

29 January 2020

The Registrar,
National Electric Power Regulatory Authority (the "Authority"),
NEPRA Tower, Attaturk Avenue (East),
G-5/1, Islamabad.

For information &
— DROI/D Reg I mpa H.
Cp h: 28
— SA (Tech) — SAT-II 300120
— DG (mrd) — ADG (li/oc) Chairman
— ALA (Lic) — MF VC
m(T)
m(CA)
m(Lic)

REGISTRAR
Dy. No. 192
Date: 30-01-20

Subject: - Motion for Review against the Authority's Determination dated 31.12.2019 in the matter of the Licensee Proposed Modification (LPM) dated 22.08.2019 submitted by Fatima Energy Ltd.

Dear Sir

Pursuant to Regulation 3(2) of NEPRA (Review Procedure) Regulations 2009 (the "Regulations") read with Section 7(2)(g) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the "NEPRA Act"), and all other enabling and applicable provisions of the NEPRA laws, the National Transmission and Despatch Company Ltd. ("NTDC") being an aggrieved party under the aforementioned Regulation, hereby submits the enclosed Motion for Review with respect to the Authority's Determination dated 31.12.2019, Case No. LAG-222 (the "Impugned Determination"), whereby the Authority approved the Licensee Proposed Modification (LPM) dated 22.08.2019 submitted by Fatima Energy Ltd. ("FEL") and modified Generation License No. SGC/96/2013 dated 31.12.2013 (the "Generation License") and Modification-I dated 14.09.2015 (the "Modification-I") granted to FEL (the "Modification").

We hereby request the Authority to admit the Motion for Review and to kindly review / recall and set aside the Impugned Determination and Modification on account of reasons stated in this Motion for Review.

NTDC will provide any further assistance that the Authority may require and seeks an opportunity of being heard in order to assist the Authority in arriving at an informed decision in this matter. This Motion for Review is submitted together with:

- (a) Duly executed General Power of Attorney of Mr. Hamza Khalid Randhawa, the Chief Law Officer of NTDC;
- (b) Duly executed Power of Attorney in favour of Axis Law Chambers;
- (c) The Affidavit of Mr. Hamza Khalid Randhawa, the Chief Law Officer of NTDC; and
- (d) Bank draft

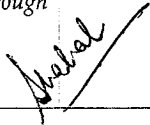
Sincerely



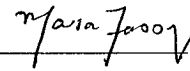
Chief Law Officer NTDC
2nd Floor Shaheen Complex
Egerton Road, Lahore

Hamza Khalid Randhawa
Chief Legal Officer
National Transmission and Despatch Company

Through



Syed Shahab Qutub
Advocate High Court
Partner, Axis Law Chambers



Maria Farooq
Advocate High Court
Partner, Axis Law Chambers

BEFORE THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

MOTION FOR REVIEW

**AGAINST DETERMINATION OF THE NATIONAL ELECTRIC AND POWER
REGULATORY AUTHORITY DATED 31.12.2019 IN THE MATTER OF APPROVAL
OF LICENSEE PROPOSED MODIFICATION IN THE GENERATION LICENSE OF
FATIMA ENERGY LIMITED**

(CASE NO. LAG-222)

FILED BY:

NATIONAL TRANSMISSION AND DESPATCH COMPANY LTD.

It is respectfully submitted:

1. The titled Motion for Review is being filed by the National Transmission and Despatch Company Ltd. (“**NTDC**”) under Regulation 3(2) of NEPRA (Review Procedure) Regulations 2009 read with Section 7(2)(g) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the “**NEPRA Act**”), against the determination dated 31.12.2019, Case No. LAG-222 (the “**Impugned Determination**”), whereby the National Electric Power Regulatory Authority (the “**Authority**”) approved the Licensee Proposed Modification (LPM) dated 22.08.2019 submitted by Fatima Energy Ltd. (“**FEL**”) and modified Generation License No. SGC/96/2013 dated 31.12.2013 (the “**Generation License**”) and Modification-I dated 14.09.2015 (the “**Modification-I**”) granted to FEL (the “**Modification**”).
2. The brief facts leading to filing of the instant Motion for Review are that:
 - (a) The Generation License was granted to FEL on 31.12.2013. Along with the Generation License, an authorization was granted to FEL to engage in second-tier supply business with those bulk power consumers that were mentioned in the said authorization. This authorization was given under Section 22 (as it then was) of the NEPRA Act read with Rule 7 of the NEPRA Licensing (Generation) Rules, 2000.
 - (b) Thereafter, on 14.09.2015, the Authority approved Modification-I in the Generation License, whereby FEL was allowed to *inter alia* supply electric power to CPPA-G, XW-DISCOs, KEL, or to any other bulk power consumers (subject to details of bulk power consumers being intimated to the Authority and inclusion thereof in the Generation License) using the network of NTDC.
 - (c) On 21.08.2019, FEL submitted a Licensee Proposed Modification (LPM) in seeking another modification in the Generation License, for supplying electric power to twenty-two more (22) bulk power consumers located in the service territories of various XW-DISCOs. Despite there being cogent legal and factual grounds for rejection of the LPM, the Authority approved the impugned Modification vide the Impugned Determination.
3. Being aggrieved of the aforesaid Impugned Determination and Modification, the instant Motion for Review is being filed on behalf of NTDC, *inter alia*, on the following grounds:

GROUNDS

- (a) At the outset, it is submitted that the Impugned Determination suffers from errors, infirmities and is violative of the letter and spirit of the NEPRA Act. The same is therefore, contrary to law and liable to be reviewed.
- (b) In 2018, the legislature made several amendments to the NEPRA Act *vide* the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2018 (“**Amendment Act**”). In light of the amendments made in the NEPRA Act, it is crystal clear that the Determination is violative of statutory prescriptions and liable to be reviewed.

- (c) Vide the Amendment Act, Section 23E has been inserted in the NEPRA Act, sub section (1) of which provides as follows:-

"23E. Electric Power Supply license- (1) No person shall, unless licensed by the Authority under this Act, engage in the supply of electric power to a consumer"

[Emphasis Added]

Therefore, after the Amendment Act, supply of electric power to a consumer, which includes bulk power consumer by virtue of Section 2(ii) and (iv) of the NEPRA Act, is prohibited unless an electric power supply license is obtained from the Authority under Section 23E of the NEPRA Act. The proviso to Section 23E of the NEPRA Act affirms this by inserting a deeming provision providing that from the date of promulgation of the Amendment till a period of five years from such date, all distribution licensees shall be deemed to hold a license for supply of electric power under Section 23E.

Section 23F(a) further provides that a licensee who has been granted a license for the supply of electric power shall possess the right to make sales of electric power to consumers in the territory specified in the license and to frame schemes in respect of that territory. Therefore, a licensee can only sell electric power to consumers once the Authority has granted a license for the supply of electric power to consumers under Section 23E.

It is not disputed that FEL has not obtained any license under Section 23E of the NEPRA Act. In the absence thereof, the Modification made vide the Determination is against the specific letter of the law and, accordingly, liable to be reviewed and recalled.

- (d) In this regard, reference is also made to Section 14D(3) of the NEPRA Act, which deals with the duties of the generating companies, and provides as follows:-

"A generating company may supply electricity to any transmission, distribution, supply or market trader licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to Section 23E, supply electricity to any consumer..."

[Emphasis Added]

Section 23E of the NEPRA Act read with Section 14(D) leaves no iota of doubt that after the Amendment Act, the right of a generation licensee to engage in supply of electricity to any consumer, including any bulk power consumer, has been made subject to a supply license to be obtained under Section 23E of the NEPRA Act. Any attempt by a generation licensee to engage in such supply would tantamount to contravention of the NEPRA Act, which is punishable under *inter alia* Section 27B thereof. Consequently, the Determination and the Modification are in contravention of the NEPRA Act and are liable to be reviewed/recalled.

