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National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/R/ADG(Trf)/TRF-303/QASPL-2015/17530-17532

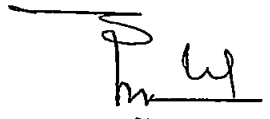
September 16, 2022

Subject: Decision of the Authority in light of the Order of the Honorable Lahore High Court dated December 10, 2021 against the Writ Petition filed by Quaid-e-Azam Solar Power (Pvt.) Ltd. (Case No. NEPRA/TRF-303/QASPL-2015)

Dear Sir,

Please find enclosed herewith the subject decision of the Authority (04 Pages) in light of the Order of the Honorable Lahore High Court dated December 10, 2021 against the Writ Petition filed by Quaid-e-Azam Solar Power (Pvt.) Ltd. in Case No. NEPRA/TRF-303/QASPL-2015 for information, please.

Enclosure: As above


16 09 22

(Syed Safeer 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 light of the Order of the Honorable Lahore High Court dated December 10, 2021 against the writ petition filed by Quaid E Azam Solar Power (Private) Limited

Introduction of the Case:

1. M/s Quaid I Azam Solar Power (Pvt) Limited ("QASPL") filed writ petition before Lahore High Court ("the High Court") against the (i) decision of the Authority in the matter of tariff adjustment at Commercial Operations Date ("COD") issued on June 02, 2016, (ii) decision of the Authority dated November 29, 2016 in respect of motion for leave for review filed by QASPL and (iii) communication of the Authority dated December 12, 2016 on QASPL's request for extension in time for filling second review motion.
2. In the said writ petition, QASPL challenged the decision of the Authority with respect to insurance during operations cost and duties and taxes. The Order of the High Court dated December 10, 2021 on the said writ petition states following:

"...this writ petition is allowed to the extent that order dated November 29, 2016 (Decision of the Authority in the matter of Motion for Leave for Review filed by QASPL against the COD Tariff Adjustment Decision of the Authority) is partially set aside in regard to the claim of duties and taxes amounting to Rs. 48,964,881 with the result that the Motion For Leave For Review filed by the petitioner shall be deemed to be pending before it. NEPRA is directed to decide the same afresh expeditiously only to the extent of claim for duties and taxes, if verifiable evidence is provided by the petitioner."

3. Subsequent to the above referred decision of the High Court, QASPL filed review motion vide letter dated March 29, 2022 wherein QASPL made following prayers:
 - a. The decision with respect to the insurance component may be decided afresh by NEPRA on merit.
 - b. NEPRA shall consider the Motion for Leave to Review as pending and decide it afresh expeditiously to the extent of claim for duties and taxes.

Proceedings

4. Notices of the hearing were issued to relevant stakeholders i.e. Ministry of Energy (Power Division), National Transmission & Despatch Co. Ltd. (NTDCL), Central Power Purchasing Agency Guarantee Limited (CPPAGL) and Alternative Energy Development Board (AEDB) on June 30, 2022 and the hearing was held on July 04, 2022 (Monday) at 12:00 PM which was attended by the representatives of QASPL and CPPAGL.

Submissions of QASPL and decision of the Authority:

Insurance during Operations:

5. The Authority in the COD tariff decision dated June 02, 2016 of QASPL disallowed the insurance during operations cost considering the fact that the same was covered in the O&M contract and no separate cost was to be incurred on this account.

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6. Being aggrieved with the COD tariff decision of the Authority, QASPL filed review motion on June 10, 2016 wherein the petitioner submitted that it has withdrawn the insurance from EPC/ O&M contractor and has arranged the insurance directly from National Insurance Company Limited (NICL) on July 26, 2016 after one year of COD and requested the Authority for reimbursement of insurance cost. The Authority dismiss the said claim considering the fact that the Petitioner had not been able to produce any important evidence to substantiate its claim regarding insurance during operation. Further, it did not satisfy the requirements of Regulation 3(2) of the National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009 that clearly stipulates as under:

"Any party 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 the record or from any other sufficient reason, may file a motion seeking review of such order."

7. In view of the above referred decisions of the Authority, QASPL filed writ petition before the High Court. The Order of the High Court dated December 10, 2021 provide following with respect to the insurance during operations cost:

"NEPRA was correct in dismissing the Motion for Leave to Review in so far as the insurance cost was concerned for the reason that the petitioner till the date of filing of the COD Adjustment Application on 22.01.2016 had not arranged the insurance itself and had not incurred any cost for the "operation phase insurance. The petitioner in its Motion for Leave for Review filed on 10.06.2016 sought clarification regarding reimbursement/adjustment of insurance cost incurred after taking over the same. For this the petitioner had to file an independent application before NEPRA. In case such an application is or has been filed by the petitioner as alleged by it " on 07.09.2016, it shall be decided on its own merits by NEPRA provided it falls within the scope of the prescribed terms of tariff determined by it for solar power producers. Needless to state that the Motion for Leave to Review and the issues raised therein were required to be determined by NEPRA in view of the cut-off date when COD Adjustment application was filed by the petitioner. Regulation 3(2) of the National Electric Power Regulatory Authority (Review Procedure) Regulations, 2000 clearly stipulates that a party aggrieved by the order can file a motion seeking its review only if new and important evidence is concerned, the petitioner's Motion for Leave to Review did not satisfy the requirements of Regulation 3."

