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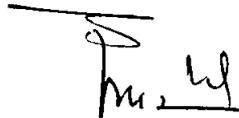
No. NEPRA/R/C(RE/Tech)/RFP-02/KEL-02/19845-49
October 14, 2022

Chief Executive Officer
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Subject: **Decision of the Authority in the matter of Approval of Request for Proposal (RFP) submitted by K-Electric for Three Solar Projects in Winder, Uthal and Bela Districts of Balochistan [Case # NEPRA/RFP-02/KEL-02]**

Enclosed please find herewith subject Decision of the Authority (21 Pages) in the matter of Approval of Request for Proposal (RFP) submitted by K-Electric for Three Solar Projects in Winder, Uthal and Bela Districts of Balochistan for information, record and further necessary action.

Encl: As above


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(Syed Safer Hussain)

CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Energy (Power Division), 'A' Block, Pak Secretariat, Islamabad
3. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.
4. Chief Executive Officer, Central Power Purchasing Agency Guarantee Limited (CPPA-G) Shaheen Plaza, 73-West, Fazl-e-Haq Road, Islamabad

National Electric Power Regulatory Authority
(NEPRA)

DECISION OF THE AUTHORITY
IN THE MATTER OF APPROVAL OF REQUEST FOR PROPOSAL (RFP) SUBMITTED BY K-
ELECTRIC FOR THREE SOLAR PROJECTS IN WINDER, UTHAL AND BELA DISTRICTS
OF BALOCHISTAN

September , 2022

(A). Introduction

In exercise of the powers conferred under Section-47 and Section 7(3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (the "NEPRA Act") read with Rule 17(3) (vi) of NEPRA Tariff (Standards and Procedure) Rules, 1998 (the "Tariff Rules"), the National Electric Power Regulatory Authority ("NEPRA" or the "Authority") on May 03, 2017 notified the NEPRA Competitive Bidding Tariff (Approval Procedure) Regulations, 2017 (the "CBTR"), to lay down the procedure for approval of tariff arrived at through a competitive bidding process.

(B). Submission of RFP Documents

2. Under relevant provisions of the CBTR, the K-Electric Limited ("K-Electric") vide its letter dated April 23, 2021 submitted a single Request for Proposal ("RFP") to carry out separate bidding to procure energy from three solar PV projects, each having capacity of 50MW, to be developed in Winder, Uthal and Bela sites in Balochistan. It was informed by K-Electric that the sites for the projects are to be allocated by the Government of Balochistan ("GOB").

3. The Authority noted a number of deficiencies in the submitted RFP and directed K-Electric to submit the information on the following issues within three week time period:

- i. Constitution of Bid Evaluation Committee
- ii. Constitution of Grievance Committee
- iii. Timelines for completion of bidding process.
- iv. Annual availability requirement to be met by bidder
- v. Detailed Feasibility Study
- vi. Approval of RFP documents from Board of K-Electric

4. K-Electric vide its letter dated June 10, 2021 submitted the point-wise response. With respect to point (v) above, K-Electric informed that it shall submit the detailed feasibility study for consideration and approval of the Authority by June 30, 2021, which was accordingly received on the specified date. With respect to point (vi) above, K-Electric submitted that it has secured the approval of the management for submission of RFP document, while final bid evaluation report will be presented to the board for its approval, before submitting the same to the Authority. The



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response of K-Electric on remaining points shall be discussed in the relevant sections/paragraphs of this decision.

5. The Authority considered the RFP document and after detailed deliberations decided to hold a public hearing in the matter and the same was scheduled for September 22, 2021. In this regard, the notices were published in the daily newspapers (Business Recorder and Express) on September 10, 2021 informing about the schedule of public hearing while also seeking comments and interventions from the interested/affected parties and general public. Additionally, separate notices were also sent to stakeholders, considered relevant by NEPRA, on September 15, 2021.

(C). Issues framed for Public Hearing

6. Following is the list of issues that were framed by NEPRA for the proceedings of the subject case:

- i. Whether the process of technical and financial evaluation as proposed in the RFP is justified? Also, briefly explain the process followed by K-Electric for the selection of pre-qualified bidders.
- ii. K-Electric has proposed that it may participate as a shareholder in the SPV while holding up to 49% shareholding. Has K-Electric decided whether it will participate in shareholding or otherwise? If former be the case, is it justified for K-Electric, being the power purchaser, to have shareholding in the power generation company under the relevant/applicable laws?
- iii. K-Electric plans to build/replace new transmission lines and grids of 132 kV for the proposed projects. Detailed explanation and timelines of these new lines/grid are to be provided by K-Electric.
- iv. It is given that Government of Baluchistan (GOB) will be responsible for land allocation for each Project. Have the exact sites for the projects been finalized and allocated by GOB?
- v. RFP provides that the value of land will be determined by the relevant authority of the GOB while stating that GOB may hold equity proportionate to their contribution in lieu of land. Have these arrangements been finalized with the GOB?
- vi. Is it justified to carry out bidding process for each project of 50 MW separately or to conduct one process for cumulative capacity of 150 MW?
- vii. What would be the constitution of the Bid Evaluation Committee? Does that fulfill the requirements stipulated in CBTR?
- viii. What would be the process of grievance redressal, if any, of the unsuccessful bidders and how would that process impacts the timelines of the project development?
- ix. Whether the amounts of Bid Bond (Rs. 40,000,000) and Performance Guarantee (Rs. 80,000,000), as specified by K-Electric, are justified?
- x. What would be the process for the selection of next bidder in case the successful bidder (s) decide, for whatever reasons, not to develop the project (s)?
- xi. Any other issue/matter with the approval of the Authority?



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(D). Comments/observation of Stakeholders

7. In response to the notices, following companies submitted the comments in the matter:
- i. Central Power Purchasing Agency (Guarantee) Limited
 - ii. FFBL Power Company Limited
 - iii. Engro Energy Limited
 - iv. Oursun Pakistan Limited
 - v. Atlas Power Limited
 - vi. Metro Group of Companies
 - vii. Ghara Solar Limited
 - viii. JCM Power

(E) Public Hearing Proceedings and Considerations of the Authority

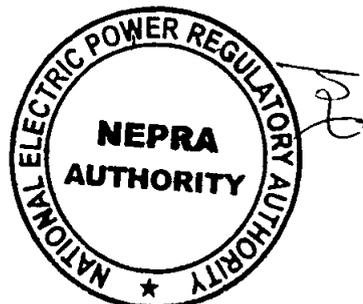
8. On September 22, 2021, the public hearing was conducted which was attended by K-Electric, CPPAGL, Government of Sindh ("GOS"), commentators and others. Given below is the summary of the discussions held during the proceedings on the framed issues and other matters, followed by analysis and decisions of the Authority thereon.

Whether the process of technical and financial evaluation as proposed in the RFP is justified? Also, briefly explain the process followed by K-Electric for the selection of pre-qualified bidders.

