



National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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Registrar

No.NEPRA/R/TRF-72/EEL-2007/3542-3544
November 3, 2010

Subject: Decision of the Authority in the Matter of Engro Energy Ltd. Tariff Adjustments at Commercial Operation Date (COD) [Case # NEPRA/TRF-72/EEL-2007]

Intimation of Decision of Tariff Adjustment pursuant to Section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (XL of 1997)

Dear Sir,

Please find enclosed the subject Decision of the Authority along with Annexure-I & II (23 pages) in Case No. NEPRA/TRF-72/EEL-2007.

2. The decision 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 1997 (XL of 1997) and Rule 16(11) of the National Electric Power Regulatory Authority Tariff (Standards and Procedure) Rules, 1998.

3. Please note that Order of the Authority at para 13 of the Decision relating to the reference tariff, adjustments, indexation and terms & conditions along with Annex-I & II needs to be notified in the official gazette.

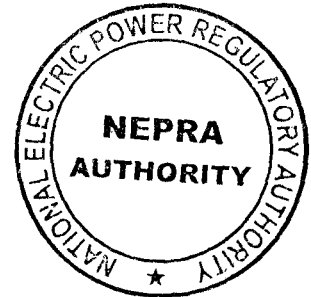
Enclosure: As above

(Syed Safer Hussain)

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

CC:

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



DECISION OF THE AUTHORITY
IN THE MATTER OF ENGRO ENERGY LIMITED TARIFF ADJUSTMENTS
AT COMMERCIAL OPERATIONS DATE

1. **Introduction**

1.1 Engro Energy Limited (hereinafter "EEL") having successfully commenced its commercial operations with effect from March 27, 2010, filed a request vide letter dated April 19, 2010 for adjustment in its reference tariff in accordance with the Authority's determination dated July 18, 2007 and December 23, 2009 (hereinafter the "determination").

1.2 According to the determination following types of adjustments were required to be made at the time of Commercial Operations Date (hereinafter "COD"):

One Time Adjustments at COD

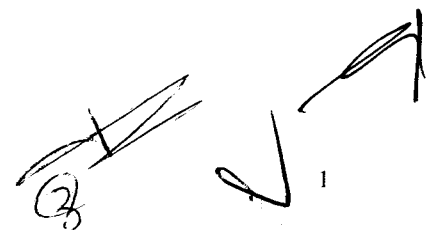
- a) Adjustments due to variation in net capacity
- b) Adjustment on account of custom duties & taxes
- c) Adjustment on account of actual interest during construction
- d) Adjustment on account of financing fees and charges including foreign loan registration stamp duty
- e) Adjustment on account of return on equity during construction

Tariff Component Adjustments at COD

- a) Adjustment on account of LIBOR/KIBOR
- b) Adjustment on account of actual insurance
- c) Adjustment on account of exchange rate
- d) Adjustment on account of US CPI and WPI
- e) Adjustment on account of change in fuel price for fuel cost component of tariff

1.3 In support of EEL's request for adjustment in its relevant tariff components following documents were submitted by EEL:

- Engineering and procurement contract
- Construction contract
- Common term agreements with banks
- Certificate of IDC test from independent engineer
- Audited financial statements
- Copies of general ledgers
- Copies of bank statements and advices
- Copies of EPC invoices
- Copies of payment challans of duties, copies of pay orders through which these duties were paid and copies of bills of entry



- Equity/debt draw downs schedule reconciled with bank statements
 - Schedule of financing fee and charges
 - Copies of other source documents
- 1.4 All the documents and figures submitted by EEL have been verified and cross checked by Tariff Division of the Authority. After detailed deliberations, the Authority was pleased to make following adjustments in the reference tariff of EEL.

2. **Engineering, Procurement and Construction Cost**

- 2.1 EPC cost excluding duties and taxes and inclusive of access road allowed to EEL at the time of determination was US\$ 160.335 million. At the time of determination, EPC cost of EEL was not based on firm (non-reopenable) competitive price duly initialed/signed by the IPP/EPC contractor. EEL has now submitted EPC contracts for US\$ 152.000 million in aggregate and has there by made a saving of US\$ 8.335 million in this cost. The Authority is fully cognizant of EEL achievements including commissioning of the project with permeate gas as a primary fuel, commencing its commercial operations before the required commercial operations date and substantial cost savings made. The Authority highly appreciates these achievements. However, since the EPC cost of EEL was based on estimates at the time of determination and in the absence of any mechanism for sharing of cost savings given in the determination, the Authority allows only actual EPC cost of US\$ 152.000 million to EEL.

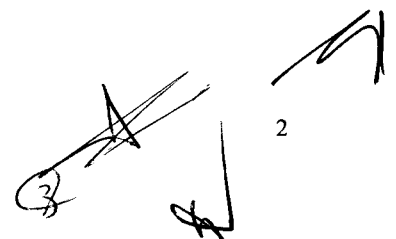
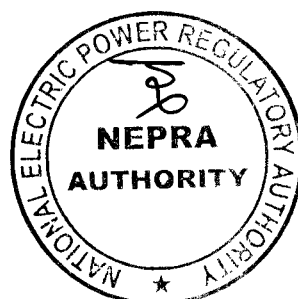
This decision has been made in the light of Rule 17 (3)(i) of the Tariff Standards & Procedure Rules, 1998 whose relevant portion is as follows:

“(i) tariffs should allow licensees the recovery of any and all costs prudently incurred to meet the demonstrated needs of their customers -----”

Accordingly the Authority is to allow the recovery of all prudently incurred costs while determining tariff. Any amount not actually incurred cannot be allowed. Likewise vide para 78 (I)(c) of the determination dated July 18, 2007 it is clearly stated that debt service, return on equity and ROE during construction shall be adjusted on the actual draw down basis leaving no ground for allowing any amount not actually incurred.

- 2.2 Further, EEL has also claimed US\$ 2.903 million on account of compensation payable in accordance with the EPC contract owing to difference in exchange rate parity between RMB/US\$. ECC decision ECC-65/5/2007 dated 23-05-2007 does not allow difference in exchange rate parity between RMB/US\$. Relevant portion of the decision reads as follows:

“(i) To enable maximum competition from suppliers and contractors, the IPPs should not be exposed to impact of exchange rate variation between US dollars, Euros, Pound Sterling and Japanese Yen upto Commercial Operation Date (COD). Consequences of this variation, whether resulting in increase or decrease in tariff, should be reflected in final tariff to be fixed at COD, EPC contracts denominated in these four currencies besides rupees should thus be accepted by NEPRA.”



