
BEFORE
THE THAR COAL AND ENERGY BOARD

MOTION FOR LEAVE FOR REVIEW

PURSUANT TO
ENABLING PROVISIONS OF THAR COAL AND ENERGY BOARD ACT, 2011,
READ WITH ENABLING PROVISIONS OF
RULES & REGULATIONS MADE THEREUNDER, INCLUDING
THAR COAL TARIFF DETERMINATION RULES, 2014

ON BEHALF OF

SINDH ENGRO COAL MINING COMPANY LIMITED

IN RELATION TO THE 'DETERMINATION OF THAR COAL & ENERGY BOARD IN THE
MATTER OF REFERENCE CONTRACT STAGE TARIFF FOR SINDH ENGRO COAL MINING
COMPANY MINE FOR DEVELOPMENT OF MINE EXPANSIONS TO 7.6 MTPA
AT BLOCK II THAR COALFIELDS, DISTRICT THARPARKAR, SINDH, PAKISTAN

DATED: OCTOBER 19, 2018

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PETITIONER

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SECTION 1
INTRODUCTION



1. INTRODUCTION

1.1. DETAILS OF THE PETITIONER

1.1.1 NAME AND ADDRESS

SINDH ENGRO COAL MINING COMPANY LIMITED

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1.1.2 AUTHORIZED REPRESENTATIVES OF SINDH ENGRO COAL MINING COMPANY LIMITED

- SHAMSUDDIN A. SHAIKH
CHIEF EXECUTIVE OFFICER
- MOHAMMAD SAQIB
CHIEF FINANCIAL OFFICER

1.2 LIST OF ABBREVIATIONS

BCM	Bank Cubic Meters
BoD	Board of Directors
CEDD	Coal Energy and Development Department
CSA	Coal Supply Agreement
DFS	Detailed Feasibility Study
EPC	Engineering, Procurement and Construction
GoS	Government of Sindh
HSE	Health Safety and Environment
ICC	In-pit Coal Crushing and Conveying System
JV	Joint Venture Company
KIBOR	Karachi Interbank Offer Rate
LBOD	Left Bank Outfall Drainage Canal
LIBOR	London Interbank Offer Rate
MDO	Mine Developer and Operator
Mt/a	Million Tons per Annum
NEPRA	National Electric Power Regulatory Authority
NIC	National Insurance Company
O&M	Operations and Maintenance
PKR	Pakistani Rupees
PMC	Project Management Cost
PPIB	Private Power & Infrastructure Board
SCA	Sindh Coal Authority
SECMC	Sindh Engro Coal Mining Company Limited
SECP	Securities and Exchange Commission of Pakistan



SEPA	Sindh Environmental Protection Agency
SIDA	Sindh Irrigation and Drainage Authority
TCEB or Authority	Thar Coal and Energy Board
USD	United States Dollar

1.3 DEFINITIONS

- 1.3.1 Unless defined herein, or if the context otherwise requires, all capitalized terms used in this 'Motion for Leave for Review' (this **Leave for Review**) shall have the meaning ascribed to the term in the '*Petition for Reference Coal Tariff Determination for Contract Stage Tariff Submitted to Thar Coal and Energy Board For Open Cast Lignite Mining Project in Thar Block-II, District Tharparkar, Sindh for Development & Operation of Mine Expansion to 7.6 Mt/a Submitted by Sindh Engro Coal Mining Company Limited on 28th December 2017*' (the **Tariff Petition**).

1.4 COMPLETENESS

- 1.4.1 For the sake of brevity, the contents of the subject Tariff Petition may be deemed, and are to be read as, an integral part of this Leave for Review.

*For your ready reference, the Tariff Petition is attached herewith as **Annexure A (Tariff Petition)**.*



SECTION 2
FACTS



2. FACTS

2.1 PROJECT BACKGROUND

- 2.1.1 **SINDH ENGRO COAL MINING COMPANY** is a joint venture between the Government of Sindh, Engro Energy Limited (formerly known as Engro PowerGen Limited) (**EEL**), affiliates of EEL and certain other private investors. The joint venture has been established to construct, develop, own and operate the Project in District Tharparkar, Sindh, Pakistan.
- 2.1.2 The Project is a landmark project that offers a unique proposition for Pakistan, which aims to not only address the power requirements in medium to long term duration, but also bring energy security to the country by saving precious foreign exchange in the current economic climate.
- 2.1.3 As a result of the implementation of the Project, Thar Coal is expected to not only produce cheap power but also provide a hedge on inflation, as the price will be regulated by the Authority, thus saving billions of dollars in foreign exchange. Furthermore, the development of the Project and the related Independent Power Producers (**IPPs**) will contribute to economic and social uplift of the Thar area (comprising of Tharparkar, Umarkot and Mirpurkhas), which presently ranks lowest on all socio-economic development indicators in Sindh.
- 2.1.4 In Phase I of the Project, a 3.8 Mt/a (which will support 2x 330MW IPPs) open cast lignite mine will be set-up by SECMC in Thar Block II with a construction period of forty (42) months after Financial Close (which Financial Close was achieved in April 2016). Also, during Phase I, a coal supply agreement for 30 years was signed between SECMC and Engro Powergen Thar (Private) Limited (the **Phase I IPP**), for setting up a mine-mouth for a 2x330MW IPP at Thar Block II, for the Phase I IPP to utilize the lignite mined by SECMC.
- 2.1.5 In Phase II of the Project, the size of the Mine is to be expanded to 7.6 Mt/a in order to serve two (2) additional power plants to be located next to the Mine. The offtake arrangements for the additional 3.8 Mt/a are set out as follows:
- (a) SECMC entered into thirty (30) year coal supply agreements with two (2) separate coal purchasers (i.e. Thar Energy Limited (**TEL**) and ThalNova Power Thar (Private) Limited (**TNPTL**, together with TEL, the **Phase II IPPs**)) for the off-take of 1.9 Mt/a each;
 - (b) as per the timelines agreed under the respective coal supply agreements, TEL requested coal off-take within thirty (30) months of financial close and TNPTL requested a timeline of thirty-three (33) months of financial close.