- (e) Additionally, Section 14(B)(4) of the NEPRA Act deals with the obligations of FEL as a generation licensee, and provides as follows:-

"(4) In case of a generation facility connecting directly or indirectly to the transmission facilities of the national grid company, the licensee shall make the generation facility available to the national grid company for the safe, reliable, non-discriminatory economic dispatch and operation of the national transmission grid and connected facilities..."

[Emphasis Added]

The same provision is also reflected in Rule 10 of the Licensing (Generation) Rules, 2000, and therefore, forms a part of the Generation License. In the instant case, the arrangement of supply of electricity envisaged in the Generation License includes connectivity between the FEL's generating facilities and NTDC. Evidently, FEL is obliged under the NEPRA Act to make available its generation facilities for economic dispatch to the system operator i.e. NTDC. However, vide the Modification and the Determination, the Authority has, prima facie, enabled FEL to bypass these essential requirements of the NEPRA Act in derogation of *inter alia* Section 14(B)(4) of the NEPRA Act. Consequently, the Determination is liable to be recalled/reviewed.

(f) That post the Amendment Act, it is not obligatory on the distribution companies to distribute electric power sold by generation companies to the bulk power consumers. The changes made *vide* the Amendment Act, including the omission of the term 'bulk power consumers' from Section 23 of the NEPRA Act by the legislature leave no doubt regarding the intention of the legislature. Consequently, the Modification and the Determination are contrary to the provisions of the NEPRA Act and liable to be declared as such and reviewed/recalled.

(g) Without prejudice to the above, under the NEPRA Act, the Authority has been given the power to regulate the provisioning of the electric power services. The preamble to the NEPRA Act recognizes that the same is aimed at *inter alia* ensuring highest standards of transparent, certain and effective regulation of electric power markets in Pakistan. In the same vein, Section 7(6) of the NEPRA Act provides that in performance of its functions, the Authority shall protect the interests of the consumers and companies providing electric power services in accordance with the principles of transparency and impartiality. Hence, a duty has been imposed on the Authority to ensure that the interests of the consumers as well as the licensees are protected. It is humbly submitted that the Modification and the License even otherwise have been issued in disregard of the aforesaid principles, due to *inter alia* the following reasons:-

(i) As the Authority is aware, several deficiencies which go to the root of the sustainability of the power sector are present, and have been identified in the existing wheeling regime. These include and relate to, without limitation, lack of specialized role of entities performing market operation, dispatch and settlement functions in the wheeling arrangement, recovery of network losses, use of system charges, cross-subsidy charge, stranded assets cost, discriminatory impacts due to difference of consumer charges, economic dispatch, issues pertaining to banked energy, renewable wheeling and hybrid nature of bulk power consumers. Under the auspices of the Authority, several deliberations and consultative sessions have been held to address these deficiencies/areas, and reform the existing wheeling regime. Pending such reform process and during the existence of such deficiencies, the approval of the Modification by the Authority is contrary to Section 7(6) of the NEPRA Act.

- (ii) The existing legal, regulatory and technical framework is not enabled to deal with the type and form of wheeling arrangement envisaged in the Modification. Furthermore, the current Grid Code and Distribution Code also do not enable such an arrangement. Thus, the Determination will, *inter alia*, lead to several difficulties, including those of technical nature, and shall also affect the performance standards of distribution and transmission sector.

