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No. NEPRA/R/ADG(Trf)/TRF-587/GoKPK-2022/17073-17075
September 9, 2022

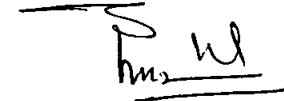
Subject: **Decision of the Authority with respect to Modification Petition filed by Government of Khyber Pakhtunkhwa in the matter of NEPRA Decision dated August 23, 2021, regarding WAPDA Hydroelectric Tariff Petition for FY 2020-21 [Case # NEPRA/TRF-587/GoKPK-2022]**

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (14 Pages) in Case No. NEPRA/TRF-587/GoKPK-2022.

2. The Decision is being intimated to the Federal Government for the purpose of notification in the official Gazette pursuant to Section 31(7) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 within 30 days from the intimation of this Decision. In the event the Federal Government fails to notify the subject tariff Decision or refer the matter to the Authority for reconsideration, within the time period specified in Section 31(7), then the Authority shall notify the same in the official Gazette pursuant to Section 31(7) of NEPRA Act.

Enclosure: As above


09 09 22
(Syed Safer Hussain)

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

CC:

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



**DECISION OF THE AUTHORITY WITH RESPECT TO MODIFICATION PETITION
FILED BY GOVERNMENT OF KHYBER PAKHTUNKHWA IN THE MATTER OF
NEPRA DECISION DATED AUGUST 23, 2021, REGARDING WAPDA
HYDROELECTRIC TARIFF PETITION FOR FY 2020 – 21**

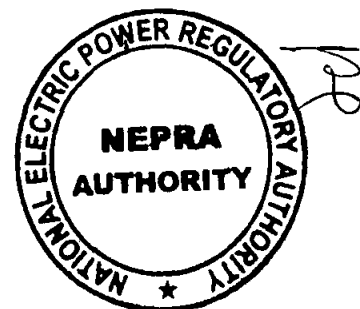
BACKGROUND

1. The Authority, vide decision dated April 5, 2021, determined tariff for WAPDA Hydroelectric for FY 2022 – 21, whereby Net Hydel Profit (“NHP”) was allowed at the rate of Rs. 1.10/kWh with no indexation. The referred decision also stated that any indexation of NHP approved by the Council of Common Interests (“CCI”) may be considered by the Authority as per applicable law.
2. The Government of KPK (“GoKP”) filed a Motion for Leave for Review (“MLR”) stating that the CCI has already approved 5% indexation of NHP. During the proceedings of MLR, the Authority observed that a majority of the submissions of GoKP have already been deliberated upon during the proceedings of WAPDA’s determination dated April 5, 2021, and that GoKP has not provided any conclusive evidence which in categorical terms states that CCI has allowed indexation of 5% over the rate of Rs. 1.10/kWh.
3. During the proceedings of the MLR, the Authority also noted that payments have been made to Government of KPK and Punjab on the basis of an indexation rate of Rs. 1.155/kWh which started from FY 2018, therefore, being cognizant of the constitutional provisions of NHP and its importance to the provinces, the Authority decided to allow indexation on an interim basis for 6 months from the date of notification of the decision of the MLR dated August 23, 2021, and the Authority also stated that GoKP shall approach CCI to obtain clear guidelines on the issue of NHP. The MLR decision was notified on May 27, 2022, and accordingly the six-month period was supposed to expired on November 26, 2022.

FILING OF TARIFF MODIFICATION PETITION

4. As per the GoKP (hereinafter referred to as the “Petitioner”), in pursuance of the abovementioned MLR decision, it approached the CCI to obtain clear guidelines on the issue of NHP and indexation. Therefore, GoKP through its legal counsel, vide dated July 19, 2022, submitted Tariff Modification Petition (hereinafter referred to as the “Modification Petition”) against the Authority’s decision dated August 23, 2021 (MLR), in the matter of WAPDA Hydroelectric Tariff Petition for FY 2020 – 21.
5. The Modification Petition was considered by the Authority on July 21, 2022, wherein the Authority decided to admit the same. Accordingly, notices of hearing in the matter were published in newspapers on August 12, 2022, and August 13, 2022, while individual notices to stakeholders were sent on August 16, 2022.

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6. In response to the notice of admission/ hearing, comments from WAPDA Hydroelectric and Anwar-ul-Haq, Chartered Management Accountant were received while an intervention request from the Government of Punjab was also received. The comments and intervention request were forwarded to the Petitioner for its response. The comments, intervention request and Petitioner's responses to the same shall be discussed under the relevant issues.

