



Registrar

National Electric Power Regulatory Authority

Islamic Republic of Pakistan

NEPRA Tower, Attaturk Avenue (East), G-5/1, Islamabad.
Tel: +92-51-9206500, Fax: +92-51-2600026
Web: www.nepa.org.pk, E-mail: registrar@nepa.org.pk

No. NEPRA/Director(Tech)/TRF-346/ST&DCPL-2015/ 287-93

January 10, 2024

Subject: **DECISION OF THE AUTHORITY IN THE MATTER OF JUDGMENT PASSED BY THE APPELLATE TRIBUNAL IN APPEAL NO. 20/NT/2022 TITLED AS SINDH TRANSMISSION & DISPATCH COMPANY PVT LIMITED (STDC) VS. NEPRA ISLAMABAD**

Please find enclosed herewith Decision of the Authority (total 10 Pages) dated January 09, 2024 in the matter of Judgment passed by The Appellate Tribunal in Appeal No.20/NT/2022 Titled as STDC vs. NEPRA in Case No. NEPRA/TRF-346/ST&DCPL-2015.

2. The Decision is being intimated to the Federal Government for the purpose of notification in the official Gazette pursuant to Section 31(7) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 within 30 days from the intimation of this Decision. In the event the Federal Government fails to notify the subject tariff Decision or refer the matter to the Authority for reconsideration, within the time period specified in Section 31(7), then the Authority shall notify the same in the official Gazette pursuant to Section 31(7) of NEPRA Act.

Enclosure: As above

(Engr. Mazhar Iqbal Ranjah)

Secretary
Ministry of Energy (Power Division)
'A' Block, Pak Secretariat
Islamabad

Copy to:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, Government of Pakistan, 'Q' Block, Pak Secretariat, Islamabad
3. Chairman, Appellate Tribunal (NEPRA), Federal Tribunal Complex, 3rd Floor, Roze Plaza, G-10 Markaz, Islamabad.
4. Secretary, Energy Department, Government of Sindh, 3rd Floor, State Life Building, Dr. Zia-uddin Ahmed Road, Karachi
5. Chief Executive Officer, Sindh Transmission & Dispatch Company (Pvt.) Ltd, Government of Sindh, 3rd Floor, State Life Building, Dr. Zia-uddin Ahmed Road, Karachi
6. Chief Executive Officer, K-Electric (KE) House, 39-B, Sunset Boulevard, Phase-II, Defence Housing Authority, Karachi.



DECISION OF THE AUTHORITY IN THE MATTER OF JUDGMENT PASSED BY THE APPELLATE TRIBUNAL IN APPEAL NO. 20/NT/2022 TITLED AS SINDH TRANSMISSION & DISPATCH COMPANY PVT LIMITED (STDC) VS. NEPRA ISLAMABAD.

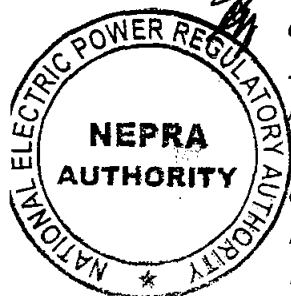
1. INTRODUCTION:

- 1.1 NEPRA awarded the Transmission License to STDC on December 17, 2015 under Section 19 of the NEPRA Act, 1997 to establish its 132 KV double circuit having length of 96.5 KM Transmission Line comprising, Aluminum Conductor Steel Reinforced (ACSR) Rail conductor to evacuate electric power from SNPC I & II to K-Electric grid station KDA-33. STDC vide its letter No. NEPRA/2015/15 dated 21st December, 2015 filed a tariff petition before NEPRA which, inter alia, also included a request to allow 3% technical losses for its 132 kV double circuit transmission line from SNPC-I & II power plant to KE's KDA-33 grid station. On the issue of technical losses, the Authority vide its Determination No. NEPRA/TRF-346/ST&DCPL-2015/ 2083-2085, dated 10th February, 2017 decided as follows:

"The Authority observed that ST&DCPL has claimed 3% transmission losses taking into account the maximum limit of losses set by NEPRA for the whole system network for transmission. After analysis, the Authority believes that that the project under consideration is a 132 kV dedicated transmission line comprising of Aluminum Conductor Steel Reinforcement ("ACSR") Rail Conductor for which level of technical losses should reasonably be in the range of 0.8% - 1%. In view thereof, the Authority has decided to cap the loss threshold for ST&DCPL at 1%. "

- 1.2 That, being aggrieved from allowed losses and certain other components of tariff in the said determination, STDC filed a Motion for Leave for Review on February 17, 2017 under Rule 16 (6) of NEPRA (Tariff Standards and Procedure) Rules, 1998 (hereinafter referred to as the "Rules") and requested as follows:

"The impugned decision has allowed transmission losses of 1% of the energy cost component or variable charge against claim of 3% of the energy cost component or variable charge based on the consideration that the project is a 132 kV dedicated transmission line comprising of aluminium conductor steel reinforcement (ACSR) rail conductor. However, the losses are to be calculated over the term of the Project for twenty five (25) years that account for ageing of the cables, wear and tear and operating conditions. Moreover, the benefit of lower losses has not been passed to the Applicant whereas the higher than the benchmark losses are attributed to the Applicant. The losses are to be calculated over life cycle of the Project, the term of which is twenty five (25)



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years duly accounting for ageing of the cables, length, resistivity and conductivity of cables, corona effect, wear and tear and operating conditions including the loading of the transmission line facility. Moreover, the benefit of lower losses should be passed to the Applicant in line with the principle that higher than the benchmark losses are attributed to the Applicant. The negative revenue impact per year on this account is around Rs. 130.196 million that translated into loss of Rs. 0.1463 per kWh.

The Impugned Decision does not take into account adjustment of the transmission carrying capacity of 100 MW for ambient / weather conditions like humidity, temperature, pressure etc. Furthermore, there is no adjustment for degradation of the transmission line facility. "

- 1.3 In the meantime, STDC achieved its Commercial Operation Date (COD) on January 18, 2018. Subsequent to COD of STDC, the Authority issued its Review Determination dated: June 14, 2018 wherein the Authority decided that:

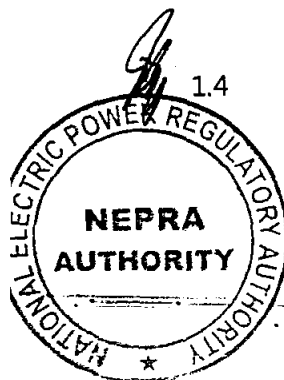
"Keeping in view the real time data which shows higher than NEPRA's allowed losses, and to protect the interest of STDC which is only a transmitter of electricity, the Authority allows a maximum of 1.5% transmission losses provisionally for the period of six months from COD. Accordingly, annual average transmission losses are provisionally allowed with a cap of 1.5%. Progressive monthly losses will be adjusted accordingly in line with the mechanism allowed to NTDC. K-Electric is also required to ensure that the voltage at KDA-33 grid station remains within acceptable limits at all times. In order to do that K-Electric is directed to take all remedial measures including installation of capacitor banks if required, within a period of six months.

The Authority considers that once the operational parameters are fully compliant with NEPRA transmission performance standards, only then the real-time data would lead to a rationale decision. STDC, K-Electric and the generation facility (SNPC) are directed to record half hourly measurements of power delivered, power received and voltages at both ends during the six monthly period, after which the Authority will review the matter of setting transmission losses."

1.4

As per the aforementioned decision of the Authority, the real time data from 18 January, 2018 (COD) to 14 January, 2019 was obtained from SNPC-I & II, STDC and KE. The Authority analyzed the data and noted that the transmission line losses of STDC's transmission line are higher than the allowed losses of 1.5%. Therefore, the Authority decided as under:

"In order to arrive at an informed decision, STDC is required to conduct a Third Party Technical losses study for its 132kV transmission line. To carry out the



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study, NEPRA shall propose list of consultants and STDC will finalize a consultant from the NEPRA proposed list. The Terms of Reference (ToRs) for the study shall be framed by NEPRA."