2.2 DEVELOPMENT OF THE TARIFF

- 2.2.1 Being a mine leaseholder in terms of the Rules, the Petitioner sought, and was granted, a tariff in respect of the Project *vide* the Phase I Contract Stage Tariff Determination. Accordingly, the Petitioner is in process of pioneering the first Thar indigenous coal project in Pakistan. Phase I achieved its Financial Close in April 2016 and since has successfully removed ~101 million BCM of overburden (i.e. approximately ninety two percent (92%) of the total overburden to be removed for the construction of the Mine). The overall progress of the Project is four (4) months ahead of schedule and the Petitioner expects to complete the Project by June 2019 against the earlier expected completion of October 2019.
- 2.2.2 To enable the Financial Close of the Project (having capacity of 3.8 Mt/a), TCEB notified the Phase I Contract Stage Tariff Determination (for the 3.8 Mt/a capacity) as well as a composite tariff for a 3.8 Mt/a mine, which will be expanded to the 6.5 Mt/a Mine. The Phase I Contract Stage Tariff Determination required the Petitioner to expand the Mine to a capacity of 6.5 Mt/a within eighteen (18) months of Phase I Commercial Operations Date. A provision of extending the timeline by another six (6) months due to an impact of delay in downstream off-take agreements was also allowed. However, given the revised scale of the Phase II IPPs, the capacity of the power projects will now be expanded to 7.6 Mt/a.
- 2.2.3 Accordingly, SECMC, through the detailed Tariff Petition, requested TCEB to determine the *Reference (Contract Stage) Tariff* for expansion of SECMC's Mine from a capacity of 3.8 Mtpa to 7.6 Mtpa (the **Phase II Contract Stage Tariff**).
- 2.2.4 In the endeavour to assist the Authority in reaching a judicious and efficacious determination of the Phase II Contract Stage Tariff, SECMC duly submitted all relevant data, information and comments required by TCEB.
- 2.2.5 Thereafter, TCEB, pursuant to Rule 10(5) of the Thar Coal Tariff Determination Rules, 2014 (the **Rules**) issued its '*Determination of TCEB In The Matter of Reference Contract Stage Tariff for Sindh Engro Coal Mining Company Mine for Development of Mine Expansions to 7.6 MTPA at Block II Thar Coalfields, District Tharparkar, Sindh, Pakistan*, bearing reference No. TCEB/Registrar/2-1/2014 (the **Tariff Determination**).



SECTION 3
GROUNDS FOR MOTION FOR LEAVE FOR REVIEW



3. GROUNDS FOR MOTION TO LEAVE FOR REVIEW

3.1 NOW, THEREFORE, the grounds on which this Leave for Review are submitted are stated in this Section 3.

3.2 GROUNDS GIVING RISE TO THE PETITIONER'S INTEREST UNDER RULE 4(5)(A) OF THE RULES

3.2.1 The Petitioner, being a mine leaseholder in the Thar Coalfield, interested in determination of a tariff in respect of the Project, in terms of Rule 4(1) of the Rules, filed the Tariff Petition with TCEB to seek the Phase II Contract Stage Tariff.

3.2.2 Upon issuance of the Tariff Determination, the Petitioner, being aggrieved of certain conclusions and decisions drawn by TCEB, and desirous of seeking certain clarifications on matters stated in the Tariff Determination seeks that the Authority may review the afore-stated determination.

3.2.3 Accordingly, pursuant to the applicable laws of Pakistan, including the Thar Coal and Energy Board Act, 2011 (the **Act**) and the rules and regulations made thereunder (including Rule 10(8) of the Rules), the Petitioner, hereby submits, for the Authority's kind and gracious consideration, this Leave for Review in respect of the Tariff Determination for the Project.

3.2.4 This Leave for Review is being submitted with the required fees for a motion for leave for review (as per Part I and Part II, Schedule I, of the Rules) through a bank draft/pay order in the amount of PKR 2,500,000/- (Pakistani Rupees two million five hundred thousand only) dated October 17, 2018 drawn in favour of the Authority.

3.3 GROUNDS UNDER RULE 4(5)(B) OF RULES: THE TARIFF STANDARDS UNDER THE APPLICABLE RULES

3.3.1 At the outset it is pertinent to highlight that the underlying objective for this Leave for Review is to ensure the ethos of the 'cost plus' tariff regime, as enshrined in Rule 11(5) of the Rules, is reflected in the Phase II Contract Stage Tariff.

3.3.2 We take this opportunity to highlight that Rule 11(5) of the Rules requires, *inter alia*, the following standards to be upheld (the **Tariff Standards**):

(a) Under Rule 11(5)(a) of the Rules:

"to allow mine leaseholders the recovery of any and all costs prudently incurred to meet the demonstrated needs of their customers".

[Emphasis Added]

It is humbly submitted that the Petitioner shall demonstrate *vide* this Leave for Review where the costs to be incurred by it have not been incorporated in the



Tariff Determination, and moreover the evidence in respect of prudence of the same.

- (b) Under Rule 11(5)(d) of the Rules:

“to include a mechanism to allow mine leaseholders a benefit from, and penalties for failure to achieve, the efficiencies in the cost of providing the service and quality of service”.

[Emphasis Added]

It is humbly submitted that the framework of the Rules envisions that the mine lease holders shall benefit from achieving efficiencies. Given that the Tariff Petition was submitted on the basis of increased capacity of the Mine, which would achieve economies of scale, and eventually benefit the consumer, it is pertinent that the same be reflected in the Tariff Determination. The Petitioner would like to submit that in certain aspects, the benefit of such efficiencies have not been given to the Petitioner and instead there are penalties in place for achieving such efficiencies. Specific examples in this regard shall be highlighted further in the detailed technical grounds.

- (c) Under Rule 11(5)(h) of the Rules:

“to be comprehensible, free of misinterpretation and shall state explicitly each component thereof”.