- (h) The National Electric Power Regulatory Authority Licensing (Application and Modification Procedure) Regulations, 1999 (the "**Regulations**") have been framed to structure the discretion of the Authority vis-à-vis the grant and modification of the licenses. Regulation 10(5) of the Regulations provide that the Authority may modify a license, if in its opinion, such modification *inter alia*:
 - a. does not cause the Authority to act or acquiesce in any act or omission of the licensee in a manner contrary to the provisions of the NEPRA Act or the subordinate legislation made thereunder;
 - b. is or is likely to be beneficial to the consumers; and
 - c. is reasonably necessary for the licensee to effectively and efficiently perform its obligations under the license;

It is submitted that the Determination and the License have been issued against the principles enshrined under Regulation 10(5) of the Regulations and are liable to be recalled/reviewed on the basis of *inter alia* the following:-

- a. from the submissions made in foregoing paragraphs, it is evident that the Determination and the Modification are contrary to the provisions of the NEPRA Act. Consequently, the Modification sought by FEL has caused the Authority to acquiesce in FEL's contraventions of various provisions of the NEPRA Act. The Determination and the Modification are liable to be recalled/reviewed on this ground alone.

- b. one of the foundational and integral duties of the Authority while performing its functions under the NEPRA Act is to protect the interests of consumers, as also envisaged in Section 7(6) thereof. It is evident from the foregoing that the effectuation of the arrangement envisaged by FEL in its Application and sanctioned by the Authority *vide* the Modification and the Determination will be prejudicial to the power sector on multiple grounds, including technical, practical and financial, besides leading to increase in the cost of electric power for the general consumers. Such issues were necessary to be addressed in the Determination, as required by Regulation 10(5) of the Regulations. The impugned Determination however does not follow the above-noted considerations and is prejudicial to the public interest. Consequently, the Determination and the Modification are liable to be recalled/reviewed on this ground alone.

- (i) NTDC reserves its right to urge, agitate or raise any additional ground at any time either prior to the hearing and/or at the time of the hearing.

In light of the above, it is most respectfully prayed that:

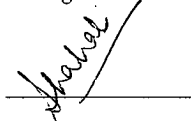
- a. The Authority may graciously admit the instant Motion for Review.
- b. The Impugned Determination and modification dated 31.12.2019, Case No. LAG-222, may kindly be reviewed / recalled and set aside in light of submissions made above.
- c. During the pendency of the titled Motion for Review the operation of the Impugned Determination and modification may kindly be suspended.
- d. An opportunity of hearing may kindly be provided to NTDC for the purposes of making detailed submissions, including a session with the technical professional team of the Authority.
- e. NTDC may please be permitted to make further written submissions with additional supporting documents.
- f. NTDC may please be allowed to amend or add to the grounds stated herein.
- g. Any other relief deemed fit and appropriate may also kindly be granted.



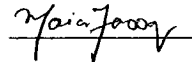
Chief Law Officer NTDC
2nd Floor Shaheen Complex
Egerton Road, Lahore

Hamza Khalid Randhawa
Chief Legal Officer
National Transmission and Despatch Company

