



National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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No. NEPRA/R/SA(Tariff)/TRF-507/WAPDA-2019/18882-18884
July 23, 2020

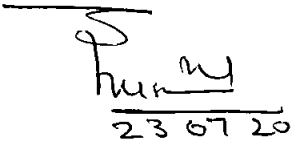
Subject: Decision of the Authority in the matter of Tariff Modification Petition for Revision of Net Hydel Profit (NHP)/Water Use Charges (WUC) Rate Payable to Government of AJ&K on Generation from Mangla Power Station [Case No. NEPRA/TRF-507/WAPDA-2019]

Dear Sir,

Please find enclosed herewith the subject decision of the Authority (04 Pages) in the matter of Tariff Modification Petition filed by WAPDA Hydroelectric for revision of Net Hydel Profit (NHP)/Water Use Charges (WUC) Rate Payable to Government of AJ&K on Generation from Mangla Power Station for information.

Enclosure: As above

Secretary
Ministry of Energy (Power Division)
'A' Block, Pak Secretariat
Islamabad


23 07 20
(Syed Safer Hussain)

CC:

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



DECISION OF THE AUTHORITY IN MATTER OF TARIFF MODIFICATION PETITION FOR REVISION OF NET HYDEL PROFIT (NHP)/WATER USE CHARGES (WUC) RATE PAYABLE TO GOVERNMENT OF AJ&K ON GENERATION FROM MANGLA POWER STATION

1. BACKGROUND

1.1 As per the NEPRA determination in the matter of Bulk supply Tariff for WAPDA Hydroelectric for Financial Year 2017-18 dated November 22, 2017 “the **Determination**”, WAPDA Hydroelectric is allowed to charge Net Hydrel Profit (NHP) to the Province of Khyber Pakhtunkhawa and Punjab @ Rs 1.10 per kWh and Water Use Charge (“WUC”) on Mangla Power Station to the Govt. of AJ&K at the rate of Rs. 0.15/kWh.

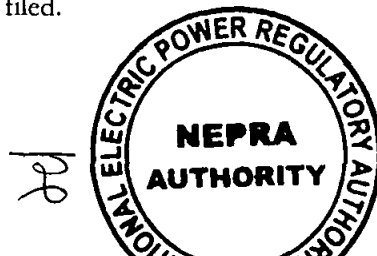
1.2 The WAPDA Hydroelectric (the “**Petitioner**”) has now submitted tariff petition pursuant to section 3(1) of the NEPRA Tariff Standard and Procedures Rules, for modification in WUC rate payable to GoAJ&K on generation of Mangla Power Station in compliance with the Economic Coordination Committee (ECC) of the Cabinet decision held in case No. ECC 76/11/2019 dated 20-03-2019. The relevant clauses of the ECC decision are reproduced here under as a ready reference:

- i. *WUC @ Rs. 1.10/kWh should be allowed on Mangla Hydropower Project prospectively as well as Neelum Jhelum Hydropower Project and any other future public sector hydropower project to AJK at par with NHP paid to the provinces. Any future revision in rate of NHP for provinces shall apply to WUC for AJK.*
- iii. *Ministry of Water Resources to issue necessary guidelines to NEPRA. WAPDA shall accordingly file tariff application to the Registrar. ECC to be briefed after 30 days.*
- vii. *WUC at the revised rate of Rs. @ 1.10/kWh shall be paid prospectively, once the recovery through tariff begins, after tariff determination by NEPRA. This arrangement shall not have retrospective effect.*
- viii. *WAPDA shall not seek any Federal Government support regarding payment of WUC to AJK.*
- ix. *An agreement incorporating the above recommendation may be signed between the Government of AJK and other stakeholders of Government of Pakistan, amending the Mangla Raising Agreement of 2003 to the extent of WUC and terms of power supply to AJK.*
- x. *The new pricing system for Water Use Charges (WUC) and consumer tariff as DISCO for AJK to complete by 30th June 2019.*

1.3 The modification tariff petition was admitted by the Authority on December 24, 2019 and it was decided to provide an opportunity of hearing to the Petitioner and other stakeholders before decision in the matter is taken.

