



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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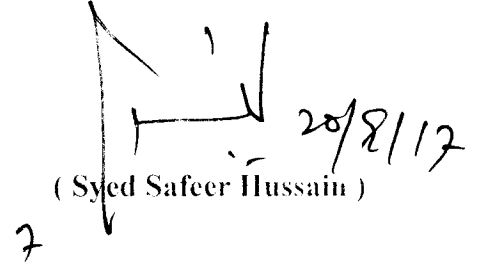
No. NEPRA/SPVPGT-2017/15770-15772
September 20, 2017

Subject: Decision of the National Electric Power Regulatory Authority in the matter of Motion for Leave for Review filed against Decision of the Authority dated March 3, 2017 in the matter of Solar PV Power Generation Tariff

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (06 pages) regarding Motion for Leave for Review filed against Decision of the Authority dated March 3, 2017 in the matter of Solar PV Power Generation Tariff for information.

Enclosure: As above


(Syed Safer Hussain)
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Secretary
Ministry of Energy
'A' Block, Pak Secretariat
Islamabad

CC:

1. Secretary, Cabinet Division, Government of Pakistan, Cabinet Secretariat, Islamabad
2. Secretary, Ministry of Finance, Government of Pakistan, 'Q' Block, Pak Secretariat, Islamabad

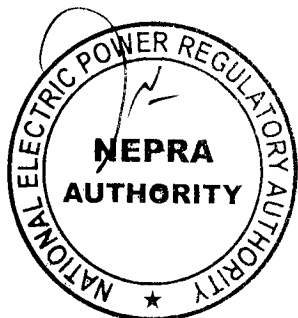


**DECISION OF THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY IN THE
MATTER OF MOTION FOR LEAVE FOR REVIEW FILED AGAINST DECISION OF THE
AUTHORITY DATED MARCH 3, 2017 IN THE MATTER OF SOLAR PV POWER
GENERATION TARIFF**

1. National Electric Power Regulatory Authority (hereinafter referred to as the "Authority") issued its decision in the matter of Solar PV power generation tariff on March 3, 2017 (hereinafter referred to as the "competitive bidding decision" or "impugned decision").
2. The following two companies filed motion for leave for review (hereinafter referred to as the "review motion") against the competitive bidding decision:
 - i) M/s Zhenfa Pakistan New Energy Company (Pvt.) Limited ("Zhenfa or Petitioner")
 - ii) M/s Zonergy Company Limited ("Zonergy or Petitioner")
3. The review motions were filed under rule 16(6) of the NEPRA (Tariff Standards and Procedure) Rules, 1998 ("Tariff Rules") read with Regulation 3 of the NEPRA (Review Procedure) Regulations, 2009. As per regulation 3(2) of the Review Procedure Regulations, 2009, *"any party who is 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 seeking review of such order"*. Therefore, while deciding the review motion, the afore-referred regulation has to be kept in mind and the grounds of the Review Motion which do not fulfill the requirements of the said regulation cannot be considered.

Brief Background

4. The Authority upon expiry of validity period of the last Upfront Tariff for Solar PV Power Plants (hereinafter referred to as the "Upfront tariff, 2016"), initiated suo moto proceedings for the determination of new tariff in exercise of its powers under the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 ("NEPRA Act") read with Rule 3(1) of the Tariff Rules. The advertisement, containing the proposed tariff and underlying assumptions thereof was published in the widely circulated daily newspapers on June 14, 2016. The public hearing in this matter was held on July 19, 2016 at NEPRA Tower, Islamabad. Following issues were framed for hearing and advertised through the aforementioned notice:



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- Whether to determine a new upfront tariff for solar PV power projects or to determine a benchmark levelized tariff for competitive bidding by the relevant agencies?
 - Whether the proposed costs are reasonable?
 - Whether the assumptions listed above are reasonable?
5. After following the due process and considering the submissions of various stakeholders, the Authority issued impugned decision on March 3, 2017. In the said decision, the Authority decided to shift to competitive bidding regime for the induction of solar PV generation into the electric power system of the country.