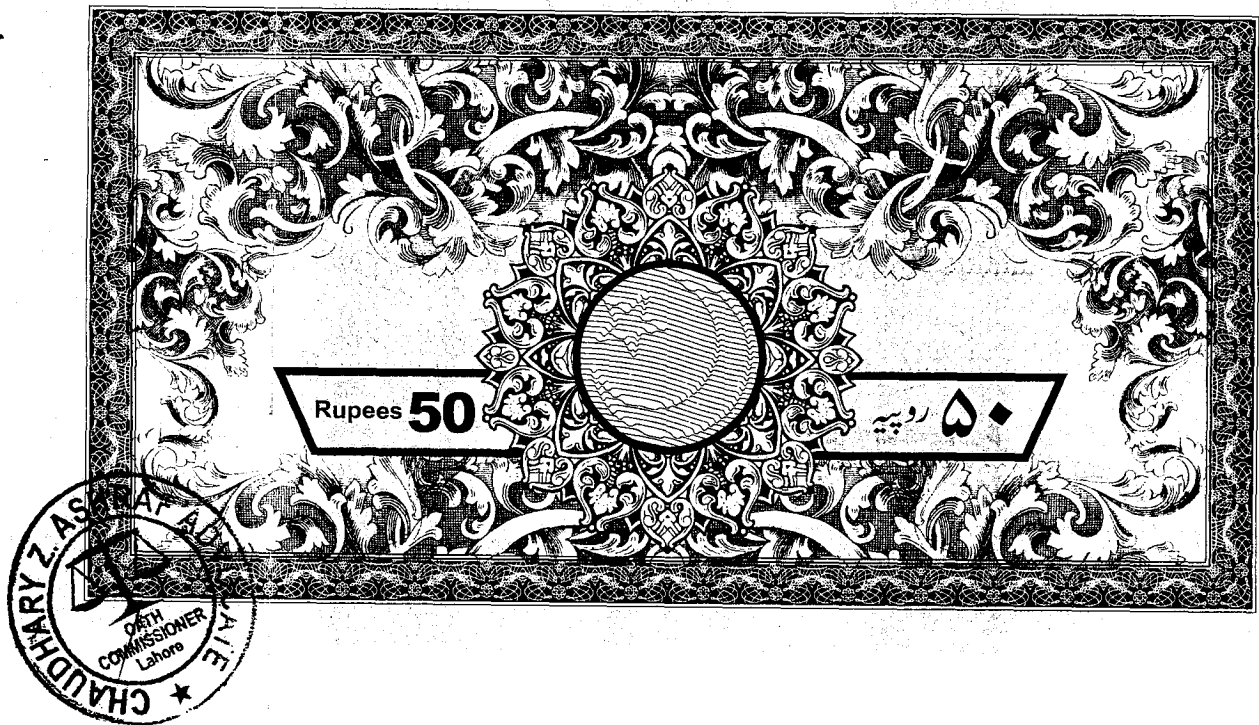
Through:



Syed Shahab Qutub
Advocate High Court
Partner, Axis Law Chambers



Maria Farooq
Advocate High Court
Partner, Axis Law Chambers



BEFORE THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

AFFIDAVIT

I, Hamza Khalid Randhawa, bearing CNIC # 36101-0403469-5, Chief Legal Officer of National Transmission & Despatch Company Ltd. ("NTDC") having its office at 6th Floor, Shaheen Complex, Egerton Road, Lahore, being the duly authorized representative of the NTDC, hereby declare and affirm that:

1. The contents of the Motion for Review dated 28.01.2020 against the Authority's Determination dated 31.12.2019, Case No. LAG-222 ("**Motion for Review**") filed by NTDC with the National Electric Power Regulatory Authority, including all supporting documentation are true and correct to the best of my knowledge and belief and nothing has been concealed therein.
2. All further documentation and information to be provided by me in connection with the Motion for Review shall be true to the best of my knowledge and belief.


DEPONENT

Verification:

Verified on oath at Lahore on this the 29th day of January, 2020 that the contents of the above affidavit are true to the best of my knowledge and belief and that nothing has been concealed therefrom.


DEPONENT

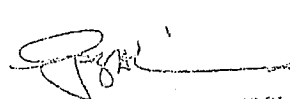
ATTESTED
Chaudhary Z. Ashraf Advocate
OATH COMMISSIONER Lahore

GENERAL POWER OF ATTORNEY

KNOW ALL MEN by these presents that I, Babar Iqbal, Chairman of National Transmission & Despatch Company Limited, a company incorporated under the Laws of Pakistan and having registered office at 414 WAPDA House, Lahore (the "Company") for and on behalf of the Directors of the Company, in exercise of the Authority conferred by Resolution of the Board of Directors of the Company passed in their 129th Meeting held on Monday 24th July 2017, do and hereby appoint Mr. Hamza Khalid Randhawa, Chief Law Officer, (the "Attorney") as the Attorney of the Company and for and on behalf of the Company, and in his absence the Managing Director of the Company, to do the following acts, deeds, and things:

- A For and on behalf of the Company to file, commence, prosecute and defend all cases or legal proceedings including suits, actions, appeals, revisions, reviews, objections, motions, execution applications, or any other application in any court, tribunal, authority or office against any persons(s) or institution claiming any right in respect of the Company and arrange or submit to arbitration disputes and to take all necessary actions, including but not limited to the appointing and engaging of legal counsel(s) and/or other agents, in this regard
- B To incur all miscellaneous administrative, legal or other expenditure in the ordinary course of day to day business that the Attorney may consider necessary and expedient.
- C To appoint from time to time any person in Pakistan upon such terms, as the Attorney may think fit as his substitute or substitutes to do, execute and perform all or any such matters and things as aforesaid and at pleasure to remove such substitute or substitutes and appoint another or others in his or their place

For the purpose of removing any doubt which may arise as to the true meaning of this Deed or as to the construction or application of the Power hereby granted, the Company hereby declare that the power hereby granted shall not in any case be deemed to revoke any powers or authorities hereto before given to the Attorney or to any other person or persons or be limited to such transactions and matters as are herein expressly mentioned but the same are intended to do extend and shall in all cases extend to any matters or transactions not herein precisely mentioned or defined which in the course of Company's general business as aforesaid may by the Attorney be deemed to be requisite or expedient to be done or performed, provided always that in the event of the Attorney ceasing to be in employment of the Company as Legal Advisor he shall ipso facto cease to be the Attorney for the Company and the powers hereby conferred on him shall be revoked



Company Secretary (NTDCL)
167 - Wapda House, Lahore

The Company hereby ratify and confirm and agree to ratify and confirm all that the Attorney or any substitute or substitutes or agent or agents of the said Attorney appointed by him under the power in that behalf hereinbefore contained shall lawfully do or purport to do under or by virtue of these presents and this General Power of Attorney shall be deemed to be effective from the date Legal Advisor is appointed in the Company.

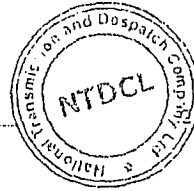
IN WITNESS our hands given under the Common Seal of the Company on this 24th day of July 2017

THE COMMON SEAL
of National Transmission & Despatch
Company Limited was hereunto
affixed in the presence of:

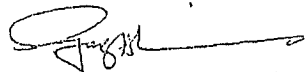
FOR AND ON BEHALF
THE BOARD OF DIRECTORS


/ Chairman/Director

WITNESSES



Attested to be true copy.


Company Secretary (NTDCL)
40th - Wapda House, Lahore

IN THE COURT OF: NEPRA ISLAMABAD

IN THE MATTER OF: FILING OF REVIEW

NTDC

Appellant
Petitioner

VS


NEPRA

Defendant
Respondent

NOW to whom the present shall come that undersigned (hereinafter referred to as the "Principal") hereby appoints **Syed Shahab Qutub Advocate, Lahore** hereinafter called the "Counsel") to be the Advocate for the National Transmission & Despatch Company in the above mentioned case to do all the following acts, deeds and things or any of them that is to say:-

1. To appear and plead and act in the above mentioned cause in the court or any other court in which the same may be tried or heard or in any other stage of its progress until its final decision.
2. To present pleadings, appeals, cross objections of petitions for execution, review, revision, withdrawal compromise or to file petition or Affidavit or other such document as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
3. To receive moneys and grant receipts therefore and subject to the provision of clauses (4) and (5) below, to do all other acts and things which may be necessary to be done for the progress in the course of said case.
4. The learned Counsel shall not have the authority to compromise or settle the cause or abandon an issue or to relinquish any part of the claim without express authority from the Principal.
5. The learned Counsel shall not have the authority to offer on behalf of the Principal to be bounded by the Oath of the opposite party.
6. The Principal reserves the right to rectify retrospectively any authorized act of the learned Counsel and he is indemnified against the consequences of all lawful acts done in good faith in exercise of NTDC hereby conferred upon him.
7. All interim costs awarded in consequence of all adjournment or for any other cause shall be credited to the Principal.

Accepted 29/01/2020


Maria Farooq
(MARIYA FAROOQ)

(Signature of Counsel)


For NATIONAL TRANSMISSION &
DESPATCH COMPANY

Chief Law Officer NTDC
2nd Floor Shaheen Complex
Egerton Road, Lahore