli Bahadur Shah for kind consideration and decision of the Authority.

Pay Order No.02444772 of Rs. 1,000/- against the fee for modification of Tariff Petition is attached herewith.

Regards,

Dhanpat Kotak

Chief Executive Officer



BEFORE
THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

IN THE MATTER OF:

CASE No. NEPRA/TRF-471/NPPMCL-2019/24617

REVIEW UNDER SECTION 7(2)(G) OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 (THE "NEPRA ACT"), READ WITH RULE 16(6) OF THE NEPRA (TARIFF STANDARDS AND PROCEDURE) RULES, 1998 (THE "TARIFF RULES") AND REGULATION 3(2) OF THE NEPRA (REVIEW PROCEDURE) REGULATIONS, 2009 (THE "REVIEW REGULATIONS"), OF NEPRA'S DECISION DATED 18-11-2019, RECEIVED ON 20-11-2019, PERTAINING TO MODIFICATION OF TARIFF FOR RLNG BASED POWER PLANT AT HAVELI BAHADUR SHAH

ON BEHALF OF

NATIONAL POWER PARKS MANAGEMENT COMPANY (PRIVATE) LIMITED (NPPMCL /
PETITIONER)



DATED: NOVEMBER 29, 2019

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Annexure – C:	Decision dated 24-10-2018
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REVIEW UNDER SECTION 7(2)(G) OF THE NEPRA ACT, READ WITH RULE 16(6)
OF THE TARIFF RULES AND REGULATION 3(2) OF THE REVIEW REGULATIONS,
OF NEPRA'S DECISION DATED 18-11-2019, RECEIVED ON 20-11-2019, PERTAINING
TO MODIFICATION OF TARIFF FOR NPPMCL'S POWER PROJECT LOCATED AT
HAVELI BAHADUR SHAH

A. Review

I. Summary and Background

1. NPPMCL is a private limited company, owned by the Federal Government, incorporated in the year 2015 under the Companies Ordinance, 1984. For the purposes of this review (the "Review"), NPPMCL has set up a 1230.54 MW (gross) RLNG power plant located at Haveli Bahadur Shah, Jhang.
2. As a brief background, it is submitted that NPPMCL had filed its cost-plus Reference Generation Tariff petition on 22-04-2016 (the "Tariff Petition"). NEPRA gave its determination on the same on 09-08-2016 (the "Determination"). Thereafter, certain aspects of the Determination relating to post-synchronization testing were revisited by NEPRA through suo moto proceedings, culminating in its decision dated 24-10-2018.

[Copy of the Tariff Petition, Determination and the decision dated 24-10-2018 are attached as Annexure – A, B and C respectively]
3. That thereafter, on 24-05-2019, NPPMCL filed a petition for modification of the Determination (the "Modification Petition"). Through the Modification Petition, NPPMCL requested for modification of various decisions of NEPRA pertaining to NPPMCL's tariff. Vide decision dated 18-11-2019 (the "Decision"), served on and received by NPPMCL on 20-11-2019, NEPRA was pleased to allow and incorporate some of the modifications requested by NPPMCL. However, NEPRA also disallowed certain costs / modifications.



[Copy of the Modification Petition and the Decision are attached as **Annexure – D** and **E** respectively]

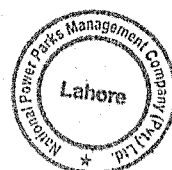
4. The Review is being filed on behalf of NPPMCL to request NEPRA to review its decisions and findings vis-à-vis certain components that were requested in the Modification Petition but have not been allowed in the Decision, and other directions given by NEPRA in the Decision, as particularized in paragraph no.5 below. The Review is being instituted under section 7(2)(g) of the NEPRA Act, read with Rule 16(6) of the Tariff Rules and Regulation 3(2) of the Review Regulations.