In accordance with the aforementioned Tariff Standards, the Petitioner shall humbly request certain clarifications in respect of the decisions made under the subject Tariff Determination for the sake of comprehensiveness and clarity.

3.4 FURTHER GROUNDS

- 3.4.1 Further detailed technical, financial and legal grounds are submitted herein below for the Authority’s kind consideration.



SECTION 4
CAPITAL STRUCTURE – DEBT TO EQUITY RATIO



4. CAPITAL STRUCTURE - DEBT TO EQUITY RATIO

4.1 The submissions herein below are in reference to section 3 (*Capital Structure – Debt to Equity Ratio*) of the part entitled ‘Material Aspects of the Petition – Analysis & Decisions’ of the Tariff Determination.

4.2 SUBMISSIONS CONTAINED IN THE PETITION

4.2.1 Under the Tariff Petition, the Petitioner requested that it be allowed to raise the Debt to Equity cap of 75:25 to 70:30. This was requested on the premise that the Project is being financed under a ‘Sovereign Guarantee’ from the Government of Pakistan (the **Sovereign Guarantee**) of USD 700 million. However, due to prevailing macroeconomic conditions it is likely that additional funding would be required to meet the Project Cost, which the Petitioner may be required to provide through equity, with a proposed overall cap of thirty percent (30%).

4.3 TCEB’S OBSERVATION

4.3.1 The Authority has denied this request based on the premise of “*insufficiency of updated data*” and that the plea is based on “*guesstimates and assumptions*” and, therefore, it cannot be ascertained that such a requirement exists at this point in time. Moreover, the Authority is of the view that the potential savings in 3.8 Mt/a capacity (including due to shorter construction period, thus saving on IDC, ROEDC, operation costs etc.) will ascertain whether additional funding will be required. As a result, the Authority has determined that maximum allowed equity for the Project will remain capped at twenty-five percent (25%).

4.4 SECMC’S SUBMISSIONS

4.4.1 The Petitioner submits that it was granted a Sovereign Guarantee of USD 700 million by the Government of Pakistan, of which USD 200 million was issued in favor of Chinese lenders and PKR 52 billion (equivalent to USD 500 million at the then prevailing exchange rate of PKR 104) was issued in favor of local lenders. It should be noted that the local loan amount was fixed in PKR, as per requirements of the Ministry of Finance and therefore, any impact of any exchange rate variation directly impacts the funding available for the Project.

4.4.2 Recognizing the savings accruing in the Project based on a shorter construction period, the Petitioner has, in the interest of prudence and efficiency, negotiated with its lenders to allow it to allocate the savings accruing for Phase I to fund the expansion of the Mine to Phase II’s 7.6 Mt/a capacity. As a result, SECMC has been allowed to utilize up to PKR 17.35 billion, to meet the funding requirement for expansion. The Petitioner was allowed to use these funds for expansion based on the condition that its overall debt requirement remains capped at USD 700 million (for Phase I and II combined).

4.4.3 As the Authority would be aware, the macroeconomic conditions mentioned hereinabove are not a matter of “*assumptions*” given that the PKR/USD exchange rate has plummeted from PKR 104 (in December 2015) to the current exchange rate of PKR 134 (as of the date of this Leave for Review), and which may further devalue, to the detriment of the available finances in respect of the Project.



*Evidence in respect of the aforementioned exchange rate changes has been attached herewith as **Annexure B (Exchange Rate Evidence)**.*

4.4.4 However, due to the recent devaluations and significant pressure on the PKR/USD parity, the Sovereign Guarantee backed amount of PKR 17.35 billion will not be sufficient to finance the Project Cost for expansion. To cover for the above scenario, the Petitioner has arranged an incremental facility through local banks totalling PKR 3.5 billion (the **Bridge Facility**). As this facility is not backed by Sovereign Guarantee, the banks have offered a spread of two point five percent (2.5%) over KIBOR, which is in line with the spread allowed by NEPRA in the latest Upfront Tariff for Thar Coal based IPPs (the **NEPRA Coal Tariff**). The lenders of the Project have only allowed the Petitioner to utilize this Bridge Facility once all of the 'cheaper' Sovereign Guarantee backed facility has been utilized and overall debt cap of USD 700 million has not been reached.

*Relevant extract from the aforementioned NEPRA Coal Tariff are attached herewith as **Annexure C (Extract of NEPRA Determination)**.*

4.4.5 Based on the above, the Petitioner seeks to implement the following combined funding plan for the financing of Phase I and Phase II:

- USD 700 million 'debt'; and
- Remainder of the Project Cost to be funded through 'equity'.

4.4.6 To fund the debt requirement, the Petitioner has the following sources of funding available:

- USD 200 million Sovereign Guarantee backed debt from Chinese lenders;
- PKR 52 billion Sovereign Guarantee backed Debt from local lenders; and
- PKR 3.5 billion Non- Sovereign Guarantee Debt from local lenders.

4.4.7 The Petitioner undertakes that incremental equity beyond twenty-five percent (25%) will only be injected once debt, up to USD 700 million, has been injected into the Project and no additional debt is available to fund remaining Project Costs. Until such time, the Petitioner will continue to maintain the debt: equity ratio of 75:25. This provision of additional equity (which is committed in USD) will provide a hedge to petitioner against further deterioration of macro environment with respect to further exchange rate devaluation.

4.4.8 It is pertinent to highlight that the respective financial institutions, providing the said debt, have already provided their 'firm approvals' in respect of the debt/equity structure discussed above. Attempting to change the aforementioned structure will result in protracted discussions and negotiations with the financial institutions and result in delays to the Financial Closing of Phase II. As the Authority is well aware, a delay in the Financial Closing will eventually lead to a further delay in Phase II achieving COD. It is only after achieving COD for Phase II that the overall tariff of the Project can be reduced, in the benefit of the consumers.

