



National Electric Power Regulatory Authority Islamic Republic of Pakistan

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Registrar

No: NEPRA/DG(Lic)/LAT-06/ 8082-83

April 04, 2023

Managing Director

National Transmission & Despatch Co.
414 WAPDA House
Shahra-e-Quaid-e-Azam, Lahore

Subject: **DETERMINATION OF THE AUTHORITY IN THE MATTER OF REVIEW MOTION
FILED BY NATIONAL TRANSMISSION & DISPATCH COMPANY LIMITED AGAINST
GRANT OF LICENCE FOR PROVINCIAL GRID COMPANY**

Reference: NTDC letter No. nil dated 29.11.2019

Enclosed please find herewith determination of the Authority in the matter of Review filed by National Transmission & Despatch Company Limited (NTDC) against Determination of the Authority dated 05.11.2019 in the matter of grant of Transmission Licence to Sindh Transmission & Dispatch Company Limited (STDC) to act as Provincial Grid Company for Sindh Province.

Encl: **As above**


(Engr. Mazhar Iqbal Ranjha)

Copy to:

Chief Executive Officer

Sind Transmission & Dispatch Company (Pvt.) Limited
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National Electric Power Regulatory Authority
(NEPRA)

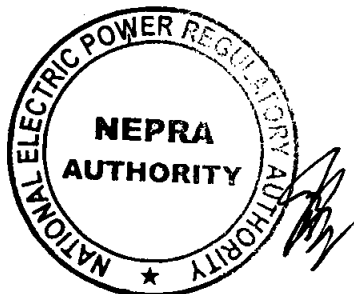
Determination of the Authority
in the Matter of Review Motion of National Transmission and
Despatch Company Limited Against the Grant of Licence for
Provincial Grid Company

April
March-04, 2023
Case No. LAT-06

The Authority in terms of Section-18A of the amended Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the "NEPRA Act") granted a Transmission Licence (No. PGCL/01/2019, dated November 05, 2019) to Sindh Transmission & Despatch Company (Private) Limited (ST&DCPL). The Authority conferred the above-mentioned licence to ST&DCPL authorizing it to engage in transmission of electric power within territorial limits of the province of Sindh.

(2). National Transmission and Despatch Company Limited (NTDCL) being aggrieved with the grant of Transmission Licence to ST&DCPL, filed a Review Motion on December 05, 2019 in terms of the NEPRA (Review Procedure) Regulations, 2009 (the "Review Regulations"). The Authority considered the submissions of NTDCL and admitted the Review Motion on January 01, 2020 and decided to provide an opportunity of hearing to NTDCL to present its case in terms of Regulations-3(8) of the Review Regulations. Accordingly, a hearing in the matter was scheduled for March 11, 2020 however, the same was adjourned on the request of ST&DCPL citing pandemic and other related reasons. The hearing was again scheduled for June 18, 2020 however, the same was adjourned on the request of NTDCL.

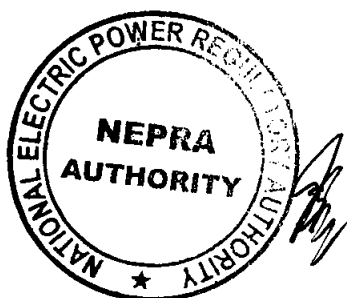
(3). The above hearing was re-fixed for November 11, 2020 however, the hearing was again adjourned on the specific request of NTDCL. Later on the hearing was arranged for June 08, 2021 but this time, the same was postponed on the submission of ST&DCPL. The hearing was once again scheduled for November 16, 2021 but was again adjourned on the request of NTDCL. The hearing was finally held on November 30, 2021 wherein Mr. Muhammad Ayub, Deputy Managing Director (DMD) of NTDCL apprised the Authority that the management of NTDCL is in the process of settlement of various issues resulting from the grant of licence to ST&DCPL as PGC. In this regard,



negotiations are in advance stage and likely to be concluded by signing a Memorandum of Understanding. DMD expressed his willingness to withdraw the Review Motion. Managing Director-MD of NTDCL also joined the hearing through Zoom link and endorsed the views of DMD, however, Chief Legal Officer-CLO of NTDCL took a contrary position and expressed that the Board of Director (BoD) of NTDCL has granted the mandate for filing and contesting the Review Motion. Whereas, there are no written directions of the BOD for withdrawal of the instant Review Motion. The CLO suggested that instead of disposing off the Review Motion, the Authority may sine die adjourn the proceedings of the same till settlement of all the contentions/issues between NTDCL and ST&DCPL. Mr. Nadir Altaf of RIAA Barker Gillette representing NTDCL also joined the hearing but at a belated stage, favouring the position that CLO of NTDCL had taken as explained above. In this regard, Mr. Nadir Altaf submitted a formal communication later on, requesting the Authority to decide the matter on merits and provide an opportunity of hearing to elaborate its submissions in detail. The Authority considered the said submissions and decided to provide another opportunity of hearing to NTDCL to present its case.

