



Registrar

# National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No.NEPRA/R/TRF-100/16742-16744

October 10, 2017

Subject: **Decision of the Authority in the matter of Upfront Tariff Applications of Six Solar Power Projects Pursuant to the Judgment of Honorable Islamabad High Court dated 04.07.2016**

Dear Sir,

Enclosed please find herewith the subject Decision of the Authority (11 pages) in the matter of Upfront Tariff Applications of Six Solar Power Projects pursuant to the Judgment of Honorable Islamabad High Court dated 04.07.2016 for information.

Encl: As above

( Syed Safer Hussain )

Secretary  
Ministry of Energy  
'A' Block, Pak Secretariat  
Islamabad

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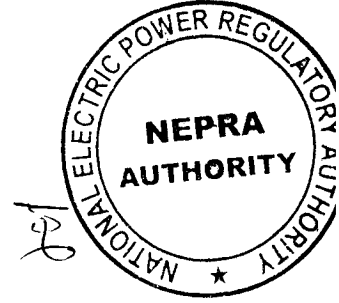
1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.

**NATIONAL ELECTRIC POWER REGULATORY AUTHORITY  
(NEPRA)**

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**DECISION OF THE AUTHORITY IN THE MATTER OF UPFRONT TARIFF  
APPLICATIONS OF SIX SOLAR POWER PROJECTS PURSUANT TO THE  
JUDGMENT OF HONORABLE ISLAMABAD HIGH COURT DATED 04-07-2016**

1. Through the instant decision, the Authority shall dispose of the applications for grant of upfront tariff filed by the companies listed below in the month of March, 2015 for their proposed solar power projects of 100 MW each at Quaid-e-Azam Solar Park, District Bahawalpur, Punjab:
  - i. High Flying Solar Development Pakistan Ltd.
  - ii. Indigo Solar Development Pakistan Ltd.
  - iii. King Rider Solar Development Pakistan Limited
  - iv. Golden Eye Solar Development Pakistan Ltd.
  - v. Flare Solar Development Pakistan Ltd.
  - vi. Elbel Green Energy Pakistan Ltd



**Facts:**

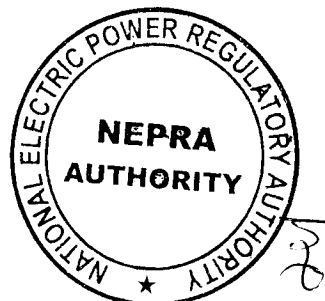
2. The applications were examined by NEPRA and it was observed and transpired that the applications were deficient and some material documents were missing i.e. Approval of Grid Connectivity and Simulation Studies by NTDC as stipulated in the tariff determination. The petitioners were directed to submit the missing documents, however, the said documents were not submitted. Therefore, it was decided by NEPRA to reject the applications as material documents were missing. Consequently, all the applications were rejected vide letter dated 14-07-2015.
3. The companies appearing at serial No.4 to 6 resubmitted their applications vide letter dated 31-07-2015. However, the first three companies did not re-submit their applications and their interconnection studies were never approved by NTDC. The resubmitted applications of the companies appearing at Serial No.4 to 6 above were deficient in various respects, therefore, NEPRA vide letter dated 13-08-2015

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highlighted the deficiencies in the resubmitted applications. After re-examination of the applications, it was observed that the submitted approval of interconnection study was not in accordance with the requirement of NEPRA, therefore, the companies/petitioners were directed to submit the interconnection study in the prescribed format. The same was done by NTDC vide its letter dated 17-08-2015. After examination of the approval granted by NTDC to these companies, NEPRA sought some clarifications regarding the basis for approval of these companies from NTDC vide letter dated 05-10-2015. The clarification was sought from NTDC as NTDC was not issuing approval of interconnections studies for various other renewable power projects on the plea that the M/s GOPA-Intec was conducting a system wide study. As a regulator it is incumbent upon NEPRA to ensure that all the licensees and players in the power market are performing their duties fairly and without any discrimination. NTDC replied to the letter of NEPRA vide letter dated 12-10-2015. After examining the reply, it was considered by NEPRA that the reply had not addressed the queries of NEPRA raised in its letter, therefore, another letter dated 28-10-2015 was written to NTDC and details of all the solar power projects were sought whose interconnection studies were pending approval with NTDC.