- 1.5 The aforementioned decision of the Authority was communicated to STDC, along with a list of Third-Party consultants and TORs for conducting the transmission line losses study for its 132-kV transmission line. Accordingly, STDC hired the services of M/s. Power Planner International (Pvt.) Limited (PPI) and submitted the transmission line losses study report to NEPRA on October 18th, 2019. Subsequently, the Authority revised the previously allowed Transmission Line Losses of 1.5% to 2.0%, taking in to account the findings of the Third-Party Transmission Line Losses Study conducted by M/s. Power Planner International (PPI) for the said project of STDC. According to that decision of the Authority, the revised Transmission Line Losses of 2.0% were applicable from the date of the decision of the Authority i.e., January 9, 2020.
- 1.6 STDC filed another review petition challenging the applicability of 2.0% Transmission Line Losses from the date of the decision of the Authority. The said review filed by STDC was considered by the Authority and also decided to conduct a hearing on the losses applicability issue and later on rejected the review application of STDC on November 4, 2020 and maintained its earlier decision dated January 9, 2020.

2. **CURRENT STATUS OF THE CASE:**

- 2.1 STDC, being aggrieved from the aforementioned review decision, filed an appeal before the Appellate Tribunal (NEPRA) on July 4, 2022. The Appellate Tribunal vide its decision dated: March 2, 2023 set aside the impugned order of the Authority dated: November 4, 2020 and directed NEPRA to decide the case afresh after hearing all the stakeholders.
- 2.2 Based on the aforementioned decision of the Appellate Tribunal, the Authority decided to grant an opportunity of Hearing to STDC.

2.3 The following issues were approved by the Authority for the Hearing:

- i. Whether the request of STDC regarding applicability of allowed 2.0% Transmission Line Losses from the date of COD i.e., January 18, 2018 is justified?
- ii. What will be the financial impact of 2.0% transmission line losses if applicable from COD i.e. January 18, 2018?
- iii. ~~Any other issue which may be considered by the Authority during the Hearing.~~





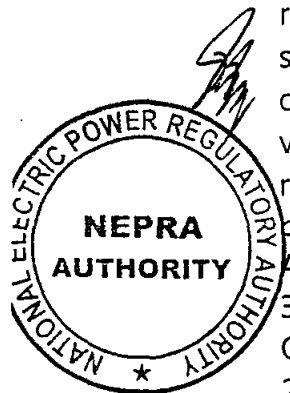
- 2.4 Accordingly, the said Hearing on the matter was conducted on November 21, 2023 and during the hearing the Authority directed STDC to submit a detailed response on the above framed issues. Accordingly, the said directions of the Authority were conveyed to STDC vide email dated November 23, 2023. In response, STDC provided issue-wise comments as follows:

3. **POST-HEARING SUBMISSIONS BY STDC:**

Issue No. 1

Whether the request of STDC regarding applicability of allowed 2.0% Transmission Line Losses from the date of COD i.e. January 18, 2018 is justified?

- 3.1 That all the facts and figures submitted by the Petitioner through tariff petition dated 21st December, 2015 (the "Tariff Petition") were based on notional calculations and assumptions. Assumptive figures are submitted for the purpose of providing approximate estimations and calculations in order to enable the regulator to issue notional tariff before the Commercial Operations Date ("COD"). Such tariffs are always subject to modifications after the availability of final and actual figures subsequent to and at the time of the achievement of COD.
- 3.2 That the petitioner achieved COD on 18 January 2018. The technical data of the testing was submitted before the Respondent through letter No. BD/AR/NEPRA-STDC-0252/2906 dated 29 June 2018 and was approved by the Respondent hence the previously allowed component of 1.5% of transmission losses was increased to 2%, however the same was not applied from the COD.
- 3.3 That this Learned Authority vide its order dated June 14th, 2018 allowed recovery of 1.5% losses 'Provisionally' subject to review by the Authority. In the same order the Authority also directed STDC, KE and SNPCL to maintain records of the half-hourly measurements of power delivered, power received and voltages at both ends. Subsequently on 29th June 2018 KE filed motion for review against the order of the Authority dated 14th June, 2018, during the proceedings, the parties submitted that records as per the directions of the Authority along with third party study report. It is important to note that the 3rd party report maintained that the losses claimed by Petitioner are prudent. On the basis of aforesaid the Authority decided that the Petitioner be allowed 2% of the losses from the date of order dated 9th January 2020.
- 3.4 The Authority vide its decision dated: 14-06-2018 provisionally approved the transmission losses for Petitioner of 1.5% while ~~directing the Petitioner to~~ conduct a technical study in order to determine the actual transmission losses.





