



Registrar

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

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No. NEPRA/PAR-107/2867-2869  
March 4, 2016

**Subject: Decision of the Authority in the matter of Motion for Leave for Review filed by Azad Pattan Power (Pvt.) Ltd. against Authority's Decision for approval of Power Procurement Request filed by CPPA-G (then NTDC) in respect of 640 MW Azad Pattan Hydropower Project [Case # NEPRA/PAR-107]**

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority along with Additional Note of Mr. Himayatullah Khan, Member NEPRA (05 pages) in the matter of Motion for Leave for Review filed by Azad Pattan Power (Pvt.) Ltd. against Authority's Decision dated 16.10.2014 for approval of Power Procurement Request filed by CPPA-G (then NTDC) in respect of 640 MW Azad Pattan Hydropower Project in Case No. NEPRA/PAR-107, for information.

Enclosure: As above

  
( Syed Safer Hussain )

Secretary  
Ministry of Water & Power  
'A' Block, Pak SecretariatS  
Islamabad

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 filed by Azad Pattan Power (Pvt) Limited against Authority's decision for approval of Power Procurement Request filed by CPPA-G (then NTDC) in respect of 640-MW Azad Pattan Hydropower Project**

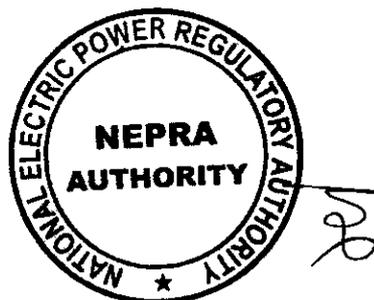
The Authority through its decision dated January 30, 2014 granted permission to NTDC ( herein after referred to as " CPPA-G") for power procurement from 640-MW Azad Hydropower Project by approving tariff (feasibility stage) at US cents 5.3050/kWh (Levelized) for 30 years life of the project. Subsequently, CPPA-G filed motion for leave for review under 16 (6)of the NEPRA Tariff (Standards & Procedure) Rules 1998, against decision of the Authority. The Review Petition was decided by the Authority on October 16, 2014 thereby revising the feasibility stage tariff to US cents 6.1893/kWh.

2. Later on Azad Pattan Power Private Limited (herein after referred to "APPPL" or the "Petitioner") filed the instant motion for leave for review under the NEPRA Review Procedure Regulations 2009 vide letter dated January 16,2015. The review petition of APPPL was admitted by the Authority on February 10, 2015 and it was decided by the Authority to provide an opportunity of hearing to the parties. Initially the hearing was fixed for April 23, 2015 but was postponed on request of the Petitioner due to non-availability of its legal team. Subsequently the hearing was scheduled for May 27, 2015. The same could not be held as the CPPA-G who is the power purchaser did not turn up to attend the hearing. Finally, the hearing of review petition of APPPL was held on August 27, 2015 at NEPRA Tower Islamabad which was attended by the petitioner as well as representatives of CPPA-G.

**Submission of Petitioner**

3. APPPL through its review petition has raised an issue of 20% return on equity (IRR based) against 17% return on equity (IRR based) already allowed by the Authority in its earlier decision. In support of its grounds for review petition APPPL has referred to the Decision of the Authority dated November 21, 2014, in the matter of Upfront Tariff for Coal Power Projects whereby the Authority at Para 61 mentioned as under:

*"After considering the Petitioner argument in support of Hydro, the Authority clarifies that hydro returns are better than the returns allowed to non Thar coal plant. However, the Authority realizes that the IRR allowed to Hydro should be at least at par with IRR allowed to Thar coal so that the return allowed to various types of coal i.e. imported, local & Thar are not more than what has been allowed to Hydro. Therefore, to encourage clean technology and to attract hydro investment in the region, the Authority therefore, assures that the return on investment in Hydroelectric shall enjoy at least similar returns as allowed by the Authority to Thar coal investars."*



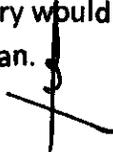
4. The Petitioner has also referred to Initial request of CPPA-G for grant of permission for power procurement and approval of feasibility stage tariff dated October 23, 2012 Para Vi(b) wherein it was stated;

*" During the negotiations, the sponsors were of the view that hydropower projects including the Azad Pattan project should be allowed 20% IRR on equity due to higher risks involved. However, since NEPRA has allowed only 17% IRR on equity to hydropower projects in their tariff determinations so far, therefore 17% IRR on equity amount of US\$ 338.677 million has been assumed in the final tariff."*