4. NTDC through its letter dated 04-11-2015 withdrew the approval of interconnection study granted to these companies as well as the certificate of power evacuation issued to these companies and stated that the interconnection studies will be reviewed in light of the final report of M/s GOPA-Intec.
5. Thereafter, the applications of the three companies were examined by NEPRA and due to the withdrawal of the approval of interconnection study as well as the certificate of power evacuation, the said applications were returned as they lacked the material documents required under the Upfront Tariff Determination.
6. The first three companies filed a writ petition No.4178/2015 against the rejection of their applications, whereas the other three companies filed writ petition No.4179/2015 against the return of their applications before the honorable Islamabad High Court, Islamabad.



7. The honorable Court through Order dated 04-07-2016 accepted all the petitions and directed NEPRA to accord the opportunity of hearing to the petitioners and decide their applications after taking into consideration all of their contentions.

### **Hearing**

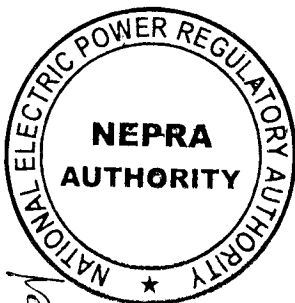
8. In compliance with the Orders of the Islamabad High Court, Islamabad, the hearing was initially fixed for November 15, 2016. However, due to the requests of the Petitioners and CPPA(G), (three times by the Petitioners, once by the CPPA(G) and once by the both Petitioners and CPPA(G), the hearing was rescheduled for five times. Finally the hearing was held on August 08, 2017.
9. The hearing was held on August 08, 2017 which was attended by the petitioners as well as other stakeholders.

### **Comments of Stakeholders**

10. In order to arrive at an informed decision and provide an opportunity of hearing to the stakeholders and the interested parties, NEPRA vide notice dated August 29, 2016 invited the comments of the stakeholders on the applications of the petitioners. In response to the said notice, eight stakeholders filed written comments. A gist of the comments is as under:

- i. **Anwar Kamal Law Associates (AKLA):**

Anwar Kamal Law Associates (AKLA) submitted comments vide three communications. AKLA vide letter dated 16-09-2016 recommended to hold a public hearing in the matter and give AKLA an opportunity to participate in the hearing. AKLA vide letter dated 19-10-2016 while, *inter alia*, mentioning about news items published in the daily "Dawn" dated June 13, 2016 and September 21, 2016 stated that as the sole regulator of the power sector NEPRA should look into the matter and find ways to bring solar tariff down rather than favoring particular parties/investors. AKLA vide letter dated 14-11-2016 raised objections on promotion of on-grid solar power plant, and determination of upfront tariff by NEPRA for solar power project which they alleged were on higher side and were causing a burden for the economy. AKLA opined that the solar upfront tariff were attractive for the investors



while for the electricity consumers, these were unaffordable. In brief AKLA did not support awarding of upfront tariff to the petitioners.

ii. **Alternative Energy Development Board (AEDB):**

AEDB vide its letter dated 14-10-2016 submitted detailed para wise comments on the writ petition 4178/2015 and 4179/2015 and framed certain questions of law and facts for consideration of the Authority regarding award of projects by the Government of Punjab to Zonergy Company, validity of LoI issued by PPDB to the Zonergy, issuance of tripartite Letter of Support (LoS) by AEDB to the project companies etc.

iii. **RIAA Barker Gillette**

M/s RIAA Barker Gillette submitted comments on behalf of its client M/s Finergy Private Limited and proposed certain issues of hearing pertaining to the requirement of opportunity of hearing while deciding the fate of the application for upfront tariff and generation licence applications by the Authority.

iv. **CTGI-WK Cholistan Solar Power**

CTGI-WK, another solar power company intending to establish a 50 MW solar power project at Quaid-e-Azam Solar Park, submitted comments giving details about its own case of upfront tariff application and proposing issues of hearing pertaining to the modus-operandi for deciding application for upfront tariff by NEPRA as well as specific issues pertaining to its own case. CTGI was also invited to participate the hearing, however, it did not attend the hearing.

