

**BEFORE THE NATIONAL ELECTRIC POWER REGULATORY
AUTHORITY**

MOTION FOR LEAVE FOR REVIEW

PURSUANT TO RULE 16 (6) NEPA (TARIFF STANDARDS AND PROCEDURE) RULES, 1998 READ
WITH THE PROVISIONS OF NEPA (REVIEW PROCEDURE) REGULATIONS, 2009

BURJ WIND ENERGY (PRIVATE) LIMITED

AGAINST THE DETERMINATION OF NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
("AUTHORITY") IN THE MATTER OF TARIFF PETITION FILED BY BURJ WIND ENERGY (PRIVATE)
LIMITED FOR DETERMINATION OF REFERENCE GENERATION TARIFF IN RESPECT OF 13.80 MW
WIND POWER PROJECT

**13.80 MW WIND POWER PROJECT AT GUJJU, DISTRICT THATTA,
SINDH**

DATED: 18 February 2020

Encl:

- a) Board Resolution of the Company;
- b) Affidavit of the authorized representative;
- c) Power of Attorney/ Vakalatnama;
- d) Bank Draft No. 05195002 dated 17.02.2020 amounting to PKR 234,732.00 as the fee for the Motion for Leave for Review; and
- e) Annexures A & B to the Motion for Leave for Review.

Salman Akram Raja

Advocate Supreme Court
M.A. (Cambridge)
LL.M. (London)
LL.M. (Harvard)

Umer Akram Chaudhry

Advocate High Court
Attorney at Law (New York)
B.A.-LL.B. (LUMS)
LL.M. (Berkeley)

Aneesa Agha

Advocate High Court
Barrister-at-Law
B.A. (Dartmouth)
LL.B. (London)

Asad Ladha

Advocate High Court
Barrister-at-Law
LL.B. (Hons) (London)
LL.M. (Leiden)

Basil Nabi Malik

Advocate High Court
Attorney at Law (New York)
B.A.-LL.B. (LUMS)
LL.M. (Columbia)

Malik Ahsan Mahmood

Advocate High Court
M.A., LL.B. (Punjab)
LL.M.

Nadeem Shehzad Hashmi

Advocate High Court
LL.B. (Punjab)
D.I.T.L. (WTO) (Punjab)

Abuzar Salman Khan Niazi

Advocate High Court
B.B.A. (Hons) (LSE)
LL.B. (Hons) (London)
M.A. (Punjab)

18 February 2020

To,
Registrar,
National Electric Power Regulatory Authority,
NEPRA Tower,
Attaturk Avenue (East),
Sector G 5/1, Islamabad.

SUBJECT: MOTION FOR LEAVE FOR REVIEW AGAINST THE DETERMINATION OF NATIONAL ELECTRIC POWER REGULATORY AUTHORITY ("AUTHORITY") IN THE MATTER OF TARIFF PETITION FILED BY BURJ WIND ENERGY (PRIVATE) LIMITED FOR DETERMINATION OF REFERENCE GENERATION TARIFF IN RESPECT OF 13.80 MW WIND POWER PROJECT

1. We write to you on behalf of our Client Burj Wind Energy (Private) Limited ("BWE" or "Client") to seek review of the Authority's determination ("Tariff Determination") dated 20 February 2019 in the matter of Tariff Petition mentioned in the subject ("the Petition"). *Vide* its Tariff Determination, the Authority determined and approved the generation tariff for BWE for its 13.80 MW Wind Power Project at Gujju, District Thatta, Sindh ("the Project") for delivery of electricity to the power purchaser. The instant Motion for Leave for Review is instituted under Rule 16(6) of National Electric Power Regulatory Authority (Tariff Standards and Procedure) Rules, 1998 read together with Regulation 3(2) of the NEPRA (Review Procedure) Regulations, 2009 and Section 31 of the Regulation, Generation, Transmission and Distribution of Electric Power Act, 1997 ("NEPRA Act") as amended from time to time.

