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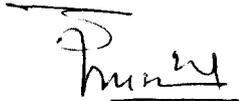
No. NEPRA/IPT-03/NJHPC-2018/14858-14860
August 19, 2019

Subject: **Decision of the Authority in the matter of Motion for Leave for Review submitted by Central Power Purchasing Agency Guarantee Limited (CPPA-G) against the Authority's Decision dated 19.11.2018 regarding Neelum Jhelum Hydropower Project [Case No. NEPRA/IPT-03/NJHPC-2018]**

Please find enclosed herewith the subject Decision of the Authority (05 Pages) in the matter of Motion for Leave for Review submitted by Central Power Purchasing Agency Guarantee Limited (CPPA-G) against the Authority's Decision dated 19.11.2018 regarding Neelum Jhelum Hydropower Project in Case No. NEPRA/IPT-03/NJHPC-2018.

2. The Decision is being intimated to the Federal Government for the purpose of notification in the official gazette pursuant to Section 31(7) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.

Encl: As above


19 08 19
(Syed Safer Hussain)

Secretary
Ministry of Energy (Power Division)
Government of Pakistan
'A' Block, Pak Secretariat,
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CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad



DECISION OF THE AUTHORITY IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW SUBMITTED BY CENTRAL POWER PURCHASING AGENCY GUARANTEE LIMITED (CPPA-G) AGAINST THE AUTHORITY'S DECISION DATED 19.11.2018 REGARDING NEELUM JHELUM HYDROPOWER PROJECT

1. This order shall dispose of the motion for leave for review filed by the Central Power Purchasing Agency (Guarantee) Limited (**CPPA-G** or the **Buyer**) against the Determination of the Authority in the matter of Tariff Proposal submitted by Central Power Purchasing Agency Guarantee Limited (CPPA-G) for import of 969 MW from Neelum Jhelum Hydropower Project Company Limited dated 19.11.2018.

Brief Facts

2. Brief facts of the case are that the Neelum Jhelum Hydropower Project (**NJHPC** or the **Seller**) is a 969MW run-of-the-river hydropower project located in AJK. Construction of the project commenced in 2008 but was faced with consistent delays and impediments towards its completion. A tariff petition was finally submitted with the Authority on 01.03.2018 for determination of rates for import of power by the CPPA-G from the Neelum Jhelum Hydropower Project under the provisions of the NEPRA (Import of Electric Power) Regulations 2017. During the proceedings for determination of Neelum Jhelum's tariff it was highlighted by various stakeholders that the costs associated with the project were still indefinite and that the GoP had given the project conditional PC-1 approvals. The Authority, in its determination dated 19.11.2018, found that a conclusive tariff could not be granted to the Neelum Jhelum Power Project since because the project costs were conditional and inconclusive. If the "*Federal Government, being the owner of the instant Project itself (was) not satisfied with the utilization of funds and intend(ed) to conduct review of the Project ... (then) the Authority (could not) move forward with due diligence of the Project*". However, the Authority being cognizant of these facts was of the view that if Neelum Jhelum's tariff petition was altogether rejected (on the basis of its PC-1 approval being conditional) it would lead to further delays in the project, would unable the project to satisfy its debt obligations, would adversely impact the projects viability, would result in an abnormal increase in its eventual tariff and, therefore, be detrimental to the interests of the consumers. As such, the Authority decided to grant the Neelum Jhelum Power Project an interim 1-year tariff, which would enable the Project to address the concerns raised by the Ministry of Planning, Development and Reform and also reach COD. Accordingly, the Authority, in its determination dated 19.11.2018, approved as follows:

The Seller is allowed to charge a tariff of Rs 5.9180 per kWh on take and pay basis with must run condition for a period of one year from the date of notification or till such time additional information/evidence is submitted before the Authority which warrant a revision in the instant tariff, whichever is earlier.

