



Registrar

National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/DG(M&E)/LAM-01/ 31745

August 23, 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 to 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 12 Pages) in the subject
matter for information and compliance.

Enclosure: Order of the Authority (total 12 Pages)


(Engr. Mazhar Iqbal Ranjha)

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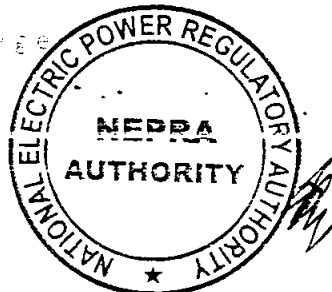


National Electric Power Regulatory Authority

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

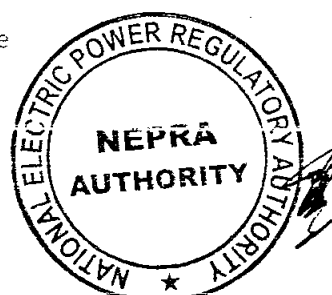
Order

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 the 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. IPGL/20/2004 dated 22.09.2004) to Kot Addu Power Company Limited (KAPCO) (hereinafter referred to as the "Power Seller") to engage in the generation business as stipulated in its Generation License.
3. The Pakistan Water and Power Development Authority (hereinafter referred to as the "WAPDA") executed a Power Purchase Agreement (hereinafter referred to as the "PPA") with the Power Seller on 27.06.1996 for a period of twenty-five (25) years 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. Pursuant to Regulation 5(1) of the NEPRA Interim Power Procurement (Procedures and Standards) Regulations, 2005 (hereinafter referred to as the "NEPRA IPPR, 2005"), before executing a power acquisition contract, a transmission company or a distribution company shall file its proposed power acquisition contract with the Registrar for its approval by the Authority.
6. The Generation License of the Power Seller was supposed to be expire on 21.09.2021. However, the Power Seller vide its letter dated 24.06.2021, submitted an application for extension in term of its Generation License for another period of ten (10) years on account of: (a) extension in term of its PPA and (b) the remaining useful life of its generation facility. Accordingly, comments of different stakeholders including the Power Purchaser were invited vide letter No. NEPRA/DG(Lic)/LAG-18/31338 dated 09.07.2021, in support or opposition of proposed extension in term of Generation License of the Power Seller. In response, the Power Purchaser vide its letter No. CPPA-G/CTO/DGMT-CON/MT-C&R/19414-18 dated 17.07.2021, submitted that pursuant to terms of the PPA between the



Power Seller and the Power Purchaser, the term of the PPA is extended due to Other Force Majeure Events (hereinafter referred to as the "OFME"). Accordingly, the term of the PPA which was scheduled to expire on 26.06.2021 has now been extended due to OFME events by 485 days.