Proceedings

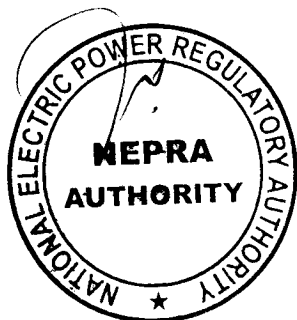
6. The Authority admitted the review motion of Zhenfa on March 29, 2017 and Zonergy on April 04, 2017. Since both the motions requested review of the same decision, therefore both the review motions were clubbed together by the Authority for consolidated proceedings. Further, the Authority decided to hold a hearing on May 9, 2017, however, the hearing was adjourned to May 16, 2017 on the request of Zonergy. The hearing was again postponed by the Authority to June 06, 2017. Notices of revised schedule of hearing were sent to the Petitioners and relevant stakeholders vide letter dated May 30, 2017.
7. In response to the notice of hearing, Central Power Purchasing Agency (Guarantee) Ltd. (CPPA-G) submitted its comments vide letter bearing No. CPPAGL/DGMT-II/MT-V/Gen/22818-19 dated May 15, 2017 wherein CPPA-G did not support the Zonergy's stance pleaded in the review motion and requested the Authority to maintain its decision to hold the competitive bidding for future wind and solar power generation projects.

Hearing

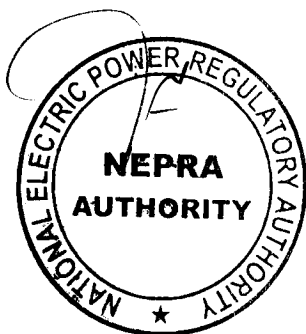
8. The hearing was held on June 6, 2017 at NEPRA Tower, Islamabad wherein the Petitioners, representative of Alternative Energy Development Board ("AEDB"), Punjab Power Development Board ("PPDB"), other interveners/stakeholders and general public participated.

Grounds of review motions

9. The Petitioners have sought review of the impugned decision on the following grounds:



- i) Zhenfa Pakistan New Energy Company (Pvt.) Limited
 - Estoppel, Legitimate Expectation, and Vested Right
 - Non-Speaking & Arbitrary Nature of Impugned Order
 - Non-feasibility of the Bidding Process
 - Discriminatory Effect of Impugned Order
 - Undermining Confidence in Investment in RE Sector of Pakistan
 - ii) Zonergy Company Limited
 - Impugned decision provides, in essence, that no tariff for any solar power project shall be determined by NEPRA except on the basis of competitive bidding.
 - The impugned decision is ultra vires of the Rules and the Act as NEPRA cannot decide that applicants cannot obtain a tariff determination on a cost plus basis.
10. CPPA-G submitted that issuance of different tariff regimes for different sponsors will create discrimination. The withdrawal of the impugned decision will hamper NEPRA and CPPA-G's efforts towards development of competitive market and consumers will be deprived of their rights to get cheapest electricity. CPPA-G requested the Authority to maintain its decision to hold competitive bidding for future wind and solar power generation projects.
11. During the hearing, representative of Punjab Power Development Board (PPDB) submitted that competitive bidding tariff is not applicable for raw sites projects/unsolicited proposals. PPDB opined that to accommodate the Petitioner and other similar unsolicited projects, the Authority may consider approving a rationalized upfront tariff.
12. The Authority has considered the review motions and submission of the petitioners. The submissions are discussed and analyzed in the following paragraphs:
- Zhenfa submitted that RE Policy provides two separate categories for setting up a renewable energy project, i.e. solicited and unsolicited proposals. The Policy provides tariff setting through competitive bidding only for solicited proposals and upfront/negotiated tariff for unsolicited proposals. During the hearing, the Petitioner while referring a judgment passed by the honorable Supreme Court of Pakistan submitted that NEPRA ought to comply with the policies of the Federal Government. However, by announcing competitive bidding tariff for unsolicited proposals, NEPRA has violated the RE Policy as the impugned decision requires

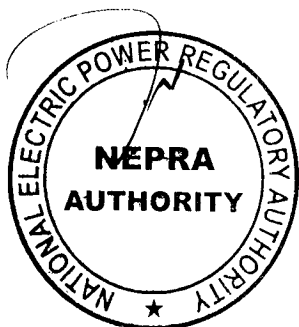


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all unsolicited project sponsors to participate in the competitive bidding for obtaining a tariff. It is to be noted that NEPRA exercised its power to determine the tariff regime under the NEPRA Act as well as Rules and Regulations made thereunder. The Policy document provides guidance for the determination of tariff. For example, while determining tariff, NEPRA has been referring and incorporating the incentives given in the Policy i.e. largely all the financial incentives and risk coverage etc. given in the Policy have been made part of the tariff determinations by NEPRA. However, keeping in view the developments in the market and other factors, it is the role of NEPRA to decide the suitable tariff and corresponding regime for the induction of certain technology of electric power. Nevertheless, the impugned decision does not restrict the projects to file petition under the Tariff Rules, i.e. one of the tariff modes prescribed for unsolicited projects in the RE Policy.

