



**Thar Coal & Energy Board**  
Government of Sindh

No. TCEB/Registrar/2-1/2014  
April 5, 2019

**DECISION OF THAR COAL & ENERGY BOARD IN  
THE MATTER OF MOTION FOR LEAVE FOR REVIEW  
OF CONTRACT STAGE TARIFF DATED  
5<sup>TH</sup> OCTOBER, 2018 FOR SINDH ENGRO COAL  
MINING COMPANY FOR MINE OF 7.6 MTPA AT  
BLOCK-II THAR COALFIELDS, DISTRICT  
THARPARKAR, SINDH, PAKISTAN**





## Thar Coal & Energy Board Government of Sindh

No. TCEB/Registrar/2-1/2014  
April 5, 2019

**Decision of Thar Coal & Energy Board in the Matter of Motion for Leave for Review of Contract Stage Tariff dated 5<sup>th</sup> October, 2018 for Sindh Engro Coal Mining Company for Mine of 7.6 mtpa at Block-II Thar Coalfields, District Tharparkar, Sindh, Pakistan**

### **Thar Coal Tariff Determination Committee**

Constituted in Pursuance of Rule 3(1) of Thar Coal Tariff Determination Rules, 2014

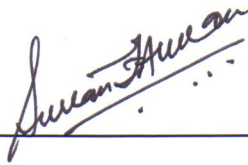
**Dr. Abdul Ghani Pathan**

Member



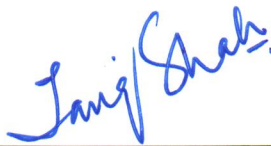
**Mr. Sultan Farooq Ahmed Khan**

Member



**Mr. Tariq Ali Shah**

Member / Presiding Officer





## Thar Coal & Energy Board Government of Sindh

No. TCEB/Registrar/2-1/2014  
May 6, 2019

In pursuance of the Rule 10(5) of the Thar Coal Tariff Determination Rules, 2014, it is certified that the Thar Coal & Energy Board, on the recommendation of the Thar Coal Tariff Determination Committee, has approved the Decision regarding Motion for Leave for Review of Contract Stage Tariff dated 5<sup>th</sup> october, 2018 for Sindh Engro Coal Mining Company for Mine of 7.6 mtpa at Block-II Thar Coalfields, District Tharparkar, Sindh, Pakistan, appended in the following pages.

**Tariq Ali Shah**

Managing Director  
Thar Coal & Energy Board

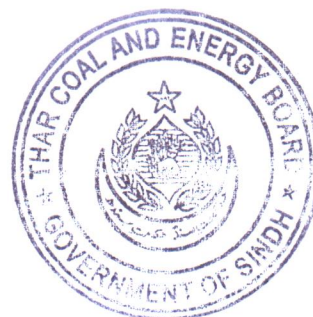




# Thar Coal & Energy Board

## Government of Sindh

BCM	Bank Cubic Meter
CAR	Contractors' All Risk
COD	Commercial Operations Date
CPI	Consumer Price Index
CSA	Coal Supply Agreement
ECC	Economic Coordination Committee
EPC	Engineering, Procurement & Construction
EPP	Energy Purchase Price
GCV	Gross Calorific Value
GoS	Government of Sindh
HSE	Health, Safety & Environment
IA	Implementation Agreement
ICB	International Competitive Bidding
ICC	In-pit Crushing & Conveying
IDC	Interest During Construction
IRR	Internal Rate of Return
KIBOR	Karachi Inter-Bank Offer Rate
LC	Letter of Credit
LDs	Liquidated Damages
LHV	Lower Heating Value
LIBOR	London Inter-Bank Offer Rate
MJ / Kg	Mega Joules per Kilogram
MMBtu	Million British Thermal Units
MSF	Mine Service Facilities
MTPA	Million Tonnes Per Annum
MW	Megawatt
MYT	Multi Year Tariff
NCV	Net Calorific Value
NEPRA	National Electric Power Regulatory Authority
NOC	No Objection Certificate
NTDC	National Transmission & Despatch Company
O&M	Operations & Maintenance
OGRA	Oil & Gas Regulatory Authority
PKR	Pakistani Rupee
PPA	Power Purchase Agreement
RCOD	Required Commercial Operations Date
RMB	Chinese Renminbi
RoE	Return on Equity
RoEDC	Return on Equity During Construction
SBLC	Stand By Letter of Credit
SBP	State Bank of Pakistan
SCOD	Scheduled Commercial Operations Date
SEPA	Sindh Environmental Protection Agency
SSRPL	Sino Sindh Resources Private Limited
TCP	Tariff Concession Period
TCEB	Thar Coal & Energy Board
TT & OD	Telegraphic Transfer & On Demand
US	United States
USD	United States Dollar