(4). In consideration of the above, the hearing in the matter was re-scheduled for February 24, 2022 and on the request of ST&DCPL, the Authority allowed a time of three (03) weeks to make an effort to amicably resolve the matter. Later on, Mr. Nadir Altaf the legal counsel of NTDCL through a communication dated July 21, 2022 submitted that all efforts for an amicable solution have failed therefore, the Authority may convene the hearing of the parties to consider the Review Motion on merit and decide the same. Accordingly, the hearing was held on August 10, 2022. In the said hearing, CLO of NTDCL requested the Authority to allow fifteen (15) days' time for seeking necessary guidance from the BoD in the matter, however, no response was received. In view of the said, the Authority decided to hold the pending hearing on November 30, 2022.

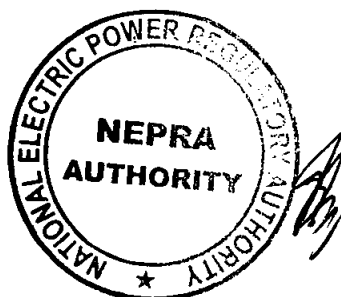
(5). In the above mentioned hearing, Mr. Nadir Altaf and CLO of NTDC i.e. Ms. Shanza Baig represented NTDCL. He submitted that NTDCL holds a Transmission Licence (No. TL/01/2002, dated December 31, 2002) as a National Grid Company (NGC), which the Authority had granted pursuant to Section-17 & 18 of the NEPRA Act. According to the terms and conditions of the granted licence, NTDCL is providing safe and reliable transmission and inter-connection services on a non-discriminatory basis



to various generators, distributors and bulk power consumers in the whole country except the area served by K-Electric Limited (KEL). It was submitted that under Article-5 of its licence, NTDCL has the exclusive right to provide transmission services and carry out transmission business in its Service Territory.

(6). Further to the above, the legal counsel of NTDCL/Mr. Nadir submitted brief facts that has led to the filing of the instant Review Motion stating that ST&DCPL submitted an application on April 11, 2019 for transmission licence to act as a PGC. The Authority admitted the application on April 17, 2019 and invited comments from various stakeholders pursuant to the notice dated April 24, 2019. In this regard, NTDCL duly submitted its objections/comments on June 21, 2019 followed by additional comments dated August 30, 2019. Thereafter, a public hearing was held on September 04, 2019 wherein NTDCL participated and raised its objections/comments wherein the legal counsel submitted that in total disregard of objections/comments of NTDCL and the applicable law and constitutional framework, the Authority vide its Determination dated November 05, 2019 had granted the Licence to ST&DCPL to perform functions as PGC as stipulated in Section-18A & Section-18B of the NEPRA Act.

(7). It was submitted that the above mentioned determination suffers from errors, infirmities and is based on surmises and conjectures, contrary to the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution") and settled norms of law and justice. Therefore, the same and the Licence of ST&DCPL for PGC are bad in law, discriminatory and liable to be dispensed with/set aside. It was expressed that under Article-154(1) of the Constitution, the Council of Common Interests ("CCI") shall formulate and regulate policies in relation to matters in Part-II of the Federal Legislative List of the Constitution. In light thereof, if a matter falls within the powers of CCI under Article-154, it must be placed before it. The subject of 'Electricity' is listed as Entry No. 4 in Part II of the Federal Legislative List of the Constitution and therefore, the policy decisions in respect of the Electricity must be placed before the CCI. This constitutional dictate has been recognized and envisaged by the legislature in the NEPRA Act wherein Section-14A inter alia provides that the Federal Government shall with the approval of the CCI Interests, prepare and prescribe a National Electricity Policy (the "NEP") for development of the power market. Further, the NEP, inter alia, shall provide for the integration of national and provincial transmission systems.

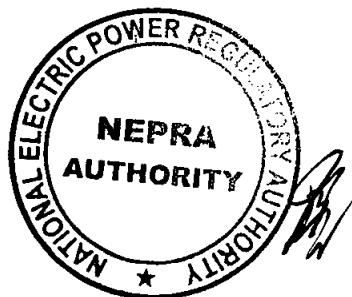


(8). NTDCL submitted that the grant of licence to ST&DCPL as PGC under Section-18A of the NEPRA Act and its subsequent operations will inevitably lead to interconnection at provincial and federal levels and has to be centrally and carefully planned as the actions taken by one grid operator may contradict/overlap with the actions of any other operator, thus requiring planning and policy formulation. Similarly, either one or both operators may attribute the responsibility of partial or full grid system collapses.

(9). In light thereof, the preparation and prescription of policy framework in respect of inter alia, the integration of national and provincial transmission systems under Section-14A of the NEPRA Act is a *sine qua non* for the operations of, and/or grant of licence to any PGC. Unless such policy framework becomes effective, no licence could have been granted to any PGC under Section-18A of the NEPRA Act. The same is also evident from a perusal of Section-18A of the NEPRA Act, which provides inter alia that the licence to act as a PGC may be granted subject to the provisions of the NEPRA Act. The Determination dated November 05, 2019 consequently, is contrary to the provisions of the NEPRA Act, the Constitution, and also hampers the smooth functioning of the transmission sector.

