



Registrar

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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

No. NEPRA/DG(M&E)/LAG-226/ 13117

August 16, 2024

Chief Executive Officer,
Pakhtunkhwa Energy Development Organization (PEDO),
Energy & Power Department,
Government of Khyber Pakhtunkhwa,
221-PEDO House, Plot # 38, Sector B/2,
Phase-V, Hayatabad, Peshawar

Subject: Order of the Authority in the matter of Explanation issued to Pakhtunkhwa Energy Development Organization 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)

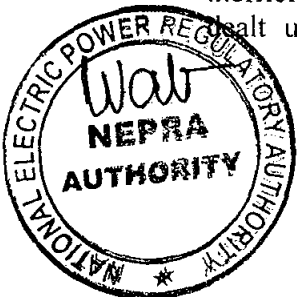


National Electric Power Regulatory Authority

In the matter of Explanation issued to Pakhtunkhwa Energy Development Organization 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" or the "Licensee") 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 "Power Purchaser") 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. The Licensee, 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 Licensee 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 the Licensee, 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



h2 3

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 Power Purchaser 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** 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 "Licensee") located on fall structure of Machai Canal in District Mardan of Khyber Pakhtunkhwa Province; and*

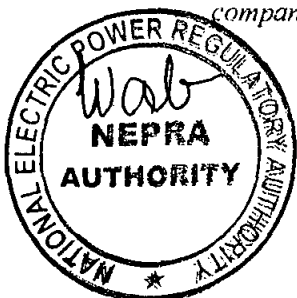
*3. **WHEREAS** the Authority, pursuant to Section 20 of the NEPRA Act read with Rule 3 of the NEPRA Licensing (Distribution) Rules, 1999, granted a Distribution License (No. 07/DL/2002 dated 30.04.2002) to Peshawar Electric Supply Company (hereinafter referred to as the "PESCO" or the "Power Purchaser")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



KE B

generally agreed well before COD through EPAs. However, in the instant case, the EPA has not yet been executed between the Power Purchaser and the Licensee; and

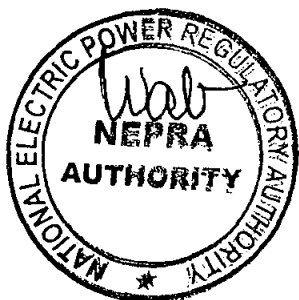
8. **NOW THEREFORE** in view of the above, the Licensee is hereby called upon under Rule 4(1) of the NEPRA (Fines) Rules, 2002, to explain its position in this regard within fifteen (15) days, failing which, it shall be presumed that the Licensee has nothing to say in its defense, and the Authority shall 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 05.04.2022. The same has been summarized as under:

- i. 2.6 MW Machai HPP is connected to PESCO grid since 2017 and has delivered over 28 Million units but PESCO has not signed the Energy Purchase Agreement, despite repeated requests and directions of the Supreme Court and Prime Minister of Pakistan Secretariat.
- ii. NEPRA had determined the tariff of Machai HPP on 14th March 2014 on Take or Pay mode. Initially the case for signing of PPA was taken up with CPPA-G in 2015. The grid interconnection/ load flow study was approved in year 2016. PESCO after approving the grid interconnection study and duly accepted by CPPA-G, again shifted their stance in year 2017 that PEDO shall get the grid interconnection study approved from NTDC. PEDO replied that as per the guidelines/SOPs for power procurement by CPPA-G under NEPRA renewable energy guidelines 2015, the concerned DISCO is mandated to approve the subject study and again reiterated to issue the Power evacuation, absorption, consent of purchase of power and back-to-back agreements to Machai HPP.
- iii. Furthermore, PESCO reiterated that the PPA will be signed by CPPA-G and that CPPA-G is shifting all the burden/responsibility on PESCO whereas only back-to-back agreement with PESCO/CPPA-G will be undertaken as responsibility on PESCO. CPPA-G demanded to issue the Power evacuation, absorption, consent of purchase of power and back-to-back agreements to Machai HPP from PESCO. PEDO had written several letters to PESCO to provide the required certificates/consent of purchase of power but no reply was received and instead PESCO and CPPA-G, both the parties were referring to each other for signing of the agreement; eventually Govt. of Khyber Pakhtunkhwa had taken the matter to the federal government and Supreme Court of Pakistan. The Supreme Court of Pakistan directed CPPA-G to immediately sign the EPAs with PEDO for Daral Khwar, Ranolia and Pehur Hydel Power Plants and for Machai HPP, PESCO shall sign the EPA. Furthermore, the Prime Minister of Pakistan Office/Secretariat has also directed Power Division/PESCO to sign the long-awaited EPAs.



Handwritten initials or signature.