II. Cost Components and Grounds

5. NPPMCL seeks review of NEPRA's decisions on the following matters:

- a. Modification of cost of Insurance During Operations, which has also not been allowed by NEPRA, as evident from Paragraph 8.84 of the Decision;
- b. Consideration of mechanism for adjustment of 'Gas Supply Deposit' during the operations period vis-à-vis Escrow Account and Standby Letter of Credit, in light of observations of NEPRA in Paragraph 8.101 of the Decision;
- c. Adjustment date for cost of Site Housing Complex and imposition of penalty, as determined by NEPRA in Paragraph 8.105 of the Decision;
- d. Modification of Testing and Commissioning Cost, which has not been allowed by NEPRA, as evident from Paragraph 8.58 of the Decision; and
- e. Observation of NEPRA regarding degradation and part load adjustments in Paragraph 8.114 of the Decision, which were not part of the Modification Petition.

6. NPPMCL requests that the aforementioned decisions may be reviewed, *inter alia*, on the following grounds:



a. Insurance Cost During Operations

7. Through the Modification Petition, NPPMCL had requested NEPRA to either: (i) allow the actual cost of insurance premium paid during the operations period; or (ii) to enhance the cap to 2% of the EPC cost from 1% of EPC cost earlier determined. However, NEPRA has refused the request of NPPMCL for reasons stated in paragraphs 8.82 to 8.84 of the Decision.
8. It is humbly submitted that NEPRA's decision is liable to be reviewed, as it does not give due consideration to the cogent submissions of NPPMCL in support of its request.
9. Under the PPA, NPPMCL is obligated to procure and have in place, at all times during the operations phase, the following insurances:
 - a. Operations All Risk Insurance, including property damage and business interruption;
 - b. Political violence / terrorism; and
 - c. Third Party Liability.
10. It is submitted that the primary law governing insurance in Pakistan is the Insurance Ordinance, 2000 (the "**Insurance Ordinance**"). Section 166 of the Insurance Ordinance deals with insurance of public property, and sub-section (3) thereof provides that all insurance business relating to public property (which term includes the Haveli Bahadur Shah project) shall be placed only with the National Insurance Company Limited ("**NICL**"). The only exceptions to the same are provided in sub-section (4) and (5) of section 166. Sub-section (4) gives the Federal Government the authority to exempt a particular property. Sub-section (5) provides that if NICL declares in writing that it is unable to enter into a contract of insurance, then the proposed insurance may be exempt from the provisions of sub-section (3). Sub-section (6) clearly provides that non-compliance with section 166 of the Insurance Ordinance is an offence.
11. It is in compliance with the aforementioned framework that NPPMCL has obtained insurance for the operational phase. For the first year of operations, NICL was able to place Political



Violence and Third Party Liability insurance for NPPMCL, amounting to an aggregate of US\$ 0.258 Million. However, NICL informed NPPMCL in writing (as per Section 166(5) of the Insurance Ordinance) that it was unable to place the Operations All Risk insurance. Thereafter, NPPMCL conducted a procurement process pursuant to the Public Procurement Rules 2004 (the "2004 Rules") for the same. However, due to time constraints, a negotiated tendering process was undertaken in terms of the 2004 Rules, which is only allowed under specific circumstances (including extreme urgency). Negotiated tendering took place with the most renowned insurance companies in Pakistan. The lowest bid received by NPPMCL was US\$ 7.27 Million. After following the process for negotiated tendering, the insurance cost came to US\$ 6.31 Million. The total cost of all insurance during operations for the first year aggregated US\$ 6.567 Million, which comes to 1.11% of the EPC Cost. Documents in support of the above are attached as **Annexure – F**.

