

**Draft National Electric Power Regulatory Authority (NEPRA) Tariff Adjustments At Commercial
Operation Date (Generation and Transmission) Guidelines, 2017**

S.R.O ----/2017-In exercise of the powers conferred by section 7(2)(i) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997) the National Electric Power Regulatory Authority, in order to facilitate stakeholders on tariff adjustments at Commercial Operations Date (COD), hereby notifies following guidelines;

PART-I

PRELIMINARY

1 Short title, commencement and purpose:

- 1) These guidelines may be called NEPRA Tariff Adjustments At Commercial Operation Date of (Generation and Transmission) Guidelines, 2017.
- 2) These guidelines come into force immediately.
- 3) The purpose of these guidelines is to identify the nature and type of source documents that are required to be submitted to Authority for tariff adjustments at COD.

2 Scope and extent of application.

- 1) These guidelines are applicable prospectively to all the tariffs for power generation and transmission determined on cost plus/up-front basis (not to be applied to K-Electric plus GENCOs, WAPDA Hydroelectric etc). These guidelines are applicable to tariff adjustments at commercial operations date for only those electric power generation projects and independent transmission companies for which tariff has been determined by the Authority either under cost plus or upfront tariff regime.

3 Definitions and Interpretations.– (1) In these guidelines unless there is anything repugnant in the subject or context,—

- 1) "Act" means the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XI, of 1997);
- 2) "Authority", means the National Electric Power Regulatory Authority established under section 3 of NEPRA Act 1997 (XI, of 1997).
- 3) "Authorized Representative" means a person, who is authorized to appear, plead and act on behalf of the company before the Authority.

- 4) "Commercial Operations Date" – The Day immediately following the date on which the Project is Commissioned; provided, that in no event shall the Commercial Operations Date occur earlier than ninety (90) Days prior to the Required Commercial Operations Date without the prior written approval of the Power Purchaser, which approval may be given or withheld in the sole discretion of the Power Purchaser.
- 5) "Competitive Bidding" means a transparent and open competitive process for procurement of equipment, services and/or works in which bids are invited nationwide or internationally by the project developer covering the scope and specifications of the equipment, services and/or works required for the project, including the terms and conditions of the proposed contract award as well as the criteria by which bids have been evaluated.
- 6) "Company Letter of Credit" An unconditional, irrevocable, divisible, and transferable on demand letter of credit in favor of the Power Purchaser in the form set out in Schedule 9, which is issued by a bank or other financial institution reasonably acceptable to the Power Purchaser, and which shall provide for draws by the Power Purchaser in immediately available funds on a monthly basis upon presentation at a Bank in Pakistan, and which, at the Effective Date, shall be delivered by the Company to the Power Purchaser in the amount as determined for the purpose in the legal covenants.
- 7) "Construction Start Date" – The date on which the Company issues the "notice to proceed" authorizing the EPC Contractors to commence the EPC Works in accordance with the EPC Contract and incurs or has incurred an unconditional obligation to pay not less than seven percent (7%) of the EPC Cost to the EPC Contractors under the EPC Contract.
- 8) "EPC" means Engineering, procurement and construction for the project.
- 9) "EPC Contract" – The agreement entered into between the project developer organization and the EPC Contractor (s) for, inter alia, the design, engineering, procurement, construction, completion, testing and Commissioning of the power project.
- 10) "EPC Cost" – The total expenditure which the Company will incur as per the terms and conditions of the EPC Contract (s) carrying out and completing the Project.
- 11) "Financial Closing" – (a) The execution and delivery of the Financing Documents that (together with equity commitments) evidence required financing commitment for the construction, testing, completion, and Commissioning of the Project. These set of documents spell out principal repayment schedule and the other salient terms of the transaction between the Project developer and the Lenders and among other parameters may also incorporate the commitments for equity as per the legal or financial requirements.

- 12) "Implementation Agreement" – The Implementation Agreement signed between the GOP and the Project Company (licensee) entered into as may be amended by the parties thereto from time to time.
- 13) "KIBOR" – The average "ask side" Karachi Inter-Bank Offer Rate which appears on the appropriate page of the Reuters service at or about 11:30 a.m. in Karachi on the last available Business Day, or in the event that the Reuter's service, or any successor thereto, no longer provides such information, such other service as agreed to by the Parties that provides the average "ask side" Karachi Inter-Bank Offer Rate for Rupee deposits in the Karachi inter-bank market.
- 14) "LIBOR" – The British Bankers Association Interest Settlement Rate for Dollar which appears on the appropriate page of the Reuters service at or about 11:00 a.m. in London on the last available London Banking Day, or in the event that the Reuter's service, or any successor thereto, no longer provides such information, such other service as agreed to by the Parties that provides the British Bankers Association Interest Settlement Rate for Dollar deposits in the London inter-bank market
- 15) "O&M Agreement" – The agreement to be entered into between the licensee (Project Company) and the O&M Contractor under a transparent process for the operation and maintenance of the project.
- 16) "Power Purchase Agreement - PPA" means an agreement together with its all Schedules enter into between the Power Purchaser and the Company (licensee, as may be amended by the Parties from time to time.
- 17) "Registrar" means an officer of the Authority who is appointed to perform the functions of the Registrar of Authority.
- 18) "Required Commercial Operations Date" – The date that is the number of days following the date on which Financial Closing occurs by which the Project is commissioned, such date may be extended by reason of a Force Majeure Event by following the procedure prescribed in relevant documents.
- 19) "Scheduled Commercial Operations Date" – The date reasonably estimated by the project developer as the Commercial Operations Date based on the construction schedule, as notified to the Power Purchaser.
- 20) "Tariff Adjustment" means adjustments of pass-through items and admissible variations to project cost allowed in the tariff determination or upfront tariff determination as the case may be including those to actual draw downs of equity and disbursements by financiers of the Project. This also includes material and labor cost variations taken into account to adjust the tariff that has been approved at the time of tariff determination.