Process followed for Pre-Qualification

9. K-Electric submitted that RFP will be circulated to the pre-qualified bidders. K-Electric vide its letter dated May 07, 2021 forwarded the list of pre-qualified bidders along with their company profiles/information.

10. In response to the issue, K-Electric in writing and during the hearing submitted that it had followed a comprehensive pre-qualification process. It published advertisements seeking Expression of Interest ("EOI") in national and international newspapers and tendering websites on August 07, 2020, against which 56 EOIs were received. Out of 56 applicants, K-Electric issued Pre-Qualification Documents ("PQD") to 43 applicants on November 05, 2020. Out of 43 applicants to whom PQD were issued, K-Electric received 25 prequalification applications on December 21, 2020. The prequalification applications were evaluated with minimum score requirement of 60% in technical and financial category each, while keeping overall qualifying score requirement of 75%. Based on the above mentioned prequalification criteria, 22 applicants were qualified, including 04 conditional applicants. K-Electric added that applicants were prequalified for 01, 02 or 03 sites depending upon their scores. K-Electric during the proceedings submitted the documents and information related to pre-qualification process followed by the company.



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11. One of the commentators submitted that the pre-qualification criteria was not widely advertised by K-Electric as required under the applicable laws and particularly under Regulation 5(3) of CBTR. It was also highlighted that the criteria followed by K-Electric for shortlisting was too stringent and beyond the scope as indicated in Regulation 5(4) of CBTR. In this regard, it informed that K-Electric had demanded Technical and Financial Undertakings from the main Sponsors, prior to the submission of bid, as an eligibility criterion which is not appropriate as at this stage the substantial technical and financial information with regards to the projects are not known. –The commentator requested that the non-submission of stated Undertakings should not be used to disqualify any bidder as that party has to eventually submit bid bond of Rs. 40 million (in accordance with RFP) for each project. The commentator stated that this will ensure the maximum competition and shall result in as minimum tariff as possible.

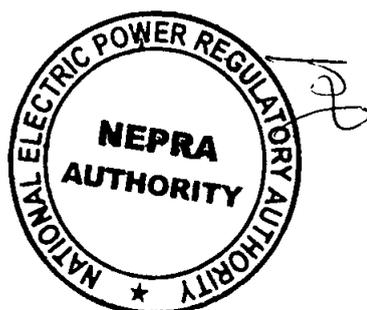
12. In response, K-Electric submitted that it had followed the prequalification process as per the requirement of CBTR. K-Electric explained that the applicants were requested to provide Undertakings from their sponsors / parent companies to demonstrate their continued financial and technical support for the execution of the projects, as they did not meet the criteria based on their own technical and financial strength but had technically and financially capable sponsors. Later during the proceedings, K-Electric submitted that out of 04 conditional pre-qualified bidders, 01 bidder has withdrawn its application and 01 conditionally qualified bidder has provided the required Undertakings and has been officially pre-qualified. That is, now there are 21 pre-qualified parties, out of which 02 parties are still conditionally pre-qualified. K-Electric also submitted that out of 21 parties, 17 parties have been pre-qualified to bid for all 03 projects and the remaining 04 parties have been pre-qualified to bid for 02 projects only.

13. The Authority noted that Regulation 5 of CBTR clearly stipulates that the Relevant Agency (i.e. K-Electric in this case) may pre-qualify the bidders before submission of RFP to the Authority for approval. The said regulations also provide the instructions for the pre-qualification process and the criteria to be followed for this purpose. The Authority considered the documents and the criteria as shared by K-Electric for the pre-qualification process. The Authority noted that the process followed by K-Electric largely complies with the criteria as given in the CBTR. As 86% of the applicants (19 out of 22) have fully complied with the set criteria, therefore, alleged stringent shortlisting criteria may not be considered correct. In view of the above, the Authority decides that the pre-qualification process followed by K-Electric is acceptable in the matter.

Technical Evaluation

14. K-Electric in the RFP submitted that two mandatory conditions i.e. Tier 1 Solar Modules and Net Annual Capacity Utilization Factor of 21.5% are pre-requisites that are required to be met by the bidders. K-Electric also developed a detailed technical scorecard specifying criteria and corresponding marks for each of the required equipment, while stating that the minimum criteria for the qualification of bidders is 75 out of 100 marks.

15. During the proceedings, K-Electric submitted that it has devised technical evaluation criteria based on its experience. K-Electric explained that the bidders being successful from



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knocking-off criteria would be technically and financially evaluated. The bidders scoring above 75% marks during the technical evaluation will be eligible for financial evaluation.

16. The Authority while reviewing the technical evaluation criteria being proposed by K-Electric considered that the criteria is mainly focused on the performance standards of the equipment. For that purpose, K-Electric has referred the international performance standards for different equipment, which needs to be complied with by the bidders and to be used for the purpose of evaluation.

17. In this regard, the Authority reviewed different national and international RFP documents (floated by procurement agencies) for development of solar PV projects through competitive bidding and noted that technical evaluation criteria of bids also include areas like technical capability, quality and delivery of service, past performance, O&M performance etc. of different contractors, which are missing in the submitted RFP.

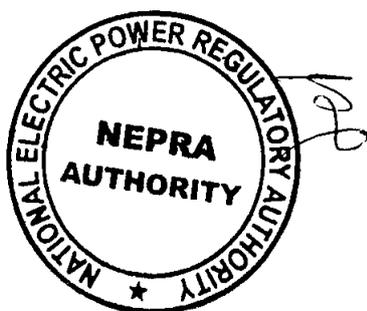
18. To address this issue, the Authority decided to revise the technical evaluation criteria, as given below:

Sr. No.	Evaluation Criteria	Proposed Score
1.	Compliance to standards, specification and provisions (on relative basis) as given in Section 12 & Exhibit 7 of the RFP	50
2.	Capability and delivery of the EPC Contractor, its performance, induction of local manpower, technical and financial strength	10
3.	Capability and delivery of the O&M Contractor, its performance, post commissioning, on-site training, annual maintenance contract options, induction of local manpower, technical and financial strength	10
4.	Technical Approach, Methodology and Implementation	10
5.	Compatibility of the complex and equipment with technical standards of Grid Code (power factor, voltage variation, operating frequency range etc.), Distribution Code and other applicable document etc.	15
6.	Ability to contribute to local economic development	05

19. K-Electric is required to provide the detailed bifurcation of proposed score against evaluation criteria mentioned at serial 1 in the above table.

Financial Evaluation

20. In the RFP, K-Electric has stated the Benchmark Tariff ("BT") of Rs. 6/kWh with maximum annual indexation of 2.5%. For financial evaluation, it is provided that the technically qualified bidders shall be selected based on the lowest Net Present Value ("NPV") offered by the bidders. That is, the tariff bid by the parties shall be indexed with the proposed annual indexation percentage for the whole tariff control period (25 years) and then the NPV, using discount factor



of 7.5%, of those 25 values shall be computed. The bids of the parties, yielding the lowest NPV value, shall be qualified/selected.