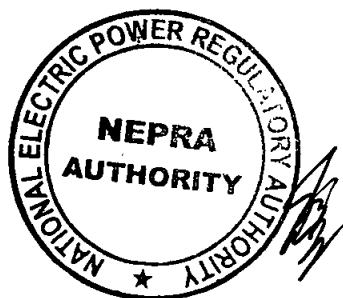
(10). Further to the above, the Section-18A of the NEPRA Act provides for inter alia the grant of licence to a PGC whereas Section-18A(2) of the NEPRA Act deals with the mode and mechanism of such grant and provides the eligibility criteria for grant of such licenses that shall be prescribed and include, without limitations (a). minimum solvency requirements and (b). minimum technical and human resource requirements. The perusal of Section-18A(2) of the NEPRA Act, it is evident that the same provides the eligibility criteria for grant of licence as a PGC shall be prescribed, including the minimum solvency and minimum technical and human resource requirements. It is pertinent to mention that the term "prescribed" has been defined by Section-2(xxii) of the NEPRA Act and requires such criteria to be prescribed by Rules, to be made by the Federal Government. The term "shall be prescribed" indicates that the prescribing of Rules in terms of Section-18(A) of the NEPRA Act is mandatory and a *sine qua non* for entertaining and adjudicating upon any application for grant of licence as a PGC. The significance of a uniform, well thought-out criteria and yardstick for assessing the application and exercising discretion in this regard is also highlighted from the proviso





to Section-18A(1) of the NEPRA Act, which provides that only one such licence shall be granted for each province at any one time.

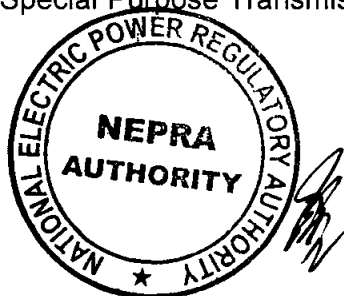
(11). In the above backdrop, it was submitted that till date, no Rules have been framed to prescribe the eligibility criteria, the minimum solvency requirements and the minimum technical/human resource requirements. Therefore, in their absence, the discretion of the Authority to grant such licenses remains unstructured, which is contrary to the law. NTDCL pointed out that Section-18A of the NEPRA Act is not a self-executory provision as it requires further legislation/steps to become effective and operative. Unless the Rules are framed, the rights, duties or powers given under Section-18A of the NEPRA Act could not be exercised. In view of the said, the Authority cannot adjudicate upon or assess any application under Section-18A of the NEPRA Act, until the requirements of Section-18A(2) of the NEPRA Act are followed and Rules, as required, were prescribed as it is a settled principle of law that if something is required to be done in a manner, it shall be done in that manner alone or not at all. Contrary to the aforesaid principles, the Authority has granted the Licence to ST&DCPL for PGC on the basis of the assumption that it would be able to comply with the minimum solvency requirements, minimum human resource requirements and other criterion as and when prescribed by the Authority in the future. It was submitted that apart from being unrealistic and unworkable, such a practice is unprecedented and reflects lack of application of mind by the Authority. Furthermore, such treatment is discriminatory and falls foul of the requirements enshrined under Article-25 of the Constitution in that all other applicants for licence are required to fulfil the criteria prescribed by the NEPRA Act, Rules and Regulations at the time of grant of the licence, whereas for ST&DCPL, a special treatment has been carved out envisioning ex post facto compliance without any basis or force of law. It was also pointed out that no embargo has been placed by the Authority on the ability of ST&DCPL to function or undertake any projects until the prescription of the criteria, thereby, giving it a free hand to operate without first being sufficiently eligible to provide the transmission services and act as the only provincial grid company in the province of Sindh. It was submitted that the same is against the letter and spirit of the NEPRA Act, including Section-7(6) thereof which obliges the Authority to protect interests of consumers and companies providing electric power services, Rules and Regulations made under the NEPRA Act, and constitutional



dictates. NTDCL submitted that the Determination and the Licence of ST&DCPL for PGC are bad in law, discriminatory, and liable to be reviewed.