- 21) "Tax" or "Taxes" – Any tax, charge, Cess, impost, tariff, duty, fiscal concession or allowance imposed by or payable to Federal or Provincial Exchequer including any value added tax, Sales Tax, water or environmental or energy tax, import or customs duty, withholding tax, excise duty or tax, tax on foreign currency or foreign exchange transactions or property tax. The term "Tax" shall not include any fee or charge payable with Public Sector as consideration for goods or services in relation to a commercial activity carried out by or through such Public Sector Entity.
- 22) TSA:--- "Transmission Service Agreement" means the agreement between the Wheeler of Power and transmission licensee(s), for Wheeling Services.

The words and expressions used but not defined in these Guidelines shall have the same meaning as are assigned to them in the Act or the NEPRA Rules and related Guidelines framed there under.

PART-II APPLICATION AND PROCEDURE

4. Procedure for applying for tariff adjustment at COD stage:

- 1) The COD application should be filed at the earliest after commencement of commercial operation date but not later than six (6) months from the commencement of commercial operations. However, the Authority may accept the application after stipulated period of six months on valid and justified grounds for delay in filing. In case of delay in filling the COD tariff adjustment request, the company should request extension within the referred six months for consideration of the Authority.
- 2) Depending upon the matter specified in the tariff determination or upfront tariff, the list of documents which are to be attached with the COD application shall include but not limited to:

EPC:

- a. Certified copies of EPC contracts
- b. Summary of EPC payments reconciled with the payment terms in the EPC contract and with periodic invoices
- c. Certified copies of all EPC invoices
- d. Payment evidences including bank debit notes, cheque, swift message (if applicable), bank statement etc
- e. For foreign remittance, supporting evidences of exchange rate applied and claimed.

- f. Receipt acknowledgement by EPC contractor against payments made.
- g. Copy of endorsement /approval of the periodic payment made by the competent Authority and Independent Engineer (where applicable).
- h. Where deemed necessary, relevant bidding documents, bids, bid evaluation report to evidence the selection of EPC contractor (s) under a transparent process, against which the cost is being claimed.

Duties and Taxes:

- a. Import shipment wise summary of duties and taxes along with reconciliation of declared value as per underlying documents of duties and taxes. This should also be reconciled with bill of lading, EPC contract and payment evidences etc
- b. Certified copies of source documents which may include shipping invoice, Goods Declaration, Bill of lading consistent to the applicable duties, custom payment and withholding taxes
- c. Supporting evidences of exchange rate used (if applicable)
- d. Evidence of deposit of payment /taxes in public exchequer or relevant public Authority .

Interest During Construction (IDC):

- a. Certified true copies of all the loan/credit/financing agreements and facility letters/terms sheets
- b. Financing amount drawdown schedules duly consistent to the bank statements. Copies of bank statements to be attached in support thereof
- c. Interest payment invoices along with calculation worksheet.
- d. Payment evidences including debit notes, cheque, swift message, bank statement.
- e. Supporting evidences of exchange rate used (if applicable)

Financing Fee:

- a. Certified true copies of all the loan/credit/financing agreements and facility letters
- b. Summary of financing fees and charges consistent with the applicable terms of financing agreements.
- c. Copies of financial charges/fee claimed or charges by lenders along with receipt acknowledgement
- d. Payment evidences including debit note, cheque, swift message (if applicable), bank statement etc.
- e. Supporting evidences of exchange rate used (if applicable)

Sinosure Fee (Credit Risk Insurance):

- a. Copies of sinosure or relevant credit risk insurance policies

- b. Summary of sinosure credit risk insurance fees reconciled with the applicable policies.
- c. Invoices raised by relevant agency/institute
- d. Payment evidences including debit note, cheque, swift message (if applicable), bank statement etc
- e. Supporting evidences of exchange rate used (if applicable)
- f. Evidence of applicable taxes withheld and deposited in public exchequer

Insurance During Construction:

- a. Certified copies of insurance policies
- b. Summary of premium paid during the construction period against the policies referred in PPA/EPA/TSA
- c.
- d. Insurance premium payment invoices along with receipt acknowledgement of relevant insurance company (s)
- e. Payment evidences including debit note, cheque, swift message (if applicable), bank statement etc
- f. Supporting evidences of exchange rate used (if applicable)

Non EPC, PDC and other cost heads:

- a. Summary sheets of Non EPC, PDC and other cost heads as allowed to be provided
- b. Based on assessed risks and nature of transaction, the sample size will be determined for substantive verification. All relevant source documents, invoices, receipt acknowledgement, payment evidence will have to be provided for the sample size identified for verification.

