



Registrar

**National Electric Power Regulatory Authority**  
**Islamic Republic of Pakistan**

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No. NEPRA/TRF-357/WAPDA(Hydro)-2016/8062-8064  
May 25, 2016

**Subject: 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 Khyber Pakhtunkhwa [Case No. NEPRA/TRF-357/WAPDA(Hydro)-2016]**

Dear Sir,

Please find enclosed the subject Decision of the Authority (12 pages) in Case No. NEPRA/TRF-357/WAPDA(Hydro)-2016.

2. The Decision is being 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 (XL of 1997).
3. Order of the Authority's Decision needs to be notified in the official gazette.

Enclosure: As above

( Syed Safer Hussain )

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.



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

**Background**

1. WAPDA Hydroelectric (hereinafter referred as "the Petitioner") had filed a petition for determination of Bulk Supply tariff for FY 2015-16 for sale of power to CPPA-G. After due process of law, the requisite tariff was determined by the Authority on November 13, 2015. In the said determination, the matter of payment of Net Hydel Profit (NHP) to the Government of Khyber Pakhtunkhwa was also considered and pursuant to the minutes of the meeting held on the side line of 8th NFC dated March 14, 2013, the Petitioner was allowed Net Hydel Profit (NHP) at a rate of Rs 1.10 /kWh as an interim measure on the generation of power plants located in the province of KPK. Through that arrangement the amount of NHP payable to the Government of Khyber Pakhtunkhwa was increased from Rs 6 billion to Rs 18.7 billion.
2. Subsequently on April 11, 2016, the petitioner filed a Supplementary Tariff petition before NEPRA seeking revision of already determined amount of NHP on the following grounds:-

That Government of Pakistan and Government of KPK held a meeting and signed a MoU on February 25, 2016 on certain issues, including settlement of past arrears on account of NHP. Subsequently, the MoU was referred to the Council of Common Interest (CCI), and CCI in its decision during the meeting dated 29th February 2016 gave concurrence to the MoU. The relevant item of the MoU as indicated in para 1 (b) & (c) are reproduced below:

*1 (b) A total amount of Rs 70 billion has been agreed upon on account of arrears of uncapped NHP after reconciliation of mutual claims in the power sector between the two governments as full and final settlement; and,*

*(c) WAPDA, after seeking concurrence of CCI through the Ministry of Water and Power, would file a tariff petition for recovery of the arrears in four installments as follows: (i) Rs 25 billion in current fiscal year and (ii) Rs 15 billion each in the next 3 years;*

The petition was examined and it was noted that there is no provision of filing a "Supplementary" tariff under the applicable NEPRA's law, however, a petition for modification or revision of tariff could be filed, therefore, the petition was considered as a petition for modification of already determined tariff and accordingly the same was admitted for further process.

*(Signature)*

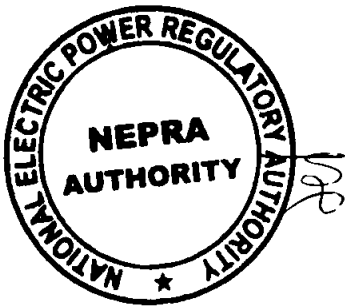




Decision of the Authority in the matter of Tariff Petition filed by WAPDA Hydroelectric for Payment of Net Hydel Profit (NHP) and Arrears to Province of KPK

Salient Feature of the Petition

3. As per the petitioner, the revised Bulk Supply Tariff for FY 2015-16 for WAPDA Hydroelectric was notified by the Federal Government on 7<sup>th</sup> March 2016, therefore, it could not bill NHP at the revised rates till 6<sup>th</sup> March 2016. As per the Petitioner, NHP arrears up to 6<sup>th</sup> March 2016 during FY 2015-16 (current year) works out to Rs.9,298 million, whereas, Rs.25, 000 million pertains to past years, NHP arrears have been agreed by GoP in the MoU which will be payable to GoKPK in FY2015-16. Therefore, the total amount of NHP arrears comes as Rs.34, 298 million, which has to be recovered through tariff on the projected generation of Hydel power stations situated in KPK during the remaining period from 7<sup>th</sup> March 2016 to 30<sup>th</sup> June 2016 of FY 2015-16.
4. The Petitioner revised the request on April 21, 2016 wherein, it included Rs 15 billion NHP arrears related to FY 2017 and Rs 1.875 billion on account of interest on Rs 25 billion loan in addition to the total claim of Rs 34,298 million. In the revised petition, instead of recovering the total NHP related cost in the current financial year, the Petitioner proposed to recover it in one year from date of revised notification in addition to the regular tariff. The Petitioner has requested for an additional overall tariff of Rs 3.01/kWh based on the following working:





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NHP	Period	Generation	Rate	Amount		
				To be billed	Billed/Paid @ Rs 6000 Mln p.a	Recoverable for KPK
1	(FY 2015-16)	(GWh)	(Rs/kWh)	(Mln Rs)	(Mln Rs)	(Mln Rs)
	2	3	4	5 = (3 x 4)	6 = (6000+360x246)	7 = (5 - 6)

Current Year Arrears (Due to late notification)	01 Jul - 06 Mar	12,180	1.10	13,398	4,100	9,298
Past years' Arrear for FY 2016				25,000	-	25,000
Mark up @ 7.5% on loan of Rs 25 billion for FY 2016						1,875
Past arrears for FY 2017						15,000
<b>Total Arrears</b>						<b>51,173</b>
Generation (Gwh) (Annual generation of power plants located in KPK)						17,004
Average Rate (Rs/kWh)						3.01

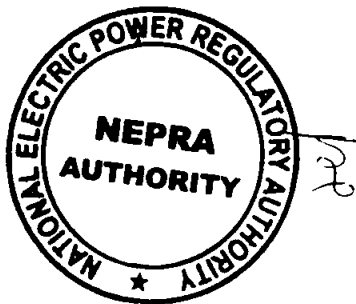
Proceedings

- Notice of admission and salient features of the petition were published in the national newspapers on April 28, 2016 for information of all concerned and the notices were also issued to the stakeholders who are considered to be affected or interested. Filing of intervention requests or comments was solicited from the affected/interested persons within 7 days of the publication. The Authority also decided to hold a hearing of the parties on May 05, 2016 for which notice of hearing was also published in the national newspapers.
- In response to the notices, intervention requests were filed by M/s Anwar Kamal Law Associates (AKLA) and All Pakistan Textile Mills Associations (APTMA). The requests were accepted by the Authority and the interveners were permitted to participate in the proceedings. The respective concerns raised by the interveners inter-alia are as under:-

AKLA Intervention

- The term "Supplementary Tariff" is not mentioned in the applicable law or the applicable documents, therefore, the petition for supplementary tariff is not maintainable..

*[Handwritten signature]*



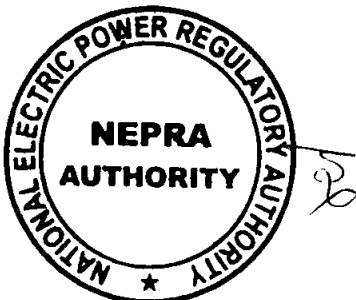


Decision of the Authority in the matter of Tariff Petition filed by WAPDA Hydroelectric for Payment of Net Hydel Profit (NHP) and Arrears to Province of KPK

- ii. AKLA expressed grievances over the increase of rates of hydroelectric tariff as Gas Tariff has already been increased by 2%. This increase in hydro tariff, according to AKLA, will be detrimental to Pakistan industry to remain globally competitive.
- iii. This kind of decisions will damage the greater national interest of the country as it will lead to individualism and the consumer of other part of the country will suffer and will start thinking of narrow self-interest.
- iv. AKLA has mentioned that WAPDA Hydroelectric has not only asked, for 'Supplementary Tariff' but has also asked for retrospective Tariff. By allowing the imposition of this closed and past transaction would be opening the floodgates of litigation.
- v. AKLA however, informed that the issue of NHP was considered and decided in the Council of Common Interest (CCI) and the present process is only a stage in implementation, for the purposes of record AKLA stated that this decision will impact the economy of Pakistan adversely and will set a principle which will also be adopted by Punjab and the AJK.
- vi. AKLA pointed out that CCI is not a forum of technical, financial, economic and legal professionals. AKLA implied while making this decision, that CCI was not briefed properly by the relevant party and thus was unaware that NHP decisions will have an adverse impact on the country as a whole. Therefore, AKLA requested the Authority that before implementing the decision, it must move a summary for the CCI and give a detailed briefing to the CCI on the economic and political issues which may arise as a consequence of the implementation of this decision.

