



National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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Registrar

No. NEPRA/R/TRF-55//AGL-2006/3614-16

May 24, 2010

Subject: **Decision of the Authority in the matter of Motion for Leave for Review filed under Rule 16(6) of NEPRA (Tariff Standards and Procedure) Rules, 1998 filed by Attock Gen Ltd. (AGL) against Authority's Decision dated 30th July 2009 - Intimation of Decision of Tariff pursuant to Section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997)**

Dear Sir,

In continuation of this office letter No. NEPRA/Tariff-55//AGL-2006/7167-7169 dated July 30, 2009 whereby decision of the Authority in the matter of adjustments in Attock Gen Ltd. tariff at Commercial Operation Date was sent. Please find enclosed herewith the decision of the Authority along with Annex-I (11 pages) in the matter of Motion for Leave for Review filed by Attock Gen Ltd. on August 10, 2009 against Case No. NEPRA/TRF-55//AGL-2006.

2. The Decision of the Authority is being intimated to the Federal Government for the purpose of notification in the official Gazette pursuant to Section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997) read with Rule 16(11) of the National Electric Power Regulatory Authority Tariff (Standards and Procedure) Rules, 1998.

3. Please be informed that the Reference Tariff earlier intimated vide letter dated 30.07.2009 is being modified and based on decision of the Authority, the Order of the Authority relating to the reference tariff, adjustments & indexation along with Annex-I (07 pages) needs to be notified in the official gazette. The same is attached herewith for the purpose of clarity.

Enclosure: As above

(Syed Safer Hussain)

Secretary
Ministry of Water & Power,
'A' Block, Pak Secretariat
Islamabad.

CC:

1. Secretary, Cabinet Division, Cabinet Block, Islamabad.
2. Secretary, Ministry of Finance, Islamabad.





ORDER OF THE AUTHORITY
IN CASE NO. NEPRA/TRF-55/AGL-2006
TO BE NOTIFIED IN THE OFFICIAL GAZETTE

Pursuant to Rule 16(11) of the NEPRA Licensing (Generation) Rules, Attock Gen Limited (AGL) is allowed to charge, on the basis of revised net dependable capacity established on the basis of test jointly carried out by the Central Power Purchasing Agency (CPPA) of the National Transmission and Dispatch Company (NTDC) and AGL at the time of Commercial Operation Date (COD), the following is approved as specified tariff for AGL for delivery of electricity to the CPPA of the NTDC for procurement on behalf of Ex-WAPDA Distribution Companies:

REFERENCE TARIFF

Tariff Components	Year 1 to 10	Year 11 to 25
Capacity Charge (PKR/kW/Hour)		
Fixed O&M - Foreign	0.1079	0.1079
- Local	0.0882	0.0882
Insurance	0.0494	0.0494
Working Capital	0.0441	0.0441
Debt Service	1.4124	-
Return on Equity	0.3487	0.3487
ROE during Construction	0.0514	0.0514
Total Capacity Charge	2.1321	0.7197
Energy Charge Rs./kWh		
Fuel Cost Component	4.4166	4.4166
Variable O&M – Foreign	0.4763	0.4763
Variable O&M – Local	0.1129	0.1129

Note:

- i) Capacity Charge Rs./kW/hour is applicable to dependable capacity at the delivery point.
- ii) Dispatch criterion will be the Energy Charge.
- iii) The above tariff is applicable for a period of 25 years commencing from the date of the Commercial Operation.
- iv) Component wise tariff is indicated at Annex-I.



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I) Adjustment in Insurance Component

Insurance component of reference tariff shall be adjusted as per actual on yearly basis upon production of authentic documentary evidence by AGL according to the following formula:

$$\text{Insurance Component (Revised)} = \text{Rs.0.0494 per kW per Hour/Rs. 67.5 million} \times \text{AP}$$

Where;

$$\text{AP} = \text{Actual Premium}$$

II) Pass-Through Items

No provision for income tax has been accounted for in the tariff. If AGL is obligated to pay any tax on its income, the exact amount paid by the company may be reimbursed by NTDC to AGL on production of original receipts. This payment may be considered as pass-through (as Rs./kW/Hour) monthly payment spread over a 12 months period in addition to the capacity purchase price proposed in the Reference Tariff. Furthermore, in such a scenario, AGL may also submit to NTDC details of any tax shield savings and NTDC may deduct the amount of these savings from its payment to AGL on account of taxation.

Withholding Tax is also a pass through item just like other taxes as indicated in the government guidelines for determination of tariff for new IPPs. Withholding tax shall be allowed @7.5% (or applicable rate) of the return on equity. CPPA (NTDC) shall make payment on account of withholding tax at the time of actual payment of dividend subject to maximum of 7.5% (or applicable rate) of 15% equity according to the following formula:

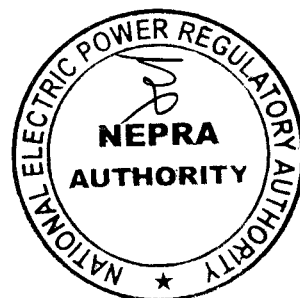
$$\text{Withholding Tax Payable} = [15\% * (E_{(REF)} + \text{ROEDC}_{(REF)}) * 7.5\% \text{ (or applicable rate)}]$$

Where:

$$E_{(REF)} = \text{Reference Equity (US\$ 39.56 million} * 80.4)$$

$$\text{ROEDC}_{(REF)} = \text{Reference Return on Equity During Construction}$$

Note: Withholding tax calculated according to the above formula shall be adjusted for variation in currency (US\$ to Pak Rupees).