- iv. CPPA-G had signed the EPAs for Power plants on the levelized tariff granted to the respective power plants whereas PESCO linked the signing of the EPA with the conditions of tariff modification on Take and Pay mode and conducting COD of the power plant. It was communicated to PESCO that CPPA-G had signed the EPAs on Take and pay mode on levelized tariff though the tariff granted by NEPRA was on take or Pay mode; therefore, on the same analogy the EPA for Machai be signed and moreover granting modification/tariff from NEPRA is a time-consuming activity and moreover the accounts of the Power plant is not closed and it too will take time.
- v. Since the matter of who will sign the respective EPAs is resolved by the Honorable Supreme Court; therefore, the subsequent process of hiring of the Independent Engineer was initiated by the department as required under EPA that the COD of the power plant will be declared by Independent Engineer along with the representatives of NTDC and CPPA-G (Operating Committee). CPPA-G signed the EPA for Daral Khwar and Ranolia HPP prior to conducting COD of the power plant whereas PESCO, conveyed that EPA for Machai HPP will be signed after conducting COD prior to the signing of EPA. The contract with Independent Engineer was signed in August, 2019 after validation by the CPPA-G. Independent Engineer has issued readiness certificate for successful completion of commissioning test of Machai HPS on 14th January 2020. Readiness certificate along with draft EPA were submitted to PESCO in January 2020 and the Schedule 8.3 tests in high flow season was conducted in May, 2020 and the COD of the Power Plant was declared successfully in May, 2020.
- vi. Apart from repeated high-level meetings in Federal Ministry, it was decided that the CEOs of PESCO, CPPA-G, PEDO and Advisor on E&P will hold a meeting to resolve the signing of Machai EPA. In the meeting it was decided that PESCO will sign the EPA immediately after granting readiness certificate by Independent Engineer. After readiness certificate, the letter was sent to the CEO PESCO along with the draft EPA for signing but the decisions of the meeting were not with-hold by PESCO. On 21st February, 2020; CEO PESCO had again assured before the PEDO Board of Directors Meeting that the EPA of Machai HPP be signed by PESCO upon submission of Power generation certificate but upon submission the certificate to PESCO, again the EPA was not signed by PESCO. PEDO submitted the tariff petition of Machai HPP on Take and Pay Mode in March, 2021 and the tariff is granted by NEPRA on dated 24.2.2022. In a meeting dated 29.12.2021, after the lapse of six years since the power plant is connected to the PESCO grid; PESCO conveyed that EPA will be signed immediately after tariff modification from NEPRA is granted.
- vii. In light of the above, it is clear that, the EPA of the project has been delayed due to lack of consensus between CPPA-G and PESCO, and not on the part of PEDO. The signing of EPA for Machai HPP is inordinately delayed by the concerned purchasers therefore Honorable Supreme Court of Pakistan had to took the Suo-



Wab R

Moto against the non-signing of EPAs of the completed/ inter-connected Power Plants of Khyber Pakhtunkhwa.

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 Power Purchaser 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 Power Purchaser to procure power from Machai HPP and directed the Power Purchaser to submit draft Power Acquisition Contract (PAC) in this regard for approval of the Authority. In response, the Power Purchaser vide letter dated 16.03.2023, submitted the draft PAC for approval of the Authority. Apart from submission of the draft PAC, the Power Purchaser 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 the Licensee, which indicated that there is a dispute between the Licensee and the Power Purchaser regarding the said clauses.
11. In view of the foregoing, separate letters dated 06.09.2023 were issued to the Licensee and the Power Purchaser, wherein, they were directed to expedite the resolution of above-mentioned dispute. In response, the Power Purchaser 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. Since no response was received from the Licensee despite lapse of the considerable time, therefore, a reminder dated 26.10.2023 was issued to the Licensee. In response, the Licensee 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 Power Purchaser, 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."



Handwritten initials or signature.

Analysis/Findings of the Authority:

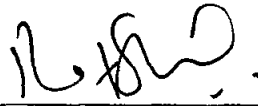
13. Since the Authority has already approved the revised draft PAC of Machai HPP as submitted by the Power Purchaser, wherein, the COD of Machai HPP is also mentioned, therefore, both the issues stands resolved.

Decision:

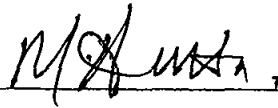
14. In view of the above, the Authority is of the considered opinion that that the Licensee has provided satisfactory reply to the Explanation issued to it, therefore, decides to accept the same and the matter stands closed in terms of Regulation 4(6) of the Fine Regulations, 2021.

Authority

Rafique Ahmed Shaikh
Member (Technical)




Engr. Maqsood Anwar Khan
Member (Licensing)



+

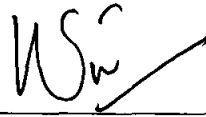
Mathar Niaz Rana (nsc)
Member (Tariff and Finance)



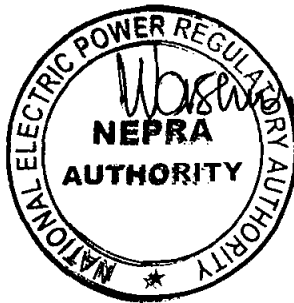
Amina Ahmed
Member (Law)

(DID NOT ATTEND)

Waseem Mukhtar
Chairman



Announced on Aug 16, 2024 at Islamabad.



* shall be implemented subject to completion of legal & code formalities
mai niaz