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No. NEPRA/R/ADG(Trf)/TRF-587/GoKPK-2022/24045-24047
December 29, 2022

Subject: **Decision of the Authority in the matter of Motion for Leave for Review filed by GOPB against Authority's Decision dated September 9, 2022 regarding Modification Petition filed by GOKPK regarding WAPDA Hydroelectric Tariff Petition for FY 2020-21 [Case # NEPRA/TRF-587/GoKPK-2022]**

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (15 Pages) in the matter of Motion for Leave for Review filed by GOPB against Authority's Decision dated September 9, 2022 regarding Modification Petition filed by GOKPK regarding WAPDA Hydroelectric Tariff Petition for FY 2020-21 in Case No. NEPRA/TRF-587/GoKPK-2022 for information.

Enclosure: As above


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(Syed Safer Hussain)

Secretary
Ministry of Energy (Power Division)
'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 MOTION FOR LEAVE FOR
REVIEW FILED BY GOPB AGAINST AUTHORITY'S DECISION DATED SEPTEMBER 9,
2022 REGARDING MODIFICATION PETITION FILED BY GOKP REGARDING WAPDA
HYDROELECTRIC TARIFF PETITION FOR FY 2020 – 21**

INTRODUCTION

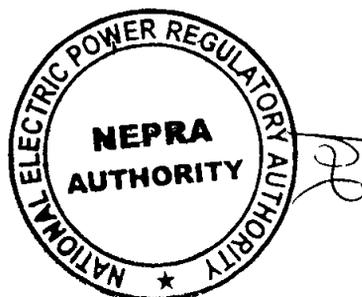
1. The Authority on September 9, 2022, issued decision in the matter of modification petition filed by Government of KPK (hereinafter referred to as the “**GoKP**”) regarding WAPDA Hydroelectric’s Tariff Petition for FY 2020 – 21 (hereinafter referred to as the “**Impugned Decision**”).
2. The Authority, in the above mentioned decision decided to approve 5% annual indexation of Net Hydel Profit (NHP) over the rate of Rs. 1.10/kWh to the Government of Khyber Pakhtunkhwa and Government of Punjab w.e.f. FY 2015-16 and FY 2016-17, respectively, subject to its adjustment, if any, in light of the CCI decision.
3. Further, the Authority, in the above mentioned decision directed the Government of Khyber Pakhtunkhwa to move / pursue its summary before CCI in order to secure explicit approval, in the matter and till receipt of any CCI order /decision in the matter, 5% annual indexation of NHP shall be continued. The Chairman NEPRA through its note provided observation on decision and stated that “*GOKP to bring the summary in the next CCI meeting for their explicit approval as agreed in the Regulatory Meeting else NEPRA reserves the right to seek CCI approval on its own*”. The decision of the Authority was notified on October 21, 2022.
4. Subsequent to the issuance of the decision of the Authority, the Government of Punjab, vide Energy Department’s letter dated September 14, 2020, provided its tabulated comments to the CCI and submitted that the substance of the case of annual indexation of NHP narrated by GoKP was not based on facts and that the attached tabulated reply of Government of Punjab may be taken up in the upcoming CCI meeting for the final decision by the CCI.

FILING OF REVIEW MOTION

5. The Energy Department of Government of Punjab (hereinafter referred to as the “**GoPb**”, or the “**Petitioner**”), being aggrieved of the aforementioned decision of the Authority, vide letter dated September 16, 2022, submitted motion for leave for review (hereinafter referred to as the “**MLR**”).
6. The MLR was admitted by the Authority in RM 22 – 530, held on October 12, 2022.