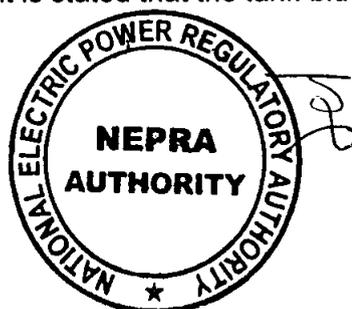
21. It is noted that the proposed tariff number, annual indexation percentage and the evaluation criteria (based on lowest NPV) as stated in the RFP by K-Electric is mirrored to what was approved by NEPRA in February, 2021 in the matter of RFP approved for the bidding that was to be carried out by AEDB. K-Electric has also referred the above said decision of NEPRA in its RFP for the said proposal.

22. The commentators submitted that the tariff should account for the general trend in increase of pricing (equipment, material, transportation etc.) since the time the RFP of AEDB was approved. They also requested to account for the cost of land, site preparation cost, additional security cost, project development cost to be reimbursed to K-Electric and cost of double circuit line in-out arrangement (was not involved in AEDB's RFP) in the computation of tariff. CPPAGL however submitted that the already determined BT in case of RFP of AEDB is quite attractive for the prospective bidders. The commentators also highlighted that the tariff scheme should allow for the variations in exchange rates. One of the commentator proposed that one-time adjustment before the Commercial Operations Date ("COD") at average exchange rates during construction period be allowed, in the absence of foreign currency adjustments during the operations phase. Further, they submitted that front loading for the debt servicing should also be allowed as it is not possible to secure loan for whole of the tariff control period.

23. K-Electric responded that NEPRA has yet to approve applicable BT and may deliberate on such concerns as showed by the bidders and commentators. K-Electric clarified that it initially incurred certain project related expenditures including the cost of feasibility studies, however, the same is not to be reimbursed by the successful bidders.

24. The Authority has considered all the above submissions and is of the view that the cost of equipment/material/labor/transportation have increased considerably since the time the decision on AEDB's RFP was issued. Taking into account these changes, the Authority has decided to approve the BT of Rs. 7.50/kWh (@ Rs. 190/USD) for the subject competitive bidding. The said tariff does not take into account the cost of land which is discussed in the relevant issue of this Decision. In the instant case, the Authority has decided to allow the bidders to structure the tariff in a way that they can service the debt during the period which is lesser than the tariff control period. Moreover, it has been decided that the tariff bid by the selected bidder shall be allowed adjustment with respect to change in exchange rates during the construction period at the time of the respective COD of the projects. The annual increase of 2.5%, as was approved in the AEDB's RFP, is being maintained in this RFP also.

25. While bidding for the projects, the parties shall be submitting the tariff of each year for the whole tariff control period along with the levelized tariff – calculated at the discount rate of 10% For the purpose of financial evaluation, the tariff of each year as bid by the parties shall be indexed with the percentage indexation number, having the cap of 2.5%, as offered by bidders. For the purpose of clarity, it is stated that the tariff bid for Nth year shall be indexed N times with proposed



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percentage to arrive at adjusted tariff number of that year. For example, the indexed value of tariff offered by the bidder for the 10th year shall be computed as per following:

$$\text{Indexed Value of 10}^{\text{th}} \text{ year} = \text{Bid Value of 10}^{\text{th}} \text{ year} * (1 + \text{proposed indexation percentage}) ^ 10$$

26. After working out each year's indexed tariff using the said formula, the NPV (@10% discount rate) of these numbers shall be calculated and the bid yielding the lowest NPV shall be considered qualified.

27. The one-time adjustments at the time of COD shall be made on all the bid 25 values of the qualified bidder using the revised exchange rate. The revised exchange rate shall be the average of the rates of each day for the 10 months period starting from the respective Financial Close dates of the Projects. The reference exchange rate would be taken as Rs. 190/USD.

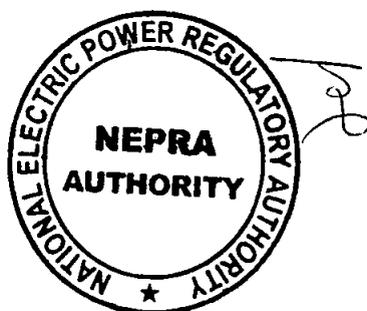
28. After making the one-time adjustment, the 25 values shall be indexed with the percentage increase as proposed by the qualified bidder. That is, the value pertaining to Nth year shall be indexed N times of the proposed percentage increase. Then these values shall be made applicable on the energy to be supplied for each year starting from COD. These adjustments shall be approved by the Authority through a separate decision upon filing of petition by the project company. Afterwards, no further adjustments shall be made in the tariff approved by the Authority.

29. It is to be noted that the BT being approved in this decision has been computed at the financing cost given in the concessionary financing scheme of State Bank of Pakistan ("SBP"), while using the share of that financing as specified in the said scheme. In case of non-availability of such financing, K-Electric may consider filing the petition before NEPRA as per applicable documents, requesting the Authority to compute and approve the BT on commercial financing terms. For such application, K-Electric shall have to prove the non - availability of said financing through documentary evidence, to the satisfaction of the Authority.

K-Electric has proposed that it may participate as a shareholder in the SPV while holding up to 49% shareholding. Has K-Electric decided whether it will participate in shareholding or otherwise? If former be the case, is it justified for K-Electric, being the power purchaser, to have shareholding in the power generation company under the relevant/applicable laws?

30. K-Electric submitted that upon issuance of the Letter of Intent ("LOI"), the successful bidder would be required to form the Special Purpose Vehicle ("SPV"), and K-Electric at its sole discretion would like to participate as a shareholder in that SPV, either through its affiliate or its subsidiary, that may hold up to 49% shareholding in the company.

31. In response to the issue, K-Electric submitted that it has merely reserved a right to invest and acquire up to 49% of the equity in the project company for which it would inject funds in proportion to its shareholding. K-Electric added that it along with GoB might participate as a non-controlling/minority shareholder in the SPV and any investment in the SPV would be made after



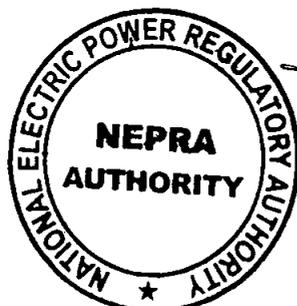
obtaining all the approvals under the relevant/applicable laws, including NEPRA laws, however, the successful bidder selected based on competitive bidding would have management control.

32. The commentators submitted that the demand of K-Electric for the shareholding would be conflict of interest, as the interests of the buyer and seller of power are opposed and such structure would not be in the interest of the consumers. They also submitted that the shareholding of K-Electric in the SPV/ Generating Company would lead to difficulties in obtaining financing by the successful bidder. One of the commentators submitted that if K-Electric would be permitted to be the shareholder then K-Electric shall have the capability of negotiating the cost of funds in respect of equity, given that it is the buyer of electricity.