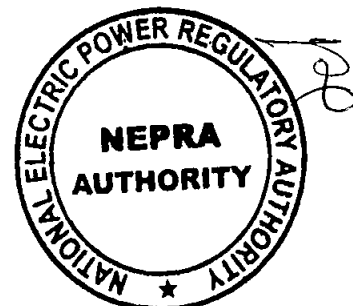
HEARING

7. A hearing in the matter was held as per schedule on Wednesday, August 24, 2022, at 11:30 AM, which was participated by, among others, the Petitioner, its legal counsel, Mr. Anwar-ul-Haq, WAPDA Hydroelectric and the representative of Government of Punjab ("GoPb").
8. During the hearing, the Petitioner, along with its legal counsel presented its case and submitted that, in compliance with the Authority's directions, it had obtained clear guidance from the CCI regarding the annual indexation of NHP in the form of para 35 of the minutes of the 49th meeting of CCI.
9. However, during the hearing, the representative of GoPb submitted that Punjab is a major stakeholder it considers that undue burden should not be passed onto the consumers. According to the representative of GoPb, this issue was added as an ex-agenda item in the CCI's 49th meeting, meaning thereby that GoPb's comments were not obtained before presenting the case before the CCI and that Punjab is not even aware of the rationale for 5% indexation. The representative of GoPb further submitted that GoKP has already moved a separate Summary regarding the indexation of NHP and the same is submitted to provinces for their respective comments. The GoPb, according to its representative, is working on exploring world best practices regarding NHP payment mechanism so that the end-consumer is not unduly burdened. Therefore, the representative of GoPb submitted that the request of the Petitioner for 5% indexation may not be entertained until the CCI gives a decision on the separate summary of GoKP which GoKP has already submitted to provinces for their respective comments.
10. During the hearing, Mr. Anwar-ul-Haq pointed out the fact that discussions held during the 49th meeting of the CCI are not consistent with the decision of the CCI. Similarly, the representative of WAPDA Hydroelectric reiterated its opinion regarding the indexation of NHP and submitted that no clear guidance has been obtained by GoKP.

ISSUES:

- I. Whether CCI has approved 5% indexation on the NHP rate of Rs. 1.10/kWh as claimed by GoKP or otherwise?

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NA





11. The Petitioner submitted that as per the decision of the Authority in the matter of MLR, it approached the CCI to obtain clear guidelines on the issue of NHP and its indexation. The CCI in its meeting held on January 13, 2022 (minutes issued on January 26, 2022), endorsed the viewpoint of GoKP and approved the annual indexation of NHP at 5% by stating in para 35, which is reproduced hereunder:

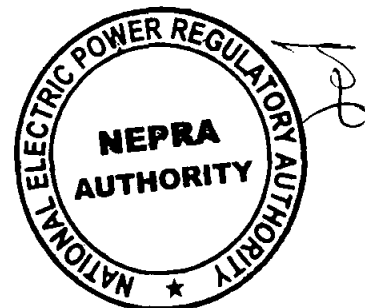
“Regarding the issue of 5% annual indexation on NHP, already approved by the CCI, it was agreed that the Government of KP may move a Summary on the subject in the next CCI meeting as it was not on the agenda of the present CCI meeting”

12. According to the Petitioner, it is evident from the above-stated para that the CCI agrees with the stance of GoKP that NHP is to be indexed annually at 5%.
13. According to the Petitioner, based on the above, it filed an application on May 18, 2022, before the Authority, which was returned with the reason that the petition cannot be entertained based on a simple letter and that the Petitioner shall file a separate Tariff Petition in the matter of annual indexation of NHP. Therefore, according to the Petitioner, it filed this instant Modification Petition.
14. According to the Petitioner, in the light of the approval of CCI in the matter of annual indexation of 5%, GoKP’s indexation amount in adherence to MOU signed between the GoP and GoKP from FY 2015 – 16 to FY 2021 – 22 is Rs. 21 billion. Further, the Petitioner submitted that the indexation of NHP and past payments made as a result of the application of 5% cannot be adjusted by WAPDA being past and closed transactions.
15. According to the Petitioner, WAPDA has included NHP at the rate of Rs. 1.213 per KWh in its Tariff Petition which needs to be Rs. 1.404 per KWh for the year 2020-21.
16. The Petitioner also submitted that WAPDA in its tariff petition considered Gomal Zam Dam as a project of FATA, however, after the 25th Amendment, FATA has now become part of KP Province, therefore, NHP for the project, amounting to Rs. 108 million, should be paid to GoKP.

