



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

NEPRA Tower, Attaturk Avenue (East), G-5/1, Islamabad
Ph: +92-51-9206500, Fax: +92-51-2600026
Web: www.nepa.org.pk, E-mail: registrar@nepa.org.pk

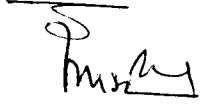
No. NEPRA/TRF-WPT/2017/8179-8181
May 30, 2017

Subject: Decision of the National Electric Power Regulatory Authority in the matter of Review Motion filed by Government of Sindh against the Determination of New Tariff for Wind Power Generation Projects

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (08 pages) in the matter of Review Motion filed by Government of Sindh against the Determination of New Tariff for Wind Power Generation Projects dated January 27, 2017, for information.

Enclosure: As above


30-05-17
(Syed Safer Hussain)

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

CC:

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

DECISION OF THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY IN THE MATTER OF REVIEW MOTION FILED BY GOVERNMENT OF SINDH AGAINST THE DETERMINATION OF NEW TARIFF FOR WIND POWER GENERATION PROJECTS

1. Directorate of Alternative Energy, Energy Department, Government of Sindh ("GOS" or "the petitioner") vide letter dated March 2, 2017 filed a motion for leave for review ("review motion") before National Electric Power Regulatory Authority (hereinafter referred to as "NEPRA" or "the Authority") under NEPRA Review Procedure Regulations, 2009 against the Determination of the Authority in respect of new tariff for wind power projects issued on January 27, 2017 (hereinafter referred to as "impugned determination").
2. In the review motion, GOS stated that it has initiated development of a number of unsolicited wind power projects which are at various stages of development. GOS stated that Renewable Policy 2006 (hereinafter referred to as "Policy") has allowed tariff setting through Competitive Bidding only for solicited proposals whereas for unsolicited projects, the Policy allows for either negotiated tariff or an upfront tariff. In view thereof, GOS requested the Authority to review the impugned determination and issue the Upfront Tariff for wind power projects being developed under unsolicited mode.

Brief Background

3. The Authority upon expiry of deadline for acceptance of upfront tariff, 2015 for wind power generation projects on June 13, 2016 initiated suo moto proceedings in exercise of its power under the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 ("NEPRA Act") read with Rule 3(1) of the NEPRA (Tariff Standards and Procedures) Rules, 1998. The advertisement, containing the proposed tariff and underlying assumptions thereof was published in the widely circulated daily newspapers on June 14, 2016. The public hearing on this matter was held on July 19, 2016 at NEPRA Tower, Islamabad. Following issues were framed and advertised through the aforementioned notice;



Whether to determine a new upfront tariff for wind power projects or to determine a benchmark levelized tariff for competitive bidding by the relevant agencies?

Whether the proposed costs are reasonable?

• Whether the assumptions listed above are reasonable?

4. After following the due process and considering the submissions of various stakeholders, the Authority issued impugned determination on January 27, 2017. In the said determination, the

Authority decided to shift to competitive bidding regime for the induction of wind power into the power system and approved following Benchmark Levelized Tariff:

(Rs./kWh)

Years	O&M	Insurance	(100% foreign debt)		(100% local debt)	
			Return on Equity	Debt Servicing	Return on Equity	Debt Servicing
1 to 13	1.1986	0.2523	1.9406	4.7184	1.9944	5.9746
14 to 25	1.1986	0.2523	1.9406	-	1.9944	-
Levelized Tariff	1.1986	0.2523	1.9406	3.6924	1.9944	4.6755

Proceedings

5. The Authority admitted the subject review motion on March 30, 2017 and decided to hold a hearing. Notices of hearing were sent vide letters dated April 20, 2017. The hearing was held on April 20, 2017 which was attended by the petitioner, representatives of National Transmission and Despatch Co. Ltd. (NTDCL), Central Power Purchasing Agency (CPPA-G), Alternative Energy Development Board (AEDB), and a large number of other interveners/stakeholders, etc.

