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**National Electric Power Regulatory Authority**  
**Islamic Republic of Pakistan**

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No. NEPRA/CAD/TCD-10/3457-58

March 13, 2017

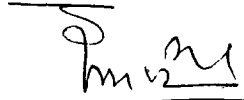
Chief Executive Officer  
Central Power Purchasing Agency (Guarantee) Limited  
6<sup>th</sup> Floor, Shaheed-e-Millat Secretariat,  
Jinnah Avenue, Blue Area, Islamabad.

Subject: **ORDER OF THE AUTHORITY REGARDING APPEAL FILED BY  
CENTRAL POWER PURCHASING AGENCY (GUARANTEE) LIMITED  
(CPPA(G)) AGAINST THE DECISION OF NEPRA IN THE MATTER OF  
COMPLAINT OF FFC ENERGY LIMITED REGARDING  
NON-IMPLEMENTATION OF DECISION OF NEPRA**

Reference is made to Appeal dated 29<sup>th</sup> July 2016 filed by CPPA(G) against the decision of NEPRA dated 29<sup>th</sup> June 2016 in the matter of complaint of FFC Energy Limited.

2. Enclosed find herewith the Order of the Authority regarding the subject matter for necessary action and compliance within thirty (30) days, please.

Encl: As above

  
13.03.17  
( Syed Safer Hussain )

Copy to:

Mr. Suhail Khalid Khawaja  
Head of FFC Energy Limited,  
156-The Mall, Rawalpindi Cantt.



**BEFORE THE**  
**NATIONAL ELECTRIC POWER REGULATORY AUTHORITY**  
**(NEPRA)**

**Central Power Purchasing Agency (Guarantee) Limited** ..... **Appellant**  
6<sup>th</sup> Floor, Shaheed-e-Millat Secretariat,  
Jinnah Avenue, Blue Area, Islamabad.

**Versus**

**FFC Energy Limited** ..... **Respondent**  
156-The Mall, Rawalpindi Cantt.

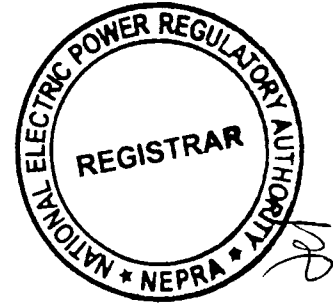
**Date of Hearing:** 11<sup>th</sup> November 2016

**Present:**

- |    |                              |                           |
|----|------------------------------|---------------------------|
| 1) | Brig. (Retd.) Tariq Saddozai | Chairman                  |
| 2) | Mr. Himayat Ullah Khan       | VC/Member (Tariff)        |
| 3) | Maj. (Retd.) Haroon Rashid   | Member (Licensing)/(M&E)  |
| 4) | Syed Masood-ul-Hassan Naqvi  | Member (Consumer Affairs) |

**On behalf of:**

- Appellant:**
- 1) Mr. Rihan Akhtar, CFO
  - 2) Mr. Majid Khan, CLO
  - 3) Mr. Ilyas Ahmed, GM NPCC
  - 4) Mr. Amanullah, C.E. NPCC
  - 5) Sh. Muhammad Ali, Advocate



- Respondent:**
- 1) Mr. Suhail Khalid Khawaja, CEO
  - 2) Mr. Asif Sultan, CFO
  - 3) Khwaja Nadeem
  - 4) Mr. Umar Sharif, Legal Counsel
  - 5) Mr. Zeeshan, Executive Officer

**Subject:** **ORDER OF THE AUTHORITY REGARDING APPEAL FILED BY CPPA(G) AGAINST THE DECISION OF NEPRA IN THE MATTER OF COMPLAINT FILED BY FFC ENERGY LIMITED REGARDING NON-IMPLEMENTATION OF DECISION OF NEPRA**

**ORDER**

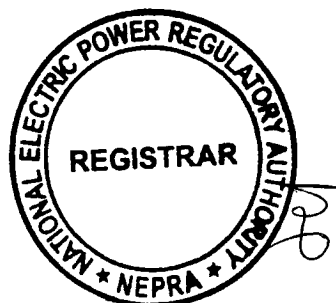
This decision shall dispose of the Appeal dated 29<sup>th</sup> July 2016 filed by Central Power Purchasing Agency Limited (Guarantee)/NTDC (hereinafter referred to as the "Appellant" or

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"CPPA(G)" or "Power Purchaser") against the decision of NEPRA dated 29<sup>th</sup> June 2016 in the matter of complaint of FFC Energy Limited (hereinafter referred to as the "Respondent" or "FFCEL") filed under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "Act").

