



Registrar

# National Electric Power Regulatory Authority Islamic Republic of Pakistan

NEPRA Tower, Attaturk Avenue (East), G-5/1, Islamabad  
Ph: +92-51-9206500, Fax: +92-51-2600026  
Web: www.nepra.org.pk, E-mail: registrar@nepra.org.pk

No. NEPRA/Consultant(CTBCM)/RFP-05/ 3180-14

August 29, 2023

M/S RIAA Barker Gillette Third Floor, 65-W, Executive Heights, Block-H, Fazl-UI-Haq Road, Blue Area, Islamabad	Malik Muhammad Nasir Ayaz House No. 774, Sector B, DHA Phase V, Lahore
Managing Director, Private Power and Infrastructure Board (Formerly AEDB) Plot No. 10, 2 <sup>nd</sup> Floor, Emigration Tower, Mauve Area, Sector G-8/1, Islamabad	

Subject: **Decision of the Authority in the matter of Review Motions filed by Malik Muhammad Nasir Ayaz and Energy and Power Solutions (PVT) Limited against the Decision of the Authority regarding Approval of Request for Proposal Submitted by AEDB for Competitive Bidding of 600 MWp Solar PV Projects at Muzaffargarh**

Enclosed please find herewith the subject Decision of the Authority (total 04 Pages) in the matter of Review motions filed by Malik Muhammad Nasir Ayaz and Energy Solutions (Pvt) Limited through their legal counsel M/S RIAA Barker Gillette against the Decision of the Authority regarding Approval of Request for Proposal Submitted by AEDB for Competitive Bidding of 600 MWp Solar PV Projects at Muzaffargarh for information please.

Enclosure: As above

(Engr. Mazhar Iqbal Ranjha)



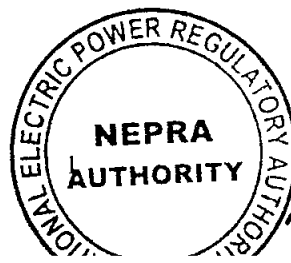
**DECISION OF THE AUTHORITY IN THE MATTER OF REVIEW MOTIONS FILED BY MALIK MUHAMMAD NASIR AYAZ AND ENERGY AND POWER SOLUTIONS (PVT.) LIMITED AGAINST THE DECISION OF THE AUTHORITY REGARDING APPROVAL OF REQUEST FOR PROPOSAL SUBMITTED BY AEDB FOR COMPETITIVE BIDDING OF 600 MW<sub>p</sub> SOLAR PV PROJECTS AT MUZAFFARGARH.**

1. The National Electric Power Regulatory Authority ("NEPRA" or "the Authority") issued its decision in the matter of approval of the Request for Proposal (RFP) submitted by the Alternative Energy Development Board ("AEDB") for Competitive Bidding of 600 MWP Solar PV Projects at Muzaffargarh on February 01, 2023. Subsequent to the said decision the Authority issued its decision in terms of Section 7(2)(G) of Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the "NEPRA Act") read with Regulation 3(1) of the NEPRA (Review Procedure) Regulations, 2009 (the "Review Regulations") regarding approval of the RFP submitted by the AEDB (collectively referred to as "Impugned Decision") on February 13, 2023.
2. Being aggrieved with the Impugned Decision of the Authority, two review motions were filed under Regulation 3(1) of the Review Regulations and other applicable documents by (i) Malik Muhammad Nasir Ayyaz and (ii) Energy and Power Solutions (Pvt.) Limited ("EPSL") through its legal counsel RIAA Barker (on February 20, 2023 and March 03, 2023 respectively).
3. The grounds for the review motion submitted by both parties are provided as under:

**Grounds submitted by Malik Muhammad Nasir Ayyaz:**

The following grounds have been submitted by Malik Muhammad Nasir Ayyaz in the review motion:

- a. The impugned decision violates Article 154 of the Constitution of Pakistan and Section 14A of the NEPRA Act. The decision relies on the Framework Guidelines, Fast Track Solar PV Initiatives, 2022 (the "Framework Guidelines") issued by the Federal Government, which are not recognized by the NEPRA Act. The authority of policy-making in the electric power sector lies with the Council of Common Interest (the "CCI"), and the Federal Government's role is limited to formulating a National Electricity Plan under specific conditions. The mentioned framework guidelines do not meet those requirements and contradict the Policy for Alternative and Renewable Energy, 2019 (the "ARE Policy"). By deferring the issue of applicability and enforceability to the Federal Government, the Authority violates its mandate and undermines its role as an independent regulator. Proper long-term planning is crucial to avoid commitments without considering all relevant factors.
- b. The impugned decision violates the mandatory provisions of the NEPRA Act regarding the composition of the Authority. As per Section 3 of the NEPRA Act, the Authority should consist of one Chairman and four specialized members, but the position of Member (Law) was vacant at the time the decision was made. This vacancy in the composition of the Authority, specifically from the province where the proposed project is located, was highlighted in the written comments submitted to the Authority. The absence of the required member means the Authority

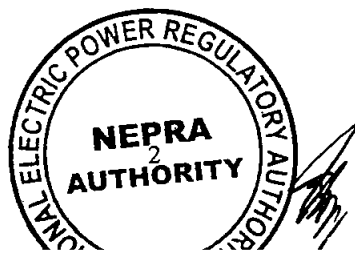




- does not possess the necessary skills and competence required under section 3(4A) of the NEPRA Act, rendering the decision invalid.
- c. The impugned decision contradicts Section 32 of the NEPRA Act and the NEPRA (Electric Power Procurement) Regulations, 2022 (the "Procurement Regulations"). The decision fails to adhere to the requirement of power procurement approval from the Authority as mandated by Section 32 of the NEPRA Act. The Power Purchase Agreement (EPA) signed by CPPA-G does not meet the requirements, and the proposed projects should have been approved by the distribution company boards and integrated into their power acquisition programs. The impugned decision also neglects the Procurement Regulations and refers to repealed NEPRA Competitive Bidding Tariff (Approval Procedure) Regulations, 2017, which indicates non-compliance. The saving clause provided in Regulation 37(2) of the Procurement Regulations does not cover the approval of the RFP, as it was submitted after the repeal.
  - d. The impugned decision contradicts the CTBCM (Competitive Trading Bilateral Contract Market) regime, which may result in additional burdens on consumers and taxpayers. The NEPRA Amendment Act, 2018 introduced the CTBCM regime to promote competition in the power sector. Instead of the proposed projects, the Authority and the Federal Government should facilitate private investors in installing solar power plants at their own cost and risk, transmitting power under the CTBCM framework to their preferred Bulk Power Consumers (BPCs). This approach would prevent burdening consumers with increased capacity payments and stranded costs.
  - e. Allowing 70% foreign exchange indexation exposes consumers to currency depreciation risks, contrary to the need for tariff stability and predictability emphasized in Section 31(2)(i) of the NEPRA Act. A better approach would be to allow investors to hedge currency risks while isolating consumers from exchange rate fluctuations. Encouraging private sector investments under the CTBCM regime would address these issues.
  - f. The RFP and Framework Guidelines contradict the AEDB Act and its mandate, which the Authority erred in noting.
  - g. Based on the above grounds, the petitioner requests that the impugned decision be set aside, and the relevant authorities should be directed to provide an enabling environment for private investors to implement these projects at their own costs and risks. Connectivity to the national grid and supply to the preferred BPCs should be fully facilitated with reasonable network costs, including certain stranded costs for a limited period, without any discrimination or bias.

**Grounds submitted by EPSL:**

5. EPSL submitted the following grounds in its review motion:
  - a. The approved RFP does not allow for CPI indexation of the tariff to cover the inflation factor, which is a significant disincentive for consumers considering the high inflation rate. The current inflation rate has reached its highest level i.e. 27.6% since 1975, projected to average 33% in the first half of 2023.
  - b. Information critical for investors to make an informed decision such as Capacity Factor, Degradation, assumed ROE, Debt Repayment Term, assumed O&M cost per MW, assumed Project Cost per MW, and assumed EPC cost, is not provided in the Impugned Decisions.





