



Registrar

National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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No. NEPRA/DG(M&E)/LAG-349/ 13048

August 15, 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 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)

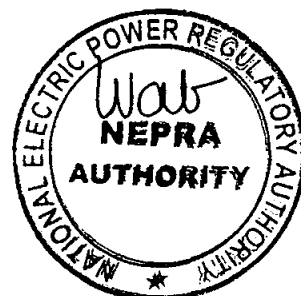


National Electric Power Regulatory Authority

In the matter of Explanation issued to Pakhtunkhwa Energy Development Organization under Regulation 4(1) & 4(2) of the NEPRA (Fine) Regulations, 2021

Order

1. 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 "Licensee") located at the right tributary of river Swat in District Swat of Malakand Division, KPK.
2. Central Power Purchasing Agency-Guarantee Limited (hereinafter referred to as the "CPPA-G" or 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.
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 Power Purchaser executed an Energy Purchase Agreement (hereinafter referred to as the "EPA") with the Licensee on 14.05.2019 for procurement of power from the Project on terms and conditions stipulated in the EPA.
5. The Licensee, 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 the Licensee, 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 Licensee, 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 a 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*

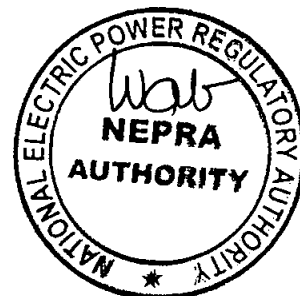
*2. **WHEREAS** Daral Khwar Hydropower Project (hereinafter referred to as the "Project") is a run of the river hydropower project of the Pakhtunkhwa Energy Development Organization (hereinafter referred to as the "PEDO" or the "Licensee") located at the right tributary of river Swat in District Swat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

*3. **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*

*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 Licensee on 14.05.2019 for procurement of power from the Project on terms and conditions stipulated in the EPA; and*

*6. **WHEREAS** the Licensee, 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; and*



7. **WHEREAS** according to the Licensee, 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 Licensee, 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

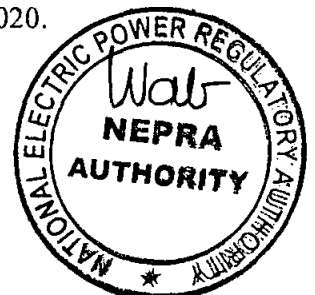
9. **WHEREAS** delay in achieving COD is a result of inefficiencies, for which the consumers must not suffer. The delays in achieving COD are dealt under the articles of EPA's/PPA's between the companies for which usually Liquidated Damages are incorporated as penalties. All this is generally agreed well before COD through EPAs; and

10. **NOW THEREFORE** in view of the above, the 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.

Licensee's Response:

10. In response, the Licensee submitted its reply vide letter dated 06.04.2022. The same has been summarized as under:

- i. Expected COD of Daral Khwar was June 01, 2019. The first synchronization of Daral Khwar with the National Grid through PESCO Madyan substation took place on September 15, 2018 and the project was officially inaugurated by the Chief Minister, Khyber Pakhtunkhwa on September 29, 2018. Following the inauguration, the NPCC, NTDC, and PESCO de-energized the Daral Khwar transmission line from the Madyan grid on the plea that the CPPA-G had not yet finalized and signed the EPA with PEDO. PEDO was granted second time permission to synchronize the powerhouse with the National Grid on April 19, 2019.
- ii. PEDO had already installed the Three Phase Electronic Multifunction (Import/Export) imported Energy Meters with accuracy class 0.2 at the interconnection point during the execution phase of the plant, satisfying the clause "Metering System" of the EPA. Despite fulfillment of above obligation, PEDO procured a three-line metering panel of ISKARA make, that is acceptable to NTDC, procurement of which took a long time due to the failure of PESCO and NTDC to develop a consensus on the formation of the metering committee.
- iii. After the installation of Primary Energy meters, CPPA-G was approached in order to finalize the testing and commissioning protocols for commissioning tests. But due to COVID-19 restrictions in Pakistan since February 2020, the commissioning schedule was delayed till June 2020. CPPA-G deputed their team to witness the commissioning tests of the project on June 19, 2020. The Independent Engineer issued Certificate for Successful Completion of Commissioning Tests on July 15, 2020 and Certificate of Initial Tested Capacity on September 01, 2020.