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In case Company does not declare a dividend in a particular year or only declares a partial dividend, then the difference in the withholding tax amount (between what is paid in that year and the total entitlement as per the Net Return on Equity) would be carried forward and accumulated so that the Company is able to recover the same as a pass through from the Power Purchaser in future on the basis of the total dividend pay out.

III Indexations

The following indexations shall be applicable to reference tariff.

a) Indexation applicable to O&M

In future Fixed O&M part of Capacity Charge will be adjusted on account of local Inflation (WPI) and variation in US CPI and dollar/Rupee exchange rate. Quarterly adjustment for local inflation, foreign inflation and exchange rate variation will be made on 1st July, 1st October, 1st January and 1st April based on the latest available information with respect to WPI notified by the Federal Bureau of Statistics (FBS), US CPI issued by US Bureau of Labor Statistics and revised TT & OD selling rate of US Dollar notified by the National Bank of Pakistan. The mode of indexation will be as under:

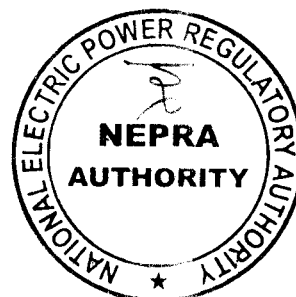
i) Fixed O&M

$$F O\&M_{(LREV)} = \text{Rs. } 0.0882 \text{ per kW per Hour} * WPI_{(REV)} / 137.00$$

$$F O\&M_{(FREX)} = \text{Rs. } 0.1079 \text{ per kW per hour} * US CPI_{(REV)} / 212.174 * ER_{(REV)} / 80.4$$

Where:

$F O\&M_{(LREV)}$	=	The revised applicable Fixed O&M Local Component of the Capacity Charge indexed with WPI
$F O\&M_{(FREX)}$	=	The revised applicable Fixed O&M Foreign Component of the Capacity Charge indexed with US CPI and Exchange rate variations.
$WPI_{(REV)}$	=	The revised Wholesale Price Index (Manufacturers)
$WPI_{(REF)}$	=	137.00 Wholesale Price Index (Manufacturers) of January 2009 notified by Federal Bureau of Statistics
$US CPI_{(REV)}$	=	The revised US CPI (All Urban Consumers)
$US CPI_{(REF)}$	=	212.174 US CPI (All Urban Consumers) for the month of January 2009 as notified by the US Bureau of Labor Statistics
$ER_{(REV)}$	=	The revised TT & OD selling rate of US dollar as notified by the National Bank of Pakistan



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ii) Variable O&M

The formula of indexation for variable O & M component will be as under:

$$V O\&M_{(LREV)} = \text{Rs. } 0.1129 \text{ per kW per Hour} * WPI_{(REV)} / 137.00$$

$$V O\&M_{(FREV)} = \text{Rs. } 0.4763 \text{ per kW per hour} * US CPI_{(REV)} / 212.174 * ER_{(REV)} / 80.4$$

Where:

- $V O\&M_{(FREV)}$ = The revised applicable Variable O&M Component of the Energy Charge indexed with US CPI and Exchange rate variations
- $WPI_{(REV)}$ = The revised wholesale Price Index (manufacturers)
- $WPI_{(REF)}$ = 137.00 Wholesale Price Index (Manufacturers) of January 2009 notified by Federal Bureau of Statistics
- $US CPI_{(REV)}$ = The revised US CPI (All Urban Consumers)
- $US CPI_{(REF)}$ = 212.174 US CPI (All Urban Consumers) for the month of January 2009 as notified by the US Bureau of Labor Statistics
- $ER_{(REV)}$ = The revised TT & OD selling rate of US dollar as notified by the National Bank of Pakistan

iii) Adjustment for KIBOR variation

The interest part of fixed charge component will remain unchanged throughout the term except for the quarterly adjustment due to variations in interest rate as a result of variation in 3-monthly KIBOR according to the following formula:

$$\Delta I = P_{(REV)} * (KIBOR_{(REV)} - 12.02\%) / 4$$

Where:

- ΔI = The variation in interest charges applicable corresponding to variation in KIBOR. ΔI can be positive or negative depending upon whether KIBOR REV is > or < 12.02%. The interest payment obligation will be enhanced or reduced to the extent of ΔI for each quarter under adjustment on quarterly basis.
- $P_{(REV)}$ = is the outstanding principal (as indicated in the attached debt service schedule to this order) on a quarterly basis on the relevant quarterly calculations date. Period 1 shall commence on the date on which the 1st installment is due after availing the grace period.