7. In view of the above, the Power Purchaser was, inter alia, asked vide letter No. NEPRA/DG(M&E)/LAG-18/39907 dated 28.10.2021, that why it did not seek prior approval of NEPRA before amending the PPA signed with the Power Seller regarding extension in its term by 485 days and what are the subsequent financial implications of the said amendment. In response, the Power Purchaser vide its letter No. CPPA-G/CEO/CTO/Dy.GM(C)/8698-8702 dated 15.11.2021, submitted that Regulation 5 of the NEPRA IPPR require that a power procurement contract be approved by the Authority. However, the scope of the regulation does not extend to the instant circumstances, which is not a case of fresh power acquisition but an amendment instead to an existing power acquisition/PPA relationship under the auspices of the Federal Government's initiative to resolve outstanding issues relating thereto for a project which predates the NEPRA Act and the regulatory framework thereunder. Thus, on bare facts the said regulations appear inapplicable; as such, and no inference of such violation is deducible.
8. The Power Purchaser further submitted that Liquidated Damages (hereinafter referred to as the "LDs") to the tune of Rs. 27 Billion (approx.) on KAPCO for the period from 2009 to 2016 under the terms of PPA due to non-availability of Complex. The LDs were disputed by the Power Seller before International Chamber of Commerce (hereinafter referred to as the "ICC") for arbitration with the argument that the non-availability of the Complex was due to non-payment by Power Purchaser which led to fuel shortages. In the meantime, as per initiative of the Federal Government and direction of Implementation Committee constituted by the Government of Pakistan, the said matter was settled whereby the events of fuel shortage during the abovementioned period aggregating to 485 days were agreed to be treated as Other Force Majeure Events (hereinafter referred to as the "OFME") and the PPA was extended for these 485 days accordingly. The Power Purchaser also submitted that it has already paid Rs.19.3 Billion as Capacity Payment to the Power Seller for these 485 days. Hence, during the 485 days extended period, the Power Seller will receive Energy Payments for energy delivered but will not receive Capacity Payment by the Power Purchaser as Capacity Payment in the 485 days extended period has been offset for availability against previous Capacity Payment already received by the Power Seller during the outage period 2009-2016.
9. In view of the above, the Authority observed that the response received from the Power Purchaser appears to be based on incorrect understanding of NEPRA laws. Though the initial contract/PPA was executed in 1996 (before promulgation of NEPRA Act), any subsequent amendment/novation after promulgation of NEPRA Act should have been approved from NEPRA prior to its execution as per Section 32 of the NEPRA Act read with Regulation 5(1) of the NEPRA IPPR, 2005. The Authority further observed that under which law the Power Purchaser can compensate the previous Capacity Payment already received by the Power Seller during the outage period 2009-2016 against the availability of its Complex in the 485 days extended period despite the fact that the Complex of Power



Seller was much needed during the outage period 2009-2016 owing to the prevailing energy crisis at that time. Hence, the Authority observed that the Power Purchaser has, prima facie, violated Section 32 of the NEPRA Act read with Regulation 5(1) of the NEPRA IPPR, 2005, while amending the PPA signed with Power Seller regarding extension in its term by 485 days. 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:

10. Accordingly, an Explanation dated 02.02.2022 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 or NEPRA") 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 under the NEPRA (Market Operator Registration, Standards and Procedure) Rules, 2015 (herein after referred to as the "Market Rules") since June 2015; and*

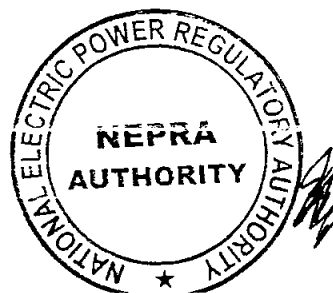
3. *WHEREAS the Authority, pursuant to Section 15 of NEPRA Act read with Rule 3 of the NEPRA (Licensing) Generation Rules, 2000, granted a Generation License (No. IPGL/20/2004 dated 22.09.2004) to Kot Addu Power Company Limited (KAPCO) (hereinafter referred to as the "Power Seller") for a period of seventeen (17) years, to engage in the generation business as stipulated in its Generation License; and*

4. *WHEREAS the Pakistan Water And Power Development Authority (hereinafter referred to as the "WAPDA") executed a Power Purchase Agreement (hereinafter referred to as the "PPA") with the Power Seller on 27.06.1996 for a period of twenty-five (25) years for procurement of power on terms and conditions stipulated in the PPA; and*

5. *WHEREAS 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; and*

6. *WHEREAS pursuant to Regulation 5(1) of the NEPRA Interim Power Procurement (Procedures and Standards) Regulations, 2005 (hereinafter referred to as the "NEPRA IPPR"), before executing a power acquisition contract, a transmission company or a distribution company shall file its proposed power acquisition contract with the Registrar for its approval by the Authority; and*

7. *WHEREAS the Generation License of the Power Seller was supposed to be expire on 21.09.2021. However, the Power Seller vide its letter dated 24.06.2021, submitted an application*



for extension in term of its Generation License for another period of ten (10) years on account of:
(a) extension in term of its PPA and (b) the remaining useful life of its generation facility; and

