



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.nepra.org.pk, E-mail: registrar@nepra.org.pk

No. NEPRA/TRF-UTB-2017/33182-84
September 30, 2020

Subject: **DECISION OF NATIONAL ELECTRIC POWER REGULATORY AUTHORITY IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW FILED BY JDW SUGAR MILLS LIMITED AGAINST THE DETERMINATION OF THE AUTHORITY DATED NOVEMBER 10, 2017 IN THE MATTER OF BAGASSE UPFRONT TARIFF, 2017 FOR NEW BAGASSE COGENERATION POWER PROJECTS**

Dear Sir,

Please find enclosed herewith the Decision of the Authority (05 pages) in the matter of motion for leave for review filed by JDW Sugar Mills Limited against the Determination of the Authority dated November 10, 2017 in the matter of Bagasse Upfront Tariff, 2017 for new Bagasse Cogeneration Power Projects for information.

Enclosure: As above

(Syed Safer Hussain)

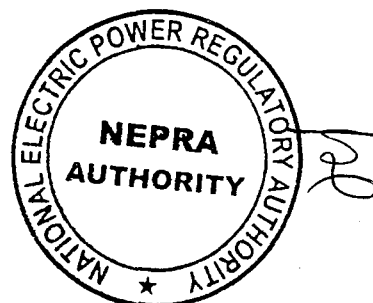
Secretary
Ministry of Energy (Power Division)
'A' Block, Pak Secretariat
Islamabad

CC:

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

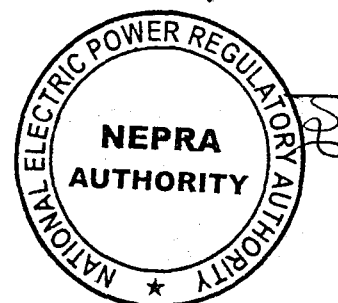
**DECISION OF NATIONAL ELECTRIC POWER REGULATORY AUTHORITY IN THE MATTER OF MOTION
FOR LEAVE FOR REVIEW FILED BY JDW SUGAR MILLS LIMITED AGAINST THE DETERMINATION OF THE
AUTHORITY DATED NOVEMBER 10, 2017 IN THE MATTER OF BAGASSE UPFRONT TARIFF, 2017 FOR
NEW BAGASSE COGENERATION POWER PROJECTS**

1. JDW Sugar Mills Limited ("JDWSML" or "the petitioner" or "the project company") dated November 20, 2017 filed motion for leave for review ("review motion") before National Electric Power Regulatory Authority ("NEPRA" or "the Authority") against Upfront Tariff for New Bagasse based Cogeneration Power Projects ("Projects") issued by NEPRA vide determination No. NEPRA/TRF-UTB-2017/18490-18492 dated November 10, 2017 ("Upfront Tariff, 2017" or "2017 tariff"). This review motion was filed under regulation 3(2) of NEPRA (Review Procedure) Regulations, 2009 ("Review Regulations") read with section 7(2) (g) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 ("NEPRA Act"). The petitioner requested the Authority to review the following in 2017 tariff:
 - Power Evacuation Scheme
 - Payment of Fuel During Season
 - Plant Factor
 - Penalty Mechanism
 - Project Cost and Efficiency
 - Fuel Pricing and Indexation Mechanism
 - Debt to Equity Ratio
 - Internal Rate of Return
 - Withholding Tax on Dividend
 - Cost of Debt
 - Working Capital
 - Operation and Maintenance Cost
 - Financial Close and Construction Period
2. The Authority decided to admit the said review motion for further proceedings. Hearing in this regard was scheduled on January 02, 2018; however, that was adjourned to a later date. Afterwards the hearing was fixed and adjourned multiple times upon the request of the petitioner and then finally was held on April 26, 2018. Notices were sent to relevant stakeholders and parties to the proceedings of the Upfront Tariff, 2017.