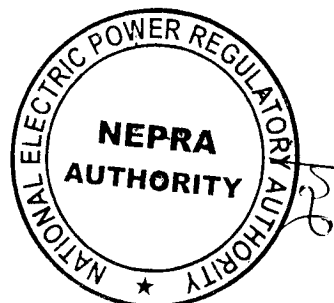
v. **Ms. Humaria Afzal**

Ms. Humaira Afzal, Advocate High Court, highlighted the following main points in her written comments:

- a. Upfront tariff fixation for 2015 and 2016 is high-rated.

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- b. Deficiency of necessary approval of interconnection studies by NTDC rendered applications incomplete.
- c. Vitality of precondition of NTDC approval.
- d. No vested right accrued to the petitioner companies in absence of any licensing agreement.
- e. How does NEPRA propose to compensate heavy burdened consumers.
- f. Discrimination wrongly presumed.
- g. Government either Federal or provincial is not duty bound by any stretch of imagination to purchase solar or any renewable energy as per upfront tariff 2015.
- h. NEPRA has unfettered but reasoned powers to issue or reject any application for power generation license

vi. **Punjab Power Development Board (PPDB)**

PPDB submitted the same detailed parawise comments which they had submitted before the Honorable Islamabad High Court in Writ Petitions No. 4178 & 4179 of 2015

vii. **Ministry of Planning, Development and Reform**

Ministry of Planning, Development & Reforms submitted the same detailed parawise comments which they had submitted before the Honorable Islamabad High Court in Writ Petitions No. 4178 & 4179 of 2015



**Submissions of the Petitioners**

11. On the date fixed for hearing, the petitioner companies were represented by their Counsel Mr. Faisal Naqvi Advocate. Mr. Naqvi argued that as per para 12.3 of the Tariff Determination, NEPRA should have considered the individual approvals given by NTDC for the projects of the Petitioners. Linking the approvals of grid connectivity study of the Petitioners with the finalization of system wide study regarding absorption of Renewable Energy in the system was contrary to the above provision at para 12.3 of NEPRA's own determination.
12. Mr. Naqvi stated that NEPRA returned the application of the Petitioners on 14.07.2015 due to non-submission of approved grid connectivity study. NTDC

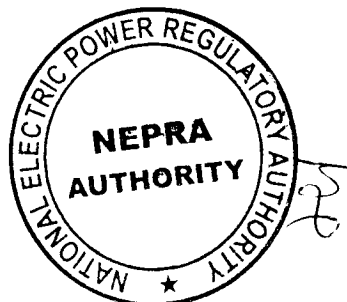
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issued approvals of grid connectivity study on NEPRA's format for three Petitioners namely Elbel Green, Flare Solar and Golden Eye on 24<sup>th</sup> July, 29<sup>th</sup> July and 05<sup>th</sup> August 2016 and they all again applied for upfront tariff. As per NEPRA upfront tariff Regulations, the applications were supposed to be approved within 10 working days.

13. Mr. Naqvi while referring to NEPRA's letter dated 05.10.2015 and 28.10.2015 stressed that NTDC withdrew its approvals granted to the Petitioners under pressure. Upon this, the Authority asked the legal counsel of the Petitioners whether NEPRA stopped NTDC from issuing approval of grid connectivity vide the letters quoted by the legal counsel? Whereupon, he responded that there was no basis for NEPRA to ask for the information advised vide the said letters. The counsel of the Petitioners stated that NTDC itself had conducted a study for evaluation of 1000 MW Solar park. Mr. Naqvi referred to the letter dated 08.04.2015 of NTDC written to M/s Zonergy wherein NTDC informed that infrastructure to evacuate power from 3x100 MW was already available in the park while infrastructure for evacuation of power from the remaining 6x100 MW will be available prior to COD of the projects.
14. Mr. Naqvi cited GOPA Study, which recommended that 2024 MW RE power could be connected without any major input. Mr. Naqvi also cited letter dated 31.03.2016 of NTDC regarding approval of Minutes of Grid Code Review Panel (GCRP) conveying GCRP approval to inform NEPRA/Ministry of Water & Power and other stakeholders regarding the share of Wind and Solar projects for the Year 2016-17, which comes to be 1756 MW and 1000 MW respectively.
15. The counsel of the petitioners argued that the Petitioners had made investment and were ready to continue with their projects. He further stated that they were cognizant of the fact that the solar upfront tariff was announced for a particular period and has now expired; however, the Petitioners should be given a way forward.