- The Petitioner submitted that the representations under the RE Policy gave it the legitimate expectation that its unsolicited proposal shall be processed in accordance with the mechanism stipulated in the RE Policy. While following the prescribed route, Zhenfa submitted that it has achieved a number of milestones for which it has spent a huge sum of money, therefore, vested rights have accrued for the completion of this project in accordance with the regulatory regime as given in the RE Policy. The Petitioner also submitted that NEPRA cannot cancel these rights by applying tariff regime/mechanism not prescribed for unsolicited projects under the RE Policy. The Authority noted that it has determined three upfront tariffs for solar power projects in the past. During the hearing, the Petitioner itself submitted that it could not avail the previous upfront tariff(s) due to non-issuance of pre-requisites thereof by relevant public authorities. Now the expectation that NEPRA shall continue determining upfront tariffs for an indefinite period of time or till the time all the LOIs issued by the relevant agencies are not exhausted may not be considered a legitimate expectation. Regarding the point of accrual of vested rights by the Petitioner, the Authority considers that there is no vested right for a company for issuance of an upfront tariff especially in light of the LOI which only stipulates the steps to be followed for the development of the projects with all risk and cost to be borne by the investors. A company has the right to get a tariff from NEPRA provided it fulfils all the requirements as required under the applicable tariff regime. The Authority also noted that the Petitioner itself has stated numerous times in its review motion and during the hearing that legitimate expectation and vested rights have accrued for the award of either the upfront or negotiated tariff as stated in the RE Policy. During the hearing, the Authority informed the Petitioner that it may file petition under the cost plus regime. The Petitioner however argued that it is developing its project since March, 2015, during the course of which the upfront



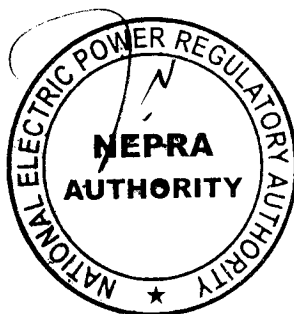
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tariff has been revised twice; therefore, further revision of tariff in cost plus regime shall not be feasible. The Authority considers that the argument put forth by the Petitioner cannot be considered maintainable as in case the Authority had decided to issue another upfront tariff, all the assumptions would have been determined afresh.

- The Petitioner submitted that the impugned decision states the submission of Alternative Energy Development Board (“AEDB”) that the development process for competitive bidding framework shall take up to 10 months and still NEPRA decided to shift towards competitive bidding. It needs to be noted that AEDB during the hearing held on July 21, 2016 had informed NEPRA that 6-8 months’ time shall be required for the development of bidding framework, therefore, the Authority in March, 2017 decided to shift towards the said regime.
- The Petitioner submitted that the bidding process can be adopted for the projects having similar site conditions. The competition between advanced stage projects and new projects shall be discriminatory and shall render the whole bidding process unfair and ambiguous. The Authority is of the view that the LOIs have been issued by the relevant agencies and as per the applicable law of competitive bidding, those agencies are also responsible to develop the bidding framework. Therefore, the project company may take up these contentions with the LOI issuing agencies.
- Zonergy has primarily submitted that the Authority has cancelled the route of cost plus tariff through issuance of the impugned decision. The Authority noted that the understanding of the Petitioner in this regard is not correct. The Authority in its decision dated May 30, 2017 in the matter of review motion filed by Energy Department, Government of Sindh (GOS) has already decided that the decision of competitive bidding by NEPRA does not restrict the unsolicited projects to get their tariff determined under NEPRA Tariff Rules and the relevant projects may file tariff petitions under the said rules subject to submission of the requisite documents under the said rules. In view thereof, there is no requirement for review of the impugned decision as requested by the Petitioner.

Order

13. In view of the above discussions, the Authority considers that the request of M/s Zhenfa to issue upfront tariff for solar power projects again is not maintainable. Further, it has been clarified that the Solar PV power projects may consider filing tariff petition under NEPRA (Tariff Standards and Procedure) Rules, 1998 subject to submission of all the requisite documents under the said rules including power



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evacuation and consent certificates from the concerned entities. In view thereof, the instant review motions stand dismissed.

AUTHORITY

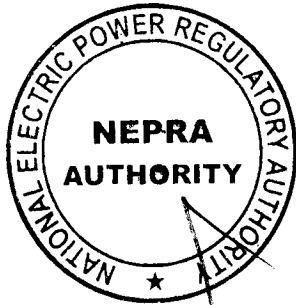
(Himayat Ullah Khan)
Member

(Maj (R) Haroon Rashid)
Member

(Syed Masood Hassan Naqvi)
Member

(Saif Ullah Chattha)
Vice Chairman

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9
2017



(Brig (R) Tariq Saddozai)
Chairman

20-9-17