4.5 RELIEF SOUGHT



4.5.1 In light of the above, the Petitioner requests:

- (a) it be allowed to finance the Project with maximum equity of thirty percent (30%) with the condition that a debt:equity ratio shall be maintained at 75:25 until debt equivalent to USD 700 million has been utilized;
- (b) allow a spread of two point five (2.5%) over KIBOR for any non-Sovereign debt arranged by the Petitioner.



SECTION 5
UPFRONT EQUITY REQUIREMENT



5. UPFRONT EQUITY REQUIREMENT

5.1 The submissions herein below are in reference to item (vii) of the General Conditions of the part entitled 'Coal Tariff Determination Order' of the Tariff Determination.

5.2 SUBMISSIONS CONTAINED IN THE PETITION SUBMISSIONS

5.2.1 SECMC had requested to inject thirty percent (30%) upfront equity followed up by pro-rata drawdowns of debt and equity.

5.3 TCEB'S OBSERVATION

5.3.1 The Tariff Determination has been determined on the basis of upfront equity drawdowns up to a maximum of twenty-five percent (25%), followed by pro-rata drawdowns of debt and equity.

5.4 SECMC'S SUBMISSION

5.4.1 In the Phase I Contract Stage Determination TCEB allowed thirty-five percent (35%) upfront equity. On this basis and expectation, the Petitioner negotiated the financial structure with the financiers on the basis of thirty percent (30%) upfront equity.

5.4.2 As submitted hereinabove, the Petitioner is in the final stages of finalization of documentation to achieve Financial Close for Phase II and all lenders have already obtained their 'final approvals' at this stage. As elaborated in paragraph 4.4.9 above, any change at this stage will potentially delay the Financial Close.

5.5 RELIEF SOUGHT

5.5.1 In light of the above, the Petitioner requests that it be allowed to inject upfront equity up to thirty percent (30%) in the Project in the manner stated in Section 5 herein above.



SECTION 6
PRE-COD REVENUES



6. PRE-COD REVENUES

6.1 **The submissions herein below are in reference to section 7 (Pre-COD Revenues) of the part entitled ‘Material Aspects of the Petition – Analysis & Decisions’ of the Tariff Determination).**

6.2 SUBMISSIONS CONTAINED IN THE PETITION

6.2.1 The Petitioner had requested that any revenue arising from sales of coal prior to COD (**Pre-COD**), at the time of Financial Close of Phase II expansion, may be used to net-off the Asset Replacement Reserve Requirement post COD. This is in place of using such Pre-COD proceeds to fund capital expenditure (**CAPEX**) for Phase II expansion.

6.3 TCEB’S OBSERVATION

6.3.1 TCEB has refused this request by the Petitioner and maintained its earlier decision of using Pre-COD revenues for reducing ‘CAPEX’ requirements for the Project’s expansion on the basis that it *“does not see any conflict in timelines of revenue generation and funds requirement for mine expansion.”*

6.4 SECMC’S SUBMISSION

6.4.1 At the outset, the Petitioner takes this opportunity to clarify the timelines for development of the Project that illustrate a disjoint between the timelines of Pre-COD revenue generation and CAPEX funds required for the Phase II expansion.

6.4.2 The Petitioner submits that, while the revenue from any Pre-COD sale will materialize during the construction period of Phase II, as per the current timelines, the Petitioner will be achieving Financial Close prior to materialization of revenue from the Pre-COD sales from Phase I.

6.4.3 At this stage, any Pre-COD sale revenues are uncertain as, under the relevant coal supply agreements, the off-takers are not obligated to procure coal from the Petitioner prior to COD.

6.4.4 On the other hand, the Project Costs in respect of Phase II are certain and must be furnished in a timely manner. Moreover, as a condition precedent to Financial Close, the Petitioner is required to demonstrate that it has firm commitments for all of the funds required to complete the Project. As a result, Pre-COD sales are not included in this calculation of available funds, due to which the Petitioner is required to arrange the complete funding through other sources.

6.4.5 Furthermore, in project finance transactions of this nature, the account waterfalls are controlled by lenders. In this scenario, the account structure of the Phase I Project is separate from Phase II, until the Phase II expansion achieves COD. This means that revenue from Pre-COD sales (from the 3.8 Mt/a Mine) will only flow into the accounts for 7.6 Mt/ after the completion of construction and COD of Phase II i.e. at least nine (9) to twelve (12) months after Phase I COD. Therefore, given the nature of ‘project finance’ model transactions, it will not be possible for the Petitioner to practically manage and control these cash flows even if these revenues are included as part of the funding plan for Phase II expansion.



- 6.4.6 It is also important to note that in terms of tariff for consumers, the impact of both approaches is similar. Allowing Pre-COD sales to offset Asset Replacement Component, will add to the competitiveness of Thar Coal in its initial years when the tariff is higher as the mine is yet to achieve scale. The benefit to the consumer associated with this sale will also start accruing at the start of 3.8 Mt/a mine operations instead of the COD of 7.6 Mt/a mine which will occur at least 24 months after the first Phase COD.

6.5 RELIEF SOUGHT

6.5.1 In light of the above, it is requested that:

- (a) **SECMC may be allowed to apply any Pre-COD revenues towards the Asset Replacement Reserve for Phase I and not towards the CAPEX costs of Phase II; and**
- (b) **similarly, once Phase II achieves COD, any Pre-COD sale shall apply towards the Asset Replacement Reserve for expanded Mine.**



SECTION 7
CONCEPT OF TWO COD'S



7. CONCEPT OF TWO COD'S

7.1 **The submissions listed below are in reference to section 6 (*Concept of Two COD's*) of the part entitled 'Material Aspects of the Petition – Analysis & Decisions' of the Tariff Determination)**

7.2 SUBMISSIONS CONTAINED IN THE PETITION

7.2.1 The Petitioner submitted that it will serve the Phase II IPPs, which are being developed by two separate legal entities, whose management and respective project development timelines are beyond the Petitioner's control.

