



Registrar

National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/DG(M&E)/LAM-01/ 21041


August 09, 2023

Chief Executive Officer,
Central Power Purchasing Agency (Guarantee) Limited
(CPPA-G), Shaheen Plaza, 7-West, Fazal-e-Haq Road,
Islamabad.

Subject: **Order in the matter of Show Cause Notice issued Central Power Purchasing Agency – Guarantee (CPPA-G) under Section 27B of the NEPRA Act read with relevant Rules and Regulations**

Please find enclosed herewith, Order of the Authority (total 09 Pages) in the subject matter for information and compliance.

Enclosure: Order of the Authority (total 09 Pages)


(Engr. Mazhar Iqbal Ranjha)

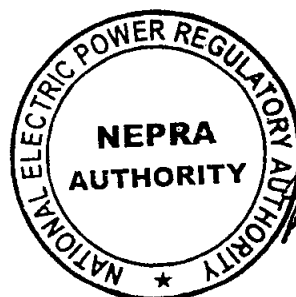


National Electric Power Regulatory Authority

In the matter of Show Cause Notice issued to Central Power Purchasing Agency-Guarantee Limited under Section 27B of the NEPRA Act read with relevant Rules and Regulations

Order

1. The Central Power Purchasing Agency-Guarantee Limited (CPPA-G) (hereinafter referred to as the "Power Purchaser") is a Company incorporated under the Companies Ordinance, 1984 and is functioning as the market operator to carry out market operations under the NEPRA (Market Operator Registration, Standards and Procedure) Rules, 2015 (hereinafter referred to as the "Market Rules") since June 2015.
2. Pursuant to Section 15 of NEPRA Act (now section 14B after promulgation of Regulation of Generation, Transmission and Distribution of Electric Power Amendment Act 2018), the Authority has granted a Generation License (No. GL/02/2002 dated 01.07.2002) to Central Power Generation Company Limited (CPGCL, GENCO-II) (hereinafter referred to as the "Power Seller") for thirteen (13) power generation units of TPS Guddu with total installed capacity of 1,655 MW to engage in the generation business as stipulated in its Generation License.
3. The Power Purchaser executed a Power Purchase Agreement (hereinafter called the "PPA") with the Power Seller on 20.09.2015 for procurement of power on terms and conditions stipulated in the PPA.
4. Pursuant to Section 32 of the NEPRA Act, the Authority shall, within eighteen months from the commencement of this Act, specify procedures and standards for the Authority's prior approval of the transmission companies' and distribution companies' investment and power acquisition programmes.
5. Schedule-II of the Market Rules prescribes the operations and responsibilities to be performed and discharged by the market operator, including generation invoice verification on the basis of meter reading and terms of the respective Power Purchase Agreements, billing to the DISCOs, collection from the DISCOs and settlement to the market participants as per the Commercial Code.
6. Pursuant to Clause 7A.1(a) of the PPA, from and after the Effective Date, the Power Purchaser shall pay the Capacity Payment to the Power Seller, Monthly in arrears, in accordance with Article 7A.7. For each Month, the Capacity Payment shall be equal to the product of the Capacity Purchase Price and the Dependable Capacity of the Complexes in effect for such month.