Comments of WAPDA Hydroelectric

17. WAPDA Hydroelectric vide letter August 23, 2022, submitted its comments in which it stated that the explicit decision of CCI on NHP and its indexation, as required by NEPRA, is still awaited. It was noted by the Authority that the comments of WAPDA Hydroelectric were not issue-wise, however, its comments being relevant to this issue are being discussed here. The relevant excerpts from the comments of WAPDA Hydroelectric are reproduced hereunder:

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“... As regards GoKP's pray No. vi & vii regarding payment of NHP/ arrears of Gomal Zam HPP, it is stated that the same has already been allowed/ incorporated in NEPRA determinations dated 05-04-2021 and 23-08-2021.

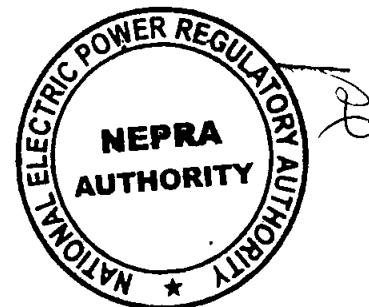
As is evident from the above decision dated 13.01.2022 of the CCI, the explicit decision of the CCI on NHP and its indexation, as necessitated/required in para-3 of NEPRA determination dated 23.08.2021, is still awaited for which Govt. Khyber Pakhtunkhwa has to submit a specific summary for the consideration of CCI in their next meeting please.”

Comments of Anwar-Ul-Haq, Chartered Management Accountant

18. Mr. Anwar-ul-Haq, Chartered Management Accountant, and a former employee of the WAPDA Hydroelectric, vide letter dated August 18, 2022, provided his issue-wise comments. A summary of his comments, with regards to the instant issue, is provided hereunder:

- a. CCI has not approved a 5% indexation on NHP as claimed by GoKP because:
 - i. the GoKP has inferred approval from the first part of the minutes of the meeting, however, the second part states that GoKP may move a Summary on the subject in the next CCI meeting, which means that the 5% is yet to be decided upon,
 - ii. had CCI approved the 5% indexation proposal, a reference to the previous meeting of the CCI would have been given in which approval was granted,
 - iii. generally, the decision made in any meeting is based on the discussions held on the matter, however, such was not the case in CCI's 49th meeting which is evident from Para 26 of the minutes which state that “...The Committee has also noted that NHP payments as per CCI decision of 29-02-2016, @Rs.1.10 per unit is being paid by WAPDA and no intervention is required there” and para 28 of the minutes which state that “...The Finance Minister, Khyber Pakhtunkhwa informed that NHP payment @ Rs.1.10 per unit was approved by CCI in 2016.” and
 - iv. CCI's decisions dated 26.01.2022 and 29.02.2016, MOU dated 25.02.2016 signed between Federal Govt. and GoKP and endorsed by the CCI and NEPRA's Determination dated 13.11.2015, don't include 5% indexation to the NHP rate.

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Intervention Request filed by Government of Punjab

19. The Government of Punjab, Energy Department, vide letter dated August 22, 2022, filed an intervention request, which was admitted by the Authority. The Government of Punjab submitted that since CCI has not approved any indexation to the NHP so far, therefore, the instant tariff modification petition filed by GoKP may be rejected.

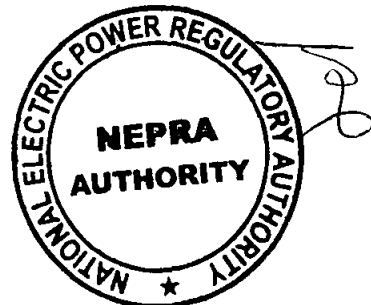
Response of the Petitioner

20. The aforementioned comments and intervention request were forwarded to the Petitioner for its response, vide letters dated August 25, 2022. The Petitioner, vide letter dated August 31, 2022, submitted its responses, a summary of which is provided hereunder:
- In response to GoPb's intervention request, the Petitioner submitted that the stance of GoPb is contrary to the decision of CCI wherein it was clearly evidenced that the issue of 5% annual indexation of NHP has already been approved by CCI in its February 2016 decision which was not challenged by anyone hence stand final. The GoKP further submitted that CCI's minutes can be objected upon within 15 days, as per CCI Rules para 12 correction of minutes and decision of the Council, however, no one objected to the same.
 - In response to the comments of WAPDA & Mr. Anwar-ul-Haq, the Petitioner submitted that the CCI has authenticated the viewpoint of GoKP that the CCI has already approved the indexation in its February 2016 decision which was not challenged by anyone. The GoKP further submitted that CCI's minutes can be objected upon within 15 days, as per CCI Rules para 12 correction of minutes and decision of the Council, however, no one objected to the same.
21. The GoPb, vide letter dated August 30, 2022, submitted detailed comments in addition to its earlier intervention request which are reproduced hereunder:

Relief Sought

- The subject cited modification petition filed by Government of Khyber Pakhtunkhwa is liable to be rejected based on certain factual premises as stated in the enclosure.*
- Government of the Punjab, Energy Department further considers that that the recovery of excess payment of NHP through adjustment over the rate of Rs. 1 . 10/ - per unit as a result of application of 5% indexation may be pended till the decision of CCI's on the indexation of NHP.*
- The rate of NHP of Rs.1.10/ per unit or any other as decided by CCI may be applied from the FY 2016 onward to the entitled provinces.*

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Petition Summary

The Government of Khyber Pakhtunkhwa has filed the subject titled petition in NEPRA through its Counsel dated 19.07.2022. In its said Petition, GoKP has prayed inter-alia to the Authority that:

- I. That in light of approval of CCI, the Authority may allow the annual indexation a five percent (5%) to GoKP with effect from and after FY 2015-2016*
- II. That the Authority may allow the indexation of the NHP and past payments made as a result of the application of 5% indexation should not be adjusted by the WAPDA being past and closed transaction*
- III. That the Authority may allow the indexation of the NHP and past payments made as a result of the application of 5% indexation should not be adjusted by the WAPDA as the indexation of the NHP has been agreed by the Federal Government and duly approved/concurred by the CCI*
- IV. That the NHP payable to the GoKP be increased to Rs. 1.404perKWh*
- V. That total liabilities /arrears on account of the NHP payable to the GoKP from and after FY 2018 needs to be adjusted in the WAPDA Determination 2020-21*

The Authority admitted the said petition and issued a notice on 12.08.2022 for seeking comments of the interested persons and fixed hearing on 24.08.2022. The Authority has framed the following Issues;

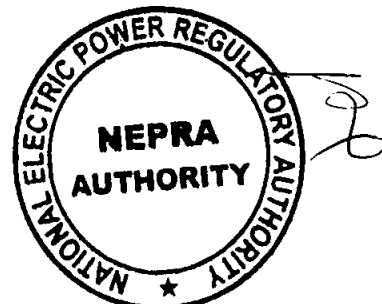
Issue#1: Whether CCI has approved 5% indexation on NHP of Rs 1.10/ kWh as claimed by GoKP or otherwise?

Issue#2: If yes, whether indexation should start w.e.f. FY 2015-16 or otherwise?

Issue#3: Whether the same decision is applicable for other provinces or otherwise, if yes from which fiscal year?

Preliminary Statement

That the intervener in the subject petition belongs to the largest province of Pakistan consuming approximately 65% of electricity generated in the country. At present, WAPDA has various hydroelectric power projects of 1792MW capacity in Punjab which warrants the flow of NHP to this Province, at an applicable rate, under Article 161(2) of the Constitution of Pakistan. Despite that fact, the Government of Punjab understands that the electricity





consumer across the country is facing severe challenges of the high rate of electricity tariff. Affordable electricity to people is necessary for economic progress as well as the social uplift of the citizens. At this juncture, it is acknowledged that all the provinces are making all-out efforts to provide relief to the public in the electricity sector.

Initial reply by the Government of the Punjab, Energy Department

While stating in the column of contents/ grounds contained in the format prescribed by NEPRA of the Intervention Request, Energy Department, Government of the Punjab submitted the following:

As per Article 16 1(2) of the Constitution of Pakistan, CCI is to determine the sale rate for bulk supply of power from a Hydel Power Station located in the related province. The CCI approved provisional NHP @ 1.10/kWh in its decision 16.12.20 16 for the payment to the Punjab province on the analogy of KPK.

To apply 5% annual indexation of NHP in Rs. 1.10 per unit with effect from 2016 onward, GoKP has circulated a draft summary for the CCI seeking comments by Government of the Punjab therein. The Government of the Punjab was in due process of offering its comments to the proposals made by GoKP in the draft summary; meanwhile, GoKP tabled the said proposal of annual indexation as an ex-agenda item in 49th meeting of CCI held on 13.01.2022. However, the CCI during the meeting decided that:

"Regarding the issue of 5% annual indexation on NHP, already approved by the CCI, the Government of KP may move a Summary on the subject in the next CCI meeting as it was not on the agenda of the present CCI meeting."

Therefore, the Punjab government believes that the CCI being the competent forum has not yet approved any indexation to the already approved NHP rate of Rs. 1.10 per unit.

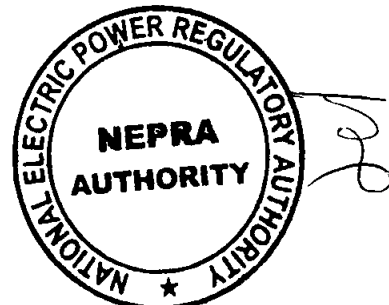
In the column of relief, it was sought that "Since, the CCI has not approved any indexation to the NHP rate of Rs. 1.10 per unit so far, therefore, tariff modification petition dated 19.07.2022 filed by GoKP may be rejected."

