

National Electric Power Regulatory Authority

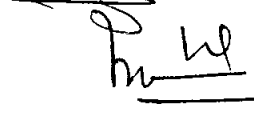
NOTIFICATION



Islamabad, the 21st day of Oct, 2022

S.R.O. 1949 (I)/2022.- In pursuance of Sub-Section 7 of Section 31 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997), NEPRA hereby notifies the decision of the Authority in the matter of Application for Recovery of Sales Tax on Construction Services and O& M Services Imposed by Govt. of AJ&K — Star Hydro Power Limited (SHPL) — 147 MW Patrind Hydro Power Project in Case No. NEPRA/TRF-172/SHPL-2011.

2. While effecting the Decision, the concerned entities including Central Power Purchasing Agency Guarantee Limited (CPPAGL) shall keep in view and strictly comply with the orders of the courts notwithstanding this Decision.


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(Syed Safeer Hussain)
Registrar





**DECISION OF NATIONAL ELECTRIC POWER REGULATORY AUTHORITY IN
THE MATTER OF APPLICATION FOR RECOVERY OF SALES TAX ON
CONSTRUCTION SERVICES AND O&M SERVICES IMPOSED BY GOVT. OF
AJ&K - STAR HYDRO POWER LIMITED (SHPL) - 147 MW PATRIND HYDRO
POWER PROJECT**

1. Introduction:

- i). Star Hydro Power Limited ("SHPL" or "Seller") has setup a 147 MW Patrind hydro power project ("the Project") in the territory of Azad Jammu and Kashmir ("AJ&K").
- ii). The Authority approved the feasibility stage tariff of the Project at Rs. 4.8223/kWh (US cents 6.1042/kWh @ Rs. 79/US\$) vide its decision dated February 13, 2009.
- iii). The Authority also approved the EPC Stage tariff of the Project on January 27, 2012 at Rs. 7.0496/kWh (US cents 8.2937/kWh @ Rs. 85/US\$) levelized over a period of 30 years.
- iv). SHPL attained commercial operations on November 08, 2017 and accordingly Central Power Purchasing Agency Guarantee Limited ("CPPA-G" or "Buyer") submitted SHPL's COD request through its dated August 31, 2018.
- v). The Authority vide decision dated July 29, 2020 determined the COD stage tariff for SHPL at Rs. 8.3924/kWh (US cents 8.3170/kWh @ Rs. 100.91/US\$).

2. Instant application - Sales Tax Petition under Pass Through Items of the PPA:

- i). CPPA-G forwarded an application submitted by M/s RIA Barker Gillette on behalf of SHPL which was admitted by the Authority on August 05, 2021.
- ii). Hearing in the subject matter was conducted on May 09, 2022 and subsequently the applicant filed written arguments through their legal counsel on May 17, 2022.

3. Petitioners Request on Sales Tax on Construction Services:

- i). SHPL vide the instant application requested for an amount of Rs. 164.846 million as a pass-through item, an amount imposed by the Govt. of AJ&K as a Sales Tax on construction services.
- ii). SHPL submitted that through a series of notifications, the Govt. of AJ&K imposed Sales Tax on services on the construction services provided by the Seller's EPC contractor to the Project. The details of aforesaid notifications are as follows:

