



Registrar

# National Electric Power Regulatory Authority

## Islamic Republic of Pakistan

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No. NEPRA/TRF-451/MHPPL-2018/11527-11529  
July 9, 2019

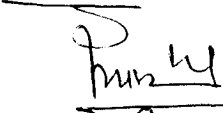
**Subject: Decision of the Authority in the matter of Motion for Leave for Review against Determination of the Authority in the matter of application for Approval of Tariff by Master Hydro Power (Private) Ltd. for its 99 MW Arkari GOL Hydro Power Project located at Arkari GOL, District Chitral, KPK [Case # NEPRA/TRF-451/MHPPL-2018]**

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority along with Annexure-II/B (07 pages) in Case No. NEPRA/TRF-451/MHPPL-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.

Enclosure: As above

  
09 07 19  
( Syed Safer Hussain )

Secretary  
Ministry of Energy (Power Division)  
'A' Block, Pak Secretariat  
Islamabad

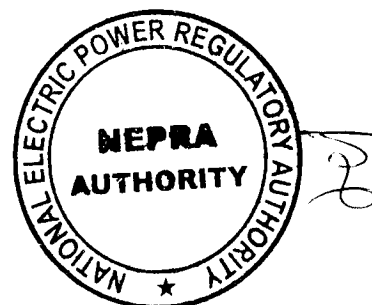
CC:

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 AGAINST DETERMINATION OF THE AUTHORITY IN THE MATTER OF APPLICATION FOR APPROVAL OF TARIFF BY MASTER HYDRO (PRIVATE) LIMITED FOR ITS 99 MW ARKARI GOL HYDROPOWER PROJECT LOCATED AT ARKARI GOL, DISTRICT CHITRAL, KPK.**

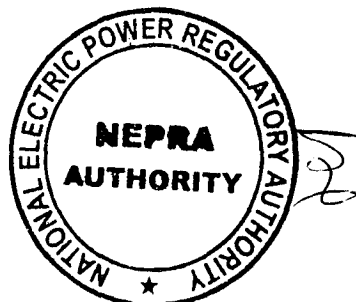
1. The Authority through its decision dated October 22, 2018 approved a tariff for Master Hydro Power (Private) Limited (MHPL) for its 99 MW Hydroelectric Power Plant at District Chitral, KPK (“Impugned Decision”). The tariff was arrived through a competitive process held under NEPRA’s Competitive Bidding Tariff (Approval Procedure) Regulations, 2014 (the “**CBTR 2014**”).
2. MHPL or “the Petitioner” being aggrieved with the decision of the Authority filed motion for leave for review (“**Review Motion**”) on October 23 2018 under Section 3(2) of the NEPRA (Review Procedure) Regulations 2009 (**Review Regulations**).
3. The Review Motion was considered by the Authority and admitted on November 01, 2018 for further proceedings. In order to reach an informed and just decision, the Authority decided to provide an opportunity of hearing to the parties to the proceedings. Accordingly, the hearing in the matter was held on January 02, 2019 for which letters of invitation for participation and submission of comments were sent to the relevant parties. The hearing was attended only by the Petitioner, CPPA-G and PEDO.
4. In response to the notices CPPA-G offered its comments on the subject which are discussed in the relevant section
5. **Grounds for Review Motion:** The Petitioner requested for the review of following matters
  - (i) Adjustment in EPC Cost at the Commercial Operation Date
  - (ii) Omission of Change in Tax clause
  - (iii) Omission of indexation of Water Usage Charges
  - (iv) Omission of Water Utilization Cess by Indus River System Authority
  - (v) Omission of indexation of Foreign Debt Service Component
  - (vi) Clarification on Foreign Currency Debt Servicing Schedule
6. The submissions of the Petitioner are as under: -
  - (i) **Adjustment in EPC Cost at the commercial Operation Date:** According to the Petitioner the Request for Proposal (“**RFP**”) issued by PEDO states that the reference date is the date one month prior to the date of issuance of RFP i.e. October 7, 2016. However, the permissible EPC adjustment mechanism that was taken from RFP and replicated in the Impugned Determination allow such adjustment of EPC cost from financial close and not from the reference date which is not the standard adopted for hydropower projects by NEPRA. The Petitioner informed that its request for changing the reference date from financial close to October 7, 2016 was initially