#### NTDC

16. The Authority asked the representative of NTDC for their submissions. The representative of NTDC stated that MD NTDC could not attend the hearing due to



other engagements while he (the representative) was not conversant with the issue. The Authority showed its displeasure over absence of MD NTDC.

**CPPA(G)**

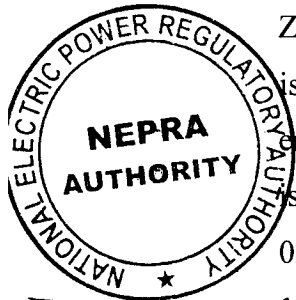
17. The counsel of CPPA(G) stated that there were six companies of Zonergy of which three were never issued approval of interconnection study. The remaining three companies secured approval from NTDC which were later withdrawn. The counsel of CPPA(G) stated that in their understanding the scope of hearing was limited to the question that whether NEPRA's decision to reject and/or return the application of the Petitioners was correct in the eyes of law. He stated that CPPA(G)'s position was that NEPRA's decision was perfectly in accordance with law. He stated that Zonergy company was issued three Letter of Intents (LOIs). The third LoI was issued to them on 02.05.2015 which expired on 02.07.2015. PPDB issued an endorsement regarding validity of LoI on 19.08.2015 which was conditional upon issuance of interconnection study approval. The LoI of the Petitioners expired on 02.07.2015 while the approval of interconnection study by NTDC was issued on 15.07.2015. CPPA(G) stated that due to non-availability of valid LoI, applications of the Petitioners were liable to be returned.

18. The counsel of CPPA(G) argued that due to expiry of valid LoI, the application of the Petitioners for Generation Licence also ceased to be valid. He further stated that CPPA(G) did not issue any consent for purchasing of power from the Petitioners. He concluded that the upfront tariff of 2015 which the Petitioners are seeking has already expired while they still not have secured approval of their interconnection studies which they have admitted; therefore, the Petitioners do not have any vested right to secure tariff or generation licence from NEPRA.

19. Mr. Talha Khalid of CPPA(G) stated the quantum of power to be procured from renewable energy companies beyond 2016-17 is still not decided.

20. The Authority asked the participants that they may submit their written submissions, if so desired, for Authority's consideration. The counsel of the Petitioners submitted their written argument/notes vide letter dated August 28, 2017.

21. Before proceeding further, considering the facts and nature of the cases it is necessary to divide this Order into two parts, one part relating to the First Three



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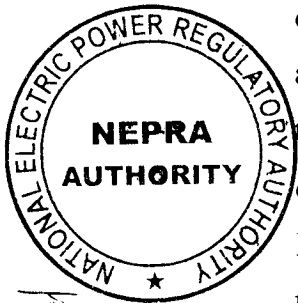
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Companies which filed Writ Petition No.4178/2015 in the Islamabad High Court and the second part relating to other three companies which filed Writ Petition No.4179/2015 as their status is totally distinct and different.

### Part One

22. It is pertinent to mention here that these three companies i.e. High Flying Solar Development Pakistan Ltd., Indigo Solar Development Pakistan Ltd. and finally King Rider Solar Development Pakistan Ltd. did not re-submit their applications after initial rejection of their applications vide letter dated 14-07-2015. Even in the hearing, the counsel of the petitioners did not agitate the matter of award of tariff to these three companies as they never got approval of interconnection study and simulation study from NTDC as well as no evacuation of power certificate was granted to them by NTDC. As noted above, the submission of these important documents along with the application is a condition precedent for admission of the application for grant of upfront tariff. The Authority has re-examined the case of these three companies and after examining their applications afresh, it is hereby decided that since these three companies failed to submit the Approval of Interconnection Study as well as Power Evacuation Certificate as stipulated in the tariff determination and submission of these documents is mandatory, therefore, their applications are not maintainable and hence rejected.