Hearing

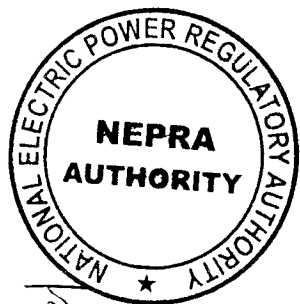
6. During the hearing, GOS submitted that Policy provides that the following categories of proposals for renewable energy based IPP projects shall be welcomed by the AEDB and designated provincial/AJK agencies:

"Unsolicited proposals: (Para 8.7.1)

In the case of unsolicited proposals, a Letter of Intent (LoI) shall be issued to enable the sponsors to carry out a feasibility study and obtain tariff determination and a generation license from NEPRA. Thereafter, a Letter of Support (LoS) shall be issued to assist the sponsors in achieving financial closure for the project."

"Solicited proposals: (Para 8.7.2)

In the case of solicited proposals, bids shall be invited by AEDB/Provincial/AJK Agency from IPPs to participate in a competitive bidding process. After completion of evaluation of bids, an LoS shall be issued to the successful bidder to facilitate the project's financial close. The procedure will be structured in consultation with NEPRA. The tariff determined through competition will be regarded as final and will not be re-opened by NEPRA"



7. GOS submitted that pursuant to above quoted section 8.7.1 of the Policy, it has initiated thirty four (34) unsolicited proposals. Two projects of 50 MW each were initiated under solicited proposals in pursuance of aforementioned Para 8.7.2 of the Policy. GOS submitted that 34 unsolicited wind power projects are at different development stages.
8. GOS further stated that Policy expressly restricts the competitive bidding process to solicited proposals only, making no mention of a competitive bidding process for unsolicited proposals. To substantiate its submission, GOS referred the following sections of the Guidelines for Determination of Tariff for Grid-Connected IPPs attached as Annexure-A of the Policy:

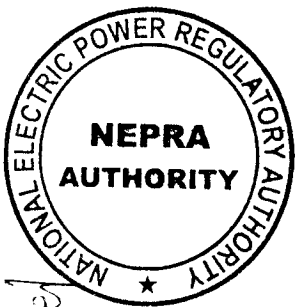
“A.7.1 Tariff through Competitive Bidding on Solicited Proposals

This would entail determination of tariff on the basis of competition in accordance with the Policy for Power Generation Projects, 2002. The bidding process may be structured along either of the following two options:

- i. Bidders may be required to submit their competitive proposals for the tariff
- ii. A benchmark tariff may be offered up-front, and bidders invited to quote a discount on the benchmark price.”

“A.7.2 Negotiated Tariff for Unsolicited Proposals and Up-front Tariff

...If an IPP wishes to submit an unsolicited proposal and wants to settle tariff through negotiations, NEPRA will determine the tariff in consultation with the IPP, the power purchaser(s), and other stakeholders. Projects opting for up-front tariff determined by NEPRA will not require any further negotiations, approvals, or clearances with respect to the purchase price of the electricity produced.”



9. Referring above, the petitioner submitted that its two solicited projects (100 MW) are eligible to be considered for competitive bidding tariff pursuant to the new determination whereas the remaining projects require tariff approval under either negotiated or upfront mode. GOS also submitted that introducing competitive bidding at this stage for unsolicited project sites will result in not only lengthy litigation but also halt the development of the power sector by means of private investment. Stating all the above, GOS requested the Authority to announce upfront tariff for the proposals initiated by the petitioner under unsolicited mode.
10. The representative of NTDC during the hearing stated that as per the study carried out by its consultant; wind power evacuation capacity of 1756 MW was specified for the spot year 2016-17. NTDC submitted that it was required to setup grid to evacuate 1756 MW of power which shall be completed by 2019; therefore, the stated power can be evacuated by that time. NTDC further

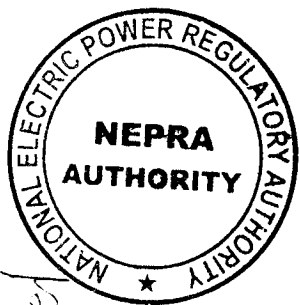
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submitted that the growth in issuance of LOIs has been the serious concern for the power purchaser and it repeatedly advised GOS in several meetings to link the issuance of LOIs with any spot year for evacuation of power so that the sponsor should certainly know that in which year its project will complete.