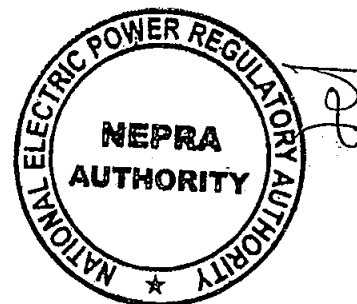
8. In addition to the above, the Authority noted that the order of the High Court set asides the review motion decision of the Authority dated November 29, 2016 only to the extent of claimed duties and taxes amounting to Rs. 48,964,881. Therefore, the Authority considers that the claim of the petitioner with respect to insurance during operations cost, being outside the purview of the High Court decision, does not merit any consideration in review proceedings however the claim of insurance can only be considered if any application/petition is filed by QASPL in the manner prescribed in law provided it fulfills the requirements as prescribed in NEPRA's applicable documents.

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Duties and Taxes:

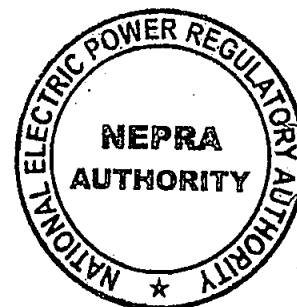
9. The upfront tariff decision for QASPL issued on March 19, 2015 (revised on August 04, 2015) provides following with regards to the adjustment for duties and taxes at COD;

"The approved taxes and duties of US\$ 47,365/MW in the EPC cost will be adjusted as per actual at the time of COD stage adjustment of tariff on the basis of verifiable documentary evidence."

10. In the COD tariff adjustment application dated January 22, 2016, the petitioner claimed duties and taxes of Rs. 244.342 million, comprising of Rs. 110.511 million Sindh infrastructure Development Surcharge ("SIDS") Cess on EPC imports, Rs. 59.859 million Withholding Tax ("WHT") on EPC onshore cost and the remaining amount of Rs. 73.972 million were related to duties and taxes on retention amount and were unbilled invoices.
11. Later, QASPL informed that further payments on account of duties and taxes had been made after filing of COD tariff adjustment request and revised its claimed to the tune of Rs. 274.884 million, comprising of Rs. 110.511 million on account of SID Cess and Rs. 159.770 on WHT .
12. Based on the documentary evidence as submitted by QASPL, an amount of Rs. 243.883 million on account of duties and taxes was verified and allowed to QASPL in COD tariff decision issued June 02, 2016. Following is the breakup of the allowed vs claimed duties and taxes:

Duties and Taxes	Revised paid D&T as per COD application	Allowed at COD	Difference (Revised claim-Allowed)
	Rs. in million		
SID Cess	110.511	84.113	(26.398)
WHT	159.770	159.770	-
Total	274.884	243.883	(26.398)

13. It is important to mention here that the total WHT payment of Rs. 159.770 million (inclusive of Rs. 48.964 million as mentioned in the High Court order) was verified and allowed to QASPL in the COD tariff decision. As indicated in the table above, Rs. 26.398 million of SID Cess was disallowed, as the documentary evidence submitted for the same could not be reconciled with the EPC offshore cost.
14. QASPL filed motion for leave for review dated June 10, 2016 against above referred COD tariff decision of the Authority. In the said review motion QASPL did not submit duties and taxes as the ground of review motion. However, during the hearing QASPL submitted that WHT of Rs. 48.964 million was not claimed in the COD tariff petition. The Authority considered the request of QASPL and noted that the claimed amount of Rs.48.964 million is already considered and allowed and therefore maintained its earlier decision.
15. QASPL then filed writ petition with the High Court against the above referred decisions of the Authority and now based on the High Court order is requesting for the review of the WHT amounting to Rs. 48.964 million. In this regard, QASPL was asked vide letter dated January 18, 2022 to justify its claim with respect



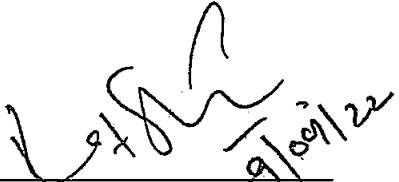


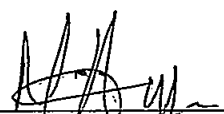
to WHT as stated in honorable High Court decision. In response QASPL vide letter dated May 18, 2022 and July 20, 2022 acknowledged that the said claim of Rs. 48.964 million has already been allowed and requested that the remaining SID cess amount of Rs. 26 million against duties and taxes may be allowed. The Authority considers that the claim of duties and taxes amounting to Rs. 48.964 million, for which honorable High Court set aside the review motion decision, had already been allowed and also acknowledged by QASPL therefore stands addressed.

Order:

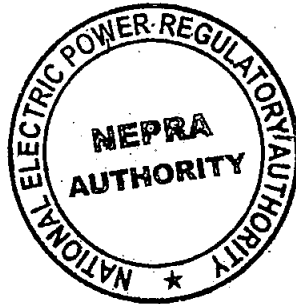
The Authority considers that the stance and grounds taken by the petitioner do not merit review of Authority's decision dated June 02, 2016 and November 29, 2016. Therefore, the Authority has decided to maintain its earlier decision dated November 29, 2016 in the matter.

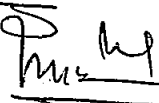
AUTHORITY


Engr. Rafique Ahmed Shaikh
Member


Engr. Magsood Anwar Khan
Member


Tauseef H. Farooq
Chairman




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