



Registrar

National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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No. NEPRA/DG(M&E)/LAG-349/ **13046**

August 15, 2024

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

Subject: **Order of the Authority in the matter of Explanation issued to Central Power Purchasing Agency-Guarantee Limited under Regulation 4(1) & 4(2) of the NEPRA (Fine) Regulations, 2021**

Please find enclosed herewith, the Order of the Authority along with Dissent note of Mr. Mathar Niaz Rana (nsc), Member (NEPRA) and jointly signed Additional note by Majority Members of Authority (total 07 pages) in the subject matter for information and compliance.

Enclosure: **As above**

Wasim Anwar Bhinder
(Wasim Anwar Bhinder)

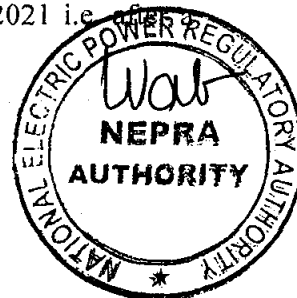


National Electric Power Regulatory Authority

In the matter of Explanation issued to Central Power Purchasing Agency-Guarantee Limited under Regulation 4(1) & 4(2) of the NEPRA (Fine) Regulations, 2021

Order

1. Central Power Purchasing Agency-Guarantee Limited (hereinafter referred to as the "CPPA-G" or the "Licensee") 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. Daral Khwar Hydropower Project (hereinafter referred to as the "Project") is a run of the river hydropower project of the Pakhtunkhwa Energy Development Organization (hereinafter referred to as the "PEDO") located at the right tributary of river Swat in District Swat of Malakand Division, KPK.
3. The Authority issued generation license to the Project on 19.05.2017 and approved EPC stage generation tariff of Rs. 8.4377/kWh or US Cents 8.0594/kWh on 09.01.2018. The said tariff was an energy based, single part tariff with hydrological risk to the extent of 154 GWh to be borne by the Power Purchaser.
4. The Licensee executed an Energy Purchase Agreement (hereinafter referred to as the "EPA") with PEDO on 14.05.2019 for procurement of power from the Project on terms and conditions stipulated in the EPA.
5. PEDO, vide letter dated 31.03.2021, 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 09.01.2018. 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.
6. According to PEDO, the Project has been operational since February 2019 and is providing electricity to the national grid, however, the Project's COD could not be declared due to non-installation of back-up meter, dedicated Current Transformers and Potential Transformers (CT & PT) at site. According to PEDO, the back-up meter and dedicated CT & PT were not installed because the Chinese engineers could not travel to the site due to COVID-19.
7. According to the information provided, the Project successfully completed the commissioning tests and its COD was declared with effect from 26.05.2021 i.e. after delay of almost 28 months.



8. In view of the above, the Authority observed that the Project's COD was declared after a lapse of more than two (02) 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. 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:

9. 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 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; and*

3. ***WHEREAS** Daral Khwar Hydropower Project (hereinafter referred to as the "Project") is a run of the river hydropower project of the Pakhtunkhwa Energy Development Organization (hereinafter referred to as the "PEDO" or the "Power Seller") located at the right tributary of river Swat in District Swat of Malakand Division, KPK; and*

4. ***WHEREAS** the Authority has issued generation license to the Project on 19.05.2017 and approved EPC stage generation tariff of Rs. 8.4377/kWh or US Cents 8.0594/kWh on 09.01.2018. The said tariff was an energy based, single part tariff with hydrological risk to the extent of 154 GWh to be borne by the Power Purchaser; and*

5. ***WHEREAS** the Power Purchaser executed an Energy Purchase Agreement (hereinafter referred to as the "EPA") with the Power Seller on 14.05.2019 for procurement of power from the Project on terms and conditions stipulated in the EPA; and*

6. ***WHEREAS** the Power Seller, vide letter dated 31.03.2021, 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 09.01.2018. 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*

7. ***WHEREAS** according to the Power Seller, the Project has been operational since February 2019 and is providing electricity to the national grid, however, the Project's COD could not be declared due to non-installation of back-up meter, dedicated Current Transformers and Potential Transformers (CT & PT) at site. According to the Power Seller, the back-up meter and*



dedicated CT & PT were not installed because the Chinese engineers could not travel to the site due to COVID-19; and

8. **WHEREAS** according to the information provided, the Project has successfully completed the commissioning tests and its COD has been declared with effect from 26.05.2021 i.e. after a delay of 28 months; and

9. **WHEREAS** 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; and

10. **NOW THEREFORE** in view of the above, the Power Purchaser 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 Power Purchaser has nothing to say in its defense, and the Authority shall proceed in accordance with the law.

