

January 16, 2015
Ref: 3040394/2015

The Registrar
National Electric Power Regulatory Authority
Islamic Republic of Pakistan
NEPRA Tower, Ataturk Avenue (East)
G-5/1, Islamabad

Subject: **MOTION FOR LEAVE FOR REVIEW – against the decision issued by NEPRA October 16, 2014 in respect of 640MW Azad Pattan Hydropower Project (Case # NEPRA/PAR-107)**

Dear Sir,

We refer to the decision of the Authority in the subject matter communicated to us vide Authority's letter no. NEPRA/PAR-107/12818 dated October 16, 2014 (the "**Decision**").

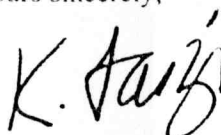
Subsequently, the Authority vide Decision reference no. NEPRA/TRF-UTC/2013/15274 dated 21 November 2014 NEPRA dispensed the Review Petition filed by Asad Umer, MNA vide "*Decision of the Authority in the matter of Review Petition filed by Fazal-e-Akbar & Company on behalf of Asad Umer (Member National Assembly) under NEPRA (Review Procedure) Regulations 2009 with respect to the Upfront Tariff of Coal dated 20.06.2014*". (The "**Coal Review Decision**")

Pursuant to the Coal Review Decision the Authority has provided certain assurances to protect investment in hydropower sector of the region which applies to the subject matter as well being a new and important matter of evidence.

The Company, being a "Party" to the Decision, hereby submits this application under NEPRA (Review Procedure) Regulations 2009 as modified by SRO 1036(1)/2014 dated 19th day of November 2014 duly communicated and made public through NEPRA web site on 19th day of December 2014, read with all applicable provisions of the NEPRA laws (the "**Review Regulations**"), for the leave of the Learned Authority for the Petitioner's motion for review of Decision and for revision as contemplated therein. As the matter in question is based on peculiar facts and circumstances, the Company hereby requests the Authority to condone delay, if any, in filing this Motion for Leave for Review. Other relevant documents required under NEPRA laws are appended herewith.

We look forward to a favourable decision of the Authority and shall remain at your service to provide further information or explanation as and when required.

Yours sincerely,


Khalid Faizi
Chief Executive Officer

For information & up to
— B/Reg-I/SAR
CA to
— SAT-I
— SA (Tech)
— M/F
16.01.15
cc: Chairman
VC/M (LC)
M(T)
M(CA)
M(M&E)

Registrar	621
By No.....	
Dated 16-01-15	



**EXTRACT OF THE RESOLUTION PASSED BY THE DIRECTORS' OF
AZAD PATTAN POWER (PVT.) LIMITED
DATED 5th JANUARY 2015**

“RESOLVED THAT AZAD PATTAN POWER (PRIVATE) LIMITED (a company incorporated under the laws of Pakistan) with its registered office located at 50C, Margalla Road, F-8/2, Islamabad, Pakistan be and is hereby authorized to file Motion for Leave for Review against the decision of the Authority dated 16 October 2014 in response to Motion for Leave for Review filed by the National Transmission and Despatch Company Limited vide its letter no. GM/WPPO/CE-IV/DH/3862-65 dated 23 April 2014.

“FURTHER RESOLVED THAT Mr. Khalid Faizi, Chief Executive Officer of the Company be and is hereby authorized for and on behalf of the Company to sign all necessary documents, appear before the Authority as needed and to do all such acts necessary for processing and completion of this Motion for Leave for Review.