- iv. The certification of successful completion of commissioning of the Complex for continuous operation to the Purchaser and the Seller by the Independent Engineer entitles the seller to claim establishment of Commercial Operations Date in accordance with the definition of "Commissioned" as per EPA. However, since the installation of backup meters and associated instrument transformers was pending so the effective date for the Commercial Operation was held by CPPA-G for which one year time was already granted in a meeting held on September 16, 2019 among Higher-ups of Ministry of Power Division, CPPA-G, NTDC and PEDO.
- v. The dedicated CTs and PTs were managed from sole approved manufacturer of NTDC in China. The type-test reports of equipment were provided to NTDC, as per their requirement, before shipment for which several meetings were scheduled with NTDC. In October 2020, NTDC intimated CPPA-G for additional documents i.e. signed copies of EPA and load flow studies reports (although the same were already with NTDC). The reports were submitted by the Project Authorities to NTDC through CPPA-G on October 19, 2020. The technical submittals of dedicated CTs/PTs were provisionally approved by NTDC on October 29, 2020 which were sent to the manufacturer and Contractor office in China on very same day. The fabrication/manufacturing of the equipment was vigorously pursued with manufacturer in China despite COVID-19 restrictions and manufacturers' overloaded schedule.
- vi. The dedicated CTs/PTs arrived on site of Daral Khwar Hydropower Project in March 2021, and the Project Authorities informed CPPA-G that the installation works would be completed soon and requested to schedule the visit of their technical team for testing of the equipment and finalize with the modalities regarding the declaration of COD. CPPA-G apprised that the testing and installation of CTs/PTs and backup-metering system is the mandated domain of constituted metering committee; therefore Convener metering committee and NTDC may be requested to visit site for testing of CTs/PTs and Back-up metering system. As a result, the Convener Metering committee was approached and testing/calibration/sealing committee was constituted. The backup meters were tested/calibrated/sealed on 26-05-2021 and COD of the project was achieved.
- vii. Despite having completed all codal formalities when CPPA-G was requested to notify COD, CPPA-G forwarded the reports to NTDC for review and further verification, upon which NTDC raised observations. It is pertinent to mention here that PEDO had already communicated the list of tests performed to NTDC/CPPA-G prior to testing but neither party highlighted any insufficiency in the proposed tests upon that submission. However, PEDO performed all the additional tests as recommended by NTDC and submitted reports to CPPA-G with request to notify the Commercial Operation Date of the project with effect from the date of sealing of backup energy meters. CPPA-G notified the COD of the project with effect from 26-05-2021 after the intervention of NEPRA.
- viii. In light of the above, it is clear that besides the COVID-19 restrictions, the COD of the project has been delayed due to lack of consensus between PESCO and NTDC, as well as delay in approvals by the power purchaser. The procurement of dedicated CTs/PTs was materialized within 139 days after the approval of specifications by



the NTDC. Moreover, the Energy Purchase Agreement between PEDO and CPPAG is on Take-and-Pay basis agreement which does not include the provision of Liquidated Damages.

Hearing:

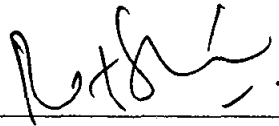
11. In view of the above, the Authority decided to provide an opportunity of hearing to the Licensee, under Regulation 4(5) of the Fine Regulations, 2021 before proceeding further. Hearing in the matter was held on 27.07.2022, wherein, the representatives of the Licensee participated and made their submissions.

Decision of Authority:


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

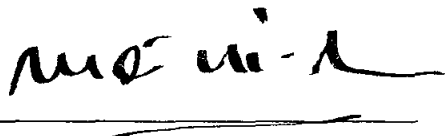
Rafique Ahmed Shaikh
Member (Technical)



Engr. Maqsood Anwar Khan
Member (Licensing)



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



Amina Ahmed
Member (Law)

(DID NOT ATTEND)

Waseem Mukhtar
Chairman

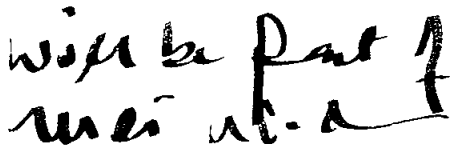
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★★ Additional Note

Attached 

Announced on _____, 2024 at Islamabad.



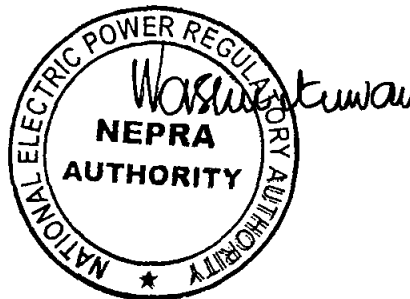
★ My Dissent note dated 17 Oct 2023 in ROR 23-204 will be part of this record also  5/7

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 (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.

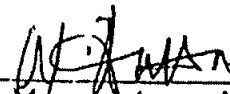
4. Furthermore, the Daral Khwar Hydel Power Project signifies a substantial investment in a cost-effective and environmentally sustainable energy source. It is imperative to recognize the broader positive implications of this project, which serves as an exemplar of renewable energy initiatives. Penalizing 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. Maqsood Anwar Khan
Member



Wassem Makhitar
Chairman