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iv) Fuel Price Variation

The Energy Charge Part of the tariff relating to fuel cost shall be adjusted on account of the fuel price variations as and when notified by the relevant authority, which in the instant case is the Attock Petroleum Ltd. In this regard, the variation in AGL's allowed rate relating to fuel cost shall be revised according to the following formula:

$$FC_{(Rev)} = (\text{Rs. } 4.4166 \text{ per kWh} * FP_{(Rev)}) / \text{Rs. } 22,415.17 \text{ per Ton}$$

Where:

$$FC_{(Rev)} = \text{Revised fuel cost component of Variable Charge on RFO.}$$

$$FP_{(Rev)} = \text{The new price of RFO as determined per price mechanism given at para 69 of the original determination of AGL and as per decision of the Authority dated April 09, 2009 (communicated vide letter No. NEPRA/TRF-55/AGL - 2006 / 1421-23 dated April 9, 2009)}$$

Adjustment on account of local inflation, foreign inflation, foreign exchange rate variation, KIBOR variation and fuel price variation will be approved and announced by the Authority for immediate application within seven working days after receipt of AGL's request for adjustment in accordance with the requisite indexation mechanism stipulated herein.

V) Adjustment in Return on Equity (ROE)

ROE component of tariff will be adjusted subject to exchange rate variation according to the following formula;

$$ROE_{(Rev)} = \text{Rs. } 0.3487 \text{ per kW per hour} * ER_{(Rev)} / ER_{(Ref)}$$

Where:

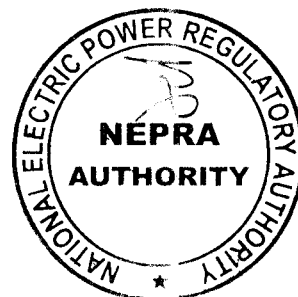
$$ROE_{(Rev)} = \text{The revised ROE component of the Capacity Purchase Price}$$

$$ER_{(Rev)} = \text{The revised TT \& OD selling rate of US\$ as notified by the National Bank of Pakistan}$$

$$ER_{(Ref)} = \text{The reference exchanges rate of PKR } 80.4 = 1 \text{ US\$}.$$

VI. Adjustment on Return on Equity during Construction (ROEDC)

ROEOC component of tariff will be adjusted subject to exchange rate variation according to the following formula;



B



$$\text{ROEDC}_{(\text{Rev})} = \text{Rs. } 0.0514 \text{ per kW per Hour} * \text{ER}_{(\text{Rev})} / \text{ER}_{(\text{Ref})}$$

Where:

- $\text{ROEDC}_{(\text{Rev})}$ = The revised ROEDC component of the Capacity Purchase Price
 $\text{ER}_{(\text{Rev})}$ = The revised TT & OD selling rate of US\$ as notified by the National Bank of Pakistan
 $\text{ER}_{(\text{Ref})}$ = The reference exchanges rate of PKR 80.4 = 1 US\$.

IV Terms and Conditions of Tariff:

- i) Use of RFO will be considered as primary fuel.
- ii) Dispatch criterion will be based on the Energy Charge.
- iii) General assumptions of AGL, which are not covered in this determination, may be dealt with in the PPA according to its standard terms.

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Attock Gen. Limited (AGL)
Revised Reference Tariff Schedule Based on RFO
w.e.f March 17, 2009

Year	Energy Charge (PKR/kWh)				Capacity Charge (PKR/kW/Hour)								Capacity Charge at 60% Plant Factor Rs./kWh	Total Tariff Rs./kWh		
	Fuel	Variable O&M Local	Variable O&M Foreign	Total	Fixed O&M Local	Fixed O&M Foreign	Insurance	Financing Cost on Working Capital	Return on Equity	Return on Equity for Construction Period	Withholding Tax @7.5%	Loan Repayment			Interest Charges	Total
1	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.3468	1.0657	2.1321	3.5535	8.5593
2	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.4013	1.0111	2.1321	3.5535	8.5593
3	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.4643	0.9481	2.1321	3.5535	8.5593
4	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.5373	0.8751	2.1321	3.5535	8.5593
5	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.6218	0.7906	2.1321	3.5535	8.5593
6	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.7195	0.6929	2.1321	3.5535	8.5593
7	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.8327	0.5797	2.1321	3.5535	8.5593
8	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.9636	0.4489	2.1321	3.5535	8.5593
9	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	1.1150	0.2974	2.1321	3.5535	8.5593
10	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	1.2903	0.1221	2.1321	3.5535	8.5593
11	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
12	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
13	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
14	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
15	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
16	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
17	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
18	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
19	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
20	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
21	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
22	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
23	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
24	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
25	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
Levelized	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.4409	0.5152	1.6758	2.7931	7.7988

Net Capacity

156.181 MW

80.4 PKR/USD

22,415.17 Rs/Metric Ton

212.174 for January 2009 as notified by the US Labor Bureau of Labor Statistics

137.000 for January 2009 as notified by the Federal Bureau of Statistics

45%

Efficiency



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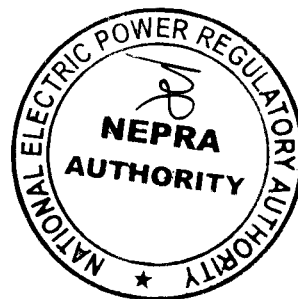


**DECISION IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW FILED UNDER RULE 16(6)
OF TARIFF STANDARDS & PROCEDURE RULES, 1998 FILED BY ATTOCK GEN LIMITED (AGL)
AGAINST AUTHORITY'S DECISION 30TH JULY 2009**

Brief facts of the case are that Attock Gen Limited (hereinafter referred as AGL) is a public limited company established for setting up a combined Cycle Power Plant based on single fuel (RFO) indigenously produced by Attock Refinery Limited. AGL filed a tariff petition for determination of generation tariff for 165 MW at ISO Gross conditions which was decided by the Authority vide its decision dated September 4, 2006 and the same was intimated to the Federal Government for notification in the official gazette pursuant to section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.