CERTIFICATE

Certified that the foregoing are the true extracts of the resolution passed by the Board of Directors of the Company dated January 5, 2015



For Azad Pattan Power (Private) Limited

Mazhar Hussain
Company Secretary

Dated: 16 January 2015

MOTION FOR LEAVE FOR REVIEW

BY

AZAD PATTAN POWER (PRIVATE) LIMITED
(formerly, Alamgir Power (Private) Limited)

IN RESPECT OF

640MW AZAD PATTAN HYDROPOWER PROJECT

SUBMITTED TO

NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

DATED: 16 January 2015

Legal & Regulatory Consultant
RIAALAW
(formerly Rizvi, Isa, Afridi & Angell)
191-A Shami Road, Lahore Cantt
Tel: 042-111-LAWYER (529-937)
Email: hnaqvee@riaalaw.com
Web: www.riaalaw.com

TABLE OF CONTENTS

1. Motion for Leave for Review – Application for Revision of Return on Equity	3
1.1 Motion for Leave for Review	3
1.2 Background:.....	3
2. Grounds for Review.....	4
3. Review Sought.....	8
Annex – A.....	9

1. MOTION FOR LEAVE FOR REVIEW – APPLICATION FOR REVISION OF RETURN ON EQUITY

1.1 Motion for Leave for Review

Following the Authority's decision dated 16 October 2014 (Case no. NEPRA/PAR/107) (the "**Impugned Tariff Ruling**"), the Azad Pattan Power (Private) Limited (*formerly, Alamgir Power (Private) Limited*), (the "**Petitioner**" or the "**Company**"), has discovered new and important matters of evidence which materially affect the return on investment as decided by the Authority in the Decision.

Based on such new evidence and the Decision, the Company, as aggrieved party/Party, is applying under Regulation 3(2) National Electric Power Regulatory Authority (Review Procedure) Regulations 2009 as modified by SRO 1036(1)/2014 dated 19 November 2014 duly communicated and made public through NEPRA website on 19 December 2014 (the "**Review Regulations**") and all applicable provisions of other NEPRA laws, for the leave of the Learned Authority for the Company's motion for review of the Impugned Tariff Ruling (the "**Motion**"), and is hereby seeking revision and determination, by the Authority, of the return on investment in a fair, equitable, non-discriminatory and comparable basis.

1.2 Background:

By way of background, it is submitted that a power acquisition request under the NEPRA Interim Power Procurement (Standards & Procedure) Regulations, 2005, was filed by the NTDC through its letter no. GM/WPPO/CE-IV/DH/8708-11 dated 23 October 2012 (the "**Power Acquisition Request**") seeking permission of the Authority to negotiate power acquisition contract for purchase of 640 MW power generating capacity of Azad Pattan Hydropower Project (the "**Project**") located in the State of Azad Jammu and Kashmir based on feasibility study report duly endorsed by the PPIB/NTDC and the advance tariff proposed by NTDC.

The Power Acquisition Request was dealt by the Authority through its Decision (Case No. NEPRA/PAR/107) intimated vide letter dated 30 January 2014 deciding the outcome of certain project costs and other terms and conditions relating to advance tariff based on the feasibility study and the power acquisition contract for the Project to be negotiated by the Power Purchaser with the Company.

A Motion for Leave for Review was filed by NTDC vide its letter no. GM/WPPO/CE-IV/DH/3862-65 dated 23 April 2014, requesting the Authority to reconsider its decision dated 30 January 2014 against which the Authority issued the Impugned Tariff Ruling.

2. GROUNDS FOR REVIEW

The Grounds for review of the Impugned Tariff Ruling are, *inter alia*, as follows:

- 2.1 The Company requests NEPRA to review the "*Decision of the Authority in the matter of Motion for Leave for Review filed by NTDC against the Decision of the Authority regarding Procurement of Power from 640MW Azad Pattan Hydropower Project located in the State of Azad Jammu & Kashmir [Case# NEPRA/PAR-107]*" intimated to NTDC vide Authority's Decision dated 16 October 2014 reference No. NEPRA/PAR-107/12813-12815 (the "**Impugned Tariff Ruling**").

The Company communicated its reservations with regard to the Impugned Tariff Ruling vide letter ref. 3040373/APPL/2014 dated 27 November 2014 requesting a number of confirmations with respect to certain items of cost and other matters; and vide letter ref. 3040376/APPL/2014 dated 2 December 2014 requesting an equity IRR in conformity with the Thar Coal Decision both duly communicated to NEPRA vide NTDC letter ref. no. GM/WPPO/NTDCL/11621-24. We anticipate that the requested confirmations will be forthcoming in due course while the request for the equity return in conformity with the Thar Coal Decision is the subject matter of this Review Petition.

