



Registrar

# National Electric Power Regulatory Authority

## Islamic Republic of Pakistan

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

No. NEPRA/PAR-100/15309-15311  
October 21, 2015

Subject: **Decision of the Authority in the Matter of Motions for Leave for Review against NEPRA's Decisions Dated 24.11.2014 filed by (i) Thal Industries Corporation Ltd., (ii) Jamal Din Wali Sugar Mills, (iii) Al-Moiz Industries Limited, (iv) Deharki Sugar Mills Ltd. and (v) Al-Noor Sugar Mills Ltd.**

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (05 pages) in the matter of Motion for Leave for Review filed by Thal Industries Corporation Ltd., Jamal Din Wali Sugar Mills, Al-Moiz Industries Limited, Deharki Sugar Mills Ltd. and Al-Noor Sugar Mills Ltd. against Authority's Decision dated 24.11.2014 in the matter of Suo Moto Review Proceedings initiated by NEPRA for Revision/Modification of Fuel Cost Component Indexation Mechanism provided in its Decision dated 24.12.2012 regarding approval of Power Acquisition Requests filed by concerned XWDISCOs for purchase of power, for information.

Enclosure: As above

21/10/15  
( Iftikhar Ali Khan )

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

CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.

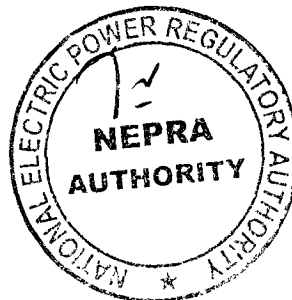
**DECISION OF THE AUTHORITY IN THE MATTER OF MOTIONS FOR LEAVE FOR REVIEW OF  
NEPRA'S DECISION DATED 24.11.2014 FILED BY:-**

- i. Thal Industries Corporation
- ii. Jamal Din Wali Sugar Mills
- iii. Al-Moiz Industries Limited
- iv. Deharki Sugar Mills
- v. Al-Noor Sugar Mills

All the review motions, captioned above, throw the same grievance and, therefore, those have been heard together and are being decided by this consolidated handing down.

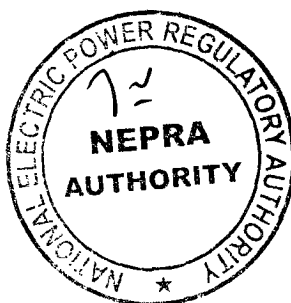
2. Brief facts of the cases are that the National Electric Power Regulatory Authority (hereinafter referred to as the "Authority") while approving the cases for procurement of electric power by the Distribution Companies (DISCOs) under NEPRA Interim Power Procurement (Procedure & Standards) Regulations 2005 from bagasse based captive generation power plants allowed the indexation of the fuel cost component with gas price. As many as 16 cases were approved on different dates for the supply of electric power by those 16 companies to FESCO, MEPCO, HESCO, SEPCO and PESCO. Subsequently, when the Upfront Tariff for new bagasse based generation power plants was determined by the Authority vide its determination dated 29<sup>th</sup> May 2013 and subsequent corrigendum dated 28<sup>th</sup> August 2013, the mechanism for indexation/adjustment of the fuel cost component was linked with the imported coal price. The two different indexation mechanism (i) on gas and (ii) the other on coal created anomaly, which was required to be removed to bring consistency in the fuel cost component adjustment mechanism provided for captive as well as new bagasse based power generation plants, therefore, the Authority decided to initiate Suo Moto proceedings under section 7(2)(g) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 read with Regulation 3(1) of the NEPRA (Review Procedure) Regulations 2009 and after providing opportunity of hearing to the concerned parties, the decisions already taken in respect of 16 companies including the petitioners were modified vide a decision dated 24.11.2014 and the fuel cost component adjustment mechanism linked with gas was changed and linked with imported coal.
3. Out of those 16 companies, 5 companies (the petitioners) have filed motion for leave for review against the decision of Authority dated 24.11.2014 inter-alia on the following grounds:-

- i. That the petitioners were not heard properly while arriving at the impugned decision.



