



National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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Registrar

No.NEPRA/R/TRF-140/EEPL-2009/1346-1348

December 23, 2007

Subject: Determination of the Authority in the Matter of Petition filed by Engro Energy Ltd. for Revision / Modification of Generation Tariff dated July 18, 2009 (Case No. NEPRA/TRF-140/EEPL-2009)

Dear Sir,

In continuation of this office letter No. NEPRA/R/TRF-72/EEPL-2007/3062-64 dated July 19, 2009 whereby Determination of the Authority dated July 18, 2009 regarding Engro Energy (Pvt.) Ltd. was sent in Case No. NEPRA/TRF-72/EEPL-2007. Please find enclosed herewith the Determination of the Authority (05 pages) in the matter of petition filed by Engro Energy Ltd. for revision / modification of generation tariff in Case No. NEPRA/TRF-140/EEPL-2009.

2. Please note that this decision shall become part of the earlier determination dated July 18, 2009.

Enclosure: As above.

Secretary,
Ministry of Water & Power,
Government of Pakistan
Islamabad.


Registrar

CC:

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



**NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)**

PETITION NO: NEPRA/TRF-140/EEL-2009

**DETERMINATION OF THE AUTHORITY
IN THE MATTER OF PETITION FILED BY
ENGRO ENERGY LIMITED (EEL)
FOR REVISION/MODIFICATION OF GENERATION TARIFF
DATED JULY 18, 2009 IN CASE NO. NEPRA/TRF-72/EEL-2007**

**DETERMINED UNDER
TARIFF STANDARDS AND PROCEDURE RULES - 1998**

December 23, 2009



PETITIONER

Engro Energy Limited (EEL), 7th Floor, Harbor Front Building, HC # 3, Marine Drive, Block 4, Clifton, Karachi

COMMENTATOR

1. National Transmission and Despatch Company (NTDC)

REPRESENTATION

1. Mr. Sardar Azmat Babur Chohan, Chief Financial Officer, Engro Energy Ltd. EEL
2. Dr. Muhammad Ahmed, Commercial Manager EEL
3. Dr. Zia Ahmad, Government Inspector on Electricity (GIE) Ministry of Water & Power
4. Mr. Rana Amjad, General Manager WPPO
5. Mr. Shah Jahan Mirza, Director Finance & Policy, Private Power & Infrastructure Board (PPIB)

The Authority, in exercise of the powers conferred on it under Section 7(3)(a) read with Section 31 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 197 Tariff Standards and Procedure Rules, 1998 and all other powers enabling it in this behalf, and after taking into consideration all the submission made by the parties, issues raised, evidence/record produced during hearings, and all other relevant material, hereby issues this determination.

(Zafar Ali Khan)
Member

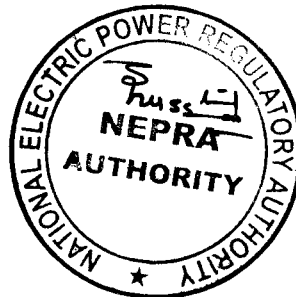
22/12/09

(Maqbool Ahmed Khawaja)
Member

(Ghousuddin Ahmed)
Member / Vice Chairman

23/12

(Khalid Saeed)
Chairman





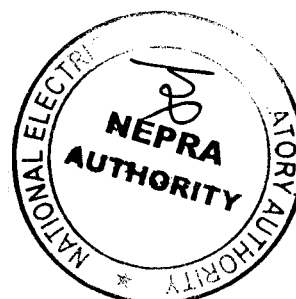
BACKGROUND

1. Engro Energy Limited (EEL) filed petition on August 10, 2009 for revision / modification of the generation tariff determined by the Authority on July 19, 2007 (Case No. NEPRA/TRF-72/EEL-2008). The Company requested one time adjustment in the reference cost of working capital due to change in the working capital requirement based at actual HSD price prevailing at the time of first fill. In this regard the Company referred the case of Liberty Power Tech Ltd.
2. The petition was admitted by the Authority on October 5, 2009. The Authority decided to hold a hearing in the matter on November 4, 2009. Notice of admission/public hearing was published on October 18, 2009 in order to invite participation of the stakeholders in tariff setting process. Individual letters were also sent to the stakeholders inviting them to assist the Authority on arriving at just and informed decision. In response to the advertisement and letters CPPA/NTDC submitted their comments. Hearing in the matter was held on November 3, 2009 at NEPRA main office in which representatives of Ministry of Water & Power, the Power Purchaser, the petitioner, and other stakeholders participated.
3. The petitioner sought following relief:
 - a. To allow one time adjustment in the working capital at the time of Commercial Operation Date (COD) based on the actual price of HSD prevailing at first fill; and
 - b. To pass on the amount of Withholding tax on Interest Income of Lenders, to the Power Purchaser at actual basis.
4. Following issues emerged out of proceedings:
 - a. Working Capital (Adjustment for HSD Price on COD)
 - b. Debt Service Component (Change in Tax)
5. Working Capital (Adjustment for HSD Price on COD)
 - 5.1 The petitioner submitted that due to unprecedented increase in HSD price from PKR 37.7 to PKR 62.65 per litre it should be allowed one time adjustment in its cost of working capital on the basis of actual HSD price prevailing at the time of first fill. The petitioner stated that NEPRA while determining the tariff had not allowed any adjustment on account of HSD price variation on its fuel inventory. The Authority however, did allow fuel price adjustment for the fuel actually used in generating electricity through payment on Last in First Out (LIFO) basis. While justifying its request the petitioner contended that due to unprecedented increase in HSD prices it was not possible for it to maintain stock of 7 days based on the