3. The Neelum Jhelum Power Project being aggrieved by the above determination of the Authority dated 19.11.2018 (the **Impugned Determination**) proceeded to file the instant review motion through CPPA (G). The review motion, dated 29.11.2018, was filed with the CPPA-G who simply forwarded the same to the Authority along with its own comments on the matter.

4. The instant review motion was admitted on 24.01.2019 and hearing on the matter were held on 06.03.2019. Letters of invitation for participation and submission of comments were sent to the parties. The hearing was attended by representatives of the Neelum Jhelum Hydropower Company (Private) Limited, the



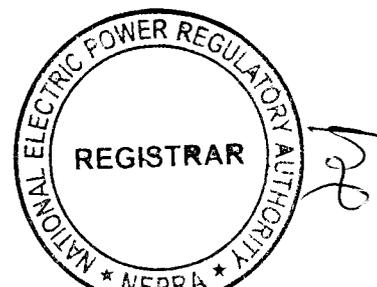
CPPA-G, the Punjab Power Development Board (PPDB), Syed Akhtar Ali Shah (Ex-Member Energy Planning Commission) and various other stakeholders.

5. The main grounds raised in the instant review motion are as follows:
- i. **Take and Pay (must run basis):** The Seller during the hearing as well as in its review submitted that its tariff has been determined on *take and pay* as opposed to the requested *take or pay*. This is contrary to the GoP Power Generation Policy 2015 under which the Neelum Jhelum Power Project is being established. Accordingly, the power sale rates should be determined in two parts, i.e. variable charge (to meet the revenue requirement for variable O&M and Water Usage Charge (WUC) based upon actual generation) and fixed charges (to meet revenue requirement for fixed O &M, Insurance, debt servicing and return on equity based upon installed capacity of Neelum Jhelum Hydropower project).
 - ii. **Revenue for Debt servicing:** NEPRA has determined revenue for debt servicing on the basis of FY accounts of 2017. At the power sale rate determined, the project will generate revenue equivalent to Rs 36.636 billion (at the estimated annual generation of 5,126 GWh). However, as per audited accounts as on 30.06.2018, the loan amount drawn by the project was Rs 256 billion, and the debt service liability (as per the loan repayment schedule for the current financial year) amounts to Rs 43 billion. Therefore, the project revenue should be determined as a fixed charge based upon the installed capacity of the project, such that the project generates, and is able to meet, is loan repayment obligations equivalent to Rs. 43 billion per year.
 - iii. **Application date of Determined Tariff:** The tariff determined by NEPRA is to be operative from the date of its notification by the GOP. However, the Seller has been supplying power to the national grid from its commissioning date. Therefore, NEPRA should determine its tariff to be operative from 19.06.2018, such that the Seller can raise invoices for the power it has already delivered to the national grid.

Comments of Stakeholders:

6. Written comments submitted by the Ministry of Planning, Development & Reform (the **Ministry**) and the CPPA-G are as follows:
- i. On issue (i), the Ministry in its written comments stated that NEPRA allowed tariff on 'Take and Pay' basis which is contrary to the provisions of the Power Policy 2015. However, since the tariff is only for a period of 1 year and is subject to later revision/review, therefore NEPRA's determination in this regard is correct. Therefore, the Ministry did not support NJHPC request for a 'Take or Pay' Tariff at this stage.

On this issue, the CPPA-G (during the hearing and in their written submissions) highlighted that the Ministry and numerous stakeholders maintain serious reservations regarding the delay in the construction of the project and the costs incurred due to such delays. As such, it is necessary that a 3rd party evaluation of these matters be conducted for the purposes of determining the COD stage tariff. However, till date the TORs for such a 3rd party evaluation have yet to be approved by the Ministry of Energy. As an interim measure, the Authority determined a 1-year tariff vide the Impugned Determination of Rs. 5.9180 per kWh on *take and pay* and must run condition. The CPPA-G was of



the view that the Authority rightly allowed this 1-year tariff on *take and pay*, until the costs of the project have not been ascertained by a 3rd party.