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Decision of the Board In the matter of Motion for Leave for Review  
Against SECMC Coal Tariff Determination Order dated 05-10-2018  
Case No TCEB/Registrar/2-1/2014





# Thar Coal & Energy Board

## Government of Sindh

### 1. INTRODUCTION

- 1.1. The Thar Coal and Energy Board (TCEB) vide its decision No. TCEB/Registrar/2-1/2014 dated October 5, 2018 determined the Contract Stage Coal Tariff for Sindh Engro Coal Mining Company (SECMC) for a 7.6 MTPA mining capacity at Block II Thar Coalfield District Tharparkar, Sindh, Pakistan. SECMC on October 19, 2018 filed motion for leave to review the decision of TCEB dated October 05, 2018.
- 1.2. The TCEB considered and admitted the review motion on October 19, 2018 in accordance with Thar Coal Tariff Determination Rules 2014.

### 2. GROUNDS OF REVIEW MOTION

The petitioners filed the review on the following grounds:

- 2.1. The Determination does not conform to the "ethos" of the Cost Plus Regime as enshrined in the Rules
- 2.2. Capital Structure – Enhancement of Debt/Equity Ratio to 70:30
- 2.3. Injection of up-front Equity of up to 30%
- 2.4. Treatment of pre-COD Revenues
- 2.5. Recognize the Concept of two COD's (5.7 mtpa & 7.6 mtps)
- 2.6. Tariff adjustment due to variations in Coal Calorific Value
- 2.7. Waiver of Penalty for failing to reach committed milestone of 6.5 mtpa
- 2.8. Review of non EPC Cost adjustments
- 2.9. Adjustments in claimed escalation to Local O&M Costs
- 2.10. Foreign O&M Costs
- 2.11. Validity term of Determination

### 3. HEARING

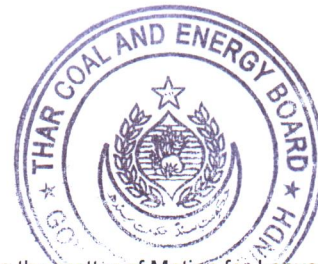
The Petitioner was afforded a hearing in the matter on November 13, 2018. A presentation was made by SECMC on various aspects of their motion for review.

### 4. DISCUSSION OF THE ISSUES

On the basis of the issues raised by the petitioners, the determination of TCEB is provided in the succeeding paragraphs.

#### 4.1.1. Conformity with "Ethos" of Rules

#### 4.1.2. SECMC petitions that:



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## Thar Coal & Energy Board Government of Sindh

"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.

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]"

- 4.1.3. TCEB has reviewed the plea of SECMC and taken due consideration of their standpoint. The "ethos" of the Rules are clear and it is an onerous obligation of the TCTDC to ensure that the tariff determinations fully conform to the guidelines established by the Rules which inter-alia also cover the interests of the Consumer.

SECMC is on record to move cost heads which cannot be condoned under "any and all costs" as claimed by the Petitioner. The TCTDC is inherently obliged to sift through and rationalize such claims under due considerations of prudence and eligibility.

This specific plea for reconsideration is rejected.