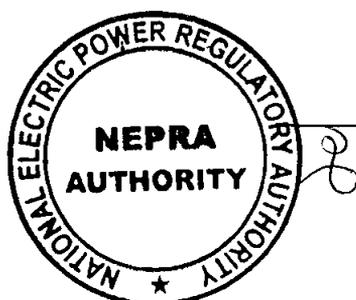
GROUND OF MLR

7. A summary of the grounds of the MLR is presented in the coming paragraphs.



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8. According to the Petitioner, the Authority has taken the Impugned Decision arbitrarily, in a hurried manner and not granted fair opportunity to GoPb to submit rejoinder to the response given by the GoKP to its submission contained in the intervention request.
9. According to the Petitioner, the approved 5% indexation in the Impugned Decision shall have major impact of increase in tariff to upon 70% of consumers and that consumers of Punjab are already bearing some of the unwarranted factors of power sector including theft, line losses and low recoveries by DISCOs.
10. The Petitioner submitted that GoKP has already circulated a draft summary dated December 28, 2021, for consideration of CCI and sought approval of determination of regular NHP @ Rs. 1.1/kWh with 5% indexation including arrears from FY 2015 – 16 as decided by CCI in February 29, 2019. The Petitioner submitted that it had provided its comments and pointed out that CCI has not approved 5% indexation to interim NHP rate of Rs. 1.1/kWh and that it is evident from the gazette notification that NHP @ Rs. 1.1/kWh was applicable for FY 2016 on the generation of power plant(s) located in KP.
11. The Petitioner further submitted that the proposed 5% indexation on Rs. 1.1/kWh from FY 2015 – 16 will increase to the rate of Rs. 13/kWh over time during economical useful life of 50 years of a hydel power station overstraining the end-consumers of Punjab. Therefore, according to the Petitioner, thorough deliberation is required to be done with respect to the rationale and logic of the proposed annual 5% indexation and its financial impact on the tariff.
12. The Petitioner submitted that it feels the interim approval of NHP and its parent formula i.e., AGN Kazi Committee Computation Methodology endorsed by CCI are inconsistent with the provision of Article 161(2) of the Constitution of Pakistan and that this formula has been challenged at various forums and that a special committee has been formulated to review it. Therefore, according to the Petitioner, till its finalization, such determination of indexation in favor of GOKP puts justice and fair-play on guards.
13. According to the Petitioner, for the purpose of 49th meeting of the CCI, the agenda of 5% indexation of NHP was not included in the notice of CCI's meeting and neither a working paper was received by GoPb. Further, according to the Petitioner, the GoKP in its modification petition stated that the CCI in its minutes of meeting has endorsed the view point of GoKP and approved the annual indexation of NHP at 5% based on decision of 49th meeting on CCI. However, according to the Petitioner, the Authority's order in the Impugned Decision was unfounded as the CCI has asked to place agenda of GoKP's assertion of NHP indexation in next meeting, but the Authority is deciding the case on the basis of what was neither discussed nor debated or consulted in the CCI meeting. According to the Petitioner, such hasty decisions put the impartiality of the Authority under serious question while the interests of people of the larger province were put on jeopardy.
14. The Petitioner further submitted that GoPb in its intervention request against the Impugned Decision pointed out that GoKP has misinterpreted the decision of CCI and that 5% annual indexation has never been approved by the CCI. Despite that, the Petitioner submitted that



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the Authority instead of applying judicious approach, rendered the Impugned Decision, ignoring the contention of GoPb.

15. According to the Petitioner, the Authority by taking the Impugned Decision has overstepped its mandate as the competent forum for the decision in this matter in CCI. According to the Petitioner, the GoPb strongly feels that the Authority has no power to take such decision, when the matter is already pending in the CCI and that by doing so, the Authority has gone against its own understanding depicted in its determination dated November 17, 2017, which is reproduced hereunder:

“--- NEPRA cannot be any stretch of imagination assume the CCI's Constitutional jurisdiction and provide a determination on the subject matter----”

16. The Petitioner further highlighted the Authority's observation made in its determination dated August 23, 2021, which are reproduced hereunder:

“--- in the opinion of the Authority there is a need to bring clarity on the issue of indexation of NHP rate for both province of KP and Punjab---”

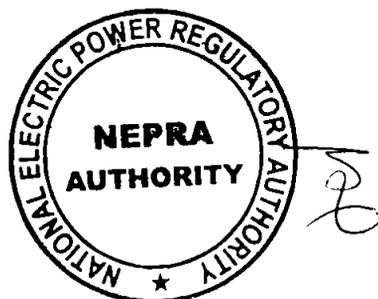
17. Given the above, the Petitioner has requested the Authority to:

- a. To review impugned determination dated 09.09.2022 while considering the submissions, reasoning and justifications —prudently dilated upon, in the preceding paragraphs.
- b. The Authority may suspend the impugned determination, refrain from notifying it in the official gazette, hold its operations in the larger interest of people of Pakistan and maintain its earlier decision dated 23.08.2021 till an unequivocal decision by the CCI on the subject.
- c. Any other relief deemed necessary for equitable and legal disposal of review motion, may be granted.

HEARING

18. Hearing in the matter was originally scheduled to be held on October 24, 2022, for which invitations to individual stakeholders were issued on October 14, 2022. However, the Petitioner, vide letter dated October 21, 2022, requested adjournment of the said hearing for one month.
19. Accordingly, the said hearing was re-scheduled and fixed for November 22, 2022 at 11:30AM. Individual invitations were issued on October 26, 2022 to stakeholders that were party to the proceedings of the Impugned Decision.