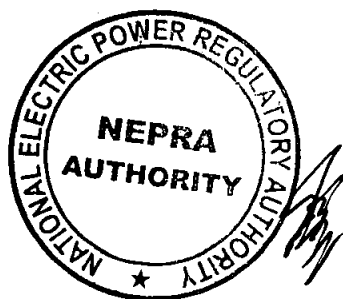
(12). It was further submitted that the existing legal framework which the Authority administers is also not yet competent for grant of licence to a PGC due to the reasons (a). National Electric Power Regulatory Authority (Application, & Modification Procedure) Regulations, 1999 ("Licensing Regulations") deal with inter alia the procedure for application for licences. Regulation-3(3) of the Licensing Regulations provides that the registrar shall not receive the application unless it is accompanied with the correct amount of application fee. Regulation-3(2) deals with the correct amount of the application fee for various categories of licenses and provides that such fee is prescribed under Schedule II of the Licensing Regulations. It was submitted that till date, no fee has been fixed or provided for an application for a provincial grid company. In absence thereof, the entertaining of application by the Authority was in non-compliance with Regulation-3(3) of the Licensing Regulations; (b). Similarly, Regulation-3(6) of the Licensing Regulations read with Schedule-III provides for a non-exhaustive list of the documents which shall be provided in support of an application. Till date, Schedule-III has not been amended to provide for any list of documents for licence of the PGC. (c). in the generation and distribution segment, National Electric Power Regulatory Authority Licensing (Generation) Rules, 2000 and National Electric Power Regulatory Authority Licensing (Distribution) Rules, 1999 have been framed respectively to provide for inter alia the terms and conditions of a licence and rights and obligations of such licensees. It expressed that no similar Rules have been framed for the transmission segment, which acts as a backbone of the power sector. In light thereof, the application for licence for a PGC cannot have been entertained unless the requisite legislative framework is put into place by the appropriate bodies/authorities.

(13). The Authority has overlooked many critical legal aspects while issuing the Determination and Licence and consequently, the Determination/the Licence are liable to be set aside for being contrary to the law. Without prejudice to the submission that the eligibility criteria for grant of licence to a PGC has not been prescribed yet, it was submitted that the application failed to meet the existing, general criteria provided under Regulation-5(1) of the Licensing Regulations considering that ST&DCPL does not has sufficient experience in the transmission sector. It has undertaken only one transmission line project pursuant to the Special Purpose Transmission Licence which the Authority



had granted it, which is insufficient to entitle it to act as a PGC. Without prejudice to the generality of the foregoing, it was expressed that a perusal of the application reveals the absence of any intent to undertake protection system studies and co-ordination of the network. ST&DCPL has, at present, no capacity, skill and experience of the protection system, which shall result in tripping and faults discrimination in the interconnected areas. All the equipment connected to the network must have to undergo a "Protection Coordination Study" in order to have harmonized protection relay settings which ensures localized clearance of the power system faults and avoids travelling of faults to other voltage levels. In the absence of such skills with the ST&DCPL, the whole interconnected network will be jeopardized with reference to safety of equipment as well as stability and reliability of the network.

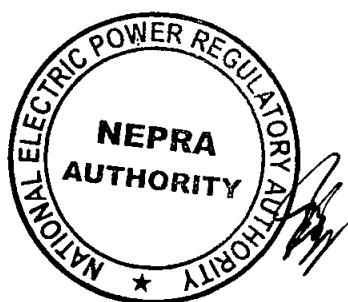
(14). Further, ST&DCPL has not provided evidence of its financial status as required by the Licensing Regulations. The undertaking by the Energy Department, Government of Sindh to provide for the minimum solvency requirements to ST&DCPL has been issued without there being any knowledge of the quantum of the minimum solvency requirements and therefore, falls short of the mandatory requirements of the Licensing Regulations. Furthermore, the information and documents that ST&DCPL has provided with the application are insufficient for the Authority to satisfy itself that it meets the eligibility criteria under the Licensing Regulations. The mandatory documents such as feasibility studies, designs, plans, and environmental approvals were not provided with the Application. Moreover, Regulation-5(2) of the Licensing Regulations provides that the Authority may decline to issue a licence even if an applicant meets the eligibility criteria, if certain circumstances exist. It was submitted that the Regulation-5(2) of the Licensing Regulations was attracted to the application and the Authority should have rejected the application thereunder due to the reasons (a). Regulation-5(2)(a) and (b) of the Licensing Regulations:- it was submitted that ST&DCPL has admitted that NTDCL has already catered for the evacuation of power from most of the existing and upcoming wind power plants in Sindh. ST&DCPL has effectively admitted that it attempts to evacuate power from power plants which are still to be conceived. Therefore, the application was based on speculations, and did not demonstrate any need for such investment and facilities in the power sector. In fact, the operations of ST&DCPL without any centralized planning and policy decisions, are likely to jeopardize the existing state of affairs in the transmission sector; (b). Regulation-5(2)(c) of the



Licensing Regulations:- it was submitted that optimal harnessing of wind power falls under the domain of national level planning, requires high level framework and cannot be placed as a standalone activity under a smaller grid levels. It was further submitted that a bare perusal of existing tariff determination of ST&DCPL reveals that it has admitted its failure to be as cost efficient as NTDCL, and has claimed more costs in its tariff than NTDCL. Moreover, it was also evident from such perusal that ST&DCPL has admitted its lack of experience in the transmission business; (c). Regulation-5(2)(d) of the Licensing Regulations:- as per said Regulation, the Authority may refuse the grant of licence if the site proposed is not suitable on environmental or social grounds. In light thereof, it is evident that environmental impacts of any power project must be thoroughly considered before the grant of licence. In the instant case, it is noted that no environmental impact assessment report was provided with the application in order for the Authority to form its mind as to the environmental impacts of the projects envisaged therein. In absence of such environmental impact assessment, the grant of licence results in serious consequences to the social and environmental conditions.