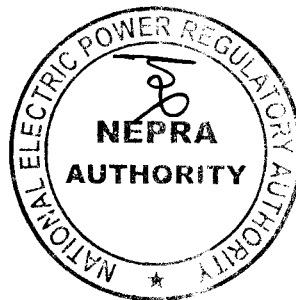
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Keeping in view the fact that difference in exchange rate parity between RMB/US\$ is not allowed by the ECC and circumstances of the case, the Authority has decided not to allow this difference in exchange rate parity.

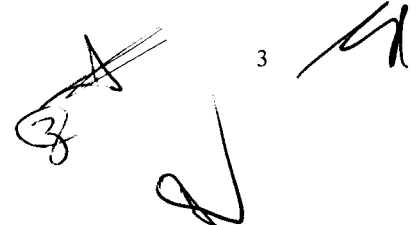
- 2.3 EPC cost of US\$ 152.000 million has been reconciled with the EPC contract, cross checked with the EPC invoices and payments made through the banks and being verifiable is allowed.
- 2.4 EEL was also allowed US\$ 3.500 million as cost for housing colony. The amount claimed under this cost component is within the allowed limit and is verified with invoices, bank statements, etc. therefore the same has been allowed.
- 2.5 EEL claimed US\$ 7.662 million on account of duties and taxes against the determined amount of US\$ 6.797 million. The requested amount was higher by US\$ 0.865 million or 12.73% against the originally determined amount. In support of its claim EEL submitted copies of goods declarations of Pakistan Customs, payment challans of these duties, copies of pay orders of different banks through which these duties were paid, copies of bills of entries, etc.
- 2.6 The increase in duties and taxes was due to the following reasons:
- increase in exchange rate of Euro during the construction period, which has resulted in increase in rupee value of the equipment cost resulting into increase in duty;
 - imposition of CESS by the Sindh Government after tariff determination; and
 - payment of 1% regulatory duty, Sindh excise duties and other miscellaneous charges which were not considered at the time of determination.
- 2.7 Based on evaluation of the information provided by EEL, the Authority concluded that, except for the amount of income tax of US\$ 0.383 million, all the claims against customs duties, CESS, Sindh excise duties, etc. pertain to the EPC cost.
- 2.8 The Authority observed that EEL has claimed withholding tax amount of US\$ 0.383 million, deducted by it from various suppliers and deposited into the Government treasury by EEL on their behalf. The Authority considers that this cost does not pertain to EEL therefore, it cannot be allowed. After adjusting the withholding tax of US\$ 0.383 million the amount of duties and taxes works out as US\$ 7.279 million.
- 2.9 Based on the verifiable documentary evidence this cost after adjustment has been assessed as US\$ 162.779 million (EPC cost US\$152.000 million plus cost for housing colony US\$ 3.500 million plus duties and taxes US\$ 7.279 million) as against US\$ 170.632 million originally allowed in the determination.

3 Adjustment on account of Actual Interest During Construction (IDC)

- 3.1 EEL requested the Authority to adjust its IDC based upon documentary evidence. In this regard it has submitted copies of common term agreements with lenders, copies of bank statements evidencing actual draw down of debt, copies of bank advices evidencing the amount of interest charged by the lenders, data of LIBOR rates, etc.



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3.2 EEL has also claimed US\$ 0.385 million on account of withholding tax on interest income of lenders, as allowed by the Authority in its decision dated December 23, 2009. In support of its claim EEL submitted bank invoices, income tax challans and other documentary evidence.

3.3 The Authority observed that EEL has claimed US\$ 5.967 million on account of IDC as against the amount of US\$ 14.983 million allowed by the Authority in its original determination. The decrease of US\$ 9.016 million is due to the following reasons:

- IDC was computed in the determination based on construction period of 28 months whereas actually loan was utilized during construction period for only about 17 months (November 2008 to March 2010). Injection of major portion of equity upfront before any loan injection in the project has contributed to reduction in utilization of debt;
- effective rate of LIBOR during the construction period was significantly lower than the one assumed in the determination. In the determination, LIBOR of 5.4% p.a. was assumed, whereas actual LIBOR during the construction period ranged between 1.16% p.a. to 2.3% p.a.;
- interest income of US \$ 1.456 million earned by EEL during construction was not considered in the original determination.

3.4 Based on the documentary evidence provided by EEL and duly verified by the Authority, IDC in the instant case has been assessed as US\$ 5.967 million (inclusive of US\$ 0.385 million claimed by EEL on account of withholding tax on interest income of lenders) and the same has been allowed.

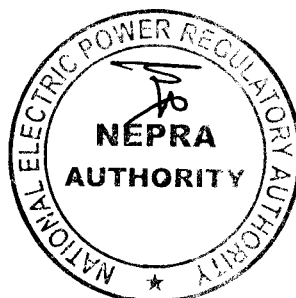
4. Financing Fees and Charges

4.1 EEL has requested the same amount of US\$ 2.504 million on account of financing fees and charges as allowed by the Authority in its original determination. In support of its claim EEL submitted bank invoices, bank statements and other documentary evidence.

4.2 The requested amount of US\$ 2.504 has been verified through the documentary evidence and the same has been allowed to EEL.

5. Foreign Loan Registration Stamp Duty

5.1 In original determination EEL was allowed US\$ 1.67 million on account of foreign loan registration stamp duty. However, due to the fact that loan documents were signed at Dubai this expense has not been actually incurred and therefore has not been allowed. However,



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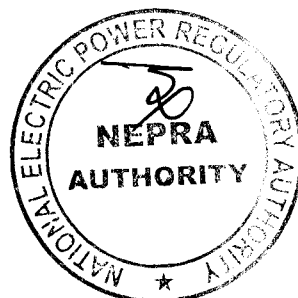
EEL has requested the Authority to allow this expense in future on actual basis i.e. whenever EEL actually incurs this expense. Considering the nature of expenditure the Authority has decided to allow this expense in future on actual basis.