7.2.2 Based on the existing tariff structure, a delay in completion of either one of the Phase II IPPs will result in the Petitioner, practically, being unable to declare COD for Phase II, even if it has completed the expansion. As a result, as per the current Tariff structure, the Petitioner will sell coal at the higher price (equivalent to Phase I Tariff) until both Phase II IPPs have achieved 'Commercial Operations Date' under their respective power purchase agreements (in each case, referred to herein as the **IPP COD**).

7.2.3 Given that the aforesaid structure results in a higher tariff for the consumers, during the interim period (i.e. between IPP COD of the first Phase II IPP and second Phase II IPP), the Petitioner requested that it be allowed to achieve COD, upon completion of construction of Phase I, based on the number of IPPs that are ready to achieve IPP COD at that point. For example, in case only one IPP can achieve IPP COD until that point, the Mine be allowed to capitalize cost based on a capacity of 5.7 Mt/a. This will result in the Mine immediately being able to lower its tariff, which will be applicable to, and benefit, the whole basket of Thar Coal based IPPs.

7.3 TCEB'S OBSERVATION

7.3.1 The Authority has stated that the plea "*is unusual for cost plus tariff regime...and the mine development cannot be segregated for 5.7MTPA & 7.6 MTPA production streams.*" Moreover, TCEB has not allowed the above request as they find the "*prospective variations in production outputs stem from market risk*" for which adequate returns are granted in the policy structure and the associated incentives.

7.3.2 Furthermore, TCEB stated that SECMC is "*not fully firmed up with respect to the off-taker's schedules...*" and this plea may be taken up at a later stage.

7.4 SECMC'S SUBMISSIONS

7.4.1 The Petitioner takes this opportunity to again highlight that a delay in the completion of one IPP will negatively impact the consumer, as it will result in the Petitioner being unable to declare COD, despite having completed the construction of the entire Phase II Mine. As a result of the same, the higher Phase I tariff will remain prevalent until all Phase II IPPs have achieved IPP COD.

7.4.2 The Petitioner takes this opportunity to clarify that SECMC is not seeking a segregation of costs between 5.7M Mt/a and 7.6 Mt/a (as stated by the Authority in the Tariff Determination). Our underlying submission is that once the CAPEX for the



whole of Phase II has been made, and there is a scenario where one of the Phase II IPPs has not completed construction (and thus are not in a position to offtake from SECMC), that the Project be permitted to divide the costs, and revise the Tariff, on the basis of off-take by the one Phase II IPP which is in a position to achieve IPP COD. This will result in lowering the applicable tariff for the consumer.

- 7.4.3 The Petitioner acknowledges the comment made by TCEB in respective of the fact that the “*prospective variations in production outputs stem from market risk*”. However, this comment would be applicable where the Mine is in production and in such scenario the market risk is an acknowledged risk. However, where the Mine is constrained from achieving COD, on account of non commissioning of the off-taker, the scenario is not a common scenario of ‘variation in production output’ due to market demand, but instead a matter of timelines of related projects. In this case the emphasis should be on reducing the risk and impact of delay for the consumer.
- 7.4.4 The Petitioner acknowledges that the requested concept of ‘two COD’ has no precedence in Pakistan. However, it is to be noted that the only precedence of the cost-plus regime available in Pakistan is that of IPPs where capacity enhancements under the same SPV do not take place. Any capacity enhancements in IPPs are undertaken by separate SPVs. However, since mine capacity enhancement takes place under the same SPV (due to the nature of mining projects), the regulatory regime needs to evolve to address specific issues faced by the mining industry.
- 7.4.5 The Petitioner acknowledges that the TCEB has allowed it to raise this matter at a later stage in the event such eventuality has occurred. However, it is submitted that allowing the ‘Two COD’ concept at this stage will also aid the timely financial close for both Phase II and the Phase II IPPs. The reason for this being that both the Project and Phase II IPP lenders consider these projects to be integrated. This partly stems from the fact that under the current design of the Tariff, the debt repayment of the Mine is distributed among all IPPs. As a result, lenders only allow the Mine to declare Financial Close once both IPPs have achieved financial close, which means that even if one IPP is facing a delay in achieving financial close, the whole expansion is delayed.
- 7.4.6 However, if the Petitioner is able to show cost recovery based on one IPP (Mine capacity 5.7 Mt/a), it will be allowed to declare Financial Close, based upon financial close of the first Phase II IPP. Thus, this will not only benefit the rate payer in the quantum of USD 3.5 million per month but shall also expedite the development of Thar Block II.

7.5 RELIEF SOUGHT

- 7.5.1 **In light of the above, the Petitioner requests that TCEB allows the Petitioner to declare COD after completion of its construction period for Phase II, even if one of the two off-takers achieves IPP COD prior to such date. Once the second Phase II IPP achieves IPP COD, the Petitioner will request TCEB to revise the capacity of the Mine by adjusting the denominator to the revised capacity of 7.6 Mt/a.**



SECTION 8
ADJUSTMENT IN TARIFF DUE TO VARIATIONS IN HEATING
VALUE OF LIGNITE



8. ADJUSTMENT IN TARIFF DUE TO VARIATIONS IN HEATING VALUE OF LIGNITE

8.1 The submissions listed below are in reference to section 8 (Adjustment in Tariff due to Variations in Heating Value of Lignite).

8.2 SUBMISSIONS CONTAINED IN THE PETITION

8.2.1 The Petitioner requested that the Tariff be adjusted on account of variations in the 'heating value of lignite' which was based on the most recent coal quality testing conducted by its consultants in Pakistan and Germany.

8.2.2 As part of the Phase I Contract Stage Tariff Determination TCEB had determined the Tariff on heating values of 11.3 MJ/Kg for Year 1- 8 & 11.6 MJ/Kg thereafter. It further allowed a downward heating value adjustment of two point five percent (2.5%) from the determined values. However, based on recent testing data, the heating value of the coal is lower than the earlier determined values.