33. Post hearing, one of the commentators submitted that K-Electric has not provided information with respect to the exact shareholding percentage, the identity of shareholders of K-Electric, or its subsidiaries and/or affiliates in the SPV. Further, it added the Shareholder Agreement which is a fundamental document on the relationship between various shareholders will also not be provided to the bidders until a bidder has been selected, therefore, bidders shall be unaware as to what terms shall dictate their relationship with K-Electric. Moreover, it stated that Bidders' Risk Committees/Banks/Financial Institutions will require the shareholding structure and shareholder information before negotiating the indicative term sheet which will include important commercial aspects like debt tenor and pricing which will impact the tariff. In case of K-Electric participation, the commentator suggested that the information about the shareholding percentage, shareholders of K-Electric (K-Electric or subsidiary and/or affiliates), and Shareholder Agreement must be provided at least two months before the bid submission date. The commentator also proposed that it should be the discretion of the successful bidder to have K-Electric as a shareholder in the SPV and not otherwise.

34. On the queries raised by the commentators, K-Electric responded that proposed projects are strategic projects for K-Electric whereby it will be setting up new transmission lines and upgrading the existing 66kV grid stations in the region to 132kV. The projects would be the first-ever competitive bidding projects of Pakistan and one of the first-ever renewable projects in Balochistan. Therefore, K-Electric would like to be a part of this development in a meaningful way while also enhancing its portfolio of renewables. K-Electric further added that these projects form part of its strategic development plans, hence, it would maintain the right to enter as equity holder at its own discretion. K-Electric substantiated its request while stating that NEPRA, in a similar case of Datang Coal Power Project, granted consent and allowed K-Electric to hold direct shareholding in the IPP structure with the international investor, which had to sell power to K-Electric.

35. K-Electric also submitted that it would not influence the bid evaluation process as the evaluation criteria would be overseen by an Independent Consultant, who would also be part of Bid Evaluation Committee. The discussion on shareholding will commence only when the successful bidder will be notified based on the lowest bid and approval of the tariff by NEPRA so that K-Electric would not influence the process. According to K-Electric, its participation as a shareholder in the Project would not create any difficulty in the financing of the Project; rather



being a power off-taker, the shareholding of K-Electric would be a source of comfort to the financier(s). K-Electric also has indicated that it will share the terms of Joint Venture Agreement/Shareholding Agreement with the bidders soon.

36. Lately, K-Electric vide its letter dated November 11, 2021, submitted that it proposed to invest equity in the projects via its recently formed subsidiary KE VCL, to be up to 25% of equity (instead of up to 49% as stated in the RFP) in the project company, once the successful bidder is notified. K-Electric reiterated that as per its understanding the proposed investment by KE VCL in the SPV is not prohibited under any law or regulation of Pakistan. Moreover, K-Electric submitted that any representative from NEPRA or any representative of the choice of Authority may like to be part of the Bid Evaluation Committee, whereby the Authority will be able to monitor the transparency of the process conducted by K-Electric as Relevant Agency.

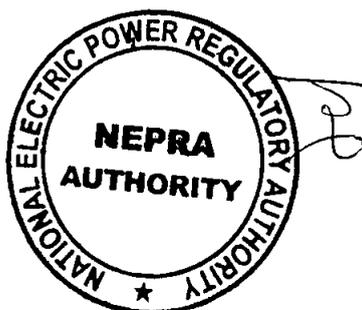
37. The Authority considered the viewpoint of K-Electric and the commentators. The Authority agrees with the submission of the commentators that participation of K-Electric in the shareholding of the SPV will be a conflict of interest. It is apprehended that K-Electric, being the purchaser, is likely to dictate the terms of the agreements in its favor or may absolve the SPV from performing its obligations under the EPA. Therefore, the Authority decided not to allow K-Electric to hold any shareholding in the SPV and therefore directs K-Electric to amend the RFP by omitting the said term.

K-Electric plans to build/replace new transmission lines and grids of 132 kV for the proposed projects. Detailed explanation and timelines of these new lines/grid are to be provided by K-Electric.

38. K-Electric in the RFP submitted that the existing transmission network from Winder to Bela via Uthal is 66 kV, which is planned to be replaced with new transmission lines and grids of 132 kV. K-Electric informed that 132 kV transmission system is planned to be available before the COD of each project.

39. In response to the issue, K-Electric submitted that it has planned enhancement in its transmission capacity, subject to approval of NEPRA in its multi-year tariff. Under this arrangement, a new 132kV double circuit transmission line having length of 158 km shall be constructed from Hub to Bela District. Further, K-Electric submitted that it also plans enhancement of Grids in Winder, Uthal and Bela, from 66 kV to 132 kV level. K-Electric explained that the existing infrastructure is in very poor condition and these additions are made for evacuation of power from these plants and for smooth and reliable power supply to meet electricity demand of the region. K-Electric informed that the timeline for the construction of Hub to Uthal's transmission line and associated grids is 19 months whereas that for Bela transmission line and associated grid is 24 months from the Contract award.

40. CPPAGL questioned that whether the investment for the proposed 132 kV transmission line/grids has been allowed by the Authority in the multi-year tariff. One of the commentators submitted that status of up gradation should be shared with the Bidders to ensure the power off-



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take arrangements. That commentators also added that detailed grid interconnection study was not provided with feasibility study and therefore requested the Authority to direct K-Electric to conduct detailed grid interconnection study and to share it with the bidders.

41. In response to the query raised by the commentator, K-Electric reiterated its earlier submitted timelines for the construction of Hub to Uthal transmission lines and associated grids. It informed that the proposed solar PV projects will tie into this new 132 KV transmission line, and both transmission and generation projects will be constructed in parallel. K-Electric also submitted that load flow study is currently in progress and will be shared soon with the bidders.

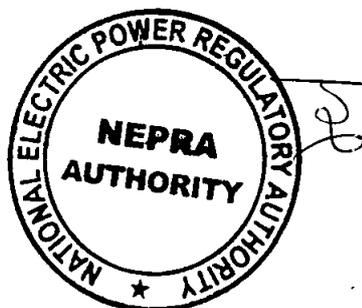
42. It is noted that K-Electric had claimed the cost of Rs. 7,325 million for the addition/up-gradation of existing 66kV network to 132 kV level from Hub to Bela District. The Authority has approved the said cost under mid-term review of multiyear tariff of K-Electric vide decision notified on May 27, 2022. The Authority has also considered the submissions of K-Electric with respect to timelines and hereby directs K-Electric to ensure that both transmission line and generation projects be constructed/upgraded in parallel so that evacuation arrangement should be ready well before time of the COD of the respective projects.

It is given that Government of Balochistan (GOB) will be responsible for land allocation for each Project. Have the exact sites for the projects been finalized and allocated by GOB?

