



# National Electric Power Regulatory Authority

Islamic Republic of Pakistan

2nd Floor, OPF Building, G-5/2, Islamabad

Ph: 9206500, 9207200, Fax: 9210215

E-mail: registrar@nepra.org.pk

Registrar

No. NEPRA/TRF-165/NTDC-2010/5423-5425

July 18, 2011

**Subject: Decision of the Authority with respect to Motion for Leave for Review filed under Rule 3(2) of the NEPRA (Review Procedure) Regulations, 2009 by National Transmission and Despatch Company Ltd. (NTDC) against the Authority's Determination dated 9<sup>th</sup> May 2011.**

Dear Sir,

Enclosed please find herewith the Decision of the Authority (03 pages) in the matter of Motion for Leave for Review filed by National Transmission and Despatch Company Ltd. against the Authority's Determination dated 09.05.2011 regarding Transfer/Wheeling Charges in Case No. NEPRA/TRF-165/NTDC-2010, for information.

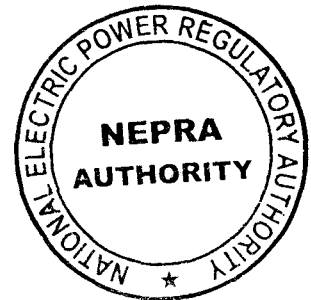
Encl: As above

Secretary  
Ministry of Water & Power  
'A' Block, Pak Secretariat  
Islamabad

CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'Q' Block Pak Secretariat, Islamabad.

( Syed Safer Hussain )



Decision of the Authority with respect to Motion for Leave for Review filed under Rule 3(2) of the Review Procedure Regulations 2009 by National Transmission and Despatch Company Limited (NTDC) against the Authority's determination dated 9<sup>th</sup> May 2011.

1. Background:

1.1 National Transmission and Despatch Company, hereinafter referred as NTDC, had filed a tariff Petition on August 23, 2010 for determination of its transfer/ wheeling charges for FY 2010-11. The Petition was admitted by the Authority on 26<sup>th</sup> August, 2010 and after fulfillment of due procedure provided under the law, a detailed determination on the subject was given by the Authority on 9<sup>th</sup> May, 2011 which was intimated to the Federal Government for the purpose of notification in the official gazette pursuant to section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 read with rule 16(11) of the NEPRA Tariff (Standards and Procedure) Rules, 1998.

2. Motion for Leave for Review:

2.1 Being aggrieved with the Determination of the Authority dated 9<sup>th</sup> May 2011, NTDC has filed the subject motion for leave for review in respect of the following items of impugned Determination:-

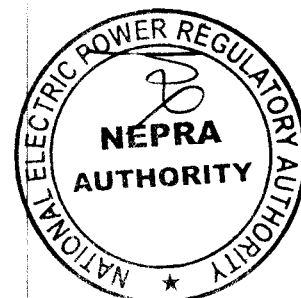
1. Restriction of T&T losses upto 2.5%
2. Disallowance of provision for Taxation
3. Recognition of other income on the higher side.

2.2 In order to meet with the ends of natural justice and fair play, the Authority considered it just and appropriate to provide an opportunity of hearing to the Petitioner before taking the final decision and a date of hearing for the purpose was fixed as 21<sup>st</sup> June, 2011. The representatives of the Petitioner were heard at length by the Authority on the day of hearing.

3. Restriction of T&T losses upto 2.5%:

3.1 During the hearing, the Representatives of the Petitioner pleaded that its actual T&T losses ranging from 3.36% to 3.59% are based on the actual meter readings of 0.2 class accuracy energy meters installed at almost all the Common Delivery Points (CDPs) and that the Load Flow Studies show losses in MWs for either peak load or off-peak load conditions, therefore, energy losses cannot be correctly simulated on the basis of the computer studies. The Petitioner further informed that as a result of disallowing T&T losses beyond 2.5%, NTDC has in its account over Rs.4 billion.