7. Clause 7A.1(c) read with Schedule VI of the PPA (C. Capacity Purchase Price) refers to the Dependable Capacity as the capacity determined on the basis of Annual Capacity Tests,
8. Pursuant to Clause 6.1(a) of the PPA, during each Demonstration Period a test (the "Annual Capacity Test") shall be conducted to determine the Tested Capacity and heat rate of the Complex.
9. The available record revealed that Units 1, 2, 3, 4 and 13 of TPS Guddu remained on forced outage since 28.08.2015, 13.05.2013, 02.08.2018, 23.05.2013 and 24.03.2013 respectively. However, the information submitted by the Power Purchaser vide its letter No. DGMF-I/MF-I/13510-15 dated 19.05.2021 pertaining to the Capacity Charges paid to TPS Guddu for the FY 2014-15 to 2019-20 indicated that the Capacity Charges were also paid to TPS Guddu in respect of above-mentioned units amounting to Rs. 0.738 billion, Rs. 1.142 billion, Rs. 0.454 billion, Rs. 2.763 billion and Rs. 2.546 billion respectively since their outage date.
10. In view of the above, the Authority observed that the Power Seller, as per its Tariff Determination dated 24.02.2006, was required to conduct Net Dependable Capacity Test within six months of the notification of tariff rates as determined by the Authority vide the said determination. However, the Power Seller failed to fulfill its obligation to carry out the Net Dependable Capacity Tests required under Tariff Determination to establish the actual Net Dependable Capacity for the purpose of charging the capacity payments. However, despite the failure of the Power Seller to conduct Net Dependable Capacity Test to establish the Net Dependable Capacity of its old blocks, the Power Purchaser continued to make Capacity Payments to the Power Seller which, prima facie, appears to be in violation of Schedule-II of the Market Rules read with Clause 7A.1(a)&(c), Schedule VI (C. Capacity Purchase Price) and Section 6.1(a) of the PPA and Section 32 of the NEPRA Act and thus is unjustified and unlawful and shows negligence on the part of the Power Purchaser to discharge its obligation to carry out proper scrutiny to ensure that capacity payments after satisfying the conditions of the applicable documents. In view of the foregoing, the Authority decided to initiate legal proceedings against the Power Purchaser under NEPRA (Fine) Regulations, 2021 (hereinafter referred to as the "Fine Regulations, 2021").

Explanation to the Power Purchaser:

11. Accordingly, an Explanation dated 29.12.2021 was issued to the Power Purchaser under Regulation 4(1) of the Fine Regulations, 2021. The salient features of the Explanation are as follows:

***WHEREAS** the National Electric Power Regulatory Authority (herein after referred to as the "Authority") established under Section 3 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (herein after referred to as the "NEPRA Act") is mandated to regulate the provisions of electric power services; and*



2. **WHEREAS** the Central Power Purchasing Agency-Guarantee Limited (CPPA-G) (herein after referred to as the "Power Purchaser") is a Company incorporated under the Companies Ordinance, 1984 and is functioning as the market operator to carry out market operations in accordance with the National Electric Power Regulatory Authority (Market Operator Registration, Standards and Procedure) Rules, 2015 (herein after referred to as the "Market Rules") since June 2015; and

3. **WHEREAS** Schedule-II of the Market Rules prescribes the operations and responsibilities to be performed and discharged by the market operator, including generation invoice verification on the basis of meter reading and terms of the respective Power Purchase Agreements, billing to the DISCOs, collection from the DISCOs and settlement to the market participants as per the Commercial Code; and

4. **WHEREAS** pursuant to Section 7A.1(a) of the Power Purchase Agreement (herein after referred to as the "PPA") signed between the Central Power Generation Company Limited (CPGCL, GENCO-II) (herein after referred to as the "Power Seller") and the Power Purchaser on 20.09.2015, from and after the Effective Date, the Power Purchaser shall pay the Capacity Payment to the Power Seller, Monthly in arrears, in accordance with Article 7A.7. For each Month, the Capacity Payment shall be equal to the product of the Capacity Purchase Price and the Dependable Capacity of the Complexes in effect for such month; and

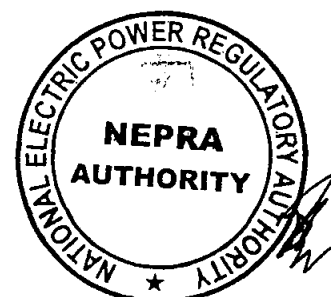
5. **WHEREAS** Section 7A.1(c) read with Schedule VI of the PPA (C. Capacity Purchase Price) refers to the Dependable Capacity as the capacity determined on the basis of Annual Capacity Tests; and

6. **WHEREAS** pursuant to Section 6.1(a) of the PPA, during each Demonstration Period a test (the "Annual Capacity Test") shall be conducted to determine the Tested Capacity and heat rate of the Complex; and

7. **WHEREAS** Demonstration Period is defined in the Definition Section as the period commencing with the first anniversary of the Effective Date with respect to the Complex, a period of 60 days following the last day of the last month of the maintenance months in each year or such other 60 days period as may be agreed between the Power Purchaser and the Power Seller; and