6. Return on Equity

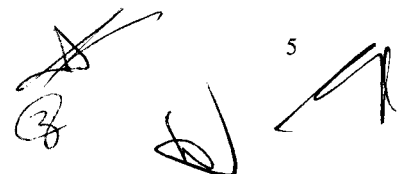
6.1 The return on equity (ROE) needs to be adjusted on the basis of revised amount of equity, revised net capacity established at the time of COD and revised USD/PKR exchange rate.

6.2 In the original determination dated 18th July, 2007 EEL was erroneously allowed treatment of a BOOT project and was allowed redemption of its equity. The Authority considers that in the original determination while calculating IRR the terminal value of the equity was erroneously omitted. This was not only against the GOP Guidelines for Determination of Tariff for IPPs 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 NEPRA Act) but also inconsistent with other tariff determinations given by the Authority to other IPPs. The Authority understands that this calculation error does not create any right of EEL. The Authority also 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. 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 the definite manner. The view is also supported by the verdict of the superior courts and a decision of the Lahore High Court, Lahore in the 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".

6.3 Based on the above judgment of the Honourable High Court, it is clear that no vested rights arise pursuant to a provisional authorization/decision of the Authority. EEL 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 guidelines issued by the Government of Pakistan for Determination of Tariff for IPPs.

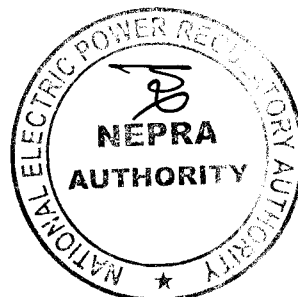


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- 6.4 The Authority also finds that the principle of “estoppel” does not apply against the provisions of law. Reliance in this regard could be placed on the judgments of superior courts cited as, PLD 2005 SC 819, PLD 2006 Karachi 10 and 2003 GLC 18.
- 6.5 Furthermore, the Authority also cannot discriminate among the investors by giving different treatment to different investors. The Authority is obliged 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. In this regard the Authority has placed its reliance on 2009 PTD 1187 Income Tax Tribunal and 2007 MLD 1858 Sindh High Court, Karachi.
- 6.6 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 continues with the original determination 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 Guidelines for Determination of Tariff for IPPs.
- 6.7 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 Authority has revised the erroneous treatment given in the original determination allowing redemption of equity to EEL.
- 6.8 EEL has requested the Authority to revise its debt equity ratio according to its actual financing structure. EEL has further requested that in case any cost is not allowed by the Authority, its entire equity actually injected should be fully allowed and effect of such adjustment should only be made in its debt component. Debt equity ratio as per the original determination of EEL was 75:25. The Authority considers that the request of EEL is reasonable and has accepted the same. Accordingly debt equity ratio of EEL stands revised to 72.16 : 27.84.
- 6.9 On the basis of revised equity of US\$ 51.820 million, net capacity of 217.298 MW and revised USD/PKR exchange rate of 84.20 the ROE component of tariff Rs. 0.2542/kW/hr originally allowed is being revised to Rs. 0.3438/kW/hr.



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7. Return on Equity During Construction

7.1 At the time of determination the Authority assessed Return on Equity during Construction (ROEDC) on assumed equity injections which was subject to adjustment as per the actual equity injections at COD. Based on the total construction period of 28 months claimed by EEL (commencing from 27 November, 2007 to COD), keeping in view the relevant dates of equity injections, allowing annual compounding for the first two years and compounding at COD for the incomplete period preceding COD i.e. period of four months, the ROEDC in the instant case has been revised from Rs. 0.0229 /kW/hr to Rs 0.1265/kW/hr.

7.2 EEL's request for determining ROEDC assuming monthly compounding prior to COD and annual thereafter being inconsistent with the Authority's earlier decision is not maintainable at this stage.

8. Withholding tax

8.1 Based on the revised ROE and ROEDC, the tariff component of withholding tax has also been revised from Rs. 0.0208/ kW/hr to Rs. 0.0353/kW/hr.

9. Insurance Cost

9.1 EEL claimed insurance cost of Rs. 119.908 million. In support of its claim, EEL has provided insurance policies of Adamjee Insurance Company Ltd., Central Insurance Company Ltd. and EFU General Insurance Limited along with a certificate of M/s. Marsh Ltd (UK).

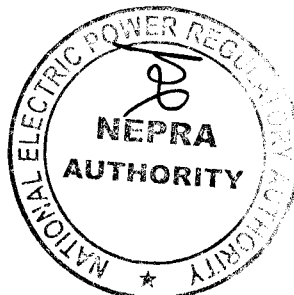
9.2 The requested amount of Rs. 119.908 million being fully verifiable from the documentary evidence provided by EEL has been allowed by the Authority.

10. Working Capital Component

10.1 In the original determination reference tariff component of working capital Rs. 0.0277/kW/h was determined based on the following parameters:

- Fuel price Rs.37.70 / litre
- Net capacity 216.8 MW
- KIBOR 10.40% + 2% Margin

10.2 Working capital component needs to be revised with actual parameters as at the COD which are as follows:



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- Fuel price Rs.74.05 / litre (weighted average price of HSD for 1st fill)
- Net capacity 217.298 MW (at the time of COD)
- KIBOR 12.36% (at the time of COD) + 2% Margin

10.3 In support of its claim EEL submitted the relevant fuel invoices, Independent Engineer's certificate for revised net capacity and data of KIBOR rates.

10.4 Based on the documentary evidences the working capital component in the instant case has been assessed as Rs. 0.0537/kW/hr and the same has been allowed to EEL.

