

REGISTERED No. M - 302  
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EXTRAORDINARY  
PUBLISHED BY AUTHORITY

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ISLAMABAD, FRIDAY, JUNE 3, 2022

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PART II

Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN

NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

NOTIFICATION

*Islamabad, the 27th May, 2022*

**S. R. O. 756(I)/2022.**—In pursuance of Sub-Section 7 of Section 31 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997), NEPRA hereby notifies the Decision of the Authority 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 in Case No. NEPRA/TRF-530/WAPDA-2020.

2. While effecting the Decision, the concerned entities including Central Power Purchasing Agency Guarantee Limited (CPPAGL) shall keep in view and strictly comply with the orders of the courts notwithstanding this Decision.

[No. NEPRA/TRF-530/WAPDA/8292.]

SYED SAFEER HUSSAIN,  
*Registrar.*

1425(1—6)

*Price: Rs. 10.00*

[8010(2022)/Ex. Gaz.]

**DECISION OF THE AUTHORITY 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**

**Background**

1. The Authority vide its decision dated April 5, 2021, determined tariff for WAPDA Hydroelectric for FY 2021-21. In the determination, the NHP rate was allowed at Rs 1.10 per kWh payable to the provinces with no indexation. While approving this, the Authority stated that if CCI makes any decision with respect to indexation, the Authority may consider it as per the applicable law.
2. Subsequently, the Government of KPK through its legal counsel Barrister Asghar Khan Advocate & Faisal Atta, Advocate ("the Petitioner") submitted a motion for leave for review (MLR) against the determination of the Authority in the matter of Tariff Petition filed by WAPDA Hydroelectric for FY 2020-21 ("impugned determination"). The MLR was filed on April 30, 2021, which is now challenging the disallowance of indexation on the rate of NHP in the impugned determination.

**GROUND OF MOTION FOR LEAVE FOR REVIEW (MLR):**

3. The following grounds for filing MLR was made by the Petitioner
  - 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 Rs. 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
4. Based on the aforementioned grounds, the Petitioner in its MLR requested the Authority to reconsider its MLR.

**Proceedings**

5. In order to provide an opportunity to the Petitioner, the Authority decided to hold a hearing in the matter on July 14, 2021, in NEPRA Tower at 10:00 am via zoom. Notices of hearing were also sent to the relevant stakeholders on June 30, 2021.



6. The hearing was held on the above mentioned date. The Petitioner side was led by the Minister of Finance Government of KPK who was accompanied by the provincial attorney general, and legal counsel. The representatives of WAPDA hydroelectric and PPDB joined via Zoom.
7. Subsequently, comments from Punjab Power Development Board (PPDB) & WAPDA Hydroelectric were received. PPDB comments were brief which primarily requested that the Authority *while considering the subject review petition, the effect of tariff basket and its impact on the end consumers may please be sympathetically considered.* WAPDA Hydroelectric comments dated August 02, 2021 are given in the subsequent paragraphs.

#### Hearing

8. During the hearing representative of the Petitioner presented its case and argued that the decision of the Authority dated November 13, 2015, where the NHP was uncapped to Rs 1.10 per kWh with 5% annual indexation was made a part of MoU which was later endorsed by CCI through its decision dated 29.02.2016. According to the Petitioner, the Authority also continued to allow indexation in subsequent WAPDA hydroelectric tariff decisions. Therefore, as per the Petitioner indexation of 5% over 1.10 per kWh should be applied from FY 2016 and till FY 2021. The Petitioner while supporting its argument displayed various decisions of the Authority including the MoU. The Petitioner further clarified that CCI original determination on NHP is based on the application of AGN Kazi Methodology (KCM) the current arrangement of Rs 1.10 per kWh is an interim arrangement until consensus is reached on KCM.
9. During the hearing, it also came into the discussion why the indexation is being referred to CCI when indexations for IPPs are allowed by NEPRA. In response, NEPRA legal adviser clarified that the IPP tariff is fixed by NEPRA under its law wherein indexation is also allowed by NEPRA whereas NHP doesn't come under the domain/power of NEPRA therefore, indexation power also doesn't comes under the domain of NEPRA. The representative of PPDB stated that NHP will affect the whole of Pakistan and Punjab consumers as well, therefore, NEPRA needs to see its impact on consumers. In response, the Petitioner stated that it is wrong to assume it will impact consumer tariff as according to the Petitioner oil royalty is given to provinces by Federal Government and the MoU was also signed with the Federal Government. If it is considered as profit then how come it affects the consumer? So Petitioner further informed that they are taking up the NHP payment matter with the Federal government where payment will be made by the Federal government and not by WAPDA.
10. The representative of WAPDA however endorsed the impugned determination of the Authority. WAPDA further argued that "and onward" word was deleted in the CCI decision in case of Punjab which means the CCI is yet to give a new rate instead of Rs 1.10 per kWh. KPK replied that it was WAPDA who incorporated the indexation decision in its original petition and now WAPDA is backtracking by agreeing on not allowing indexation over Rs 1.10 per kWh.