8.3 TCEB'S OBSERVATION

8.3.1 In its Tariff Determination, the TCEB made the following comments on the Petitioned Costs:

"In continuation of above the plea of the Petitioner is presumably clearing an opening in the earlier Determination which had fixed margin of variation to 5%. The explanations and information presented does not warrant a reconsideration of the earlier determined acceptability band. The plea for reopening the earlier determined boundaries of variability acceptance does not hold ground."

8.3.2 We also make reference to the paragraph of the Tariff Determination that makes reference to the methodology used to conduct the aforementioned tests. These include the following statements from the Tariff Determination:

- *"...the methodology for respective tests and the protocols followed are not presented – the variation of results are sort of conjectural and not based upon exact records"; and that "it is not clear whether sample collection and transportation protocols for the two tests were similar and , if different, then the variations cannot be compared for serious consideration"; and*
- *"...calibration of test results at various locations is bound to vary".*

Our submissions herein below will address the aforesaid comments in specific detail.

8.4 SECMC'S SUBMISSIONS

8.4.1 COAL QUALITY BACKGROUND

- (a) Exploration in Thar Block II was done in 2002 by Shenhua & NECB (the **Original Developers**). At the beginning of the Project, the Petitioner acquired the database from the Original Developers and developed a bankable feasibility study based on the same. As per the feasibility study thirty (30) year coal



quality was estimated as 11.6 MJ/Kg (11.3 MJ/Kg for Year 1- 10 & 11.6 MJ/Kg for Year 11-30) which was also petitioned in 3.8 Mt/a Tariff petition.

8.4.2 PREMISE FOR CHANGE IN COAL QUALITY PARAMETERS

- (a) Now, the Petitioner has carried out additional geological exploration within mining area to increase the confidence interval and resource estimation as per Joint Ore Reserves Committee (**JORC**) 2012 (as per the standards required under the '*Principles Governing Information Submission*' stated in Part I of Schedule II of the Rules) as more fully described herein below.
- (b) This campaign was part of the non-EPC cost allowed by TCEB for the 3.8 Mt/a Tariff. In order to carry out this testing, the Petitioner engaged Australian consultants who were JORC Certificated. This Drilling Program had following aims and objectives:
- Extending the Measured Resource for thirty (30) years of Mine operations;
 - Obtaining additional geotechnical information for slope stability determination; and
 - Testing the accuracy of previous drilling campaigns by 'Quality Assurance and Control (**QA/QC**) holes.
- (c) A total of fifty-six (56) boreholes were drilled (SGH – Series), which included 3 QA/QC (twined boreholes). After extensive QA/QC, whereby same samples were sent to ALS Australia, RWE Germany and SGS Pakistan and results were compared. Based on the accuracy of results, and close proximity of lab, SGS Laboratory was finalized as the main testing lab for quality analysis, whereas RWE Laboratory was used for inter laboratory counter verification.
- (d) All the samples were preserved as per the JORC 2012 standard and were sent to SGS lab within two (2) to three (3) days of drilling so that moisture loss could be prevented.
- (e) During the testing, it was identified that the updated coal quality parameters are inferior to the parameters that were submitted in the 3.8 Mt/a Tariff, based on tests conducted by the Original Developers. This was attributable to the fact that moisture loss was not appropriately captured in earlier samples. Based on the results, regression analysis between moisture and ash was done by RWE consultants. The analysis shows high coefficient of correlation (R^2) of ninety-eight percent (98%), based on the which all the earlier coal sample results corrected for the following:
- Moisture Content – increased;
 - Low Heating Value (LHV) – decreased;
 - Ash Content – increased; and
 - Fixed Carbon Values – decreased.

The results mentioned herein above are stated in the Report titled '*Coal Quality Prediction: Final Report*' dated January 19, 2016 prepared by RWE



Technology International (the **Exploration Reports**) is attached herewith as **Annexure D (Extract of the Exploration Report)**.

- (f) This has triggered the need to revise the coal quality ranges versus the ranges approved by TCEB in the 3.8 Mt/a tariff.

- 8.4.3 It is submitted that the results mentioned above are in line with the coal quality cited in determinations by TCEB in recent determination of Block I. An extract of the relevant determination is reproduced herein below for your ready reference:

	Block I	Block II
Total Moisture (%)	47.8	44 – 50.2
Ash (%)	7.3%	5.1 – 10.8
Volatile Matter (%)	28%	23.6 – 25.5
Fixed Carbon (%)	-	18.5 – 19.7
Net Heating Value (MJ/Kg)	10.88	10.84

- 8.4.4 The Petitioner is willing to get additional samples tested at any lab prescribed TCEB to reaffirm coal quality results attached herewith.

8.5 RELIEF SOUGHT

- 8.5.1 **In the light of the above, it is requested that the base line for coal quality is defined as 10.84 MJ/Kg with an allowable variation of two point five percent (2.5%).**



SECTION 9
WAIVER ON PENALTY APPLICABLE TO DEFAULT ON
CAPACITY ENHANCEMENT



9. WAIVER ON PENALTY APPLICABLE TO DEFAULT ON CAPACITY ENHANCEMENT

9.1 **The submissions listed below are in reference to section 9 (Waiver of Penalty Applicable to Default in Capacity Enhancement) of the part entitled ‘Material Aspects of the Petition – Analysis & Decisions’ of the Tariff Determination).**

9.2 SUBMISSIONS CONTAINED IN THE PETITION

9.2.1 In the Phase I Contract Stage Tariff Determination, TCEB determined that a one percent (1%) IRR penalty would be applied on the Petitioner if it fails to expand the existing mine to 6.5 Mt/a within a maximum of twenty-four (24) months from COD of 3.8 Mt/a Mine capacity.

9.2.2 The intention of this was to achieve market competitive coal pricing. The Petitioner had petitioned to waive this penalty as it does not have any control over the date of Phase II IPPs’ COD.