AGL achieved its Commercial Operation Date (COD) on 17th March 2009. Subsequently AGL requested the Authority to allow COD adjustments in accordance with the Para 58 & 64 of the Authority's determination dated 4th September 2006. The adjustments in this regard were allowed on 30th July 2009. AGL vide its letter dated 7th August 2009 pointed out following observations or "inconsistencies" in the Authority's decision;

- i) In the paragraph I of the subject order the revision of insurance component was not made on the basis of actual premium;
- ii) In paragraph II "Pass Through Items" typo error in the formula i.e. after withholding Tax payable plus sign (+) was to be replaced with equal sign (=);
- iii) Paragraph III a. (ii) Variable O&M; AGL, through its letter No. AGL/1-03/1112 dated July 15 2009, requested for change in taxes and duties on its imported spare parts. However the effect of this change was erroneously missed out in the subject decision;
- iv) Paragraph III (iv) of the Order of the Authority; The formula provided for FC(Rev) required a correction with regard to the revised Fuel Component i.e. Rs.4.4166 per kWh and revised reference Fuel Price i.e. Rs.22,415.17 per Ton instead of Rs.22140.07 per Ton;
- v) a) Adjustment with regard to exchange rate at which, as and when, the equity was brought into the project up to the exchange rate of Rs.80.4 per US Dollar at COD was not taken into account for calculation of ROE(Rev); b) AGL was allowed ROE on the basis of Internal Rate of Return (IRR) without taking into account the terminal value of equity, by the learned Authority through its letter No. NEPRA/TRF-55/AGL-2006/02 dated October 6, 2006; however the revised component of ROE in the subject decision was calculated after taking into account the terminal value of equity, which was resulting into simple rate of return of 15% and not 15% IRR; the correct return on equity is attached as Annexure B; and



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- vi) Paragraph VI of the Order and paragraph 13 of the Decision of the Authority “Adjustment in Return on Equity During Construction (ROEDC)”; The calculation for ROEDC did not appear to be consistent with the premise on which the same component was calculated in the original tariff determination. The correct rate of return on equity during construction was attached as **Annexure B.**”
2. The extract of the Authority’s decision communicated to AGL vide letter No. NEPRA/TRF-55/AGL-2006/02 dated October 6, 2006 (referred at Para – v above) has been reproduced as under;

- “i) The calculation error regarding 15% IRR on ROE Component as pointed out at para 2(iii) of your letter in reference has been accepted by the Authority. The necessary correction in the ROE component shall be made and sent to the Federal Government for rectification in due course of time.*
- ii) The Authority did not notice any calculation error in the determination with regard to other observations made by the AGL. AGL may however, file review motion before the Authority if they feel that any such issue requires review of Authority’s determination in the matter.”*

3. In response to AGL’s letter dated August 7, 2009, AGL through letter No. TRF-55/692 dated November 13, 2009 was informed as follows:

“Considering the Attock Gen Ltd (AGL) observations being justified, the Authority has decided to modify its aforementioned decision to the extent, as given hereunder;

- In para-II “Pass Through Items”, the “+” sign appearing in the formula after withholding Tax Payable” may be read as “=”.*
- In para-III “Indexation”, sub para iv), the fuel price of “Rs. 22,140.07 per ton” may be read as “Rs.22,415.17 per ton”.*

However with regard to your concerns/observations expressed in para I, III, V & VI in the referred letter, do not fall under motion for recalculation, therefore, a separate review petition in this regard can be filed for consideration of the Authority”.

4. AGL vide letter No. AGL/1-03/1494 dated 25th November 2009 filed motion for leave for review under Rule 16(6) of the NEPRA Tariff Standards and Procedure Rules, 1998 (the Tariff Rules). AGL sought review in the following terms:

“1. Paragraph-12 (on page-6) of the Decision Reference dated 30th July, 2009; Adjustment in Return on Equity” the Learned Authority purported to compute the tariff revision on the basis of Rs.2,494.3 Million revised equity and a net capacity of





156.181 MW. The resultant ROE figure of Rs.0.2735 per kW per hour (also set forth in paragraph-V of the Order thereof), however is erroneous. The corrected computation thereof in light of NEPRA's own letter No. NEPRA/TRF-55/AGL-2006/02 dated 6th October, 2006 (appended herewith) is set forth in the Table appended hereto.

