



Registrar

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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No. NEPRA/TRF-WPT/2013/4445-4447
May 2, 2014

Subject: Decision of the National Electric Power Regulatory Authority in the matter of Review of Determination of Upfront Tariff for Wind Power Generation

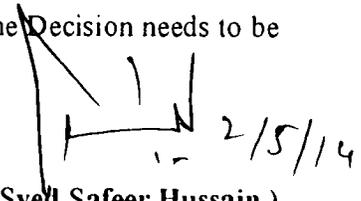
Dear Sir,

Please refer to this office letter No. NEPRA/TRF-WPT/2013/3942-3944 dated 24.04.2013 whereby decision of the Authority in the matter of Upfront Tariff for Wind Power Generation was communicated to Federal Government for notification in the official Gazette.

2. Enclosed please find herewith the subject Decision of the Authority with reference to above referred Determination of the Authority dated 24.04.2013 whereby Clause 51(v) and Clause 51(vi) are substituted.
3. The Decision is being intimated to the Federal Government for the purpose of notification in the official gazette pursuant to Section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997).
4. Please note that only Order of the Authority at para 16 of the Decision needs to be notified in the official Gazette.

Enclosure: As above

Secretary
Ministry of Water & Power
'A' Block, Pak Secretariat
Islamabad


(Syed Safer Hussain)

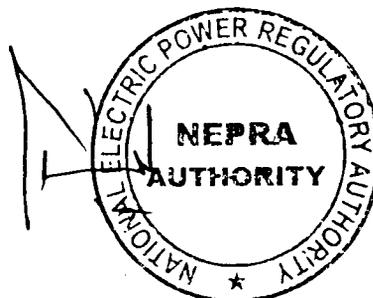
CC:

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



**DECISION OF THE NATIONAL ELECTRIC POWER REGULATORY
AUTHORITY IN THE MATTER OF REVIEW OF DETERMINATION OF
UPFRONT TARIFF FOR WIND POWER GENERATION**

1. National Electric Power Regulatory Authority (hereinafter referred to as the "Authority") issued its determination in the matter of upfront tariff for wind power generation on April 24, 2013 (hereinafter referred to as the "upfront tariff determination").
2. The upfront tariff determination specified that it will only be valid for approvals given for the first 500 MW of companies, however, applications conveying unconditional acceptance of upfront tariff and requesting for Authority's approval for aggregate installed capacity of above 500 MW were received by the Authority.
3. The Authority observed that there is great possibility that out of all the projects granted tariffs by the Authority, only some of the projects will actually materialize. The Authority further observed that some of the applicants granted upfront tariff, might not be able to achieve financial close. Due to the aforesaid facts and considering the grave energy crises facing the country, the Authority deliberated on the issue as to whether the first 500 MW capacity of complete applications received by the Authority be approved, as originally stipulated in the upfront tariff determination, or, for facilitating the serious investors, all the complete applications be approved and thereafter the companies achieving financial close in order of merit up to 500 MW capacity be the criteria determining the capacity limit specified in the upfront tariff determination.
4. The Ministry of Water and Power vide letter No. PF-05(08)/2012 dated April 04, 2014 also proposed that all the applications fulfilling the criteria prescribed in the upfront tariff may be considered for the grant of upfront tariff. However, the criteria for first 500 MW (capacity cap) as given in the upfront tariff determination may be based on first come first serve basis after achieving the financial close, within the stipulated time, with the remaining terms and conditions as mentioned in the upfront tariff determination remaining the same. Government of Sindh vide letter No.DAE/Wind/48/2014 dated March 05, 2014 also requested the Authority to enhance the capacity

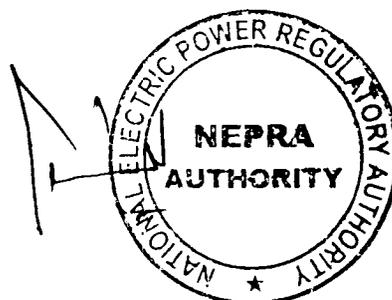


cap of 500 MW in order to accommodate all serious and potential wind power projects and also to extend the financial close date stipulated in the upfront tariff determination. In addition to that, the Authority received applications for grant of upfront tariff from Hawa Energy (Pvt.) Ltd., Dewan Energy (Pvt.) Ltd., NBT Wind Power Pakistan II (Pvt.) Ltd. and others, however, the Authority could not entertain their applications due to 500 MW capacity cap provided in upfront tariff determination.