8. **WHEREAS** comments of different stakeholders including the Power Purchaser were invited vide letter No. NEPRA/DG(Lic)/LAG-18/31338 dated 09.07.2021, in support or opposition of proposed extension in term of Generation License of the Power Seller; and

9. **WHEREAS** in response, the Power Purchaser vide its letter No. CPPA-G/CTO/DGMT-CON/MT-C&R/19414-18 dated 17.07.2021, submitted that pursuant to terms of the PPA between the Power Seller and the Power Purchaser, the term of the PPA is extended due to Other Force Majeure Events (hereinafter referred to as the "OFME"). Accordingly, the term of the PPA which was scheduled to expire on 26.06.2021 has now been extended due to OFME events by 485 days; and

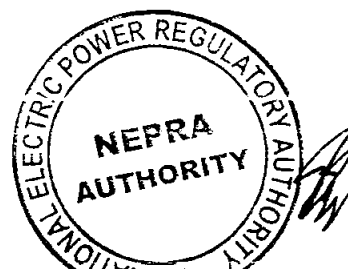
10. **WHEREAS** the Power Purchaser was, inter alia, asked vide letter No. NEPRA/DG(M&E)/LAG-18/39907 dated 28.10.2021, that why it did not seek prior approval of NEPRA before amending the PPA signed with the Power Seller regarding extension in its term by 485 days and what are the subsequent financial implications of the said amendment; and

11. **WHEREAS** in response, the Power Purchaser vide its letter No. CPPA-G/CEO/CTO/Dy.GM(C)/8698-8702 dated 15.11.2021, has submitted that Regulation 5 of the NEPRA IPPR require that a power procurement contract be approved by the Authority. However, the scope of the regulation does not extend to the instant circumstances, which is not a case of fresh power acquisition but an amendment instead to an existing power acquisition/PPA relationship under the auspices of the Federal Government's initiative to resolve outstanding issues relating thereto for a project which predates the NEPRA Act and the regulatory framework thereunder. Thus, on bare facts the said regulations appear inapplicable; as such, and no inference of such violation is deducible; and

12. **WHEREAS** the Power Purchaser further submitted that Liquidated Damages (hereinafter referred to as the "LDs") to the tune of Rs. 27 Billion (approx.) on KAPCO for the period from 2009 to 2016 under the terms of PPA due to non-availability of Complex. The LDs were disputed by KAPCO before International Chamber of Commerce (hereinafter referred to as the "ICC") for arbitration with the argument that the non-availability of the Complex was due to non-payment by Power Purchaser which led to fuel shortages. In the meantime, as per initiative of the Federal Government and direction of Implementation Committee constituted by the Government of Pakistan, the said matter was settled whereby the events of fuel shortage during the abovementioned period aggregating to 485 days were agreed to be treated as Other Force Majeure Events (hereinafter referred to as the "OFME") and the PPA was extended for these 485 days accordingly; and

13. **WHEREAS** the Power Purchaser also submitted that it has already paid Rs.19.3 Billion as Capacity Payment to the Power Seller for these 485 days. Hence, during the 485 days extended period, the Power Seller will receive Energy Payments for energy delivered but will not receive Capacity Payment by the Power Purchaser as Capacity Payment in the 485 days extended period has been offset for availability against previous Capacity Payment already received by the Power Seller during the outage period 2009-2016; and

14. **WHEREAS** the response received from the Power Purchaser appears to be based on incorrect understanding of NEPRA laws. Though the initial contract/PPA was executed in 1996 (before promulgation of NEPRA Act), any subsequent amendment/novation after promulgation of



NEPRA Act should have been approved from NEPRA prior to its execution as per Section 32 of the NEPRA Act read with Regulation 5(1) of the NEPRA IPPR; and