8. **WHEREAS** the information submitted by the Power Purchaser vide its letter No. DGMF-I/MF-I/13510-15 dated 19.05.2021 pertaining to the Capacity Charges paid to TPS Guddu for the FY 2014-15 to 2019-20 clearly indicates that the Capacity Charges were also paid to TPS Guddu in respect of Units No. 1, 2, 3, 4 & 13 of TPS Guddu despite their closure since long as per the following details; and

Unit No.	Net Capacity (MW)	Outage Date	Reason of Shutdown	Capacity Payment (Rs. Billion)
1	70	28.08.2015	Economizer tube leakage.	0.738
2	70	13.05.2013	Fire incident at 6.6 kV breaker room.	1.142
3	170	02.08.2018	This is the last operational date, afterward Unit remained standby till de-licensing.	0.454
4	170	23.05.2013	Fire incident.	2.763
13	130	24.03.2013	Turbine & its foundation damage.	2.546
Total	610	-		7.643



9. **WHEREAS** the Capacity Payment to be made by the Power Purchaser had to be as per the formula provided in the PPA. It appears that the requisite capacity tests were not conducted as per the requirements of the PPA, nevertheless, as the Power Seller had itself admitted that its certain units were on outage for longer periods, the capacity payment should have been adjusted accordingly based on the Dependable Capacity. It also appears that keeping this in view the Power Seller had raised its invoice as per the Dependable Capacity while omitting the capacity of the units on outages, however, the Power Purchaser directed them to revise their invoice. The position taken by the Power Purchaser does not appear to be in line with the letter and spirit of the PPA. A failure to conduct Annual Capacity Test cannot be construed beneficially for the Power Purchaser at the expense of the consumers; and

10. **WHEREAS** in terms of observations given in Para 8 and 9 above, the Power Purchaser has prima facie failed to perform its operations and discharge its responsibilities in accordance with Schedule-II of the Market Rules read with Section 7A.1(a)&(c), Schedule VI (C. Capacity Purchase Price) and Section 6.1(a) of the PPA; and

11. **WHEREAS** the rules and regulations framed under the NEPRA Act fall within the definition of "Applicable Documents" as defined under NEPRA (Fines) Rules, 2002 (herein after referred to as the "Fine Rules") and for any violation of the Applicable Documents, fine could be imposed by the Authority; and

12. **NOW THEREFORE**, in view of the above, the Power Purchaser is hereby called upon under Rule 4(1) of the Fine Rules, to either admit or deny the occurrence of the violation as mentioned above within fifteen (15) days, failing which, it shall be presumed that the occurrence of the violation is admitted by the Licensee.

12. In response, the Power Purchaser submitted its reply vide letter dated 10.02.2022. The Authority after detailed deliberations rejected the response submitted by the Power Purchaser against the above Explanation giving reasons for such rejection vide Order dated 17.08.2022.

Show Cause Notice to the Power Purchaser:

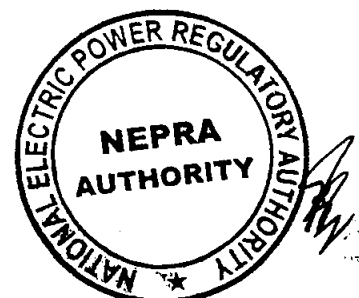
13. Accordingly, a Show Cause Notice dated 17.08.2022 was issued to the Power Purchaser under Section 27B of the NEPRA Act read with relevant Rules and Regulations, based on violations alleged in the Explanation.

Hearing:

14. The Power Purchaser was directed to submit its response within fifteen (15) days, however, no response was received from the Power Purchaser despite lapse of the stipulated time. In view of the foregoing, the Authority decided to provide an opportunity of hearing to the Power Purchaser under Regulation 4(11) of the Fine Regulations, 2021. Accordingly, hearing in the matter was held on 10.11.2022, wherein, the representatives of the Power Purchaser participated and made the following submissions:

i. CPPA-G apologizes for not submitting the response to the Show Cause Notice.

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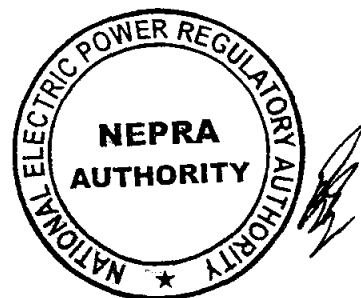


- ii. CPPA-G is pushing CPGCL to conduct the Annual Dependable Capacity Test (ADCT) of TPS Guddu since long. However, CPGCL is not ready to conduct the same.
- iii. If ADCT is not carried out due to any reason, then capacity payments are made on the basis of capacity established as a result of last test.
- iv. CPPA-G has imposed Liquidated Damages (LDs) on CPGCL on account of non-performance of TPS Guddu.