11. The representative of CPPA-G proposed that there should be a mechanism inbuilt in the competitive bidding framework to address the projects who have achieved some progress. CPPA-G further submitted that the Policy has phasing approach and for medium term Policy framework provides the mode of competitive bidding. Stating above, CPPA-G recommended that the competitive bidding tariff should continue.

12. The representative of AEDB did not support the contentions of GOS and submitted the following:

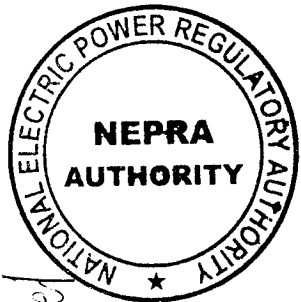
- The referred paragraphs A.7.1 and A.7.2 of the Policy on which the grounds of review motion are based are just the guidelines annexed with the Policy and sections 7 and 34 of NEPRA Act override the tariff guidelines of the Policy. AEDB submitted that section 7(6) of the NEPRA Act requires the Authority to comply with the guidelines of the Federal Government only if the Authority considers that they are practicable and consistent with the Act.
- AEDB further submitted that Policy should be read as a whole instead of choosing selective paragraphs to build a definitive position. Stating above, AEDB referred the paragraph 7 of the Policy-Road Map for Policy Development and Implementation-which defines the phasing and sub paragraph 7.3 which provides that beyond June, 2012, renewable energy shall be inducted through competition. AEDB also referred paragraph 2.2 of the Policy which says that ".....NEPRA was established under NEPRA Act to function as an independent regulator and ensure a transparent, competitive, commercially-oriented power market in Pakistan. AEDB further submitted that paragraph 5 of the Policy-Policy Goals and Development Strategy-provides that "..... gradually lower RE costs and prices through competition in an increasingly deregulated power sector". Referring above provisions of the Policy, AEDB submitted that impugned determination is consistent with higher level goals, development strategy and roadmap for Policy development given in the Policy.
- Further, AEDB submitted that there is a difference between award of project and award of tariff. Paragraph 8.7 of the Policy talks about how the project proposals are initiated, i.e. unsolicited proposals and solicited proposals. These mode of proposals for procurement of projects given in the Policy do not dictate the Authority the mode for award of tariff. AEDB stated that the tariff setting is prerogative of NEPRA under the NEPRA Act and not



upon the purview of the Policy for any project either develop by public sector or private sector.

- Moreover, AEDB submitted that the relevant agencies have issued a large number of LOIs without taking into account whether the power purchaser will be able to evacuate power. AEDB stated that the NTDCL system has limited interconnection capacity and it is understood that competition is a good method for the allocation of interconnection slots.
- AEDB further submitted that merely the fact that a large number of LOIs have been given does not mean that now it has become mandatory on national transmission to make sure that interconnection capacity is made available. AEDB clarified that provision of LOI does not create the right of mandatory purchase of electricity and applies to those projects which are at mature stage. AEDB further submitted that LOI itself expresses the shift of entire risk and cost to the investors and the issuance of LOI has no vested right to a grant of tariff by NEPRA or the execution of an EPA by the power purchaser.
- AEDB stated that world power market is heading towards competitive reverse auctions. While referring the statistics, AEDB submitted that as per the World Bank report published in 2013, the competitive bidding tendering has grown from 7 in 2005 to 45 in 2013.
- AEDB submitted that the as the market evolves, the Policy responds accordingly. He stated that the Policy in para 8.3.1 says that the wind risk must be borne by the power purchaser which is still there in the Policy; however, NEPRA in 2013 shifted the said risk to the purchaser. AEDB accordingly changed the Energy Purchase Agreement and every wind project signed the same.

