

BEFORE THE THAR COAL AND ENERGY BOARD

Sindh Engro Coal Mining Company Limited

16th Floor, The Harbour Front Building,
HC # 3, Marine Drive, Block 4,
Clifton, Karachi.

Applicant

MOTION FOR LEAVE FOR REVIEW UNDER RULE 10(8) OF THE THAR COAL TARIFF DETERMINATION RULES, 2014 READ WITH ALL ENABLING PROVISIONS OF LAW

1. Through the present motion for leave for review, the Applicant seeks to challenge the Contract Stage tariff determination dated 25.06.2023 made in respect of the Phase III CS Tariff Petition (defined below; enclosed as **Annex A**) (“**Determination**”). The Determination was served on Applicant on 25.06.2023. Hence, the present motion for leave for review (“**Review Application**”) is within the limitation prescribed in Rule 10(8) of the Thar Coal Tariff Determination Rules 2014 (“**2014 Rules**”).
2. The Applicant is a limited liability company. It is a joint venture between the Government of Sindh, Engro Energy Limited (formerly Engro Powergen Limited), Thal Limited, Hub Power Company, Habib Bank Limited, China Machinery Engineering Corporation and Huolinhe Open Pit Coal (HK) Investment Co.
3. The Applicant has been established to construct, develop, own and operate a coal mine in Block II of the Thar Coal Fields, Tharparkar District, Sindh, Pakistan (“**Project**”). To that end, the Applicant and the Government of Sindh entered into an Implementation Agreement on 19.11.2015. Moreover, the Thar Coal and Energy Board (“**TCEB**”) has enacted the Thar Coal Pricing Framework and the 2014 Rules for such projects. The purpose of the Project is to harness the considerable potential of the coal resources in Tharparkar (“**Thar Coal**”) to produce power through an associated power plant.
4. Thar Coal offers the potential to be the cheapest source of thermal energy in Pakistan. Hence, it is likely to alleviate the energy crisis that has continuously plagued Pakistan. In addition, the use of Thar Coal will lead to substantial foreign exchange savings for the country. Furthermore, the Project has provided employment to locals and resulted in substantial investment in healthcare, education and infrastructure in Tharparkar. The Project is, therefore, of enormous benefit to the country.
5. The Project comprises of multiples phases. The Applicant has developed the Phases I and II of the Project. Applicant now intends to expand the capacity of the Mine with a capacity of 11.2 Mt/a (“**Phase III Mine Expansion**”), for which the Applicant had filed Contract Stage tariff petition dated 24.02.2023 (“**Phase III CS Tariff Petition**”) and has received the Determination. Accordingly, this Review Application pertains to Phase III Mine Expansion only.
6. Through the present Review Application, the Applicant hereby requests TCEB to reconsider specified components of the Determination, each as discussed below.

A. Timeline

The Applicant is committed to achieving commercial operations for the Phase III Mine Expansion at the earliest. However, it is important to highlight that due to the prevailing



circumstances in Pakistan's financial sector, achieving financial close within a short timeframe will be very challenging.

TCEB has, in the Determination, prescribed that commercial operations date (“COD”) for Phase III Mine Expansion should be achieved by 31.12.2024. Whilst we fully share the commitment to expedite the Project's completion, we must also acknowledge the realities of the financial landscape in Pakistan. Achieving financial close for large-scale infrastructure projects of this magnitude requires sufficient time and strategic planning, especially given the complexities involved in raising substantial capital in such pressing economic times.

Furthermore, we want to draw your attention to the various interconnected timelines involved in the Project's execution. From equipment ordering, opening of letters of credit (“LC”), equipment delivery, to the actual construction process, each phase requires a systematic and well-coordinated approach.

In terms of timeframes, a minimum of eighteen (18) months from the date of financial close for Phase III Mine Expansion would be prudent/ideal for seamless execution leading to the COD thereof. The Applicant hereby assures TCEB that it is fully committed to achieving COD for Phase III Mine Expansion swiftly and diligently and to exert its best efforts to do so without compromising safety, quality, and environmental standards.

Considering the aforementioned intricacies, we hereby request TCEB to reconsider the cut-off date for declaring COD, which should be a minimum of eighteen (18) months from the date of achieving Financial Close for Phase III Mine Expansion.

B. Pre-COD sales to Lucky Electric Power Company Limited (“LEPCL”)

In respect of the pre-COD sales to LEPCL we clarify that pre-COD sales to LEPCL are not 1.2 million tonnes; these are 1.42 million tonnes from October 2021 till date. Such sales are bifurcated as follows:

- (i) sales of 0.37 million tonnes were made to LEPCL prior to COD of Phase II and are pre-COD sales which have already been included in Section 3.6.1 of the Phase III CS Tariff Petition;
- (ii) as mentioned in our letter dated 02.02.2023 and in the Public Hearing, sales of 0.62 million tonnes to LEPCL from 01.10.22 to 17.02.2023 were based on the actual tariff to bridge the capacity gap raised by non-achievement of COD by Thal Nova Thar Private Limited; and
- (iii) sales 0.43 million tonnes were made to LEPCL post 17.02.2023 which are yet to be billed to them due to unavailability of tariff.