Response received from the Power Purchaser:

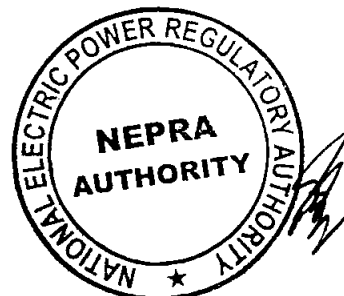
15. Since no response was received from the Power Purchaser even after the hearing, the Authority decided to give a final time of ten (10) days to the Power Purchaser for submitting its response to the Show Cause Notice. Accordingly, a final notice dated 19.01.2023 was issued to the Power Purchaser. In response, the Power Purchaser finally submitted its reply vide letter dated 31.01.2023. The salient features of the response submitted by the Power Purchaser are as follows:

- i. CPPA-G wishes to seek a hearing before the Authority in deciding the Show Cause Notice and wishes to assist the Authority regarding the PPA adherence to which CPPA-G has not been negligent and, the active conflict within the role of the Power Purchaser and Market Operator be also considered relevant in terms of the attending circumstances requiring invocation of Section 9.3 of the PPA.
- ii. According to Section 7A.1(a) of the PPA, Capacity Payment is the product of Capacity Purchase Price and Dependable Capacity in effect for such month. The Dependable Capacity is to be determined on the basis of ADCT as defined in Section 6.1(a) of the PPA which requires that Demonstration Period for the Capacity Test be determined for the Tested Capacity. It is noteworthy that Demonstration Period as contained in the PPA means the Period after the last day of the last month in the Maintenance Month of given year or such other sixty-day period as agreed by the Parties for the conduct of ADCT by the Seller. The Maintenance Months were not notified to the Power Purchaser nor the Seller was agreeing to a mutually agreed Period for determining the Demonstration Period to carry out the ADCT.
- iii. Furthermore, the Coordination Committee had to establish the SOP to conduct the Capacity Test and Heat Rate Test were required to take into consideration the Complex Operating conditions as well as the relevant OEM standards. It is on record that the Seller had made the SOP/ADCT contingent upon the calibration of meters. It is also on record that CPPA-G in the year 2019 shared a draft SOP for carrying out ADCT which has not been reverted by the Seller. That it is eminent that the Seller has been recalcitrant in observing the Provisions of the PPA on account of one reason or the other. These instances have impeded the Power



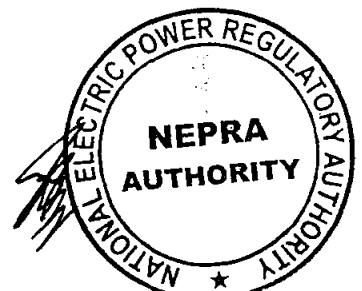
Purchaser from the application of Section 7A.1(a) as per the formula contained in the PPA.