11. Debt Servicing Component

11.1 Debt service comprises of two components i.e. loan repayment and interest charges. The Authority originally allowed levelized loan repayment of Rs. 0.7336/kW/hr applicable for 10 years. The reference values at the time of determination were as follows:

- Total debt US\$ 153.501 million @ 75% of the total project cost
- LIBOR 3-Month @ 5.4% + 3% Margin
- Term of loan 10 years

11.2 The Authority carefully examined EEL's request for adjustment with respect to debt service component on the basis of documentary evidence. Authority also examined the claimed cost over-run in some non-EPC costs like construction management and administrative cost. The Authority felt that the cost has been allowed by the Authority in its determinations were based on due scrutiny and no cost over-run had been allowed to other projects for such non-EPC items. Further EEL did not support its claim with full justifications and evidences. The amount of debt has decreased to US\$ 134.309 million as against the determined debt of US\$ 153.501 million due to decrease in project cost. Based on the revised debt of US\$ 134.309 million, 3 months LIBOR of 1.16% + 3% margin and revised capacity of 217.298 MW revised debt servicing component works out to Rs. 0.7291/kW/hr.

12. Net Capacity

12.1 According to the Authority's determination, all the tariff components except fuel cost were required to be adjusted at the time of COD based upon Initial Dependable Capacity. The reference tariff was determined on the basis of net capacity of 216.8 MW at delivery point and mean site conditions. Consequent to the Initial Dependable Capacity test, the net capacity has been assessed as 217.298 MW. All the relevant tariff components which were subject to adjustment on the basis of actual net capacity established have been accordingly revised.



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13. **ORDER**

Pursuant to Rule 16 (11) of the NEPRA Tariff Standards & Procedures Rules, 1998 EEL 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 EEL at the time of COD, the following tariff for delivery of electricity to the CPPA of the NTDC:

REFERENCE TARIFF

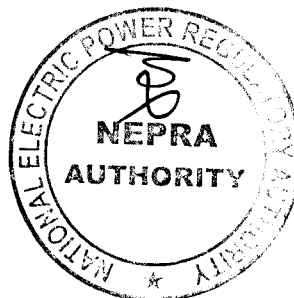
Tariff Components	Year 1 to 10	Year 11 to 25	Indexation
Capacity Charge (PKR/kW/Hour)			
Fixed O&M - Foreign	0.0096	0.0096	US\$/PKR & US CPI
- Local	0.1366	0.1366	WPI
Insurance	0.0630	0.0630	Nil
Cost of working capital	0.0537	0.0537	KIBOR
Debt service	0.7291	-	LIBOR
Return on equity	0.3438	0.3438	US\$/PKR
Return on equity during construction	0.1265	0.1265	US\$/PKR
Total Capacity Charge	1.4623	0.7332	
Energy Charge Rs./kWh			
Fuel cost component (Gas)	2.7628	2.7628	Fuel price
Variable O&M – Foreign	0.1917	0.1917	US\$/PKR & US CPI
- Local	0.0381	0.0381	WPI

Note:

- Capacity Charge Rs./kW/hour is applicable to dependable capacity at the delivery point.
- Dispatch criterion will be the Energy Charge.
- The above tariff is applicable for a period of 25 years commencing from the date of the Commercial Operations.
- Component wise tariff for operation on permeate gas is indicated at Annex-I and Debt Service Schedule at Annex-II.

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 EEL according to the following formula:



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Insurance Component (Revised) = Rs.0.0630 per kW per hour/ (1.35% x US\$ 186.129 Million) x AP

Where:

AP = Actual Premium subject to maximum of 1.35% of the adjusted EPC

II) Pass-Through Items

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

Withholding tax is also a pass-through item just like other taxes as indicated in the government guidelines for the determination of tariff for new IPPs. In revised tariff table withholding tax number is indicated as reference and NTDC shall make payment on account of withholding tax at the time of actual payment of dividend subject to maximum of 7.5% of 15% of reference equity i.e. hourly payment (Rs./kW/hour) spread over 12 months.

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 in hourly payments spread over 12 months period as a pass-through from the power purchaser in future on the basis of the total dividend payout.

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 shall be adjusted on account of local inflation as per wholesale price index (WPI) and variation in US CPI and dollar/rupee exchange rate parity. Quarterly adjustment for local inflation, foreign inflation and exchange rate variation shall 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, US CPI notified



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by the 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**

$$F O\&M_{(LREV)} = \text{Rs. } 0.1366 \text{ per kW per hour} * WPI_{(REV)} / 159.31$$

$$F O\&M_{(FREV)} = \text{Rs. } 0.0096 \text{ per kW per hour} * US CPI_{(REV)} / 216.741 * ER_{(REV)} / 84.20$$

Where:

- $F O\&M_{(LREV)}$ = The revised applicable fixed O&M local component of the capacity charge indexed with WPI
- $F O\&M_{(FREV)}$ = 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)
- $WPI_{(REF)}$ = 159.31 wholesale price index (manufacturers) of February 2010 notified by the Federal Bureau of Statistics
- $US CPI_{(REV)}$ = The revised US CPI (all urban consumers)
- $US CPI_{(REF)}$ = 216.741 US CPI (all urban consumers) for the month of February 2010 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

Note:- The above revised reference O&M cost components of tariff shall be adjusted on quarterly basis for variations in WPI, US CPI and US\$/Rs. exchange rate variation.

ii) **Variable O&M**

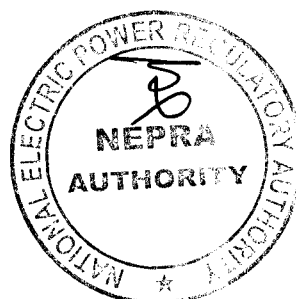
The formula of indexation for variable O & M component will be as under:

$$V O\&M_{(LREV)} = \text{Rs. } 0.0381 \text{ per kW per hour} * WPI_{(REV)} / 159.31$$

$$V O\&M_{(FREV)} = \text{Rs. } 0.1917 \text{ per kW per hour} * US CPI_{(REV)} / 216.741 * ER_{(REV)} / 84.20$$

Where:

- $V O\&M_{(LREV)}$ = The revised applicable variable O&M local component of the energy charge indexed with WPI
- $V O\&M_{(FREV)}$ = The revised applicable variable O&M foreign component of the energy charge indexed with US CPI and exchange rate variations
- $WPI_{(REV)}$ = The revised wholesale price index (manufacturers)



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WPI _(REF)	=	159.31 wholesale price index (manufacturers) of February 2010 notified by the Federal Bureau of Statistics
US CPI _(REV)	=	The revised US CPI (all urban consumers)
US CPI _(REF)	=	216.741 US CPI (all urban consumers) for the month of February 2010 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

Note:- The above revised reference O&M cost components of tariff shall be adjusted on quarterly basis for variations in WPI, US CPI and US\$/Rs. exchange rate variation.

b) **Adjustment for LIBOR variation**

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

$$\Delta I = P_{(REV)} * (LIBOR_{(REV)} - 1.16\%) / 4$$

Where:

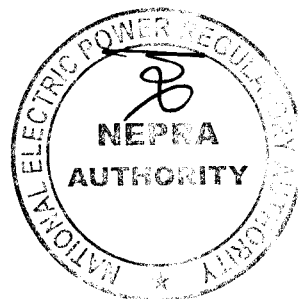
ΔI = The variation in interest charges applicable corresponding to variation in LIBOR. ΔI can be positive or negative depending upon whether LIBOR_(REV) is > or < 1.16%. The interest payment obligation will be enhanced or reduced to the extent of ΔI for each quarter under adjustment on quarterly basis.

