



**Registrar**

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

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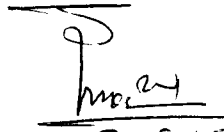
No. NEPRA/TRF-269/JPL-2013/9784-9786  
June 29, 2015

**Subject: Decision of the Authority in the Matter of Motion for Leave for Review filed by Jhimpir Power (Private) Ltd. (Case No. NEPRA/TRF-269/JPL-2013)**

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (07 pages) in the matter of Motion for Leave for Review filed by Jhimpir Power (Private) Ltd. against Authority's Decision dated 20.06.2014 in Case No. NEPRA/TRF-269/JPL-2013 for information.

Enclosure: As above

  
29.06.15  
( Syed Safer Hussain )

Secretary  
Ministry of Water & Power  
'A' Block, Pak Secretariat  
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  
JHIMPIR POWER (PRIVATE) LIMITED**

1. Jhimpir Power (Private) Ltd. (hereinafter referred to as "JPPL") vide its letter no. Nil dated April 03, 2015, received in this office on April 06, 2015, filed a motion for leave for review (hereinafter referred to as "review motion"), seeking review of decision of the National Electric Power Regulatory Authority (hereinafter referred to as the "Authority") dated June 20, 2014 (hereinafter referred to as the "impugned decision") granting upfront tariff to JPPL along with all assumptions, terms and conditions as contained in the determination of upfront tariff for wind power generation dated April 24, 2013 (hereinafter referred to as "upfront tariff, 2013").
2. The review motion was filed in terms of rule 16 (6) of the National Electric Power Regulatory Authority Tariff (Standards and Procedure) Rules, 1998 (hereinafter referred to as "tariff rules"), regulation 3 of National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009 (hereinafter referred to as "review regulations") and other applicable provisions of law.
3. Rule 16 (6) of the tariff rules requires that within ten days of service of a final decision of the Authority, a party may file a review motion. As per Regulation 3 (2) of the review regulations, a review motion 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 or from any other sufficient reasons. Further rule 16 (9) of tariff rules provides that the Authority may refuse leave for review if it considers that the review would not result in the withdrawal or modification of final order, determination or decision.
4. The review motion of JPPL was examined and it was found to be barred by time as it was filed after a delay of more than nine months of the issuance of impugned decision, however, JPPL had requested the Authority to condone the delay in filing of the review motion. The Authority while considering the request of JPPL and to determine the merits of the case, decided to condone the delay in filing of the review motion in exercise of its powers under regulation 3(3) of review regulations and accordingly admitted the review motion.



5. To consider the contentions of JPPL and to provide it an opportunity to explain its point of view, a hearing in the matter was held on May 05, 2015 for which letters/notices were sent to JPPL, parties to the tariff determination proceedings of upfront tariff, 2013 and to the concerned government agencies on April 28, 2015. The hearing was attended by JPPL, Alternative Energy Development Board (hereinafter referred to as "AEDB") and various other stakeholders.
6. Brief facts of the case are that JPPL was allowed upfront tariff, 2013 for its proposed wind power generation project of 49.60 MW installed capacity to be located at Jhimpir vide the impugned decision. Paragraph 4 (iv) of the impugned decision reads as follows:

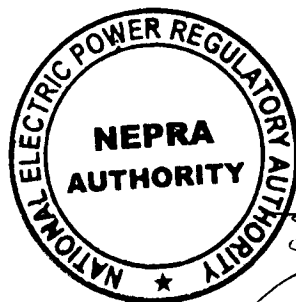
*"The applicant will have to achieve financial close by March 31, 2015. The upfront tariff granted to the applicant will no longer remain applicable/valid, if financial close is not achieved by the applicant by March 31, 2015 or generation license is declined to the applicant."*

JPPL was unable to achieve financial close by March 31, 2015.

7. In its review motion, JPPL has prayed for reasonable extension in achieving the financial close, for a period of not less than three months commencing from the date of decision on this review motion and resolution of issues highlighted in the review motion.
8. The subject review motion was filed by JPPL on, inter alia, following grounds;
- The Authority initiated processing of eleven projects under the upfront tariff, 2013 with a cumulative capacity of 579 MW. The Authority however repeatedly declined JPPL application on the grounds that the 500 MW capacity cap prescribed in the upfront tariff, 2013 was exhausted/met.
  - The Authority in its decision in the matter of review of determination of upfront tariff for wind power generation dated May 02, 2014 (hereinafter referred to as "upfront review decision"), failed to distinguish between the companies who already got their tariffs approved by the Authority (in November 2013, December 2013 and April 2014), from the companies whose applications for upfront tariff were earlier refused or declined by the Authority for different reasons.



