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No. NEPRA/R/SA(Trf)/TRF-521/STDC-2020/37724-37726

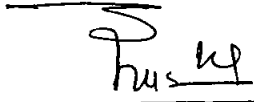
October 22, 2020

Subject: **Decision in the matter of Modification of the Tariff Determination – Sindh Transmission and Dispatch Company (Private) Limited (STDC) (Case No. NEPRA/TRF-521/STDC-2020)**

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (05 Pages) in the matter of Tariff Modification Petition filed by Lincoln Law Chambers on behalf of Sindh Transmission and Dispatch Company (Private) Limited for Modification of Tariff Determination of Sindh Transmission and Dispatch Company (Private) Limited in Case No. NEPRA/TRF-521/STDC-2020.

Enclosure: As above



22 x 20

(Syed Safer Hussain)

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

CC: 1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'A' Block, Pak Secretariat, Islamabad

**DECISION IN THE MATTER OF MODIFICATION OF THE TARIFF DETERMINATION - SINDH
TRANSMISSION AND DISPATCH COMPANY (PRIVATE) LIMITED (STDC)**

1. **INTRODUCTION:**

Lincoln Law Chambers, the Legal Counsel of Sindh Transmission & Dispatch Company (STDCL) have submitted the tariff modification petition on behalf of STDC for modification of tariff determination of STDC. The petition referred to Section 31 of Regulation of Generation, Transmission and Distribution of Electric Power Act of 1997 and NEPRA Tariff (Standards & Procedure) Rules - 1998. The Petitioner has stated that the Government of Sindh has established STDC for evacuation of 100 MW power from SNPC and SNPCL-II. The Petitioner holds a Special Purpose Transmission License granted by NEPRA. The electricity generated by SNPC-I&II is transmitted through the dedicated lines of the petitioner to K-Electric under a tripartite Energy Wheeling Agreement between the Petitioner, Seller and purchaser. Under the payment mechanism approved by the Authority in the tariff determination of SNPC and SNPCL-II, the petitioner invoices the Seller for its determined tariff and the Seller invoices the purchaser both for its generation tariff and transmission tariff of STDC. The same mechanism has been followed in the PPA between seller and purchaser and energy wheeling agreement. However, the above mechanism created a problem of double taxation. The Petitioner through the subject petition has proposed to modify the payment mechanism in the tariff determination whereby it is proposed that the petitioner be allowed to invoice to Wheeling Charges to the purchaser rather than the seller. The Petitioner at Section 35 of the petition has sought following relief:

- i) That the instant petition for the modification of tariff determination is admitted.
- ii) That the tariff determination is modified such that the petitioner is entitled to invoice the wheeling charges to the purchaser
- iii) That the power purchase agreement and the energy wheeling agreement is permitted to be modified to the extent that Petitioner is entitled to invoice the wheeling charges to the purchaser.
- iv) That the assignment agreement is approved such that assigned rights and claims are transferred from the seller to the petitioner duly acknowledged by the purchaser and or
- v) Any other relief and remedy appropriate, just and equitable in the public interest

2. **Proceedings**

- 2.1 In order to arrive at a just and informed decision, it was decided by the Authority to hold online hearing on this matter on July 14, 2020 (Tuesday) at 10:30 a.m. The advertisement in this regard was published on July 8, 2020 and notices to the relevant stakeholders was also issued. In response to the advertisement KE and Sindh Nooriabad Power Company submitted the intervention requests which were approved by the Authority.



3. Intervention Requests

3.1 K-Electric submitted as follows:

- i) NEPRA approved power acquisition request of K-Electric Limited and also determined the reference tariffs and approved Power Purchase Agreements (PPAs) with Sindh Nooriabad Power Company (Pvt.) Limited and Sindh Nooriabad Power Company Phase-II (Pvt.) Limited. Since these two projects are located at Nooriabad, upon request of K-Electric and SNPCs, NEPRA also approved Sindh Transmission and Dispatch Company as power wheeler and determined its tariff.
- ii) The tariff determinations of SNPC and STDC provided for billing mechanism whereby STDC will invoice wheeling charges to SNPC and SNPC shall make that payment to STDC. Subsequently, SNPC shall invoice and recover such wheeling charges from K-Electric. This mechanism has created double taxation and GST on service issues for both SNPC and STDC. As a result of this taxation issues, STDC has not issued invoices for wheeling charges since July 2019 and is waiting for resolution of this issue. This is creating an unsustainable position and may result in disruption of wheeling services.
- iii) In view of the above, necessary modifications may please be allowed in PPAs and Energy Wheeling Agreement to entitle STDC to bill / invoice wheeling charges directly to K-Electric.