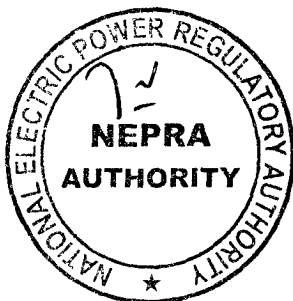


- ii. That the Authority has not given due consideration to the impact of the revised fuel cost indexation mechanism on the actual tariff in Rs./kWh to be charged by the company relative to the prevailing tariff previously approved by the Authority.
  - iii. That the petitioner made huge investment for the production of the electricity and unilateral modification of the tariff to the detriment of the petitioner has resulted in violation of vested rights created in favour of the Petitioner.
4. The petitioners requested as under:-
- The coal based fuel cost indexation may be retained but the assumed electrical efficiency of 24.5% which is based on high pressure plants, may be revised to 15-17% for low pressure bagasse based plants; or
  - The coal based indexation may be retained but the reference fuel cost component may be changed to the prevailing figure based on the Authority's earlier approval dated 24-12-2012. The prevailing tariff would thus remain unchanged but the risk of inordinate future escalation would be mitigated due to linkage with coal instead of local gas; or
  - The revised indexation may be retained as is but a separate O&M component may be added to mitigate the impact of the sharp decrease in the fuel cost component.
5. The subject motions for leave for review were considered by the Authority and opportunity of hearing also provided to the parties on 25.2.2015. During the course of hearing, the petitioners as well as the concerned Distribution Companies who are the power purchaser were heard. It was submitted on behalf of petitioners inter-alia that reduction in tariff due to change in indexation mechanism has affected the Return on Investment; that huge investments have been made for the installation of machinery; the efficiency calculated by NEPRA is on higher side; the efficiency of the low pressure boilers is on lower side, therefore, lining the same with high efficiency boilers is not justified and the revision of fuel cost component shall take effect from the date of determination/notification and any pending payments of power already supplied should be paid as per the previously prevailing tariff.
6. The representative of HESCO supported the impugned decision. It was submitted on behalf of MEPCO that they support the impugned decision. It was further explained that ENERCON department is also endorsing the efficiency of 21-22 of the bagasse base sugar mills. In addition to that Shiekh Sugar Mills who is interested to provide the electricity as per tariff of NEPRA and is also investing on 132 V grid station which indicates that there is reasonable profit in the selling surplus energy as per revised rates of NEPRA.
7. On the other hand, following concerns have been raised by PESCO who is purchaser of energy from Al-Moiz Sugar Mills, one of the petitioners:-
- i. While calculating tariff in PKR, it is linked to dollar exchange rate. Therefore, whenever dollar rate will increase (Phenomena mostly occurs), the cost per unit will be increased. PESCO considers it incorrect and against the norms of justice, because





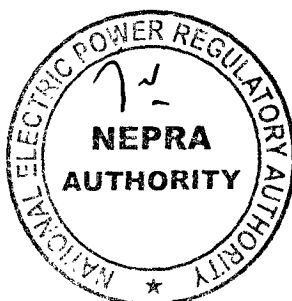
- bagasse is a local product and not the imported one, as such should not be lined with dollar fluctuation.
- ii. CIF, FOB, MF, MI, charges are included in tariff, inspite of the fact that bagasse is neither imported, nor shipped, nor any insurance is made. In addition bunker indexation is also taken in calculation, which is incorrect in case of bagasse.
  - iii. No breakup or details of Rs. 6.29/kWh (F.F.C) are provided to PESCO as such they are unable to assess it thoroughly.
  - iv. It is understood that efficiency of plants, using waste/trash is about 30% although waste contains very high contents of moisture and sulphur, the most negatively/adverse effecting components regarding efficiency & heat exchange rate. On the other hand bagasse as a fuel has no such negative component affecting plant's efficiency; therefore its efficiency must be higher than 30%. PESCO do not agree with the plea of Al-Moiz for indexation with gas for the reasons that it is using bagasse as primary fuel and does not utilize gas for generation of power at all; that bagasse is remains of sugarcane, is comparatively low cost fuel which is available at site and does not involve any transportation cost and its linkage with gas will put an extra burden on PESCO and its consumers.
  - v. PESCO further submitted that it is incorrect that M/s Al-Moiz entered into an agreement with PESCO after determination by NEPRA rather it is a fact that the agreement was signed on 16.2.2008 as per CPPA notified tariff while NEPRA determined tariff on 30.5.2013. It was also pointed out by PESCO that matter of sale of Power by Al-Moiz is under investigation in NAB and it suggested that NEPRA may carry a study to determine the tariff on bagasse by calculating its heat values as compared to other fuels, for determination of tariff purely on bagasse fuel.
8. Having gone through the respective submissions of the parties and perusal of record, the Authority is of the view that Sugar Industry used bagasse based cogeneration for achieving self-efficiency in steam and electricity as well as economy in operations. Technologies are now available for high-temperature/high pressure steam generation using bagasse as fuel. These technologies make it possible for sugar mills to operate at higher levels of efficiency and can generate more electricity. It is noted that the efficiency for bagasse based co-generation plant remains in the range of 11 to 36% depending on the type of machinery so used. The fuel cost component of Rs. 3.62/kWh was based on the 22.49% efficiency. The sale purchase on the same agreed efficiency was made by the petitioners for several years. The earlier determined and approved efficiencies by the Authority for subject plants are for backpressure turbines. However, it is noted that the steam is also being used for sugar production which is primary business of the petitioners; therefore, the Authority considers that while the bagasse based co-generation plants are to be encouraged they should also take





some risk due to their low efficiency. Accordingly, the consumers should not be penalized by allowing lower efficiency.