### 4.2. Capital Structure - Enhancement of Debt/Equity Ratio to 70:30

- 4.2.1. A cap on equity of 25% is fixed in the Determination. It is clear in this context and the Petitioner's attention is drawn to the relevant portion of the Determination:

*" ..... a maximum cap of 25% Equity is established under this Determination. Any additional (approved) capital injections shall be treated as Project Debt on Terms & Conditions to be established in accordance with approved debt terms"*



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*[Handwritten initials]*





## Thar Coal & Energy Board Government of Sindh

### 4.3. Upfront Equity Requirements

- 4.3.1. SECMC seeks a review on basis of an earlier determination of 3.8 mtpa tariff whereby a maximum up front equity drawdown was allowed at 35%.
- 4.3.2. It is to be noted that the 3.8 mtpa tariff was accorded special consideration because of a "first of its kind" venture of such large scale mining. The relaxation in considering such a high up front equity in the initial stages can only be an exception rather than the norm.
- 4.3.3. The limit of up to 25% upfront equity spend remains as per the Determination.

### 4.4. Treatment of Pre-COD Revenues

- 4.4.1. The Pre-COD Revenues are accrued prior to Phase I COD. The Contract for Phase II is yet to be signed and Financial Close timelines fall in later and consequently cash flow timelines are not in place. Revenues from pre-COD sales should be in place significantly ahead of the cash flow requirements for Phase II Contract.
- 4.4.2. Pre-COD Revenues may be utilized in reducing Phase II Capex as any other treatment would result in a tariff enhancement which is not in the interests of the Petitioner as well as the rate payer.

### 4.5. Concept of two CODs

- 4.5.1. The Petitioner has submitted the tariff computation for a 5.7 mtpa tariff on the basis of Capex of 7.6 mtpa. There are no delineated costs on basis of which a tariff on any production other than 7.6 mtpa can be computed.
- 4.5.2. The Petitioner cannot be allowed to claim a 5.7 mtpa tariff on a capex of 7.6 mtpa.
- 4.5.3. Based upon the CAPEX spend and information provided by the Petitioner, a 7.6 mtpa tariff will be applicable on coal supplies to all power projects covered under Phase II of mine expansion. Any mismatch of off-taker's requirements is an associated business risk and any potential dip in profitability needs to be factored in the designated returns of the Developer. An IRR incentive to coal mining cannot be construed as a "risk free" return and is expected to cover potential business risks including variabilities of market conditions.
- 4.5.4. The plea for a two stage tariff constructed on a single EPC Contract is rejected.



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### 4.6. Tariff Adjustments due to variations in Calorific Value

- 4.6.1. SECMC proposes that due to revised tests for Coal CV the new figures emerge that are different than the earlier claimed values for Calorific Values. Accordingly it seeks revision in production costs of the tariff resulting from a (revised) analysis of the coal samples.
- 4.6.2. The mine lease holder is provided adequate time to conduct detailed investigations and assimilate data that is comprehensive, accurate and relevant. The costs associated with these investigations and studies are covered and factored in the tariff computations. A later day rethinks and/or revision of basic data and tests on a plea that the earlier tests and studies were erroneous holds no ground. When all necessary investigative costs are already covered in the cost-plus regime the Petitioner has no basis to once again burden the tariff due to supposed errors in its own methodology and protocols for conducting field tests. A plea to charge the rate payer for errors on account of faulty field investigations and tests is rejected.

### 4.7. Waiver of Penalty for failing to reach committed Milestone of 6.5 mtpa

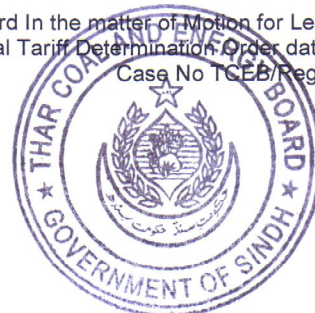
- 4.7.1. Petitioner solicits to reverse the decision on imposing a penalty of 1% on Equity IRR in case of default in reaching a higher production within twenty four months of 3.8 mtpa COD.
- 4.7.2. This plea was rejected in the Determination and TCEB re-emphasizes the condition that the said Penalty on IRR shall be applicable as per the conditions of the original Determination. However the condition of reaching enhanced production would be deemed to have been met as and when a higher production is achieved in Phase II of mining plan and the applicability of penalty would cease thereof.

