



Registrar

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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No. NEPRA/DG(M&E)/LAG-226/ 13119

August 16, 2024

Chief Executive Officer,
Peshawar Electric Supply Company (PESCO),
WAPDA House, Shamsi Road,
Sakhi Chashma, Peshawar

Subject: **Order of the Authority in the matter of Explanation issued to Peshawar Electric Supply Company under Regulation 4(1) & 4(2) of the NEPRA (Fine) Regulations, 2021**

Please find enclosed herewith, the Order of the Authority (total 06 pages) in the subject matter for information and compliance.

Enclosure: **As above**

Wasim Anwar Bhinder
(Wasim Anwar Bhinder)

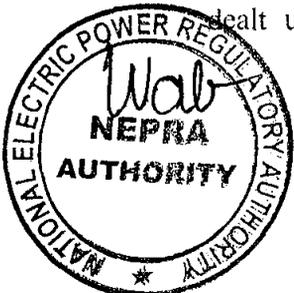


National Electric Power Regulatory Authority

In the matter of Explanation issued to Peshawar Electric Supply Company under Regulation 4(1) & 4(2) of the NEPRA (Fine) Regulations, 2021

Order

1. Machai Hydropower Project (hereinafter referred to as the "Project" or "Machai HPP") is a low head, run of the canal hydropower project of the Pakhtunkhwa Energy Development Organization (hereinafter referred to as the "PEDO") located on fall structure of Machai Canal in District Mardan of Khyber Pakhtunkhwa Province.
2. The Authority, pursuant to Section 20 of the NEPRA Act read with Rule 3 of the NEPRA Licensing (Distribution) Rules, 1999, granted a Distribution License (No. 07/DL/2002 dated 30.04.2002) to Peshawar Electric Supply Company (hereinafter referred to as the "PESCO" or the "Licensee") to engage in the distribution business as stipulated in its Distribution License.
3. The Authority issued a generation license to the Project on 17.11.2013 and approved EPC stage generation tariff of Rs. 5.6200/kWh or US Cents 5.7938/kWh on 14.03.2014. The said tariff was single part tariff with hydrological risk borne by the Power Purchaser.
4. PEDO, vide letter dated March 2021, filed tariff modification petition under Section 31 of the NEPRA Act read with Rule 3 of the NEPRA (Tariff Standards and Procedure) Rules, 1998 (hereinafter referred to as the "Tariff Rules") for modification of Authority's determination dated 14.03.2014. PEDO requested for provision of Pre-Commercial Operation Date (hereinafter referred to as the "COD") sale tariff, conversion of its existing Take or Pay tariff to Take and Pay tariff and extension of debt repayment period from the existing 20 years to 30 years.
5. According to PEDO, the Project has been operational since November 2016 and is providing electricity to the Power Purchaser, however, the Project's COD could not be declared due to non-formation of metering committees, which were to be formed subsequent to the execution of the Energy Purchase Agreement (hereinafter referred to as the "EPA").
6. In view of the above, the Authority observed that the Project's COD could not be declared despite a lapse of more than five (05) years and delay in achieving COD is a result of inefficiencies, for which the consumers must not suffer. The delays in achieving COD are dealt under the articles of EPA's/PPA's between the companies for which usually



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Liquidated Damages are incorporated as penalties. All this is generally agreed well before COD through EPAs. However, in the instant case, the EPA has not yet been executed between PEDO and the Licensee. In view of the foregoing, the Authority decided to initiate legal proceedings against the Licensee under NEPRA (Fine) Regulations, 2021 (hereinafter referred to as the "Fine Regulations, 2021").

Explanation:

7. Accordingly, an Explanation dated 15.03.2022 was issued to the Licensee under Regulation 4(1) & 4(2) of the Fine Regulations, 2021. The salient features of the Explanation are as follows:

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

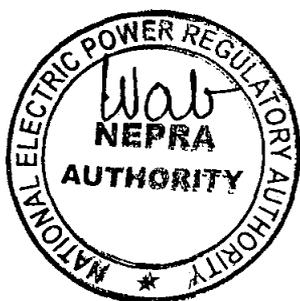
2. ***WHEREAS** the Authority, pursuant to Section 20 of the NEPRA Act read with Rule 3 of the NEPRA Licensing (Distribution) Rules, 1999, granted a Distribution License (No. 07/DL/2002 dated 30.04.2002) to Peshawar Electric Supply Company (hereinafter referred to as the "PESCO" or the "Licensee") to engage in the distribution business as stipulated in its Distribution License; and*

3. ***WHEREAS** Machai Hydropower Project (hereinafter referred to as the "Project") is a low head, run of the canal hydropower project of the Pakhtunkhwa Energy Development Organization (hereinafter referred to as the "PEDO" or the "Power Seller") located on fall structure of Machai Canal in District Mardan of Khyber Pakhtunkhwa Province; and*