COMMENTS RECEIVED



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20. In response to the MLR filed by the Petitioner, the GoKP, vide letter dated October 21, 2022, submitted its response according to which GoPb has been given multiple opportunities of hearing and that indexation of NHP is already approved by the CCI hence the Authority has not exceeded its mandate. GoKP's detailed comments are being reproduced hereunder:

S/N	GOPB COMMENTS	GOKP RESPONSE
1	<p>The decision of NEPRA is discriminatory, slipshod, deception to the cardinals of justice and inherently devoid of merit. It has been taken arbitrarily and in a hurried manner. This is an established principle of law that no one can be condemned unheard. NEPRA should have decided the case judiciously while assessing the evolving events in the case. NEPRA has not granted fair opportunity to the Government of Punjab in the case to submit rejoinder to the response given by GoKP to our submissions contained in intervention request.</p>	<p>The GoPb has been given multiple opportunities of hearing and the allegation is unfounded.</p>
2	<p>The application of 5% annual indexation of NHP announced w.e.f. 2015-16 and 2016-17 to the GoKP and the Punjab respectively entails great implications for the electricity consumers of Punjab. The major impact of increase in tariff will be contingent upon 70% of electricity consumers of the country who are already suffering due to the high cost of electricity.</p>	<p>Correct to the extent that GoPb is consuming more than 70% of electricity.</p> <p>However, Punjab electricity demand is more than its production. Punjab is only producing approx. 52000 GWh through National Grid Generation but consuming approximately 70000 GWh in total (Energy Year Book & State of Industry Report). All the additional power is supplied from the other provinces, specially from Khyber Pakhtunkhwa. The Khyber Pakhtunkhwa exports half of its energy from the hydel power stations situated in Khyber Pakhtunkhwa, to Province of Punjab. This affordable clean and green energy not only fulfill the demand of Punjab but also subsidizes the unit price of the expensive thermal generating plants in Punjab.</p> <p>GoPb desire to give relief to the general public cannot be fulfilled by generating expensive energy through imported fuel but</p>

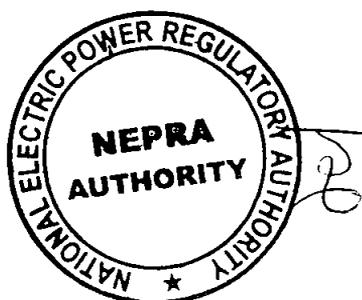


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		<p>the GoPb need to focus on the generation of electricity through renewable energy. Public of the country in general and public of Punjab particularly are facing huge hikes in the electricity prices due to these thermal, coal & RLNG plants. Such short-term solutions need to be eliminated permanently. This issue was also heightened / pointed out in the Report on Power Sector, prepared by the Committee for Power Sector Audit, Circular Debt Resolution & Future Roadmap</p>
3	<p>The consumers of Punjab are already bearing the cost of some unwarranted factors in the power sector such as heavy theft of electricity, huge line losses and low recoveries by DISCOs in other provinces</p>	<p>This is not relevant to instant Petition of the GoKP for the indexation of the NHP which is providing the cheapest source of electricity to the national grid</p>
4	<p>The GoKP has already circulated a draft summary dated 28.12.2021 titled as "Approval of indexation on the Net Hydel Profit as decided by NEPRA Authority on the matter of WAPDA Hydroelectric for FY 2020-21" for the consideration by the CCI. At paragraph 7 of the draft summary, the CCI has been requested to approve as follows: <i>Issue of directions to determine regular NHP @ Rs. 1.10 per kWh with 5% annual indexation including adjustment of previous arrears from FY 2015-16, as was decided by the CCI dated February 29, 2016 while endorsing the MOU signed between GoKP and Federal Government</i></p> <p>In response, GoPb provided its comments and pointed out that CCI in its decision dated 29.02.2016 has not approved 5% annual indexation to interim NHP rate of Rs 1.10 per unit. The validation of rate of Rs. 1.10/kwh determined by NEPRA in its decision dated 23.11.2015 is evident from the Federal Government gazette notified through SRO# 191 dated 71k March 2016. As per said gazette notification, NHP (& Rs 1.101 kWh was applicable for FY</p>	<p>The Government of Punjab misinterpreted the Constitution, the exact clause of the Article 161 (2) is reproduced as under:</p> <p><i>"The net profits earned by the Federal Government, or any undertaking established or administered by the Federal Government from the bulk generation of power at a hydro-electric station shall be paid to the province in which the hydro-electric station is situated"</i></p> <p>The NEPRA through review determination dated 23rd August, 2021 accepted the plea of GoKP on interim basis by allowing indexation at 5% for a period of six months along with arrears subject to CCI guideline on the issue of NHP and indexation. The NEPRA further directed that "GoKP shall approach CCI to obtain clear guidelines on the issue of NHP and indexation (if any) within six months of notification of this decision, till such time:</p> <p>(a). "NHP Regular" rates as stated shall be applicable. In case the Petitioner failed to obtain explicit decision of CCI on NHP and its indexation (if any) then the "NHP</p>