The Impugned Tariff Ruling announced a tariff based on the Project Cost determined by the Authority after applying an Internal Rate of Return (IRR) for equity of 17%. This resulted in an advance levelized tariff of Rs 6.0655 per kWh for feasibility stage over the 30 year term. The resultant Return on Equity (ROE) worked out to be 28.88% (ROE + ROEDC) based on the assumptions stated therein.

- 2.2 Subsequently, the Authority vide its decision no. NEPRA/TRF-UTC/2013/15274 dated 21 November 2014 dispensed the Review Petition filed by Mr. Asad Umer, MNA vide "*Decision of the Authority in the matter of Review Petition filed by Fazal-e-Akbar & Company on behalf of Asad Umer (Member National Assembly) under NEPRA (Review Procedure) Regulations 2009 with respect to the Upfront Tariff of Coal dated 20.06.2014*" (the "**Coal Review Decision**").

The Coal Review Decision in Serial 61 "*Findings of the Authority*" has considered the impact that the higher tariff given to coal projects will have on investment in hydropower projects and to redress this discriminatory situation the Authority confirmed that;

"... the Authority realizes that the IRR allowed to Hydro should be at least at par with IRR allowed to Thar coal so that the returns allowed to various types of coal i.e. imported, local, & Thar are not more than what has been allowed to Hydro.

Therefore, to encourage clean technology and to attract hydro investment in the region, the Authority therefore, assures that the return on investment in Hydroelectric shall enjoy at least similar returns as allowed by the Authority to Thar coal investors."

[Emphasis added]

Relying on the principles laid out in the Coal Review Decision and the Authority's assurance contained therein, the Company is hereby applying for a Review of the Impugned Tariff Ruling to allow the Company at least similar return as allowed by the Authority to Thar coal investors.

2.3 Such consideration and award which is fully in consonance with the Coal Review Decision will bring the financial viability of the Project to the level of Thar coal. It is pertinent to mention here that the Company had requested for 20% IRR, in its initial tariff proposal dated June 18, 2012 submitted to NTDC, in the following terms (reference paragraph 3.2 of the aforesaid proposal):

- *It is strongly contended that Policy inconsistencies whereby coal projects are given an IRR up to 20.5% (20% IRR + 0.50% for firms achieving Financial Close by or before December 31, 2014) as compared to 17% for hydropower projects be addressed. The following table summarizes IRR for various generation technologies and highlights the issue:*

Technology	Equity IRR	
	NEPRA	BOI/PPIB
Thermal (gas/oil)	15%	15%
Coal (Imported)	16%	16%
Hydropower (indigenous)	17%	17%
Coal (Indigenous)	17%	20%

- *Both NEPRA and BOI/PPIB are offering 17% IRR for hydropower projects. NEPRA is consistent in its approach and regards both coal and hydropower as an "indigenous" resource with the same 17% IRR; however, both BOI and PPIB are offering investors in indigenous coal projects 20% IRR;*
- *This contradiction and anomalous policy is "squeezing" out already scarce hydropower investment into the highly polluting but more profitable indigenous coal power generating sector and is driving investment into competing coal projects at the expense of hydropower;*
- *Faced with various risks including but not limited to - long development period, remote location, lack of infrastructure, permitting, geology, land acquisition, resettlement and construction risks the development of hydropower are very challenging and investors demand a higher return to compensate such risk;*
- *It is imperative that hydropower return be enhanced to equal or exceed coal projects to create and maintain a long term sustained investor interest and develop the massive undeveloped hydropower resources in Pakistan. A discriminatory and inequitable policy is not helpful for the orderly development of the power sector in Pakistan.*