#### WAPDA Hydroelectric Comments

11. WAPDA in its comments dated August 02, 2021 submitted that in its tariff determination for FY 2016 and FY 2018, NEPRA Authority allowed payment of NHP @ 1.10 per kWh and Rs 1.155 per kWh, as an interim arrangement. However, the CCI I its latest decisions dated 16.12.16 and 24.11.2017 approved payment of NHP @ Rs 1.10 per unit for FY 2017 and clearly instructed that the same rate may be continued as an interim rate for subsequent years till the finalization of revised rates.

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12. Therefore, WAPDA Hydroelectric is of the opinion that given the above decisions, NEPRA decision as mentioned in para 133 of the impugned determination to allow payment of NHP to GOKP and GoPb @ Rs 1.10 per kWh is in conformity with the CCI's decision dated 24.11.2017. In support, WAPDA shared copy of CCI decision 16.12.16 and 24.11.2017

#### Finding of the Authority

13. Argument heard and record perused.

14. As per regulation 3(2) of the National Electric Power Regulatory Authority (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".

15. In the instance case, it is observed that the majority of the submissions made in the MLR were already deliberated upon in the impugned determination. The Authority however is of the view that the decisions of CCI reproduced below need careful reading:-

MoU signed between Go KP and Federal Government dated February 25, 2016 which was endorsed by CCI on Feb 29, 2016

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

CCI decisions 16.12.16 amended 24.11.2017

Payment of NHP to Government of Punjab @ Rs 1.10 per unit on the analogy of Government of KPK, generated from Hydel Power Station located in Punjab for the FY 2016-17 and the same rate may be continued as an interim rate for subsequent years till the finalization of revised rate".

16. After review of the relevant decisions of the CCI pertaining to the NHP rate of Rs 1.10 per kWh it was observed that the Petitioner has not provided conclusive evidence which in categorical terms state that CCI has allowed indexation of 5% over the rate of Rs 1.10 per kWh. Therefore, in the opinion of the Authority there is a need to bring clarity on the issue of indexation of NHP rate for both the province of KPK and Punjab. In addition to this, if CCI were to give indexation, it is also important to clarify since when such indexation should be given. The Authority is also aware that payments have been made to the provinces on the basis of an indexed rate of Rs 1.155 per kWh which started for the Provinces of KPK and Punjab since FY 2018. 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.

#### Order

1. 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 revise its order approved vide its decision in the matter of Motion for



Recalculation filed by WAPDA Hydroelectric against the Tariff Determination of the Authority for FY 2020-21 issued on April 5, 2021 in the matter of Tariff Petition filed by WAPDA Hydroelectric for FY 2020-21 (Case No. NEPRA/TRF-530/WAPDA-2020) and allow WAPDA Hydroelectric to charge the Central Power Purchasing Agency Guarantee Limited (CPPA-G) the following tariff of each plant at the bus bar of its hydroelectric power stations connected directly or indirectly to the transmission system of NTDC:

| Sr.No. | Power Stations   | Variable Rate | Fixed Charges |             |                           | Hydel Levies |        |             |        |
|--------|------------------|---------------|---------------|-------------|---------------------------|--------------|--------|-------------|--------|
|        |                  |               | Fixed Rate    | Revenue Gap | Interest on Loans for NHP | NHP Regular  | WUC    | NHP Arrears | IRSA   |
|        |                  | Rs/kWh        | Rs/kW/M       | Rs/kW/M     | Rs/kW/M                   | Rs/kWh       | Rs/kWh | Rs/kW/M     | Rs/kWh |
| 1      | Tarbela          | 0.043         | 421.940       | (425.917)   | 63.837                    | 1.404        |        | 119.62      | 0.005  |
| 2      | Warsak           | 0.107         | 748.198       | 64.332      | 63.837                    | 1.404        |        | 145.56      | 0.005  |
| 3      | Duber Khawar     | 0.215         | 1,768.284     | 369.329     | 63.837                    | 1.404        |        | 155.59      | 0.005  |
| 4      | Allai Khawar     | 0.215         | 1,508.871     | 523.789     | 63.837                    | 1.404        |        | 122.34      | 0.005  |
| 5      | Khan Khawar      | 0.211         | 1,592.305     | 213.254     | 63.837                    | 1.404        |        | 113.25      | 0.005  |
| 6      | Jabban           | 0.275         | 2,881.467     | 3,505.165   | 63.837                    | 1.404        |        | 204.08      | 0.005  |
| 7      | Dargai           | 0.088         | 826.772       | (587.876)   | 63.837                    | 1.404        |        | 175.03      | 0.005  |
| 8      | Kuram Garhi      | 0.255         | 1,924.961     | 343.330     | 63.837                    | 1.404        |        | 132.50      | 0.005  |
| 9      | Chitral          | 0.343         | 2,164.941     | (4,020.787) | 63.837                    | 1.404        |        | 117.75      | 0.005  |
| 10     | Tarbela 4th Ext. | 0.134         | 781.992       | 876.992     | -                         | 1.404        |        | 76.44       | 0.005  |
| 11     | Golen Gol        | 0.344         | 2,446.539     | 3,225.457   | -                         | 1.404        |        | 22.68       | 0.005  |
| 12     | Gomal Zam        | 0.634         | 3,092.300     | (470.671)   | -                         | 1.404        |        | 542.867     | 0.005  |
| 13     | Ghazi Brotha     | 0.079         | 777.899       | 434.090     | 366.499                   | 1.337        |        | 65.59       | 0.005  |
| 14     | Chashma          | 0.191         | 1,524.435     | 1,403.294   | 366.499                   | 1.337        |        | 59.97       | 0.005  |
| 15     | Jinnah HPP       | 0.267         | 1,521.280     | 1,113.603   | 366.499                   | 1.337        |        | 29.17       | 0.005  |
| 16     | Rasul            | 0.157         | 895.550       | (34.025)    | 366.499                   | 1.337        |        | 30.34       | 0.005  |
| 17     | Nandipur         | 0.132         | 833.858       | (1,222.819) | 366.499                   | 1.337        |        | 35.99       | 0.005  |
| 18     | Shadiwal         | 0.178         | 833.830       | (790.848)   | 366.499                   | 1.337        |        | 19.49       | 0.005  |
| 19     | Chichoki         | 0.176         | 866.551       | (870.862)   | 366.499                   | 1.337        |        | 33.13       | 0.005  |
| 20     | Renala Khurd     | 0.342         | 1,831.918     | (3,455.565) | 366.499                   | 1.337        |        | 29.36       | 0.005  |
| 21     | Mangla           | 0.067         | 715.090       | 41.611      | -                         | -            | 0.150  | -           | 0.005  |

2. The "Revenue Gap" & "Interest on Loans for NHP" components of tariff as indicated above shall be applicable for a period of one year from the date of its notification by GoP, after which the tariff without these two tariff components shall be applicable.
3. The GoKP (Petitioner) shall approach CCI to obtain clear guidelines on the issue of NHP and indexation (if any) within six months of notification of this decision, till such time
  - a. "NHP Regular" rates as stated shall be applicable. In case the Petitioner fails to obtain an explicit decision of CCI on NHP and its indexation (if any) then the "NHP Regular" shall be paid at Rs 1.10 per kWh to the abovementioned plants other than Mangla.
  - b. "NHP Arrears" as stated shall be applicable. In case the Petitioner failed to obtain explicit decision of CCI on NHP then no payment shall be charged on this account, however, for Gomal Zam HPP, "NHP Arrears" shall be paid at Rs 454.646 per kW per month.
4. Any excess payment made (due to application of 5% indexation) to the provinces as a result of failure of the Petitioner to obtain clear guidelines on NHP from CCI shall be adjusted in the next tariff determination of WAPDA Hydroelectric.



5. The order is to be intimated to the Federal Government for notification in the official gazette under section 31 (7) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.

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AUTHORITY



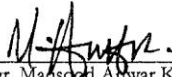
Rehmatullah Baloch

Member



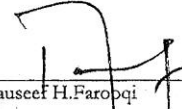
Engr. Rafique Ahmed Shaikh

Member



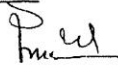
Engr. Maqsood Anwar Khan

Member



Tauseef H. Farooqi

Chairman



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