[Tariff Determination by the Authority dated 20 February 2019 has been attached herewith as Annexure A]

2. We humbly request the Authority to allow and condone the delay as per Regulation 3(3) of the NEPRA (Review Procedure) Regulations, 2009 in the submission of instant Motion for Leave for Review given the peculiar facts and circumstances of our Client as specified in the Paras A to D below. Furthermore, we seek that the learned Authority may be guided by the mandatory principles set out under Section 31(2)(e) and (f) of the NEPRA Act requiring the Authority to keep in view the "**economic and social policy objectives of the Federal Government**" – including mitigation measures against climate change through encouragement of renewable energy projects, and the "**elimination of exploitation and minimization of economic distortions**" – including delays and inefficiencies of state agencies. The Client has made consistent

Page 1 of 4

Address: 33 C, Main Gulberg
Lahore, Pakistan

T: +92 42 35750208 / 35750074
F: +92 42 35750175

E: info@rmaco.com.pk
W: www.rmaco.com.pk

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and diligent efforts to achieve financial close within one year from the date of issuance of Tariff Determination. However, such efforts have been stalled due to inordinate delays on part of Alternative Energy Development Board ("AEDB") and Central Power Purchasing Agency (Guarantee) Limited ("CPPA-G"). It is submitted that the facts and circumstances along with the grounds set out below constitute "**sufficient reasons**" for the Authority to grant instant Motion for Leave for Review under Regulation 3(2) of the NEPRA (Review Procedure) Regulations, 2009.

3. By way of background, it is submitted that BWE was granted Letter of Intent (LOI) by the AEDB on 31 October 2012 for BWE's proposal of establishing an approximately 14 MW wind power generation project at Gujju, District Thatta, Sindh falling in the Ghara Wind Corridor. In compliance with the LOI, BWE obtained approval of the Grid Interconnection Study by the National Transmission and Despatch Company Limited ("NTDC") and was granted grid connectivity through NTDC's letter dated 7 April 2017. Consequently, BWE filed an application for grant of generation licence on 22 May 2018. A week later, BWE filed the petition for tariff determination on 31 May 2018.
4. The Authority, *vide* the Tariff Determination, approved the tariff on 20 February 2019 along with the terms and conditions mentioned therein. The Authority was pleased to note at Para 47, Section C, point 12 on page 23: "The company will have to achieve financial close within one year from the date of issuance of this determination. The tariff granted to the company will no longer remain applicable/valid, if financial close is not achieved by the company in the abovementioned timeline or its generation license is declined/revoked by NEPRA."
5. Despite fulfilling all legal qualifications and requirements as well as obtaining all requisite approvals by 30 May 2018, the grant of the generation license to BWE was inordinately delayed for more than 16 months. It is highlighted that under Regulation 9(4) of the National Electric Power Regulatory Authority Licensing (Application and Modification Procedure) Regulations, 1999 the Authority is mandated to issue its determination within a period of 28 days from the receipt of application. Unfortunately, our Client was granted generation license on 8 October 2019 in violation of the above requirement. It would be against the rules of natural justice and equity if the delays on part of state agencies and regulatory authorities were allowed to adversely affect the rights of our Client.
6. Meanwhile, on 27 February 2019, one week after the issuance of Tariff Determination, the Cabinet Committee on Energy issued a decision ("CCoE Decision"). The CCoE Decision set up three categories of projects. Category I included projects that were issued letter of support by the AEDB and Category II included projects that were granted tariff determination by the Authority; both Category I and Category II projects were allowed to proceed to financial close as per the Policy for Development of Renewable Energy for Power Generation, 2006 ("the RE Policy 2006"). Specifically, Para IX of the CCoE Decision clearly sets out that only projects that "**have not received a tariff from NEPRA**" shall be required to participate in competitive bidding. Since at the time of the CCoE Decision, BWE was **already** in

receipt of "a tariff from NEPRA", the case of BWE undoubtedly fell outside the scope of Category III projects which included projects for which tariff had not been determined by the Authority.