- iv. It is established fact that the Power Purchaser has maintained its obligation of good faith which has not been adequately reciprocated but rather has arraigned the Power Purchaser for the act of 'continued to make Capacity Payments' which has been termed 'unjustified and unlawful and shows negligence' under the relevant clauses of the PPA read with Section 32 of the NEPRA Act. The factum that has been considered by the Authority is divided into two parts: a) Pre 2020 and b) Post 2020.
- v. The Pre 2020 time portion demonstrably depicts the pursuit of the Power Purchaser for conducting ADCT in the Coordination Committee separately as well because it was cognizant of the six month period for the estimated Net Dependable Capacity; an obligation that persisted on the Power Seller since the 2004 Tariff and to record the actual Net Dependable Capacity for application to Section 7A.1(a) after adhering to Section 6.1(a). In consideration to the hardship representations made by Power Seller to the Power Purchaser which were being coordinated in anticipation that the ADCT shall be conducted in the next year which continued till the recalcitrant approach of the Power Seller surfaced on the issue of Draft SOPs for the conduct of ADCT by the year 2019. It is worthwhile to reiterate that the Power Purchaser was making Capacity Payments as per NEPRA determined Net Dependable Capacity in anticipation that the actual Net Dependable Capacity shall be available in the succeeding year with stoppage of Capacity Payment not provisioned for on the clear understanding that actual Net Dependable Capacity shall serve as the prevailing Tested Capacity causing substantiation of invoices/reconciliation for which a thirty six month period was considered tolerable parameters of PPA.
- vi. The Post 2020 time portion observed a shift of the Power Purchaser of refusing the invoice as non-conforming which the Authority has considered as a position not 'in line with the letter and spirit of the PPA'. The shift was in light of the considerations mentioned in the preceding paragraph which was not unfounded in terms of the exhaustion of tolerance parameters of the PPA with the obligation of good faith being defiled by the Power Seller. CPPA-G vide letter dated 24.01.2020 returned the Invoice with the remarks that the Invoice could be resubmitted based on tested Dependable Capacity of the Complex. It was meant for realization by CPGCL for planning and carrying out ADCT of the Complex. As already apprised to the authority on several occasions that CPGCL has been requested continuously for carrying out ADCT of the Complex obligatory under relevant provisions in PPA. However, CPGCL has not planned and informed schedule of ADCT of the Complex so far.
- vii. Moreover, CPPA-G has also availed recourse to LDs for non-availability or outages of units beyond allowable outage allowance block-wise.



Analysis/Findings of the Authority:

16. The Power Purchaser has requested to provide an opportunity of hearing before deciding the Show Cause Notice. In this regard, the Authority observes that the Power Purchaser has already been provided an opportunity of hearing under Regulation 4(11) of the Fine Regulations, 2021. The said hearing was held on 10.11.2022, wherein, the representatives of the Power Purchaser participated and made their submissions. Therefore, the request of the Power Purchaser does not merit consideration.
17. Moreover, the Authority observes that according to Section 7A.1(a) of the PPA, Capacity Payment is the product of Capacity Purchase Price and Dependable Capacity in effect for such month. Whereas, Dependable Capacity is to be determined on the basis of Annual Capacity Tests. Annual Capacity Test is defined in Section 6.1(a) of the PPA which states that during each Demonstration Period a capacity test shall be conducted to determine the tested capacity. Thus, the Capacity Payment to be made to the Power Seller had to be as per the formula provided in the PPA. It appears that the requisite capacity tests were not conducted as per the requirements of the PPA. It also appears that keeping this in view the Power Seller raised its invoice for the month of January, 2020 on the basis of its Available Capacity, however, the Power Purchaser returned the same with remarks that the Capacity Payment as per Available Capacity is contrary to provisions in the PPA. Hence, the position taken by the Power Purchaser does not appear to be in line with the letter and spirit of the PPA. A failure to conduct Annual Capacity Test cannot be construed beneficially for the Power Seller or the Power Purchaser at the expense of the consumers.
18. The Power Purchaser has further submitted that it is pushing the Power Seller to conduct the ADCT of TPS Guddu since long, however, the Power Seller is not ready to conduct the same. The Power Purchaser has also submitted that if ADCT is not carried out due to any reason, then Capacity Payments are made on the basis of capacity established as a result of last test. In this regard, the Authority observes that currently the old blocks of the Power Seller are being governed under the tariff determination dated 24.02.2006, wherein, CPP is determined on estimated Net Dependable Capacity of 1400 MW. The Net Capacity was due to be adjusted (one-time adjustment) after Net Dependable Capacity test to be carried out within six months of the notification of tariff rates determined by the Authority. However this Net Dependable Capacity test has not yet been carried out by the Power Seller. While it is a fact that the Net Dependable Capacity of old blocks of the Power Seller has been decreased considerably not only on account of deletion of various units from its generation license as a result of APM and LPM but also due to degradation of the operating units which are still in operation. This shows that the Power Purchaser may be getting more CPP as against the CPP due (actual CPP to be determined on the basis of ADCT) against its power plant. Hence, the stance adopted by the Power Purchaser is unjustified.
19. In addition to this, the Power Purchaser has submitted that it has imposed LDs on the Power Seller on account of non-performance of TPS Guddu. In this regard, the Authority observes