RFP provides that the value of land will be determined by the relevant authority of the GOB while stating that GOB may hold equity proportionate to their contribution in lieu of land. Have these arrangements been finalized with the GOB?

43. K-Electric in its RFP informed that the projects will be installed at the sites, allocated by GOB at Winder, Uthal and Bela in the province of Balochistan. K-Electric informed that allocation of land for each project is the responsibility of GOB, and until such formal allocation letter is awarded to K-Electric by GOB, any changes to the land coordinates will be timely notified to the bidders. With respect to the value of land, K-Electric mentioned that the same will be determined by the relevant authority of the GOB and will be communicated to the bidders before NEPRA's approval of the RFP. It was also stated that GOB may hold equity proportionate to their contribution in lieu of land.

44. In response to the issue, K-Electric in writing and during the hearing submitted that the exact sites of Winder, Uthal and Bela projects have been shared with NEPRA and also with the bidders. These sites were identified through joint survey of K-Electric team with the District Office, Lasbela, held on November 10, 2020, and have been duly documented and forwarded to the relevant authorities of the GOB for approval. The final approval of the allocated land is pending at the end of Land Evaluation Committee ("LEC"). With respect to the value of land, K-Electric reiterated that the same will be determined in accordance with the applicable GOB procedure and submits that the matter is under final assessment by the LEC, which is chaired by the Chief Secretary of Balochistan. Regarding equity matter, K-Electric submitted that during initial



discussions, GOB communicated its intention to contribute land in lieu of equity participation in the projects, in accordance with its policies.

45. The commentators submitted that RFP mentions for the provision of land by GOB and holding proportionate equity in the projects in lieu thereof, however, the information related to (i) confirmation of equity participation by GOB, (ii) the formal land allocation letter by GOB, and (iii) the cost of land, has not been shared with the bidders. They further submitted that as part of the precedents, NEPRA does allow the cost of land as pass through, subject to the prudence of such costs, and in the subject matter the cost of land should also be approved by NEPRA in accordance with the earlier precedents and to ensure transparent bidding.

46. Replying to the above queries of the commentators, K-Electric submitted that formal allocation of land is under assessment stage and is pending final approval of LEC, which will be chaired by the Chief Secretary of Balochistan. According to K-Electric, it has been in continuous correspondence with GOB with regards to the allocation and valuation of land and is trying to expedite the process.

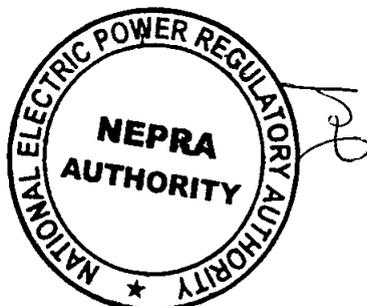
47. NEPRA vide its letter dated December 01, 2021 directed K-Electric to finalize the matters related to valuation and allocation of land with GOB. A subsequent reminder in this matter was also issued on February 02, 2022. K-Electric in its response dated February 03, 2022 submitted that it has been continuously following up with GOB for allocation and valuation of land. K-Electric further apprised that due to recent changes at GOB level, the decision on the matter is delayed.

48. Later, K-Electric vide its letter dated April 08, 2022 submitted that GOB is still evaluating its preferred participation basis, i.e. whether to allocate land for these projects either on lease basis or through share in equity. K-Electric further submitted that GOB has informed that one of the land sites at Uthal is owned by the Forest Department, and is not available for the project under the Forest Act. Alternatively, another piece of land will be identified and finalized by K-Electric and LEC at a later stage. Stating above, K-Electric requested to allow to proceed for competitive bidding with two pieces of land, located at Winder & Bella, while the Uthal portion can be taken up later when the new site is made available to K-Electric.

49. K-Electric then through its letter dated April 21, 2022 submitted that it is in continuous correspondence with GOB for finalization of land allocation. Additionally, K-Electric also shared the following initial estimates for Bela and Winder sites that were provided to it by Board of Revenue ("BOR"), GOB:

Location	Rs. Per Acre
Tehsil Bela	1,000,000
Tehsil Sonmiani (Winder)	1,500,000-2,000,000

50. K-Electric in the same letter also requested the Authority to allow it 03 month time for finalization of the land pricing and allocation mechanism with GOB for Bela and Winder projects, prior to setting a BT and approving the RFP. K-Electric further added that it will communicate the



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final land prices, as approved by LEC, to NEPRA once the land pricing and allocation mechanism are finalized.

51. Subsequently, K-Electric vide letter dated July 28, 2022 submitted that the GOB has identified alternate land for Uthal project, which is in Bela Tehsil (adjacent to existing Bela site). K-Electric submitted that it has surveyed the proposed land jointly with the district administration. K-Electric further submitted that currently the case of allocation of all three sites is under process with Board of Revenue, GOB and being actively pursued by K-Electric. K-Electric also informed that the feasibility study, environmental impact assessment and load flow study for the alternate site land at Bela will be undertaken in due course.

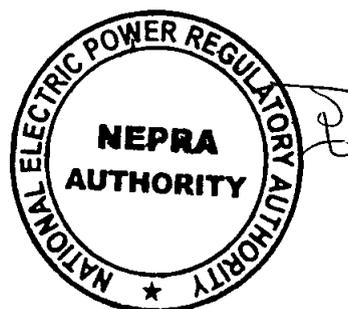
52. The Authority noted that K-Electric has not been able to provide the final documents with respect to allocation, valuation and other terms with respect to land, despite the lapse of considerable time. The Authority is of the view that the approval of the subject RFP cannot be halted for unlimited period. Therefore, the Authority has decided to approve the RFP, without taking into account the cost of land in the BT being approved in this case. Upon finalization of the above matters related to land, K-Electric may consider filing petition before NEPRA as per applicable documents, requesting the Authority to include the cost of land in the approved BT and modify the other terms, if applicable. The Authority shall allow the proposed cost of land and other terms related to land, subject to the prudency check. The Authority further require K-Electric to share the detailed feasibility study of the new proposed site at Bela with the bidders and submit the copy of same to NEPRA, before initiating the bidding process.

Is it justified to carry out bidding process for each of 50 MW separately or to conduct one process for cumulative capacity of 150 MW?

53. K-Electric in the RFP submitted that separate bidding shall be conducted for projects on Winder, Uthal and Bela, as each of these projects are planned to be developed under the separate and independent SPV Structure.

54. In response to the issue, K-Electric in writing and during the hearing submitted that the rationale for carrying out separate bidding process for each of 50 MW project is primarily based on three reasons, (i) availability of SBP concessionary refinancing scheme (ii) encouragement of maximum participation and (iii) different technical and geographical parameters of the sites. K-Electric further submitted that to encourage economies of scale, if NEPRA so directs, K-Electric can give the option to the bidders to give both a combined bid for 2 or 3 projects depending upon their pre-qualification or give separate bids for each of three projects.