Justification of Preliminary Reply

The urging of 5% annual indexation of NHP concept was discussed in series of events occurred on various forums. The same are delineated hereunder:

1. The issue of 5% annual indexation of NHP was first observed by the Punjab from NEPRA's determination dated 13.11.2015. At paragraph

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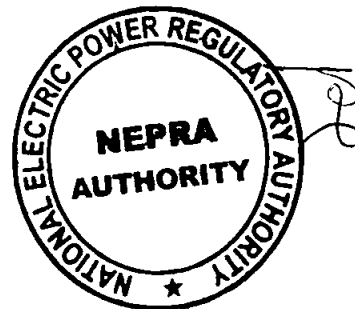


60 of the instant decision, it was stated that subsequent to the sideline meeting between Federal and KPK Governments of 8th NFC dated 14.03.2013 and discussion held by some sub-committees, following decision was emerged out:

"For uncapping, WAPDA and the Ministry of Water & Power may immediately approach the NEPRA through a tariff petition under the law to include the NHP @ 1.10 together with annual indexation @ 5% payable to the Government of Khyber Pakhtunkhwa. The change in tariff may take effect from next fiscal i.e. 01.07.2013"

After detailed discussion, at paragraph-7 1 of the instant decision, NEPRA allowed Rs. 1.10/ per unit for the FY 2016 (Annex-A), whereas, 5% indexation, as discussed in the case, was not considered in the decision. **Since, the Government of Punjab was one of the key stakeholders, the basis of origination of 5% annual indexation of NHP was required to be consulted with Punjab.**

2. The KPK and the Federal Governments signed an MoU on 25.02.2016 to uncap NHP determined by NEPRA (as per its decision contained at paragraph 71) to be notified by the Ministry of Water & Power. It was further agreed that the total amount of Rs. 70 Billion, agreed upon by both of the parties subsequent to reconciliation, would be as **full and final settlement** (Annex-B). The same was endorsed by CCI in its meeting held on 29.02.2016 (Annex-C). **From the contents of the MoU, it is evident that the settlement between KP and GoP was full and final as per the rate determined by NEPRA which was Rs.1.10/ per unit. Thus, the case of annual indexation was yet not established.**
3. NHP for the Punjab was also approved by the CCI in its meeting dated 16.12.2016. While approving the payment, CCI decided that NHP to the Government of Punjab would be paid @ 1.10 per unit on the analogy of KPK (Annex-D), generated from Hydel Power Station located in Punjab, for the FY 2016-17 and onward.
4. The matter of NHP was again discussed in 34th CCI meeting held on 24.11.2017. While discussing, the Chief Minister KP requested that subcommittee may recommend the continuation of interim arrangement for payment of NHP to the Governments of KP and Punjab till implementation of AGN Kazi methodology. While concluding the meeting, CCI decided that the word "onward" appearing at the end of para-45 of the minutes of CCI meeting dated 16.12.2016 be replaced with the words "and the same rate may be continued as an interim rate for subsequent years till the finalization of revised rates" (Annex-E). (It

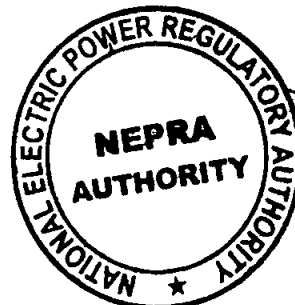




is paramount to note that the rate of NHP while settlement with Punjab was Rs. 1.10/ per unit. No indexation was allowed so far). Upon interlinking the decision of CCI meeting dated 16.12.2016, where the rate of NHP for the Punjab was approved at Rs.1.10/- per unit, with the decision of later meeting dated 24.11.2017, it can be conveniently be construed that KPK itself requested to continue the payment of NHP to the provinces at the rate of Rs.1.10/per unit.