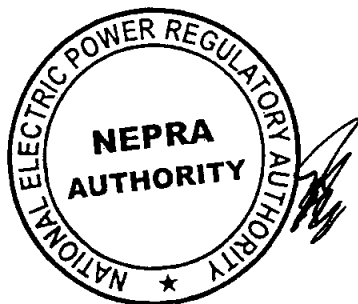
that the argument put forward by the Power Purchaser could have been considered had the Power Purchaser made the Capacity Payments to the Power Seller on the basis of ADCT of TPS Guddu. However, in the instant case, the Power Purchaser has made the Capacity Payments to the Power Seller on the basis of estimated Net Dependable Capacity of TPS Guddu. Therefore, the argument put forward by the Power Purchaser does not merit consideration.

20. The Authority also observes that units 2, 4, and 13 of TPS Guddu remained on outage since 13.05.2013, 23.05.2013, and 24.03.2013 respectively. Hence, the Power Purchaser should have raised LDs invoices to the Power Seller for the agreement years 2012-13 and 2013-14 as well. However, upon inquiry, the Power Purchaser has submitted that details of LDs raised to the Power Seller for the agreement years 2012-13 and 2013-14 are not available and LDs have been raised to the Power Seller for the agreement years 2014-15 to 2020-21. In this regard, the Authority observes that according to Article 7A.5 of the PPA:

"...within forty five (45) days of the end of each Agreement Year in case of Section 7A.4 (a), subject to the Seller's review, the Power Purchase shall compute and advise the seller an invoice for Liquidated Damages..."

In view of the above, the Authority observes that the Power Purchaser was bound to raise LDs invoices to the Power Seller within forty five (45) days of the end of agreement years 2012-13 and 2013-14. However, the Power Purchaser has not yet done the same despite lapse of the considerable time.

21. The Authority further observes that the Power Purchaser raised LDs' invoices amounting to **Rs. 10.351 Billion** to the Power Seller in respect of TPS Guddu for the agreement years 2014-15 to 2020-21 on account of availing higher outages by the units/machines of TPS Guddu than allowed limit as specified in the PPA. However, the same were disputed by the Power Seller. Therefore, the LDs have not yet been recovered from the Power Seller and passed on to the consumers. Whereas, the Capacity Payments have already been received by the Power Seller and passed on to the consumers.




Decision:

22. Keeping in view the relevant provisions of the NEPRA Act, Rules & Regulations made thereunder, other applicable documents, submissions of the Power Purchaser and available record, the Authority observes that the Power Purchaser has constituted violation of Schedule-II of the Market Rules read with Clause 7A.1(a)&(c), Schedule VI (C. Capacity Purchase Price) and Section 6.1(a) of the PPA and Section 32 of the NEPRA Act by making excess Capacity Payments to the Power Seller in respect of different units/machines of TPS Guddu on the basis of their estimated Net Dependable Capacity. Therefore, the Authority decides to impose a fine of Fifty Million Rupees (**Rs. 50 Million**) on the Power Purchaser.
23. Accordingly, the Power Purchaser is directed to pay the fine of Fifty Million Rupees in designated bank of the Authority within a period of fifteen (15) days after the date of issuance of this order and forward a copy of the paid instrument to the Registrar Office for information, failing which the Authority shall recover the amount due under Section 41 of the NEPRA Act read with relevant provisions of the Fine Regulations as arrears of the land revenue.

Authority

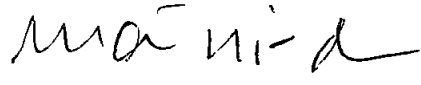
Rafique Ahmed Shaikh
Member (Technical)



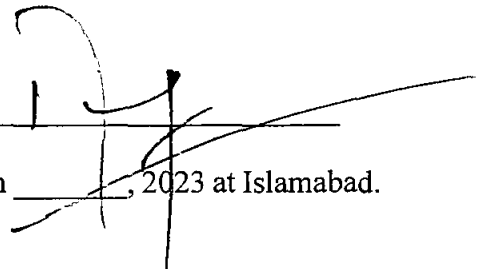
Engr. Maqsood Anwar Khan
Member (Licensing)



Mathar Niaz Rana (nsc)
Member (Tariff and Finance)



Tauseef H. Farooqi
Chairman



Announced on _____, 2023 at Islamabad.

