



Registrar

National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/TRF-357/WAPDA(Hydro)-2016/14360-14362

October 19, 2016

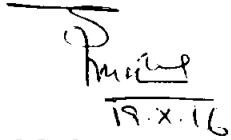
Subject: Decision of the Authority in the matter of Pre-admission Hearing with regard to Motion for Leave for Review filed by All Pakistan Textile Mills Association (APTMA) against the Decision of the Authority in the matter of Tariff Petition filed by WAPDA Hydroelectric for Payment of Net Hydel Profit (NHP) and Arrears to Province of KPK dated May 25, 2016 [Case No. NEPRA/TRF-357/WAPDA(Hydro)-2016]

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (04 Pages) in the matter of Motion for Leave for Review filed by All Pakistan Textile Mills Association for information and record.

Enclosure: As above

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


19.X.16
(Syed Safer Hussain)

CC:

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



DECISION OF THE AUTHORITY IN THE MATTER OF PRE- ADMISSION HEARING WITH REGARD TO MOTION FOR LEAVE FOR REVIEW FILED BY ALL PAKISTAN TEXTILE MILLS ASSOCIATION (APTMA) AGAINST THE DECISION OF THE AUTHORITY IN THE MATTER OF TARIFF PETITION FILED BY WAPDA HYDROELECTRIC FOR PAYMENT OF NET HYDEL PROFIT (NHP) AND ARREARS TO PROVINCE OF KPK DATED MAY 25, 2016 IN CASE NO. NEPRA/TRF-357/WAPDA (HYDRO)-2016

1. **Background**

1.1 WAPDA Hydroelectric filed a Supplementary Tariff Petition dated April 11, 2016 for determination of Tariff and Net Hydel Profit (NHP) payables of Province of KP. The Authority gave its Decision on May 25, 2016, in the matter of Tariff Petition filed by WAPDA Hydroelectric along with Payment of Net Hydel Profit and arrears to Province of KP hereinafter referred to as the "Impugned Decision". All Pakistan Textile Mill Association (APTMA) also participated in the proceedings as an intervener. APTMA subsequently on June 02, 2016 filed Motion for Leave for Review against the Impugned Decision requesting the honorable Authority to revisit its decision by disallowing the arrears amount prior to 2015-16 period and let Government of Pakistan pick up this cost as one time subsidy for the electricity sector.

2. **Pre-Admission Hearing**

2.1 The Authority considered the review motion of APTMA and decided to provide the petitioner a pre-admission hearing. Accordingly a pre-admission hearing was held on July 26, 2016 for which notice of hearing were also sent to the concerned stakeholders. The pre-admission hearing was attended by a nominated representative by APTMA Mr. Syed Akhlaq Ahmad.

2.2 In its petition, APTMA raised two issues:

- Retrospective recovery of Net Hydel Profit arrear which is unlawful.
- Recovery of the NHP arrear allowed to be recovered on the installed capacity of 6902.4 MW, which has never been functional and never available to consumers.

2.3 Having considered the submission of the Petitioner, the Authority concluded the following on the above issues raised by APTMA.

3. **Nature of Recovery Retrospective or prospective**

3.1 APTMA submitted that:

- The retrospective implementation is violation of the Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan and that bars from discriminatory treatment with any citizen. It is the contempt of the Supreme Court of Pakistan that has ruled retrospective implementation of levies as illegal and unlawful.



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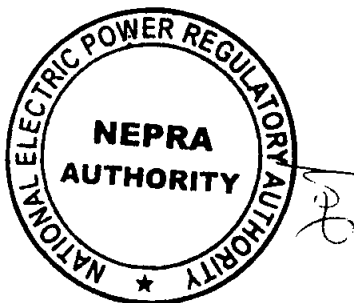


Decision of the Authority in the matter of Review filed by All Pakistan Textile Mills Association against the Authority Decision with regard to WAPDA Hydroelectric tariff application for Payment of Net Hydel Profit (NHP) and Arrears to Province of KP

- The retrospective implementation of the New Hydel profit rate determined by NEPRA in 2015-16 is a clear victimization of the new customers as to why their cost of electricity should include past cost of electricity which they never used. The Petitioner further questioned why not recovery should be made from the customers who have been disconnected from the system but used electricity in the previous years to which this cost relates.
- NEPRA determination to allow the billing of arrears of the NHP profit for the past periods before 1st July, 2015 to CPPA and recovery of the same from the electricity consumers in three years is unlawful since it does not ensure the principle of equity and fairness that lay down the basic foundation from 2015-16 onwards per NEPRA determination.