3.2 Having heard the Petitioner, the Authority is of the view that the Petitioner did not provide any additional or new evidence in support of its reconsideration request on T&T losses. The points raised by the Petitioner stood already addressed by the Authority at Para 7 of its determination dated 9<sup>th</sup> May, 2011.



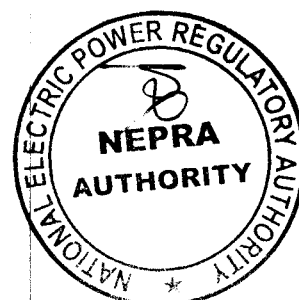
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4. Disallowance of Provision for Taxation:

- 4.1 The NTDC representative explained that although CPPA is a separate legal entity however currently it is working under the umbrella of NTDC and its accounts are incorporated and merged in NTDC's final accounts. Due to large provisions for doubtful debts by CPPA on account of receivables from DISCOs, the company is having accumulated losses since last several years, therefore, it was not liable to pay any taxes. However, in future when CPPA will become a separate legal entity, NTDC will likely to pay taxes on its income for which it will have no funds. He also stated that disallowing the tax is against the spirit of applicable sections of the Income Tax Ordinance 2001.
- 4.2 Having heard the Petitioner, the Authority is of the view that CPPA is still working under NTDC and its accounts are incorporated in NTDCs accounts, therefore, it will likely to suffer losses due to the significant provisions for doubtful debts each year. Similarly NTDC has already collected billions of Rupees on account of taxes as part of its tariff since its last determination dated 06-01-2006 when the Authority had allowed taxes as part of NTDC's tariff. Since then, the Petitioner, although has been collecting tax from DISCOs as part of its tariff but did not pay any tax to the national exchequer. The Authority also considers that the income tax ordinance 2001 does not restrict the Petitioner first to pay the tax and then claim the same amount later. Therefore, if NTDC earns any profits in future, any taxes paid thereof will be reimbursed in the subsequent year.
- 4.3 In view of aforementioned, the Authority considers that no such new grounds are provided which would establish the basis for review on this account, therefore, this payment will remain as pass-through as described at Para 11.7 of the determination dated 9<sup>th</sup> May, 2011.

5. Recognition of Other Income on the higher side.

- 5.1 During the hearing, NTDC representative presented the details of Other Income of last four years pertaining to NTDC excluding the other income of CPPA. As per the details provided NTDC earned an income of more than Rs.1 billion during FY 2009-10 excluding income of CPPA. He further contended that the Authority's assessment of Rs.1,616 million is on the higher side without considering the yearly expected variations in the components of Other Income. Traditionally, the company is earning almost the same volume under the head of Other Income over the last few years except a sharp rise was recorded in the year 2009 wherein an amount of Rs.440 million was generated through sale of scrap. Later in year 2010, the Other Income has increased due to the rise in interest rates and by broadening the services of the Services Division.
- 5.2 After forgoing the above, the Authority considers that CPPA's other income cannot be excluded from the other income of NTDC because CPPA currently is a part of NTDC. It was also observed that after the issuance of the Authority's determination, NTDC submitted its Audited Financial Statements for FY 2009-10 reflecting Other Income of Rs.4,918 Million which is much higher than Rs.1,469 Million as earlier provided in its un-audited accounts. This also does not support the Petitioner's stance that the Authority's assessment for Other Income is on the higher side.



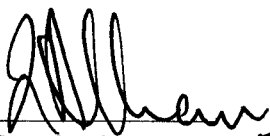
5.3 Having heard the Petitioner, the Authority is of the view that the Petitioner could not provide any additional or new evidence in support of its reconsideration request on Other Income which would constitute any basis for reconsideration of the assessment given at Para 11.6 of the determination dated 9<sup>th</sup> May, 2011.