APTMA Intervention

- i. APTMA questioned the un-called and illegal demand of Rs 41.875 billion rupees requested by the Petitioner to be included in its revenue requirement for 2015-16 on account of past year hydel profit to the KPK provincial government to be passed through to power consumers who are already burdened with surcharges to





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pay for the various inefficiencies and socio-political obligation of the GoP.

- ii. APTMA submitted that from the CCI decision regarding the NHP, the intention is very clear that it is a forward looking charge as far as the recovery of cost on this account from customers is concerned. However, when NEPRA approved the NHP rate as Rs. 1.1/kWh, the MOWN&P in collaboration with WAPDA worked out the arrears amount and decided to recover it from the customers. Working out of the arrears may be correct, but it is a liability that cannot be underwritten by the consumer.
  - iii. APTMA is of the opinion that arrear amount should instead be paid by the Federal Government
  - iv. APTMA further submitted that APTMA Member Mills are all corporate entities and close their books each financial year. Consequently, there are no provisions at all to cater for any claims for the periods which are considered as past and closed transactions.
7. The pleadings available on record was duly examined by the Authority and following issues were framed to be considered and deliberated during the course of hearing:-
- i. Whether the nature of NHP arrears amounting to Rs 25 billion and Rs 15 billion is fixed (installed capacity based) or variable (unit generation based)? If it is variable should it be applied to KPK generation as proposed or otherwise?
  - ii. NHP calculated on the basis of interim measure at Rs 1.10 per kWh applicable on KPK generation has already been incorporated in the Petitioner's Bulk Supply tariff for FY 2016. Therefore, Whether Rs 9.298 billion claimed on account of current NHP should be reconsidered at this stage or at the time of next tariff petition
  - iii. Whether the interest on loan for one year amounting to Rs 1875 million related to Rs 25 billion is justified?





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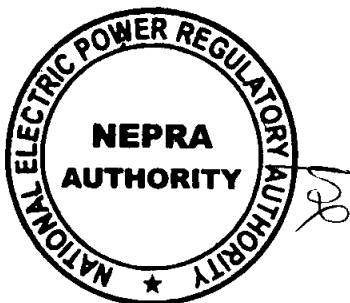
8. As per schedule, the hearing was conducted on May 05, 2016 wherein the representatives of the petitioner, Punjab Power Development Board (PPDB), NTDC, APTMA, and Pakhtunkhwa Energy Development Organization (PEDO) participated.
9. Having considered the submission of the Petitioner, comments of the interveners and commentator, the issue-wise finding of the Authority is given in the following paragraphs.

Issue No. 1

Whether the nature of NHP arrears amounting to Rs 25 billion and Rs 15 billion is fixed (installed capacity based) or variable (units generation based)? If it is variable should it be applied to KPK generation as proposed or otherwise?

10. *As per the petitioner*, NEPRA determined Bulk Supply Tariff for WAPDA Hydroelectric for FY 2015-16 on 13th November 2015 in which NEPRA allowed Rs.18,704 million as an interim arrangement against previously allowed Rs.6,000 million as NHP to the KPK province. The nature of this component of Revenue Requirement was also changed from fixed to variable and NHP amount of Rs 18,704 million was assessed by applying rate of Rs.1.10/kWh on the projected generation of 17,004 GWh during FY 2015-16 from Hydel power stations situated in KPK.
11. *On the same analogy*, the nature of NHP arrears amounting to Rs 25 billion and Rs 15 billion is variable and it should be applied to KPK generation as hydel related charges as proposed by WAPDA in the supplementary tariff petition.
12. *During the course of hearing*, the main emphasis of the interveners was that the financial liability to pay the NHP could not be made with retrospective effect. It may be clarified that any deliberation upon that aspect would tantamount to questioning the vires of a decision of apex constitutional forum for the sector and may be beyond the scope of the powers and functions of NEPRA. The Authority considered that the amount of NHP arrears amounting to Rs 70 billion as approved by the CCLin its meeting dated February 29, 2016 is a fixed amount that has to be paid to the Province of KPK in the following years.