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	<p>2016 on the generation of power plant(s) located in KP.</p>	<p>Regular" shall be paid at Rs. 1.10 per kWh to the above-mentioned plants other than Mangla.</p> <p>(b). "NHP Arrears" as stated shall be applicable. In case the Petitioner failed to obtain explicit decision of CCI on NHP then no payment shall be charged on this account, however, for Gomal Zam dam, "NHP arrears" shall be paid at Rs. 454,646 per kWh per month" As per the directions of NEPRA authority, GoKP (the Petitioner) approached the CCI to obtain clear guidelines on the issue of NHP and 5% indexation. The CCI dated 13th January, 2022 endorsed the viewpoint of GoKP and approved the annual indexation of NHP at 5% annual indexation. The relevant decision of the CCI is reproduced as under:</p> <p><i>"Regarding the issue of 5% annual indexation on NHP, already approved by the CCI, it was agreed that the GoKP may move a summary on the subject in the next CCI meeting as it was not on the agenda of the present CII meeting."</i></p> <p>The stance of the GoPb is contrary to the decision of the CCI dated 13th January, 2022 wherein it was clearly evidenced that the issue of 5 % annual indexation has already been approved by the CCI and since it was not part of the agenda, the GoKP was given the option to move a summary in this regard if so desired.</p>
5	<p>The proposed annual indexation of 5% over the rate of Rs. 1.10/kWh from the FY 2015- 16 onward will increase the rate of NHP from 1.10/kwh to Rs.13.00/kWh <u>over time during economical useful life of 50 years of a hydel power station.</u> This will further overstrain the end electricity consumers of the Punjab. It is therefore emphasized that before making any decision on the proposal, a thorough deliberation is required to be made with respect to the rationale and logic of proposed</p>	<p>The NEPRA Authority in its determination in respect of WAPDA Hydroelectric for FY 2020- 2021 at Para 131 observed that "the Authority in the last determination allowed indexation at 5% at the rate of Rs. 1.10 per kWh which increased the rate of NHP to Rs. 1.155 per kWh. CCI in its December, 2016 decision allowed "Payment of NHP to GoPb @ Rs. 1.10 per unit on the analogy of Government of KP, generated from Hydel Power Station located in Punjab for the FY 2016-2017".</p>



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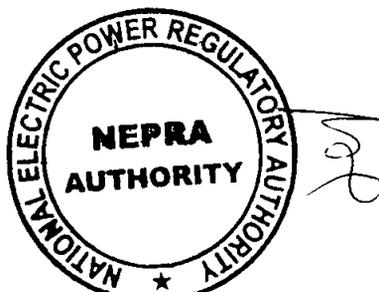
	<p>animal 5% indexation on it and its financial impact on bulk supply tariff of WAPDA hydroelectric power stations and ultimately on the consumer end tariff.</p>	<p>The same rate indexed at 5% was made applicable on Punjab based WAPDA's plant from the same year in the WAPDA's tariff. The GoKP has now indexed the rate by 5% to Rs. 1.2128 per kWh for FY 2021."</p>
6	<p>Government of the Punjab feels that the interim approval of NHP @ Rs. 1.10/kWh and its parent formula i.e. AGN Kazi Committee Computation Methodology endorsed by the CCI is inconsistent with the provision of Article 16 1(2) of the Constitution of Pakistan which needs to be deliberated afresh at length. By no spread of imagination, price of electricity produced at busbar of hydro-electric station be equated against total generation basket (that includes thermal, nuclear and other expensive fuels as well). This formula has been challenged at various forums and a special committee has been formulated to review it. Till finalization, such determination of indexation in favour of GoKP of the Authority, puts the justice and fair-play on guards</p>	<p>The observations made by the Intervener are not relevant to the instant Petition for modification which is limited to indexation of 5% NEIP as approved by the CCI and was clarified / acknowledged by the CCI through its decision dated 13th January 2022.</p> <p>Further the discussions and the issues raised by the Intervener have been fully deliberated in NEPRA Determinations in respect of WAPDA Hydroelectric for FY 2015 -2016, FY 2020 — 2021. NEPRA Review Determination dated 23rd August 2021 Hence such decisions and determinations have achieved finality and cannot be re-opened on the same facts and grounds.</p>
7	<p>The Secretariat of the Council of Common Interests through its letter dated 30. December 2021 circulated notice of the 49th CCI meeting together with working papers of the agenda items to be discussed in the said meeting. The agenda of approval of 5% annual indexation to interim NHP rate of Rs 1.10 per unit was not included in the said notice of the CCI meeting and no working paper on proposed 5% annual indexation was received to the GoPb. The Secretariat of the Council of Common Interest through its letter dated 26th January 2021 circulated minutes of 49th CCI meeting. The minutes on the matter of "Implementation status of previous CCI decisions" for Agenda items 3 (ii) "Implementation of Kazi Committee Methodology (KCM) for Calculation of Net Hydel Profit (NHP)' were discussed at</p>	<p>The Petitioner viewpoint is endorsed by the CCI and it is evident that the CCI agrees with the stance of GoKP that NHP is to be indexed annually at 5%. In light of the aforesaid decision of the CCI the Petitioner filed a Modification Petition in NEPRA to review or modify the Authority decision dated 23.1 August, 2021. The NEPRA Authority accepted the Modification Petition and called a public hearing dated 24. August, 2022. Decisions of the CCI meeting dated 29 February 2016 were not challenged and hence stand final by giving concurrence to the MoU signed between two governments i.e. GoP and GoKP by uncapping the NHP at a rate of Rs. 1.10 per kWh with 5% annual indexation in WAPDA Hydroelectric's tariff determination dated 13. November, 2015.</p>