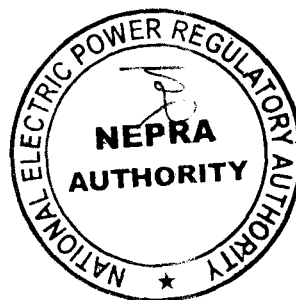
2. in Paragraph-13 (also on page 6) of the Decision Dated 30th July 2009 (and also in paragraph VI of the Order thereof) "Return on Equity During Construction", the ROEDC computation is also erroneous, and the corrected computation is also set forth in the Table appended hereto.

5. A hearing on the motion of review was conducted by the Authority on 14th January 2010 wherein opportunity of hearing was provided to the petitioner Company as well as other parties of the proceedings. The hearing was attended by the representatives of AGL, Central Power Purchase Agency, Ministry of Water & Power, etc. During the hearing AGL submitted that the ROE and ROEDC worked out in COD was not determined in accordance with the Authority's determination dated 4th September 2006. AGL requested that the original formula for calculating ROE and ROEDC as adopted in the original determination might be restored. AGL submitted that while calculating the ROE, the Authority excluded the terminal value of the equity, which was injected at the time of start of the project that reduced its IRR. AGL requested that the calculation of ROEDC and ROE during operation made in the determination might be followed without going into the details of BOO and BOOT. AGL admitted that the GoP guidelines for the determination of tariff do provide for distinction between BOO and BOOT projects. AGL further stated that GoP guidelines although comprehensively provide the treatment of equity return and mechanism for redemption of equity in case of BOOT projects but it simply says IRR in the case of BOO projects. It was also argued on behalf of AGL that since the terminal value of the equity was not deducted at the time of original determination, therefore the doctrine of estoppel would apply for revision of that.
6. AGL further submitted that its equity was brought in two ways; 70% was foreign equity and 30% local equity. According to AGL for the local equity component the difference of exchange rate from the date on which actually this equity was brought in till COD has not been accounted for due to which AGL was deprived from gaining IRR on US\$ investment for more than 4%. AGL stated that its request was as per the GoP Policy that local equity has to be treated just like foreign equity for the purpose of calculating return.
7. The examination of the Table appended with the Review Motion indicated that the calculations of ROE and ROEDC were based on monthly compounding of ROE before COD and annually thereafter along with equity redemption. The ROEDC based on drawdown period of 17.69 months and return @15% worked out US\$7.8304 million, which was assumed





- to be paid in 25 annual equal installments each of US\$1.2114 million on annuity method. As per the aforementioned table AGL worked out ROEDC as Rs.0.0712/kW/hour on the basis of 156.181 MW net capacity and Rs.80.4/US\$ exchange rate.
8. AGL based on the same parameters as adopted for calculating ROEDC but with zero terminal value worked out ROE during operation on its equity US\$ 39.5590 million or Rs.0.3596/kW/hour.
 9. Having gone through the documents and working provided by AGL, the Authority observed that the ROEDC and ROE appearing in the Annex-B of the AGL's letter No. AGL/po/5,310.99/060911 dated September 11, 2006 i.e. Rs.0.413/kW/hour and Rs.0.02017/kW/hour respectively was incorrectly calculated because it used the wrong discount factor i.e. 1 for -1 year and 1.20 for zero year.
 10. It is pertinent to mention that Central Power Purchasing Agency (CPPA) on AGL's assumptions pertaining to ROE (comments on assumptions page 15 of the Determination dated September 4, 2006) observed that:
"The Company has considered an IRR of 15.5% with annual ROE of 17.8% over the 30 years, it should be rationalized with other projects keeping in view the BOO and BOOT arrangements. Regarding ROE during construction and financing cost of working capital it is stated that the previous practice of tariff Determination should be followed."
 11. AGL in its response to CPPA's comments, which is also given at para-49 (c) page 20 of the Determination dated September 4, 2006, did not address the issue of BOO and BOOT. Similarly the issue of ROEDC to be consistent with the Authority's previous practice of tariff Determinations was also not responded by the AGL. The AGL's response on the issue of ROE given in the Determination is reproduced as under:
 - i) *15.5% IRR is considered reasonable.*
 - ii) *ROE during construction is based on the assumption that equity is drawn before senior loans are disbursed. Considering current practices, this is assumed to be required by lenders. The total amount is annualized over 30 years in the tariff.*
 - iii) *ROE during operation is calculated taking realistic timing of dividend payments into account in order to achieve 15.5% IRR. Equity is drawn down upfront and dividends are assumed to be paid after the end of the relevant financial year."*
 12. AGL did not respond to CPPA's observation as it was aware of the GoP Guidelines for Determination of Tariff for IPPs issued in 2005. AGL wrongly contended that the GoP guidelines only talk about IRR on BOO projects. The GoP guidelines for Determination of Tariff for IPPs clearly provide at para 1.4(e) that for BOO projects there should be no redemption of equity. The Authority in its decision did not discuss the issue of redemption of equity because this issue was not before the Authority as AGL itself at para 6.6.1.4 (c) at page

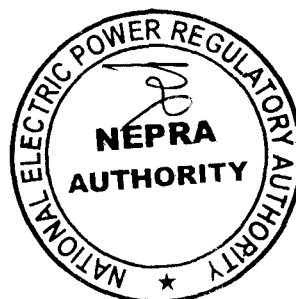


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14 of the Petition assumed no equity redemption being BOO project. The main reason for assuming no equity redemption was that AGL was aware of the GoP Guidelines for Determination of Tariff for IPPs, 2005. The Authority's decision on the issue of ROE and ROEDC at para-64 is reproduced as follows:

"The ROE as 15.5% demanded by the petitioner is on the higher side. The Authority has allowed 15% IRR in the case of other IPPs and finds no justification to allow higher return in the instant case. The Authority, therefore decides to allow 15% IRR to AGL. AGL has worked out Return on Equity during the construction period on the basis of 100% equity injection at the start of the construction period. The ROE during construction thus works out Rs.0.0379/Kw/hour. This will be adjusted as per actual draw downs during the construction period at the time of COD".