- Rs 25 billion in 2016



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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

- Rs 15 billion in 2017
- Rs 15 billion in 2018
- Rs 15 billion in 2019

13. In Authority's opinion, 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). 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 is decided that that the amount of NHP arrears shall be recovered through a capacity charge and not through generation.

Issue No.2

NHP calculated on the basis of interim measure at Rs 1.10 per kWh applicable on KPK generation has already been incorporated in the Petitioner's Bulk Supply tariff for FY 2016. Therefore, Whether Rs 9.298 billion claimed on account of current NHP should be reconsidered at this stage or at the time of next tariff petition?

14. It is contended by the petitioner that NEPRA while incorporating NHP amount of Rs 18,704 million by applying rate of Rs.1.10/kWh on the projected generation of 17,004 GWh during FY 2015-16 from Hydel power stations situated in KPK also directed WAPDA at Para-66 in its determination dated 13th November 2015 to bring the matter of Net Hydel Profit (NHP) payable to provinces before the Council of Common Interests (CCI), through Ministry of Water & Power.
15. The petitioner further explained that on 25th February 2016, in a meeting chaired by Federal Minister Finance; Government of Pakistan, represented by the Minister for Water & Power and the Government of Khyber Pakhtunkhwa (KPK) represented by the Chief Minister, KPK agreed and signed a MoU (Annexure-I of the Petition) on certain issues including un-capping of NHP payable to KPK and settlement of past arrears on this account, which was countersigned by the Federal Minister Finance. Subsequently, CCI in its decision during the meeting dated 29th February 2016 (Annexure-II of the Petition) has given concurrence to the MoU and directed WAPDA to file a tariff petition as agreed in the MoU.







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16. In view of above the decisions it has become obligatory on WAPDA to pay NHP @ Rs.1.10/kWh on the projected generation of 17,004 GWh during FY 2015-16 from Hydel power stations situated in KPK. The revised Bulk Supply Tariff for FY 2015-16 determined by NEPRA was notified by GoP on 7th March 2016, therefore, WAPDA Hydroelectric could not bill NHP at the revised rates till 6th March 2016, resultantly, NHP arrears up to 6th March 2016 during FY 2015-16 (current year) accumulated to Rs.9,298 million.
17. Recovery of current year NHP arrears of Rs.9,298 million has been sought by WAPDA through this petition for modification of already determined tariff over a spread of one year from date of notification in addition to regular tariff for NHP already determined by NEPRA in Bulk Supply Tariff determination dated 8th January 2016, which will streamline the NHP payments as well as avoid the complications of Regulatory Revenue Gap in future.
18. Having considered the respective contentions of the parties, in the opinion of the Authority, the MoU – signed between the Federal Government and Government of KPK and as endorsed by CCI on February 29, 2016 – has only given its decision on previous NHP arrears and it has not made any decision on NHP (rate) to be used for future NHP calculation. The Petitioner has informed that NHP amount, calculated on the basis of Rs. 1.10 kWh applicable on KPK generation, currently has left over amount of Rs 9.3 billion. It was noted that the amount of Rs 9.3 billion has risen due to late notification of the Authority's decision in case of WAPDA Hydroelectric Bulk supply tariff for FY 2016, hereinafter referred to as "the Determination". The Determination clearly provides an adjustment of the arrear amount (in the next tariff petition) on account of NHP payment at a rate of Rs 1.10/kWh. In view thereof, Rs 9.3 billion is therefore, being disallowed at this stage and instead shall be adjusted at the time of next tariff petition based on the actual unit generated during FY 2016 from the power plant located in the Province of KPK.

Issue No.3

Whether the interest amounting to Rs.1,875 million related to Rs.25 billion is justified?