5. The Authority after thorough deliberation on the matter, decided to initiate proceedings in terms of section 7 (2) (g) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "Act") read with regulation 3 (1) of National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009 and proposed the review of clause 51 sub clause v of the upfront tariff determination. The Authority further decided to hold a hearing on the subject matter to arrive at a just and informed decision and to hear the point of views/suggestions of all the stakeholders regarding review of upfront tariff determination. Accordingly a notice of hearing was published in the daily newspapers on April 12, 2014. It was proposed in the notice of hearing to substitute the existing clause 51 sub clause v of the upfront tariff determination with the following:

" v) This tariff will only be valid for the first 500 MW of companies achieving financial close. Alternative Energy Development Board shall ensure that financial close for aggregate installed capacity in excess of 500 MW is not allowed under the upfront tariff. Upon achievement of financial close by the first 500 MW of companies under the upfront tariff, the upfront tariff applications accepted by the Authority for remaining companies, if any, shall no longer remain valid and approvals granted by the Authority to such companies shall automatically stand cancelled ab-initio".

6. Public hearing in this regard was held on April 18, 2014 at Marriott hotel, Islamabad which was attended by the Alternative Energy Development Board (hereinafter referred to as "AEDB"), Government of Sindh and various other stakeholders.
7. In response to the notice of hearing, the Authority also received intervention requests from some of the stakeholders. The Authority however noted that

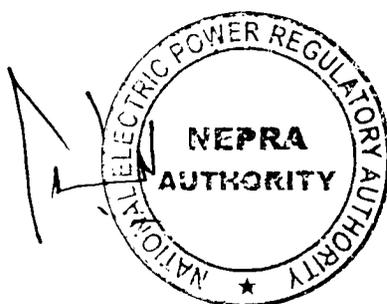




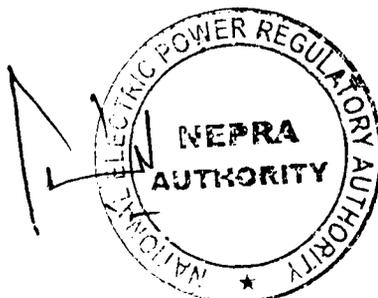
the aforementioned proceedings were initiated under National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009, therefore all persons who participated in the hearing and had filed written submissions can only be considered as commentators. The Authority accordingly decided to consider all the submissions of the stakeholders as comments. Following parties also made their submissions in writing:

- AEDB
- Embassy of the United States of America
- FFC Energy Limited
- Gul Ahmed Wind Power Limited
- Hawa Energy (Pvt.) Limited
- Hydrochina Dawood Power (Pvt.) Ltd.
- National Bank of Pakistan
- NBT Wind Power Pakistan (Pvt.) Limited
- Tapal Wind Energy (Pvt.) Limited
- Tenaga Generasi Limited
- UEP Wind Power (Pvt.) Limited
- Yunus Energy Limited

8. The Authority has seen that some of the commentators have questioned the legality of proceedings initiated by the Authority and have stated that the Authority has no power to initiate instant review proceedings. The Authority has considered this issue and is of view that in terms of section 7(2)(g) of the Act read with regulations 3(1) of National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009, the Authority is fully competent to review its decisions and orders wherever it is justified and it is in the interest of justice and fair play. The Authority is also cognizant of fact that in terms of section 7(6) of the Act, it has to protect the interests of consumers and companies providing electric power services therefore it is mandated to exercise its jurisdiction for advancement of its functions and fulfillment of its responsibilities under the Act.
9. The Authority after consideration of all the comments received by it, noted that majority of commentators did not support the amendment in the upfront tariff determination, as proposed by the Authority, and raised some valid objections to the proposal. The Authority has therefore decided not to review the clause 51 sub clause (v) in the upfront tariff determination, as suggested through the aforementioned advertisement.

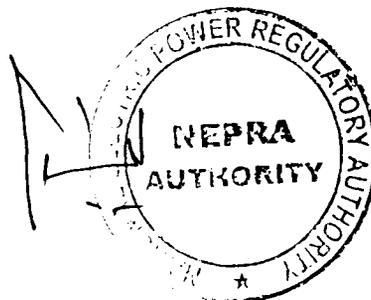


10. The Authority noted that though the majority of stakeholders, did not support the clause proposed by the Authority, however, they have raised many pertinent and valid issues which need to be taken care of to ensure level playing field and to induct the potential wind power projects in the system within shortest possible time.
11. The Authority has considered all the other submissions of the stakeholders including:
 - That regulation 4 (7) of the National Electric Power Regulatory Authority Upfront Tariff (Approval & Procedure) Regulations, 2011 requires that decision of the Authority on an application to opt for the upfront tariff shall be conveyed to the applicant within ten working days of filing of the application, however contrary to the requirement of these regulations, decision on some of the applications opting for upfront tariff has not been made by the Authority despite passage of considerable time.
 - That by awarding upfront tariff to four wind power projects earlier than others, these projects have been given a head start and therefore does not allow level playing field to all the investors.
 - That in the current circumstances, it seems highly unlikely for some of the wind power projects to be able to meet the deadline of financial close.
 - Requests for extending the deadline for financial closure by a reasonable period of time.
 - Requests for increasing the maximum capacity cap of 500 MW envisaged in the upfront tariff determination or removal of this cap altogether.
12. The Authority noted that AEDB has also submitted that award of upfront tariff to some of the applicants has been delayed to the extent of making it very challenging for them to achieve financial close by September 30, 2014. AEDB recommended to extend the date of achieving financial close up to March 31, 2015.