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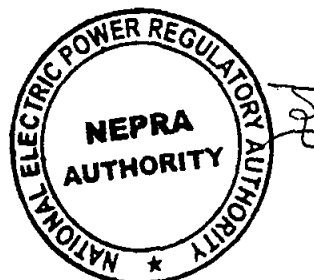
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- a. Notification No. LD/Legis-Act/256-66/2015 dated July 14, 2015 imposed Services Tax at the rate of 16%;
 - b. Notification No. FD/Tax/8296-8385/2017 dated May 25, 2017 reduced the rate of the Services Tax to 5% with effect from July 01, 2015 and
 - c. Notification No. FDT-1(136)/19/3545-3644/2021 dated March 03, 2021 reduced the rate of the Services Tax to 1% with effect from July 01, 2015 (i.e. the effective date of the first notification).
- iii). SHPL submitted that, as evident from above listed notification at no. (b) and the latest notification at no. (c), the Seller has been precluded from recovering the Services Tax from the Govt. of AJ&K.
 - iv). On the basis of the 1% rate and the aggregate of the payments made for the construction services, the total value of the Sales tax payable is Rs. 164.846 million.
 - v). SHPL submitted that the Authority has given an assurance to another similar AJK-based hydropower project that it will be treated in a manner similar to the CPEC projects in respect of the Services Tax. In reliance of the principles of fairness and non-discrimination, SHPL seeks treatment similar to the CPEC projects.
 - vi). SHPL requested for imposition of Sales Tax by Govt. of AJ&K to be considered as a pass through item under Section 10.3(a) of the Power Purchase Agreement (PPA) which states: *"pass-through payment spread over a 12 months period in addition to fixed charges proposed in the Reference Tariff."*
4. **Petitioners Request on Sales Tax on O&M Services:**
- i). SHPL vide the instant application also requested for an amount of Rs. 215.115 million (Fixed O&M Service Sales Tax of Rs. 180.800 million & Variable O&M Service Sales Tax of Rs. 27.735 million) as pass-through item, as imposed by the Govt. of AJ&K on O&M services.
 - ii). SHPL submitted that through AJK Finance Act, 2015 and Notification dated July 14, 2015; the Sales Tax on services is determined at the rate of 16%.
 - iii). SHPL submitted that since O&M Services Tax has been imposed after the determination of SHPL tariff, wherein SHPL could not have made a provision for the same in tariff, therefore, SHPL seeks the Authority to allow O&M Services Tax as a pass through item and tax reimbursable by the Buyer.





5. **Authority's Findings:**

- i). **Construction Services:** Based on the submitted documents, it was noted by the Authority that in pursuance to notice of the Assistant Commissioner Inland Revenue, Mirpur, AJ&K dated June 15, 2021, SHPL has paid an amount of Rs. 164.846 million as a Sales Tax on Construction Services to the EPC Contractor (Daewoo) during the period from July 2015 to December 2017. In support, SHPL has submitted tax notice, tax challan and bank instrument as a payment evidence.
 - ii). It has been noted that the exchange rates used by SHPL for the sales tax computations were beyond the Required Commercial Operations Date (RCOD) i.e March 20, 2017, therefore restricting the exchange rates to RCOD date reduced the sales tax claimed amount by Rs. 286,965. Also, an amount of Rs. 6.602 million pertain to the sales tax paid on additional payment under the EPC Cost (i.e USD 6.316 million) which was not part of the reference EPC Cost allowed. Further the Head Race Tunnel Adjustment cost of USD 1.969 million was restricted to USD 1.418 million in the COD Decision, therefore the sales tax will be reduced accordingly to the allowed cost, i.e by Rs. 576.130 million. The revised sales tax amount on construction services of SHPL after incorporating the aforesaid adjustments lead to Rs. 157.380 million as final allowed sales tax on construction services.
 - iii). **O&M Services:** The documents also revealed that a sum of Rs. 215.115 million has been paid by SHPL to its O&M contractor (K-Water). In support of its claim, SHPL has submitted invoices, Output figures and a summary sheet.
6. The Authority noted that in the previous cases, it has allowed Sales tax under fixed regime (non-adjustable @5%) imposed by Punjab Government to some IPPs. In the territory of AJ&K, 1124 MW Kohala HPP was allowed sales tax to be considered in COD and adjusted if such tax is non-refundable or non-adjustable in nature.
7. The Authority also observed that another project in AJ&K, 700 MW Azad Pattan HPP was also allowed tax to be considered and adjusted at COD if such tax is non-refundable or non-adjustable in nature. This decision was made in the decision of EPC review petition dated Oct 11, 2018 wherein CPPA-G also supported its inclusion in project cost and stated that "Sales tax and withholding tax on EPC contract may be considered and if applicable should be capitalized in the project cost". Both these projects (Azad Pattan and Kohala) are being developed under the umbrella of CPEC. The Authority observed that projects objected to initial high rate of non-adjustable sales tax of 5% and as a result of negotiation, the Govt. of AJ&K reduced the rates for CPEC projects to 1% through a Finance Division Govt. of AJ&K notification dated Jan 30, 2018 wherein "construction services for hydro power projects in AJ&K under CPEC arrangements" – "one percent subject to the condition that no input tax adjustment or refund shall be admissible".
8. Mira Power Limited (MPL) an AJ&K based hydro project was also given such assurance for adjustment of non-adjustable sales tax on services as given to CPEC projects. In view of the above, and keeping in view past precedence, the Authority opined that it can't discriminate SHPL with regards to treatment of sales tax on construction services therefore, it has decided to allow the same i.e. Rs. 157.380 million. However, SHPL shall ensure and certify that no refunds and no input tax adjustments are claimed under the head of sales tax on construction period.