15. **WHEREAS** under which law the Power Purchaser can compensate the previous Capacity Payment already received by the Power Seller during the outage period 2009-2016 against the availability of its Complex in the 485 days extended period despite the fact that the Complex of Power Seller was much needed during the outage period 2009-2016 owing to the prevailing energy crisis at that time; and

16. **WHEREAS** in terms of observations given in Para 9 to 15 above, the Power Purchaser has prima facie violated Section 32 of the NEPRA Act read with Regulation 5(1) of the NEPRA IPPR, while amending the PPA signed with Power Seller regarding extension in its term by 485 days; and

17. **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

18. **NOW THEREFORE** in view of the above, 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 and explain its position in this regard within fifteen (15) days, failing which, it shall be presumed that the occurrence of the violation is admitted by Power Purchaser, and the Authority shall proceed in accordance with the law.

19. This issues with approval of the Authority.

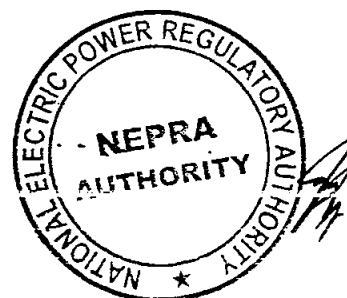
11. In response, the Power Purchaser submitted its reply vide letter dated 16.03.2022. The Authority after detailed deliberations rejected the response submitted by the Power Purchaser against the above Explanation giving reasons for such rejection vide Order dated 21.07.2022.

Show Cause Notice to the Power Purchaser:

12. Accordingly, a Show Cause Notice dated 21.07.2022 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.

Submissions of the Power Purchaser:

13. In response, the Power Purchaser submitted its reply vide letter dated 12.08.2022. The salient features of the response submitted by the Power Purchaser are as follows:
- CPPA didn't amend the PPA and even otherwise was not required under the law to file for any approval before NEPRA.



- ii. The inability of the Power Purchaser to make timely payments to the IPPs, in the backdrop of the then liquidity crunch and power sector dynamics is prone to misreading of facts.
- iii. The compensation of OFME treatment attributable to the inability of the Power Purchaser to make timely payments with purported implications as a burden to the consumers is baseless and misconceived for want of complete reading of facts.
- iv. The cursory interpretation accorded to the Article 13.1(c) of the PPA in terms of the definition of OFME requires consideration to the distinct arrangement attached to it by the explicit inclusion of "including, but not limited to" which provides for the relational functionality essential in long term contract theory supporting the valid and legitimate transposition of inability of the Power Purchaser to make timely payments as an event eligible for OFME treatment and was agreed and executed by the counterparty.
- v. The myopic view and interchangeability accorded to the "inability of the Power Purchaser to uncontrollable event or a political event that occur outside Pakistan and do not directly involve Pakistan, therefore the said event doesn't satisfy/fulfill the requirements of OFME as stipulated in Article 13.1 (c) of the PPA" being erroneous in nature as the inability of the Power Purchaser has been read as "an other event" beyond the reasonable control of the affected Party being the Power Purchaser after acceptance of counterparty and the execution thereof with the only implication of time of performance being excused and extended accordingly.
- vi. The complexion being adduced that the Power Purchaser has in contravention of the terms of the PPA declared and extended the days under the garb of OFME is incorrect at fact and at law as the Power Purchaser acted under the directives issued pursuant to the Federal Government Initiative which are well within the knowledge of the Authority and had the authorization for offsetting of time against accrued liabilities of the power Purchaser which are also within the knowledge of the Authority and the treatment accorded was agreed well within the mechanism provided by the PPA.
- vii. The Power Purchaser considers it of relevance to state that the act of enabling the OFME treatment was to ensure that the obligations of Government of Pakistan are not exceeded and the inference of negligence being imputed on the Power Purchaser acting pursuant to the initiative of the Federal Government shall raise the challenge of adjudication within policy domain which has not been vested with the NEPRA.