4. ***WHEREAS** the Authority issued a generation license to the Project on 17.11.2013 and approved EPC stage generation tariff of Rs. 5.6200/kWh or US Cents 5.7938/kWh on 14.03.2014. The said tariff was single part tariff with hydrological risk borne by the Power Purchaser; and*

5. ***WHEREAS** the Power Seller, vide letter dated March 2021, filed tariff modification petition under Section 31 of the NEPRA Act read with Rule 3 of the NEPRA (Tariff Standards and Procedure) Rules, 1998 (hereinafter referred to as the "Tariff Rules") for modification of Authority's determination dated 14.03.2014. The Power Seller requested for provision of pre-Commercial Operation Date (hereinafter referred to as the "COD") sale tariff, conversion of its existing Take or Pay tariff to Take and Pay tariff and extension of debt repayment period from the existing 20 years to 30 years; and*

6. ***WHEREAS** according to the Power Seller, the Project has been operational since November 2016 and is providing electricity to the Power Purchaser, however, the Project's COD could not be declared due to non-formation of metering committees, which were to be formed subsequent to the execution of the Energy Purchase Agreement (hereinafter referred to as the "EPA"); and*



7. **WHEREAS** the Project's COD could not be declared despite a lapse of more than five (05) years and delay in achieving COD is a result of inefficiencies, for which the consumers must not suffer. The delays in achieving COD are dealt under the articles of EPA's/PPA's between the companies for which usually Liquidated Damages are incorporated as penalties. All this is generally agreed well before COD through EPAs. However, in the instant case, the EPA has not yet been executed between the Licensee and the Power Seller; and

8. **NOW THEREFORE** in view of the above, the Licensee is hereby called upon under Rule 4(1) of the NEPRA (Fines) Rules, 2002, to explain its position in this regard within fifteen (15) days, failing which, it shall be presumed that the Licensee has nothing to say in its defense, and the Authority shall proceed in accordance with the law.

9. This issues with approval of the Authority.

Licensee's Response:

8. In response, the Licensee submitted its reply vide letter dated 01.04.2022. The same has been summarized as under:

i. COD is usually declared once the independent engineer is hired by the project sponsor/company (in the instant case PEDO), therefore, PEDO was responsible for the delay caused in the declaration of the COD. Moreover, once the independent Engineer was hired by PEDO, accordingly PESCO vide office order dated 18th March, 2020 constituted the technical committee and the project commissioning tests pertaining were performed on 18th May, 2020.

ii. As far as the non-signing of the Energy Purchase Agreement (EPA) is concerned, in this connection the following facts are submitted for necessary review and perusal in the matter:

a. Initially as per NEPRA guidelines for renewable energy projects, 2015 and CPPA-G SOPs/guidelines, 2016, it was the responsibility of CPPA-G to execute all the Power Purchase Agreements (PPAs)/Energy Purchase Agreements (EPAs) on behalf of DISCOs irrespective of the voltage levels. However, during July, 2018, KP government gave a statement in the Supreme Court of Pakistan that Provincial Government and Ministry of Energy (Power Division) will resolve the issues related to the projects in KP. Subsequently, during the meeting held under the chairmanship of Additional Secretary Power Division and CEO PEDO, in addition to other decisions it was mutually agreed that:

- The EPA/PPA regarding Machai HPP-2.6 MW will be signed by PESCO.
- CPPA-G agreed that PEDO may approach NEPRA for revision in tariff in lieu of assuming hydrological risk and redetermination of Tariff on "Take and Pay" mode.



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The Supreme Court of Pakistan considered the submissions along with the complete report as part of the order of the Apex Court dated 12.07.2018 and disposed of the matter accordingly.

- b. Following the decision of the Supreme Court and the Board of Directors of PESCO, a joint meeting between representatives from PESCO and PEDO was convened on December 4th, 2018, a joint meeting was held between PESCO & PEDO representatives on 4th December, 2018 at PESCO H/Q wherein the prerequisites related to signing of the EPA in respect of Machai HPP were discussed. It was decided in the said meeting that PEDO will provide the documents/information including but not limited to the tariff revision as per the Court decision NEPRA directions in the determination dated 14.03.2014 and the certificate from Independent Engineer regarding COD of the plant and accordingly further action would be initiated in the matter. It is worth mentioning that the tariff for Machai HPP was on "Take or Pay" basis and the same was applicable from commercial operation date of the project and without any provision for the pre-COD sale, i.e. since energization of the plant in November, 2016 till COD in May, 2020. Moreover, since NEPRA is the regulator, therefore, tariff revision as per the Apex Court decision was necessary from legal aspects.
- c. Similarly PESCO vide letters dated 18.12.2018, 15.2.2019, 15.3.2019, 28.3.2019, 08.4.2019, 23.4.2019, 20.6.2019, 7.2.2020, 10.8.2020 and 16.9.2020 requested PEDO for provision of certain documents in order to finalize the agreement which mainly included the following:
- Certificate from Independent Engineer regarding commissioning of the plant.
 - Tariff on Take & Pay as per Supreme Court decision dated 12.07.2018.
 - Action taken as per NEPRA directions in the determination dated 14.03.2014.
- d. However, after repeated requests, PEDO agreed for fulfillment of the above cited prerequisites and on the request of PEDO dated 22nd January, 2020, PESCO vide office order dated 18th March, 2020 constituted the technical committee for commissioning tests. Accordingly, the project commissioning tests pertaining to commercial operation were performed by the technical committee in the presence of the Independent Engineer on 13th May, 2020, Similarly, the independent engineer issued the readiness certificate after the above cited tests and the same was intimated by PEDO vide letter dated 17.06.2020.