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	<p>paragraph 25 to 35. The GoKP in its modification petition to NEPRA in the matter of NEPRA decision dated 23rd August 2021 regarding WAPDA Hydroelectric Tariff petition for FY 2020-21 stated that CCI in its minutes of meeting has endorsed the view point of GoKP and approved the annual indexation of NHP at live percent (5%) based on decision of 49's meeting of CCI contained at Para 35."Regarding the issue of 5% annual indexation on NHP, already approved by the CCI, it was agreed that the Government of KP may move a Summary on the subject in the next CCI meeting as it was not on the agenda of the present CCI meeting.</p>	<p>CCI in 49'h meeting dated 13. January, 2022 decided as per para-35 "Regarding the issue of 5% annual indexation on NHP, already approved by the CCI. it was agreed that the Government of KP may move a Summary on the subject in the next CCI meeting as it was not on the agenda of the present CCI meeting." The CCI instant decision authenticate the viewpoint of GoKP as Petitioner that CCI had already approved the indexation in its February, 2016 decision which was not challenged by any of the stakeholder hence stand final.</p>
8	<p>The GoPb in its intervener request dated 22.08.2022 pointed out to the NEPRA that the GoKP has misinterpreted the decision of the CCI recorded at paragraph 35 of minutes. <u>The GoPb firmly believes and has clear understanding that request of GoKP to approve 5% annual indexation has never been approved by the CCI.</u> It is evident from the minutes recorded at paragraph 31, the Chief Minister and Finance Minister, Khyber Pakhtunkhwa formally requested the CCI to approve 5% annual indexation, It is contrary to the common logic and understanding that a province making a request for an already approved / settled issue by</p> <p>CCI. It was, rather clarified by the CCI that the issue was not on the agenda of the meeting hence, as recorded at paragraph 35 of the minutes. The CCI further decided that a summary for the CCI in the case of annual indexation may be moved / pursued in the next meeting.</p>	<p>Comments are reiterated as above.</p>
9	<p>Despite the oblique decision of CCI, the Authority instead of applying judicious approach, rendered the impugned determination dated 09.09.2022, ignoring the contention of</p>	<p>These are administrative suggestions of the GoPb and does not require response.</p>



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	<p>GoPb on the issue and decided at paragraph 42 as under:</p> <p>(a) To approve 5% annual indexation of Net Hydel Profit (NHP) over the rate of Rs. 1.10/kWh to the Government of Khyber Pakhtunkhwa and Government of Punjab w.e.f. FY 2015-16 and FY 2016-17 respective subject to its adjustment, if any, in light of the CCI decision.</p> <p>(b) The Government of Khyber Pakhtunkhwa to move /pursue its summary before CCI in order secure explicit approval, in the matter and till receipt of any CCI order / decision in the matter, the 5% annual indexation of NHP shall be continued</p>	
10	<p>Since, the GoPb does not agree with the contention made by the Government of KP on the decision of CCI recorded at paragraph 31 and 35 of the minutes of 49th meeting of the CCI, the Authority by taking impugned decision has overstepped its mandate as the competent forum for the decision in this matter is CCI</p>	<p>The indexation of the NHP is already approved by the CCI and hence the NEPRA Authority has not exceeded its mandate.</p>
11	<p>The Government of Punjab strongly feels that Authority has no power to take such decision, when the matter is already pending in the CCI. By doing so, the Authority has gone against its own understanding depicted in its determination dated 22.11.20 17 reproduced as under: NEPRA cannot by any stretch of imagination assume the CCI's</p>	<p>The NEPRA Authority has decided as under:</p> <p>(a) approved 5% annual indexation of Net Hydel Profit (NHP) over the rate of Rs. 1.10/Kwh to the GoKP and GoPb w.e.f. FY 2015-16 and FY 2016-17 respectively subject to its adjustment, if any, in light of the CCI decision.</p>