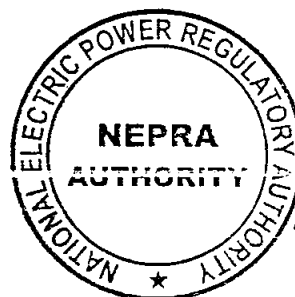
The examination of the Authority regarding details of savings wherein the failure to comply with the contractual obligations and inefficiency has been attributed to the Power Purchaser unilaterally without examining all pertinent facts in determining as to the operations of Power Purchaser were not being contractually met despite sufficiency of funds and the contractual obligations were being

withheld for extraneous reasons without any constraints is a matter which is inconclusive and open which necessitates that the current proceedings are premature.

- ix. The reasoning afforded by the Authority in attributing that the liquidated damages have been foregone by the Power Purchaser which is the financial impact of the underutilization of the Complex of the Power Seller and resultant operation of less efficient units, as well as the economic loss due to load shedding is flawed and misconceived as the arguments and the merits of the liquidated damages are well contained in the other consistent arbitration Awards which shall lend credence to the strategy being followed for the purposes of the conduct of arbitral proceedings which were preserved as the proceedings were underway whilst the Federal Government initiative materialized.
- x. The Federal Government initiative was a policy decision which involved complex economic factors and quasi-judicial forum are to exercise restraint from interfering with economic decisions based on economic expediencies unless it is demonstrated that the policy decision is violative of constitution and is abhorrent to reason and the law.
- xi. The policy of the Federal Government is binding on the Authority except for it causes a contravention of the NEPRA Act.
- xii. The proceedings are voidable as observed by the apex court in the case of Muhammad Swaleh v. United Grain (PLD 1964 SC 97) that when a Court or Tribunal assumes jurisdiction not vested in it by law or fails to exercise jurisdiction so vested, its orders may be void and a nullity in law.
- xiii. Regulation 5(1) of the NEPRA IPPR, 2005 which mandates the execution of a power acquisition contract which is required to be filed with the Registrar for its approval by the Authority does not extend to the instant amendment executed by the Power Purchaser.

Hearing:

- 14. The Authority considered the response submitted by the Power Purchaser and 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 12.01.2023, wherein, the representatives of the Power Purchaser participated and made the following submissions:
 - i. CPPA-G didn't extend the term of the PPA for an additional 485 days. Rather, the 485 days extension was under the "OFME". Hence, the overall term of the PPA remained 25 years and therefore, CPPA-G was not required under the law to file for any approval before NEPRA.



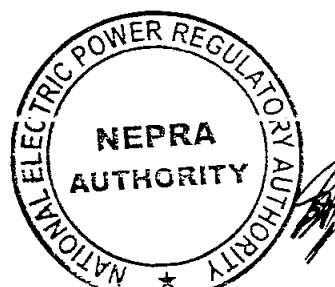
- ii. The cursory interpretation accorded to the Article 13.1(c) of the PPA in terms of the definition of OFME requires consideration to the distinct arrangement attached to it by the explicit inclusion of "including, but not limited to" which provides for the relational functionality essential in long term contract theory supporting the valid and legitimate transposition of inability of the Power Purchaser to make timely payments as an event eligible for OFME treatment and was agreed and executed by the counterparty and approved by the Federal Cabinet.
- iii. Regulation 5(1) of the NEPRA IPPR, 2005 which mandates the execution of a power acquisition contract which is required to be filed with the Registrar for its approval by the Authority does not extend to the instant amendment executed by the Power Purchaser as the same was not the case of a new/fresh power acquisition.

Analysis/Findings of the Authority:

15. The Power Purchaser has submitted that it didn't extend the term of the PPA for an additional 485 days. Rather, the 485 days extension was under the OFME. Hence, the overall term of the PPA remained 25 years and therefore, the Power Purchaser was not required under the law to file for any approval before NEPRA. In this regard, the Authority observes that although, Article 4.1(b) of the original PPA signed between the Power Seller and the Power Purchaser allows extension in term of the PPA on account of Force Majeure Events, however, in the instant case, the non-availability of the Power Seller due to fuel shortage for an equivalent 485 days during the financial years 2009 to 2016 is attributable to the Power Purchaser's inability to make timely payments to the Power Seller and the said inability of the Power Purchaser was not explicitly covered under the definition of OFME as stipulated in Article 13.1(c) of the PPA.