$P_{(REV)}$ = The outstanding principal (as indicated in the attached debt service schedule to this order) on a quarterly basis on the relevant quarterly calculations date.

Cost of working capital component will be adjusted on the basis of quarterly variation in reference KIBOR (12.36%) with spread (200 basis points) remaining the same.

c) **Fuel Price Variation**

The variable charge part of the tariff relating to fuel cost shall be adjusted on account of the fuel price variations. In this regard, the variation in EEL's allowed rate relating to fuel cost shall be revised according to the following formula:



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$$FC_{(Rev)} = (\text{Rs. } 2.7628 \text{ per Kwh} * FP_{(Rev)}) / \text{Rs. } 368.67 \text{ per MMBTU}$$

Where:

$$FC_{(Rev)} = \text{Revised fuel cost component of variable charge on permeate gas}$$
$$FP_{(Rev)} = \text{Revised fuel price}$$

d) Adjustment in Return on Equity (ROE)

ROE component of tariff shall be adjusted on account of exchange rate variation according to the following formula:

$$ROE_{(Rev)} = \text{Rs.}0.3438 \text{ per kW per hour} * ER_{(Rev)} / ER_{(Ref)}$$

Where:

$$ROE_{(Rev)} = \text{The revised ROE component of the capacity purchase price}$$
$$ER_{(Rev)} = \text{The revised TT \& OD selling rate of US\$ as notified by the National Bank of Pakistan}$$
$$ER_{(Ref)} = \text{The reference exchange rate of PKR } 84.20 = 1 \text{ US\$}.$$

e) Adjustment on Return on Equity during Construction (ROEDC)

ROEDC component of tariff shall be adjusted on account of exchange rate variation according to the following formula:

$$ROEDC_{(Rev)} = \text{Rs.}0.1265 \text{ per kW per hour} * ER_{(Rev)} / ER_{(Ref)}$$

Where:

$$ROEDC_{(Rev)} = \text{The revised ROEDC component of the capacity purchase price}$$
$$ER_{(Rev)} = \text{The revised TT \& OD selling rate of US\$ as notified by the National Bank of Pakistan}$$
$$ER_{(Ref)} = \text{The reference exchanges rate of PKR } 84.20 = 1 \text{ US\$}.$$

Adjustments on account of local inflation, foreign inflation, exchange rate variation, KIBOR/LIBOR variation and fuel price variation will be approved and announced by the Authority for immediate application in accordance with the requisite indexation mechanism stipulated herein.



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IV) Terms and Conditions of Tariff:

- i) Use of permeate gas will be considered as primary fuel.
- ii) Dispatch criterion will be based on the energy charge.
- iii) General assumptions of EEL, which are not covered in this and earlier determinations, may be dealt with according to standard terms of PPA.

AUTHORITY

Note of dissent would be attached

attached

(Zafar Ali Khan)
Member

(*)

(Maqbool Ahmad Khawaja)
Member

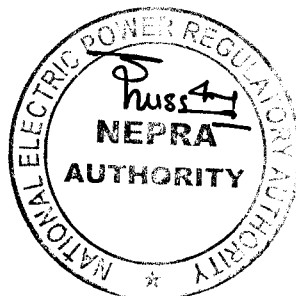
Shaukat Ali Kundi
(Shaukat Ali Kundi) *29.10.2010*
Member

Ghiasuddin Ahmed
(Ghiasuddin Ahmed) *29.X.2010*
Vice Chairman /Member

Khalid Saeed
(Khalid Saeed) *3/11/2010*
Chairman

My note of dissent attached

3/11/10

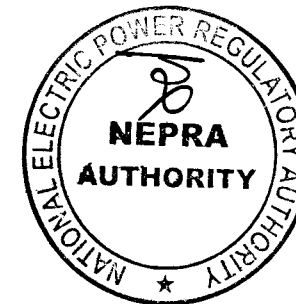


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ENGRO ENERGY (PVT) LIMITED
Tariff Table at COD

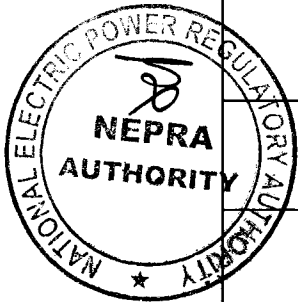
Year	Variable Charge (PKR/kWh)				Capacity Charge (PKR/kW/Hour)									
	Fuel	Variable O&M Local	Variable O&M Foreign	Total	Fixed O&M Local	Fixed O&M Foreign	Insurance	Financing Cost on Working Capital	Return on Equity	Return on Equity for Construction Period	Withholding Tax @7.5%	Loan Repayment	Interest Charges	Total
1	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.4898	0.2393	1.4974
2	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.5105	0.2186	1.4974
3	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.5320	0.1971	1.4974
4	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.5545	0.1746	1.4974
5	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.5779	0.1512	1.4974
6	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.6022	0.1268	1.4974
7	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.6277	0.1014	1.4974
8	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.6542	0.0749	1.4974
9	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.6818	0.0473	1.4974
10	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.7105	0.0185	1.4974
11	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
12	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
13	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
14	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
15	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
16	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
17	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
18	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
19	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
20	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
21	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
22	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
23	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
24	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
25	2.7628	0.0381	0.1917	2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353			0.7684
Levelized Tariff (1-25 Years)				2.9926	0.1366	0.0096	0.0630	0.0537	0.3438	0.1265	0.0353	0.3894	0.1041	1.2619

