



Registrar

National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/R/ADG(Trf)/TRF-540/TPGR-2020/10334-10337


June 20, 2022

Subject: Decision of the Authority in the matter of Motion for Leave for Review submitted by Trident Power GR (Private) Limited for the 7.5 MW LCC Hydropower Project (Case No. NEPRA/TRF-540/TPGR-2020)

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (03 Pages) in the matter of Motion for Leave for Review submitted by Trident Power GR (Private) Limited for the 7.5 MW LCC Hydropower Project in Case No. NEPRA/TRF-540/TPGR-2020 for information please.

Enclosure: As above


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(Syed Safeer Hussain)

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

CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.
3. Secretary, Ministry of Water Resources, 'Attaturk Avenue (East), Sector G-5/1, Islamabad

**DECISION OF THE AUTHORITY IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW
SUBMITTED BY TRIDENT POWER GR (PRIVATE) LIMITED FOR THE 7.5 MW LCC
HYDROPOWER PROJECT.**

- 1 Trident Power GR (Private) Ltd. (hereinafter referred to as the "**Company**" or "**Petitioner**"), vide its letter dated June 18, 2021, filed a motion for leave for review (hereinafter referred to as "**Review Motion**") seeking review of the decision of the National Electric Power Regulatory Authority (hereinafter referred to as "**the impugned decision**") dated May 17, 2021, regarding the tariff proposal for 7.5 MW LCC hydropower project (hereinafter referred to as "**the Project**").
- 2 The Review Motion was considered and admitted on July 12, 2021, for further proceedings. It was also decided to provide an opportunity of hearing to the parties to the proceedings; accordingly, the hearing in this regard was held on October 06, 2021, for which letters were also sent to the stakeholders. The hearing was attended by the Petitioner, Central Power Purchasing Agency Guarantee Limited (CPPA-G), Private Power Infrastructure Board (PPIB) Punjab Power Development Board (PPDB), and other stakeholders.
- 3 **Grounds of Review Motion:** The Petitioner submitted the following grounds for revision of the impugned decision.
 - a. **Violation of Due Process & Statutory Powers, Duties & Functions:** The Petitioner in the Review Motion while referring to the clauses of the Constitution of Pakistan, the NEPRA Act, Rules and Regulation regarding the generation and license, and the principle of natural justice, has stated that the Authority has violated theses while conducting the hearing and passed the impugned decision in the unlawful, non-transparent, discriminatory, unreasonable, arbitrary, capricious and whimsical manner and without applying an independent mind and misread the non-reading applicable laws and facts including the (i) By holding the public hearing through ZOOM and restricting the participation of all the stakeholders. (ii) By framing issues in accordance with rule 9 of the Tariff Rules, but not concluding these in the impugned decision. (iii) Non-speaking impugned decision and unreasoned decision in violation of the applicable laws, including, without limitation section 24A of the General Clauses Act, 1897.
 - b. **Mistakes & Error on the Face of the Record:** The Petitioner in the Review Motion submitted that while conducting a hearing and passing the impugned decision, the Authority had made a mistake and error of law and fact which are apparent on the face of the record on account of non-reading or misreading of relevant laws and facts, including, without limitation, of the (i) By ignoring and disregarding the laws, rules, and principles to the determination of electric power generation tariffs for a low head small run of the canal hydropower projects. (ii) By drawing unreasoned and unsupported conclusions while making the impugned decision by ignoring the relevant law and previous practice and compliance with the least cost option while determining the tariff of each hydropower project based on its own unique features and circumstances and the project feasibility study. (iii) By comparing with the tariff of the Jabori HPP being neither comparable nor relevant to the Project as Jabori HPP is a high head with unique technical

and financial parameters. (iv) Unlawfully, unreasonably, arbitrarily, and capriciously directed the Petitioner to revise the feasibility study without considering the questioning and doubting the process of approval by the members of PoEs of PPDB.

c. **Other Sufficient Reasons:** The Petitioner in the Review Motion submitted that, while passing the impugned decision the Authority failed adequately or at all to take into account all the relevant considerations and took into account irrelevant considerations, including, without limitation failing and refusing to adequately and at all to carry out a financial and economic analysis of the Project and of the tariff proposed to determine the extent to which it was a least-cost option among all potential electric power option for myriad reasons. The Petitioner further submitted that the Authority's failure and refusal to consider and refusal to consider or analyze the Project on economic analysis, prevented it from observing efficiency gains and benefits on account of avoided cost of transmission/transformation losses, shorter construction period, higher plant factor, local debt and gains from the social and economic impact, etc.

4 **Prayer:** The MLR further states that these defects and irregularities in the impugned decision and the tariff petition proceedings have caused substantial injustice to the Petitioner and are sufficient grounds for the Authority to review the impugned decision and withdraw or modify it in accordance with the Review Regulation and it is most respectfully prayed that the Authority may graciously grant the following relief:

- i. Accept the Review Motion and modify the impugned decision by accepting the petitioner's feasibility stage tariff petition and their tariff claimed therein; or
- ii. Accept this Review Motion and modify the impugned decision in accordance with the law by accepting the Petitioner's feasibility stage tariff petition or withdraw/set aside the impugned decision and re-examine and reconsider afresh the tariff petition whilst giving the Petitioner an adequate opportunity of a personal hearing for making oral or written representations/submissions during the process of re-examination/reconsideration and before making a final decision afresh; and
- iii. Grant any other relief just and appropriate in the circumstances.

5 Comments of the stakeholders: CPPA-G and PPDB also submitted written comments which are summarized below:

6 **CPPA-G** vide letter dated September 04, 2021, submitted that, as per section 3(2) of NEPRA Interim Power Procurement (Procedures and Standards) Regulation, 2005, "upon satisfaction of distribution company or transmission company in respect of an offer of sale of power to be in accordance with its obligation to procure electric power electric at best effective price obtainable or a transmission's company least cost expansion plan, a request for power acquisition shall be filed with Registrar by distribution company or a transmission company." In this matter, GEPCO vide letter dated September 24, 2020, has provisionally withdrawn its consent issued to M/s Trident Power (GR) Pvt. Limited. CPPA-G also supported the

Authority's impugned decision and further stated that in order to reduce the basket price for end consumers, a higher tariff project should not be added into the system and any addition should be on a least-cost basis.

- 7 PPDB vide letter dated September 17, 2021, submitted that PPDB's appointed Panel of Experts (POE) approved the feasibility of the study and GEPCO has also issued a Power Acquisition Request (PAR) to the Project. Further PPDB supports the development of the projects and has requested the Authority to review its earlier decision.
- 8 Arguments were heard and records perused.
- 9 It was noted that the Review Motion was admitted on July 13, 2021. The Indicative Generation Capacity Expansion Plan 2021-30 (IGCEP-2021) was approved by the Authority on September 24, 2021, wherein the Project was not optimized. This means that CPPA-G would not be able to procure power from the Project as there is no procurement under IGCEP, therefore, there may not be a need for a regulated tariff for the Project.
- 10 The Authority however noted that given the liberalization of the power market, the projects which are not optimized in the IGCEP should now be encouraged to enter the market as Merchant Plants as per the applicable documents. Under this regime, the Petitioner may consider setting up a power plant to sell electricity either under a bilateral contract or through a merchant plant, in the competitive trading bilateral contract market.
- 11 In view of the above, the Review Motion is not maintainable and is accordingly disposed of.

AUTHORITY



Engr. Maqsood Anwar Khan
Member



Engr. Rafique Ahmed Shaikh
Member



Tauseef H. Farooq
Chairman



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