9. With regards to SHPL request for allowance of the sales tax on O&M services, the Authority carefully considered the case and noted that NEPRA has not allowed this tax in past cases of IPPs as such taxes are adjustable in nature for which consumers can't be burdened hence it has decided in principle to disallow the sales tax on O&M services.
10. **Order:** Z R 157.380 7d
- i). In view of the above facts, the Authority allowed Rs. ~~164.846~~ million as a pass through item on account of sales tax imposed by Govt. of AJ&K at the rate of 1% on construction services as requested by Star Hydro Power Limited (SHPL).
- ii). The Authority did not allow Rs. 215.115 million as a pass through item on account of sales tax imposed by Govt. of AJ&K at the rate of 16% on O&M services as requested by Star Hydro Power Limited (SHPL) as it is an adjustable tax which shall be reimbursable by the entity imposing it i.e., Govt. of AJ&K.
11. The above Order of the Authority shall be notified in the official Gazette in terms of Section 31(7) of the Regulations of Generation, Transmission and Distribution of Electric Power Act, 1997.

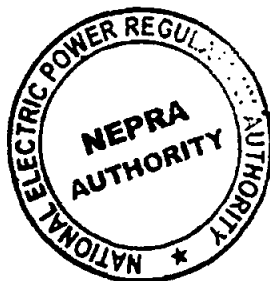
AUTHORITY

Engr. Maqsood Anwar Khan

Member

Rafique Ahmed Shaikh

Vice Chairman



Tauseef H. Farooqi

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REGISTRAR

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No. NEPRA/TRF-172/ 20529-31

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Subject: **NOTIFICATION REGARDING DECISION OF THE AUTHORITY IN THE
MATTER OF APPLICATION FOR RECOVERY OF SALES TAX ON
CONSTRUCTION SERVICES AND O&M SERVICES IMPOSED BY GOVT.
OF AJ&K - STAR HYDRO POWER LIMITED (SHPL) — 147 MW PATRIND
HYDRO POWER PROJECT**

In pursuance of Sub-Section 7 of Section 31 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997), enclosed please find herewith '*Decision of the Authority in the matter of Application for Recovery of Sales Tax on Construction Services and O&M Services Imposed by Govt. of AJ&K — Star Hydro Power Limited (SHPL) — 147 MW Patrind Hydro Power Project*' for immediate publication in the official gazette of Pakistan. Please also furnish thirty five (35) copies of the Notification to this Office after its publication.

Encl: Notification [5 pages & CD]


(Syed Safeer Hussain)^{21.10.22}

CC:

1. Chief Executive Officer, Central Power Purchasing Agency (Guarantee) Limited, 73 East, AKM Fazl-e-Haq Road, Block H, G-7/2, Blue Area, Islamabad
2. **Syed Mateen Ahmed**, Deputy Secretary (T&S), Ministry of Energy – Power Division, 'A' Block, Pak Secretariat, Islamabad [w.r.t. NEPRA's Decision issued vide No. 16522-16524 dated August 30, 2022]