Regarding the point of litigation by the LOI holders, AEDB stated that the competitive bidding ensures transparency of process in procurement of power and results in lowest possible tariffs. AEDB submitted that it understands that that the court shall not strike down the auction solely because of these two paragraphs in the guidelines of the Policy.

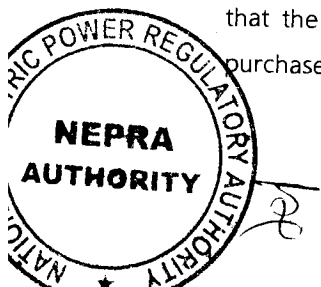


13. During the hearing and in writing numerous project developers including Trans Atlantic Energy Pvt. Ltd., Norinco International Power Limited, Din Energy etc. stated that they are developing their projects under unsolicited mode of the Policy and have spent a huge amount in achieving the milestones listed in LOI. Therefore, application of competitive regime on their projects is contrary to the Policy as well as violates their rights. They submitted that competitive bidding process is discriminatory as the projects that have invested huge amount for last few years cannot be treated equal to the new projects They supported the submission of GOS that guidelines in

the Policy clearly prescribe the mode of competition only for solicited proposals and the impugned determination is the violation of NEPRA Act which, inter alia, provides for compliance of the guidelines of the Government. They also requested for issuance of an upfront tariff to accommodate the existing LOI holders of wind power projects being developed under unsolicited mode and then competitive bidding process should initiate. Iran-Pak Wind Power Pvt. Limited proposed the Authority to convert the benchmark tariff into upfront tariff. Shaheen Foundation requested the Authority that all those projects which have been given power evacuation certificate by NTDC may be approved upfront tariff in chronological order with respect to their grid availability at any tariff as the Authority may deem fit.

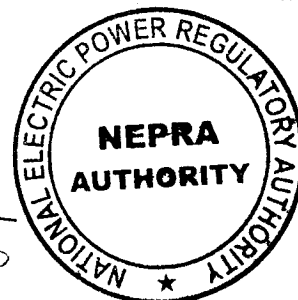
Discussion, Analysis and Decision of the Authority

14. GOS and the project developers have submitted that the Policy describes two separate modes for setting up a renewable energy project, i.e. solicited and unsolicited mode. The Policy provides tariff setting through Competitive Bidding only for solicited proposals whereas negotiated tariff OR upfront tariff have been prescribed for unsolicited proposals. The petitioner and the project developers have submitted that by announcing benchmark levelized tariff, NEPRA has parted from the tariff scheme given in the Policy as it requires all unsolicited project sponsors to participate in the competitive bidding for obtaining a tariff. It is understood that the arguments are based on the pretext that Policy is binding on NEPRA for the tariff determination purposes. The Authority considers that it is governed by NEPRA Act and the rules/regulations made thereunder. Keeping in view the developments in the market, global trends and other factors, it is the role of NEPRA to decide the suitable tariff and corresponding regime for the induction of certain technology of electric power. Hence, the Authority considers that the Policy document provides guidance for tariff purposes; however, the governing legislative framework of NEPRA supersedes the Policy for the purpose of tariff determination. Nevertheless, the Authority agrees with the submission of AEDB that the impugned determination of NEPRA is consistent with the overall long run objective of competition as provided in the Policy.
15. The petitioner and other participants further submitted that the impugned determination is in violation of Section 7(6) of the NEPRA Act. Section 7(6) of the NEPRA Act provides "*In performing its functions under this Act, the Authority shall, as far as practicable, protect the interests of consumers and companies providing electric power services in accordance with guidelines, not inconsistent with the provisions of this Act, laid down by the Federal Government*" AEDB submitted that as per the produced section, NEPRA, while complying with the Guidelines, has to check and judge whether they are practical and consistent with NEPRA Act. The Authority noted that the Guidelines of the Policy provides that the wind risk shall be absorbed by the power purchaser, however, NEPRA, while considering the availability of reasonable wind data, decided to