### Part Two

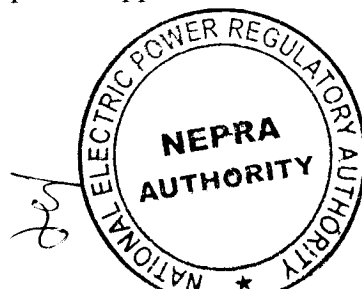
23. In this part, the applications and submission of the other three companies i.e. Golden Eye Solar, Flare Solar and Elbel Green Energy shall be discussed which filed Writ Petition No.4179/2015 in the Islamabad High Court, Islamabad. NTDC initially issued the approval of interconnection studies for these companies, however, later on the NTDC vide letter dated 05-11-2015 withdrew the approval earlier granted vide letter dated 17-08-2015.
24. The Authority has considered the submissions of the Petitioners, CPPA(G) and other stakeholders during the hearing, the arguments submitted by the counsel of the Petitioners as well as the record of the cases and noted that initially in March 2015 the Petitioners applied for unconditional acceptance of solar upfront tariff for their proposed solar power projects of 100 MW each at Quaid-e-Azam Solar Park,

District Bahawalpur, Punjab. The Petitioners also submitted applications for grant of generation licenses for their respective projects. As per para 14(v)(xiii)(c) of NEPRA's determination dated January 22, 2015, which the Petitioners desired to opt, the applicants were required to submit approval of grid connectivity and simulations studies in support of their applications which the Petitioners could not produce. Therefore, the Authority rejected applications of the Petitioners for upfront tariff as conveyed vide NEPRA's letter dated 14.07.2015

25. Subsequently, the Petitioners re-submitted their applications for acceptance of upfront solar tariff. These Petitioners submitted communications dated July 24, 2015, July 29, 2015 and August 05, 2015 of NTDC in respect of vetting of grid connectivity studies of Golden Eye Solar, Flare Solar and Elbel Green Energy followed by certificates dated August 17, 2015 in respect of approval of the said grid connectivity studies. The Authority noted that NTDC had refused to approve grid interconnection of various Renewable Energy projects on the premise that the study for determining the optimum share of RE Power in the national grid had not been finalized, therefore, the Authority vide letter dated October 05, 2015 directed NTDC to explain on what basis it had confirmed the grid interconnection of three companies of M/s Zonergy while it was refusing confirmation of grid connectivity to others due to absence of system wide study regarding absorption of Renewable Energy in the system.
26. NTDC responded vide letter dated October 12, 2015 giving justification for confirmation of grid connectivity for three projects of Zonergy. Through the said letter, NTDC confirmed that proposals for a lot of other solar and wind power projects had also been received by them and interconnection studies of those projects will be vetted in the light of suggestions by the international consultant M/s GOPA-Intec in the final report which was still not available by that time. Thereupon, the Authority advised NTDC to provide details of all the solar projects awaiting approvals of interconnection studies pending with NTDC. In response, NTDC vide its letter dated 04-11-2015 withdrew approvals accorded for the interconnection studies of these three companies. Owing to the withdrawal of approvals by NTDC, the Authority decided to return the applications of the above companies being deficient in respect of approved interconnection study.