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declined as per the minutes of the pre-bid meeting issued by PEDO on January 30, 2017 and indexation base rates were maintained as per the RFP. Subsequently, MHPL again took up this issue with PEDO, during a meeting held at PEDO house prior to the submission of bids. MHPL argued its case before PEDO and further contested that no EPC Contractor is willing to hold the PKR EPC Cost for such a long period of time. Building in contingencies for such issues would unnecessarily inflate the bid tariff. According to the Petitioner, PEDO accepted MHPL's concerns as valid and agreed to take up the same with NEPRA to modify the RFP. MHPL further informed that after PEDO's meeting with NEPRA, PEDO informed us that the request from MHPL had been accepted, as it is in line with the standard indexation mechanism. However, it appears that such modification was not officially captured in subsequent clarifications regarding the bidding process issued by PEDO. In light of the foregoing, the Petitioner request the Authority to review its Impugned Order and consider October 7, 2016 as the reference date for indexation of the civil works component of EPC cost otherwise the project would be exposed to significant cost increase which would not be covered in tariff.

- (ii) **Omission of Change in Tax clause** According to the Petitioner, Paragraph III (iii) of the Impugned Order states that "Income tax, worker profit participation, worker welfare funds and other taxes, levies, charges, surcharges and government levies, apart from custom duty and cess, **have been accounted** for in tariff" (*emphasis added*); however Section 5.3.2.B (vii) of the RFP states that "**No provision for** income tax, workers profit participation fund and workers welfare fund, any other tax, levy, charge, surcharge or other governmental impositions except the customs duties and cess should be accounted for in the tariff" (*emphasis added*). Further Section 5.3.2.B (ix) of RFP states "Any change in applicable taxes after the Reference Date shall be treated as Pass-Through item in accordance with the provisions of the PPA", however, this provision has not been included in the Impugned Order. The Petitioner further pointed out that Para 22.III (xiv) of the Impugned Order states that: "No adjustment for duties and/or taxes imposed either on the MHPL or on third parties such as contractors, suppliers, etc. of the Project shall be allowed at COD", however as mentioned earlier, this in contradiction to Sections 5.3.2.B (vii) and (ix) of the RFP (reproduced above), which instruct that no tax other than custom duties and cess is to be accounted for in the bid (tariff) and any change in applicable taxes is to be treated as pass- through items. MHPL humbly requested that the wording of the RFP, as mentioned above, be incorporated into the Impugned Order to avoid ambiguities at a later stage.
- (iii) **Omission of indexation of water usage charges:** As per government policy, water usage charge payable to KPK government is indexed with local inflation (CPI) annually from the date of COD. MHPL understands that the same will be applicable in this case as well, however, for the purpose of clarity, the Authority is requested to include the CPI formulae in the Impugned Order to avoid ambiguity at later stage. That in light of the foregoing, the Authority is requested to review its

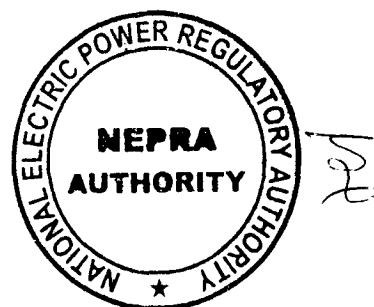


Impugned Order and include CPI formulae for indexation of water usage charges as part of allowed indexations.

- (iv) **Omission of Water Utilization Cess by Indus River System Authority:** The Petitioner informed that it has received notice from Indus River System Authority notifying that MHPL would have to formally apply for the NOC regarding the Project. As the applicability of water utilization cess was not mentioned in the RFP, the same was not catered for by MHPL in the Bid. MHPL is still in process of ascertaining if the charge is applicable to the Project. However, in case it is, MHPL request the Authority to include it in the Impugned Order as pass-through cost to be reimbursed by the power purchaser on the basis of actual payment made by the Project.
- (v) **Omission of indexation of foreign debt service component:** MHPL understand that PKR / US\$ indexation of foreign debt service components (principal and interest) as per the below formula is a standard provision of the tariff mechanism, however the same has not been explicitly stated in the Indexations section of the Impugned Order. MHPL request that the indexation formula may be included in the Indexations Section to avoid ambiguities at later stages.
- (vi) **Clarification on Foreign Currency Debt Servicing Schedule:** The Foreign Debt Servicing Schedule, provided as Annexure II-B of the Impugned Order is not aligned with the schedule provided by MHPL in the Tariff Petition to NEPRA and the anomalies may be corrected.

