



# National Electric Power Regulatory Authority Islamic Republic of Pakistan

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

**Registrar**

No. NEPRA/R/ADG(Trf)/TRF-172/SHPL-2011/ 12430-34

August 07, 2024

**Subject: Decision of National Electric Power Regulatory Authority in the matter of Tariff modification Petition filed by Central Power Purchasing Agency Guarantee Limited (CPPA-G) for exclusion of Principle Debt Damages from Star Hydropower Limited (SHPL) (147 MW Patrind Hydropower Project) Located at District Muzaffarabad, (AJ&K)**

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (total 05 Pages) in Case No. NEPRA/TRF-172/SHPL-2011.

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

*Wasim Anwar Bhinder*  
(Wasim Anwar Bhinder)

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

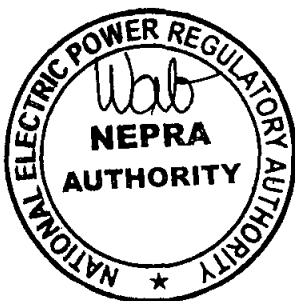
**Copy to:**

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad
3. Chief Executive Officer, Central Power Purchasing Agency Guarantee Limited (CPPA-G), Shaheen Plaza, 73-West, Fazl-e-Haq Road, Islamabad
4. Chief Executive Officer, Star Hydro Power Limited (SHPL), Usman Square, 3<sup>rd</sup> & 4<sup>th</sup> Floor, Main Double Road, E-11/2, Islamabad



**DECISION OF NATIONAL ELECTRIC POWER REGULATORY AUTHORITY IN  
THE MATTER OF TARIFF MODIFICATION PETITION FILED BY CENTRAL  
POWER PURCHASING AGENCY (CPPA-G) FOR EXCLUSION OF PRINCIPLE  
DEBT DAMAGES FROM STAR HYDROPOWER LTD. (SHPL) (147 MW PATRIND  
HYDROPOWER PROJECT) LOCATED AT DISTRICT MUZAFFARABAD, (AJ&K).**

1. Star Hydro Power Limited (herein referred as the "Project Company" or "SHPL") has setup a 147 MW Patrind Hydro Power Plant (the Project) in the territory of Azad Jammu and Kashmir (AJ&K).
2. The Authority granted permission to CPPA-G for procurement of power from Patrind Hydropower Project on September 29, 2008 and thereafter approved the levelized feasibility stage Tariff of Rupees 4.8223/kWh (US cents 6.1042/kWh) at reference exchange rate of PKR 79 per US Dollar) vide decision dated February 13, 2009.
3. The Authority vide its decision dated January 27, 2012 approved the Power Purchase Agreement between CPPAG and SHPL for procurement of power pursuant to Regulation 5(6) of NEPRA Interim Power Procurement (Procedure and Standards) Regulations 2005 (IPPR), at a negotiated tariff of Rs. 7.0496/kWh (US cents 8.2936/kWh at US\$/PKR exchange rate of Rs. 85.0) levelized over a period of 30 years starting from Commercial Operation Date (COD).
4. CPPA-G, vide its letter dated August 31, 2018, forwarded the petition for Adjustment at COD submitted by SHPL for 147 MW Patrind Hydropower Project. The Authority on July 29, 2020 determined the COD stage tariff for SHPL in pursuance to SHPL's award of tariff at Rs. 8.3924/kWh (US cents 8.3170/kWh @ Rs. 100.91/US\$)
5. CPPA-G, vide letter dated July 13, 2022 forwarded a Tariff Modification petition submitted by SHPL regarding the exclusion of debt damages pursuant to Section 6.5(b) of the Power Purchase Agreement between SHPL and NTDC.
6. The Authority also issued a decision dated May 02, 2024 in the matter of motion for leave for review filed by SHPL against its COD decision dated July 29, 2020.