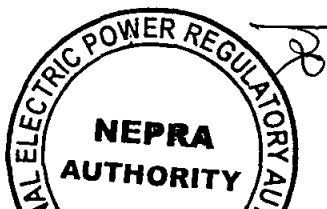
4. SNPC

4.1 SNPC representatives submitted that the Company is necessary party to this arrangement. SNPC further submitted that STDC was established because of the SNPC power projects. Special purpose transmission license was issued to STDC for transmission arrangement between SNPC and K-Electric. SNPC submitted that present invoicing mechanism is in-efficient. For modification of the invoicing mechanism several rounds of meetings have been held among the parties. According to SNPC someone have to pick the cost of taxation which is ultimately the end-consumer. SNPC further submitted that if I have to pick this cost I will bring this cost before the Authority for approval as pass through item.

4.2 According to SNPC this issue is due to invoicing mechanism which needs to be rectified through the amendment in the NEPRA decisions. SNPC submitted that the amendment has been required in the tariff decisions wherein this invoicing mechanism has been mentioned and approved. SNPC have disagreed with the assignment resolution of the agreement as proposed by the legal counsel of STDC and stated that for the business for which SNPC is not authorized no assignment agreement can be made. SNPC suggested that modification shall be made in the NEPRA decisions.

5. Hearing

5.1 Hearing in the matter was held on July 14, 2020 which was attended by the representatives of SNPC-I&II, STDC and K-Electric. The petitioner submitted that in the current mechanism STDC raises invoice to SNPC which is further claimed from K-Electric. Petitioner's payments received





from the SNPC I & II are subject to deduction of withholding income tax at source @ 8%. K-Electric would again deduct 8% withholding income tax from the wheeling invoice sent by the Seller to the purchaser.

5.2 Furthermore, SNPC I & II are obligated to deduct 1/5th of the sales tax on 13%. Purchaser cannot claim input adjustment in respect of the deducted sales tax as the SNPC I & II are not the transmission service providers. Therefore will deduct 100% of the applicable 13% Sindh Sales Tax. In addition the additional unjustified impact of double taxation as above on the payments of the petitioner in respect of transmission services approximately results in 21% I.e. (extra 8% income tax withholding and extra 13% Sindh Sales Tax withholding) which is material and adverse and is affecting the performance of petition and cash flows of the petitioner are being seriously delayed and affected.

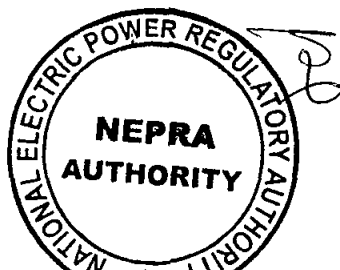
5.3 The Petitioner proposed the following modified mechanism:

- The Petitioner to invoice the wheeling charges for the payment directly to the Purchaser rather than the seller. More specifically, the following revision is sought so that it reads as follows:
"STDC shall invoice K-Electric for the wheeling charges as per the wheeling agreement and K-Electric shall make the payment thereof"

5.4 Further, in light of the above revision, STDC be allowed to send wheeling capacity payment invoices directly to K-Electric for payment.

5.5 According to STDC this recommendation is more efficient and simpler to use than the present mechanism. This will not impose any additional financial obligations on the consumers of K-Electric and there will be no change in the rates / charges that are passed on to the consumers of K-Electric. STDC submitted the following comparison of pending receivables:

Month	SNPC	SNPC-II	Total (Rs.)
July-19	19,817,657	19,817,657	39,635,314
Aug-19	19,817,657	19,817,657	39,635,314
Sep-19	19,178,379	19,178,379	38,356,758
Oct-19	19,817,657	19,817,657	39,635,314
Nov-19	19,178,379	19,178,379	38,356,758
Dec-19	19,817,658	19,817,658	39,635,316
Jan-20	19,817,658	19,817,658	39,635,316
Feb-20	18,539,099	18,539,099	37,078,198
Mar-20	19,817,658	19,817,658	39,635,316
Apr-20	19,178,379	19,178,379	38,356,758
May-20	19,817,658	19,817,658	39,635,316
June-20	19,178,379	19,178,379	38,356,757
	233,976,217	233,976,217	467,952,434





5.6 K-Electric being intervener have opposed the revised mechanism proposed by STDC and stated that K- Electric will not support this mechanism.