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	<p>Constitutional jurisdiction and provide a determination on the subject matter" and the Authority's observation made in its determination dated 23.08.2021 that —"in the opinion of the Authority there is a need to bring clarity on (lie issue of indexation of NHP rate for both the province of KPK and Punjab.</p>	<p>(b) The GoKP to move / pursue its summary before CCI in order secure explicit approval, in the matter and till receipt of any CCI order / decision in the matter, the 5% annual indexation of NHP shall be continued.</p> <p>Hence, the decision of the NEPRA Authority is subject to CCI decision and any adjustment in light of the CCI decision.</p>
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21. In response to the notice of hearing for the MLR, the Ministry of Energy, Power Division vide letter dated November 16, 2022, provided its comments according to which NEPRA being a regulatory– and not a decision-making – authority, it is stated that the determinations referred by the Ministry are in violation of the CCI’s decision of 2016 as amended in 2017. Power Division thus urges NEPRA to reconsider these determinations, and reserves its rights to proceed further with the matter as per the law. The complete response of the Power Division is reproduced hereunder:

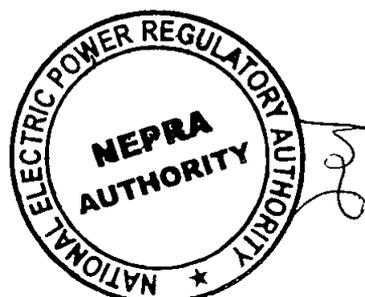
Article 161(2) of the Constitution of the Islamic Republic of Pakistan, 1973 as amended (the "Constitution") states in relation to natural gas or hydroelectric power that:

"the net profits earned by the Federal Government, or any undertaking established or administered by the Federal Government from the bulk generation of power at a hydro-electric station shall be paid to the province in which the hydro-electric station is situated ..."

Further, as per the explanation provided under Article 161(2) of the Constitution:

"for the purposes of this clause "net profits" shall be computed by deducting from the revenues accruing from the bulk supply of power from the bus-bars of a hydro-electric station at a rate to be determined by the Council of Common Interests ..."

Further, Article 153 of the Constitution establishes the Council of Common Interests (the "CCI") and Article 154 lays down the functions and responsibilities of the CCI. These functions include the 'formulation and regulation' of policies in relation to matters in Part II of the Federal Legislative List..." over which the CCI is to exercise supervision and control over related institutions. In this context it is cogent to note that



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"Electricity is delineated at serial number 4 of Part II of the Federal Legislative List to the Constitution. Thus, as per the explicit provisions; of the Constitution, the CCI is the preeminent institution exercising oversight over matters relating to Electricity and its associated services, and thus is the only body mandated to approve the provision of Net Hydel Profit ("NHP") and any indexation thereon. This position has also been consistently held by NEPRA itself, as evinced in its earlier determinations where NEPRA has itself stated that the CCI is the relevant body in relation to NHP matters.

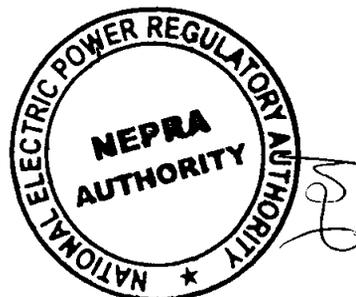
In its decision dated 16.12.16, amended 24.11.2017, the CCI held that 'payment of NHP to Government of Punjab @ Rs 1.10 per unit on the analogy of Government of KPK, generated from Hydel Power Station located in Punjab for the FY 2016-17 and the same rate may be continued as an interim rate for subsequent years till the finalization of revised rate ..."

NEPRA - in paragraph 132 of its determination no. NEPRA/ADG(Trf)/TRF-530/WAPDA-2020/18731-18734 dated 5.04.2021 - stated that "it came to the knowledge of the Authority that CCI which is the relevant body has not approved indexation on the rate of Rs 1.10 per kwh ... ", and further held that the issue had also been pointed out in the Report on Power Sector, prepared by the Committee for Power Sector Audit, Circular Debt Resolution & Future Roadmap which stated:

"the Committee did not however find any record which shows that the CCI has approved such indexation ..."