9. As regard non-provision of opportunity of hearing before issuing the impugned decision, it is a matter of record that before deciding the matter, notices were published in the national newspapers and in addition to that, individual letters were also sent to the stakeholders and the impugned decision was issued after due consideration of the comments of the stakeholders therefore the stance of the petitioners that no opportunity of hearing was provided is not true.
10. It is also to be noted that the primary business of petitioners is sugar and not sale/purchase of electricity. The petitioners are Captive Power Plants who are defined in the NEPRA Licensing (Application & Modification Procedure) Regulations 1999 as "*Captive Power Plant*" means *Industrial undertakings or other businesses carrying out the activity of power production for self-consumption, who intend to sell the power, surplus to their requirement, to a Distribution Company or bulk-power consumer.*" Thus surplus energy is delivered to the Distribution Companies on take and pay basis. In addition to that, NEPRA has not revised / reduced / modified the O&M cost which covers the salaries and wages, operation and maintenance, insurance, return on equity etc of the petitioners. Only fuel cost component which is pass through item is linked with the adjustment mechanism prescribed by the Authority in Upfront tariff of bagasse based sugar mills. The Authority considers that two difference mechanism of adjustment for similar technology and fuel would create anomaly and will be against the principle of fairness, equity and justice. In view thereof in order to provide level playing field, uniform adjustment mechanism is prescribed for the Captive bagasse based Co-generation plants.
11. In so far as the concerns raised by PESCO are concerned, the same are not based upon actual facts. PESCO itself agreed with CPPA tariff and it used to make payments for 4-5 years without getting the tariff approved from NEPRA.
12. The petitioners were provided an opportunity for provision of grounds/documentary evidence in support of its stance however they failed to do so. The Authority has already deliberated in detail the reasons and rational for revising fuel cost component indexation mechanism in the impugned decision dated 24.12.2014. The Authority has made no change in the efficiency. In Authority's opinion the stance taken by the petitioners are without any merit as many sugar mills have already accepted the revised / modified tariff on the basis of revised fuel price adjustment mechanism.
13. Keeping in view the above stated facts, the Authority is of the view that in terms of regulation 3(2) of the NEPRA (Review Procedure) Regulations, 2009, a motion seeking review of any order of the Authority is competent only upon discovery of new and important matter of evidence or on account of some mistake or error apparent on the face of record. The perusal of the impugned decision sought to be review clearly indicates that all material

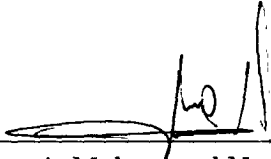


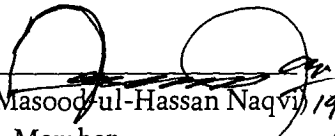


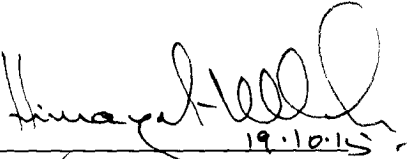
facts and representation made were examined in detail and there is no occasion to amend the impugned decision. No error inviting indulgence as admissible in law has been pleaded out. Therefore, the Authority is convinced that the review would not result in the withdrawal or modification of the impugned decision.

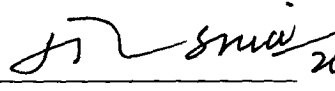
14. From what has been discussed above, the Authority is of the considered view that the grounds agitated in the motions for leave for review are not sufficient enough justifying the modification of the impugned decision, hence the subject motions for leave for review are declined.

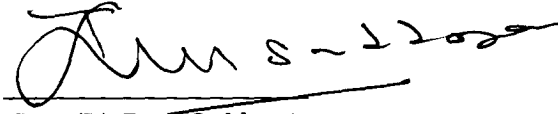
AUTHORITY

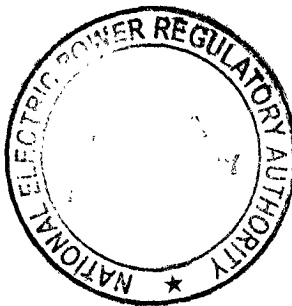
  
(Khawaja Muhammad Naeem)  
Member


  
(Syed Masood-ul-Hassan Naqvi)  
Member

  
(Himayat Ullah Khan)  
Member

  
(Major (R) Haroon Rashid)  
Vice Chairman

  
Brig (R) Tariq Saddozai  
Chairman



  
21-10-2015