As that approval was given on provisional basis, hence, it was subject to be replaced with the actual losses, after considering the study results.

3.5 That study was submitted by Petitioner. While considering the same, the Authority in the decision dated 4th November, 2020 decided to allow transmission losses of 2%. However, the Authority decided not to allow the impact of 2% transmission losses from COD for the reason that the applicability of decision cannot be made retrospectively. However, Petitioner argues that impact of the transmission losses be allowed from COD due to the following reasons:

- The earlier approval was allowed provisionally which means it has to be finalized based on approval of some final number.
- NEPRA has given decisions on interim/provisional basis to a number of generation companies and allowed adjustment/recovery of same on actual basis, from the date of their respective CODs, through decisions made subsequently i.e. later in time.
- On monthly basis, NEPRA entertains the request of CPPA-G w.r.t. adjustment of monthly fuel charges on the basis of provisional data and allowing adjustment of the same on the actual basis through decisions made subsequently.
- NEPRA allows adjustment of prior period (monthly/quarterly/annually) to distribution companies through decisions made subsequently.
- NEPRA adjusts the QTA on quarterly basis with retrospective effect.

3.6 In all aforesaid cases, NEPRA decided to approve something on a provisional basis and then changed the same based on final numbers with application from the relevant period. Hence it is discriminatory if, applicability of the Authority's decision is not allowed from COD whereas, it has been allowed in several other cases.

3.7 It is worth noting that Petitioner is of the view that the 1.5% losses were allowed by the Authority provisionally for a period of six months from COD subject to provision of data. Subsequently, on the basis of study on the actual basis, the Authority finally decided the cap of 2% transmission losses and the same may be applicable with the effect from the date of COD.

The Petitioner argues that 2% losses should be allowed from the date of COD instead of date of decision because the Authority permitted losses on provisional basis subject to its adjustment by the actual numbers. Not allowing actual losses, which are already approved by the Authority, from the date of Cod shall not be in consonance with other decisions of the Authority.



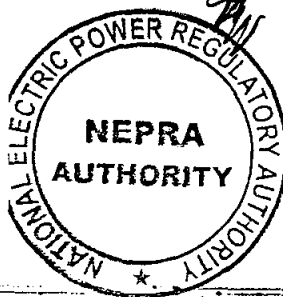


- 3.9 Allowing the tariff components on projected/reference/provisional/interim number is prudent practice in all tariff determinations/decisions by the Authority. Therefore, not allowing the actual transmission losses, which came out as a result of technical study and already accepted by the Authority from the date of COD of the Petitioner, tantamount to discrimination with other projects and will cause financial losses to the Petitioner.
- 3.10 That it is imperative to mention that the Authority allowed the Petitioner transmission line losses from 1% to 1.5% to 2% respectively, without any change in technical specifications, the increase in the allowed losses was a result of appropriate/prudent calculations based on maintained records by the Parties along with third party report. Furthermore, the judgement of the Appellate Tribunal rightly pointed out that the Authority has ample resources to determine the transmission line losses from the parameters to determine the quantum of losses, however, regrettably it took several years and many real-time reports and studies to show the actual line losses of the Petitioner.
- 3.11 In furtherance thereof, the Petitioner pleads that the delay of several years that took in the determination of transmission line losses are not attributable to the Petitioner, therefore it would be offensive to the principles of equity and justice that the losses suffered by Petitioner are not recovered from the actual date of accrual. Moreover, the issue of delay was deliberated in detail by the Appellate Tribunal and it was held that:

"It is known principle of equity that 'justice delayed is justice denied' but NEPRA took more than four years to firm up the actual losses for this Project. The Authority determines tariff under rule 16(2) of Tariff Standard and Procedures Rules, 1998 as amended in 2011, which provides maximum six-month time (extendable further 1 month). If Authority had followed the Tariff Rules in letter and spirit it has to decide the Tariff in the given time frame under its Tariff Rules".