- iii. The inordinate delay in issuing the decision on JPPL's application opting for upfront tariff (as initially the applications were declined) and later critical delay in the processing of generation license application (16 September 2014) left unreasonably little time to achieve the financial closing.
- iv. The inordinate delay in processing and issuing of letter of support (hereinafter referred to as "LOS") left only three months and few days for JPPL to achieve the financial closing.
- v. While other projects had more than sixteen months and more than eleven months, JPPL only had slightly more than three months to achieve the financial closing under its LOS.
- vi. Given that the project is being developed through US funding agency Overseas Private Investment Corporation (hereinafter referred to as "OPIC"), meeting the requirements of foreign lenders in such short time frame was unrealistic from the very inception. Unlike other lenders (local and Chinese lenders in particular) who might be more flexible in granting waivers and deferrals to the borrowers in meeting the conditions, precedents and obtaining consents prior to the financial closing, OPIC requirements for the financial closing are much rigid.
- vii. Issues relating to site lease which in case of JPPL is being directly leased by the Government of Sindh caused unreasonable delay in the development of the project. The issues relating to land and expropriation risk over site lease continues to remain a hurdle and need to be resolved. Material change of the lessor from AEDB to Government of Sindh required corresponding changes in other documents in particular the pertinent provisions of the Implementation Agreement (hereinafter referred to as "IA").
- viii. The Authority has extended the financial close deadline for solar power projects developed under the upfront solar tariff recognizing the significance of IA and Energy Purchase Agreement (for solar power projects). In light of the aforesaid it is just, fair and reasonable to allow JPPL a reasonable extension in order to seek the resolution of site specific issues in the IA which have arisen pursuant to the fact that the site lease has been executed directly by the Government of Sindh as opposed to AEDB (under the site sublease agreement).



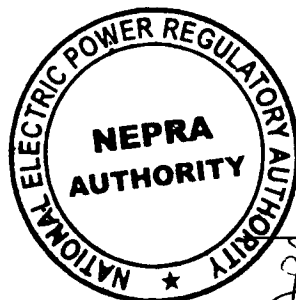


9. **Submissions of different stakeholders:** Summary of the pre, post and during the hearing submissions of different stakeholders, regarding the review motion filed by JPPL are as follows:

- i. Mr. Michael Ratliff, Managing Director, Renewable Energy Finance, OPIC wrote an email to Chairman of the Authority to express support for review motion. He submitted that due to delayed issuance of impugned decision, LOS and time consumed to sort out land lease issues with the Government of Sindh, JPPL did not have as much time to reach the required financial close as was available with other wind power projects.
- ii. AEDB during the hearing as well as in writing, along with the list of the events and supporting documents, apprised the Authority that the claim made by JPPL in its review motion regarding delay on the part of AEDB in the issuance of LOS is not correct and contrary to the facts.
- iii. Energy Department, Government of Sindh on March 20, 2015 requested the Authority for extension in date of financial closing for JPPL by three months as it has completed all the project milestones stipulated within LOI and LOS except the finalization of IA, which was about to be finalized by the time the tariff expired on March 31, 2015. Energy Department, Government of Sindh assured that the project sponsors will be facilitated in resolving the concerns of OPIC relating to land risk issues, within the time period /extension, allowed by the Authority for achieving the financial close.

10. Arguments heard and record perused.

- i. Upfront tariff, 2013 stipulated that it would only be valid for approvals given for the first 500 MW of companies. JPPL submitted its first application opting for upfront tariff, 2013 on November 26, 2013 i.e. after the Authority had already issued its decisions allowing upfront tariff to three projects and had already come to the conclusion that the applications submitted by the projects of up to 500 MW capacity had complied with the filing requirements of National Electric Power Regulatory Authority Upfront Tariff (Approval & Procedure) Regulations, 2011 and upfront tariff, 2013. Accordingly, the application of JPPL not being entitled at that time for upfront tariff, 2013 was returned.



- ii. The upfront tariff, 2013 always envisaged a fixed time line for achievement of financial close, meaning thereby that it was up to the applicants to submit their applications at earliest. The concept of fixed timeline for financial close was known to all the stakeholders right from the inception i.e. from the date of issuance of upfront tariff, 2013 therefore JPPL has not been discriminated against on this account in any manner. The decisions on applications opting for upfront tariff of other wind power projects issued by the Authority, prior to the issuance of impugned decision, are not comparable with JPPL, as they submitted and completed their applications much earlier than JPPL. Further, JPPL was aware that earlier financial close deadline was September 30, 2014 and considering the reasonable time for achievement of financial close, the deadline was extended from September 30, 2014 to March 31, 2015 through upfront review decision of the Authority.
- iii. JPPL was a beneficiary of upfront review decision as it was allowed upfront tariff in light thereof, otherwise, its application was not entitled for acceptance due to cap of 500 MW in upfront tariff, 2013. JPPL has been claiming that it can achieve financial close within a short period of time as evidenced by the following correspondence:
- a. Letter no. DEPL/01/14 dated: January 02, 2014 "-----". We are now in a position to achieve financial close by February 15, 2014 assuming our application of wind upfront tariff is accepted. -----"
- b. Letter no. DEPL/02/14 dated: January 07, 2014 "-----". We are very pleased to share with you that DEL is ahead in the race to achieve financial close and COD, in February 2014 and June 2015, respectively, as compared to the other wind power projects in the pipeline. -----"
- iv. After the upfront review decision, application of JPPL was processed and the impugned decision was issued on June 20, 2014. The generation license application was submitted by JPPL on May 14, 2014 which was admitted by the Authority on June 26, 2014 after fulfillment of legal formalities, the determination of the Authority along with generation license was issued on September 16, 2014.
- v. AEDB during the hearing as well in writing has submitted that submissions of JPPL regarding delay on the part of AEDB in the issuance of LOS are not correct and contrary to the facts. AEDB brought to the