[CCoE Decision dated 27 February 2019 as notified on 4 April 2019 has been attached herewith as Annexure B]

7. In light of the foregoing, it is abundantly evident that CPPA - G and AEDB were obligated to engage in the negotiation and execution of the energy purchase agreement and other concession documents with our Client. However, in complete disregard of the mandate of the CCoE Decision, the applicable regulatory framework and the fundamental rights of our Client under the Constitution of the Islamic Republic of Pakistan, 1973 (the "**Constitution**"), CPPA - G and AEDB deliberately prevented BWE from achieving financial close within the timeframe set out in Tariff Determination.
8. Since the date of issuance of Tariff Determination, BWE has been assiduously engaged in achieving the requisite milestones and timelines under the project documents. To this end, the Project has completed the feasibility study, transportation study, topographical study, wind resource assessment study and grid interconnection study. BWE has conducted the Initial Environment Examination and obtained approval from the Sindh Environmental Protection Agency. BWE has also conducted bidding for EPC Contractor and signed EPC and O&M agreements. The generation license has also been granted to the Client as noted above. It is also important to highlight that the Project has completed the financing arrangements and a consortium of lenders has also approved the terms of the finance facilities for the Project. In achieving the aforementioned milestones, the Project has incurred significant costs amounting to approximately US \$2,468, 579. It is clear that BWE has met all the stipulated conditions under the project documents in order to proceed to financial close.
9. In the circumstances, it is requested that the Authority may kindly extend the validity period set out in Para 47, Section C, point 12 on page 23 of the Tariff Determination for further **6 months** for BWE to achieve financial close on the following grounds:

GROUND

Discriminatory Classification

- A. At the outset, it is submitted that the intransigence of AEDB and CPPA - G to process and execute the project agreement with our Client is a blatant violation of BWE's rights under Article 25 of the Constitution. Such refusal is contrary to well settled constitutional principles that similar treatment should be accorded to similarly circumstanced entities and is completely arbitrary and unreasonable. As set out in Para 6 above, it is manifestly clear that the true import of the CCoE Decision unambiguously entitles the Project to proceed to financial close.

Diligent Efforts

- B. It is further submitted that since the CCoE Decision, BWE has been consistently and diligently corresponding with the Ministry of Energy, CPPA – G and AEDB to be allowed to proceed to financial close. The Authority shall appreciate that BWE has requested the aforementioned authorities on thirteen separate occasions to be granted the permission to achieve financial close. It is a matter of grave concern and alarm that the state agencies and authorities have shown a callous disregard towards BWE's legitimate demands.

Legitimate Expectation and Past and Closed Transaction

- C. It is additionally submitted that the LOI was issued to BWE on 31 October 2012. Since the issuance of LOI, the Project has achieved milestones and expended significant amounts of money as stated in Para 8 above. Our Client has incurred these costs relying upon the representations made by CPPA – G and AEDB since the issuance of LOI and therefore in the legitimate expectation that the projects agreements will be executed. In this regard, it is submitted that the refusal to extend validity of tariff would be against the interests of justice. It is reiterated that BWE has been unable to achieve financial close entirely due to the delays caused by CPPA – G and AEDB.

6 Months Extension: Past Precedents

- D. We further highlight that the grant of a 6 months' extension in the validity period of the tariff would be in accordance with the recent precedent set by the Authority when it allowed a 6 months' extension to certain wind power projects to achieve financial close. In the interests of justice and fairness and in line with the constitutional principles under Article 25, we submit that the Authority grant the same extension to our Client.

PRAYER

10. In light of the foregoing, it is humbly requested that the Authority review the Tariff Determination and allow this Motion for Leave for Review based on the grounds set out above which constitute sufficient reasons. The Authority is also thereby requested to condone the delay in filing of the instant Motion for Leave for Review.
11. It is further submitted that the Authority be pleased to amend Para 47, Section C, point 12 on page 23 of the Tariff Determination to allow the Project a further period of 6 months to achieve financial close i.e. the Authority may kindly extend the validity of the tariff to 18 months from the Authority's Tariff Determination.

Yours sincerely
For and on behalf of

Raja Mohammed Akram & Co.

Raja Mohammed Akram & Co.