*"The sponsors strongly believe that a return of at least 20% as allowed for indigenous coal projects is required to expedite development of the largely untapped hydropower resources and take into account the long development period and higher risks. The project would be entitled to any enhancement of such return if and when announced for the sector as whole."*

5. In the hearing of instant review petition held on August 27, 2015, the representatives of CPPA-G who is the power purchaser and also was petitioner of the negotiated tariff stated that nothing in the last 3 years has changed as far as the project risk is concerned, which has compelled the project sponsors to ask for higher rate of return (20% IRR) from 17% last allowed by the Authority to this and other hydropower projects. He mentioned that the Authority has already set higher rate of return for hydropower power projects than the thermal projects where the Authority allows 15% IRR return on equity. The representative of CPPA-G further stated that the Authority should take cognizance of the fact that hydropower energy should remain the cheapest source of energy in the country which is essential for long term energy security of the country and therefore higher rate of return which would result in higher tariff for Azad Pattan and such other projects is not recommended.

6. The Authority during the hearing asked the petitioner to describe whether the hydropower resources could be considered Indigenous or not. The Petitioner through letter dated September 21, 2015 has submitted its reply while quoting the principle of territorial supremacy and sovereignty and International Law relating to territorial supremacy. The Petitioner has stated that under the principle of territorial supremacy and sovereignty any resource which is under the exclusive jurisdiction of a state would be treated as its indigenous resource. This would apply to a surface river, sub-surface aquifer, wind or indeed a mineral deposit. According to the petitioner any river whether originating within the territorial jurisdiction of the country or rivers entering Pakistan's territory and flowing in to the Arabian Sea wholly through Pakistan's territory would be treated the same as National Rivers originating and terminating wholly within Pakistan.



7. To summarize, the Petitioner has based its arguments for allowing it higher rate of return (20%) on the following grounds;

- i) Hydropower projects involve uncertainties and risks associated with geology, long construction period and difficult conditions and hydropower structures.
- ii) Hydropower projects are indigenous like Thar Coal where the Authority has allowed 20% IRR on equity.
- iii) Hydropower projects experience cost over runs due to unforeseen conditions resulting in project delays which is not covered in the allowed tariff and therefore the actual return ultimately results in lower than allowed rate of return on equity to the investors.

8. The Authority has examined the contents of review petition as well as arguments presented by the Petitioner during the course of proceedings in support of its claim for allowing higher than existing rate of return on equity. The Authority agrees that hydropower projects being indigenous and relatively complex in nature should be allowed higher rate of return on equity than other competing technologies. The Authority however feels that arguments/rationale given by the Petitioner in support of its claim for allowing higher rate of return are not convincing at all. The Authority notes that the risk of losing return by the project investors due to uncertain geology and project delays due to unforeseen conditions, is covered under the Authority's approved Mechanism for determination of tariff for hydropower projects as well as back to back guarantees provided in the EPC contracts between parties and through relevant provisions of Power Purchase Agreement/implementation Agreements.

9. Regarding Authority's assurance given its determination of Upfront tariff for coal power projects, the Authority has already implemented the above mentioned provision by giving 20% return on equity (IRR based) in the Upfront Tariff for hydropower projects through its decision issued vide NEPRA/UTH-01/15042 dated October 14, 2015.

10. The Upfront Tariff is a general tariff and does not address the project specific risks and costs, whereas, in case of cost plus tariff, the project specific risks, project design and associated costs are taken in to consideration. The Authority after due deliberation, determines the tariff under NEPRA Tariff (Standards and Procedure) Rules 1998 as in the case of the Petitioner, all these factors were duly considered and determined at the time of approval of feasibility stage tariff including 17% IRR along with Withholding tax on dividends as pass through cost.

11. Keeping in view the above stated facts, the Authority is of the view that in terms of regulation 3(2) of the NEPRA (Review Procedure) Regulations 2009, a motion seeking review of any order of the Authority is competent only upon discovery of new and important matter of

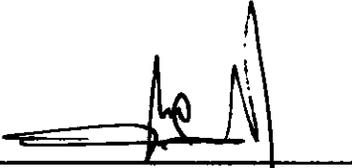


evidence or on account of some mistake or error apparent on the face of record. The perusal of the impugned decision sought to be reviewed clearly indicates that all material facts and representation made were examined in detail and there is no occasion to amend the impugned decision. No error inviting indulgence as admissible in law has been pleaded out. Therefore, the Authority is convinced that the review would not result in the withdrawal or modification of the impugned decision.