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- determined working capital allowance. The petitioner further submitted that it was not seeking any relief on account of increased borrowing cost due to the financial crises in Pakistan.
- 5.2 CPPA supported the petitioner's request for allowing one time adjustment on account of HSD price variation at first fill of HSD at the time of Commercial Operation Date (COD) as allowed in the case of Liberty Power Tec Ltd.
- 5.3 The Authority having examined its earlier determinations observed that such adjustment has already been allowed to the following Independent Power Producers (IPPs):
- Atlas Power
 - Nishat Power
 - Nishat Cunian
 - Warda Power
 - Hubco-Narowal Power
 - Bestway Power
 - Gujranwala Power.
- 5.4 On the principle of fairness, equity and justice the Authority considers that the petitioner's request is justified and merits consideration. The Authority also considers that the Petitioner has no control over the fuel prices; therefore it should not be penalized for any thing which is beyond its control. The Authority agrees with the Petitioner contention that in order to maintain 7 days stock such adjustment is needed. The request being justified is accepted; accordingly the Authority has decided to allow one time adjustment in working capital requirement for maintaining 7 days fuel stock on the basis of actual HSD prices prevailing at the time of first fill, at Commercial Operation Date (COD).
6. **Debt Service Component (Change in Tax)**
- 6.1 The petitioner stated that it arranged a debt of US\$ 154 million through DEG, IFC, FMO, Proparco, Swen Fund and OFID. The Petitioner further stated that at the time of loan agreements there was a tax exemption on interest and related income according to Schedule 2 Part 1 Clause 72 (iii) of income tax ordinance 2001 to any foreign lenders who provided loan for industrial undertaking in Pakistan after February 1991. According to the Petitioner GOP withdrew this exemption under 2008-09 finance bill effective July 1, 2008. Subsequently, IFC tax exemption was restored under Schedule 2 Part 2 Clause 65 of Income Tax Ordinance, whereas DEG's exemption is intact under Pakistan German double taxation treaty. The petitioner stated that for the remaining loans it has approached FBR for exemption because these loans were signed and registered with SBP before announcement of the change. The



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petitioner stated that it also approached Ministry of Finance seeking exemption under Clause 72 (i) of Part – I of 2nd Schedule to the Income Tax Ordinance 2001 but was not allowed exemption. Due to the aforesaid reason the petitioner has to bear the cost of withholding tax liability, which is currently 10%; and will ultimately increase its project cost. Moreover the interest payments to be made to the lenders post Commercial Operation Date (COD) will also be taxed.

- 6.2 According to the petitioner 50% of the loan is coming from IFC and DEG who have exemption available from this tax. The petitioner stated that although Section 14.3 of PPA & Section 13.1 of IA provides relief due to the change in tax but the same should be made part of the determination. The Petitioner has accordingly proposed the following;
- a. Lenders tax liabilities till COD to be adjusted on actual at the time of COD.
 - b. Lenders tax liabilities after COD to be adjusted on actual with changes according to the contractual obligations.
- 6.3 CPPA was of the opinion that PPIB may be advised to approach GOP to seek exemption for the application of the said tax prior to COD and thereafter, although the change in tax was covered under the provisions of Power Purchase Agreement (PPA) after COD.
- 6.4 The Authority has considered the Petitioner's request for making the proposed changes as part of the determination. In Authority's opinion the Petitioner's request is reasonable because it will not only bring in more clarity but also make determination consistent with the PPA's terms. Accordingly the Authority has decided to make the proposed amendment as part of the determination.
7. **Summary of the Decision**
- 7.1 Engro Energy Limited (EEL) is allowed:
- i) one time adjustment on account of HSD price variation at first fill of HSD at the time of Commercial Operation Date (COD)
 - ii) passing on the impact of Withholding tax on Interest Income of Lenders till and after COD in accordance with the contractual obligations, to the Power Purchaser on actual basis.
- 7.2 This decision shall become part of the earlier determination dated July 18, 2009.



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