9.3 TCEB’S OBSERVATION

9.3.1 The above request has been denied by TCEB to “*ensure a concerted discipline in moving towards optimum capacities*” and the overall quest for achieving optimum level of production quantities. Furthermore, the Authority has provided that this penalty will trigger twenty-four (24) months after COD of the Phase I Mine i.e. 3.8 Mt/a.

9.4 SECMC’S SUBMISSION

9.4.1 At the outset, the Petitioner takes the opportunity to address the premise that without the penalty (in the form of one percent (1%) IRR) there would be no concerted effort to move towards Mine expansion and optimization. As explained in further detail in the ‘*Business Plan*’ (submitted by SECMC in the Tariff Petition), the long term objective of the Petitioner is expansion of the Mine to optimize and maximise the investment by the stakeholders, whilst benefiting from economies of scale. As such, it is in the interest of all stakeholders to push for the expansion of the Mine at the earliest possible time and the imposition of a penalty is not the actual incentive for such focused timelines.

9.4.2 Moreover, the Petitioner reiterates that since it has no control over the coal off-takers, it has no control over their ability to achieve financial close within the stipulated time. Furthermore, it is submitted that since the financing for Phase II IPPs is being arranged from financial institutions in China there are many external factors (ranging from political and macro-economic) that can impact the achievement of financial close by the Phase II IPPs. Therefore, despite best efforts by the Petitioners and Phase II IPPs the parties have been unable to achieve financial close till date. Notwithstanding the afore-stated, the progress made by the Phase II IPPs towards achieving financial close is steady and all stakeholders continue to move towards the objective of expansion of the Project in order to achieve Mine optimization.

9.4.3 In addition, it is notable that the Tariff Determination does not distinguish between the Scheduled COD and the actual COD and has simply made reference to the period that is twenty-four (24) months from COD. Since the Tariff Determination does not distinguish between the Scheduled COD and actual COD, the twenty-four (24) month



window for the Petitioner will begin on the date it achieves COD. As the Petitioner plans to achieve COD ahead of schedule, this is tantamount to penalizing the Petitioner for its diligent performance in the construction of Phase I. Therefore, notwithstanding our submission in paragraph 9.4.1 above, the penalty is not required, and it is requested that the Tariff Determination be clarified to ensure that any time frame for completion of expansion to 6.5 Mt/a is triggered from SCOD.

- 9.4.4 In light of the above and the fact that the Phase II IPPs require a construction period of thirty (30) and thirty-three (33) months (for TEL and TNPL, respectively) from their financial close, it means that they will be unable achieve COD within the stipulated twenty-four (24) month window, even from the Scheduled COD Date, if their financial close is delayed beyond December (which seems likely given the current market situations and which issue is addressed in further detail in Section 12).

9.5 RELIEF SOUGHT

- 9.5.1 **In light of the above, it is requested that the Petitioner may be allowed a window of thirty (30) months from SCOD, provided such a delay is attributable to downstream IPPs.**



SECTION 10
NON-EPC COSTS



10. NON-EPC COSTS

10.1 **The submissions listed below are in reference to section 11 (Non-EPC Costs) of the part entitled ‘Material Aspects of the Petition – Analysis & Decisions’ of the Tariff Determination.**

10.2 SUBMISSIONS CONTAINED IN THE PETITION

10.2.1 SECMC had sought Costs for USD 4.5 million on account of incremental Salaries, Wages and Benefits (**SWB**) and USD 3.88 million on account for Project Development as part of its Non-EPC Cost.

10.3 TCEB’S OBSERVATIONS

10.3.1 TCEB observed that no additional staff are required for the expansion phase and that the existing manpower is enough to carry out existing operations with supervising operations being carried out by the EPC Contractor.

10.3.2 In addition, Project Development Costs of USD 1.59 million was allowed *versus* the requested cost of USD 3.88 million, amounting in a USD 2.29 million reduction in the requested cost.

10.4 SECMC’S SUBMISSION

10.4.1 It is humbly submitted that the assumption that no additional manpower is required for the Phase II expansion is not correct. The various types of additional manpower required in the Phase II are discussed herein below.

10.4.2 It is requested that while the Petitioner’s manpower at site is involved in supervision and HSE, it is also developing in house capability for geology, short-range mine planning, production and hydrology. These teams are providing critical input at the site to ensure that operations proceed smoothly.

10.4.3 In Phase II, the Petitioner has also taken additional scope whereby dewatering and construction of MSF will be its responsibility. Due to the additional scope, critical manpower is required who will undertake this additional scope.

10.4.4 However, in the interest of prudence, the Petitioner has revisited its manpower requirements and requests that it be allowed a cost of USD 3.2 million for incremental manpower that is required for Phase II.

10.4.5 In addition, the Petitioner has revisited the originally petitioned Project Development Cost of USD 3.88 million. This cost included costs incurred till date by the Petitioner, including allocations of current staff (USD 0.8 million) who were involved in projected development of 7.6 Mt/a. Removing these allocations, to date the Petitioner has spent USD 2.3 million in relation to development of the Project and is still incurring development costs relating to *inter alia* contract reviews, Tariff Petitions and other charges. It is expected that an additional USD 0.4 million will be spent in this regard over the next four (4) months.



10.4.6 Therefore, it is requested that the allowed Project Development Cost limit is increased to USD 2.7 million.

10.4.7 In addition, the Tariff breaks major heads of non-EPC costs into sub-heads and states that the individual heads have been capped. The Petitioner requests that clarity is provided as to whether these costs are capped at the major head level or at the sub head level.

10.5 RELIEF SOUGHT

10.5.1 In light of the above the Petitioner requests that the following costs are revised as follows:

- (a) SWB component up to USD 3.2 million is included in Non-EPC Costs; and**
- (b) Project Development Costs is requested to be revised to USD 2.7 million.**



SECTION 11
LOCAL O&M COST



11. LOCAL O&M COST

11.1 The submissions listed below are in reference to section 12 (*Escalations sought in the Financial Model*) of the part entitled 'Material Aspects of the Petition – Analysis & Decisions' of the Tariff Determination).