12. From what has been discussed above, the Authority is of considered view that the grounds agitated in the motion for leave for review are not sufficient enough justifying the modification of the Impugned decision, hence the subject motion for leave for review is declined.

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Authority

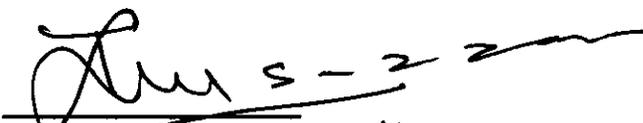
  
Khawaja Muhammad Naeem  
Member

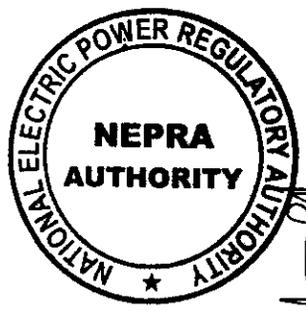
  
Syed Masood-ul-Hassan Naqvi  
Member

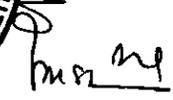
An additional note, based on the same grounds as I had submitted for Kerot Hydro Power project, is attached for record.

  
Himayat Ullah Khan  
Member 4.3.16.

  
Maj. (R) Haroon Rashid  
Vice Chairman

  
Brig. (R) Tariq Sadozai  
Chairman 3/3/16



  
04.03.16

Additional Note

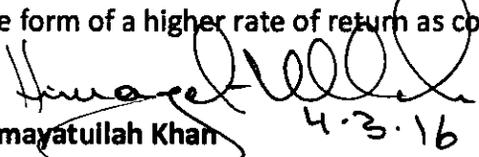
**Subject: Decision of the Authority in the matter of Motion for Leave for Review filed by Azad Pattan Power (Pvt) Ltd against Authority's decision for approval of Power Procurement Request filed by CPPA-G/NTDC in respect of 640-MW Azad Pattan HPP**

NEPRA had categorically observed in its decision on Asad Umer's Petition re: Coal Power Projects (dated 21<sup>st</sup> Nov 2014) that to "encourage clean technology and to attract hydro investment in the region" the Authority "assures that the return on investment in Hydroelectric shall enjoy at least similar returns as allowed by the Authority to Thar coal investors." The Upfront Tariff for Thar Coal announced by the Authority allows 20% IRR; hence, not allowing "at least similar returns to investment in Hydroelectric", in my opinion, is not in line with the Authority's assurance given in its decision dated 21<sup>st</sup> Nov 2014.

In addition, I believe that development of hydropower in our country should be prioritized and given an edge by allowing a higher return on investment over other competing technologies due to the following reasons:

- a) **Energy Security**: Development of hydropower projects in the country provides energy security as hydropower is an indigenous resource and insulates the economy from unexpected fluctuations in oil and gas prices, providing protection from an unhealthy dependence on oil and gas imports and conserving foreign exchange for other alternate uses.
- b) **Useful Life of Hydropower Plants**: The useful life of Hydropower plants is much longer than comparable thermal, wind, solar or nuclear power plants with its Civil structure lasting up to 100 years; hence the 30 year levelized tariff of a hydel project is not comparable to the levelized tariff of thermal projects as the benefit of the remaining life of the hydel project is not captured by such tariff.
- c) **Operation & Maintenance**: Due to their relatively easier O&M hydropower plants have been maintained at a far better standard than the thermal plants in Pakistan. Tarbela and Mangla power houses operate at much better availability levels even after 40 years of operation compared to the abysmal availability levels of much younger public-sector thermal plants.
- d) **Environment Friendly**: Hydropower, especially the run-of-river projects, have no adverse impact on the environment unlike polluting thermal plants using fossil fuels
- e) **Cheapest Long-term Option**: The very low variable cost (the lowest among all technologies) makes hydropower the cheapest option of electricity generation in the long-term.
- f) **Risks/Longer Gestation**: Due to greater risks involved in development of hydropower, coupled with its long gestation period, the private sector investor prefers to invest in the easier options available in thermal, wind & solar projects. There is a long list of investors opting to invest in coal, RLNG, wind & solar projects in the country rather than in hydro.

I am of the firm opinion that NEPRA, as the regulator, must provide an edge to hydropower projects in the form of a higher rate of return as compared to other technologies.

  
Himayatullah Khan  
Member (M&E/KP)

4.3.16