7. CPPA-G in response to NEPRA's notice, sent replies vide its letter dated January 01, 2019 where CPPA-G gave its opinion on the review grounds. CPPA-G, vide a subsequent letter dated January 22, 2019 raised certain issues related to the process through which MHPL was awarded the tariff. The second letter dated January 22, 2019 is not within the scope of the Review Motion therefore, it has not been discussed. However, summary of CPPA-G comments relevant to the Review Motion are stated below:

- i- With reference to EPC Cost adjustment at COD, CPPA-G support the adjustment mechanism provided by NEPRA in Tariff Determination and the same should be in line with RFP.
- ii- According to the CPPA-G NEPRA may review Paragraph 23.III (iii) of the Tariff Determination and the same should be amended in-line with other Hydro Power Project's Tariff Determinations. NEPRA As per CPPA-G Para 23.111 (xiv) rightly stated by NEPRA in its Determination, as, "No adjustment for duties and/or taxes imposed, whether on MHPL or on third parties such as contractors, supplies, etc. of the project shall be allowed at COD," Instead, the allowable taxes and duties may be claimed as Pass-Through as per Para 23.III (iii) of the Tariff Determination.
- iii- The water use charges should be allowed after one year of COD or Authority may clarify that Water Use charges shall be applicable and payable to GOKP, as amended by GOP time to time.
- iv- According to CPPA-G Indus River Cess is included in Water Use Charges, However, NEPRA may review and clarify the same



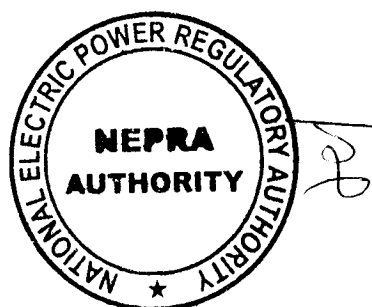
v- The CPPA-G stated that NEPRA has provided the basis for Indexation of Foreign Debt Service Component as LIBOR & Rs. /US\$ in the Tariff Determination. Further, NEPRA periodically notify the indexed Foreign Debt Component, therefore, we understand that there is no need to mentioned the Indexation formula in Tariff Determination.

vi- NEPRA may clarify the difference in Foreign Currency Debt Servicing Schedule

8. Arguments heard and record perused.

9. As per regulation 3(2) of the National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009, “any party who is aggrieved from any order of the Authority and who, from the 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, may file a motion seeking review of such order”. Therefore, while deciding the review motion, the afore-referred regulation has to be kept in mind and the grounds of the Review Motion which do not fulfill the requirements of the said regulation cannot be considered. Considering the material and evidence submitted by the Petitioner and the commentator, the Authority is of the view that some of the grounds merit consideration and some require further clarification and corrections, therefore, the same are discussed in following paragraphs in detail: -

(i) **Adjustment in EPC Cost at the Commercial Operation Date:** It was considered that in the Chapter F “One Time Adjustment at COD of the approved RFP prescribes the adjustment mechanism for EPC costs. The adjustment mechanism in the approved RFP contains the reference date as financial close of the project. The Impugned Tariff granted by NEPRA has directly incorporated these provisions approved by the Authority in the RFP. As such, the Petitioner has effectively sought an amendment in tariff that is inconsistent to the prior approved RFP, which cannot be granted. The RFP approved by the Authority is the document containing the terms, conditions, mechanisms, incentives, procedures etc. on the basis of which competitive bidding for the Arkari Gol Power Project was undertaken. After conclusion of the bidding process, the successful bidder cannot be granted exemptions or benefits that did not form part of the original auction process/RFP or such exemptions/benefits that were not available to other bidders at the time of auction. Such ex post facto grants/concessions would be violative of the principles of natural justice and due process. Furthermore, it was considered that due to express provision of RFP it is highly likely that the second highest bidder inflated its bid in order to cater for the RFP design (that allocates pre-financial close variation risks to the bidder) due to which it did not succeed in the process. Revising the RFP design (through ex post revisions in tariff that are inconsistent with the RFP) at this stage would invalidate the entire bidding process. Therefore, the revised adjustment mechanism being sought by MHPL cannot be granted, irrespective of its technical or financial merit or any assurance or representations that PEDO may have made in this regard.



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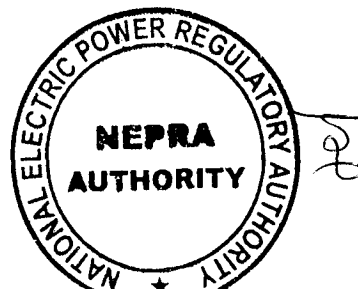
Regardless, PEDO in writing has rejected MHPL request for change of the reference date before the bidding commenced. Despite various reminders the relevant agency which conducted the bidding process i.e. PEDO didn't respond to the grounds based on which this review motion has been filed. Even if PEDO gave verbal assurance to MHPL regarding the change in reference date it couldn't be accepted now as no such amendment request in the RFP was received or approved by NEPRA.