TCEB is hereby requested to confirm that sales made under point no. (iii) above be treated as pre-COD sales and the Applicant be permitted to bill for the same as per the first-year tariff (as set out in section (iv) of general conditions of the Determination).

C. Power Generation Mix

The Applicant, in line with TCEB's policy and strategic direction of working on lowering the cost of coal, firmly believes that dedicated and sustainable electric power will improve the efficiency of existing infrastructure, and the potential use of electric dump trucks will further enhance the economics of coal mining operations at Thar, resulting in lower fuel prices for end consumer.



Further, for the utilization of power for mine operations from power plant's auxiliary supply, the Applicant has sought support from the TCEB through letters dated 20.06.2023 and 17.07.2023, National Electric Power Regulatory Power Authority in the Public Hearing for Phase III Mine Expansion and Central Power Purchasing Agency (Guarantee) through letters. Unfortunately, despite our continuous efforts, we still await the requisite regulatory approvals.

While we understand and firmly believe in the usage of power through auxiliary load, it is important to note that the same would need to be approved by relevant government authorities and be reflected in respective power purchase agreement(s) of independent power producers, which is beyond the Applicant's control.

Furthermore, a time frame of 12 months for usage of diesel-based power is not feasible as: (i) allocation of auxiliary load is subject to approval from the relevant governmental authorities; (ii) once the relevant approvals are in place, amendments to respective power purchase agreements of the independent power purchasers will be required; and (iii) following the aforementioned, the Applicant will need to lay the transmission line, install step-down transformers which would take at least further 9 months.

In light thereof, unless (i) and (ii) are carried out swiftly (which is completely out of the Applicant's control), it would be very difficult (if at all possible) for the Applicant to adhere to TCEB's direction.

TCEB is hereby requested to remove any such hard stop timeline for diesel usage and any such timelines may only be allocated once (i) and (ii) above are completed.

Further, we urge TCEB as the flag bearer for development of Thar Coal to secure approvals from the relevant government authorities for allocation of auxiliary power to the Applicant at the same tariff as allocated to power plants, so that the Applicant may do the needful to establish the auxiliary power arrangements with mine-mouth power plants.

Moreover, indexations for power generation in the Determination have been quoted at 86% for diesel proportion in the power mix whereas the current mix of diesel, as mentioned in our Financial Model, is 90%. We request that the same may be rectified accordingly.

D. Mining Technology

The selection of equipment for coal mining has been a meticulous process, with thorough consideration by the Applicant of technology's optimum suitability. Detailed calculations were undertaken by international mining consultants to evaluate equipment deployment plans, combined synergies of all equipment, and the overall impact on the Project's tariff. Key factors such as the characteristics of stripping materials, space constraints, and investment were considered by the Applicant during this evaluation.

TCEB, in the Determination, has stated that "*The Petitioner can enhance operational efficiency by effectively managing the OB from Phase II operations to external dumps while maintaining the balance between external and internal dumps.*" For this, the Applicant has re-evaluated its future equipment deployment plan. The existing in-pit dump has limited area and capacity of ~30 M BCM/year whereas Applicant's overburden removal quantity will reach up to ~ 80 M BCM/year during Phase III Mine Expansion. As per the mine design, any overburden beyond 30 M BCM shall be dumped at the outside dump. Any further optimization in in-pit dumping beyond the design capacity will increase the congestion and simultaneously create safety hazard including traffic safety issues and slope failure at dump site.



*In light of the above, TCEB is hereby requested that the same quantity of equipment as was petitioned in the Phase III CS Tariff Petition (i.e., 93 * 70-ton class dump trucks and 6 * 6.5m³ shovels) (detailed technical evaluation attached as Annex B) is allowed.*

E. EPC Overburden Cost

TCEB, in paragraph 7 of the Determination, has stated that EPC Costs were petitioned at USD 41.79 million, however the same has been reduced to USD 30.77 million following reconfiguration of equipment required during the development stage.

We understand that such deduction was solely due to proposed optimization in equipment configuration and haulage distances by TCEB. The Applicant reserves the right to address deductions in the overburden cost in case the deduction is made for reasons other than those stated in paragraph 7 of the Determination.