11.2 SUBMISSIONS CONTAINED IN THE PETITION

11.2.1 SECMC requested increments in various heads in the Local O&M head of the Tariff, owing to the increased cost which will be incurred as the size of the Mine expands.

11.3 TCEB'S OBSERVATIONS

11.3.1 TCEB has disallowed the above-mentioned percentage increase in local O&M and only indexations on these costs have been allowed.

11.4 SECMC's Submission

11.4.1 It is pertinent to note that TCEB had allowed the Petitioner the following increases in Local O&M Costs beyond 3.8 Mt/a in its Phase I Contract Stage Tariff Determination of 6.5 Mt/a, recognizing the increased scope of the operations. The relevant extract from the aforementioned Phase I Contract Stage Tariff Determination is reproduced as follows:

<i>Salaries, Wages and Benefits</i>	10%
<i>Site expenses</i>	33%
<i>Consultancy</i>	33%
<i>Effluent Disposal</i>	50%
<i>Head Office Running Expenses</i>	10%
<i>Capital Items</i>	33%
<i>Land Rehab & Water</i>	50%
<i>Legal and Professional Services</i>	20%

11.4.2 In the Tariff Petition for Phase II, the Petitioner had sought an increase by ten percent (10%) on account of SWB and ten percent (10%) on account of head office running expenses.

11.4.3 However, the TCEB has reduced the costs to the level which will make it impossible to manage the increased scope of the Petitioner's Mine, where the production capacity is increasing by one hundred percent (100%).

11.5 RELIEF SOUGHT

11.5.1 In light of the above, the Petitioner requests the fixed cost be analysed further and determined costs



SECTION 12
FOREIGN O&M COST



12. FOREIGN O&M COST

12.1 The submissions listed below are in reference to the Coal Tariff Determination Order for determined Foreign O&M Costs

12.2 SUBMISSIONS CONTAINED IN THE PETITION

12.2.1 The Petitioner had requested a foreign O&M Component based on the OB removal rate of USD 1.86/ BCM. This resulted in a levelized mining cost of USD 17/ ton. This cost was based on the negotiated EPC Contract for 7.6 Mt/a. The Petitioner had stated in the Petition that these costs are indicative, and it plans to conduct an international competitive bidding process after which revised O&M estimates will be filed prior to COD..

12.3 TCEB'S OBSERVATIONS

12.3.1 TCEB has reduced allowed OB removal rate to USD 1.65/ ton thereby relating the overall cost of mining operations to USD 14.7/ ton. However, the Petitioner's plea for filing of revised O&M estimates has not been addressed.

12.4 SECMC'S SUBMISSION

12.4.1 The Petitioner reiterates its plea that currently there is no other market benchmark available for mining in Thar other than costs it has negotiated with its contractors. The Petitioner has used the learning experience it adopted to negotiate a lower price for its 7.6 Mt/a mine than the one that was received as part of the International Competitive Bid for its 3.8 Mt/a mine.

12.4.2 The Petitioner requests that it be allowed to re-submit these costs close to the actual COD of Phase II. The revised cost will be determined based on competitive bidding process and it will incorporate any learnings of the Petitioner during the O&M of its 3.8 Mt/a mine and TCTDC tariff guidelines.

12.5 RELIEF SOUGHT

It is requested that the Determination should have a provision of revising O&M Costs based on competitive bidding based revised O&M costs submitted by the Petitioner.



SECTION 13
VALIDITY OF DETERMINATION



13. VALIDITY OF DETERMINATION

13.1 The submissions stated herein below are in reference to part (iv) of General Conditions of the Coal Tariff Determination Order.

13.2 TCEB'S OBSERVATIONS

13.2.1 TCEB has directed the Petitioner to achieve Financial Close by 31st December, 2018 for the Determination to remain valid.

13.3 SECMC'S SUBMISSION

13.3.1 It is prudent to note that as part of the lender's requirements, the Petitioner's Financial Close is subject to the Phase II IPPs achieving their respective financial close.

13.3.2 While the Petitioner and Off-takers are trying to achieve Financial Close within this calendar year, based on current market conditions, which have been elaborated upon throughout this Petition, the Financial Closing may be delayed beyond this deadline.

13.4 RELIEF SOUGHT

In light of the above, the Petitioner requests that the Tariff remain valid till March 30, 2019 as the Phase II IPPs have communicated that they are likely to achieve their financial close between February and March 2019.



SECTION 14
CONCLUSION



14. CONCLUSION

- 14.1 In light of the submissions, the relevant analysis and information contained in this Leave for Review, along with the Annexures attached hereto, this Leave for Review is submitted (pursuant to the applicable laws of Pakistan, including the Act and the rules and regulations made thereunder (including the Rules) for the Authority's kind consideration and for its grant of this Leave for Review.
- 14.2 In light of the submissions, the relevant analysis and information contained in this Leave for Review, along with the Annexures attached hereto, this Leave for Review is submitted (pursuant to the applicable laws of Pakistan, including the Act and the rules and regulations made thereunder (including the Rules) for the Authority's kind consideration and for its grant of this Leave for Review.
- 14.3 Based on the various submissions and the 'reliefs sought' in this Leave for Review, the revised proposed 'Tariff Summary' is attached herewith as **Annexure E** (the *Tariff Summary*).
- 14.4 The Authority is humbly requested to re-visit the Tariff Petition, in line with the Tariff Standards stated under the Rules and the Tariff Summary, in order to uphold the objective of the tariff regime providing recovery of all prudent costs, benefit of efficiencies to consumers, and to provide for a comprehensive adjudication on the matter.
- 14.5 SECMC is grateful to TCEB for its ongoing support of the Project and is available to provide any further clarifications, submissions and analysis on the enclosed submissions.

RESPECTFULLY SUBMITTED,

**FOR AND ON BEHALF OF
SINDH ENGRO COAL MINING COMPANY LIMITED**



MOHAMMAD SAQIB
CHIEF FINANCIAL OFFICER