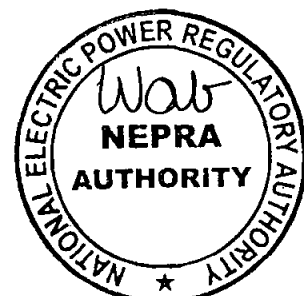
1/5



### Modification Request

7. SHPL vide its Modification Petition, has submitted a request to revise the tariff, excluding the Principal Debt Damages awarded to SHPL in the London Court of Arbitration (LCIA) Award.
8. A detailed summary of the extracts from the petition submitted by SHPL is provided as under:
  - i. **Tariff:** Through the COD Decision dated July 29, 2020, the Authority determined one-time adjustments of SHPL's EPC Stage Tariff, which sets a schedule, among other components, principal debt repayment amounts to be paid by NTDC through tariff for SHPL's project debt.
  - ii. **PPA Section 6.5(b):** SHPL and NTDC are parties to the PPA, which among other matters, provides development and commissioning of the Project and completion of Power Purchaser Interconnection Works (PPIW) by NTDC.
  - iii. Section 6.5(b) directs NTDC to pay a certain amount including principal debt damages, if a delay is caused by NTDC in providing the PPIW continues beyond 60 days.
  - iv. The same section also directs that, *"that such Principal debt paid by NTDC under this Section 6.5 shall be excluded in any determination or calculation of the Tariff at the Commercial Operation Date to be paid by the Power Purchaser hereunder"*.
  - v. **LCIA Award:** SHPL submitted that, in 2017, SHPL issued invoices to NTDC for the amounts payable under Section 6.5(b) on the ground that NTDC had delayed the completion of the PPIW which had consequently delayed the commissioning of the Project.
  - vi. The matter became disputed between the parties and was referred to dispute resolution under the PPA, Ultimately, the dispute was referred to LCIA.
  - vii. On 18 May 2022, the LCIA-appointed sole arbitrator issued the arbitral award ("LCIA Award") overwhelmingly in favor of SHPL.
  - viii. Para 186 of the LCIA Award indicated NTDC to pay SHPL USD 9.5 Million as damages for breach of its obligation to make the principal debt payment.
  - ix. In order to be entitled to the Principal Debt Damages under the LCIA Award, para 187 of the LCIA Award indicated the Petitioner to apply to the Authority for the exclusion of the Principal Debt Damages from the tariff, so as to avoid double recovery by the Petitioner.

2/5





- x. In view of above, SHPL has filed this present Petition to revise the tariff to exclude the Principal Debt Damages.

### Proceedings

9. Subsequent to admission of the instant petition, the Authority held a hearing in the matter on March 28, 2023 at NEPRA Tower, Ataturk Avenue (East), G-5/1, Islamabad. Notices of Admission and hearing were advertised in the National dailies on March 18, 2023.
10. The following list of issues were framed and discussed for deliberation:

- Issue # 1) Whether the revision of debt service as claimed by SHPL is justified or otherwise?
- Issue # 2) Whether the LCIA award is challenged by NTDC at any legal forum or otherwise?

### Comments of Stakeholders

11. NTDC vide its letter dated March 29, 2023 submitted that, *"Principal Debt Damages determined by Arbitrator of London Court of International Arbitration (LCIA) on the basis of Financing Documents did not coincide with verified principal debt component determined by the Authority. Keeping in view the above, it is requested that petition filed by CPPA-G on behalf of SHPL for exclusion of Principal Debt Damages may be declined being not on merit."* During the hearing NTDC submitted that it has challenged both the recognition of the award and the extent of its implementation, whether in full or in part.
12. CPPA-G vide letter dated September 21, 2022 submitted that, *"claim(s) made by SHPL in the Tariff Proposal are not enforceable under the applicable laws of Pakistan. ... to effect enforcement of a foreign arbitral award SHPL is required to apply for such relief before a High Court and obtain an enforcement order therefrom"*
13. CPPA-G further through letter dated March 19, 2024 submitted a copy of the Judgment of Lahore High Court and submitted that *the Honorable Lahore High Court has recognized the exclusive jurisdiction of NEPRA in relation to tariff matters such as the amount of Principal Debt Damages on which NEPRA has already decided in the COD Tariff Decision dated 29.07.20. Accordingly the Honorable High Court has held that "no claim could be brought by the Applicant regarding this amount before the Sole Arbitrator at LCIA". Thus, SHPL is not*