5. Meanwhile, NEPRA in its determination on 22.11.2017, first time approved 5% indexation of NHP and increased its rate from Rs. 1.10 to Rs.1.155/per unit subject to adjustment if any, and subsequent to the final resolution issued by CCI which was a competent forum on the subject of NHP (Annex-F).
6. While hearing a petition filed by WAPDA for further indexation of NHP on 1.155/ per unit, NEPRA at para 132 stated that CCI which was the relevant body had not approved indexation on the rate of RS. 1.10 per kWh. NEPRA also stated that the instant observation was also pointed out in the Report on Power Sector, prepared by the Committee for Power Sector Audit, Circular Debt Resolution & Future Roadmap. Thus, on 05.04.2021, NEPRA while revisiting its own decision of 5% indexation dated 24.11.2017, withdrew the allowed indexation and restored actual NHP rate of Rs.1.10/- approved by CCI in its meeting dated 16.12.2016 (Annex-G). KPK could not convince NEPRA on the provision of approved indexation from CCI.
7. Feeling aggrieved to the decision of NEPRA dated 05.04.2021, KPK filed a Motion for Leave for Review. NEPRA stated at para 16 that the Petitioner (KPK) has not provided any conclusive evidence of any CCI decision which directly allowed 5% indexation of NHP on Rs. 1.10/ per unit. NEPRA, however, allowed NHP of Rs.1.404 for KPK and Rs.1.337 for Punjab on an interim basis for a period of six months from the date of notification of the instant decision. KPK was advised to seek clear guidelines therein from the CCI; otherwise, the excess payment made as a result of the application of 5% indexation over the rate of Rs. 1.10/ per unit shall be adjusted in WAPDA Hydroelectric Tariff for the next financial year (Annex-H). Again, NEPRA firmly stated that the Petitioner (KPK) could not provide any evidence of CCI's concurrence on annual indexation of NHP to NEPRA.
8. To apply a 5% annual indexation of NHP in Rs. 1.10 per unit with effect from 2016 onward, GoKP circulated a draft summary for the CCI seeking comments from the Government of Punjab. The Government of

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Punjab was in due process of offering its comments to the proposals made by GoKP in the draft summary, meanwhile, GoKP tabled the said proposal of annual indexation as an ex-agenda item in the 49th meeting of CCI held on 13.01.2022 (without due process of circulation to the provinces for the summoning of their comments). However, the CCI did not consider the case as it was not on the agenda of the present CCI meeting (Annex-I). While perusal of minutes of the instant CCI meeting, the Government of Punjab, Energy Department observes that the contents of the decision need clarification. The CCI concedes to the approval of 5% indexation, while on the other hand, the Government of KP is being advised to move a Summary on the case of annual indexation in the next CCI meeting. This will be taken up with CCI by the Punjab in due course.

22. The above-detailed comments of GoPB were forwarded to the Petitioner, vide letter dated September 2, 2022. The response of GoKP to the same was received, vide letter dated September 5, 2022. GoKP stated that Punjab's electricity demand is more than its production and that additional power is supplied from other provinces including KP, and that GoPb's desire to give relief to the general public cannot be fulfilled by generating expensive energy. According to GoKP, the GoPb may be the intervener but is also beneficiary of the CCI's decision with respect to indexation of NHP. The GoKP further submitted that the stance of the GoPb is contrary to the decision of the CCI dated 13th January, 2022, wherein it was clearly evidenced that the issue of 5% annual indexation has already been approved by the CCI and since it was not part of the agenda, the GoKP was given the option to move a summary in this regard if so desired.
23. According to GoKP, the decisions of the CCI meeting dated 29th February 2016 were not challenged and hence stand final by giving concurrence to the MoU signed between two governments i.e., GoP and GoKP, by uncapping the NHP at a rate of Rs. 1.10 per KWh with 5% annual indexation. Further, according to GoKP, the CCI's instant decision authenticates the viewpoint of GoKP as Petitioner that CCI had already approved the indexation in its February, 2016 decision which was not challenged by any of the stakeholder hence stand final.
24. According to the Petitioner, the observations made by the Intervener are not relevant and have been fully deliberated in Determinations for FY 2015-2016, FY 2020-2021, Review Determination dated 23rd August, 2021. Hence such decisions and determinations which have achieved finality and cannot be reopened on the same facts and grounds. According to the Petitioner, the MoU stated that the uncapped NHP as determined and transmitted from NEPRA would be notified by the Ministry of Water and Power immediately and that the uncapped NHP as determined and transmitted from NEPRA included the five percent (5%) indexation of the NHP rate for the FY 2015 -2016.





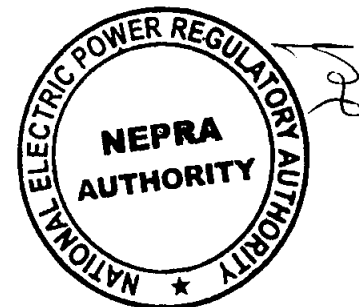
- II. If yes, whether indexation should start with effect from FY 2015 – 16 or otherwise?
&
III. Whether the same decision is applicable for other provinces or otherwise, if yes from which fiscal year?