In this regard, the Power Purchaser has submitted that a distinct arrangement was attached to the definition of OFME as stipulated in Article 13.1(c) of the PPA by the explicit inclusion of "including, but not limited to" which provides for the relational functionality essential in long term contract theory supporting the valid and legitimate transposition of inability of the Power Purchaser to make timely payments as an event eligible for OFME treatment and was agreed and executed by the counterparty and approved by the Federal Cabinet. In this regard, the Authority observes that since the Power Seller and the Power Purchaser amended the PPA in order to execute the above settlement, wherein, these 485 days were, inter alia, declared as an OFME Period. Therefore, the Power Purchaser was required to file the said amendment in the PPA for approval of the Authority prior to its execution as per Section 32 of the NEPRA Act read with Regulation 5(1) of the NEPRA IPPR, 2005 and Clause 2.2 of Annex-B (Settlement Terms) to the Third Amendment dated 11.02.2021 to the PPA signed between the Power Seller and the Power Purchaser. However, the Power Purchaser failed to do so. Hence, the stance adopted by the Power Purchaser is unjustified.

16. Moreover, the Power Purchaser has submitted that Regulation 5(1) of the NEPRA IPPR, 2005 does not extend to the instant amendment executed by the Power Purchaser as the same was not the case of a new/fresh power acquisition. In this regard, the Authority

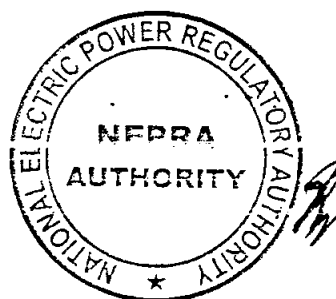


observes that the response received from the Power Purchaser appears to be based on incorrect understanding of NEPRA laws. Though the instant amendment executed by the Power Purchaser was not the case of a new/fresh power acquisition, any amendment in the PPA should have been got approved by the Power Purchaser from NEPRA prior to its execution as per Section 32 of the NEPRA Act read with Regulation 5(1) of the NEPRA IPPR, 2005. Therefore, the argument put forward by the Power Purchaser does not merit consideration.

17. The Authority also observes that when the Power Purchaser and the Power Seller amended the PPA on 11.02.2021 and extended its term till 24.10.2022, at that point in time, the Generation License of the Power Seller was only valid till 21.09.2021 and the application of the Power Seller for extension in term of its Generation License was also not received in NEPRA. However, despite this, the Power Purchaser extended the term of the PPA beyond the date of expiry of the Generation License of the Power Seller and didn't even submit the same for prior approval of the Authority.
18. The Authority further observes that before issuing the subject Show Cause Notice, the Power Purchaser was directed vide letter dated 08.04.2022 followed by reminder dated 18.05.2022 to provide financial implications of non-availability of the Power Seller for an equivalent 485 days during the FY 2009 to 2016. In response, the Power Purchaser vide letter dated 20.05.2022, inter alia, submitted that since the requisite information requires huge quantum of data pertaining to the System Operator, the Power Purchaser has taken up the matter with NPCC and sought event wise details of power plants on hourly basis which were operated during the forced outage events of the Power Seller during the FY 2009-2016. As soon as the requisite data is received from NPCC, the Power Purchaser would calculate financial implications as required by the Authority and furnish the same. However, the Power Purchaser has not yet submitted the desired information despite a lapse of more than one (01) year.