- e. In addition to the above, on the repeated requests of PESCO, PEDO during March, 2021 filed petition for tariff modification and the NEPRA Authority vide its decision dated February 24, 2022 determined the tariff on "Take & Pay" mode.
- f. In light of the above details and facts, it is quite evident that signing of the EPA was the responsibility of CPPA-G; however, as per decision of the Supreme Court of Pakistan, PESCO has to sign the EPA. Therefore, PESCO is of the considered opinion that it was the prime responsibility of PEDO to have timely adhered to the decision of the Apex Court but unfortunately PEDO failed and ultimately lead to the delay in signing of the EPA. Moreover, since mode of payment/tariff determined by NEPRA in 2014 was not in line with the decision of the Apex Court, therefore, signing of any such EPA could not be declared legally viable.

Hearing:

9. In view of the above, the Authority decided to provide an opportunity of hearing to the Licensee, under Regulation 4(5) of the Fine Regulations, 2021 before proceeding further. Hearing in the matter was held on 27.07.2022, wherein, the representatives of the Licensee participated and made their submissions.
10. Prior to that, the Licensee vide letter dated 06.06.2022 filed Power Acquisition Request (PAR) for purchase of power from Machai HPP. The Authority, vide letter dated 13.10.2022, granted permission to the Licensee to procure power from Machai HPP and directed the Licensee to submit draft Power Acquisition Contract (PAC) in this regard within thirty (30) days for approval of the Authority. However, the Licensee didn't submit the same despite lapse of the considerable time. Therefore, the Licensee was once again directed vide letter dated 27.01.2023 followed by reminder dated 24.02.2023 to submit the draft PAC for approval of the Authority. In response, the Licensee submitted the same vide letter dated 16.03.2023. Apart from submission of the draft PAC, the Licensee also requested the Authority to provide necessary clarification/guidance on certain clauses/points which also included the insertion of the exit & entry clauses in the draft PAC by PEDO, which indicated that there is a dispute between the Licensee and PEDO regarding the said clauses.
11. In view of the foregoing, separate letters dated 06.09.2023 were issued to the Licensee and PEDO, wherein, they were directed to expedite the resolution of above-mentioned dispute. In response, the Licensee vide letter dated 16.10.2023 submitted that during July 2023, on the request of PEDO, the issue of insertion of exit & entry clause was discussed and resolved in a joint meeting between PESCO and PEDO held under the chairmanship of Chairman PESCO's BOD at PESCO H/Q. Accordingly, the clauses (m) & (n) of the previous draft PAC were amended, with mutual consent of both PESCO & PEDO, and the amended draft PAC was submitted to NEPRA vide letter dated 08.09.2023, for approval of the Authority. Similarly, PEDO vide letter dated 30.10.2023 submitted that the EPA



pertaining to Machai HPP has been shared with NEPRA vide PESCO's letter dated 08.09.2023.

12. Accordingly, the Authority approved the revised draft PAC submitted by the Licensee, wherein, COD is defined as "the Day immediately following the date on which Complex is Commissioned" and Commissioned is defined as "the successful completion of commissioning of the Complex for continuous operation and the certification of such successful completion of commissioning to the Purchaser and the Seller by the independent engineer as on 21st May, 2020."

Analysis/Findings of the Authority:

13. Since the Authority has already approved the revised draft PAC of Machai HPP as submitted by the Licensee, wherein, the COD of Machai HPP is also mentioned, therefore, both the issues stands resolved.

Decision:

14. In view of the above, the Authority is of the considered opinion that that the Licensee has provided satisfactory reply to the Explanation issued to it, therefore, decides to accept the same and the matter stands closed in terms of Regulation 4(6) of the Fine Regulations, 2021.

Authority

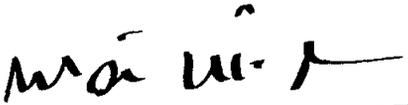
Rafique Ahmed Shaikh
Member (Technical)



Engr. Maqsood Anwar Khan
Member (Licensing)



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

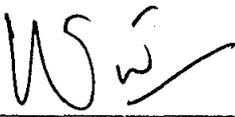


Amina Ahmed
Member (Law)



 DID NOT ATTEND

Waseem Mukhtar
Chairman



Announced on August 16, 2024 at Islamabad.

*A shall be implemented subject to
completion of legal and social formalities
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