- *The higher return for coal projects is justified as development of indigenous resources. Hydropower is also as much an indigenous resource and in fact has many additional benefits over indigenous coal. It is thus highly inequitable to offer a higher return to indigenous coal projects as compared to hydropower. Pending an equitable policy decision however, Return on Equity is computed on the basis of 17% IRR in such a way that the equity repayment starts once the Debt has been fully repaid. The results for 20% IRR being claimed are also shown.*

2.4 Furthermore the Company respectfully refers to NTDC's tariff petition (FS stage) filed to NEPRA vide their letter no. GM/WPPO/CE-IV/DH/8708-11 dated October 23, 2012, in particular its paragraph VI(b), which provided as follows:

b) Return on Equity

During the negotiations, the Sponsors were of the view that hydropower projects including the Azad Pattan project should be allowed 20% IRR on equity due to higher risks involved. However, since NEPRA has allowed only 17% IRR on equity to hydropower projects in their tariff determinations so far, therefore 17% IRR on the equity amount of US \$ 338.677 million has been assumed in the final tariff. The equity injection has not been assumed to be made 30 months prior to Construction start as allowed by the ECC for private-sector hydropower projects in its decision dated July 30, 2009. Such adjustment shall be made at the time of EPC stage tariff determination when actual costs before financial closing will be known, however, the company shall have to provide proof of the actual expenditures at the time of the 2nd stage Tariff Determination to finalize the IRR on Equity stream.

It is also pertinent to mention that the sponsors have included an assumption in their tariff proposal and insisted that the same should be made part of our tariff petition to NEPRA which reads as follows:

"The sponsors strongly believe that a return of at least 20% as allowed for indigenous coal projects is required to expedite development of the largely untapped hydropower resources and take into account the long development period and higher risks. The project would be entitled to any enhancement of such return if and when announced for the sector as a whole."

2.5 In light of the assurance given by the Authority under the Coal Review Decision and the aforesaid submissions and assumptions of the Company, we request a levelized tariff of Rs 6.7858 per kWh over the 30-year term (plus 6 year construction period); which after adjusting for 7.50% taxation on dividends allowed on actual will provide an IRR of 20.00% equal to the net IRR enjoyed by Thar coal investors of 19.87% over the 30-year term (plus 4 year construction period).

The claimed IRR of 20.00% is designed to give an equalized IRR to match that provided to Thar coal investors and satisfies the condition that investors in hydropower project

would receive a return on investment at least similar to the returns as allowed by the Authority to Thar coal investors.

To match the parameters and assumptions with the upfront Coal Tariff, the Company hereby requests to adopt a constant stream of ROE for deriving the returns on comparable basis, accordingly the claimed tariff incorporates the ROE component computed on a constant stream of cash flow on an IRR basis, in which repayment of equity is inherent over the term of 30 years and no separate stream for equity redemption will be claimed.

A comparative table is reproduced hereunder while the Tariff Table on the claimed basis is attached as Annex A hereto.

	Thar Coal 660MW Decision July 2014 (Foreign Financing)	Azad Pattan 640MW Decision Oct 2014 (foreign/local financing)	Azad Pattan 640MW NOW CLAIMED (foreign/local financing)
ROE	34.49%	28.58%	36.74%
IRR	21.36%	18.275%	21.50%
Taxation	7.50%	7.50%	7.50%
Equalized IRR	19.87%	17.00%	20.00%
Construction period	4 years	6 years	6 years
Term	30 years	30 years	30 years
Equity draw down	3 years	6 years	6 years
Tariff Rs/kWh (levelized)	8.0924	6.0655	6.7858

A summarized tariff table, levelized over 30 years term, comparing tariff allowed by Authority under the Impugned Tariff Ruling and claimed under this Motion is as follows:

Tariff Components	Impugned Tariff Ruling		Tariff claimed under Motion	
	Year 1-12	Year 13-30	Year 1-12	Year 13-30
Variable Charge (Rs/kWh)				
Variable O&M – Local	0.1006	0.1006	0.1006	0.1006
Water Use Charge	0.1500	0.1500	0.1500	0.1500
Fixed Charge (Rs/kW/M)				
Fixed O&M – Local	96.6505	96.6505	96.6505	96.6505
Fixed O&M – Foreign	64.4336	64.4336	64.4336	64.4336
Insurance	103.2599	103.2599	103.2599	103.2599
Debt Service	1005.5830	-	1005.5830	-
Return on Equity (ROE)	623.1446	662.3880	736.2128	736.2128
Return on equity during construction (ROEDC)	424.3614	424.3614	610.5736	610.5736

3. REVIEW SOUGHT

In light of the foregoing, to avoid substantial injustice and facilitate implementation of the much needed hydropower capacity in the deteriorating hydel generation mix in the Country, the Company respectfully prays that the Impugned Tariff Ruling, which earlier determined an advance levelized tariff of Rs. 6.0655/kWh based on 17% IRR, may be reviewed and an advance levelized tariff of Rs. 6.7858/kWh may be determined by the Authority to provide 20% IRR as "Return on Investment", as allowed to Thar Coal Investors, in accordance with evidence and details submitted herein.

The Company reserves the right to take additional grounds at the time of hearing.

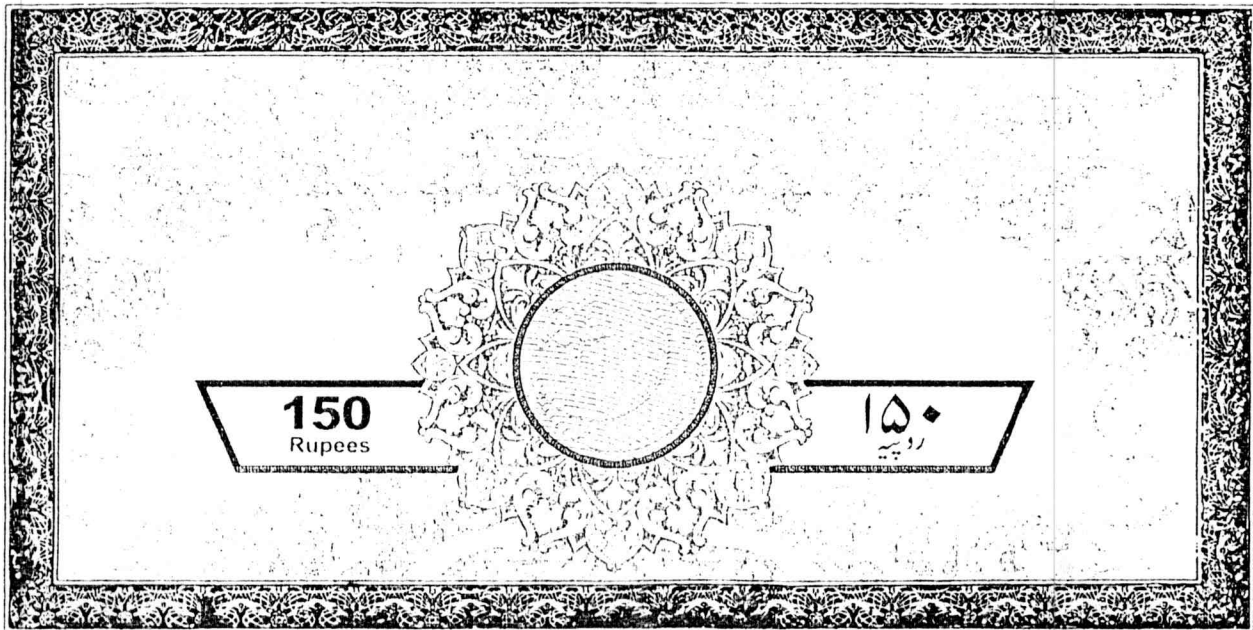
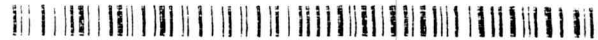
Respectfully submitted on behalf of the Company

A handwritten signature in black ink, appearing to read 'K. Faizi', is written over a horizontal line.