Licensee's Response:

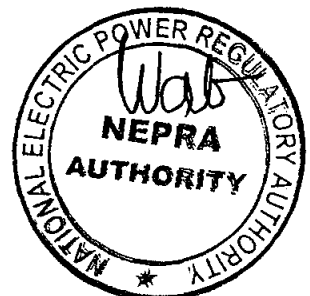
10. In response, the Licensee submitted its reply vide letter dated 01.04.2022. The same has been summarized as under:

- i. As per the directions of the Honorable Supreme Court of Pakistan, a meeting was convened on 4th July 2018 chaired by the Additional Secretary of the Ministry of Energy, Power Division and attended by all relevant power-sector stakeholders, to deliberate upon the issues affecting PEDO's hydroelectric projects at the time. In the said meeting, it was highlighted by CPPA-G that, while initiating various hydroelectric power projects, PEDO had failed to adhere to the prescribed and applicable project development procedures. In particular, it was emphasized that the execution of an Energy Purchase Agreement (EPA) was a necessary precondition to the construction of such projects, particularly in light of the need to ensure the corresponding construction and provision of the appropriate interconnection facilities and the conduct of interconnection, testing, and commissioning activities associated with said projects as prescribed under their respective EPAs.
- ii. Following detailed deliberations in the above-mentioned meeting, it was decided that the EPA of the Project would be executed subject to the fulfillment by PEDO of all necessary prerequisites as identified in the minutes of the meeting. Subsequent to the aforementioned meeting and following detailed discussions between CPPA-G and PEDO, the EPA was drafted, negotiated, finalized, and executed on 14th May 2019. As the project did not fall under the auspices of any particular National Power Policy, the standardized security package of documents was not used. Further, the Authority issued its Tariff Determination in favor of the Project on 9th January 2018, wherein the Authority had allowed a construction period for the Project of a total of thirty-six (36) months. However, in its determination the Authority did not clarify when this thirty-six (36) month period would begin.
- iii. Pursuant to the EPA, the Project's Metering System and Backup Metering System are required to be installed in the Complex in order to record its meter readings. In light thereof, NTDC, vide its letter of 23rd September 2019, issued the Metering



System after having scrutinized the Project's Single Line Design and Grid Layout. On 8th October 2019 the Metering Committee conducted the Project's testing and sealing activities, whose report clearly specified that the Project was advised to install/arrange primary and back-up dedicated current and potential transformers as well as the Backup Metering system as soon as possible in order to forestall any potential untoward situations. Subsequently, upon the completion of the Project's pre-synchronization tests the Project's Independent Engineer issued its certificate for Readiness of the Complex for Synchronization and commencement of commissioning tests on 1st January 2020.

- iv. On 2nd March 2020 the Operating Committee constituted for the Project to finalize the Commissioning Test procedures, following which the outbreak of COVID-19 in the last week of March 2020 placed the country under lockdowns whereby international movement was restricted due the restrictions on transportation imposed by the Federal and Provincial governments to curb the spread of disease. Concurrently, the Project was asked to provide certain documents necessary for the commencement of its commissioning tests; however, despite repeated requests/reminders, after a prolonged delay the final documents were submitted by PEDO to CPPA-G on 10th June 2020. Consequently, CPPA-G vide its office order dated 19th June 2020 deputed its team to witness the conduct of the Project's Commissioning Tests.
- v. Prior to the commencement of the Commissioning Tests, during the inspection of the Complex by CPPA-G's team it was revealed that, despite the issuance of clear instructions by the convener of the Metering Committee, PEDO failed to install the Backup Metering System at the Complex. Consequently, the Project Director for the Project issued an undertaking dated 24th June 2020 with the effect that CPPA-G would witness the conduct of the Commissioning Tests and the Project's COD would be declared and be effective from the date of the installation of said Backup Meters. After a delay of over eleven (11) months the dedicated CTs and PTs, along with the Backup Metering system, were installed and calibrated on 25th May 2021. Subsequently, PEDO vide its letter of 26.05.2021 confirmed the successful testing of the newly-installed CTs, PTs, and metering systems, thereby satisfying the requisites of the undertaking submitted by its Project Director on 24th June 2020 over eleven (11) months prior. Therefore, pursuant to the undertaking submitted by PEDO and following the installation of the Backup Metering System, CPPA-G with the approval of the CEO, CPPA-G issued its notification that the Project has achieved its COD on 26th May 2021.
- vi. In view of the foregoing, it must be noted that the delay in declaring the Project's COD is solely and entirely attributable to PEDO; however, said delay in the Project's COD has not been addressed under the EPA due to the fact that the determination did not clearly clarify the start date of the thirty-six (36) month construction period allowed by the Authority in said determination. It is also pertinent to note that at the time of the Authority's determination, the Project was nearing completion and thus the Authority's clarification regarding said date was indispensable to the operation of the corresponding clauses of the EPA and consequently, the imposition of Liquidated Damages as applicable.



- vii. It is also noted that had the Authority specify the start date of the Project in the 31st March 2021 Modification of Tariff submitted by PEDO, accordingly the delay in the Project's COD will automatically be rendered part of the EPA as the Tariff Determinations issued by the Authority take precedence over the provisions of the EPA.

Hearing:

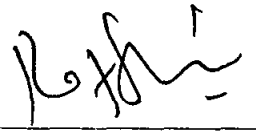
11. In view of the above, the Authority decided to provide an opportunity of hearing to the Licensee, under Regulation 4(5) of the Fine Regulations, 2021 before proceeding further. Hearing in the matter was held on 27.07.2022, wherein, the representatives of the Licensee participated and made their submissions.