2. The brief facts of the case are that the Respondent filed a complaint regarding non-implementation of the determination/decision of the Authority dated 31<sup>st</sup> July 2015 on its motion for leave for review by the Appellant. The Respondent submitted that the Authority vide its said determination held that the imposition of Liquidated Damages (LDs) amounting to U.S. \$ 0.477 million imposed by the Power Purchaser must be reimbursed to FFCEL. Further, the Authority allowed the cost of Pre-COD sale of electric power to the FFCEL at the reference tariff excluding principal repayment of debt component and interest component i.e. @ 4.1911/kWh, however, the Appellant is not implementing the said determination.

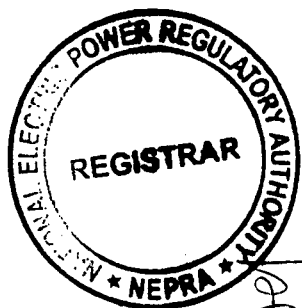
3. In consideration of the above, the complaint was taken up with the Appellant for comments/report. In response, CPPA(G) vide its letter dated 23<sup>rd</sup> February, 2016 submitted that National Transmission and Dispatch Company Limited (NTDCL) executed an Energy Purchase Agreement (EPA) with FFCEL on 5<sup>th</sup> April 2011 in line with standard EPA approved by the Economic Coordination Committee of the Cabinet (ECC). The Board of Director (BoD) of NTDCL approved the said EPA (including all its annexures). The LDs were imposed on FFCEL due to late commissioning of the project as stipulated in the EPA. CPPA(G) has recovered an amount of Rs.4.11 billion for LDs on account of late commissioning from different Independent Power Projects (IPPs). The reimbursement of LDs to FFCEL will not only be a clear violation of the EPA but will also create a disparity with regards to other IPPs. Further, CPPA(G) submitted that as per the provisions of the EPA, the Power Purchaser is not obligated to pay for any electricity supplied to it before Commercial Operation Date (COD) of the generation facility. Moreover, in case of Wind Power Projects, no fuel is consumed and therefore the Power Purchaser is not obligated to pay for any Net Electric Output before COD. CPPA(G) added that it honors all determinations of the Regulator and if such payments are to be made then the invoking provisions should be incorporated in the EPA and such amendments will require the approval of ECC as the same is not covered in the existing Standard Security Package. CPPA(G) further submitted that it had applied all the provisions of the EPA in letter and spirit and the same were also endorsed by the BOD of NTDC and there is no claim of FFCEL for the energy supplied before COD.



4. In order to further examine the matter, a hearing was held on 18<sup>th</sup> April 2016 at NEPRA Head Office, Islamabad, and during the hearing, the parties advanced their arguments on the basis of their earlier submissions. The case was examined in light of written and verbal arguments of both the parties and applicable documents and law, and was disposed of by Member (Consumer Affairs) NEPRA vide decision dated 29<sup>th</sup> June 2016. The CPPA(G) was directed to "comply with directions of the Authority contained in the Determination dated 31<sup>st</sup> July 2015 in letter and spirit". The decision was conveyed to CPPA(G) (with a copy endorsed to the Respondent and NTDC) for compliance within thirty (30) days vide letter dated 30<sup>th</sup> June 2016.

5. Being aggrieved with the impugned decision, CPPA (G) filed an Appeal under Section 12-A of the Act. The Authority admitted the appeal and, in this context, a hearing was held on 11<sup>th</sup> November 2016. The representatives of the Respondent reiterated their earlier submissions, whereas the Appellant in its written arguments as well as during the hearing submitted as under:

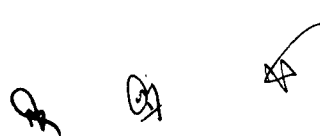
- i) The LDs have been imposed on the Respondent due to late commissioning of the project as stipulated in the EPA. The reimbursement of LDs to the Respondent will not only be clear violation of the EPA but will also create a disparity with regard to other IPPs. The delay between Required Commercial Operation Date (RCOD) and actual COD can be condoned due to any *force majeure* occurrence whereas, no *force majeure* has been claimed by the Respondent. Further, the delay on part of the Respondent is an admitted position and the Authority did not condone the delay.
- ii) As per the provisions of the EPA, the Power Purchaser is not obligated to pay for any electricity supplied to it before COD of the generation facility. Moreover, in case of Wind Power Projects, no fuel is consumed and therefore, the Power Purchaser is not obligated to pay for any Net Electric Output before COD. Further, the energy obtained prior to COD has been passed on to the consumers without charging the same.
- iii) The Respondent, in its motion for leave for review, never demanded for the reimbursement of LDs and payment of energy supplied during Pre-COD period, therefore, allowing these two components is not justified and contrary to the principles of the natural justice. The Authority has allowed Pre-COD Sale of Energy only in case of projects under Upfront Tariff regime whereas the project of the Respondent is based on Cost Plus Tariff, therefore the same is not admissible to the Respondent.