Moreover, it is to highlight that overburden removal cost for Phase III Mine Expansion is the lowest cost as compared to Phases I and Phase II, which highlights the Applicant's commitment towards cost rationalization. We humbly submit that any further reduction in the overburden cost during construction phase is not possible as we have concluded the price with the EPC contractor after extensive bidding as mentioned in 4.2 of the Phase III CS Tariff Petition.

TCEB is hereby requested to reinstate the aforementioned deduction in the overburden removal cost during construction phase to the costs set out in Phase III CS Tariff Petition, since optimization of equipment is not technically possible, as explained in section D above.

F. Financing & LC Charges

TCEB has disallowed Financing & LC charges ("**FINCH**") of USD 3.15 million from the project cost of Phase III Mine Expansion. The Applicant requests TCEB to reconsider this as Phase III Mine Expansion is to be financed primarily by debt.

Currently major banks are not funding coal-based projects therefore syndication will be made to finance the Phase III Mine Expansion. Syndication fees such as arrangement fees, advisory fee, investment, agency, legal counsel fee and associated charges are globally accepted to be part of costs associated with securing long-term loan.

Furthermore, due to the prevailing macroeconomic climate, LC charges have been increasing, which are an additional expenditure for the Applicant, over which the Applicant has no control. Such LC charges are to be incurred by the Applicant on any imports to undertake Phase III Mine Expansion.

The Applicant would also like to assure TCEB that in the interest of lowering the coal tariff, The Applicant endeavors to negotiate the lowest rate possible for Phase III Mine Expansion, as already done during Phase I and Phase II.

TCEB is hereby requested to allow FINCH at 2.5% of facility loan while the Applicant reserves the right to submit the actualized costs with supporting evidences at the time of financial close and/or COD tariff submission for Phase III Mine Expansion.



G. O&M Cost

The Applicant has submitted details pertaining to selection of O&M Contractor and O&M cost breakup in Phase II COD stage petition, which was achieved through price discovery viz a viz international competitive bidding. Based on the same, the Applicant has petitioned the costs in Phase III Contact Stage Tariff Petition.

TCEB has, in the Determination, significantly reduced the fixed and variable O&M Costs as opposed to what was petitioned/requested.

It is pertinent to note that the foreign variable and fixed O&M numbers that the Applicant petitioned in Phases II and III are aligned with TCEB's Phase I COD Determination dated 29.12.2022 ("**Phase I Determination**"). As per indexation that TCEB issued for July – September 2022 quarter, the foreign variable O&M component was PKR 1,267/ton and foreign fixed O&M component was PKR 1,612/ton. These rates were published at an exchange rate of PKR 205.3/USD resulting in total foreign O&M component of USD 14.02/ton. Against this, the Applicant petitioned the below numbers which are majorly aligned with the Phase I Determination.

USD/ton	Phase I Determination – July-Sept 2022 Indexation	Phase II – COD Petition (First Year)	Phase III – CS Review Application (First Year)
Foreign Variable O&M costs (inc. Spares and Site Services)	6.17	6.63	6.82
Foreign Fixed O&M costs (Technical and Site)	7.85	3.81	2.99
Total	14.02	10.43	9.81

As evident from the above table, Phase II and III variable costs are mainly aligned with TCEB's indexed Phase I variable costs. The slight variation is due to the significant shifts in recent times which the global economic landscape has witnessed, which has subsequently led to increases in the prices of various commodities.

Furthermore, the fixed costs per ton has significantly reduced on account of economies of scale and is mainly in line with increased capacity.

Moreover, the equipment and machinery procured by the Applicant during the Project's inception has matured over time. As the equipment ages, the frequency of maintenance and the requirement for replacement parts and consumables naturally increase. The wear and tear on the Applicant's assets, especially in the demanding mining environment, necessitates a more proactive approach to maintenance, resulting in higher spares and consumables consumption.



In light of the above realities, TCEB is hereby requested to allow the spares and O&M costs as petitioned in the Phase III Mine CS Tariff to ensure the continued operational efficiency, reliability, and safety of the Project.

H. Capital Structure

In the Determination, TCEB has reduced the spread allowed on local debt to finance Phase III Mine Expansion to 1.5% against 2.5% as petitioned in the Phase III CS Tariff Petition. We understand that the risk premium associated with Phase I was higher as it was a greenfield project. However, it is also pertinent to note that the entire Phase I and most of Phase II was undertaken on sovereign guaranteed loan, which greatly reduced the Project risk for the lenders, and hence the spread of 1.75% was negotiated.

There is no sovereign guarantee for Phase III Mine Expansion; hence, loan(s) will have to be arranged which command a much higher premium. The Applicant would also like to stress that the financial market available to finance coal-based project is rapidly contracting as more and more banks, globally and now even locally, have stopped all coal-based lending as a policy decision. The Applicant will therefore require sufficient allowance to adequately address the premiums attracted with the loans that will be obtained for Phase III Mine Expansion.