In this regard, the Authority observes that the Complex of the Power Seller was one of the most efficient power plants till induction of gas based power plants (Orient, Saif, Sapphire and Halmore) during 2008-2010 and RLNG power plants (Bhikki, Balloki and Haveli Bahadur Shah). It is obvious that in the condition of un-utilization or under-utilization of the Complex of the Power Seller, the electricity was generated through comparatively costlier units. If the units of the Power Seller were fully available during 2009-2016, the operation of costlier units could have been avoided to the extent of the generation capability of the Complex of the Power Seller. The Authority also observes that during the period of 2009-2016 when the Complex of the Power Seller was unavailable, the country was facing acute load shedding. The situation required maximum utilization of available capacity. However, unavailability of the Complex of the Power Seller, despite being one of the biggest power complexes with higher efficiency, aggravated load shedding which caused immense economic loss to the country. The un-utilization/under-utilization of the Complex of the Power Seller has had immense financial impact.

In order to depict the probable impact, the position of electricity generated by different units of the Power Seller along with their un-utilization and/or under-utilization factors

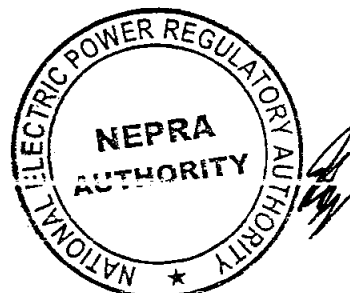


vis-à-vis operation of costlier power plants during the relevant period has been compiled, which reveals that:

- a. During the month of November 2016, the Power Seller's three Blocks generated an aggregate 163 GWh using two fuels i.e RLNG and RFO at EPP of Rs. 1223 millions, which translated into Rs. 7.50/KWh EPP. It is noted that the cheapest fuel was RLNG followed by RFO. The impact of generation on expensive fuel has been calculated and noted that if all units of the Power Seller were operated on cheapest fuel RLNG then almost an amount of Rs. 75.46 Million could have been saved during the month.
 - b. The Power Seller has dependable capacity of 1336 MW and max generation capability of 962 GWh. During the month of November 2016, the Power Seller generated 163 GWh which means the Power Seller missed 799 GWh generation during the month. This missed volume of the Power Seller is replaced by the costliest power plants. The calculation shows that generation of 799 GWh by costliest power plants instead of generation by the Power Seller on first cheapest fuel i.e. gas caused a loss of almost Rs. 1824.83 million. Similarly assuming that the missed volume of 799 GWh could be generated by the Power Seller on 2nd cheapest fuel i.e. RFO, the generation by costliest power plants instead leaving the Power Seller underutilized caused a loss of almost Rs. 1356.16 million.
 - c. After induction of efficient RLNG and Coal based plants, utilization of the Power Seller leaving the more efficient power plant is undesirable. During the month of July 2021, the Power Seller generated 771 GWh using RFO and RLNG at total Energy cost of Rs. 12,463 million translating into per unit EPP of Rs. 16.17. During the same period, various cheapest power plants including Guddu-747, China Hub and Uch-II etc. remained underutilized for more than the quantum of generation by the Power Seller. It is noted that an approximate loss of Rs. 6,967.26 million incurred due to utilization of expensive Power Seller leaving the cheapest plants underutilized during the same period.
19. In addition to this, the Authority observes that the Power Purchaser was directed vide letter dated 08.04.2022 followed by reminder dated 18.05.2022 to provide details of savings as a result of extension in term of the PPA by 485 days. In response, the Power Purchaser vide letter dated 20.05.2022 has attached details showing net savings of Rs. 17.894 billion as a result of settlement with the Power Seller as below:

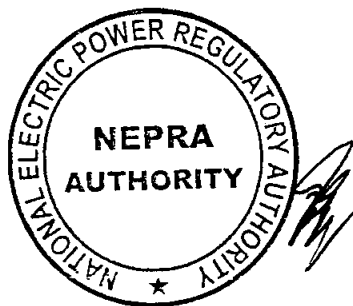
Description	Rs. Billion
*LPI on LPI claim waived off by KAPCO up to 31 st December 2021	41.53
485 days of Plant Availability without CPP Invoicing	36.32
Loss of LD claims along with interest thereon up to 31 st December 2020	(59.07)
LSFO/HSFO Price Differentials along with 50% interest	(0.886)