6. Decision of the Authority

6.1 The Power Acquisition Request was submitted by K-Electric for procurement of power from SNPC-I&II. The decision in the matter was issued on June 01, 2016 and subsequently review decision was issued on August 04, 2017. In the said PAR, SNPC stated as follows:

"In its PAR, K-Electric has submitted that for the transmission of power, STDC, a company wholly owned by GOS will lay out a transmission line of 95 km that will originate from SNPCL-11 and end at K-Electric's Grid Station. K-Electric has submitted that STDCL shall enter into a long term wheeling agreement with SNPCL-11, also having K-Electric as signatory, defining therein, inter alia, the rights and obligations of the parties. STDC shall receive energy at entry point (SNPCL-11 interconnection point) and deliver energy at exit point (K-Electric Grid Station). STDC shall invoice SNPCL-11 for the wheeling charges as per the wheeling agreement and SNPCL-11 shall make the payment thereof. Afterwards, SNPCL-11 shall invoice K-Electric its generation tariff and wheeling tariff it had paid to STDCL. The Authority noted that under the proposed arrangement, K-Electric shall be invoiced by SNPCL-11 both for the generation tariff and wheeling charges. The Authority is of the view that for the sale and purchase to be taken place at the Authority's determined tariffs and other terms & conditions, both for the generation and transmission companies, as stated in their respective license and tariff decisions, the proposed interconnection arrangement is allowed"

6.2 STDC in its respective petition submitted the same mechanism. Relevant extract of the STDC decision dated February 10, 2017 is reproduced as under:

"ST&DCPL has submitted that the inter-connection scheme has been agreed with K- Electric and is part of Power Purchase Agreement (PPA) to be signed between SNPCLs and K-Electric. The Authority has observed that K-Electric in its PAR to purchase power from SNPCLs had submitted that ST&DCPL will lay out a transmission line to transfer power from SNPCLs interconnection point to K-Electric KDA-33 grid station. K-Electric also submitted that ST&DCPL shall enter into a wheeling agreement with SNPCL, also having K-Electric as signatory; defining therein, inter alia, the rights and obligations of the parties. As per the referred wheeling agreement, ST&DCPL shall invoice SNPCL for its determined tariff and then SNPCL shall invoice K-Electric both for its generation tariff and transmission tariff of ST&DCPL. It has been noted that the Authority vide its decision dated June 01, 2016 in the matter of aforesaid PAR had allowed the proposed arrangement for the sale and purchase to be taken place at the Authority's determined tariffs and other terms & conditions, both for the generation and transmission companies, as stated in their respective license and tariff decisions."


6.3 The Authority approved the proposed invoicing mechanism by SNPC-I&II, STDC and K-Electric. Now STDC intends for modification of the invoicing mechanism however SNPC and K-Electric have not recommended the proposal of the STDC. In order to provide an opportunity for substantiating its claim, the Authority directed the SNPC, STDC and K-Electric to submit the




agreed mechanism of invoicing in next two weeks. However, no response in the matter was submitted. NEPRA issued letter to STDC on September 9, 2020 to submit the mutually agreed invoicing mechanism. In response STDC vide letter dated September 11, 2020 submitted that in the event parties reach an amicable solution we will inform NEPRA.

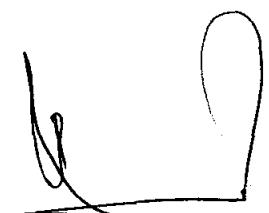
- 6.4 The Authority considers that justifying its claim through provision of documentary evidence is responsibility of the petitioner. In the instant case revision / modification in the invoicing mechanism has been requested by the Petitioner, for which mutual agreed mechanism was required to be submitted along with the modification petition. However no agreed mechanism has been submitted despite Authority's directions during the hearing dated July 14, 2020 and letter dated September 09, 2020. In view thereof the Authority has decided to dismiss the modification petition.

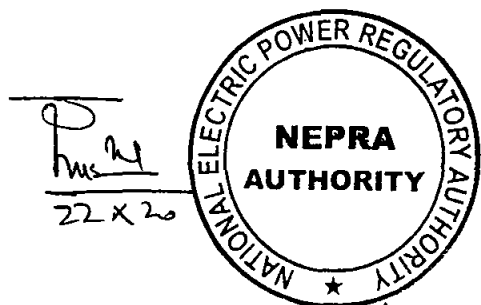
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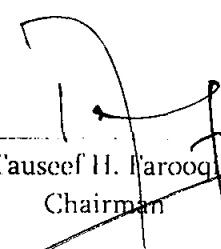

(Saif Ullah Chattha)
Member 28.9.2020

ⓧ
(Engr. Rafique Ahmed Shaikh)
Member


(Rehmatullah Baloch)
Member 28/9/2020


(Engr. Bahadur Shah)
Member




(Tauseef H. Farooq)
Chairman

Since the parties are in process of negotiations and are not yet developed consensus, therefore the opportunity may be given to parties to approach NEPRA once consensus is developed.

Alternatively, parties may also approach authority under dispute resolution mechanism.