6. Decision:

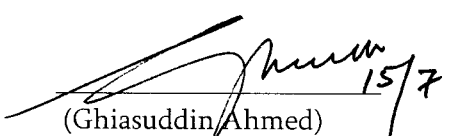
6.1 In terms of Rule 16(6) of the Tariff Standards and Procedure Rules 1998 and Rule 3(2) of the Review Procedure Regulations 2009, a motion seeking of review of any order of the Authority is competent only upon discovery of new and important matter of evidence or on account of some mistake or error apparent on the face of record. Neither any such thing agitated by the Petitioner in its Review Motion nor any fresh evidence was provided by it despite of providing another opportunity after the hearing.

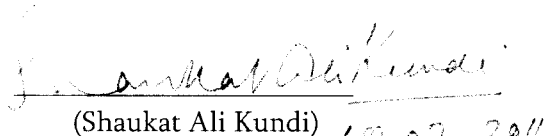
6.2 After going through the record and hearing the Petitioner, it has been established that the Petitioner has failed to point out any error or omission in the impugned determination and it also failed to produce any new and important matter of evidence. The points raised in the motion for leave for review stood already addressed in the impugned determination. Therefore, the Authority is convinced that the review would not result in the withdrawal or modification of its determination dated 09-05-2011.

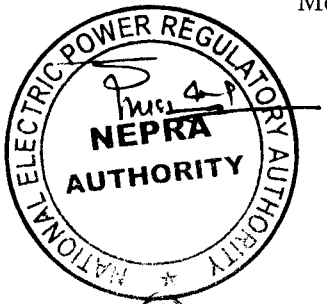
6.3 From what has been discussed above, the Authority is of the considered view that the grounds agitated in the motion for leave for review are not sufficient enough justifying the modification of the impugned determination, hence the motion for leave for review is declined.

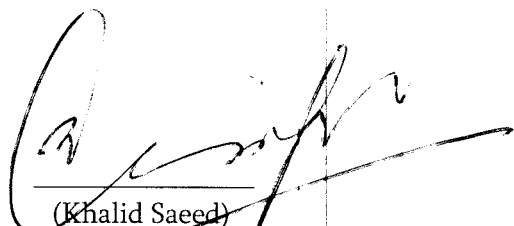
  
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(Zafar Ali Khan)  
Member  
18/7/11

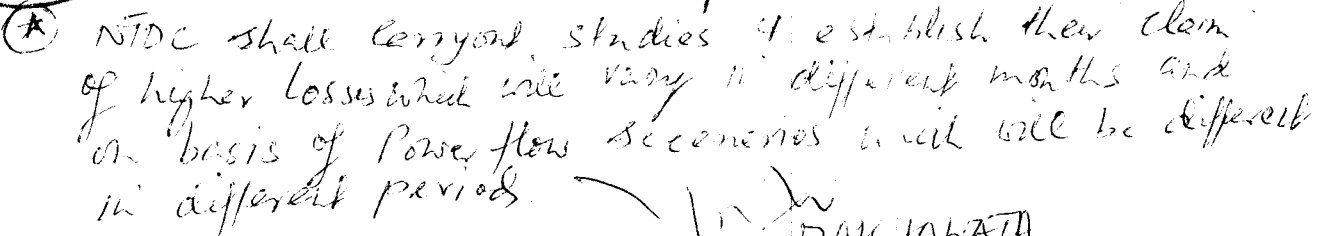
  
\_\_\_\_\_  
(Maqbool Ahmad Khawaja)  
Member


  
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(Ghiasuddin Ahmed)  
Member  
15/7

  
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(Shaukat Ali Kundi)  
Vice Chairman  
18.07.2011



  
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(Khalid Saeed)  
Chairman

  
\* NTD shall carry out studies to establish their claim of higher losses which will vary in different months and on basis of power flow scenarios which will be different in different periods.

  
MAQBOOL AHMAD KHAWAJA  
MEMBER (S)