25. The Petitioner, in its submissions, stated that in the light of the approval of CCI in the matter of annual indexation of 5%, GoKP's indexation amount, in adherence to MOU signed between the GoP and GoKP from FY 2015 – 16 to FY 2021 – 22, is Rs. 21 billion.
26. On issue # II, Mr. Anwar-ul-Haq provided his comments and according to him, since his answer in response to the first issue is "no", therefore, the question of indexation with effect from FY 2015 – 16 is irrelevant.
27. The GoPB submitted detailed comments regarding its own intervention request, vide letter dated August 30, 2022, wherein it stated that "*the rate of NHP of Rs. 1.10 per unit or any other as decided by CCI may be applied from the FY 2016 onwards to the entitled provinces.*"
28. On issue # III, only Mr. Anwar-ul-Haq provided his comments and according to him, other provinces may be treated at par.

FINDINGS OF THE AUTHORITY ON THE ABOVE ISSUES

29. With regard to indexation on net hydel profit, following facts were brought before the Authority:
30. That during a meeting dated 14.03.2013 held on the sidelines of 8th NEC, the issue of uncapping of NHP was discussed and under 5(a) of minutes of meeting, following was decided:
- "After examining the matter and going through record of the proceedings of subcommittee meetings, following decisions emerged out as actionable items:*
- a. *For un-capping, WAPDA and the Ministry of Water & Power may immediately approach the NEPRA through a tariff petition under the/ow to include the NHP @ 1.10 together with annual indexation 5% payable to the Government of Khyber Pakhtunkhwa. The change in tariff may take effect from next fiscal i.e. 01.07.2013."*
31. That the above facts was recorded in NEPRA Determination (dated 13.11.2015) of Bulk Supply tariff for WAPDA hydroelectric for Financial Year 2015-16 and based on above, NEPRA under para 61 of its determination, inter alia, decided to provisionally uncap the NHP payable to the Government of KPK in accordance with para 5(a) of the above mentioned meeting dated 14.03.2013 held on the sidelines of 8th NEC.

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32. That a meeting was held under the chairmanship of the Finance Minister, Government of Pakistan on pending issues, including but not limited to the issue of NHP, between Government of Pakistan and Government of KPK on 25.02.2016.

33. That after the meeting, a Memorandum of Understanding (MoU) was signed between the Government of Pakistan and Government of KPK on 25.02.2016 at Islamabad wherein, following was recorded with regard to NHP:

“Net Hydel Profit (NHP): (a) The uncapped NHP as determined and transmitted from NEPRA, would be notified immediately by Ministry of Water & Power:

(b) A total amount of Rs. 70 billion has been agreed upon on account of arrears of uncapped NHP after reconciliation of mutual claims in the power sector between the two Governments as full and final settlement; and,

(c) WAPDA, after seeking concurrence of CC/through the Ministry of Water & Power, would file a tariff petition for recovery of the arrears in four installments as follows: (i) Rs. 25 billion in current fiscal year and (ii) Rs. 15 billion each in the next 3 years.”

The MoU was circulated vide letter No. BO(NFC-II)/FD/6-1/2016/Vol-X dated 26.02.2016 of the Finance Department, Government of KPK.

34. That above referred MoU was presented before CCI in its 28th Meeting held on 29.02.2016. Under Agenda Item No. 1, the CCI gave its decision in the matter which is recorded at para 22 of its Minutes and Decisions circulated vide letter No. F.2(102)/2015-CCI dated 09.03.2016 of the Ministry of Inter-Provincial Coordination. The decision regarding MoU as recorded under para 22 of the said Minutes is reproduced below;

“The CCI gave its concurrence to the MoU signed between Government of Pakistan and Government of Khyber Pakhtunkhwa on 25th February 2016 specially directing WAPDA to file a Tariff Petition as agree in the MoU.”

35. Pursuant to the Decision of NFC, MoU between GoP & GoKP and decision of CCI, in the matter of NHP and its uncapping, the WAPDA filed petition for supplementary tariff on 11.04.2016. The Authority considered the petition as modification petition for modification of already determined tariff of WAPDA and gave its determination on 25.05.2016 where-through, additional tariff was allowed to WAPDA on account of payment of NHP to the GoKP.

36. Based on the Report on Power Sector, prepared by the Committee for Power Sector Audit, Circular Debt Resolution and Future Roadmap, the Authority vide Determination dated 15.04.2021 in the matter of Tariff Petition filed by WAPDA Hydroelectric for FY 2020-21, decided that *“NHP rate of Rs. 1.10 per KWh has been assumed by the Authority going forward for FY2021 for Punjab and KP based hydropower stations and excess past payment made as a result of the application of 5% indexation should, therefore, be adjusted by the petitioner on yearly basis. However, if CCI make any decision with respect to indexation, the Authority may consider it as per the applicable law.”*