shift this risk towards power producer in the upfront tariff, 2013 and subsequent tariff determinations. Also, Policy Guidelines provide that there will be no sharing of better terms of debt servicing under the upfront tariff regime whereas NEPRA in its upfront tariff, 2015 decided to share the said savings with the power purchaser. In its impugned determination, the Authority has mentioned that *"....the Authority further considers that the procurement of power under transparent competitive process is most appropriate as it can fetch realistic prices based on the prevailing conditions of the market. It has also been observed that competitive bidding mode has been the most successful and preferred mode for arriving at fair and judicious prices and after announcing three upfront tariffs for wind technology, this is the appropriate time for a logical shift towards competitive regime....."* Therefore, the Authority, considering the market conditions and benefits of the auctions regime, considered it practical to shift towards competition. In view thereof, the Authority considers that the argument that impugned determination violates the NEPRA Act is not correct.

16. The parties further submitted that a number of project developers submitted their proposals on an unsolicited basis in light of process stated in the Policy. Since the issuance of the LOI by the relevant agencies, they have incurred huge expenses, achieved significant milestones and are at very advance stage of development. These developments were made on the expectation that their projects shall be processed in accordance with the mechanism given in the Policy and the impugned determination revokes these rights. AEDB during the hearing submitted that LOI expresses the shift of entire risk and cost to the investors and the issuance of LOI has no vested right to a grant of tariff by NEPRA or the execution of an Energy Purchase Agreement by the power purchaser. On review of the language given in the LOI, the Authority also considers that the said letter stipulates the steps to be followed for the development of the projects with all risk and cost to investors. Notwithstanding above, the impugned determination does not restrict the unsolicited projects to get tariff approvals under NEPRA Tariff (Standards & Procedure) Rules, 1998 and the relevant projects may file tariff petitions under the said rules subject to submission of the requisite documents including power evacuation and consent certificates from the concerned entities.



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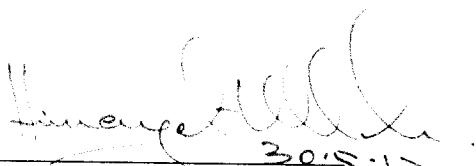
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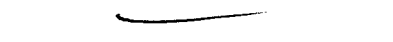
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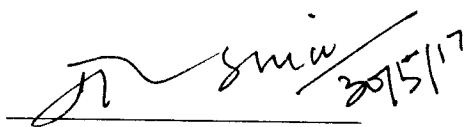
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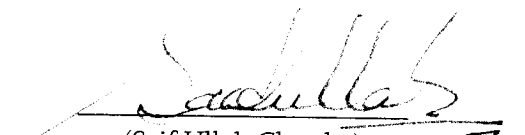
17. In view of the discussions and analysis given above, the Authority considers that the request of GOS to restrict the impugned determination to solicited projects and determine upfront tariff for wind power projects being developed under unsolicited mode is not maintainable. In view thereof, the subject review motion stands dismissed.

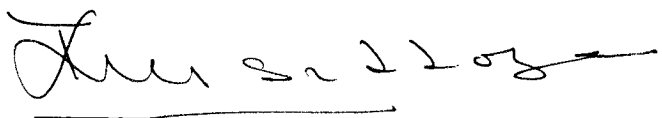
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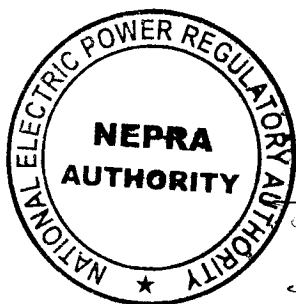

30.5.17
(Himayat Ullah Khan)
Member

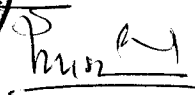

(Syed Masood ul Hassan Naqvi)
Member


30/5/17
(Maj. (R) Haroon Rasheed)
Member


30.5.2017
(Saif Ullah Chattha)
Member/ Vice Chairman


(Tariq Saddozai)
Chairman




30.05.17