13. CPPA in its comments, while objecting to the higher ROE and ROEDC requested by AGL, also requested the Authority to keep in view the BOO and BOOT arrangement, while calculating ROE.
14. The Authority considers that in the original Determination while calculating IRR in the case of AGL the terminal value of the equity was erroneously omitted. This calculation error does not create any right of AGL for overriding the GoP Guidelines for Determination of Tariff for IPPs in this regard as being followed by the Authority pursuant to sub-section 6 of section 7 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the Act). The Authority considers that it is within its jurisdiction to rectify any error committed in the calculation of any tariff component which is inconsistent with the guidelines given by the GoP for determination of Tariff for IPPs. The Authority rectified the error committed in the original determination dated 4th September 2006 through its latest determination dated 30th July 2009. It is understood in the sector/industry that the first determination which is given at the feasibility stage is for reference and all the adjustments are made at the COD stage. The status of the original determination is that of "provisional", as the determination at the COD stage settles and adjusts all the components of tariff in a definite manner. Therefore, any provisional determination of any component of tariff does not in any manner create a vested right in favour of the petitioner and the same is subject to the adjustments at the time of COD. The view is also supported by the verdict of the superior courts and a decision of the Lahore High Court, Lahore in a Haj case reported as 2007 PLD 550 whereby it was held that "Authorization having been given by the authorities for Haj 2007 were provisional, therefore, no vested right of nominees could arise with respect thereto; in any event such provisional nominees could conveniently compete in a selection process of the Organization for Hajj 2007 that was framed by authorities strictly in accordance with law."



15. Based on the above judgment of the Honorable High Court, it is clear that no vested rights arise pursuant to a provisional authorization/decision of the Authority. AGL knew that the Authority shall make all adjustments at the time of COD through its determination which has now been made, *inter alia*, in accordance with the guideline issued by the Government of Pakistan for Determination of Tariff for IPPs.
16. The Authority also finds that the argument of “estoppel” being raised by the AGL during the course of hearing is not maintainable for the reasons firstly that it was not agitated in the motion of review and secondly that this principle does not apply against the provisions of law. Reliance in this regard could be placed on the judgments of superior courts cited as, PLD 2005-SC-819, PLD-2006-Karachi-10 and 2003-CLC-18.
17. Furthermore, the Authority also cannot discriminate among the investors by giving different treatment to different investors. The Authority is obligated to apply the law correctly and in case of any error in applying the law due to any mistake or omission, the same shall be rectified by the Authority on suo motto basis or on the application of any party. The Authority refers the following decisions of the Honorable superior courts relevant in this case:

a. 2009 PTD 1187 Income Tax Tribunal

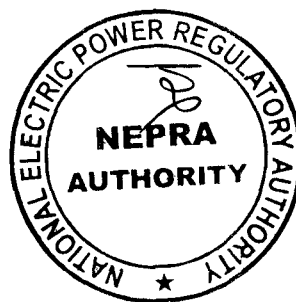
Correct Application of Law:

Appellate Tribunals as well as judicial forums have to correctly apply the law and where the law has not been correctly applied due to any mistake, on the application of aggrieved party as well as suo moto action should be taken and that illegality be rectified. Appellate Tribunal as well as all the judicial forums are very much within the jurisdiction to rectify the order where law had not been properly applied.

b. 2007 MLD 1858 Sindh High Court, Karachi

A right can be created through a valid and legal order, but if the order is invalid, illegal or void, no right whatsoever can be created through the said orders as the void order is one, which was passed by an authority either lacking jurisdiction or was made in complete disregard of the mandatory provisions of law, which is an illegal order non-existent in the eyes of law.

18. Keeping in view the principle of correct application of law, principles of natural justice & fairness and while performing its functions under the Act generally and under sub-section 6 of section 7 of the NEPRA Act in particular read with the Tariff Rules and GoP Guidelines, the AGL’s request for determining ROEDC assuming monthly compounding prior to COD and annual thereafter being inconsistent with the Authority’s earlier decision and GoP

