

National Electric Power Regulatory Authority Power Purchase Agreements (Review and Approval)
Regulations, 2021

S.R.O._____. — In exercise of the powers conferred by Section 47 read with Section 7 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997), the National Electric Power Regulatory Authority is pleased to make the following regulations, namely:-

1. **Short title, commencement and scope.** — (1) These regulations may be called National Electric Power Regulatory Authority Power Purchase Agreements (Review and Approval) Regulations, 2021.

(2) They shall come into force at once.

(3) These regulations shall be applicable to all the agreements for sale and purchase of electric power in Pakistan.

2. **Definitions.** (1) In these regulations, unless there is anything repugnant in the subject or context:

- i. "Act" means Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997);
- ii. "Applicable Documents" means the Act and the rules, regulations, licences, registrations, tariff, directives, codes, standards, guidelines, notifications, circulars, orders, determinations, documents, instruments, approvals and authorizations issued or granted from time to time by the Authority in exercise of its powers under the Act;
- iii. "Applicant" means power purchaser who either procures power under NEPRA (Interim Power Procurement) Regulations, 2005 or is directly involved in purchase of power.
- iv. "Authority" means the National Electric Power Regulatory Authority established under Section 3 of the Act;
- v. "Agreement" means Power/ Energy purchase agreement to procure electric power from a generation company containing standardized terms and conditions deliberated and approved by the relevant forum pursuant to policy approved by Council of Common Interest and where specific information of the parties to agreement has been incorporated for review and approval of the Authority.

- vi. "Provincial Grid Company" means the person engaged in the transmission of electric power and licensed under section 18A of the NEPRA Act.
- vii. "Registrar" means a person designated by the Authority to register and record the receipt of Agreement.

(2) Words and expressions used but not defined in these regulations shall have the same meaning as assigned in the Act and rules and regulations made thereunder.

3. **Submission of Agreement.** (1) The power purchaser or power procurer shall submit the negotiated Agreement with the Registrar initialed by the parties to the Agreement and where applicable approved by its board, for review and approval of the Authority.

Provided that an Agreement for procurement of electric power from a generation company pursuant to a Power Acquisition Program approved by the Authority, shall be submitted to the Registrar for review and approval by the Authority after bilaterally negotiating the Agreement.

(2) The Agreement shall be accompanied with;

- (a) a statement which shall explain the essential terms and conditions of the Agreement;
- (b) authorization of Board for the individual who is submitting the Agreement;
- (c) affidavit as to accuracy and correctness of the information provided by the parties to the Agreement; and
- (d) any other information or document as the Authority may require from time to time.

(3) The Agreement shall be deemed to be filed after all required information has been submitted by the Applicant and the Registrar may return the Agreement if the required information has not been submitted.

(4) The Registrar shall present the Agreement before the Authority for admission within seven (7) days of filing of the Agreement complete in all respect. The Authority may admit the Agreement for further proceedings after it is satisfied that all the relevant and required information has been provided:

Provided that prior to admission of the Agreement, the Authority may seek any other information or document which, in the opinion of the Authority, is material and necessary for arriving at an informed decision.

4. **Review and Approval of the Agreement (1)** The Agreement will be reviewed on the basis of technical and financial parameters which shall include without limitations –

- Technical Parameters including Plant capacity, Auxiliary Consumption, Efficiency/Heat Rate, Availability, Liquidated Damages etc.)
- Financial Parameters including Capacity Charges (Debt, Interest, Return on Equity (ROE), Return on Equity During Construction (ROEDC), Insurance, Cost of Working, Capital. Withholding Tax, Fixed O&M) & Energy Charges (Fuel Cost/Water Usage Charges (WUC), Variable O&M)

(2) The Authority will review the Agreement and determine whether –

- (a) the rates and charges are in accordance with the applicable tariff approved by the Authority;
- (b) the proposed terms and conditions of the Agreement are prudent and reasonable, fair and balanced;
- (c) different rights and obligations of the parties to the Agreement have been distributed fairly and evenly and no undue burden or obligations have been imposed on the seller/purchaser of electric power; and
- (d) the terms of the Agreement are consistent and in conformity with the terms and conditions given in the generation license, tariff or other Applicable Documents;

(3) If during the review, it is found that any term and condition of the Agreement is imprudent, unreasonable, inconsistent explicitly or otherwise with the spirit of tariff determination, license or any other applicable document, the Authority may issue notice to the parties to the Agreement for explaining their position and if deemed appropriate, it may hold a hearing in the matter.

(4) If parties to the Agreement fail to satisfy the Authority regarding prudence and reasonableness of the terms and conditions of the Agreement or inconsistency with the tariff

determination, license or any applicable document, the Authority may direct the parties to amend the Agreement accordingly.

(5) The parties to the Agreement shall amend the Agreement within thirty (30) days of the receipt of the direction of the Authority under sub regulation (3).

(6) In case the Authority is satisfied with the terms and conditions of the Agreement, the Authority shall convey its approval to the Applicant or the agency as the case may be:-

Provided that approval of the Agreement by the Authority shall not be considered as blanket approval of the standardized terms and conditions of the Agreement prepared by an agency, subject to review by the relevant forum pursuant to any policy approved by Council of Common Interest.

5. **Stage wise Approval Process:-** (1) In case of conventional thermal and hydro power projects, the Authority may carry out the approval process in the following manner:

- (a) three months prior to financial close of the project, the Applicant may submit the negotiated Agreement along with the best available technical data, which shall be approved on provisional basis by the Authority within four (4) weeks of admission of the Agreement; and
- (b) after finalization of EPC and OEM of the project, but not later than twelve (12) months prior to commercial operation date (COD) of the power project, Agreement shall be resubmitted along with complete schedules for final approval of the Authority. The Authority shall carry out the approval of the Agreement in terms of regulations within sixty (60) days of admission.

(2) For Renewable Projects, the design data required in the Schedules are finalized prior to Financial Close and only Interconnection equipment data is required to be approved by National Transmission and Dispatch Company (NTDC), provincial grid company and/or distribution licensee wherever relevant. Therefore, single stage approval process will be adopted. NEPRA will scrutinize the Agreement submitted by the Applicant and provide approval within sixty (60) days. After finalization of Interconnection data the relevant schedule will be re-submitted to NEPRA.

6. **Execution or Modification of Agreement:-** (1) Every Agreement for purchase of electric power shall be submitted to the Authority for its ex ante review and approval prior to its execution.

(2) Any amendment to the Agreement already approved by the Authority shall be submitted to the Authority within seven (7) days of the execution thereof accompanied with a statement containing the reasons for such amendment.

(3) The Authority shall review and approve the amendment(s) as per the procedure provided for review and approval of the Agreement in these Regulations.

(4) Any Agreement executed or modified in contravention of sub-regulation (1) above shall be void to the extent of the contravention and inconsistency with any applicable document.

7. **Penalty for failure, refusal to comply with, or contravention with any provision of the regulations:-** if any person fails or refuses to comply with, contravenes any of the provisions of these regulations or any direction or order passed by the Authority under these regulations or knowingly or willfully authorizes or permit such failure, refusal or contravention, shall be punishable with a fine as provided under NEPRA Act.