*LPI on LPI: Late Payment Interest on Late Payment Invoice



In this regard, the Authority observes that the details shared by the Power Purchaser transpires that the Power Seller has pledged waiver of Rs. 41.53 billion Late Payment Interest on Late Payment Invoice which the Power Purchaser has shown as a saving. However, the Authority observes that such Late Payment Interest has been accumulated due to delay in payments by the Power Purchaser reflecting on its failure to comply with contractual obligation. Had the payments been made in a timely manner as per the provisions of the contract, there would not have been a claim of Rs. 41.53 billion on account of Late Payment Interest. In this regard, the Power Purchaser has only submitted that the inability of the Power Purchaser to make timely payments to IPPs was in the backdrop of the then liquidity crunch and power sector dynamics. However, the Power Purchaser has not submitted any documentary evidence in support of its submission, clearly indicating the funds available with the Power Purchaser vis-à-vis the payments to be made to IPPs and the criteria for making payments to IPPs at that time, etc.

The Authority further observes that on the other hand, the Power Purchaser is foregoing the LDs amounting to Rs. 59.07 billion (Rs. 27.77 billion LDs + Rs. 31.30 billion interest) for the period of non-availability of the Complex of the Power Seller for an equivalent 485 days. In this regard, the Authority observes that subtracting the amount of Rs. 41.53 billion on account of LPI, which accumulated due to Power Purchaser's inefficiency, against the claim of LDs to show savings is not justifiable. In addition to the LDs claims being foregone by the Power Purchaser, the financial impact of underutilization of the Complex of the Power Seller and resultant operation of less efficient units, as well as the economic loss due to load shedding to the tune of underutilization of the Complex of the Power Seller need to be accounted for to ascertain the loss to the consumers and the economy.

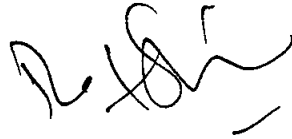


Decision:

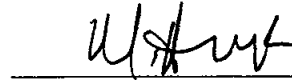
20. Keeping in view the relevant provisions of the NEPRA Act, Rules & Regulations made thereunder, other applicable documents, submissions of the Power Purchaser and available record, the Authority observes that the Power Purchaser has constituted violation of Section 32 of the NEPRA Act read with Regulation 5(1) of the NEPRA IPPR, 2005 by extending the term of the PPA signed with the Power Seller by 485 days without prior approval of the Authority. Therefore, the Authority decides to impose a fine of Ten Million Rupees (**Rs. 10 Million**) on the Power Purchaser.
21. Accordingly, the Power Purchaser is directed to pay the fine of Ten 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

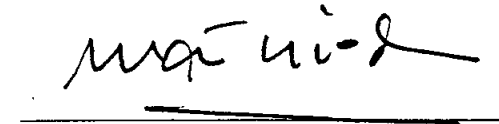
Rafique Ahmed Shaikh
Member (Technical)



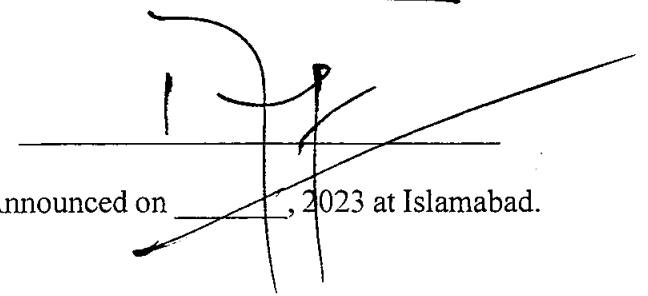
Engr. Maqsood Anwar Khan
Member (Licensing)



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



Tauseef H. Farooqi
Chairman



Announced on _____, 2023 at Islamabad.