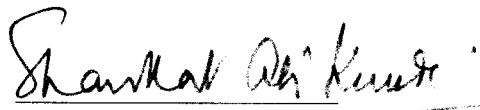


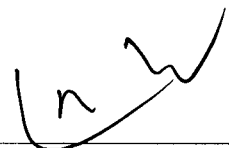


Guidelines for Determination of Tariff for IPPs, is not maintainable, hence hereby rejected. The Authority believes and understands that doctrine of estoppel is not relevant in this case as estoppel cannot be applied against any law or statute, hence ignored. The Authority is duty bound to apply the law in its true letter and spirit and while doing so it is equally obligated to strike a balance in the interest of consumers as well as companies providing electric power services. In case, the Authority accedes to the request of AGL, it will certainly neither be performing its functions as envisaged under the Act, nor will it be protecting the interests of consumers and other companies who have been given tariff pursuant to and in accordance with the GoP Guideline for Determination of Tariff for IPPs. Above all, the question of estoppel was never raised in the motion for leave for review; hence the same cannot be allowed to be agitated during the course of arguments. Furthermore, the Authority also finds that the AGL's request for assuming zero terminal value for calculating IRR is inconsistent with the GoP Guidelines for Determination of Tariff for IPPs, hence cannot be acceded to.

19. However, AGL's request for considering the exchange rate at the time of equity injection for converting into Dollars is consistent with the GoP Policy that allows ROE in Dollar terms irrespective of local or foreign equity. The Authority has therefore, decided to accept AGL's request in this regard. AGL's tariff to this extent is being modified. The modified reference tariff table is attached as Annex-I.
20. Pursuant to Section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997), the Annex-I as attached to this decision is being intimated to Federal Government for notification in the Official Gazette.

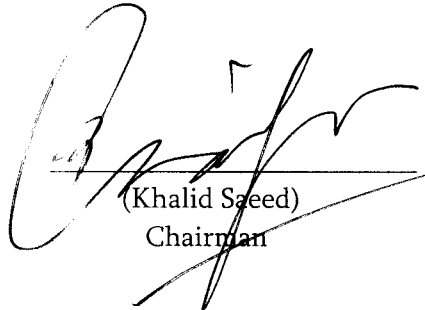
AUTHORITY


(Shaukat Ali Kundi) 14.05.2010
Member

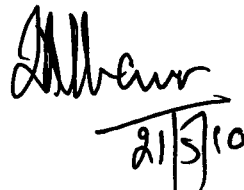

(Maqbool Ahmad Khawaja)
Member

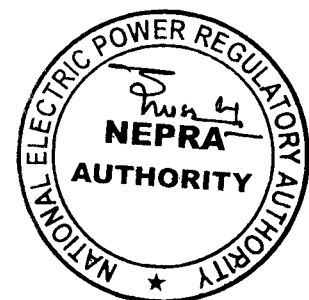
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(Zafar Ali Khan)
Member


(Khalid Saeed)
Chairman

* Dissenting Note is attached.


21/5/10



Dissenting Note

Decision in the matter of Motion for Leave for Review filed under Rule 16(6) of Tariff Standards & Procedure Rules, 1998 Filed by Attock Gen Limited (AGL) Against Authority's Decision 30th July 2009

I do not agree with the decision of the learned fellow Authority Members on the following grounds:

Under Para-14 of the decision it is stated that:

“...This calculation error does not create any right of AGL for overriding the GoP Guidelines for Determination of Tariff for IPPs in this regard as being followed by the Authority pursuant to sub-section 6 of section 7 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the Act). The Authority considers that it is within its jurisdiction to rectify any error committed in the calculation of any tariff component which is inconsistent with the guidelines given by the GoP for determination of Tariff for IPPs. The Authority rectified the error committed in the original determination dated 4th September 2006 through its latest determination dated 30th July 2009...”

Two fundamental considerations on which the decision appeared to have been taken are (a) an error was committed which has been rectified (after 4 years) and (b) it is contrary to the GoP Guidelines for determination of Tariff for IPPs.

Regarding omission of error the facts of the case are as follows:

- a) On June 15, 2006, AGL filed a Tariff Petition requesting an IRR of 15.5% (ROE 17.8%) over a Tariff Control Period of 30 Years on BOO basis taking a terminal value as zero in its computation of IRR.
- b) The Authority while giving its determination dated 4th September 2006 restricted the tariff control period to 25 years (instead of 30 years) but ROE computation was based on 30 years period, after taking into account zero Terminal Value (as requested by AGL).
- c) Subsequently AGL highlighted in its letter of 11th September 2006 that ROE computation was based on 30 years whereas it should have been 25 years. AGL also submitted along with its covering letter a detailed computation of ROE in which Terminal Value was taken as zero.
 - i) The Authority after consideration of all the relevant aspects of the case, the working paper submitted by Director Tariff-II

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and decided that no error in the determination on this account was made by the Authority.

- ii) Director (Tariff-II) was directed to present revised Order of the Authority along with amended Tariff Table for approval.
- d) On 6th October 2006, in accordance with the Authority decision the Director (Tariff-II) in his letter informed AGL that the calculation error of 15% IRR has been rectified (from 30 years to 25 years) as requested by the AGL and necessary correction shall be sent to the Federal Government for rectification in due course of time and necessary calculations and ROE during construction were annexed on a separate statement. Here again, the Authority in its re-calculation took a zero Terminal Value as requested by AGL.
- e) A Corrigendum/Addendum was issued under the signatures of the Chairman of the Authority addressed to the Secretary Cabinet Division on 14th October 2006.