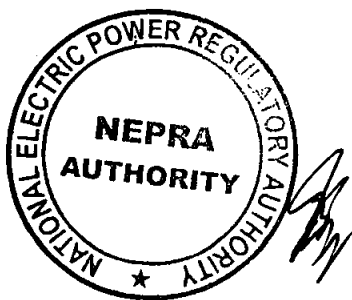
(15). Under the terms and conditions of the licence dated December 31, 2002 that the Authority has granted to NTDCL, during the term of its licence i.e. till December 30, 2032 has been given exclusivity in the Service Territory. While relying on the said assurance, NTDCL has organized its business and commercial affairs and taken decisive steps for laying down transmission infrastructure in the service areas, including in the province of Sindh. However, through the Determination and granted Licence, ST&DCPL has been granted the permission to provide transmission services in the province of Sindh, including those areas in respect of which exclusivity vested with NTDCL. It was submitted that the same constitutes a breach of settled principles of law and interferes with the vested rights of NTDCL, which cannot be taken away in such a manner, contrary to its legitimate expectations. Consequently, the Determination and the Licence being exploitative in nature and in violation of Articles-4, 10-A and 18 of the Constitution are liable to be set aside.

(16). It was submitted that NTDCL has already planned the generation capacity expansion plan for next two (02) decades which includes optimum harnessing of wind potential in Jhimpir area, keeping in view overall power system stability. In this regard, many of the projects are in pipeline, and loans have also been finalized. In order to enable ST&DCPL to work on such projects will result in huge financial implications for



NTDCL, along with duplication of work. Additionally, NTDCL, in its integrated system planning is addressing wind intermittency through balancing reserve to be provided by combination of hydro and gas turbines including forecasting techniques for load flowing. ST&DCPL intends to transmit a huge cluster of variable renewable energy plants in the region, therefore, the addressing of intermittency studies will be duplicated and cost of reserve for power balance will be additional if ST&DCPL maintains it. Such duplication of infrastructure for power evacuation of optimum wind potential and other thermal plants including (indigenous coal based and nuclear plants) in the southern region will result in a great loss to national exchequer. ST&DCPL may spill over additional powers to the network of NTDCL, affecting overall dispatch, resulting in stability issues, and huge economic impacts.

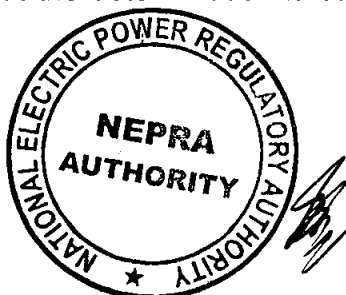
(17). Moreover, it may also be noted that HVDC Pak Matari-Lahore Transmission Line Project, which is a private transmission line project was envisaged for evacuation of power from thermal and wind power plants from the southern regions to deliver power to the load centres in the northern regions. Such private transmission line projects receive capacity payments irrespective of actual power flow. In case of operations of ST&DCPL reduce the power flow through such transmission line project, NTDCL will incur capacity payments to its disadvantage. This will, in turn, jeopardize the functioning of NTDCL, and also create hindrances in transmission services throughout the country. Without prejudice, the transmission licence granted to NTDCL dated December 31, 2002 expressly carves out the territories falling within the domain of KEL from the Service Territory of NTDCL. However, ST&DCPL has now been allowed to provide services in whole of the province of Sindh without any exception, including the service territories falling under the domain of KEL. It was highlighted that such an act of the Authority, being discriminatory falls foul of the requirements enshrined under Article-18 and Article-25 of the Constitution. The Determination and the Licence are therefore liable to be set aside on this ground alone. Without prejudice, it was submitted that the function of dispatch remains entrusted to NTDCL by virtue of Section-18 and Section-23G of the NEPRA Act. In such circumstances, the use of the term "dispatch" by ST&DCPL in its name is misrepresentative and is capable of misleading the potential investors as to the functioning and scope of work of ST&DCPL. Further to the above, Mr. Nadir referred to the judgement of the Islamabad High Court (IHC) dated July 08, 2021 in the case of Writ Petition No. 1592 of 2020: IESCO v NEPRA wherein the court



had held that the amendments made in the NEPRA Act of 1997, through the Amendment Act of 2018, are prospective and do not affect or impair the exclusive rights possessed by the companies under their respective licenses. The “exclusivity” right shall continue to operate till the expiry of under their respective licenses. The legal counsel contested that in light of the judgement of the court, NTDC holds an exclusive right during the term of thirty (30) years i.e. till December 30, 2032 and the same cannot be changed in a manner. NTDC requested the Authority to review the Determination for PGC and revoke the granted Licence to ST&DCPL by accepting the Review Motion.