55. One of the commentator during the hearing submitted that the bidding should be conducted for cumulative capacity of 150 MW instead of piecemeal (3 x 50 MW) basis as this will help the bidders to optimize the O&M cost and the tariff, which will have a positive impact on end customers. In response to the query raised by the commentator, K-Electric reiterated its above stated stance.



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56. This issue was framed to ensure that the impact of economies of scale should be reflected in the tariff. Earlier, K-Electric informed that proposed projects are planned to be developed at 03 different sites. However, K-Electric later informed that due to unavailability of land in Uthal, the 02 projects now shall be developed at one location, adjacent to each other, in Bela and 01 project shall be located in Winder. It is noted that the major impact of economies of scale would have been applicable, had all these 03 projects been developed at one location. Although 02 projects are proposed to be developed at one location, however, the Authority noted that in case if they are developed as 01 project of 100 MW then they will not remain eligible to obtain concessionary financing under SBP scheme. In addition, the Authority also considered that the impact of bulk purchases and optimization of O&M cost would automatically be taken into account in the instant case, either through separate or cumulative bidding, as majority of the parties have been qualified to bid for all the three projects. Besides, the separate bidding in the subject matter would provide opportunity for the parties to bid for less than 03 projects also, which will invite maximum participation and resultantly more competition. In view above details, the Authority has decided that K-Electric is allowed to carry out the separate bidding for each of the three solar PV projects. However, in case of non-availability of the financing under the SBP Scheme, the proposed 150 MW shall be developed as 02 projects under 02 SPVs, i.e. 01 project of 50 MW in Winder and the other project of 100 MW in Bela, and the bidding processes shall be carried out accordingly.

What would be the constitution of the Bid Evaluation Committee? Does that fulfill the requirements stipulated in NCBT Regulations, 2017?

57. K-Electric in its RFP document had not mentioned about the constitution of the Bid Evaluation Committee (“BEC”) as per the requirements of CBTR. For that purpose, a letter was sent to K-Electric on May 27, 2021. In response, K-Electric vide letter dated June 10, 2021 submitted that a cross functional evaluation team will be selected from K-Electric which will include representatives from K-Electric’s Supply Chain, Finance and Business Development functions. Further, it submitted that one member of BEC will be a reputable consultant having expertise in competitive bidding and fulfilling the independence requirement as given in the CBTR, and for this purpose K-Electric has already started the hiring process. Subsequently, K-Electric vide its letter dated October 03, 2021 submitted that it has invited bids from various consultants for appointment of Independent Consultant and has finalized NESPAK among all bidders (03 in Nos.) after review of their technical capabilities/experience and their commercial offers. K-Electric further submitted that they are now proceeding to hire them for Bid Evaluation as Independent Consultant in the BEC.

58. The Authority has deliberated on the submissions of K-Electric and is of the view that the requirements with respect to formation of bid evaluation committee as given in the CBTR have been fulfilled by K-Electric, therefore, considers this issue as settled.

What would be the process of grievance redressal, if any, of the unsuccessful bidders and how would that process impacts the timelines of the project development?



59. K-Electric in its RFP document had not mentioned any Grievance Redressal Mechanism, while merely stating that any dispute between the parties involved with the RFP procedure shall be submitted exclusively before the courts of Karachi, Pakistan.

60. In response to the issue of the hearing, K-Electric through its letter dated October 06, 2022 and during the hearing submitted that being a private entity, it is not subject to any public procurement laws. Further, K-Electric stated that the formation of Grievance Redressal Committee is not mandated under CBTR. Nevertheless, K-Electric submitted that it plans to establish a Committee of Redressal of Grievances as per K-Electric's procedures/policies, which will follow the below mentioned process:

- i. From and after the announcement of technically qualified bidders, any bidder feeling aggrieved by the evaluation outcome may lodge a written complaint before the Grievance Committee concerning its grievance, not later than 7 days after the announcement, with adequate particulars of the complaint and attaching copies of documents relevant to the complaint.
- ii. The Grievance Committee shall decide the complaint within 15 days of receipt of the complaint, subject to timely cooperation by the complainant and, if applicable, by the respondent.
- iii. The mere fact of lodging of complaint shall not warrant suspension of the bidding process.
- iv. The Grievance Committee will consist of three members. Two members of the Committee shall be senior officers employed with K-Electric who are not directly involved in the Project and the third member of the Grievance Committee shall be an independent member with expertise in this area and engaged in its independent capacity by K-Electric.
- v. In event the decision of the Grievance Committee is not acceptable to the aggrieved Bidder, such aggrieved Bidder shall have the right to submit any dispute before a competent court at Karachi, Sindh.

61. K-Electric in its letter further submitted that project development should not be halted in the event of a Grievance as it may result in delays in the project timelines.

62. The Authority has considered the submissions of K-Electric and is of the view that the formation of Committee and the process/methodology to be followed in the matter, as submitted by K-Electric, is reasonable and decides to approve the same. However, the Authority hereby directs that the decisions with respect to grievances are to be taken by the Committee, before opening of the financial bids.

Whether the amounts of Bid Bond (Rs. 40,000,000) and Performance Guarantee (Rs. 80,000,000), as specified by K-Electric, are justified?

63. K-Electric in its RFP submitted that bidders shall be required to provide Bid Bond of Rs. 40,000,000 for each project along with the submission of bid. K-Electric submitted that the amount of Bid Bond shall be returned to the successful bidder(s) at the time of issuance of LOI. For unsuccessful bidder, the Bid Bond will be released after award of the Project. K-Electric further



submitted that the successful bidder shall provide Performance Guarantee of Rs. 80,000,000 for each project, prior to issuance of LOI by K-Electric, with validity up to 13 months.

64. In response to the issue, K-Electric in writing and during the hearing submitted that the amount of USD 5,000/MW and USD 10,000/MW of Bid bond and Performance Guarantee respectively, is reasonable as it is less than 1% and 2% respectively of the expected project cost. K-Electric further submitted that these amounts have been kept as deterrence to ensure that Bidders do not leave the process at the final stages of bid evaluation and during project execution. K-Electric has additionally submitted that since there are no benchmarks or references provided under the ARE Policy, 2019 for amounts of Bid Bond or Performance Guarantees, therefore, K-Electric has used the values proposed by AEDB in its RFP.

65. One of the commentators submitted that K-Electric should release the Bid Bond to unsuccessful bidder right after the announcement of successful bidder. It also submitted that as proposed in the RFP, K-Electric and GOB would also be the shareholders, therefore, proportional amounts of Performance Guarantee should be provided by them also. Furthermore, the commentators submitted that Performance Guarantee should be linked with signing of EPA rather than issuance of LOI.

66. In response to above, K-Electric submitted that the understanding of commentators is correct that the Bid Bond of unsuccessful bidders will be released, upon award of successful bid. For Performance Guarantee, K-Electric emphasized that the same shall be submitted by the successful bidders, prior to LOI issuance by K-Electric, which will cover all its obligations till Financial Close. Moreover, K-Electric submitted that all obligations during the development stage of the projects would be the responsibility of the successful bidder, therefore, K-Electric and GOB are not required to proportionally share the Performance Guarantee.

