



Registrar

National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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

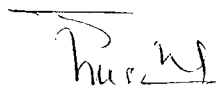
No. NEPRA/ADG(Lic)/LAM-01/26005-17

August 31, 2020

Subject: **Determination of the Authority in the matter of Motions for Leave for Review Filed by Wind Power Projects Regarding Registration of Central Power Purchasing Agency (Guarantee) Limited**

Please find enclosed herewith the Determination of the Authority (05 Pages) in the subject matter for information.

Encl: As above


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(Syed Safer Hussain)

1	Chief Executive Officer Central Power Purchasing Agency (Guarantee) Limited (CPPA-G) Shaheen Plaza, Plot No. 73-West, Fazal-e-Haq Road, Blue Area, Islamabad	2	Chief Executive Officer Liberty Wind Power 1 (Pvt.) Limited A/51-A, SITE Karachi-75700
3	Chief Executive Officer Liberty Wind Power 2 (Pvt.) Limited A/51-A, S.I.T.E, Karachi-75700	4	Chief Operating Officer Indus Wind Energy Limited 5 th Floor, Office No. 508, Beaumont Plaza, Beaumont Road, Civil Line Quarters, Karachi
5	Chief Executive Officer Nasda Green Energy (Pvt.) Limited 26-A, SMCHS off Sharah-e-Faisal Karachi	6	Chief Executive Officer Master Green Energy Limited 82-C-1, Gulberg-III, Lahore
7	Chief Executive Officer Tricom Wind Power (Pvt.) Limited 7-A Tabba Street, Muhammad Ali Society, Karachi	8	Chief Executive Officer Act 2 Wind (Pvt.) Limited Office No. 1002, 10th Floor, Emerald Tower, Near 2 Talwar, Karachi
9	Chief Executive Officer Din Energy Limited Din House, 35-A/I, Lalazar Area, Opposite Beach Luxury Hotel, Karachi	10	Chief Executive Officer Metro Wind Power Limited 7 th Floor, Al-Tijarah Centre, 32-I-A, Block-6, PECHS, Main Shahrah-e-Faisal, Karachi
11	Chief Executive Officer Lakeside Energy (Pvt.) Limited B-21, Block 7/8 Bangalore Town, Main Shahrah-e-Faisal, Karachi	12	Chief Executive Officer Gul Ahmed Electric Limited 7th Floor, Al-Tijarah Centre, 32-I-A, Block-6 P.E.C.H.S Main Sharae Faisal, Karachi
13	Chief Executive Officer Artistic Wind Power (Pvt.) Limited Plot 4 & 8, Sector 25, Korangi Industrial Area, Karachi-74400		

Determination of the Authority
in the matter of Motions for Leave for Review Filed by Wind
Power Projects Regarding Registration of Central Power
Purchasing Agency (Guarantee) Limited

(A). Background

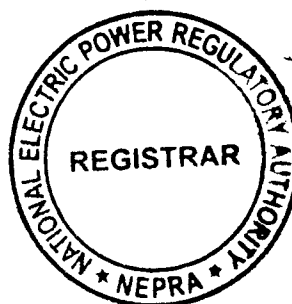
(i). The Authority through its Determination dated November 16, 2018, (the "Determination") approved the Registration (the "Registration") of Central Power Purchasing Agency (Guarantee) Limited (the "CPPA-G") as a Market Operator (MO). In the Registration, the Authority set out different Terms & Conditions (T&C) for the CPPA-G to perform its functions as an MO.

(ii). In this regard, one of the above T&C (i.e. Article-XIV) related to the Settlement of Disputes which provided that any dispute arising out of or in connection with the activities performed by the CPPA-G under the Registration or the NEPRA (Market Operator Registration, Standards and Procedure) Rules, 2015, (the "Market Rules") shall be decided by the Authority in accordance with the NEPRA (Complaint Handling and Dispute Resolution Procedure) Rules, 2015.

(B). Filing of the Review

(i). Being aggrieved of the Determination of the Authority, twelve (12) Wind Power Projects namely Liberty Wind Power-I (Pvt) Ltd., Liberty Wind Power-II (Pvt) Ltd., Nasda Green Energy (Pvt) Ltd., Act 2 Wind (Pvt) Ltd., Artistic Wind Power (Pvt) Ltd., Din Energy Ltd., Metro Wind Power Ltd., Gul Ahmed Electric Ltd., Indus Wind Energy Ltd., Master Green Energy Ltd., Tricom Wind Power (Pvt) Ltd., and Lakeside Energy (Pvt) Ltd. (collectively referred as "the WPPs"), filed Motions for Leave for Review (the "MLR") under Regulation 3(2) of the NEPRA (Review Procedure) Regulations, 2009 (the "Review Regulations").