Net Capacity at COD 217.298 MW
 Exchange Rate at COD 84.20 Rs./US \$
 Fuel Price (Inclusive of Freight) 368.67 Rs./MMBTU
 US CPI 216.74
 WPI (Manufacturers) 159.31
 Levelized Tariff at 60% plant factor Rs.5.0958 per kWh (or US Cent 6.0520)



ENGRO ENERGY (PVT) LIMITED
Debt Servicing Schedule at COD

Period	LIBOR Premium		1.16% 3.00%		Balance Million \$	Debt Service Millin \$	Annual Principal Repayment \$ Million	Annual Interest \$ Million	Annual Principal Repayment Rs. Million	Annual Interest Rs. Million	Principal Repayment Rs./kW/ Hour	Interest Rs./kW/ Hour	Annual Debt Service Rs/kW/Hour
	Principal Million \$	Repayment Million \$	Mark-Up Million \$	Repayment Million \$									
1	134.3088	2.7255	1.3951	131.5834	4.1206								
2	131.5834	2.7538	1.3668	128.8296	4.1206								
3	128.8296	2.7824	1.3382	126.0472	4.1206								
4	126.0472	2.8113	1.3093	123.2359	4.1206	11.0730	5.4095	932.3452	455.4788	0.4898	0.2393	0.7291	
5	123.2359	2.8405	1.2801	120.3954	4.1206								
6	120.3954	2.8700	1.2506	117.5253	4.1206								
7	117.5253	2.8998	1.2208	114.6255	4.1206								
8	114.6255	2.9299	1.1907	111.6956	4.1206	11.5403	4.9422	971.6920	416.1321	0.5105	0.2186	0.7291	
9	111.6956	2.9604	1.1602	108.7352	4.1206								
10	108.7352	2.9911	1.1295	105.7441	4.1206								
11	105.7441	3.0222	1.0984	102.7219	4.1206								
12	102.7219	3.0536	1.0670	99.6683	4.1206	12.0273	4.4552	1,012.6992	375.1248	0.5320	0.1971	0.7291	
13	99.6683	3.0853	1.0353	96.5830	4.1206								
14	96.5830	3.1174	1.0033	93.4656	4.1206								
15	93.4656	3.1497	0.9709	90.3158	4.1206								
16	90.3158	3.1825	0.9382	87.1334	4.1206	12.5349	3.9476	1,055.4370	332.3870	0.5545	0.1746	0.7291	
17	87.1334	3.2155	0.9051	83.9179	4.1206								
18	83.9179	3.2489	0.8717	80.6689	4.1206								
19	80.6689	3.2827	0.8379	77.3863	4.1206								
20	77.3863	3.3168	0.8038	74.0695	4.1206	13.0639	3.4186	1,099.9785	287.8456	0.5779	0.1512	0.7291	
21	74.0695	3.3512	0.7694	70.7183	4.1206								
22	70.7183	3.3860	0.7346	67.3323	4.1206								
23	67.3323	3.4212	0.6994	63.9111	4.1206								
24	63.9111	3.4567	0.6639	60.4543	4.1206	13.6152	2.8673	1,146.3996	241.4244	0.6022	0.1268	0.7291	
25	60.4543	3.4926	0.6280	56.9617	4.1206								
26	56.9617	3.5289	0.5917	53.4327	4.1206								
27	53.4327	3.5656	0.5550	49.8671	4.1206								
28	49.8671	3.6026	0.5180	46.2645	4.1206	14.1898	2.2927	1,194.7799	193.0442	0.6277	0.1014	0.7291	
29	46.2645	3.6400	0.4806	42.6245	4.1206								
30	42.6245	3.6779	0.4428	38.9466	4.1206								
31	38.9466	3.7161	0.4046	35.2306	4.1206								
32	35.2306	3.7547	0.3660	31.4759	4.1206	14.7886	1.6939	1,245.2019	142.6222	0.6542	0.0749	0.7291	
33	31.4759	3.7937	0.3270	27.6822	4.1206								
34	27.6822	3.8331	0.2875	23.8492	4.1206								
35	23.8492	3.8729	0.2477	19.9763	4.1206								
36	19.9763	3.9131	0.2075	16.0632	4.1206	15.4127	1.0697	1,297.7517	90.0723	0.6818	0.0473	0.7291	
37	16.0632	3.9538	0.1669	12.1094	4.1206								
38	12.1094	3.9948	0.1258	8.1146	4.1206								
39	8.1146	4.0363	0.0843	4.0783	4.1206								
40	4.0783	4.0783	0.0424	0.0000	4.1206	16.0632	0.4193	1,352.5193	35.3047	0.7105	0.0185	0.7291	



NOTE OF DISSENT RECORDED BY MR. ZAFAR ALI KHAN,
MEMBER NEPRA IN THE MATTER OF ENGRO ENERGY LIMITED
TARIFF ADJUSTMENTS AT COMMERCIAL OPERATIONS DATE
(CASE NO. NEPRA/TRF-72/EEL-2007)

1. A petition for determination of generation tariff for 216.80 MW net combined cycle power plant on permeate gas was filed by Engro Energy (Pvt.) Limited (hereinafter referred as EEL). After observing due process of law as envisaged under Tariff Standards and Procedure Rules, 1998, the Authority had given its determinations on July 18, 2007 and December 23, 2009.
2. Having successfully commenced its commercial operations w.e.f. March 27, 2010, EEL filed a request with the Authority vide letter dated April 19, 2010 seeking adjustments in its reference tariff in accordance with the aforementioned tariff determination of the Authority.
3. While allowing COD adjustments for the Engineering, Procurement and Construction Cost (EPC), the decision of Authority, under Para 2.1 of the decision, states the following:

“EPC cost excluding duties and taxes and inclusive of access road allowed to EEL at the time of determination was US\$ 160.335 million. At the time of determination, EPC cost of EEL was not based on firm (non-reopenable) competitive price duly initialed/signed by the IPP/EPC contractor. EEL has now submitted EPC contracts for US\$ 152.000 million in aggregate and has there by made a saving of US\$ 8.335 million in this cost. The Authority is fully cognizant of EEL achievements including commissioning of the project with permeate gas as a primary fuel, commencing its commercial operations before the required commercial operations date and substantial cost savings made. The Authority highly appreciates these achievements. However, since the EPC cost of EEL was based on estimates at the time of determination and in the absence of any mechanism for sharing of cost savings given in the determination, the Authority allows only actual EPC cost of US\$ 152.000 million to EEL.”