Additional Documents Required:

The documents which are incidental to COD tariff adjustment should also be provided along with. These include;

- i. Certificate of commissioning of complex by independent engineer
- ii. Copy of notification of COD by National Transmission and Dispatch Company Limited
- iii. Letter of financial close by relevant agency
- iv. Copy of notice to proceed issued by the project company to the EPC contractor.
- v. Certified true copy of the capacity test certificate.
- vi. Certified true copy of the heat rate test certificate (where applicable)
- vii. Comparative summary of the project cost at COD with the already determined project cost in a tabulated manner.
- viii. Certified true copy of the power purchase agreement/energy purchase agreement/Transmission supply agreement and implementation agreement.

- ix. Certificate from manufacturer of all equipments and machinery procured and installed that it is new
 - x. Certified true copy of the financial statements of the company from inception till the date of filing of COD application audited by a CA firm registered with ICAP. These financial statement should be prepared under financial report framework as applicable
 - xi. Evidences of compliance with the Authority directions given in the tariff determination(s), if any
 - xii. Reconciliation of the project cost at COD with the audited financial statements. The difference, if any, should be explicitly referred and narrated with reasons
 - xiii. Certified copy of LC (if applicable) established for project cost.
 - xiv. Certified copies of share certificates and other evidences against equity
 - xv. Equity/debt drawdowns schedules reconciled with the bank statements.
 - xvi. Tariff Table at COD comparative to the tariff table referred in tariff determination of upfront tariff.
 - xvii. Debt servicing schedule at COD and an undertaking to identify and submit to the Authority in case of any subsequent change made in the terms of the debt
 - xviii. Evidences of all other documentation in support of the claim at COD along with supporting schedules including, undertaking on the stamp paper that costs, expenses and other claims are true, correct and legitimate and no undue/unauthorized costs have been claimed by the petitioner. In case any costs/adjustments claimed by the petitioner under any head are false, unauthorized and are based upon any forged and un-authentic documentary evidence, the Authority, under section ----of NEPRA Act, through some evaluation or other evidence will impose penalty.
- 3) The COD tariff adjustment should be filed by the officer duly Authorized by Board of Director (or any Governing body) along with an undertaking that all cost being claimed has been incurred solely for the project.
 - 4) The cost claimed has not included in any other tariff consideration by NEPRA or any other relevant Authority (OGRA etc). The tariff adjustment application should identify relevant official(s) to be contacted for any clarification or pending information.
 - 5) In case the COD tariff adjustment is filed with Authority by a financial advisor/consultant. The same should be duly Authorized and approved by competent Authority of the relevant project /organization. The same approval should be accompanied with the COD tariff adjustment application filed.
 - 6) The Authority may require any other documents/evidence which it deems are necessary for consideration of COD Adjustment application of the petitioner. Further, the Authority may require the petitioner to obtain professional opinion from such valuers, legal advisors, CA

firm, Tax Advisors on any matters which it deems necessary. The Authority may also, if it considers necessary and after giving notice (of one month) to the petitioner, appoint such valuers, legal advisors, CA firm etc. at the cost of the petitioner.

PART-III TARIFF

5. Other terms and conditions for tariff adjustments at COD Stage.

Unless expressly allowed otherwise by the Authority in the tariff determination:

- 1) All tariff adjustments are proposed to be restricted to the domains and confines allowed in the tariff determination. If anything has not been specified in the tariff determination then the related prevailing documents including PPA, IA may be referred for consideration. In case such matter is not addressed in those legal covenants, the matter may be requested as per industry practice for consideration of Authority for approval.
- 2) Duties and/or taxes related to power generation business, not being of refundable nature, imposed on the petitioner up to the commencement of its commercial operations are proposed to be adjusted at actual on COD, upon production of verifiable documentary evidences to the satisfaction of the Authority. The tariff adjustment request should not include the claim of taxes of adjustable nature.
- 3) Any liquidated damages, penalties, etc. (by "whatever name called), interest income actually recovered/recoverable by the petitioner, pertaining to the construction period allowed by the Authority will be adjusted by netting off.
- 4) All project costs i.e. costs incurred during construction period prior to commercial operations date (COD) allowed in the tariff determination in foreign currency and incurred in PKR will be converted into PKR using the reference PKR/foreign currency rate parity used in the original tariff determination.
- 5) Exchange rate variation on allowed costs in four foreign currencies i.e. Euro, GBP, US\$, JPY will be allowed. In case of currency other than these four currencies that currency will be pegged with US\$ for tariff adjustment purposes.
- 6) The financing fees, charges allowed in the tariff determination as a percentages should be claimed consistent to these thresholds or the benchmark allowed and should be applied to the debt portion excluding the impact of interest during construction and all types of financing fees and charges including Sinosure fees, etc.