- (ii) **Omission of Change in Tax clause:** The Authority recognized the omission pointed by the Petitioner as it is not in accordance with the terms of the approved RFP and accordingly has been corrected in the revised Order. With regards to Petitioner request for inclusion of Section 5.3.2.B (ix) of RFP in the Impugned Order it is stated that the Petitioner is entitled to any relief under PPA in case of a change of law, including change in taxes that may be applied post determination. Hence, there is no need to mention Section 5.3.2 B (ix) of RFP in the Impugned Decision. The Petitioner request in this regard has been denied
- (iii) **Omission of indexation of water usage charges:** It was considered that Water Use Charge has been fixed in the approved RFP at Rs 0.425 per kWh subject to amendment from time to time as per GoP policy which was incorporated in the Impugned Order. The formula proposed by MHPL appears to be ultra vires to the approved RFP and the KPK Hydro Power Policy 2016 and, as such, cannot be granted.
- (iv) **Omission of Water Utilization Cess by Indus River System Authority:** The Petitioner has not given proof to substantiate whether IRSA cess is applicable on the project therefore, the request for inclusion of such cess can't be granted at this stage.
- (v) **Omission of indexation of foreign debt service component:** It was considered that the "Order" part of the Impugned Decision clearly indicates that foreign portion of debt will get US\$ to PKR indexation therefore, there is no need to prescribe a further formula or to give further assurance to the Petitioner on the subject. The Petitioner request on the subject has been denied.
- (vi) **Clarification on Foreign Currency Debt Servicing Schedule (Annexure II-B):** Some discrepancies in the debt service table related to foreign debt have been noted. Although it may be noted that it has no bearing on the Reference tariff and the tariff remains at the approved level of Rs 8.2896 per kWh. The reason being that the debt servicing component as shown in the tariff table of the Impugned Decision has been separately computed. These corrections as highlighted by the Petitioners have been corrected in the debt schedule which is attached with this decision.

**ORDER:**

10. In light of the above, the following revisions shall be made to the decision of the Authority in the matter of "Approval of tariff for Master Hydro Power (private) Ltd. for its 99 MW Hydroelectric Power Plant at District Chitral, KPK" dated 22.10.2018 (the "**Original Tariff**"):

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(i) Para 23 (III) sub para (iii) shall be replaced with the following:

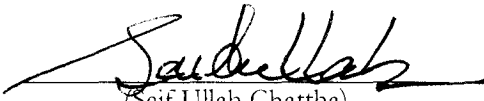
*No provision for income tax, worker profit participation, worker welfare funds and other taxes, levies, charges, surcharges and government levies, apart from custom duty and cess, have been accounted for in tariff. In case MHPL is required to pay any tax, the sum will be reimbursed by the power purchaser subject to provision of original filling documents. Notwithstanding the above, withholding tax on dividend will not be passed through under this tariff.*

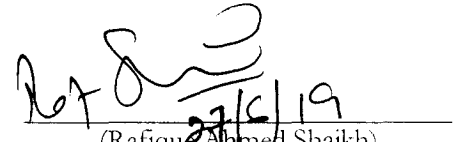
(ii) Para 23 (III) sub para (xiv) shall stand omitted/deleted.

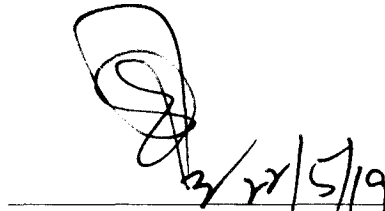
(iii) The Annex-II/B attached to the **Original Tariff** shall be replaced with the Annex-II/B attached to this decision.

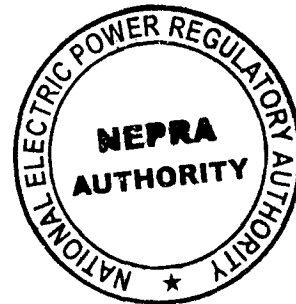
**The Authority, in exercise of powers conferred under Section 31 of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (XL of 1997) read with Regulation 12 of the NEPRA Competitive Bidding Tariff (Approval Procedure) Regulations 2014, hereby issues this decision. This decision shall be read as an integral part of the decision of the Authority in the matter of “Approval of tariff for Master Hydro Power (Private) Ltd. For its 99 MW Hydroelectric Power Plant at District Chitral, KPK” dated 22.10.2018 (the “Original Tariff”). To the extent of any conflict between this decision and the Original Tariff, this decision shall prevail.**