I do not agree with this decision and do hereby record my note of dissent on the following grounds:-

Whether EPC cost is estimated or firm the cost as per the EEL petition was thoroughly analyzed, assessed and finally approved by NEPRA in its determination. EPC cost of EEL, as per NEPRA determination dated July 18, 2007, was approved amounting to US \$ 170.632 million (including the cost of colony and access road). While approving the aforementioned cost (US\$ 751/kW), it was justified that it was US \$ 54/KW less than that of FPCDL (another IPP’s US \$ 805/KW). Even for arguments sake, if the EPC cost at the time of determination was estimated and subject to adjustment on actual at COD, the determination should have explicitly stated.



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Regarding COD adjustments, para 1.2 of the decision states the following:

“According to the determination following types of adjustments were required to be made at the time of Commercial Operations Date (hereinafter “COD”):

One Time Adjustments at COD

- a) Adjustments due to variation in net capacity
- b) Adjustment on account of customs duties & taxes
- c) Adjustment on account of actual interest during construction
- d) Adjustment on account of financing fees and charges including foreign loan registration stamp duty
- e) Adjustment on account of return on equity during construction

Tariff Component Adjustments at COD

- a) Adjustment on account of LIBOR/KIBOR
- b) Adjustment on account of actual insurance
- c) Adjustment on account of exchange rate
- d) Adjustment on account of US CPI and WPI
- e) Adjustment on account of change in fuel price for fuel cost component of tariff”

From the above mentioned COD adjustment mechanism given in the decision, it is clear that EPC cost is not subject to one time adjustment at COD and secondly it is only subject to adjustment on account of exchange rate under tariff components adjustments at COD.

The aforementioned principle is further endorsed by the Authority in its decision on COD adjustments dated October 07, 2010 that the determinations shall be complied with unless a glaring omission/ flaw is observed that merits reconsideration of the Authority.

EEL did an excellent job by completing the much needed project by about three months ahead of its schedule with the lowest project cost and tariff as against other projects. The Authority under Para - 2.1 of its decision of October 13, 2010, appreciated the performance of the project and at the same time EPC cost was hugely reduced by US \$ 8.335 million on account of cost savings made by the EEL. In my judgment it is not legally tenable to change the earlier approved EPC amount given in the determination (except for exchange rate variations) at a later stage of COD.

4. In addition, with the aforementioned US \$ 8.335 reduction in EPC cost and disallowing cost over runs, the Internal Rate of Return (IRR) of EEL is reduced significantly below 15% allowed in case of other projects. It is paradoxical that the other projects which could not achieve COD at agreed date and were less



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efficient, more costly with high tariffs were given better IRR than EEL which is more efficient with a lower project cost and tariff.

5. While allowing COD adjustments for the Return on Equity (ROE), the decision of the fellow learned Members, under Para 6.2 of the decision, states the following:-

“In the original determination dated 18th July, 2007 EEL was erroneously allowed treatment of a BOOT project and was allowed redemption of its equity. The Authority considers that in the original determination while calculating IRR the terminal value of the equity was erroneously omitted. This was not only against the GOP Guidelines for Determination of Tariff for IPPs 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 NEPRA Act) but also inconsistent with other tariff determinations given by the Authority to other IPPs. The Authority understands that this calculation error does not create any right of EEL. The Authority also 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. 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 the definite manner”.

The decision appears to have been taken on three major considerations; firstly that in its original determination EEL was erroneously allowed redemption of equity while calculating internal rate of return (IRR); secondly that the calculation of IRR was against the Government of Pakistan (GOP) guidelines for determination of tariff for IPPs issued by the GOP and thirdly that the Authority's calculation of IRR was also inconsistent with other tariff determinations given by the Authority in case of other IPPs.

The tariff determination in the case of EEL was given by the Authority on July 18, 2007 after observing due process of law and while giving said determination, the Authority had consciously decided to calculate IRR at zero terminal value by allowing redemption of the equity under the formula specifically given in the said determination. Now after more than three years when the plant is successfully in operation and producing electricity and, while giving the required COD adjustments, it has been realized that some error was committed at the time of giving the tariff determination and it is intended to rectify the same. In my view, the modus operandi being adopted to rectify some alleged error in the original determination could not be taken care of while giving some adjustments at the time of COD. Regarding commission of an error in the original determination, if the Authority feels that there was some error or flaw in the original tariff determination, then an appropriate recourse would be to first modify the tariff determination while observing due process of law (in accordance with the



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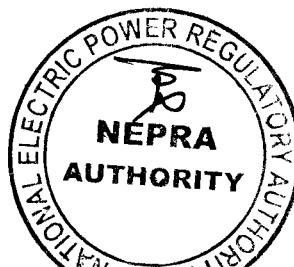
NEPRA Act and Rules) and only thereafter adjustments in line with the modified determination could be given.

Revision of earlier decision of the Authority, after passage of more than three years, will be a severe set back for the petitioner and will shake the confidence of all the stake holders participated in the tariff determination process of NEPRA and it would tantamount to increasing the regulatory risk.

The financial arrangements had been made by the sponsors of the project with the lenders and other stake holders and it would be inappropriate to materially change the decision at the time of tariff adjustments on the pretext that some error was made in the determination given more than three years ago. Commission of some mistake during the course of a tariff determination may not be ruled out but I am afraid, the error if any, should have been corrected earlier and that too, after observing due process of law and after providing with an opportunity of hearing to all the concerned. After a period of more than three years, when the sponsor has arranged its finances on the basis of tariff determination, any effort to change the original tariff determination would lead to unpredictable regulations under the shelter of errors / mistakes which can increase regulatory risk for the investors.

The original determination of July 18, 2007 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 more than three years. I am afraid that when and if taken to some other forum by the investors, the Authority may be estopped from repudiating, to EEL's determinant, a prime parameter of 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 determinant of another party – if that other party has relied upon it.