(18). The Authority has considered the submissions of NTDC and has observed that the main concerns raised in the Review Motion include (a). absence of required framework under Section-14A of the NEPRA Act; (b). the determination is contrary to the provisions of the NEPRA Act and the Constitution; (c). grant of PGC will hamper the smooth functioning of the transmission sector; (d). No Rules and Regulations have been framed to prescribe the eligibility criteria for grant of licence for PGC; (e). the Licence has been granted on the basis of the assumptions and in the absence of defined application fee; (f). the list of required documents for licence for PGC has not been provided; (g). No legislative framework is put into place by the appropriate bodies/authorities; (h). ST&DCPL does not have sufficient experience in the transmission sector and have no capacity, skill and experience of the protection system; (i). the actions taken by one grid operator may contradict/overlap with the actions of any other operator, resulting in grid system collapses; (j). ST&DCPL has not provided evidence of its financial status and mandatory documents such as feasibility studies, designs, plans, and environmental approvals with the application and (k). it has exclusive right to provide transmission services and carry out transmission business in its Service Territory. NTDC stressed that the Authority should have rejected the application on the premise that the same does not meet the eligibility criteria as stipulated in the Licensing Regulations.

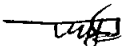
(19). In consideration of the above, the Authority has observed that CCI has already approved National Electricity Policy 2021 (the “NE Policy”) inter alia laying down the framework for integrated planning of the electric power sector of the country therefore, the very observation of NTDC that there is absence of required framework under Section-14A of the NEPRA Act, does not merit any consideration. In view of the said, the observation of NTDC that the determination is contrary to the provisions of the

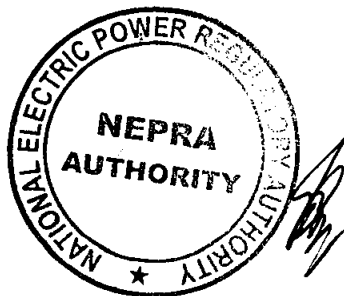


NEPRA Act and the Constitution also do not merit consideration as now there is a CCI approved NE Policy under the provisions of the Section-14A of the NEPRA Act duly covering the roles and responsibilities of the various entities involved in the transmission business.

(20). Further, NTDCL had raised the concern that grant of licence to ST&DCPL as PGC will hamper the smooth functioning of the transmission sector. In this regard, the Authority refer to Section-5.2.2 of the NE Policy wherein the roles of the various entities involved in the transmission business have been duly acknowledged. In this regard, NTDCL in its capacity as NGC will be the sole entity responsible for centralized Transmission System Expansion Planning (TSEP) and the PGC(s) and Special Purpose Transmission Licence(s)-SPTL(s) shall coordinate with NGC and provide the necessary data that NGC shall require at the conception stage prior to any execution. Further, the NE Policy clearly stipulates that NGC, PGC(s) and SPTL(s) while discharging their respective responsibilities, shall ensure compliance with TSEP that the Regulator shall approve. In view of the said provisions of the NE Policy it is abundantly clear that there will be a proper coordination between all the stakeholders before carrying out any network transmission related activity and therefore, the question of the duplication and system coordination will not arise. Therefore, the observations of NTDCL that the grant of licence to PGC will hamper the smooth functioning of the transmission sector does not have any basis for the reasons explained above.

(21). Regarding the observation of NTDCL that PGC Licence(s) cannot be granted in the absence of Rules, the Authority clarifies that Section-18A of the NEPRA Act, inter alia, provides that the eligibility criteria for the grant of licence as a PGC shall be prescribed by the Federal Government and shall include, without limitation (a). minimum solvency requirements; and (b) minimum technical and human resource requirements which are still awaited. Further, as per Section-2(xxii) of the NEPRA Act, prescribed means prescribed by the Federal Government through Rules which are not in place at moment. Further, as per pronouncements of the Superior Courts of Pakistan, absence of rules or inaction of the government functionaries to frame rules cannot be held to be prejudicial to the rights of the other party. Keeping in view of these settled principles, the applicant cannot be refused for PGC Licence solely on this ground. In fact, the Rules are made to facilitate and not hinder the enabling legislation. In view thereof, the





Authority may seek guidance from the judgment of the Honourable Supreme Court reported as *PLD 1974 SC 228* wherein the Honourable Court held as follows:

"It is universally recognized that as regulatory statutes have to deal with a variety of situations and subject, it is not possible for the Legislature itself to make detailed regulations concerning them, and, therefore the Legislature delegates its power to specified or designated authorities to make such detailed regulations, consistent with the statute, for carrying out the purposes of the parent legislation. The power so conferred, is generally in the nature of an enabling provision, intended to further object of the statute, and not to obstruct and stultify the same. As a consequence, the failure or omission of the designated authority to frame the necessary rules and regulations, in exercise of the power conferred on it by the Legislature, cannot be construed as having the effect of rendering the statute nugatory and unworkable. Such an eventuality could arise only if the Legislature indicates intention to this effect in clear and unmistakable terms."