- 3.12 That Petitioner contended that the Authority had previously decided the transmission line losses provisionally, subject to review. Any provisional determination by a regulator is always subject to final determination and the benefit thereof, if any, is always passed on to the beneficiary. The Appellate Tribunal in para-No.11 & 12 of its Judgement discussed the meaning of the word 'Provisional' and its implications at length. The Appellate Tribunal concluded that:

"It is clear from the meaning of this word [provisional] that anything awarded provisionally it is to be changed. Therefore 1.5% maximum losses allowed to



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STDC by NEPRA, provisionally for six months from COD, gives understanding to STDC that the study the actual losses shall be tried up from COD."

- 3.13 Furthermore, Regulation of Generation, Transmission and Distribution of Electric Power Act (as amended from time to time) ("NEPRA Act") in its Section 31(3)(a) provides that tariffs should allow the licensees the recovery of any and all cost prudently incurred to meet the demonstrated needs of their customers. That if the Authority do not allow Petitioner to recover losses from January 18, 2018, then it would negate the principle of prudence and recovery of permitted losses.
- 3.14 That Petitioner argues that there are several decisions of the Authority, whereby the Authority allowed various companies to make adjustment/recovery retrospectively after appraising actual data and information made available to it. That the Hon'ble Lahore High Court in its judgement in the case titled Ghani Global Gas Limited versus Federation of Pakistan (PLD 2020 Lahore 167) has recognized the principle that tariff determination based on presumptive basis has to be actualized based on actual data. Therefore, the benefits accrued to the Appellant on the basis of its determination has to be given to Petitioner and the Authority has ample powers under the law to grant the same.
- 3.15 That as per the actual data, the transmission losses were 2% right from the COD, therefore there is no rational reason to deprive the Appellant to recover the same from the COD.
- 3.16 In light of the above, it is submitted that the Authority being a regulator has ample powers under the applicable law. Furthermore, the language of the Authority's decision dated June 14, 2018 allows Petitioner to recover transmission line losses from January 18, 2018. Moreover, the Appellate Tribunal in its decision discussed the issue in hand at great length and decided that since the applicability of losses was determined provisionally, it should be finalized in consultation with stakeholders. Accordingly, Petitioner prays that the Authority may allow applicability of transmission line losses at 2% from January 18, 2018 i.e. from the date of achievement of COD.

Issues No. 2

What will be the financial impact of 2.0% transmission line losses if applicable from COD i.e. January 18, 2018?

- 3.17 Below is the extract from draft initialed Energy Wheeling Agreement already in approval stage with NEPRA, in which liquidated damages (penalty) pertaining to excess than permitted transmission line losses is agreed between the parties:

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Penalty for the Excess than Transmission Line Permitted Loss

LD = Energy Payment as stipulated in Power Purchase Agreement for Transmission Line Loss in excess of the transmission line permitted loss as approved by NEPRA in the Tariff Determination

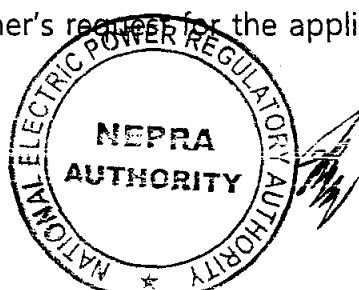
3.18 Also below is the estimated penalty amount worked out as per above mentioned agreed terms, however, actual may vary as per actual invoice to be raised by the Sindh Nooriabad Power Company Pvt. Ltd. And Sindh Nooriabad Power Company-II Pvt. Ltd:

SINDH TRANSMISSION & DISPATCH COMPANY FINANCIAL IMPACT (PENALTY)							
		CURRENTLY 1.5% ALLOWED			IF 2% ALLOWED FROM COD		
Applicable Year	Actual Loss %	NEPRA Allowed Limit	% loss for penalty	Penalty Amount (Mln) approx.	NEPRA Allowed Limit	% loss for penalty	Penalty Amount (Mln) approx.
Transmission Line Losses for Jan 2018 to Dec 2018	2.15	1.5	0.65	39.0	2	0.15	9.0
Transmission Line Losses for Jan 2019 to Dec 2019	1.98	1.5	0.48	37.2	2	-0.02	---
Total Penalty				76.24			9.01

Issue No. 3

Any other issue which may be considered by the Authority during the Hearing?

- 3.19 During the hearing, the Authority asked the Petitioner that is there any change in the technical status of Transmission Line from COD till date?
- 3.20 In response, the Petitioner stated that there is no change in the technical status of the transmission line since its COD till date, which further justifies the Petitioner's request for the applicability of 2.0% transmission line losses from COD.





- 3.21 The Petitioner clarified that it is not impugning the quantum of allowed level of transmission line losses of 2.0%, however, the same should be applicable from COD of January 18, 2018.

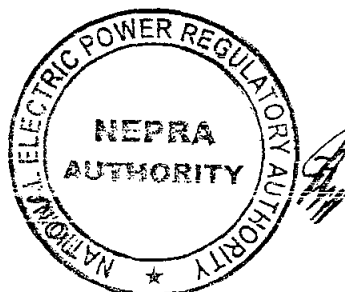
4. **ISSUE-WISE ANALYSIS BY THE AUTHORITY:**

- 4.1 **Issue 1:** It is noted that STDC contended that the initial approval of 1.5% losses was allowed on provisional basis from COD i.e. Jan 18, 2018, subject to review and adjustment based on actual data. The technical study conducted by a third party supported the claim of 2.0% losses from the COD and the said results of losses were accepted by the Authority in its decision on January 9, 2020. It is recorded that STDC, in its post hearing submissions, argued that not allowing the assessed losses of 2.0% (through the third-party study) from COD would be discriminatory, citing instances where NEPRA allowed adjustments retrospectively in other cases. It is also noted that the Appellate Tribunal emphasized the provisional nature of the earlier approved losses and directed afresh processing in the matter.
- 4.2 **Issue 2:** It is noted that STDC presented an estimate of the financial impact/penalty, indicating a penalty amount of approximately Rs. 76.24 million if 2.0% losses are not allowed from the COD as compared to penalty amounting to Rs. 9.01 million if 2.0% are allowed from COD. Further, it is also noted that the penalty calculation made by STDC is based on an agreed-upon formula in the Energy Wheeling Agreement (EWA) between STDC and KE.
- 4.3 **Issue 3:** During the hearing, the Authority inquired about changes in the technical status of the Transmission Line from COD to the present date. STDC affirmed no such changes, reinforcing its request for the applicability of 2.0% losses from the COD.

5. **CONCLUSION:**

- 5.1 In view of the above facts, submissions, comments and discussions, it is concluded that since 1.5% transmission line losses were allowed for a period of six (06) month from COD on a provisional basis and afterwards revised to a maximum cap of 2.0% transmission line losses based on the results of third party study applicable from the date of the decision dated: November 4, 2020 therefore STDC may be allowed 2.0% transmission line losses from its COD dated: January 18, 2018.

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6. **DECISION OF THE AUTHORITY:**

- 6.1 The Authority considered the above matter and accordingly allowed 2.0% transmission line losses to STDC from its COD i.e. January 18, 2018.

AUTHORITY

Rafique Ahmed Shaikh
Member

Engr. Maqsood Anwar Khan
Member

Mathar Niaz Rana (nsc)
Member

Amina Ahmed
Member

Waseem Mukhtar
Chairman