In view of the above a foregoing, it is absolutely clear from the facts of the case that no error whatsoever was committed by the Authority but all along it appeared to be a conscious decision to take a zero Terminal Value while calculating ROE as requested by AGL.

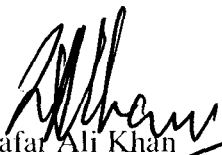
In any case, the rationale for deduction of Terminal Value, equal to the share holder's equity at the end of Tariff Control Period, is highly controversial, at best. It would be grossly optimistic to attribute any Terminal Value to Reciprocating-Engine technology after 25 years, in view of: (a) the rapid rate of technology obsolescence; and (b) the growing emphasis, world – wide as well as Pakistan-specific, on alternate renewable technologies rather than fossil fuels.

Under Section 7(6) of the Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997 - The Act) states that “ In performing its functions under this Act, the Authority shall, as far as practicable, protect the interests of consumers and companies providing electric power services in accordance with guidelines, not inconsistent with the provisions of this Act, laid down by the Federal Government.”. After studying the aforementioned guidelines, I am of the considered opinion that the guidelines are inconsistent with THE ACT and the Tariff Standards & Procedure Rules, 1998 as GoP, by issuing executive order cannot restrict or take away powers conferred upon the Regulator under the law. Just by a mere fact that GoP issued its guidelines for determination of tariff for IPPs to NEPRA is no legal valid basis for the reduction of Terminal Value of the plant for determining the ROE as it would tantamount to restricting the exclusive Tariff determination mandate of the Regulator. If GoP has to advise on how to calculate and determine the tariff than there is no point of having an independent Regulator. In addition the aforesaid guidelines for determination of tariff were very much there (issued in November 2005) when the Authority gave its decision by ignoring the Guidelines.

The original determination of 4th September 2006 constitutes the basis for financial closing, therefore, constitutes a vested right for the investors - of which they cannot legally now be deprived after a lapse of four years. I am afraid that when and if taken to some other forum by the investors, the Authority may be estopped from repudiating, to AGL's detriment, a prime parameter for ROE determination which was a fundamental factor in the financial closing. The doctrine of estoppel prevents any party from denying at law its own representation, act or decision, to the detriment of another party – if that other party has relied upon it.

In the present electricity turmoil, the Regulator, in my opinion, must realize its responsibility as one of the pillars of the electricity system in the country and must protect its independence and credibility. Trust and confidence reposed by an investor (and the lenders) by basing its investment decisions on the Regulators determination is of vital importance, especially when the consummation of the order has taken place.

That Terminal Value deduction has been factored into IRR/ROE calculations of subsequent BOO projects – even if correct – does not mean, for the reasons stated above, that it can now be introduced into AGL's ROE calculations. It has been, and remains, NEPRA's established practice that power producers are considered on a case-by-case basis- depending upon its costs and circumstances as hardly there are two similar projects with exactly the same costs and tariff. Otherwise, there would be no need for individual hearings and individual determinations – a single up-front tariff would suffice for all.


Zafar Ali Khan
Member (Tariff) 21/5/2010

Attock Gen. Limited (AGL)
 Revised Reference Tariff Schedule Based on RFO
 w.e.f March 17, 2009

Year	Energy Charge (PKR/kWh)				Capacity Charge (PKR/kw/Hour)							Capacity Charge at 60% Plant Factor Rs./kWh	Total Tariff Rs./kWh			
	Fuel	Variable O&M Local	Variable O&M Foreign	Total	Fixed O&M Local	Fixed O&M Foreign	Insurance	Financin g Cost on Working Capital	Return on Equity	Return on Equity for Constructi on Period	Withhold- ing Tax @7.5%			Loan Repay- ment	Interest Charges	
1	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.3468	1.0657	2.1321	3.5535	8.5593
2	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.4013	1.0111	2.1321	3.5535	8.5593
3	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.4643	0.9481	2.1321	3.5535	8.5593
4	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.5373	0.8751	2.1321	3.5535	8.5593
5	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.6218	0.7906	2.1321	3.5535	8.5593
6	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.7195	0.6929	2.1321	3.5535	8.5593
7	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.8327	0.5797	2.1321	3.5535	8.5593
8	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.9636	0.4489	2.1321	3.5535	8.5593
9	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	1.1150	0.2974	2.1321	3.5535	8.5593
10	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	1.2903	0.1221	2.1321	3.5535	8.5593
11	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
12	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
13	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
14	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
15	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
16	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
17	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
18	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
19	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
20	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
21	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
22	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
23	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
24	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
25	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300			0.7197	1.1995	6.2053
Levelized	4.4166	0.1129	0.4763	5.0058	0.0882	0.1079	0.0494	0.0441	0.3487	0.0514	0.0300	0.4409	0.5152	1.6758	2.7931	7.7988

Net Capacity 156.181 MW
 Exchange Rate 80.4 PKR/USD
 Fuel Price (Inclusive of Freight) 22,415.17 Rs/Metric Ton
 US CPI 212.174 for January 2009 as notified by the US Labor Bureau of Labor Statistics
 WPI (Manufacturer) 137.000 for January 2009 as notified by the Federal Bureau of Statistics
 Efficiency 45%