- ii. On issue (ii), the Ministry in its written comments stated that, as per the audited accounts upto 30-06-2018 the loan amount drawn by the project was Rs. 256 billion. Repayment of all loans started from 2019 with varying rate of interest. As per the Ministry's calculations, loan repayments for the project will be Rs. 43 billion whereas the tariff determined by NEPRA will only generate Rs. 26.638 billion (Rs. 5.918/kWh * 5126kWhs = Rs. 26.638 billion) for the project. Therefore, NJHPC's request for grant of a higher tariff to cover its Rs. 43 billion debt repayment for this year was supported by the Ministry.

On this issue, the CPPA-G (during the hearing and in their written submissions) submitted that the (principal + interest) figure of Rs. 43 billion per year computed by NJHPC is incorrect, since the repayment of the majority of the project's loan has yet to begin. The CPPA-G also highlighted that there have been variations in the debt amount and weighted average interest rate, therefore the debt servicing schedule determined by the Authority in the Impugned Determination may be re-evaluated in order to redetermine the debt component of the tariff.

- iii. On issue (iii), the Ministry submitted that the project has been supplying power since 01.05.2018. As such, the basis of NJHPC's request (for the tariff to be applicable from 19.06.2018) was unclear. NEPRA may consider granting any reasonable date for the applicability date of the tariff.

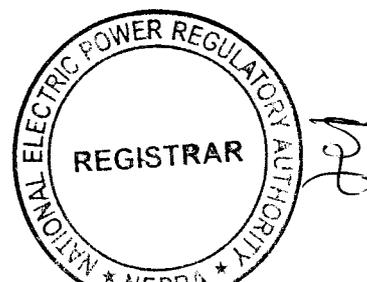
On this issue, the CPPA-G (during the hearing and in their written submissions) was of the view that NEPRA should evaluate NJHPC's request regarding the notification of tariff by the GoP. The CPPA-G also highlighted that, before COD, IPPs are only paid O&M and Water Use Charge components and the same modus operandi should be followed in the case of the Neelum Jhelum project till the commissioning of its last turbine.

Determination of the Authority

7. The concerned parties have been heard and the record has been examined at length. At the outset, it is worth highlighting that the 1-Year Tariff determined by the Authority is an interim provision granted to NJHPC for the reasons recorded in para 5.of the Impugned Determination and para 2.of the instant order. This was done in exercise of NEPRA's statutory powers under section 31 of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (the **NEPRA Act**) to allow NJHPC to address its cost-related issues and thereafter submit a petition for determination of its final tariff. The 1-Year Tariff is not a tariff granted under the provisions of the Power Generation Policy 2015 nor is it the final tariff that NJHPC will obtain from the Authority after definitive and unconditional cost information has been submitted in this regard. As such, the decision of whether the 1-Year Tariff (being a provisional tariff from NEPRA) should be on take-and-pay or take-or-pay rests solely with the Authority, and the submissions of NJHPC regarding non-compliance of the Power Generation Policy 2015 do not hold force.

8. On the issues, the Authority has held as follows:

- i. **Take and Pay (must run basis)**: In addition to the inapplicability of the Power Generation Policy 2015 on this matter, the relevant stakeholders, namely the Ministry and the CPPA-G (i.e. the Buyer), have unanimously submitted that the 1-Year tariff should be on *take and pay*. Therefore, the Authority



finds no cogent reasons to deviate from the *take and pay* mechanism already approved in the Impugned Determination.

- ii. **Revenue for Debt Servicing:** The Authority, while making the Impugned Determination, used the financial accounts available at the time ending at 30.06.2017. Now NJHPC has submitted its updated accounts ending at 30.06.2018. In the earlier accounts, the total outstanding loan amount for the project stood at Rs, 204.77 billion. The later accounts show the same figure to have inflated to Rs 256 billion, which according to NJHPC is now payable with interest from 2019. From the updated accounts, it appears that from the Rs. 256 billion, Rs 135.56 billion is foreign relent loans (**FRLs**) payable to the GOP at corresponding relent rates, Rs. 20 billion is cash development loans (**CDLs**) again payable to GoP and Rs 100 billion is Diminishing Musharaka arrangement with investment agent Pak Brunei Investment Company as co-owner of Musharaka asset.