19. It is the submission of the petitioner that as per agreed MoU, it is mandatory to pay Rs.25 billion to GoKPK by end of the current fiscal year i.e. FY 2015-16. Keeping in view the

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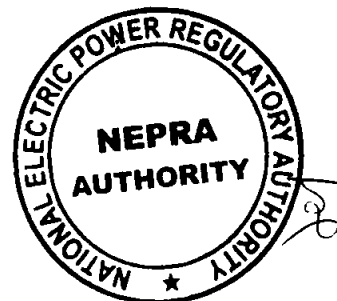
processing time required for determination of tariff, it will be however, difficult to arrange the requisite amount through tariff in the remaining period of the current Fiscal Year. Moreover in case the Rs.25 billion may be built-in the tariff petition such that to ensure recovery in remainder of the months during the current Fiscal year, it would increase the consumer-end tariff substantially.

20. Therefore, subsequent to the follow up meeting of the Finance Minister with the Ministry of Water and Power and GoKPK and in view of the timelines agreed in the MoU, WAPDA was directed vide Ministry of Water & Power letter dated 28th March 2016 to take up a loan of the same amount and subsequently take the amount of principal and servicing of the loan in the tariff petition. Accordingly, WAPDA in consultation with Ministry of Finance and Ministry of Water & Power has arranged a bank loan for payment of NHP arrears at the mark-up cost of 7.5% per annum (approximately) translating into tentative mark-up cost of Rs.1,875 million which may be trued up in the NHP arrears installment of Rs.15,000 million for FY 2017-18 and justly claimed by WAPDA in the supplementary tariff petition.

21. According the Petitioner, in pursuance to CCI decision, WAPDA Hydroelectric is bound to pay the Rs 25 billion in the current financial year i.e. FY 2016. For this purpose, the Petitioner has been asked by the Ministry of Water and Power through a letter dated March 20, 2016 that

*"...to build Rs 25 billion in the tariff petition, WAPDA may take up a loan of the same amount and subsequently take the amount of principal and servicing of the loan in the tariff petition. Further, a summary to CCI may be drafted to include the financial cost incurred in taking up the loan of Rs 25 billion in the settled amount of Rs 70 billion."*

22. It may be noted that the Petitioner revenue requirement approved for FY 2016 is ~ Rs 89 billion. The revenue requirement covers the expense and WACC based return on investment. Therefore, the Petitioner doesn't have the capacity to pay the 25 billion in the current FY to KPK out of his own revenue stream. If the Petitioner is required to pay the arrear amount of Rs 25 billion in the current fiscal year to Go KPK through a loan, then as a matter of principle, interest cost will be a prudent and justifiable cost which would be risen due to implementation of the CCI decision for which the Petitioner cannot be held liable. Having said that, in our opinion, since the Federal Government has





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already agreed to include the interest charge through CCI, in the agreed NHP arrears of Rs 70 billion in the coming period, therefore, Rs 1.875 billion or actual interest cost may be allowed when the backing of CCI becomes available. As CCI undisputedly, is the right forum to deal in the matter related to NHP payable to the provinces including matters related to NHP financing cost. In view thereof, the request for allowance of interest cost amounting to Rs 1.875 billion is disallowed

Other Issues

23. The interveners didn't specifically provide their comments on the three issues framed for the proceedings. However, they raised an issues concerning recovery of NHP arrears which is discussed hereunder:

Nature of Recovery Retrospective or prospective

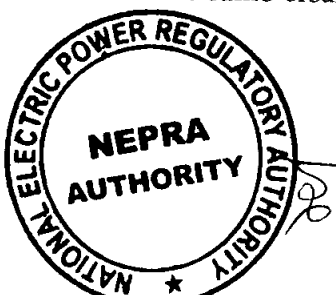
24. On the issue of the recovery of NHP, it is the contention of AKLA that WAPDA Hydroelectric has asked the recovery of arrears to be retrospective and by allowing so, it would be opening the floodgates of litigation. Moreover APTMA has also pointed out that retrospective recovery of arrears is unjustified, imprudent and against the verdict of Supreme Court and if allowed will open a new Pandora box.