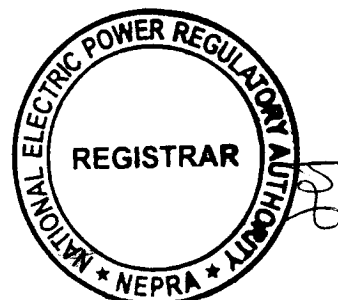


- iv) The determination of the Authority was not based on legal grounds rather the same was made on sympathetic ground. Further, the reimbursement of LDs and payment of Pre-COD sale of electric power are not covered in the "Order" part of the determination/decision of the Authority and thus is not notified, therefore the same is not applicable to the Appellant. Keeping this in view, no review was filed by the Appellant at that time.

6. The submissions of the Appellant have been examined in light of original tariff determination, COD adjustment determination, signed EPA of this specific project as well as other projects governed under upfront tariff regime, etc the following is concluded:

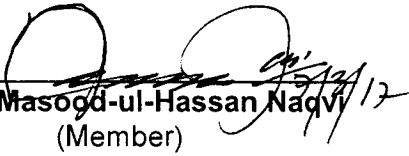
- i) As per original tariff determination and EPA dated 5<sup>th</sup> April 2011, the RCOD was 29<sup>th</sup> January 2013, however, the same was achieved on 16<sup>th</sup> May 2013. The delay was caused on account of open and short circuit test (OSCT) issue. According to terms of EPA, the OSCT was required to be conducted at site. Later on, it was realized that the same was not possible at site. The Respondent intimated the same to the Power Purchaser/Appellant well before RCOD, however, the Power Purchaser did not agree with the contention of the Respondent. At a later stage, the Power Purchaser agreed that the said test could not be undertaken at site and accepted the factory results for this test. Accordingly, the EPA was modified on 15<sup>th</sup> March 2013. As such, it is clear that the delay in achieving RCOD is attributable to the Power Purchaser, as it insisted for conducting OSCT at site. It is pertinent to mention that in subsequent EPAs for other projects, the said condition of OSCT at site was excluded *ab initio*.
- ii) There is no force in arguments of the Appellant that the reimbursement of LDs and payment of pre-COD sale of electricity are not covered in the order/notified portion of the determination. The provisions of law/determinations are interpreted in totality and not in isolation, and implementation of all the clauses of the determination/decision is mandatory.
- iii) If the Appellant had any reservation on the determination of the Authority dated 31<sup>st</sup> July, 2015, it should have challenged the same at that time but the same

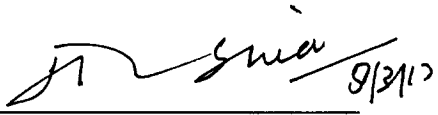


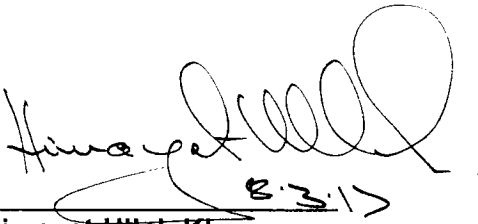


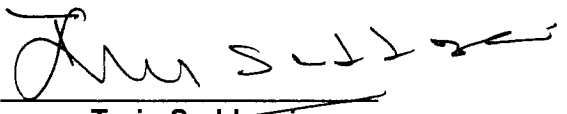
was not done. As such, the determination attained finality and its implementation is obligatory on the Appellant.


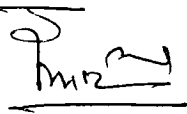
7. Foregoing in view, the Authority is of the considered view that the appeal would not result in the withdrawal or modification of the impugned decision, hence, the Appeal is declined and the decision dated 29<sup>th</sup> June 2016 is maintained. The Apellant is directed to proceed in light of the determination dated 31<sup>st</sup> July 2015 and submit compliance within thirty (30) days.

  
Syed Masood-ul-Hassan Naqvi  
(Member)

  
Maj. (Retd.) Haroon Rashid  
(Member)

  
Himayat Ullah Khan  
(VC/Member)

  
Tarig Saddozai  
(Chairman)

  
REGISTRAR  
  
13.03.17