67. The Authority noted that in case of AEDB's RFP, the Authority decided that the structure, amounts, categories and currency denomination of fees/guarantees, must be consistent with RE Policy, 2006, which provides USD 500/MW for Bid Bond and USD 2,500/MW in respect of the Performance Guarantee. The Authority further noted that AEDB has not prescribed any amount for Bid Bond and Performance Guarantee under the ARE Policy 2019. The Authority is of the view that the amount of Bid Bond and Performance Guarantee as proposed by K-Electric is on the higher side. At the same time, the Authority considers that the amount of Bid Bond and Performance Guarantee as prescribed in the RE Policy, 2006 needs upward revision with a view to safeguard the interest of the project. In view thereof, the Authority hereby approves the amount of USD 1,000/MW and USD 5000/MW for Bid Bond and Performance Guarantee respectively.

68. Regarding release of Bid Bond to unsuccessful bidder, the Authority hereby directs that the same shall be released to the unsuccessful bidders at the award of successful bid. The Authority further noted that the collection of Performance Guarantee, before issuance of LOI by K-Electric, does not require any change. Further, the Authority also agreed with the stance of K-Electric that Performance Guarantee is only to be paid by the successful bidder.



What would be the process for the selection of next bidder in case the successful bidder (s) decide, for whatever reasons, not to develop the project (s)?

69. K-Electric in RFP document submitted that in case of default or disqualification of a successful bidder, the next bidder reserves the right to replace such successful bidder. During the proceedings, K-Electric further submitted that Independent Consultant will rank the top three bidders and the next in line bidder with the lowest bid as per the evaluation criteria will be selected. The Authority considered that the submissions of K-Electric reasonable and justified, and therefore considers this issue as settled.

(F). Other Issues

Issuance of Security Package/Draft EPA to Bidder:

70. One of the commentators during the hearing raised the concern that K-Electric should share the draft EPA with the bidders so that terms of the transaction can be ascertained which are necessary to evaluate the risk profile of the projects. In response to above query, K-Electric submitted that it has shared the draft EPA with the prospective bidders on September 24, 2021. In view of the response of K-Electric, the Authority considers this issue as settled.

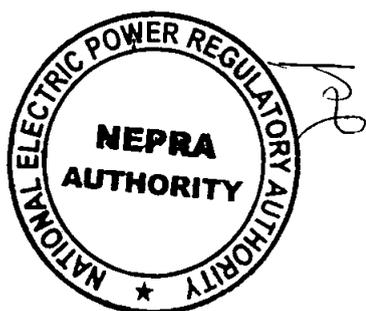
Construction period clock

71. One of the commentators during the hearing raised the query that the time clock for construction period of 10 months should start after approvals of Generation License, Tariff and others. K-Electric in its response to the query submitted that the construction period will commence from Financial Close, which will take place once all conditions and precedents to the loan disbursement, including tariff and Generation License (if applicable), have been satisfied. The Authority considered this point and agrees with the stance of K-Electric in this regard.

Claw Back and Bonus Energy Sharing Mechanism

72. CPPAGL during the hearing submitted that claw back mechanism should be made part of the tariff scheme, so that any excess profit/gains over and above the regulated returns could be shared with the consumers on annual basis. CPPAGL also requested that the benefit of the bonus energy – energy higher than the specified annual capacity factor – should also be shared with the consumers.

73. In response, K-Electric submitted that tariff will be approved on the least cost / competitive basis with no fixed or guaranteed return. As per the proposed scheme, it is up to the developers/bidders how they structure their bids to achieve optimum returns. Further, K-Electric submitted that the suggested claw back mechanism of profits and bonus energy sharing mechanism was also not part of RFP approved by NEPRA for AEDB.



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74. It is noted that in the recent tariff cases determined under the cost plus regime, the Authority decided that the annual profits of the companies, exceeding beyond certain limit, shall be shared between the producer and consumers through claw back mechanism. Likewise, a mechanism was also prescribed through which the benefit of energy produced by the projects, beyond the specified annual capacity factor, is shared between producer and consumers. However, it is noted that the scheme of tariff approved under cost plus tariff mode is quite different from the tariff scheme being approved in this decision. Under cost plus regime of tariff, the Authority specifies and approves the cost and energy level and allows certain return percentage over the attainment of those parameters. On contrary, the benchmark tariff and scheme thereof being approved in this decision is such that it neither indicates the cost and energy parameters nor guarantee any specified return thereon to the project sponsors. The spirit of the scheme is to obtain the lowest tariff for electricity, while giving project companies the freedom to decide themselves about the technical and financial parameters in order to optimize their returns. In addition, it is noted that no such reference could be found globally where any claw-back/sharing mechanism would have been applied for procurement through competitive bidding. Therefore, the Authority is of the view that there is no requirement of introducing any such mechanism for the subject matter competitive bidding.

Capacity Factor

75. CPPAGL submitted that minimum yield requirement be set at around 23% and above, instead of 21.5% as mentioned in the RFP. It added that the energy yield assessment report for the subject 03 projects, along with VRE locational study carried out by the World Bank, may also be referred by the Authority while determining capacity factor.

76. In response, K-Electric vide letter dated October 26, 2021 submitted that 21.5% is the knock-off criteria under the RFP for evaluation of bids. Anything below this criterion would not even be considered for further review. K-Electric added that it encourages a higher capacity factor, as can be seen from the other evaluation metrics it has added in its technical scorecard.

77. As submitted by K-Electric, the capacity factor level of 21.5% is the minimum requirement that has to be met by the bidders to qualify for next level of competition. This is not the capacity factor use to work out BT. It is also hereby informed that all the relevant details, (studies, resource data etc.) have been taken in account while calculating the BT being approved in this decision. Therefore, the Authority understands that the mechanism – capacity factor of 21.5% as knock off criteria – as stated in the RFP by K-Electric does not require any change.

Must Purchase Obligation

78. CPPAGL submitted that the provision of ARE Policy 2019 may also be incorporated in the RFP that (i) a "must-purchase obligation" for a duration not less than the debt repayment period and not for more than the period stated in the RFP from time to time, and (ii) the balance term being on a take-and-pay basis at the option of the power purchaser; provided, the renewable



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energy project will continue to be dispatched on merit order dispatch criteria for the balance term of the EPA after the expiry of the must-purchase obligation period.

79. In response, K-Electric submitted that the Section of ARE Policy, 2019, as mentioned by CPPAGL, is in reference to the concession package (in terms of the Implementation Agreement and GoP Guarantee) provided by GOP to the projects that sign agreements with CPPAGL, and not applicable in the case of K-Electric. Further, it submitted that any such condition may also not be relevant in the single tariff structure where debt related component and corresponding servicing period is not required from the bidders, therefore, not known. Further, K-Electric submitted that this mechanism will create bankability issues for the projects.

