



National Electric Power Regulatory Authority Islamic Republic of Pakistan

NEPRA Tower, Attaturk Avenue (East), G-5/1, Islamabad.
Tel: +92-51-9206500, Fax: +92-51-2600026
Web: www.nepra.org.pk, E-mail: registrar@nepra.org.pk

Registrar

No. NEPRA/R/DG(Lic)/LAD-01/ 33745-52

October 06, 2023

Chief Executive Officer

K Electric Limited,
KE House, 39 B, DHA Phase-II,
Karachi

Subject: **ORDER OF THE AUTHORITY IN THE MATTER OF MODIFICATION-XI IN THE GENERATION LICENCE OF K-ELECTRIC LIMITED THAT REMANDED TO THE AUTHORITY BY THE NEPRA APPELLATE TRIBUNAL**

Enclosed please find herewith Order of the Authority alongwith additional note of Mr. Mathar Niaz Rana (nsc), Member NEPRA in the subject matter for your information, record and further necessary action.

Enclosure: As Above

(Engr. Mazhar Iqbal Ranjha)

1. Secretary, Power Division, Ministry of Energy, A-Block, Pak Secretariat, Islamabad
2. Secretary, Petroleum Division, Ministry of Energy, 3rd Floor, A-Block, Pak Secretariat, Islamabad
3. Chairman Appellate Tribunal (NEPRA), Federal Tribunal Complex, 3rd Floor, Roza Plaza, G-10 Markaz, Islamabad
4. Secretary, Ministry of Finance, Government of Pakistan, 'Q' Block, Pak Secretariat, Islamabad
5. Managing Director, NTDC, 414-WAPDA House, Lahore.
6. Chief Executive Officer, CPPA-G, 73-West, Shaheen Plaza, Blue Area, Islamabad
7. Secretary, Energy Department, Government of Sindh, 3rd Floor, Start Life Building -3, Dr. Zia-ud-din Ahmed Road, Karachi

Nation Electric Power Regulatory Authority
(NEPRA)

Order of the Authority
in the Matter of Modification-XI in the Generation Licence of K-
Electric Limited that Remanded to the Authority by the NEPRA
Appellate Tribunal

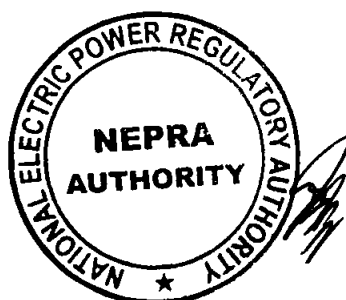
Oct 06
September , 2023
Case No. LAG-05

This order shall modify the decisions of the Authority (i). No. NEPRA/R/LAG-05/36655/61 dated September 15, 2021 and (ii). No. NEPRA/R/DG(Lic)/LAG-05/7193/98 dated May 12, 2022 in the matter of Licensee Proposed Modification-XI (LPM-XI/Modification-XI) in the Generation Licence of KEL, to the extent of allowing the cost related to the interim operation of Unit-3 of Bin Qasim Power Station-I (BQPS-I), from May 01, 2021, to August 15, 2021.

(A). Background

(i). KEL holds a Generation Licence (No. GL/04/2002) for its six (06) distinctly located generation facilities/thermal power plants. In accordance with provisions of the relevant regulations, KEL communicated LPM-XI in its Generation Licence on April 19, 2021, for allowing the addition of Pakistan LNG Limited (PLL) as a backup supplier of RLNG for BQPS-I and BQPS-II. Further, KEL also made a request for permission to utilize Unit-3 of its BQPS-I (which was de-licensed on December 07, 2020) for operation on an interim basis during the summer of 2021.

(ii). In this regard, the Authority, through its determination/decision dated September 15, 2021, allowed the addition of PLL as a backup supplier of RLNG in the Generation Licence of KEL. Further, the Authority also allowed the operation of Unit-3 of BQPS-I, for an interim period of three and half months (specifically from May 01, 2021, to August 15, 2021). In this regard, the Authority, while allowing the operation of Unit-3 of BQPS-I, decided to restrict the Fuel Cost Component (FCC) to that of BQPS-III. The premise of the said decision was that had KEL commissioned its BQPS-III within the stipulated timelines, the need for the utilization of Unit-3 of BQPS-I would not have arisen.



(B). Review Petition by KEL

(i). The above decision of the Authority was communicated to KEL, and being aggrieved, KEL filed a Motion for Leave for Review under Regulation-3(2) of the Review Regulations. In the said petition, KEL requested the Authority to review its decision and delink the payment of the FCC of the interim operation of Unit-3 of BQPS-I with the Commissioning of BQPS-III and to allow the actual cost incurred on the operation of the said Unit.

(ii). The Authority considered the submissions of KEL and ultimately through its decision/order No. NEPRA/R/DG(Lic)/LAG-05/7193/98 dated May 12, 2022, rejected the Motion for Leave for Review of KEL, by maintaining its original decision about the FCC for the interim operation of Unit-3 of BQPS-I, as explained above.

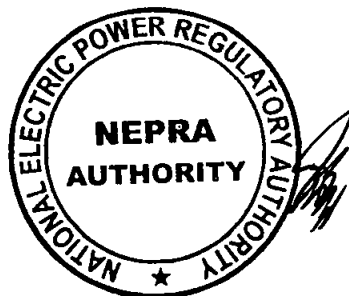
(C). Appeal Before and Judgment of the Appellate Tribunal

(i). KEL, under Section-12G of the NEPRA Act, filed an appeal before the Appellate Tribunal against the above decision of the Authority. On the appeal of KEL, the Appellate Tribunal observed that in terms of Section-31 of the NEPRA Act, the reasons for not allowing KEL the actual FCC of BQPS-I were not convincing and contrary to the guidelines under the said provision. Accordingly, the Tribunal through its judgment dated October 05, 2022, set aside the decision of the Authority to the extent of FCC and remanded the matter for a fresh hearing and decision.