12. For the second year of operations, NPPMCL again approached NICL in accordance with the law. NICL was able to place all three insurances, i.e. Operations All Risk, Political Violence and Third Party Liability insurance for NPPMCL. The total cost of such insurance for the second year was an aggregate of US\$ 8.554 Million, which came to 1.45% of the EPC Cost. It is pertinent to note that the process for arranging insurance through NICL is also based on competitive bidding processes. Documents in support of the above are attached as **Annexure – G**.
13. In view of the foregoing, it is respectfully submitted that the above costs are prudently incurred actual costs, and have been arrived at after competitive procurement processes being undertaken. Therefore, it is submitted that NEPRA's direction in paragraph 8.84 that NPPMCL should carry out competitive bidding is already being complied with.
14. Even otherwise, it is submitted that NPPMCL is bound by law to comply with Section 166 of the Insurance Ordinance, and as per sub-section (4) thereof, only the Federal Government can exempt a particular property from the requirements contained therein. The Insurance Ordinance is a special law governing insurance business in Pakistan and contains a special provision dealing with insurance of public property.



15. With respect to comparison with another power project, as stated in paragraph 8.83 of the Decision, it is reiterated that the gas turbines installed at the Haveli Bahadur Shah power plant are latest technology worldwide. These turbines were selected for the project for the benefit of the consumer, keeping in view the high efficiency benchmarks of the same. Therefore, the insurance cost for the same would also be higher, driven by market forces. The other power project referred to by NEPRA is based on older versions of gas turbines, for which long term data of performance is available in the market. Further, the cost of spares for the older versions is lower. Therefore, the insurance cost of the same is also lower. Hence, it is submitted that NPPMCL's project and projects based on older versions of gas turbines cannot be appropriately compared in this context.
16. In light of the foregoing, it is requested that NEPRA may kindly review its decision, and allow actual insurance cost during operations to NPPMCL, subject to a maximum cap of 2% of the EPC cost.

b. Escrow Account

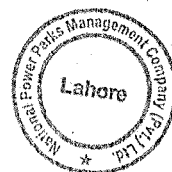
17. Through the Decision, NEPRA was pleased to allow the request of NPPMCL for inclusion of applicable taxes (GST) and adjustment of escrow account with RLNG price, to be determined at the time of COD as a one-time adjustment. However, in the context of allowing adjustment to cost of escrow account during operations, NEPRA noted that a mechanism for such adjustment had not been suggested by NPPMCL. NEPRA observed that as the cost allowed for escrow account is for part of the project cost which is locked at the time of COD, therefore it could not allow adjustment to the cost of escrow account during the operations period.
18. In the above context, it is submitted that under the GSA, NPPMCL is required to have in place at all times a 'Gas Supply Deposit', which is quantified on the basis of 3 months' consumption at 100% load. The Gas Supply Deposit can be in the form of an escrow account, a Standby Letter of Credit (SBLC), or a combination of both. Under the Tariff Determination, a combination of one (01) month's escrow account and two (02) months' SBLC has been allowed.



19. Therefore, NPPMCL proposes and requests that any post-COD variation in RLNG price (including impact of US\$ to PKR indexation) over and above the cost for escrow amount locked at COD, may be allowed in the cost for SBLC. Accordingly, the two months' SBLC will be adjusted for the post-COD differential in escrow account cost as and when applicable.

c. Site Housing Complex

20. NEPRA had allowed an amount of US\$11.738 Million (as a maximum cap) for construction of site housing complex, subject to adjustment at the time of COD on actual basis. In the Modification Petition, it was requested that the adjustment may be deferred till completion of construction of the housing complex, when the actual cost incurred would be finalized. However, NEPRA has allowed deferment for a period of two years commencing retrospectively from COD, which is effectively only five months from the date of the Decision. Further, NEPRA has decided that penalty at the rate of KIBOR + 3% would be imposed in case of delay beyond such period.
21. In this regard, NPPMCL respectfully requests NEPRA to review its decision, and to allow a period of two years from the date of one-time adjustment to be made by NEPRA. It is submitted that the construction cost is a cost that is to be incurred on actual basis within the cap determined by NEPRA. Therefore, no prejudice would be caused if the time for adjustment is deferred in terms of the above. In this respect, it may be noted that the site for housing complex was used for the storage of imported plant equipment, building material, batching plants etc. during the construction phase as the same was adjacent to the plant's location. If separate land was arranged for the same, it would have led to increased costs. Therefore, the site for housing complex was utilized to save costs and to avoid undue burden on the consumer, as a result of which the deferral request has been made.
22. It is further submitted that since NEPRA has retrospectively commenced the 24 month time period from COD, of which almost 19 months have effectively passed, the remaining period of 05 months is unrealistic. Therefore, it is in the interest of justice that the deferment period



of two years may kindly be calculated from the date of determination of one-time adjustment of tariff by NEPRA.