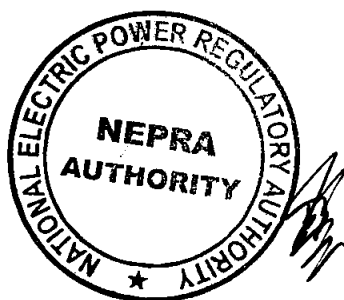
(22). In another judgment, honorable Court in the case reported as *2017 SCMR 206* held that:

"Absence of Rules may affect the enforceability or operation of the statute, however, for considering the constitutionality or otherwise of a statute on the touchstone of the Constitution or Fundamental Rights, framing or non-framing of the Rules under that statute could hardly be relevant."

(23). Further, the honorable Lahore High Court while relying on above cited Judgement and also held in its reported judgement (*PLD 2018 LHR 858*) that:

"14. It is also settled law that the operation of a statute or any statutory provision is not dependent upon framing of the Rules. However, in some cases, the absence of Rules may affect the enforceability or operatability of the statute. The framing of Rules would be generally relevant for determining as to whether the power

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under the statute has been exercised properly or not, but the existence of Rules could neither save nor destroy the constitutional validity of the Statute. Reliance in this regard is placed on Shahid Pervaiz v. Ejaz Ahmad and others (2017 SCMR 206)..."

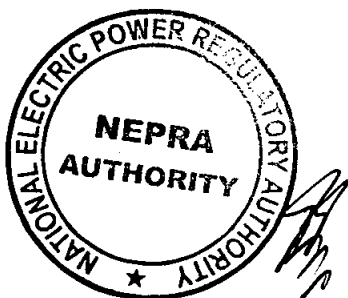
(24). Thus, from the above judgments of the honourable Courts, the Authority deduce that a person who has filed an application for grant of licence should not be penalized for any delays in framing of Rules and therefore ST&DCPL cannot be deprived of its right to obtain PGC Licence in the absence of Rules.

(25). The plain reading of the Section-18A(2) merely ordains the Federal Govt. to notify Rules in relation to financial soundness and human resource capacity of PGC(s) and does not in clear and unmistakable terms restrict the Authority from the grant of a Licence to a person. Therefore, the Authority is of the view that it had rightly processed the application of ST&DCPL for the grant of Licence for PGC. In addition to the said, the Authority has also obtained an undertaking from ST&DCPL that any further requirements/conditions that may arise upon framing of the Rules shall be complied with by it without any objection.

(26). It is pertinent to mention that ST&DCPL in its application for the grant of licence for PGC submitted an organisational chart which the Authority duly considered and found the same satisfactory and this aspect was elaborated in the Determination dated November 05, 2019 and the same is reiterated. In light of the above, it is clear that the Authority has sufficient powers for the grant of licence for PGC in the absence of the eligibility criteria Rules.

(27). NTDCL has contested that the Licence to ST&DCPL to act as PGC has been granted on the basis of assumptions and in the absence of defined application fee. In this regard, the Authority is of the view that it is a fact that ST&DCPL in the absence of the required fee Rules for PGC, deposited the fee for the grant of PGC Licence therefore, these observations of NTDCL do not carry any weight to be considered. At the submission of the application, the Licensing Regulations did not have the exact provision for the documentations relating to PGC but ST&DCPL submitted the documents which the Authority required from it for the transmission business including the feasibility study, required processing fee and other related information as deemed

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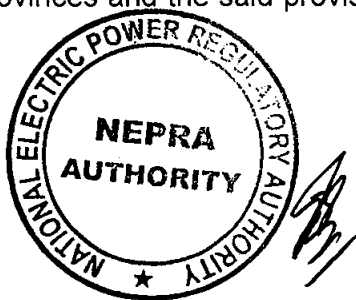
fit therefore, the observation of NTDCL that ST&DCPL did not submit the required documents for the grant of licence for PGC is not correct. Further, in light of the explanation in the preceding paragraphs the observations of NTDCL that there does not exist any legislative framework is also not tenable.

(28). The contention of NTDCL that ST&DCPL does not have sufficient experience in the transmission sector and have no capacity, skill and experience of the protection system is also not correct. It is true that ST&DCPL is new to the sector however, the Authority has already granted SPTL to it and the same is being operated and maintained as per the best industry practices. In this regard, ST&DCPL has submitted that for the future it will not only revamp its execution capacity by deploying more manpower and technical capabilities but will also consider outsourcing the future works to the qualified and experienced companies/contractor which is industry norms which even NTDCL is also following.