(D). Fresh Proceeding of the Case

(i). In light of the above judgment of the Appellate Tribunal, the Authority decided to conduct the proceedings afresh. Accordingly, the Authority held a public hearing on January 25, 2023, wherein an opportunity was provided to KEL to present its case.

(ii). In the public hearing, KEL submitted that in order to meet the peak summer demand in Karachi, it considered different options, and the option of interim utilization of Unit-3 of BQPS-I was found to be the most feasible and accordingly, the interim operation of the same was suggested. In this regard, KEL submitted that if it had not operated the said unit, either load shedding would have to be carried out or otherwise, power would have to be generated through expensive HSD, which would have been against the interests of the consumers as stipulated in Sections-31(2) & 32(3) of the NEPRA Act.



(iii). Further, KEL submitted that there is no precedence on record whereby the Authority had disallowed the operational cost of a project/plant due to the delay in the commissioning of another project/plant. KEL also maintained that the Authority had already fined it Rs. 200 million for the delay in commissioning of BQPS-III, therefore, the actual cost of operation of Unit-3 of BQPS-I must be allowed.

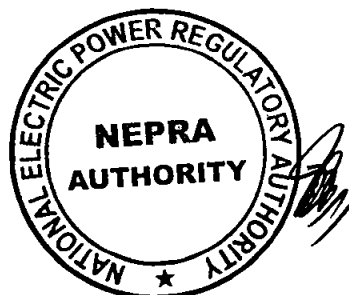
(iv). In this regard, it is relevant to mention that during the public hearing, representatives of various organizations as well as individuals were also given the opportunity to express their points of view on the matter. All the relevant stakeholders appreciated the original decision of the Authority and stressed to uphold the same.

(E). Findings of the Authority

(i). The Authority examined the matter in detail including the application of KEL for modification in its licence, determination on the LPM, the review petition filed by KEL, the decision on the review petition, the judgment of the Appellate Tribunal and proceedings of public hearing in the matter.

(ii). After detailed deliberation, the Authority has observed that at the time of the original determination on the LPM dated September 15, 2021, and subsequent decision dated May 12, 2022, on the review petition filed by KEL, it was of the view that delays in the commissioning of BQPS-III and the subsequent interim utilization of the inefficient Unit-3 of BQPS-I are due to the poor performance of KEL and the consumers should not be charged for the inefficiencies of KEL. Accordingly, the Authority considered it appropriate to restrict the FFC of the interim operation of Unit-3 of BQPS-I to that of BQPS-III.

(iii). In this regard, the Authority has noted that the decision on the LPM was issued on September 15, 2021, and by that time KEL had already operated Unit-3 of BQPS-I (i.e. from June 01, 2021, to August 15, 2021). The Authority has also observed that it had already fined KEL to the amount of Rs. 200 million on account of load shedding and delay in commissioning of BQPS-III therefore, KEL should not be put into double jeopardy. Further, after reviewing the judgment of the Appellate Tribunal, submission of KEL, and other facts related to the case, the Authority considers that in terms of Section-31(3)(a) of the NEPRA Act, a licensee should be allowed to recover the prudent cost incurred to meet its demonstrated needs. As evident, if the interim operation of Unit-3 of

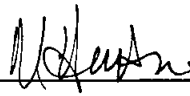


BQPS-I was allowed by the Authority in the public interest, then the costs associated with the operation of the plant should also be allowed as a prudent cost.

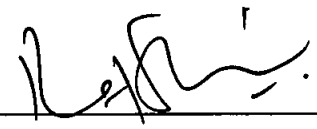
(F). Order of the Authority

In view of the foregoing, the Authority hereby decides to accede to the request of KEL and allows the actual/prudent cost relating to the interim operation of Unit-3 of BQPS-I (from May 01, 2021, to August 15, 2021). Accordingly, the earlier decisions of the Authority (dated September 15, 2021 and May 12, 2022) in this regard, stand modified to this extent.

Authority

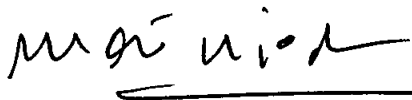


(Engr. Maqsood Anwar Khan)
(Member)



(Rafique Ahmad Sheikh)
(Member)

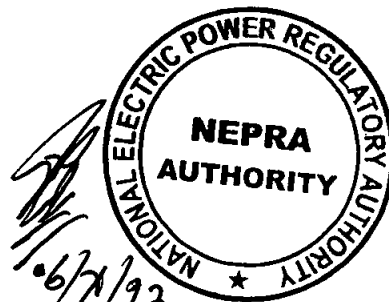
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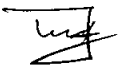


(Mathar Niaz Rana (nsc))
(Member)

(Amina Ahmad)
(Member)

Retired
(Tauseef H. Farooqi)
(Chairman)





* My additional note

Additional Note

1. As per the MYT K-Electric (KE) was required to commission both phase of BQPS –III by Dec 2019. However, KE was not been able to commission BQPS-III on time as per the MYT, this caused in requirement of operation of BQPS – I Unit 3 and resulted in additional fuel cost. Such additional burden due to inefficiency should not be passed onto the consumers.

Mathar Niaz Rana

Mathar Niaz Rana (nsc)
Member Tariff and Finance