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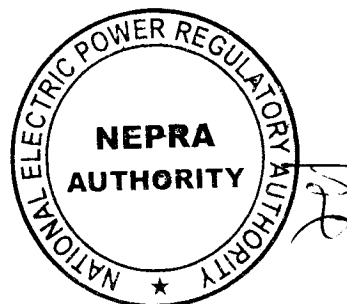
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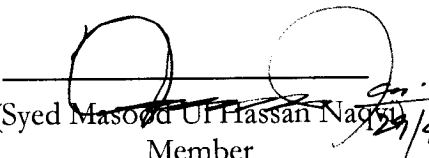
27. The Authority observes that a company seeking approval of upfront tariff from NEPRA is solely responsible to submit the documents / information / approvals etc., required under NEPRA Upfront Tariff Regulation, 2011 as well as the relevant determination of upfront tariff and the applications can only be entertained after fulfillment of all the pre-requisites by the applicant. The applications submitted by the petitioners were returned for their inability to fulfill the mandatory requirement of approval of interconnection study. The Authority has observed that the petitioners' allegation that NTDC withdrew its approvals under pressure of NEPRA is baseless and without any evidence.
28. As regards the petitioners' contention that linking the approval of the grid connectivity studies of the Petitioners with the finalization of system wide study for absorption of RE in the system was contrary to the provisions of NEPRA's solar upfront tariff determination 2015. The Authority has noted that the approvals of grid connectivity studies of the Petitioners were not linked by the Authority with the finalization of system wide study which was being conducted by the GOPA Intec. Rather, the selective approvals accorded by NTDC for some projects while keeping others pending till the finalization of the system wide study necessitated the regulator to ask NTDC to explain the basis for such selective approvals and provide details of all the projects awaiting their approvals.
29. The applications of the petitioners have been examined afresh and it has been noted that the petitioners after withdrawal of the interconnection studies and power evacuation certificate do not possess the mandatory approvals as required by the Solar Power Upfront Tariff Determination. Further, the Solar Upfront Tariff for which the petitioners had applied expired on 31<sup>st</sup> Dec, 2015. The GOPA study was received in the first quarter of 2016 after expiry of the Solar Upfront Tariff. Therefore, there are no legal basis to consider the said study for applications submitted prior to its finalization. It is also pertinent to mention here that the upfront tariff for Solar Power Plants has been discontinued and the Authority has encouraged the relevant agencies to hold competitive bidding for award of tariff. Further, the companies which cannot participate in the bidding process may approach the Authority for cost plus tariff under the NEPRA (Tariff Standards and Procedure) Rules, 1998.


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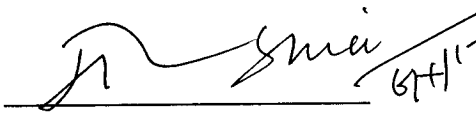
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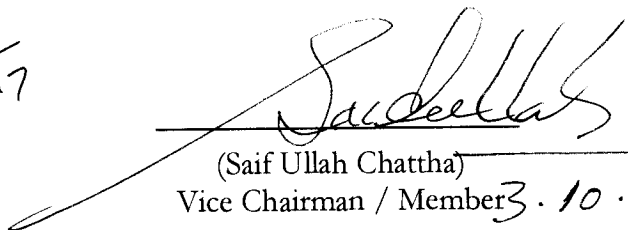


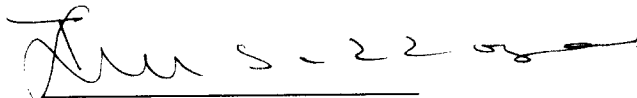
30. It noteworthy here that during the hearing, the petitioners themselves realized that award of expired Solar Upfront Tariff may not be possible owing to various legal and ground realities and requested the Authority to provide them a way forward. In this respect as noted above, it is made clear that the petitioners may avail the option of competitive bidding or the cost plus tariff in order to develop their projects.
31. In view of the above, the applications of the petitioners are not maintainable and hence rejected.

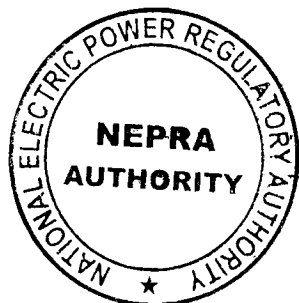
  
(Syed Masood Uf Hassan Naqvi)  
Member

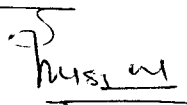
  
(Himayat Ullah Khan)  
Member

  
(Maj. (Retd) Haroon Rashid)  
Member

  
(Saif Ullah Chattha)  
Vice Chairman / Member 3.10.2017

  
(Fariq Saddozai)  
Chairman



  
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