23. It is also requested that the proposed penalty on NPPMCL may kindly be removed. The imposition of such penalty does not commensurate with any loss or damage that would be suffered by any party. Therefore, it is requested that this decision of NEPRA may kindly be reviewed, and the proposed penalty may kindly be removed. In the alternative, the penalty may be rationalized so that it does not go beyond the cost of debt allowed to NPPMCL in the Tariff Determination.

d. Testing and Commissioning Cost

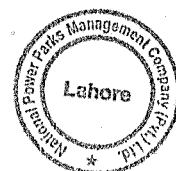
24. Through the Modification Application, NPPMCL had requested NEPRA to allow Testing and Commissioning Cost of US\$17.88 Million, instead of US\$11.043 Million allowed by NEPRA in the Tariff Determination. However, NEPRA did not allow the incurred costs to NPPMCL, primarily on the ground that information provided by NPPMCL pertaining to successful / unsuccessful tests was inconsistent.
25. It is humbly submitted that NEPRA's findings in Paragraph 8.58 are contrary to the factual position. NPPMCL has included the cost of unsuccessful Reliability Run Test in its claim because although the same was charged to the EPC contractor, the EPC contractor has made the payment to NPPMCL under protest, while also reserving its right to dispute NPPMCL's claim (copy of letter attached as **Annexure – H**). If any such claim is successful against NPPMCL, then the amount may have to be returned to the EPC contractor. Therefore, it is requested that NPPMCL's claim may kindly be allowed. Further, after the filing of the Modification Petition, certain amounts earlier claimed for mark-up cost have been adjusted, amounting to approximately US\$3.448 Million. In light of the above, the updated aggregate Testing and Commissioning Cost requested by NPPMCL is US\$ 14.431 Million, which may kindly be allowed by NEPRA. A table detailing break-down of the Testing and Commissioning Cost is attached as **Annexure – I**.



26. From a perusal of the above, it is evident that NPPMCL is only requesting NEPRA to allow costs prudently incurred by it for the purpose of testing and commissioning. It is, therefore, in the interest of justice as well as the dictates of the NEPRA Act that the same may kindly be allowed.
27. It is also submitted that in the Decision, NEPRA has only refused NPPMCL's request on the basis of apparent inconsistency in the information submitted by NPPMCL. However, the inconsistency was not identified, nor NPPMCL was asked to provide any information or documents on any particular aspect. Therefore, the decision of NEPRA fails to provide any reason and is non-speaking to this extent. Be that as it may, NPPMCL has provided detailed information in the foregoing paragraphs in support of its claim for Testing and Commissioning Cost. NPPMCL remains available to provide any further information that may be required by NEPRA. Therefore, even if any inconsistency existed earlier, NEPRA is requested to kindly review its decision in light of the information and documents provided herein, as NEPRA has not disallowed NPPMCL's request on the basis that the request was unjustified in any manner.

e. Miscellaneous Issues – Degradation and Part Load Adjustments

28. During the hearing of the Modification Petition on 28-08-2019, it was learnt that CPPA-G had provided written comments to NEPRA. As per paragraph 8.113 of the Decision, CPPA-G had stated to NEPRA that NPPMCL has been claiming Output Degradation Factor, Heat Rate Degradation Factor and Part Load Adjustment Correction from CPPA-G, and that the Tariff Determination is silent on these matters. Therefore, NEPRA should frame an issue with respect to these adjustment factors and give its decisions on the same.
29. It is submitted that despite NPPMCL's request made at the hearing, the written comments of CPPA-G were never shared with NPPMCL. Therefore, NPPMCL was not given the opportunity to respond or reply to the contentions of CPPA-G. Hence, NEPRA could not have given a decision on the matter.