2. Proceedings:

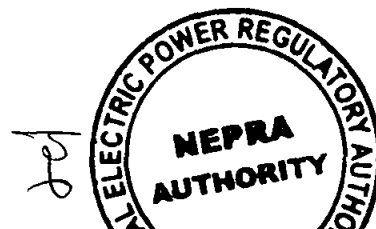
2.1 The hearing in the matter was originally scheduled on March 18, 2020, however due the COVID-19 pandemic it was postponed and rescheduled and held online on June 03, 2020. The notice of admission/hearing was also published in the national newspaper on May 23, 2020 inviting the filing of replies, intervention request or comments. The tariff petition along with the issues framed for the proceeding was also uploaded on NEPRA website. Further, separate written notices were also sent to the stakeholders. In response no intervention request was filed.

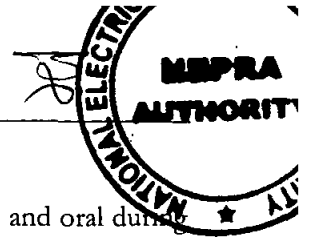


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- 2.2 The online hearing was attended by representatives of the Petitioner, Punjab Power Development Board (PPDB) and other stakeholders.
- 2.3 No written comments were received from any stakeholders, however the following were discussed during the hearing by the representative of PPDB:
- i. As per the mandate of NEPRA Act 1997, the Authority shall protect the interest of the consumers.
 - ii. As per PPDB, the assertions of WAPDA in the petition are contradictory. The WAPDA on one hand is requesting an increase in Water Use Charge (WUC), which is currently Rs.0.15/kWh for Mangla Power Station as per Power Policy 2002. Further, under the Power Policy 2015, the WUC is Rs.0.425/kWh and will be applicable only to those project which will achieved COD after 2015, so this figure is principally not applicable in case of Mangla Power Station. On the contrary WAPDA is clubbing WUC with Net Hydel Profit (NHP), which are different and should not be mixed
 - iii. The PPDB submitted that, water is an indigenous resource and the policy should be inclined keeping the WUC to a minimum but in contrary, the WUC rate has increased from Rs. 0.15/kWh to Rs. 0.425/kWh, which has further burdened the end Consumers. Keeping in view the aforementioned while protecting the interest of the consumers the Authority should consider these points.
- 2.4 Based on the content of the petition the following issues were framed for hearing:
- i. Whether Net Hydel Profit (NHP) can be provided to AJ&K within the ambit of Constitution of Pakistan?
 - ii. Whether the necessary approvals have been obtained for application of revised Water Use Charge (WUC) on Mangla Power Station?
 - iii. Whether the relevant agreements between GoP and GoAJK for application of Water Use Charge on generation from Mangla have been amended?
 - iv. What is the period of application of the revised Water Use Charge?
- 3 Arguments heard and record perused. Having considered the respective submissions of the Petitioner and other stakeholders present in the hearing, the issue-wise findings of the Authority on the subject tariff modification proposal are as under:-
- 3.1 Whether Net Hydel Profit (NHP) can be provided to AJ&K within the ambit of Constitution of Pakistan?**
- 3.1.1 The Petitioner during the hearing as well as in writing submitted that, NHP is paid to the Provinces under Article 161(2) of the Constitution of Islamic Republic of Pakistan whereas, Water Usage Charges (WUC) are paid to other units of the Federation like AJ&K and are covered in Article (1) of the Constitution of Pakistan, as per GoP policy to ensure National harmony and parity between units of Federation.





3.1.2 The Authority considered the arguments put forward by the Petitioner both written and oral during the hearing and observed that the issue of application of WUC rate (as mentioned in Power Generation Policy 2015) and NHP on Federal Government owned plants located in the territory of AJ&K also emerged during the proceedings of tariff petition of Neelum Jhelum Hydro power project which is also located in the territory of AJ&K. In that proceeding the Petitioner (Neelum Jhelum Power Company) requested to allow water use charge at a rate of Rs 0.425 per kWh to the project. The Authority considered this request and accordingly rejected it based on the argument which were reflected in the para 5.7 of Determination in the matter of Tariff Proposal submitted by CPPA-G for import of 969 MW from Neelum Jhelum Hydropower Project dated November 19, 2018. The para 5.7 of the said determination is reproduced as under:

5.7 The Authority also considered whether the Water Use Charge (WUC) is payable by the project to AJK government under the applicable law/GOP policy. It was noted that as per clause 5.3 of Power Generation Policy 2015, WUC @ Rs 0.425 per kWh is payable by private projects to the Provinces/AJK/GB, whereas, for public sector projects, NHP is payable. The Authority understands that the instant Project is established in SPV mode, however the Project itself is government owned and no private equity investment has been injected. Further AJK is not entitled to payment of NHP as per the interpretation of the Constitution. Hence, as per the strict definition of law, it can be concluded that the Project is neither entitled for WuC nor NHP. In the opinion of the Authority, there is no denial of the fact that a region where hydro stations are situated provinces/regions ought to get a payment for use of its resources. The Authority considers that this specific Project unfortunately falls in the grey area of law where both WUC and NHP is not applicable and its component can't be allowed at this stage. The Authority, however considers that the Seller may take up this issue at the relevant forum for its early resolution.