knowledge of the Authority that JPPL vide letter dated July 16, 2014 requested AEDB for the issuance of LOS i.e. after lapse of about one month from the issuance of impugned decision and prior to issuance of JPPL's generation license by the Authority. Further, AEDB submitted that JPPL failed to provide details of its main sponsor up to September 09, 2014. Moreover, even after the issuance of generation license on September 16, 2014, JPPL informed AEDB regarding the issuance of generation license on October 13, 2014 and was awarded LOS by AEDB on December 23, 2014 i.e. about three months after issuance of generation license, as it failed to meet AEDB requirements for issuance of LOS. AEDB also submitted that JPPL was repeatedly informed by it that any claim for extension in the deadline of achieving financial close will not be entertained.

- vi. JPPL had more than nine months rather than three months to achieve financial close, from the date of impugned decision. In a comparable case of Sapphire Wind Power Company Limited, one of the wind power producer allowed upfront tariff, 2013 on November 21, 2013, it was able to achieve financial close on July 07, 2014 i.e. within a span of less than eight months.
- vii. Case of solar power projects is not comparable with JPPL, as in the case of solar power projects the basic concession agreements were not in place, whereas in the instant case, concession agreements were in place and a number of projects were able to achieve financial close by the stipulated timeline i.e. March 31, 2015. Further, as conceded by JPPL itself, few projects were successful in achieving financial close even with the direct lease from the Government of Sindh. JPPL's failure to achieve, what others were able to achieve, due to its unique circumstances cannot be considered as a valid basis for extending financial close deadline by the Authority. Paragraph 44 of the upfront tariff, 2013 on this issue is pertinent to consider which provides that "The upfront tariff is a take it or leave it package deal. Any request for modification in upfront tariff or any of its terms/conditions, to meet the specific or unique requirements of any of the wind power generation companies, shall not be considered by the Authority whatsoever. ----  
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- viii. JPPL has already given unconditional acceptance of upfront tariff, 2013 with assumptions and conditions as approved by the Authority, therefore seeking modification of a term already unconditionally accepted by it, cannot be considered by the Authority.

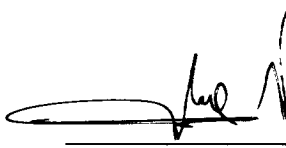


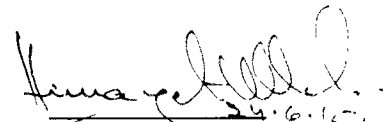


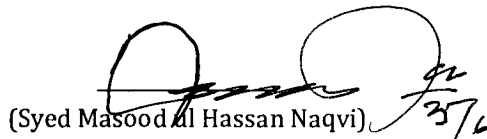
- ix. The Authority has already determined a new upfront tariff for wind power generation, which can be opted by JPPL. Since JPPL has already fulfilled the requirements of NEPRA Upfront Tariff (Approval & Procedure) Regulations, 2011 for grant of upfront tariff, therefore, it is eligible and can apply for grant of new upfront tariff for wind power generation in the prescribed manner.
11. In view of the all the above stated facts, the Authority is of view that review motion is not maintainable, therefore, the same is hereby dismissed. JPPL, however, can opt for the latest upfront tariff determined by the Authority in the prescribed manner.

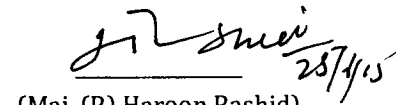
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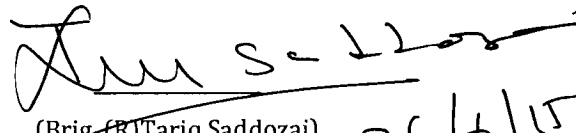
**AUTHORITY**

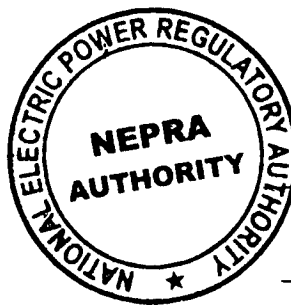
  
(Khawaja Muhammad Naeem)  
Member

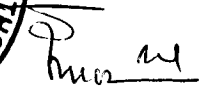
  
(Himayat Ullah Khan)  
Member

  
(Syed Masood ul Hassan Naqvi)  
Member

  
(Maj. (R) Haroon Rashid)  
Member

  
(Brig. (R) Tariq Saddozai)  
Chairman



  
29.06.15