25. The need of NHP to be paid to the Province arises because of the constitutional provision 161 (2) which is reproduced hereunder:

*The net profits earned by the Federal Government or any undertaking established or administered by the Federal Government for the bulk generation of power at a hydroelectric station shall be paid to the province in which the hydroelectric station is situated.*

*Explanation: Net Profit shall be computed by deducting from the revenues accruing from the bulk supply of power from the bus-bars of a hydroelectric station at a rate to be determined by the Council of Common Interests (CCI), the operating expenses of the station which shall include any sums payable as taxes, duties, interest or return on investment and depreciations and element of obsolescence, and overheads and provision for reserves.*

26. CCI being the highest forum/body and its decision in this regard is binding on NEPRA. It is worthy to mention that the Authority in previous decisions/determination has already made the same clear, which has not been objected by anyone so far and neither there is

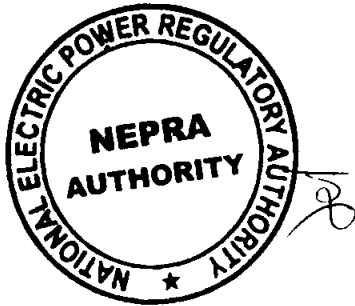




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any dispute regarding this. AKLA & APTMA needs to realize that the recent CCI decision dated February 29, 2016 does not state that the arrears amount is to be recovered on the previous years' WAPDA tariff. In fact CCI gave a clear periodic NHP payment to the Province of KPK that will end in FY 2019. This means that the recovery of NHP arrear has to be done through the Petitioner' tariff in the years to come. This means that the recovery is not retrospective but prospective in nature. In view of the above, the argument/justification stated by AKLA & APTMA is not valid and is not accepted.

27. It was also considered that the CCI has already provided the yearly NHP payment mechanism that will end in 2019. It was realized that instead of seeking a separate petition each time from the Petitioner for the recovery of remaining amount of Rs 15 billion each for FY 2018 & FY 2019, it would be in fitness of things to also give a recovery mechanism of the remaining amount of NHP arrear through Petitioner's tariff. This will also encompasses the spirit of CCI decision in to-to. Therefore, the following tariff have been allowed to the Petitioner to recover a total of Rs 70 billion in 3 years.





Decision of the Authority in the matter of Tariff Petition filed by WAPDA Hydroelectric for Payment of Net Hydrel Profit (NHP) and Arrears to Province of KPK

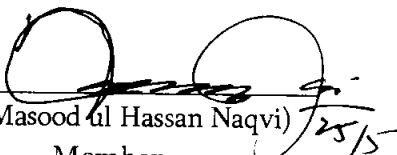
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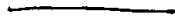
1. Based on the aforesaid discussion, the petition for modification of tariff filed by WAPDA Hydroelectric is partially accepted and following additional tariff is hereby assessed for WAPDA hydroelectric on the basis of expected installed capacity of 6902.4 MW. This tariff would be subject to adjustment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

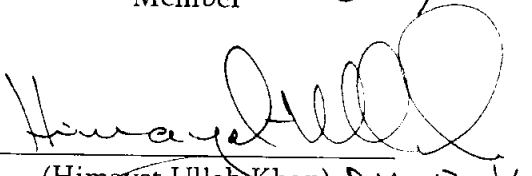
WAPDA Hydro Electric Tariff	Rs/kW/Month	Applicability
NHP payable to KPK for FY 2016 (Rs 25 billion)	301.8274	12 months from the date of notification
NHP payable to KPK for FY 2017 (Rs 15 billion)	181.0964	12 months from the date of notification
NHP payable to KPK for FY 2018 (Rs 15 billion)	181.0964	July 01, 2017 to June 30, 2018
NHP payable to KPK for FY 2019 (Rs 15 billion)	181.0964	July 01, 2018 to June 30, 2019

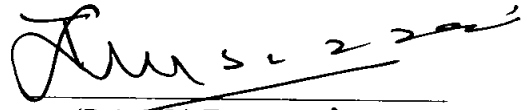
2. This order is to be intimated to the Federal Government for notification in the official gazette under section 31 (4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 which will be in furtherance to the already notified tariff vide notification No. 191(I) 2016, dated March 07, 2016.

AUTHORITY

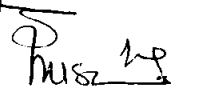
  
(Syed Masood ul Hassan Naqvi)  
Member

  
(Maj. (R) Haroon Rashid)  
Member

  
(Himayat Ullah Khan)  
Vice Chairman/Member

  
(Brig. (R) Tariq Saddozai)  
Chairman



  
P. Hussain  
25.05.16