Further, NEPRA in paragraph 133 of the aforesaid determination, also held that "...NHP rate of Rs 1.10 per kWh has been assumed by the Authority going forward for FY 2021 for Punjab and KP based hydropower stations and excess past payment made as a result of the application of 5% indexation should, therefore, be adjusted by the Petitioner on yearly basis ...", going on to state that if the CCI were to render any decision with respect to the indexation of NHP, the Authority may consider it as per the applicable law. Accordingly the only indexation on NHP given by NEPRA vide its determination dated 22.11.2017 was overturned.

Despite having recognized the CCI's constitutional role in the matter, and the fact that the CCI - in its decision dated 16.12.16 as amended on 24.11.2017 - approved the payment of NHP @ Rs.1.10 without any change until the finalization thereof I subsequent decision by the CCI thereon, NEPRA nonetheless allowed five percent (5%) indexation on NHP on an



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interim basis for a six (6) month period from the date of the notification of its determination. NEPRA further held that "the GoKP (Petitioner) shall approach CCI to obtain clear guidelines on the issue of NHP and indexation (if any) within six months of notification of this decision ...". Power Division is of the understanding that the GoP, being fully aware of the constitutional supremacy of the CCI in the matter, had prudently refrained from notifying the determination. However, NEPRA unilaterally notified the same under Section 31 (7) of the Regulation of Generation, Transmission and Distribution of Electric Power (Act XL of 1997) Act, 1997 (as amended). As per the aforesaid direction of NEPRA, the GoKP presented the said issue as an ex- agenda item in the CCI meeting held on 13.01.2022. However, it is clear from the minutes of said CCI meeting that the CCI did not consider the case as it was not on the agenda of the instant meeting, instead directing that the GoKP may move a summary on the matter for the next CCI meeting; as such, it is clear that the matter has yet to attain finality. The minutes of said meeting states:

"Regarding the issue of 5% annual indexation on NHP, already approved by the CCI, it was agreed that the Government of KP may move a Summary on the subject in the next CCI meeting as it was not on the agenda of the present CCI meeting ... "

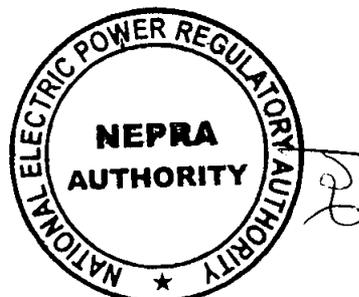
Despite being cognizant of the above fact that - to date - the CCI has not rendered a decision on the indexation of the NHP, NEPRA vide its determination No. NEPRA/ADG(Trf)/TRF-587/GoKPK-2022/17073-17075 dated 09.09.2022 again proceeded to "approve 5% annual indexation of Net Hydel Profit (NHP) over the rate of Rs.1.10kWh to the Government of Khyber Pakhtunkhwa and Government of Punjab w.e.f. FY 2015-16 and FY 2016-17 respectively subject to its adjustment, if any, in light of the CCI decision..., directing the GoKP to "move I pursue its summary before CCI in order to secure explicit approval, in the matter and till receipt of any CCI order I decision in the matter, the 5% annual indexation shall be continued".

The Chairman NEPRA, while affixing signatures on the above order placed the following additional remarks:

"GoKPK to bring the summary in the next CCI meeting for their explicit approval as agreed in the Regulatory Meeting else NEPRA reserve the right to seek CCI approval on its own"

In view of aforesaid, Power Division is therefore of the opinion that:

- i. the role of CCI is preeminent in the matter, a fact attested to by NEPRA itself most recently in its determination dated 09.09.2022 in line with its earlier determinations.



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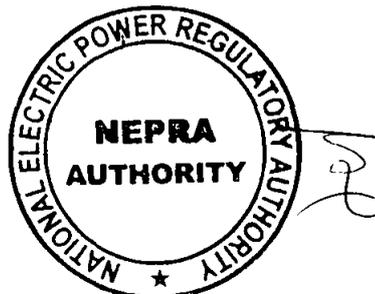
- ii. *the CCI decision dated 16.12.16 as amended on 24.11.2017 is in field at this point of time, which entails the payment of NHP to the GoKP and the GoPS @ Rs.1.10. The CCI's explicit decision on NHP indexation, as necessitated in paragraph 3 of NEPRA's determination dated 23.08.2021 is still awaited.*
- iii. *All stakeholders, including the GoPS in particular, despite being the beneficiary of NHP indexation, endorsed the fact that CCI being the competent forum has not yet approved any indexation to the already approved NHP rate of Rs. 1.10 per unit.*
- iv. *The NEPRA's decisions on the indexation of NHP, as conveyed vide i). its determination dated 23.08.2021, ii). its subsequent notification dated 27.05.2022 and NEPRA's determination dated 09.09.2022 is subject to review and approval by the CCI.*
- v. *The GoKP and the GoPS should have first secured the CCI's formal approval prior to approaching NEPRA for the latter's determination.*