(ii). In this regard, the main plea of the WPPs was that the dispute resolution mechanism provided in Article-XIV of the Registration is in conflict with



that provided in the standard Energy/Power Purchase Agreements (EPAs/PPAs) and Rule-16 of the Market Rules and the same may accordingly be amended. The Authority considered the said MLR and admitted the same. Further, in terms of Regulation 3 (8) of the Review Regulations, the Authority decided to hold a hearing of the parties in the matter.

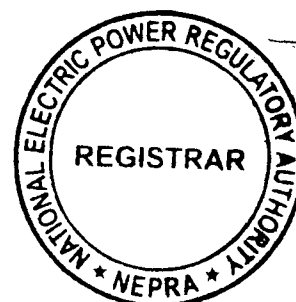
(C). Hearing of the Parties

(i). In consideration of the above, a hearing of the parties (i.e. the WPPs and the CPPA-G) was held in the main office of the Authority on March 04, 2020, to deliberate the matter. In the said hearing, the representatives of the parties participated and presented their point of view.

(ii). In this regard, the WPPs submitted that the Registration is subject to provisions of (i) the NEPRA Act; (ii). the Market Rules; and (iii). the T&C. Therefore, inconsistency in the said documents should be avoided. Further, the provisions of Article-XIV run contrary to the dispute resolution mechanism provided in the EPAs/PPAs. In this regard, the EPAs/PPAs allow the parties to refer any dispute arising out of or in connection with the same to arbitration.

(iii). In addition to the above, it was submitted that Article-XIV is inconsistent with Rule-16 of the Market Rules. The said Rule-16 provides that any dispute or disagreement between the MO and the market participant, related to any activity covered under the Market Rules, is either to be submitted to the Authority for decision or resolved in accordance with the dispute resolution mechanism provided in the respective EPAs/PPAs.

(iv). Further, the Article-XIV also runs against the internationally accepted principles of party autonomy, whereby, parties to an agreement are free to choose dispute resolution mechanisms when entering into an agreement. In this regard, the EPAs/PPAs provide the globally accepted and bankable method of dispute resolution i.e., international arbitration with a neutral seat.



(v). It was submitted that the Lenders & Sponsors of the WPPs are of the opinion that the existing language in Article-XIV raises concerns on the applicability of the relevant provisions of the EPAs/PPAs. In this regard, it is considered that it is was not the intention of NEPRA to fundamentally change, alter or abrogate any rights of the IPPs under the EPAs/PPAs or create any obligation which is contrary to the Market Rules. Accordingly, Article-XIV may be brought in consistency with Rule-16 of the Market Rules and the EPAs/PPAs.

(vi). The Authority also provided an opportunity to the CPPA-G to present its point of view in the matter. In this regard, it was submitted that the dispute resolution mechanism in the Market Rules is for the activities covered under Schedule-II of the same and that in Article-XIV is related to the activities of the CPPA-G in pursuance of the Registration or the Market Rules. However, the mechanism provided in the EPAs/PPAs is for the disputes arising out of the terms and conditions of the same only. Therefore, there is no conflict between the dispute resolution mechanisms provided in the Market Rules, the Registration, and the EPAs/PPAs. Further, Clause 2.5 of the Commercial Code also provides saving of rights for all the generation companies. Accordingly, the review motions filed by the WPPs may be dismissed.

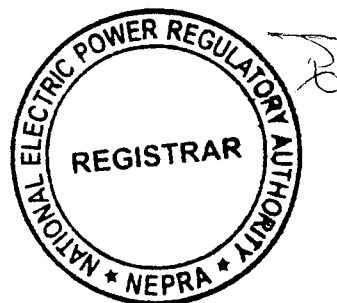
(D). Evaluations/Findings of the Authority

(i). The Authority has examined the entire case in detail including the T&C of the Registration, the relevant provisions of the Market Rules, the EPAs/PPAs, and the submissions made by the WPPs and the CPPA-G during the hearing and subsequently in the written form.

(ii). In this regard, the Authority considers that the MLR filed by the WPPs pertain to Article-XIV of the Registration. The said Article provides that any dispute related to the activities performed by the CPPA-G under the Registration or the Market Rules shall be decided by the Authority. The WPPs have filed that the dispute resolution mechanism in Article-XIV is in conflict with that provided in the Market Rules and the EPAs/PPAs.