3/5

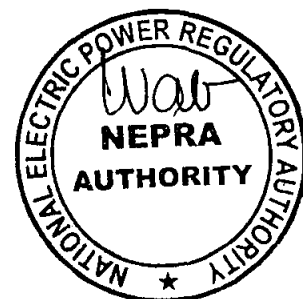


*entitled to any amount in relation to Principal Debt Damages pursuant to the Award on account of the matter being in NEPRA's exclusive authority and accordingly to be dealt with in the tariff, as also reflected in the COD Tariff Decision dated 29.07.2022. In view of the foregoing, we request NEPRA to decide the Tariff Proposal exclusively based on the legal and regulatory framework pursuant to the NEPRA Act 1997."*

14. Also SHPL vide its communication dated March 18, 2024 submitted a copy The Judgment Sheet from the Lahore High Court, related to SHPL's application for recognition and enforcement of the Award, wherein at para 8 of the judgment sheet stated that *"In view of above, this application is partly allowed and the Award is upheld while deducting the amount at clause (d) of paragraph 203 of the Award (The Award Amount)"*, which is USD 16.452 million, comprising of USD 9.507 million as Principal Debt Repayment and USD 6.945 million as Delayed payment rate.
15. The Authority has observed that in the current scenario, the application under section 6 of the aforementioned statute was partially granted by the Honorable Lahore High Court, specifically upholding the award while deducting the amount stated in clause (d) of paragraph 203 of the Award. Consequently, the portion pertaining to the payment of USD 16.452 million, comprising the Principal Debt Damages along with interest at the Delayed Payment rate, has not been recognized or enforced.
16. Consequently, at present, there exists no enforceable award concerning the Principal Debt Damages in this matter. Only upon the issuance of a conclusive and final decision by the highest court of jurisdiction regarding the enforcement of the Award, can be implemented. At present, the current modification petition seems to be an attempt by SHPL to pursue to the provisions of the Award in order to avail its benefits.
17. Recently the Authority at para 31 of the Review Motion Decision dated May 02, 2024 stated as follows:

*"Regarding the exclusion of the Principal debt repayment from SHPL's COD tariff in pursuance to LCIA award and as claimed under the modification petition dated July 13, 2022, the Authority has decided that subject to the final decision of the pending litigation regarding recognition and enforcement of LCIA award from a court of apex jurisdiction and in case the award is recognized, enforced and implemented to this effect, the Principal debt repayment from SHPL's COD tariff shall be excluded from SHPL's tariff."*

4/5 M S





**Order**

18. In light of the aforementioned circumstances, The Authority noted that the modification petition submitted by the CPPAG on behalf of Star Hydro Power Limited (SHPL) is not maintainable until the portion concerning debt damages of the award is recognized and enforced under the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011. The Authority is mindful of the fact that double benefit should not be passed on to SHPL as a result of implementation of the Award.
19. In light of above, the Authority decided to return the modification petition.
20. The above Order of the Authority shall be notified in the Official Gazette in terms of Section 31(7) of the Regulations of Generation, Transmission and Distribution of Electric Power Act, 1997.

**AUTHORITY**

\_\_\_\_\_  
Mathar Niaz Rana (nsc)  
Member

\_\_\_\_\_  
Engr. Maqsood Anwar Khan  
Member

\_\_\_\_\_  
Engr. Rafique Ahmed Shaikh  
Member

\_\_\_\_\_  
Amina Ahmed  
Member

\_\_\_\_\_  
Waseem Mukhtar  
Chairman