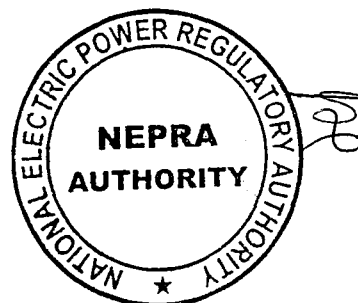
3. During the hearing on April 19, 2018, JDWSML presented its case before the Authority. Central Power Purchasing Agency (Guarantee) Limited ("CPPAGL") also offered its comments with respect to the contentions of JDWSML. The brief of the submissions of JDWSML and comments of CPPAGL relevant to the issues are discussed below:

- i. Power Evacuation Scheme: JDWSML submitted that Upfront Tariff, 2017 specifies a merit order dispatch of energy from Projects above 55% which is in contravention of Government of Pakistan Policy for Development of Renewable Energy for Power Generation, 2006 ("RE Policy, 2006") and Framework for Power Cogeneration 2013 (bagasse/biomass) ("Framework, 2013"). CPPAGL supported the evacuation scheme approved in the Upfront Tariff, 2017 determination and submitted that the energy up-to 55% plant factor guarantees all the costs allowed to the power producer including returns and cost of debt. Therefore, the evacuation scheme works for the benefit of both consumers and the power producers.
- ii. Payment of Fuel during season: Upfront Tariff, 2017 specifies that no variable payments shall be made for energy made available by the Project but not evacuated by the power purchaser. JDWSML submitted that there should be compensation of variable component of tariff without dispatch during the season as the Projects must operate in the season (and accordingly consume bagasse) whether or not power is dispatched by the power purchaser. It also submitted that the arrangement as decided by the Authority is contrary to the RE Policy, 2006 and Framework, 2013 as well as to the facts and commercial realities.
- iii. Plant Factor: Upfront Tariff, 2017 specifies a plant factor of 55%. It submitted that apart from in-house supply of bagasse, which is consequential to the cyclical production of sugarcane, there is no formal and constant supply. The petitioner also stated that outsourcing of bagasse shall be difficult in view of the upcoming bagasse based projects hence a plant factor of 55% will be difficult to achieve. It also submitted that mixing of biomass fuels to generate power is highly technical and has not been successfully carried out in Pakistan. CPPAGL during the hearing submitted that the plant factor in Haryana is up-to 60%. CPPAGL also submitted that the petitioner is saying that achieving a plant factor of 55% is very difficult while its projects namely JDWSML Unit-II and Unit-III have achieved plant factors of 75%-83%.



- iv. Penalty: JDWSML submitted that Upfront Tariff, 2017 prescribes a mechanism of penalty for power producer in case of default in making the declared capacity available which is in contravention of RE policy, 2006.
- v. Project cost and Efficiency: The petitioner submitted that Upfront Tariff, 2017 specifies a project cost of USD 0.9966 million per MW with an efficiency of 28.37%. It stated that the allowed level of efficiency does not match with the project cost that has been allowed in 2017 tariff.
- vi. Fuel pricing and Indexation mechanism: The petitioner submitted that the Authority has delinked bagasse pricing from Imported Coal in Upfront Tariff, 2017 which should be reversed. Further, it submitted that a standalone indexation mechanism for adjustment of bagasse prices has been introduced which is also not well founded. CPPAGL submitted that the fuel pricing and indexation mechanism should not be linked with imported alternative fuel. CPPAGL also submitted to keep a window open in order to review the fuel pricing and indexation mechanism in future.
- vii. Debt Equity Ratio: JDWSML has submitted that the Authority has changed the proposed debt equity structure of 75:25 to 80:20 without stating any reason. All other tariffs determined by the Authority after 2013 for wind, solar, Liquefied Natural Gas ("LNG") and small hydro projects are based on a debt to equity ratio of 75:25.
- viii. Internal Rate of Return: JDWSML has submitted that the Authority has reduced the Internal Rate of Return to 15% in the Upfront Tariff, 2017 which needs to be amended as the same is on the lower side in view of the prevailing market conditions. It submitted that IRR for Projects should be 19-20% as the Authority has allowed an IRR of 18% in the case of Thar coal which is an indigenous resource like bagasse.
- ix. With Holding Tax on dividend: JDWSML requested to allow the 7.5% WHT on dividends as the IRR of 15% will further reduce if the WHT on dividends is not allowed.
- x. Cost of Debt: JDWSML submitted that the Authority has specified in Upfront Tariff, 2017 to exhaust the State Bank of Pakistan ("SBP") refinance scheme prior to obtaining commercial financing. The petitioner submitted that SBP refinance scheme effectively results in financial costs more than 6% due to certain procedural delays. JDWSML also submitted that the Authority should confirm the percentages of foreign and local debt from the SBP and should identify the limits to be financed through SBP and/or commercial

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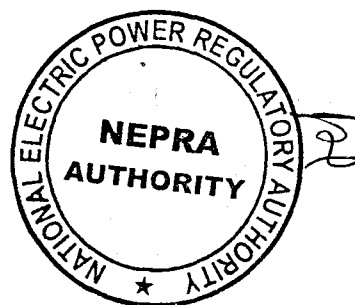
banks. JDWSML has further submitted that local financing at KIBOR plus 1.75% is way low. Further, the foreign financing at LIBOR plus 4.25% is very low as the projects are normally financed at LIBOR plus 4.5% and 4.75%.