3.1.3 Therefore, the Authority is of the view, that for NHP to be given, the power houses, owned and operated by federal government have to be situated in the province, and AJ&K is not the province as per the Constitution of Pakistan therefore, enhancing current WUC rate of Rs 0.15 per kWh to the NHP rate of Rs 1.10 per kWh is not justified.

3.2 Whether the necessary approvals have been obtained for application of revised Water Use Charge (WUC) on Mangla Power Station? & whether the relevant agreements between GoP and GoAJK for application of Water Use Charge on generation from Mangla have been amended?

3.2.1 The Petitioner during the hearing as well as in its written comments stated that, the instant petition seeking revision of Water Usage Charge rate for Mangla Power Station has been filed in line with the decision of the Economic Coordination in case # 76/11/2019 dated: 20.03.2020 and upon directions of Ministry of Water Resources. The Petitioner further stated that as per the ECC decision, Agreement is to be signed between the Government of AJ&K and other stakeholders of Pakistan and that, Government of AJ&K has prepared a draft agreement and submitted it to the Ministry of Water Resources, which is under review at different forums.

3.2.2 The Authority is of the considered opinion that, the payment of Water Usage Charges (WUC) to AJK is agreed in the MoU signed at the time of Mangla Dam Raising Project @ Rs.0.15 per kWh on generation of power from Mangla Power Station in line with the GoP Power Policy 2002, which has been accordingly incorporated for payment of WUC to AJ&K in the tariff of WAPDA Hydro Electric. This warrants that if any change in rate is to be incorporated in the WAPDA hydroelectric

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tariff, the underlying agreement i.e. Mangla Dam Raising agreement has to be amended first and the same has also been stated in the above mentioned ECC decision, which is reproduced as under:

"ix. An agreement incorporating the above recommendation may be signed between the Government of AJK and other stakeholders of Government of Pakistan, amending the Mangla Raising Agreement of 2003 to the extent of WUC and terms of power supply to AJK."

3.2.3 The Authority noted that, the Mangla Raising Agreement of 2003 is yet to be amended, therefore, in the absence of revision in the base agreement; revising the rate from current Rs. 0.15 per kWh is not justified at this stage.


3.3 What is the period of application of the revised Water Use Charge?


3.3.1 The Petitioner on this issue clarified that in pursuance to the abovementioned ECC decision dated 20.03.2020, revised WUC rate will be applicable prospectively, after recovery begins through tariff as per NEPRA decision and GoP notification. With the Petitioner's clarification this issue stands addressed.

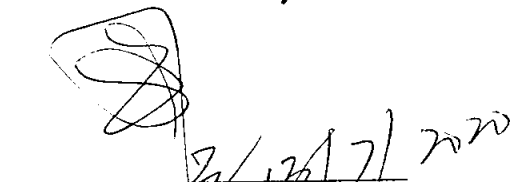
4 Order:


4.1 In view of the aforementioned, the modification petition for enhancement of Water Use Charges is not justified and the same is hereby rejected.

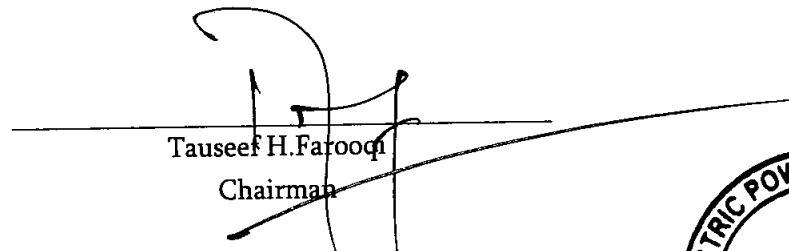
AUTHORITY


Saif Ullah Chattha
Member 9.7.2020

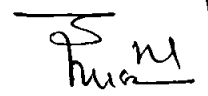

Engr. Rafique Ahmed Shaikh
Member


Rehmatullah Baloch
Member


Engr. Bahadur Shah
Member


Tauseef H. Farooqi
Chairman

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