13. The Authority observed that it has issued decisions on applications opting for upfront tariff to three wind power companies on November 21, 2013, one wind power company on December 13, 2013 and five wind power companies on April 23, 2014. The Authority observed that delay in issuance of decisions to various applicants is a genuine issue, although it has been caused mainly due to inability to resolve all issues pertaining to power evacuation in clear terms by the power purchaser. Issuance of upfront tariff decisions by the Authority to various applicants with time lag, owing to power evacuation problems, has created a disparity between various applicants of upfront tariff.
14. The Authority also considered that some applications opting for upfront tariff, received within 365 days from the upfront tariff determination, have not been accepted by the Authority and some of these have been returned. The Authority noted that AEDB and some other stakeholders have requested for modification/removal of maximum capacity cap specified in the upfront tariff determination. The Authority also noted that after the issuance of upfront tariff determination, the power purchaser has submitted that it is actively working on power evacuation plans and further power purchaser will be certifying that it will have the necessary infrastructure ready and in place to evacuate all the power supplied by the applicant, therefore, this upper capacity cap is no more relevant in the current scenario.
15. Keeping in view the aforesaid facts, for providing level playing field to all the applicants, giving the applicants reasonable time to achieve financial close and also giving an opportunity to all the serious applicants, who have made efforts for setting up their projects under the present upfront tariff regime, and have already applied for upfront tariff, the Authority has decided as follows:
 - a. In line with the recommendation of AEDB, all the companies opting for upfront tariff will be allowed to achieve financial close by March 31, 2015.
 - b. All those applicants who had submitted their application conveying unconditional acceptance of upfront tariff to the Authority, up to 365 days from the date of upfront tariff determination, irrespective of the fact whether those applications were not earlier accepted by the Authority or were returned or rejected, will be granted up front tariff, subject to the fulfillment/completion of all the terms and conditions of the National





Electric Power Regulatory Authority Upfront Tariff (Approval & Procedure) Regulations, 2011 and upfront tariff determination.

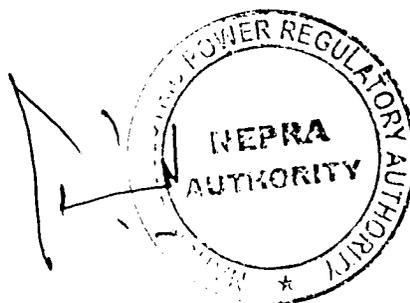
- c. The relief granted through this decision, will also be applicable to the upfront tariff applications already accepted by the Authority.

16. ORDER

Pursuant to section 7(2)(g) and section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 read with Regulation 3 (1) of the National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009, the Authority has decided to review clause 51 (v) and clause 51 (vi) of the determination of National Electric Power Regulatory Authority in the matter of upfront tariff for wind power generation dated April 24, 2013 and accordingly to substitute the clause 51 (v) and clause 51 (vi) with the following:

"v) The choice to opt for this tariff will only be available to those companies who applied for grant of tariff within 365 days from the date of determination by the Authority. All those applicants who have submitted their application conveying unconditional acceptance of this tariff to the Authority, up to 365 days from the date of its determination by the Authority, irrespective of the fact whether those applications were not earlier accepted by the Authority or were returned or rejected, will be granted up front tariff, subject to the fulfillment/completion of all the terms and conditions of this determination and the National Electric Power Regulatory Authority Upfront Tariff (Approval & Procedure) Regulations, 2011.

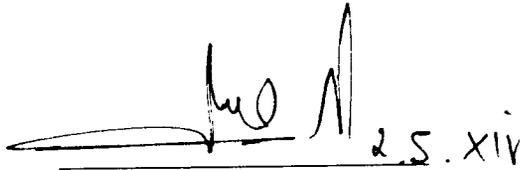
vi) The companies opting for this tariff will have to achieve financial close by March 31, 2015. The up-front tariff granted to any company will no longer remain applicable/valid, if financial close is not achieved by the relevant company by March 31, 2015 or a generation license is declined to that company."

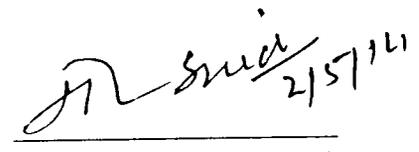


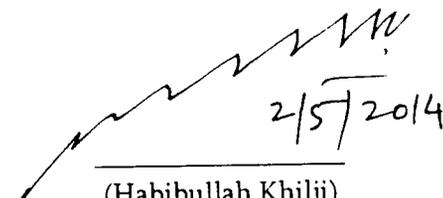


17. The order at paragraph 16 is recommended for notification by the Federal Government in the official gazette in accordance with Section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.

AUTHORITY


(Khawaja Muhammad Naeem)
Member


(Maj. (R) Haroon Rashid)
Member


(Habibullah Khilji)
Vice Chairman