(29). About the apprehension of NTDCL that grant of Licence to ST&DCPL as PGC may have operational issues as the actions taken by one grid operator may contradict/overlap with the actions of any other operator, resulting in grid system collapses, the Authority considers that the NE Policy has addressed this issue in detail as explained in the preceding paragraph(s).

(30). The Authority has considered the observation of NTDCL that ST&DCPL has not provided evidence of its financial status and mandatory documents such as feasibility studies, designs, plans, and environmental approvals with the application. In this regard, the Authority re-iterates that ST&DCPL has provided all the required information and documentation it required and this observation is contrary to facts of the case and are therefore not worth considering.

(31). Regarding the observation of NTDCL that it has exclusive right to provide transmission services and carry out transmission business in its Service Territory, as there is a saving of the already taken decision in terms of Section-50(2) of NEPRA Act. the Authority considered all the facts in the matter and has observed that under Article-157(2) of the Constitution, the provincial governments have the power to construct grid stations, lay transmission lines and engage in transmission of electric power within the territorial limits of the provinces and the said provision is duly reflected in Section-7(4)

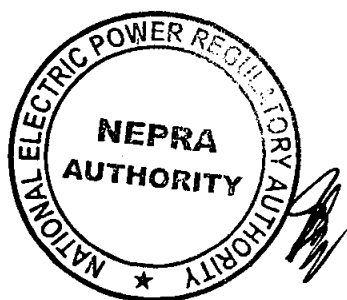


of the NEPRA Act and Section-5.2.2 of the NE Policy. In this regard, it is pertinent to mention that in terms of Section-14A(5), the Authority is bound to perform its functions in accordance with the NE Policy. In light of the above explanation, it is abundantly clear that not only the NEPRA Act but the NE Policy which is duly approved by CCI acknowledges the role of the PGC(s).

(32). The Section-18A and Section-18B of the NEPRA Act envisage that after grant of licence(s) to PGC(s), the NTDCL will continue to work as a NGC and the same aspect has also been acknowledged in the NE Policy. In consideration of the said, when all these provisions are read in harmony, it is clear that NTDCL as NGC has a much larger scope/role as stipulated in the NEPRA Act and other applicable documents and PGC(s) will operate in collaboration and coordination with all the stakeholders including NGC. In view of the above, it is clear that none of the rights of NTDCL as NGC are being infringed with the grant of licence for PGC.

(33). The Authority is of the view that grant of licence to ST&DCPL as PGC will be beneficial for the power sector of the country as considering the amount of future projects, more than 40,000 MW capacity is being planned to setup. It is virtually impossible for a single entity/NTDCL to construct the dispersal arrangements for such a huge volume expected to be added in the next ten (10) years. Moreover, the Authority has also observed that despite its efforts, NTDCL has failed to complete the interconnection/dispersal arrangement of a number of generation projects due to which not only huge amount of payments are made to these projects as compensation but also the low cost energy is not transported to the end consumers the result of which is that the consumers are being supplied using plants of higher cost resulting increase in the consumer tariff.


(34). About exclusivity, the Authority has reviewed judgement of the IHC dated July 08, 2021 in the case of Writ Petition No. 1592 of 2020: IESCO v NEPRA. In this regard, the Authority is of the view that the said judgement pertains to Section-20, 21, 22 of the NEPRA Act which relates to the cases to DISCO(s) whereas, the case of NTDCL is governing under Section-17 of the NEPRA Act and the same has no nexus. In consideration of the above, the Authority is of the view that grant of licence to ST&DCPL as PGC in no way is taking away the exclusivity of NTDCL.




(35). In light of the above, the Authority considers that NTDCL in its Review Motion has not been able to substantiate its claim. NTDCL has not been able to point out any mistake or error apparent on the face of record or from any other sufficient reasons as stipulated in Regulation-3(2) of the NEPRA (Review Procedure) Regulations, 2009 and therefore, the Motion for Review is rejected.

Authority:

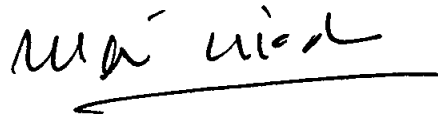
Engr. Maqsood Anwar Khan
(Member)



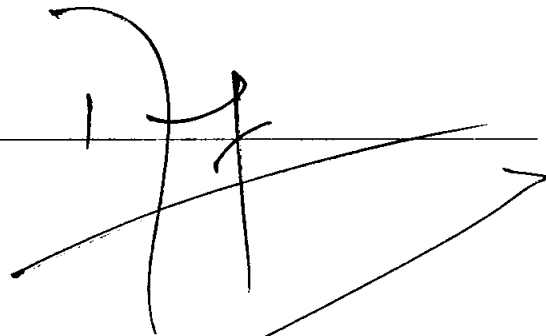
Engr. Rafique Ahmed Shaikh
(Member)




Engr. Mathar Niaz Rana (nsc)
(Member)



Engr. Tauseef H. Farooqi
(Chairman)




4/04/23