H *K*





37. Against the above Determination of the Authority, the GoKP filed a Motion for Leave for Review on 30.04.2021 wherein the following was prayed:
- i. That the Authority may allow the indexation of the NHP and past payments made as a result of the application of 5% indexation should not be adjusted by the WAPDA being past and closed transactions.
 - ii. That the Authority may allow the indexation of the NHP and past payments made as a result of the application of 5% indexation should not be adjusted by the WAPDA as the indexation of the NHP has been agreed by the Federal Government and duly approved /concurred by the CCI.
 - iii. That the Province of Khyber Pakhtunkhwa be allowed NHP @ Rs. 1.10 / kWh with 5% annual indexation from and after Year 2016.
 - iv. That the NHP payable to the GoKP be increased to Ks. 1.404/ kWh
 - v. That Rs. 7,949 million should be determined in respect of indexation claims of the GoKP since the Year 2016
 - vi. That the NHP for the Gomal Zam Dam along with arrears of Rs. 108 Million for the Years 2018-20 are allowed to the Province of Khyber Pakhtunkhwa
 - vii. That total liabilities / arrears on account of the NHP of Rs. 48.3 Billion payable to the GoKP from and after FY 2018 needs to be adjusted in the WAPDA Determination 2020-21.
38. The Authority gave its decision on MLR on August 23, 2021. At para 16 of the said Decision, the Authority recorded as below:

“Therefore, being cognizant of the constitutional provision of NHP and its importance to the provinces, the Authority has decided to allow indexation on an interim basis for six (6) months from the date of notification of this decision. In case no clear guidelines from CCI is obtained on the issue of NHP then any excess payment made as a result of application of 5% indexation over the rate of Rs 1.10 per kWh shall be adjusted in WAPDA Hydro Electric tariff for the next financial year. For this purpose, the Petitioner shall approach CCI to obtain clear guidelines on the matter and accordingly approach NEPRA for reconsideration of this tariff, if required.”

39. Again GoKP vide letter dated 18.05.2022 while enclosing the following Decision of CCI in its 49th meeting held on 13.1.2022 requested to allow NHP @ Rs. 1.10/Kwh with 5% indexation from and after year 2016:

“Regarding the issue of 5% annual indexation on NHP, already approved by the CCI, it was agreed that the Government of KP may move a Summary on the subject in the next CCI meeting as it was not on the agenda of the present CCI meeting.”

Handwritten initials/signatures



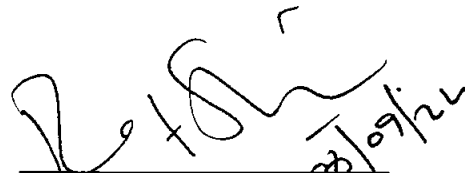


40. The Authority directed the GoKP to file a separate tariff petition in the matter of annual indexation on NHP as their request could not be entertained on a simple letter. Upon this direction, GoKP filed this tariff modification petition.
41. During the hearing held on 24.08.2022, the GoKP confirmed that it has already moved a summary to CCI in the matter and prayed to allow the NHP with 5% indexation till any decision in the matter by the CCI.

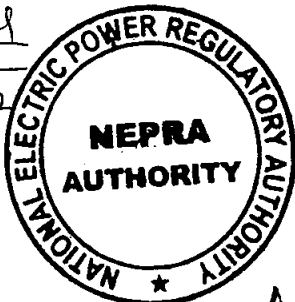
ORDER


42. In accordance with Rule 16(6) of NEPRA (Tariff Standards & Procedure) Rules, 1998, read with 3(2) of the National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009, the Authority hereby modifies its order approved vide its decision in the matter of Motion for Leave for Review filed by Energy and Power Department, Govt. of Khyber Pakhtunkhwa against the Authority Decision dated April 5, 2021, regarding WAPDA Hydroelectric Tariff Petition for FY 2020-21, issued on August 23, 2021 (Case No. NEPRA/TRF-530/WAPDA-2020) to the following extent:
 - a. To approve 5% annual indexation of Net Hydel Profit (NHP) over the rate of Rs. 1.10/Kwh to the Government of Khyber Pakhtunkhwa and Government of Punjab w.e.f FY 2015-16 and FY 2016-17 respectively subject to its adjustment, if any, in light of the CCI decision.
 - b. The Government of Khyber Pakhtunkhwa to move / pursue its summary before CCI in order secure explicit approval, in the matter and till receipt of any CCI order / decision in the matter, the 5% annual indexation of NHP shall be continued.

AUTHORITY


(Engr. Rafique Ahmad Shaikh)
Member


(Engr. Maqsood Anwar Khan)
Member




(Tauseef M. Farooqi)
Chairman

GoKPK to bring the summary in the next CCI meeting for their explicit approval as agreed in the Regulatory Meeting else NEPRA reserves the right to seek CCI approval on its own.