Khalid Faizi
Chief Executive Officer

TARIFF TABLE Exchange Rate 98.00
Contract Capacity 637,696.00

Agreement Year	Energy Purchase Price (PKR/kWh)			Capacity Purchase Price (PKR/kw/Month)										Capacity Charge	Total Tairff
	Water Use Charges	Var O&M	Total EPP	Fixed O&M		Insurance	Return on Equity	ROEDC	Debt Service Component				Total CPP	PKR/kWh	PKR/kWh
	Local	Local		Foreign	Local	Foreign	Foreign	Foreign	Principal	Interest	Principal	Interest			
1	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	506.8890	430.2654	106.3222	347.7728	3,002.3798	7.4985	7.7490
2	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	534.1101	403.0443	120.3104	333.7846	3,002.3798	7.4985	7.7490
3	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	562.7930	374.3614	136.1389	317.9561	3,002.3798	7.4985	7.7490
4	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	593.0163	344.1382	154.0499	300.0451	3,002.3798	7.4985	7.7490
5	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	624.8626	312.2919	174.3174	279.7776	3,002.3798	7.4985	7.7490
6	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	658.4191	278.7353	197.2513	256.8437	3,002.3798	7.4985	7.7490
7	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	693.7777	243.3768	223.2024	230.8926	3,002.3798	7.4985	7.7490
8	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	731.0351	206.1193	252.5679	201.5271	3,002.3798	7.4985	7.7490
9	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	770.2934	166.8611	285.7967	168.2983	3,002.3798	7.4985	7.7490
10	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	811.6599	125.4946	323.3973	130.6977	3,002.3798	7.4985	7.7490
11	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	855.2478	81.9066	365.9448	88.1503	3,002.3798	7.4985	7.7490
12	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	901.1766	35.9779	414.0899	40.0051	3,002.3798	7.4985	7.7490
13	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
14	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
15	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
16	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
17	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
18	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
19	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
20	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
21	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
22	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
23	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
24	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
25	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
26	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
27	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
28	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
29	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
30	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	-	-	-	-	1,611.1303	4.0238	4.2744
Average for 1- 10	0.1500	0.1006	0.2506											7.4985	7.7490
Average for 11- 20	0.1500	0.1006	0.2506											4.7187	4.9693
Average for 21- 30	0.1500	0.1006	0.2506											4.0238	4.2744
Average for 1- 30	0.1500	0.1006	0.2506											5.4137	5.6642
Levelized Tariff	0.1500	0.1006	0.2506	64.4336	96.6505	103.2599	736.2128	610.5736	468.1604	209.2067	144.4401	183.7759	2,616.7133	6.5353	6.7858



Before The National Electric Power Regulatory Authority

Review Petition No. 3090394 / 2015

Azad Pattan Power (Private) Limited

Petitioner

vs

National Electric Power Regulatory Authority

Respondent

AFFIDAVIT

1. I, Khalid Faizi, Chief Executive Officer of, Azad Pattan Power (Private) Limited, resident of House No. 7, Street No. 15, F-6/3, Islamabad, am the duly authorised representative of Azad Pattan Power (Private) Limited by virtue of Board Resolution dated 05-01-2015.
2. I hereby solemnly affirm and declare that the contents of the accompanying Review Petition dated 16-01-2015 including all supporting documents are true and correct to the best of my knowledge and belief and that nothing material has been concealed or withheld therein.

K. Faizi

DEPONENT

Khalid Faizi

Chief Executive Officer

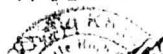
Azad Pattan Power (Private) Limited

Verification:

Verified on oath at Islamabad, this 16th day of January 2015 that the contents of the above affidavit are correct and true to the best of my knowledge and belief

16 JAN 2015

ATTESTED



K. Faizi

DEPONENT

2427
157/15
NEPRA

Stamp: REGISTRAR GENERAL
(M/S N...)
F-6 Markaz
Islamabad

2472 (9)