80. The Authority had detailed deliberations on the above provision of ARE Policy, 2019. The provision indicates that the ARE Policy 2019 intends to strike a balance between the long-term take-or-pay obligations under the EPA and probable price increase impact of short term EPAs. This provision safeguards the bankability risk by allowing 'must purchase obligation' during the debt servicing period and requiring the plant to be despatched on the basis of economic merit order during remaining term of the tariff control period. The Authority also of the firm view that the ARE Policy, 2019 is applicable for procurement by K-Electric. Further, as stated above, the Authority has decided to allow the bidders to structure the tariff in a way that they can service the debt during the period lesser than the total tariff control period. In view of the above, the Authority hereby require K-Electric to incorporate the above provisions of the ARE Policy, 2019 in the EPA to be signed with the successful bidder. Given the scheme of the tariff, it would be the discretion of the bidders to decide about the tenor during which they want to service the debt during the tariff control period of 25 years.

Pass-through Items

81. K-Electric in its RFP has stated that subject to approval of NEPRA in Consumer End Tariff, following items shall be considered as pass-through:

- i. If the Successful Bidder is obligated to pay any tax on its income from electricity generated from solar or any duties or taxes not being of refundable nature are imposed on the Successful Bidder, the exact amount paid by the Successful Bidder on these accounts will be reimbursed by KE on production of original filing documents.
- ii. In case of the above scenario, the Successful Bidder shall also submit to KE the details of any tax savings and KE shall deduct the amount of these savings from its payment to the Successful Bidder on accounts of taxation. The adjustment for duties and taxes will be restricted only to the extent of duties and taxes directly imposed on the Successful Bidder. No adjustment for duties and taxes imposed on third parties such as contractors, suppliers, consultants, etc. will be allowed.
- iii. Withholding tax on dividend will not be a pass-through item.
- iv. In case any Bidder proposes to import any plant, machinery or equipment that is also manufactured locally in accordance with the Customs General Order of the FBR, the Bid should account for the additional duties so that the Tariff Bid by the Bidder is



inclusive of customs duty; pass-through of such duty subsequent to the bidding is not allowed. The Bidder is expected to have knowledge of applicable laws and regulations and shall not in any case hold KE accountable for information not provided under this document.

Duties/Taxes during Construction

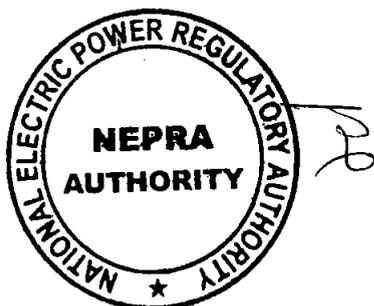
82. It is noted that the following term is stated in the tariffs of all the generation technologies with respect to duties/taxes during the construction period:

“Duties and/or taxes, not being of refundable nature, relating to the construction period directly imposed on the company up to Commercial Operations Date, will be allowed at actual upon production of verifiable documentary evidence to the satisfaction of the Authority.”

83. While doing the adjustment in the tariff at the COD stage, the amount of duties/taxes imposed directly on the company, after due verification, is included in the project cost. In this way, the company earns specified return on the equity portion of that amount, and debt part of that amount is serviced at the approved financing cost during the tariff control period.

84. The impact of duties/taxes have not been taken into account for the computation of benchmark tariff in the subject case. Considering the scheme of the tariff being approved in the matter, the Authority has decided that the duties/taxes shall be reimbursed to the qualified bidder by the power purchaser, during certain period of time. The Authority shall approve the amount of such duties and taxes, to be reimbursed to the qualified bidder, through a separate decision at the time of respective COD of the projects. For that purpose, the companies shall file an application along with all the details related to such duties/taxes, to the satisfaction of the Authority.

85. With respect to items being manufactured locally, the commentators submitted that that the custom duties on plant and equipment imported in special circumstances be treated as pass through item upon presenting documentary evidence, substantiating that local procurement was not viable for the project due to genuine technical and production constraints. The Authority has considered the submissions of KE and the commentators in this regard. The Authority has noted that Alternative & Renewable Energy Policy, 2019 states certain conditions, fulfillment of which can result in the exemption of duties on the import of items, being manufactured locally also. In view thereof, the Authority has decided that the duties on imported equipment, also being manufactured locally, shall also be reimbursed to the qualified bidder, subject to fulfillment of conditions as given in the ARE Policy, 2019, for which certification shall be obtained by the qualified bidder from AEDB.



Duties/taxes during Operation

86. Following is stated in the treatment of income tax on power generation projects during its operations:

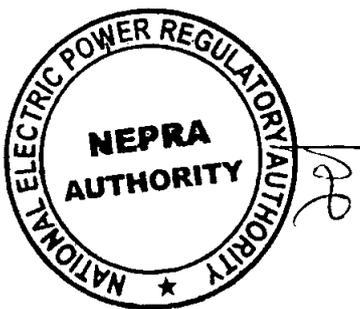
“In case the company is obligated to pay any tax on its income from generation of electricity, or any duties and/or taxes, not being of refundable nature, are imposed on the company, the exact amount paid by the company on these accounts shall be reimbursed on production of original receipts. This payment shall be considered as a pass-through payment”

87. The commentators commented that the imposition and applicability of taxes by the relevant authorities be allowed as pass through in the tariff. K-Electric also submitted that NEPRA has previously allowed applicable income tax as a pass through item in the tariff and would allow the same for these projects in its decision on RFP.

88. It is noted that the return on equity used for the computation of benchmark tariff in the subject case does not include the impact of income tax. It was also considered that ARE Policy, 2019 also provides for the exemption of income tax for renewable energy projects. In view thereof, the Authority has decided that income tax on these projects shall be considered as pass through. The Authority shall approve the amount of such duties and taxes, to be reimbursed to the qualified bidder, through a separate decision on the application to be filed by the company.

Withholding Tax on Dividend

89. The commentators submitted that the variation in WHT on Dividend to be treated from the rate of 7.5% (upward and downward) as a pass through item to provide level playing field to local and foreign bidders as the later requires to pay only 5% WHT due to various tax treaties. The Authority noted that it has principally decided not to allow the WHT on dividend and decided to maintain the said decision in the matter also.



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(G). ORDER OF THE AUTHORITY

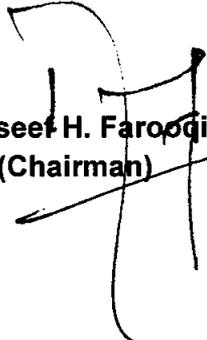
90. Foregoing in view, the Authority hereby decides to approve the RFP documents with the direction to K-Electric to comply with the observations and decisions as stated against each of the afore stated issues.

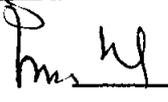
AUTHORITY


Rafique Ahmed Shaikh
(Member)


Engr. Maqsood Anwar Khan
(Member)




Tauseef H. Farooqi
(Chairman)


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