The other justification of the decision being given is that the treatment of IRR calculation in the original determination was against GOP guidelines. It is a matter of record that the guidelines of the GOP were issued in the year 2005 while the tariff determination for EEL was given in the year 2007, hence it is an established fact that when the determination was given, the Guidelines of GOP were already there and a decision was given whereby the guidelines were not considered as such. No doubt, it is provided in section 7(6) of the NEPRA Act that in performing its functions, 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. In my considered opinion, the guidelines are inconsistent with NEPRA Act because by issuing an executive order, GOP cannot restrict or take away powers conferred upon NEPRA under the law. Mere fact of issuance of some guidelines to NEPRA could not be made legal basis for determining the ROE as it would tantamount in restricting the exclusive Tariff determination mandate of the Regulator. If GOP has to advise on how to calculate



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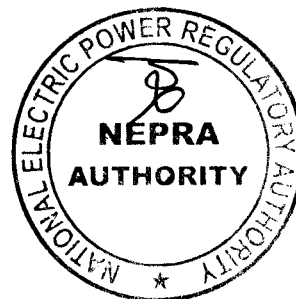
and determine the tariff then there is no point of having an independent Regulator. It would also be worth mentioning here that question of legality or otherwise of those Guidelines is already pending sub-judice before the Honorable Supreme Court of Pakistan.

The facts of the instant case regarding the treatment of ROE at COD are almost identical to the case of Attock Gen Limited (NEPRA/TRF-55/AGL-2006). A motion for leave for review was filed by Attock Gen Limited against the decision of the Authority dated 30th July 2009 and the undersigned had also dissented from the decision of the Authority so arrived upon the motion for review filed by Attock Gen Limited. Reportedly a writ petition has been filed by Attock Gen Limited against the decision of NEPRA before Lahore High Court, Rawalpindi Bench and said matter is also pending adjudication before the court of law.

6. In terms of section 7(3) of NEPRA Act, determination of tariff is one of the statutory functions of NEPRA. Before arriving at any such determination, an exhaustive process, envisaged in the Tariff Standards and Procedure Rules, 1998 is to be observed. The tariff determined by the Authority shall not become effective until such time it is published in the official gazette in accordance with sub-section (4) of section 31 of the NEPRA Act.

Legal sanctity is attached to a tariff determination being a legal document and the tariff determination so given by the Authority is to remain in field until and unless it is reviewed or modified by the Authority itself or a judicial review thereof is made by a Court of competent jurisdiction. Hence, the adjustment, if any, should be confined only to the extent of original decision of the Authority and there is hardly an occasion for the Authority to change its earlier decision materially to the detriment of the project while giving the adjustments at COD.


Zafar Ali Khan
Member (Tariff) 25/10/10

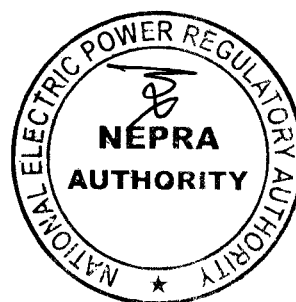


NOTE OF DISSENT OF MAQBOOL AHMAD KHAWAJA, MEMBER ON DECISION OF
AUTHORITY, IN THE MATTER OF ENGRO ENGERY LIMITED TARIFF ADJUSTMENT
AT COMMERCIAL OPERATION DATE
CASE NO.NEPA /TRF-72/EEL-2007

- 1) At the time of determination, EPC cost of EEL was not based on firm EPC price. However, as per Authority determination of 18th July 2007 EPC Cost was allowed as \$.160.335 Million as per estimates submitted by EEL.

- 2) As per present decision of Authority on tariff Adjustment at COD:
Para-2.1: “Since the EPC Cost of EEL was based on estimates at the time of determination and in the absence of any mechanism for sharing of cost saving given in the determination, the Authority is constrained to allow only actual EPC Cost of US\$.152.0 million to EEL”.
Para-2.2: “Further , EEL has also claimed US\$.2.903 million on A/C of compensation payable in accordance with the EPC Contract owing to difference in exchange rate parity between RMB/US\$. The Authority in the light of ECC decision ECC - 65/5/2007 dated 23-5-2007 and circumstances of the case has decided not to allow the difference in exchange rate parity”.

- 3) In my considered opinion, if we have to carry out adjustments on basis of actual Expenditure incurred on EPC than the actual expenditure incurred as claimed by EEL is \$.154.4 million. Reducing it by \$.2.903 million on the plea that exchange rate parity between RMB /US\$ has not been mentioned in ECC decision 65/5/2007 dated 23.5.2007, will be contrary to decision to allow EPC cost incurred on actual basis amount of which is \$.154.4 million as verified by the Case Officer.
ECC’s decision was arrived, in principle after realizing the problem of exchange parity of different currencies , considered only 4 currencies i.e. Dollar, Pound, Euro and Japanese yen. Since RMB has also now become stronger, may be it is high time same may also be considered to be allowed as exchange parity.
In my opinion EPC cost of \$.154.4 million be allowed to EEL as verified by the Case Officer as actual expenditure.



- 4) EEL has also claimed that there construction management expenses increased due to certain items carried out by them which were part of EPC contractor scope. It also included additional / extraordinary security provided by EEL due to Law & order situation required for protection of Chinese experts working on execution of project. Although details have not been provided by EEL, however I am of considered opinion that EEL may be allowed expenditure on this accord up to extent same is substantiated and verified actually incurred on this project only.
- 5) IRR of 15% is allowed on thermal projects. Due to reduction in the overall project cost, debt / equity ratio and other factors, if it transpires that IRR has been substantially reduced below 15% than in my view it will not be fair specially with project sponsors of EEL who were able to complete project 3 months ahead of RCOD at substantially reduced cost, using their competent skills professionally on this project using Permeate gas which otherwise was going as waste.
- 6) In my opinion, completion of project before schedule needs special consideration / incentive to attract sponsors to make efforts to bring projects ahead of schedule which ultimately is in benefit of consumers as it helps in reduction of load-shedding earlier.



Maqbool Ahmad Khawaja
Member (S)
Date: 01-11-2010