Based on the foregoing, with NEPRA being a regulatory - and not a decision-making - authority, it is stated that the determinations referred above, are in violation of the CCI's decision of 2016 as amended in 2017. Power Division thus urges NEPRA to reconsider these determinations, and reserves its rights to proceed further with the matter as per the law.

22. The above comments of the Ministry have been forwarded to the Petitioner.

PROCEEDINGS

23. The hearing was held as per the revised scheduled on November 22, 2022, wherein representatives of the Petitioner, GoKP, CPPA-G and WAPDA Hydroelectric were present and presented their respective point of views.
24. During the hearing, the Petitioner submitted that as the matter is pending before the CCI, therefore, it would be best to wait for its decision and NEPRA should not issue an interim decision in the matter.
25. Further, the Petitioner was of the view that since there is lack of clarity with regards to the decision of CCI's meeting dated January 13, 2022, therefore, the benefit of this lack of clarity must go to the end-consumers of electricity and not to any provincial government. However, according to the Petitioner, in the instant case, the interim arrangement decided by the Authority is skewed towards the GoKP. The Petitioner further submitted that this is



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in particularly important that since the interim arrangement decided by the Authority is in favor of the GoKP, the GoKP may not be compelled to obtain clarity on the matter from CCI, as also directed by the Authority, knowing that such clarity on NHP's indexation may be otherwise was well.

26. The Petitioner during the hearing submitted that previously the Authority has not treated Punjab at par with KPK in the matter of allowing the NHP by allowing to KPK at first instance and directing Punjab to approach CCI.
27. The Petitioner further submitted that the CCI decision in the matter of NHP provision is an interim arrangement and any revision in the NHP rate is the mandate of the CCI, therefore, the Authority may not have the mandate to deviate from the CCI approved rate.
28. The Petitioner also highlighted that the CCI Secretariat vide letter dated October 24, 2022, informed that the GOKP has submitted a summary in the matter of NHP which shall be deliberated upon in the next CCI's meeting.
29. The representative of the Ministry of Energy (Power Division), during the hearing, also submitted that the Authority's entire decision is based on the interpretation of CCI's 49th meeting's decision and according to the Ministry, the CCI has not yet decided on the indexation of NHP which is why it has sought a summary in the matter for its next meeting.
30. The representative of GoKP, during the hearing, submitted that the Authority had decided the issue on the basis of the decision of the CCI's 49th meeting, which explicitly states that the NHP indexation "as already approved" and that the GoKP is not required by the same CCI's decision to bring a summary to the next CCI's meeting, as the minutes of the meeting state the GoKP "may" move a summary on the subject in the next CCI meeting.
31. Arguments heard. Record perused.
32. The Regulation 3 (2) of the National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009 (hereinafter referred to as the " Review Regulations ") provide that any party aggrieved from any order of the Authority and who, from the discovery of new and important matter of evidence or on account of some mistake or error apparent on the face of record or from any other sufficient reasons, may file a motion



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seeking review of such order. Further Regulation 3 (7) of the Review Regulations read with Rule 16(9) of NEPRA Tariff (Standard & Procedure) Rules, 1998, Rules provides that the motion for leave for review may be refused by the Authority if it considers that the review would not result in the withdrawal or modification of the order. The petitioner has failed to bring any new and important matter of evidence which was not considered by the Authority at the time of passing of the determination and has also failed to point out any mistake or error apparent on the face of the record. The fact of matter which is also evident from the perusal of the determination is that all material facts and documents were in the knowledge of the Authority and the record clearly shows that the Authority issued the determination after consideration of all material facts and documents. Therefore, the Authority is of view that the review motion is not maintainable in terms of Regulation 3 (7) of the Review Regulations read with Rule 16(9) of the Rules and the same is hereby dismissed.

AUTHORITY

(Did not attend)

Mathar Niaz Rana (nsc)
Member

Engr. Maqsood Anwar Khan
Member

Engr. Rafique Ahmed Shaikh
Member



Tauseef H. Farooqi
Chairman

29/12/2022

The power to determine tariff rests with the CCI and since the requisite summary is with CCI as submitted by GOKPK, we hope to get CCI decision on Indexation soon. 29/12/2022