It is also clear from the documents on record that the principle of these debts has yet to be paid and that all of NJHPC's loans, including FRLs and CDLs, are due in 2019. This is because, as per NJHPC, the project has not obtained a tariff from NEPRA which would have allowed it to recover funds and allocate the same debt repayment.

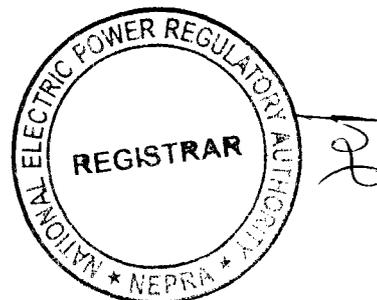
The Ministry has also supported enhancing NJHPC's debt component for recovery of the updated debt amount of Rs. 256 billion.

In light of the above, the Authority is of the view that the debt servicing component determined in the Impugned Determination may be redetermined to incorporate the updated accounts of NJHPC that have been placed on the record.

- iii. **Application date of determined tariff:** The matter of application date of tariff in this case effectively translates to when NJHPC will receive its funds under the 1-Year Tariff. If the tariff is given a past date, then NJHPC can immediately raise invoices for the bulk of energy that it has already supplied. The Ministry and the CPPA-G have not objected to revising the application date of the 1-Year Tariff, which is relevant since the immediate liabilities accruing from a revised application date are to be borne by the CPPA-G (being the Buyer and paymaster of NJHPC). Since the relevant stakeholders have no objection towards the immediate liabilities accruing from the revised application date, the Authority does not find any reason to not grant NJHPC a revised date of application of the 1-Year Tariff.

NJHPC has requested that the application date of tariff should be 19.06.2018 while the Ministry have proposed the date to be 01.05.2018. However, the Authority has determined that the application date of tariff should be the Commercial Operation Date of the power plant that (under the concerned PPA and as per NJHPC's submissions) is 04.07.18.

Furthermore, the Authority was also of the view that the revised tariff application date would create a large balloon liability on the Buyer's end. This is not ideal keeping in view the current financial strength of the Buyer and the GoP at this time. Therefore, the Authority is of the view that the accumulated arrears created from the revised tariff application date shall be payable by the Buyer in six (06) equal instalments.



ORDER:

9. The Authority, in exercise of its powers under Section 7(2)(g), read with Section 31, of the NEPRA Act, hereby partially accepts the motion for leave for review submitted by the CPPA-G and the Impugned Determination stands modified as follows:

9.1. Para 6.1.1 of the Impugned Determination shall be substituted with the following:

The Seller is allowed to charge a tariff of Rs 9.1184 per kWh (which includes a revised debt servicing component of Rs 8.3967 per kWh) on take and pay basis with must run condition. This tariff shall have a term not exceeding 1 (one) year from the date of notification and shall have effect from 4th July, 2018. Any accumulated arrears arising from the instant tariff for energy already generated and supplied shall be payable by the CPPA-G/Buyer in six (06) equal instalments.

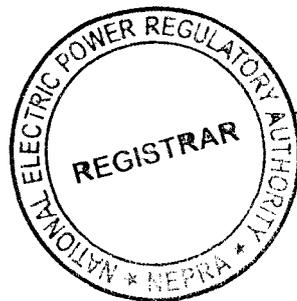
AUTHORITY


Saif Ullah Chattha
Member
19.7.2019


Rafique Ahmed Shaikh
Member
19/08/19


Rehmatullah Baloch
Member
19/08/19

— Not Attended —
Engr. Bahadur Shah
Vice Chairman




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