- xi. Working Capital: JDWSML submitted that working capital is required for financing receivables from the CPPAGL as well as to finance advance payments of bagasse to be purchased from outside sources and requested to include that cost in Upfront Tariff, 2017.
- xii. Operation and Maintenance Cost: JDWSML requested the Authority to revise the Operation and Maintenance (O&M) costs in view of the increase in plant factor to 55% and handling costs associated with bagasse. According to JDWSML, the Authority should allow such costs at 4% of the EPC cost instead of 3% as mentioned in the determination.
- xiii. Financial Close and Construction Period: JDWSML submitted that the timeline specified for financial close of one year in Upfront Tariff, 2017 is less in view of the complexities associated with foreign financing and local financing. It further submitted that signing of EPA is also beyond control of the developers. It requested for a period twelve (12) months to achieve the financial close. Further, JDWSML requested to enhance the construction period to twenty four (24) months.

4. The matter was considered by the Authority multiple time but delayed due to litigations filed by CPPAGL in other bagasse related cases. During the process, it was considered that the hearing held on April 26, 2018 was conducted by the two members of the existing Authority. Hence, it was decided to provide the petitioner another opportunity of hearing so that the current Authority members can decide the matter after listening to the grounds of the petitioner.

5. Accordingly, the hearing on the subject matter was first scheduled for March 16, 2020 but was postponed due to other commitments of the Authority. Later, the hearing was scheduled for June 16, 2020, however, the same was adjourned on the request of the petitioner. The hearing was then fixed for August 18, 2020. Notices of the hearing were issued to the petitioner and relevant stakeholders on August 06, 2020. It was communicated to JDWSML that this will be the last opportunity of hearing and in case the same is not attended by the petitioner, the Authority shall proceed on the subject case as per the available record. However, the petitioner did not attend the hearing scheduled for August 18, 2020.

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Analysis and Decision of the Authority

6. The Authority has considered all the arguments put forth by the petitioner in the review motion. Also, the submissions advanced by CPPAGL were given due deliberation. The Authority noted that all the bases to decide the parameters of Upfront Tariff, 2017 were explained in detail in the determination. The petitioner has not been able to put forth any new and important matter of evidence or any other sufficient reasons, as required under the relevant law, which warrant the review of Upfront Tariff, 2017, hence, the Authority has decided not to change the same.

Order

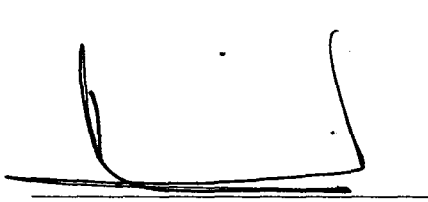
7. The Authority considers that the subject review motion does not require any change in Upfront Tariff, 2017. In view thereof, the instant review motion is hereby disposed of as dismissed.

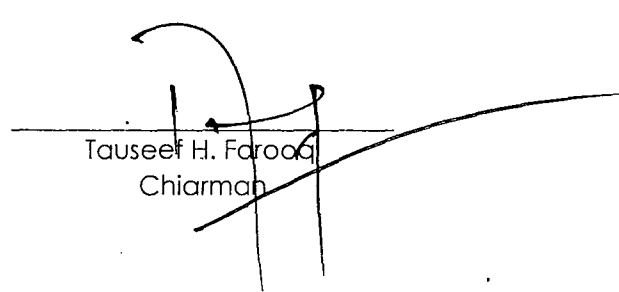
AUTHORITY

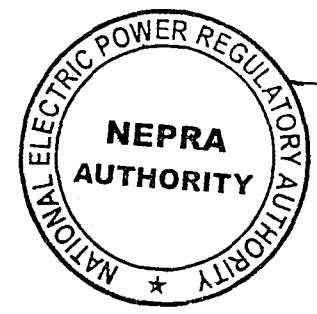

(Saif Ullah Chattha)
Member 15-9-2020

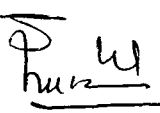

(Rafique Ahmed Shaikh)
Member


(Rehmatullah Baloch)
Member


(Eng. Bahadur Shah)
Member


Tauseef H. Farooq
Chairman




30/9/20