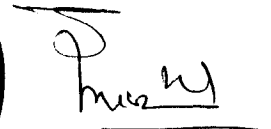
#### AUTHORITY

  
(Saif Ullah Chattha)  
Member

  
(Rafique Ahmed Shaikh)  
Member

  
(Rehmatullah Baloch)  
Vice Chairman



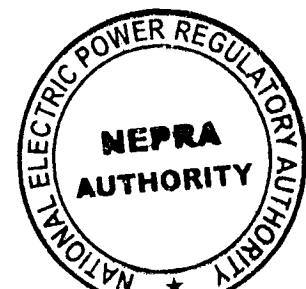
  
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**Debt Servicing Schedule**

Annex-II/B

Foreign Currency Debt								
Period	Principal	Principal Repayment	Interest	Balance	Total Debt Service	Principal Repayment	Interest	Total Debt Service
	<i>Million \$</i>	<i>Million \$</i>	<i>Million \$</i>	<i>Million \$</i>	<i>Million \$</i>	<i>Rs./kW/M</i>	<i>Rs./kW/M</i>	<i>Rs./kW/M</i>
Q1	95.89	1.33	1.17	94.55	2.50			
Q2	94.55	1.35	1.15	93.20	2.50			
Q3	93.20	1.36	1.14	91.84	2.50			
Q4	91.84	1.38	1.12	90.46	2.50	485.5373	409.1631	894.7004
Q1	90.46	1.40	1.10	89.06	2.50			
Q2	89.06	1.42	1.08	87.65	2.50			
Q3	87.65	1.43	1.07	86.21	2.50			
Q4	86.21	1.45	1.05	84.76	2.50	509.6264	385.0740	894.7004
Q1	84.76	1.47	1.03	83.30	2.50			
Q2	83.30	1.49	1.01	81.81	2.50			
Q3	81.81	1.50	1.00	80.31	2.50			
Q4	80.31	1.52	0.98	78.78	2.50	534.9106	359.7898	894.7004
Q1	78.78	1.54	0.96	77.24	2.50			
Q2	77.24	1.56	0.94	75.68	2.50			
Q3	75.68	1.58	0.92	74.11	2.50			
Q4	74.11	1.60	0.90	72.51	2.50	561.4492	333.2512	894.7004
Q1	72.51	1.62	0.88	70.89	2.50			
Q2	70.89	1.64	0.86	69.26	2.50			
Q3	69.26	1.66	0.84	67.60	2.50			
Q4	67.60	1.68	0.82	65.92	2.50	589.3045	305.3959	894.7004
Q1	65.92	1.70	0.80	64.23	2.50			
Q2	64.23	1.72	0.78	62.51	2.50			
Q3	62.51	1.74	0.76	60.77	2.50			
Q4	60.77	1.76	0.74	59.01	2.50	618.5418	276.1586	894.7004
Q1	59.01	1.78	0.72	57.23	2.50			
Q2	57.23	1.80	0.70	55.43	2.50			
Q3	55.43	1.82	0.68	53.60	2.50			
Q4	53.60	1.85	0.65	51.75	2.50	649.2296	245.4707	894.7004
Q1	51.75	1.87	0.63	49.88	2.50			
Q2	49.88	1.89	0.61	47.99	2.50			
Q3	47.99	1.92	0.58	46.08	2.50			
Q4	46.08	1.94	0.56	44.14	2.50	681.4400	213.2604	894.7004
Q1	44.14	1.96	0.54	42.18	2.50			
Q2	42.18	1.99	0.51	40.19	2.50			
Q3	40.19	2.01	0.49	38.18	2.50			
Q4	38.18	2.03	0.46	36.14	2.50	715.2485	179.4519	894.7004
Q1	36.14	2.06	0.44	34.08	2.50			
Q2	34.08	2.08	0.42	32.00	2.50			
Q3	32.00	2.11	0.39	29.89	2.50			
Q4	29.89	2.14	0.36	27.75	2.50	750.7342	143.9661	894.7004
Q1	27.75	2.16	0.34	25.59	2.50			
Q2	25.59	2.19	0.31	23.40	2.50			
Q3	23.40	2.21	0.29	21.19	2.50			
Q4	21.19	2.24	0.26	18.95	2.50	787.9806	106.7198	894.7004
Q1	18.95	2.27	0.23	16.68	2.50			
Q2	16.68	2.30	0.20	14.38	2.50			
Q3	14.38	2.32	0.18	12.06	2.50			
Q4	12.06	2.35	0.15	9.70	2.50	827.0748	67.6256	894.7004
Q1	9.70	2.38	0.12	7.32	2.50			
Q2	7.32	2.41	0.09	4.91	2.50			
Q3	4.91	2.44	0.06	2.47	2.50			
Q4	2.47	2.47	0.03	(0.00)	2.50	868.1087	26.5917	894.7004

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