3.2 The Authority considered the arguments of the Petitioner and is of the opinion that CCI is the highest forum/body and its decision in this regard is binding on NEPRA. It is worth mentioning that the Authority in previous decision/determination has already made the same clear, which has not been objected by anyone so far and neither there is any dispute regarding this. With regards to retrospective application of NHP arrears amount which was raised by both AKLA & APTMA, it need to be noted that the recent decision of CCI dated February 29, 2016 does not state that the arrears amount is to be recovered on the previous years' WAPDA tariff. In fact CCI gave a clear periodic NHP payment to the Province of KP that will end in FY 2019. This means that the recovery of NHP arrear has to be done through the Petitioner's tariff in the years to come. The same was clearly stated in the Impugned Decision. It is therefore, again reiterated that the recovery is not retrospective but prospective in nature.

3.3 Although as a general rule based on fairness, consumers of electricity should only be made to pay for the services they receive and at the prevalent price of electricity generation, transmission and distribution. However due to dynamic nature of the market and several other constraints, this is not always practically possible. For example, consumers of electricity who at one point in time pay for the high capital cost of a large hydropower plant in its initial years of operation (through the price of electricity being consumed) may not be able to benefit from its low cost of energy generation several years later when the capital cost of the plant has been paid off. Similarly industrial and commercial consumers of electricity still cross subsidize domestic and lifeline consumers through higher tariffs. Hence, the recovery of unpaid Hydel profits from new customers is not unique instance on basis of which the Authority's decision can be reversed.





3.4 In view of the above, the argument/justification stated by APTMA is not valid and therefore, it is rejected.

4. **Recovery of NHP through fixed Capacity Charges**

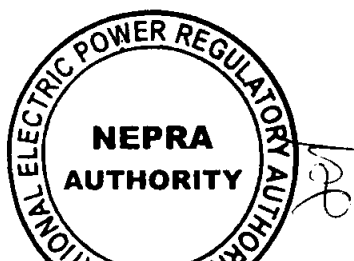
4.1 APTMA while referring to the para 12 of the Impugned Decision (reproduced below) submitted that the said order is unlawful because the Authority is authorizing the recovery on installed capacity of 6902.4 MW which has never been functional and never been available to customers, who have been taxed with fixed charges of Rs 301.8274/kW/Month for FY 2016 and next three years for the FY 2017, FY 2018 & FY 2019 Rs. 181.0964/kW/Month.

“Based on the aforesaid discussion, the petition for modification of tariff filed by WAPDA Hydroelectric is partially accepted and following additional tariff is hereby assessed for WAPDA hydroelectric on the basis of expected installed capacity of 6902.4 MW. This tariff would be subject to adjustment in case there is any change in expected installed capacity of 6902.4 MW during the respective applicable period”

4.2 In Authority’s opinion, it was made fairly clear in the Impugned Decision that to recover the full amount as a whole, the arrears are required to be treated under the capacity (fixed) charges rather than under the variable charges (generation based). It was so, because the generation based recovery will lead to either over or under recovery of the arrear amount, which will further complicate the matter and will result in another adjustment in the subsequent arrears. In the view of the foregoing, it was therefore; decided to recover NHP arrears amount through a capacity charge and not through generation.

4.3 With regards to recovery through capacity of 6902.4 MW, it needs to be understood that 6902.4 MW is expected capacity for the NHP arrear recovery period. And provision of the adjustment of tariffs based on actual year wise capacity is already provided in the determination. So it is incorrect to assume that 6902.4 MW is supposed to be fixed for the purpose of the NHP arrear recovery period that is to end in FY 2019.

5. Having heard the Petitioner in support of its Review Petition, the Authority observed that in terms of rule 16(6) of NEPRA Tariff Rules, 1998 read with regulation 3(2) of the NEPRA (Review Procedure) Regulations, 2009, a motion seeking 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. The perusal of a determination sought to be reviewed clearly indicates that all material facts and representation made were examined in detail and there is no occasion to amend the impugned Decision. No error inviting indulgence as





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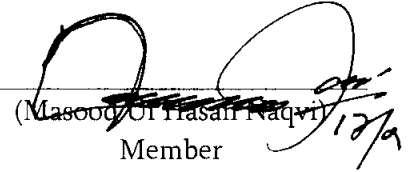
admissible in law has been pleaded out. Therefore, the Authority is convinced that the review would not result in the withdrawal or modification of its Decision.

6. 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.

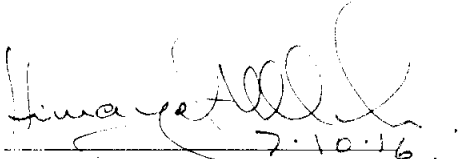
AUTHORITY



(Maj. (R) Haroon Rashid)
Member

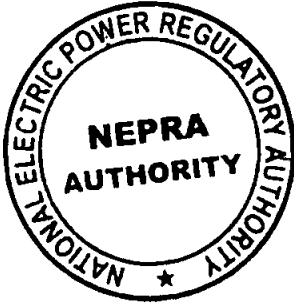


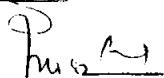
(Masood Ul Hasan Naqvi)
Member



(Himayat Ullah Khan)
Vice Chairman

(Brig. (R) Tariq Saddozai)
Chairman




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