Analysis/Findings of the Authority/Decision:

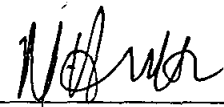
12. The Authority has gone through the submissions of the Licensee and considers that the Licensee has provided satisfactory reply to the Explanation issued to it. Therefore, the Authority decides to accept the same and the matter stands closed in terms of Regulation 4(6) of the Fine Regulations, 2021.


Authority

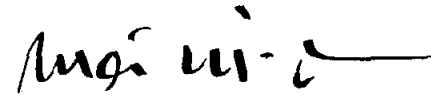
Rafique Ahmed Shaikh
Member (Technical)



Engr. Maqsood Anwar Khan
Member (Licensing)



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




Amina Ahmed
Member (Law)

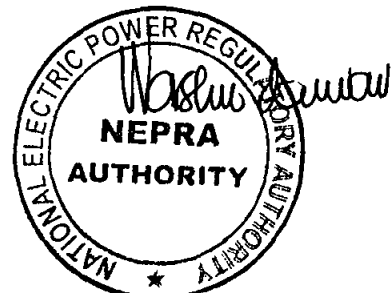
(DID NOT ATTEND)

Waseem Mukhtar
Chairman



 *Additional Note*
Attached Wm

Announced on _____, 2024 at Islamabad.



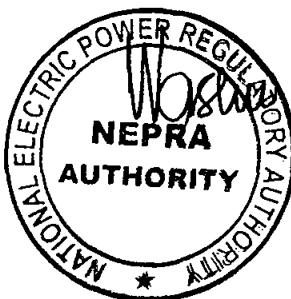
** My Dissent letter 17-04-2023
in R/T 23-204 will be part of this
mention 5/7*

DISSENT NOTE OF MEMBER TARIFF
RM 23 - 204

1. The declaration of the Commercial Operation Date (COD) concerning the delay in commissioning of the 36.6 MW Daral Khawar Hydropower Project falls within the jurisdiction of CPPA-G and out of mandated jurisdiction of NEPRA. In my opinion, if the Authority approves the COD effective from February 2019 in this instance, it would set a legally incorrect precedent that could be cited in other cases for seeking or claiming similar relief. I therefore disagree with the decision. Furthermore, I propose the development of a special policy/framework aimed at incentivizing the establishment of small run-of-river/canal-based hydro power plants which are to provide electricity to local areas.

Mathar Niaz Rana

Mathar Niaz Rana (nsc)
Member Tariff



Additional Note by Majority Members of Authority
RM 23-204 held on October 17, 2023:

We deeply appreciate and acknowledge the insightful perspective presented by the honorable Member (Tariff) regarding the Commercial Operation Date (COD) for the Daral Khwar Hydel Power Project. Nonetheless, we remain steadfast in our stance to approve the COD effective from February 2019, supported by a comprehensive array of compelling reasons and substantiated evidence.

2. To begin with, the delay in meter installation, attributed to the tardy approval of technical submittals by the National Transmission and Dispatch Company (NTDC) for the associated instrument transformers, was an unforeseen circumstance beyond the control of the project developers. It's essential to underscore that despite this setback, the primary meter had already undergone verification by representatives of both NTDC and the Pakhtunkhwa Energy Development Organization (PEDO), affirming its readiness for power sales to the Central Power Purchasing Agency (CPPA-G).

3. Moreover, the issuance of a certificate by the Independent Engineer on 15th July 2020, endorsing the successful completion of commissioning tests, provided robust validation of the project's readiness and fulfillment of critical milestones well before the eventual COD declared by CPPA-G on 26th May 2021. Additionally, the initiation of power sales to CPPA-G from February 2019 represents a pivotal operational milestone for the project. This alignment with commercial activities signifies the tangible commencement of power generation, reinforcing the project's preparedness and functionality.

4. Furthermore, the Daral Khwar Hydel Power Project signifies a substantial investment in a cost-effective and environmentally sustainable energy source. It is imperative to recognize the broader positive implications of this project, which serves as an exemplar of renewable energy initiatives. Penalizing the project for issues such as meter installation delays, which were beyond its direct control, could potentially deter future investments in similar ventures aimed at advancing green energy solutions.

5. In conclusion, our decision to uphold the COD effective from February 2019 is firmly grounded in compelling evidence and principled reasoning. This decision underscores our commitment to fairness and practicality in project commissioning while advancing steadfast support for sustainable energy initiatives crucial for our societal and environmental well-being. We firmly believe that nurturing and promoting such initiatives is paramount for a sustainable future, fostering innovation and progress in the renewable energy sector.

6. Moreover, since the issue of delay in commissioning of Daral Khwar Hydel Power Project has now been resolved, therefore, we have decided to accept the responses received from PEDO and CPPA-G to the Explanations dated 15.03.2022 and order the matter closed.



Rafique Ahmed Shaikh
Member


Engr. Magsob Anwar Khan
Member
Waseem Mukhtar
Chairman