### 4.8. Review of Non-EPC Cost Reductions

- 4.8.1. SECMC is petitioning for acceptance of USD 3.2 million under Salaries, Wages & Benefits against its originally claimed costs of USD 4.5 million. Additionally, it is seeking acceptance of USD 2.7 million under the head of Project Development as against the originally claimed costs of USD 3.88 million.
- 4.8.2. TCTDC had carefully evaluated the existing staff and their SWB costs against their present duties, work inputs and resultant outcomes. A site visit by one of the Members of TCTDC was also conducted to gain first hand review of the efficacy of working of the existing staff. Basic queries pertaining to operational data etc. went un-responded under the explanation that this is the domain of the EPC Contractor and that the staff does not have its own independent records, log books and quantified observations. This reflects lack of control and supervision over the site works and brings in question the vary rationale under which SECMC has been claiming heavy costs on this account.
- 4.8.3. TCTDC has surmised that even if the existing staff were to (somehow) perform their intended and designated tasks, they have sufficient strength in numbers to be able to meet up with the claimed additional work duties.
- 4.8.4. It is apparent that the Petitioner is not enforcing appropriate diligence and controls and is seeking the luxury of refuge under a "cost plus" regime by lodging excessive claims in the tariff regime.

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4.8.5. Notwithstanding the above shortcomings the TCTDC is constrained to note that the Petitioner has also consistently refused to share accurate details of their accrued (and assigned) Salaries, Wages and Benefits against itemized and listed staff members. This is a serious deficiency against claimed costs under the head of SWB and it is to be clearly understood that this requirement of TCTDC shall have to be met to the entire satisfaction of the Committee Members and TCEB prior to any further updation and fixing of the Tariff Regimes for the next milestone, i.e. the COD Tariff, etc.

4.8.6. The Petitioner's plea for any adjustments of these cost heads beyond the Determination is rejected.

### 4.9. Adjustments in claimed escalation to Local O&M Costs

4.9.1. The Determination Order for 7.6 mtpa remains effective and escalations etc. shall be permitted as the indexation mechanism provided for under the Rules and the Tariff Framework.

### 4.10. Foreign O&M Costs

4.10.1. The Petitioner seeks that the "Determination should have a provision of revising O & M Costs based on a competitive bidding based revised O&M costs ...."

4.10.2. TCTDC finds the suggestion of competitive bidding acceptable provided be adhered to a transparent process. Under the truly competitive bidding process it is expected that O & M would further come down even below the Determined Cost.

### 4.11. Validity term of Determination

4.11.1. The TCTDC is bound by parameters set by TCEB Policy and so far there is no such decision in this regard.

4.11.2. Request of SECMC can only be looked in to after the TCEB/ GoS issues new Policy directives in this regard.



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### 5. REVISED ORDER

**No. TCEB/Registrar/2-1/2014:** The Thar Coal and Energy Board (TCEB) vide its decision No. TCEB/Registrar/2-1/2014 dated October 5, 2018 determined the Contract Stage Coal Tariff for Sindh Engro Coal Mining Company (SECMC) for a 7.6 MTPA mining capacity at Block II Thar Coalfield District Tharparkar, Sindh, Pakistan. SECMC on October 19, 2018 filed motion for leave to review the decision of TCEB dated 5<sup>th</sup> October, 2018.

The TCEB has considered the Motion for Review Petition and considers that the points raised in the Review Petition have been appropriately addressed in the hereabove. The Determination Order dated October 05, 2018 remains effective in accordance with Thar Coal Tariff Determination Rules, 2014.

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