30. Furthermore, this aspect did not form part of the Modification Petition. Therefore, the same could not be made a part of the Decision as it did not relate to any requests for modification by NPPMCL. If any such request was to be made by a third party, then the same could be done independently. Even otherwise, it is pertinent to note that CPPA-G itself had requested that an issue be framed in this respect, and a decision be taken after input from all stakeholders. However, from a perusal of the Decision, it is evident that NEPRA did not frame any issue for decision or determination in this respect. In the absence of the same, particularly without any input from the NPPMCL which is directly affected from the findings of NEPRA, no decision could have been passed. Therefore, NEPRA's decision in paragraph 8.114 is liable to be reviewed and set aside on this ground alone.
31. Without prejudice to the foregoing, it is respectfully submitted that these matters are all dealt with under the PPA, and is the industry norm. The PPA is executed after due diligence by both parties, and is a freely executed document. Therefore, NPPMCL's submission is that these matters do not, even otherwise, require determination of NEPRA.
32. In paragraph 8.114 of the Decision, NEPRA has held that the adjustments on account of the above factors shall be considered at the time of one-time adjustment at COD stage. On the basis of this observation, CPPA-G has informed NPPMCL that it will not allow any of these factors and associated costs to NPPMCL for future invoices. Needless to say, the impact of the same is devastating. These factors and adjustments are vital to support the financial model and feasibility of the project. If the same are not accounted for and reflected in the financial arrangement between the parties for even a short period, the same could have grave consequences for the viability of the project. In view of the same, it is requested that NEPRA's decision may kindly be reviewed, and it may kindly be held that until such time that any decision is made by NEPRA, the commercial and financial arrangement between the parties under the PPA shall continue to remain applicable.
33. Further, with respect to NEPRA's observation that the adjustments shall be based on correction curves of the Complex specified by the OEM, it is submitted that the OEM cannot provide correction curves for the Complex but only for the gas turbines and ancillary machinery. The correction curves for the Complex, which entail distinct plant and machinery



items, can only be provided by the EPC contractor, and the same have also been shared with CPPA-G. Therefore, it is requested that NEPRA may review its decision in view of the above.

f. Other Grounds

34. On the basis of the foregoing submissions, NPPMCL requests NEPRA to review its decisions as detailed therein.
35. In this respect, NPPMCL submits that under the law, it is entitled to recovery of all costs prudently incurred. The NEPRA Act provides that tariffs should allow recovery of any and all costs prudently incurred. This is also reflected in Rule 17(3) of the Tariff Rules. It is evident from the foregoing submissions that all modifications requested by NPPMCL are prudent costs, and therefore should be allowed.
36. Under the NEPRA Act, NEPRA is to, *inter alia*, ensure efficient tariff structures for sufficient liquidity in the power market. It is submitted that efficient tariff structures are intrinsically linked to allowing full recovery of costs. Therefore, if the costs identified hereinabove are not allowed, the same would be in violation of the provisions of the NEPRA Act. Further, under the regulatory framework, NEPRA is required to, *inter alia*, protect the interests of companies engaged in the electric power business.
37. NPPMCL reserves the right to raise any further grounds or provide any documents in support of the Review at any appropriate stage in the future.

B. Prayer / Request

In light of the above, it is requested that Decision may kindly be reviewed to the extent of the aspects identified hereinabove, and the modifications requested may kindly be made to the tariff allowed to NPPMCL. It is further requested that a hearing be provided for the purposes of



providing detailed submissions, including a session with the professional team of the NEPRA prior to hearing.





NPPMCL / Petitioner

through



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