TCEB is hereby requested to allow a reasonable spread of 2.25% to enable arrangement of debt in an already contracted and challenging debt market.

I. Non-EPC cost

In the Determination, TCEB has commented that Thar Rail Link is currently at early stages and has therefore not allowed the Applicant any costs related to railway connectivity at this stage.

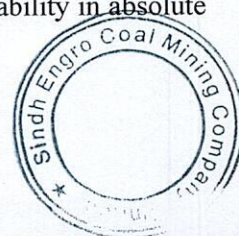
In this regard, the Applicant, in the under section 3.2.1 of Phase III CS Tariff Petition and slide 25 of the Public Hearing presentation submitted that if the Thar Rail Link Project is delayed, LEPCL shall be responsible to collect the coal/lignite from the Applicant's mine and transport the same through road networks to its power plant. In such a case, the Applicant will have to make alternate, safe and suitable arrangements for management of trucks being used by LEPCL for transportation of Coal/Lignite.

In line with TCEB view and the Phase III CS Tariff Petition, we submit that additional infrastructure would need to be developed for management of huge number of trucks which will be at least around 250 trucks on daily basis. This infrastructure includes truck marshalling yard, equipment, and implementation of additional safety measures, waiting area, queue management, service area, HSE infrastructure, tarpaulin station, weighbridges, which are currently non-existent and are required to be developed.

TCEB is hereby requested to allow USD 2.5M for development of infrastructure for transportation of coal/ignite from the Applicant's mine to LEPCL's power plant.

J. Return for Existing Shareholders

TCEB, in the Determination, has stated that: (i) a guaranteed IRR of 20% takes into consideration sovereign risk; and (ii) scaling up mine is in the interest of the shareholders as they can more effectively utilize the mining lease and enhance overall profitability in absolute terms.



We hereby respectfully submit that with Phase III Mine Expansion, the overall risk profile of Project (across all phases) will increase, due to increased commercial and other risks. Due to the increased risk profile of the Project, the Applicant's return on equity of the earlier phases (i.e., Phase I & II) will be further exposed and from a commercial standpoint, already secured return on equity of the Project from Phases I and II will be negatively impacted in case of materialization of any of associated risks of Phase III. Hence, it will not be viable for the Applicant to undertake Phase III Mine Expansion on zero return on equity as there is no upside in returns by expanding mine; the potential however for downside is likely on the already locked returns of Phase I and Phase II.

In order to make Thar Coal a savior for Pakistan, TCEB must notify some return mechanism for sponsors of Phase III Mine Expansion to adequately compensate them for taking additional risks with respect thereto.

TCEB is hereby requested to reconsider the return for shareholders to undertake Phase III expansion, on zero equity basis as requested earlier by Applicant vide its letter dated 02.05.2023.

7. A revised financial model incorporating the aforementioned points is enclosed as Annex C to this Review Application.

PRAYER

In light of the foregoing, it is prayed in the interests of justice that this Honourable Board may be pleased to grant the following relief:

- (i) Set aside the Determination; and
- (ii) Approve the Phase III CS Tariff Petition as submitted; or
- (iii) Revise the Determination in accordance with our aforementioned submissions.

Karachi

Dated 27th July'23

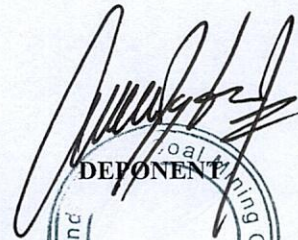
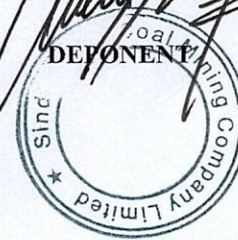


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AFFIDAVIT

I, Amir Iqbal, s/o Qazi Iqbal Uddin Ahmed, r/o 2/1-104 Street 4, Khayaban- e- Muhafiz Phase 6, DHA, Karachi, adult, Muslim, and duly authorized representative of Applicant do hereby solemnly affirm and declare on oath as under:

1. That I am the authorized officer of Applicant in the above matter and as such am fully conversant with the facts of the case.
2. That the accompanying Review Application has been drafted and filed under my instructions.
3. That the contents of the accompanying Review Application may be treated as part of this affidavit for the sake of brevity.
4. That unless the accompanying Review Application is granted Applicant shall be seriously prejudiced and suffer irreparable loss and injury. Applicant has a good prima facie case and the balance of convenience is overwhelmingly in its favour.
5. That whatever has been said above is true and correct.


DEPONENT


BEFORE THE THAR COAL AND ENERGY BOARD

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Karachi

Dated 27th July '23