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(iii). In this regard, the Authority observes that the Article-XIV of the Registration puts a regulatory obligation on the CPPA-G to perform its functions specifically the execution of PPAs/EPAs in an objective, unbiased, and nondiscriminatory manner and at the price and the rates, and on the terms and conditions, determined by the Authority. The said Article provides a mechanism for the aggrieved parties in case the CPPA-G delays or refuses the execution of the contracts or execute the same on the terms and conditions different than those determined by the Authority.

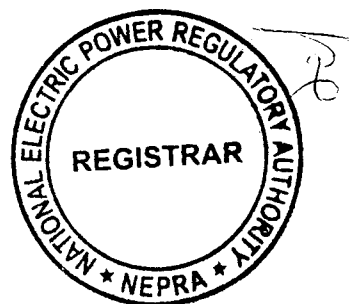
(iv). It is pertinent to mention here that the background of the Article-XIV is that the Authority observed that the CPPA-G was delaying signing of the power purchase contracts and was also discriminating against various private power developers. In order to curb the said practice, the Authority through Article-XIV put an obligation on the CPPA-G to sign the EPAs/PPAs in an objective, nondiscriminatory and unbiased manner and at the prices and rates determined by the Authority.

(v). In this regard, the Authority is of the considered opinion that Article-XIV pertains to obligations of the CPPA-G pursuant to Registration and in no way extinguishes, reduces, or affects the rights available to WPPs in the EPAs/PPAs. The disputes arising under the EPAs/PPAs are of specific nature and are to be resolved in accordance with the mechanism provided therein.

(vi). In addition to the above, the Authority further observes that Article-XIV does not conflict with Rule-16 of Market Rules as the background of the said Article is distinct and pertains to the disputes arising under the Registration as explained above. In view of the said, the Authority is of the considered opinion that dispute resolution mechanism provided in the Registration, the Market Rules and the EPAs/PPAs cover distinct domains and do not contradict in any manner. The WPPs filed the MLR without due consideration to the background of the said

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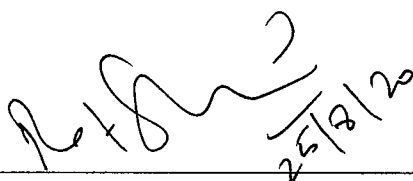


Article-XIV and therefore, their argument is not in line with the spirit of the Determination.

(E). Decision of the Authority

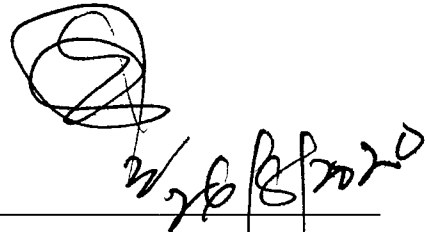
(i). In light of the above explanation, the Authority observes that MLR filed by the WPPs are not justified in terms of the NEPRA Act, the Market Rules, and other applicable documents. Therefore, the Authority decides to reject the MLR filed by the WPPs and maintains the Determination/Registration of the CPPA-G in the matter.

(ii). Further to the above, the Authority clarifies that Article-XIV of the Registration in no way extinguishes, reduces, or affects the rights available to WPPs or other generation companies in their respective EPAs/PPAs. Any dispute arising out of or in connection with the activities covered under the EPAs/PPAs shall be resolved in accordance with the mechanism provided therein.

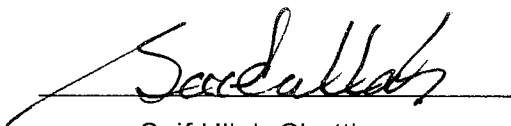

25/8/20

Rafique Ahmed Shaikh
(Member)

Authority


25/8/2020

Rehmatullah Baloch
(Member)

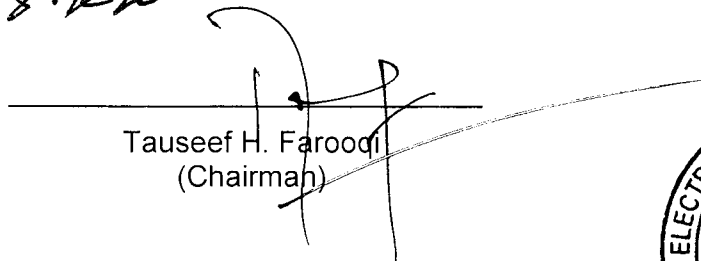


Saif Ullah Chattha
(Member/Vice Chairman)



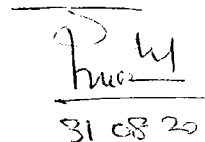
Engr. Bahadur Shah
(Member)

26.8.2020



Tauseef H. Farooqi
(Chairman)




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