- c. To ensure an appealing and viable tariff, any ambiguity regarding the dissenting note of the Learned Member of the Honourable Authority, specifically regarding one-time indexation at Commercial Operation Date (COD) and its subsequent impact on the tariff, should be eliminated.
  - d. The Impugned Decision disregarded fundamental principles, rendering investments financially unviable and depriving the petitioner, potential investors, and the public from benefiting.
  - e. Based on the above, the petitioner requested a review of the Impugned Decision based on NEPRA laws, the provided grounds, and the project's specific circumstances.
6. The Authority admitted the aforementioned review motions on March 14, 2023, and decided to grant an opportunity of hearing to relevant parties. Accordingly, individual notices of the hearing to relevant parties i.e. CPPA-G, AEDB, NTDC, and Petitioners were issued on May 19, 2023. The hearing on the subject matter was held on May 23, 2023, and was attended by representatives of AEDB/PPIB and Petitioners, etc.
  7. During the hearing, Mr. Nasir Ayyaz presented his arguments and considered that the submissions made in the review motion are very clear and self-explanatory. He further stated his current intention not to press the petition and requested the Authority to duly consider the grounds presented in the review motion for future Request for Proposals (RFPs) approved by the Authority, as opposed to the instant review. The legal counsel of EPSL also explained the grounds of their review motion and reiterated that more disclosure of allowed tariffs should be made and CPI indexation should also be allowed given the high inflation. According to the legal counsel of EPSL, the points raised in the additional note of one of the Authority's members in the decision dated February 13, 2023, are valid wherein, the Honourable member has stated that proceedings should have been initiated under the Review Regulations if AEDB's request for one-time adjustment on 30% of tariff is to be allowed.
  8. Arguments heard. Record perused.
  9. The Authority has noted that Regulation 3(2) of the Review Regulations provides 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 the record or from any other sufficient reasons, may file a motion seeking review of such order. Further, Regulation 3(7) of the Review Regulations read with Rule 16(9) of the NEPRA (Tariff Standards and Procedure Rules, 1998 (the "Tariff 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.
  10. The Petitioner (Mr. Nasir Ayyaz) 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 Decision and also failed to point out any mistake or error apparent on the face of the record neither any sufficient reason was provided which was not considered by the Authority. Additionally, no sufficient grounds have been put forth that were not taken into account by the Authority. The fact of the matter which is also evident from the perusal of the Decision is that all material facts and documents were in the knowledge of the Authority and the record clearly shows that the Authority issued the Decision after consideration of





all material facts and documents. Therefore, the Authority is of the view that the review petition is not maintainable in terms of Regulation 3(2) of the Review Regulations read with Rule 16(9) of the Tariff Rules and the same is hereby dismissed.

11. Furthermore, the contentions raised by the Petitioner (EPSL) on the indexation and tariff structure, the Authority noted that the aforementioned decisions were made with due regard to the Framework Guidelines approved by the Federal Government. These aspects also underwent comprehensive deliberation during the proceedings, thus rendering them ineligible to meet the criteria for decision review.

**Order:**

12. The Authority considers that the grounds advanced by the petitioners (i) Mr. Nasir Ayyaz and (ii) Energy and Power Solutions (pvt) Limited do not merit review. In view thereof, the instant review motions are hereby dismissed.

**AUTHORITY**

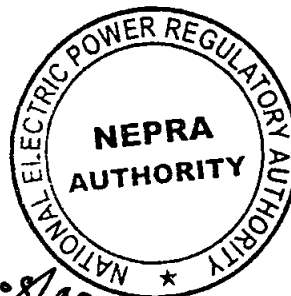
(Mathar Niaz Rana (nsc))  
Member

(Amina Ahmed)  
Member

(Eng. Rafique Ahmed Shaikh)  
Member

(Eng. Maqsood Anwar Khan)  
Member

(Tauseef H. Farooqi)  
Chairman



29/08/23