



Registrar

# National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/Consultant(CTBCM)/RFP-05/ 32724-30

September 06, 2023

**Managing Director,**  
Private Power and Infrastructure Board  
Plot No. 10, 2<sup>nd</sup> Floor, Emigration Tower, Mauve Area,  
Sector G-8/1, Islamabad

Subject: **DECISION OF THE AUTHORITY IN THE MATTER OF REVIEW MOTION FILED BY THE PRIVATE POWER & INFRASTRUCTURE BOARD (THE "PPIB") IN THE MATTER OF APPROVAL OF REQUEST FOR PROPOSAL SUBMITTED BY THE ALTERNATIVE ENERGY DEVELOPMENT BOARD (AEDB) FOR COMPETITIVE BIDDING OF 600 MWP SOLAR PV PROJECTS AT MUZAFFARGARH.**

Enclosed please find herewith the subject Decision of the Authority (total 36 Pages) in the matter of Review Motion Filed by the Private Power & Infrastructure Board (The "PPIB") in the matter of Approval of Request for Proposal submitted by the Alternative Energy Development Board (AEDB) for competitive bidding of 600 MWp Solar PV Projects at Muzaffargarh for information, record and further necessary action please.

Enclosure: As above

  
(Engr. Mazhar Iqbal Ranjha)

Copy to: (alongwith Copy of Subject Decision)

1. Secretary, Ministry of Energy (Power Division), 'A' Block, Pak Secretariat, Islamabad
2. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
3. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.
4. Secretary, Ministry of Inter Provincial Coordination, (Secretariat of Council of Common Interests), Government of Pakistan, Cabinet Block, Cabinet Secretariat, Islamabad
5. Chief Executive Officer, Central Power Purchasing Agency Guarantee Limited (CPPA-G) Shaheen Plaza, 73-West, Fazl-e-Haq Road, Islamabad
6. Managing Director, National Transmission & Despatch Company Limited 414-WAPDA House, Lahore



**DECISION OF THE AUTHORITY IN THE MATTER OF REVIEW MOTION FILED BY  
THE PRIVATE POWER & INFRASTRUCTURE BOARD (THE "PPIB") IN THE MATTER  
OF APPROVAL OF REQUEST FOR PROPOSAL SUBMITTED BY THE ALTERNATIVE  
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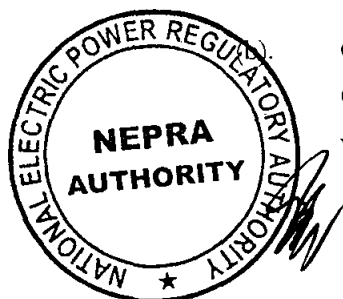
**BACKGROUND**

1. In exercise of the powers conferred by Section-7(3) & 47 of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 as amended from time to time (the "NEPRA Act") read with Rule 17(3) (vi) of the NEPRA Tariff (Standards and Procedure) Rules, 1998 (the "Tariff Rules"), the Authority on May 03, 2017, notified the NEPRA Competitive Bidding Tariff (Approval Procedure) Regulations, 2017 (the "NCBTR-2017"), to lay down the procedure for approval of tariff arrived at through a competitive bidding process.
2. The AEDB (now merged into the PPIB) vide its letter dated November 21, 2022, submitted the Request for Proposal (the "RFP") documents under the NCBTR, 2017 for competitive bidding in respect of 600 MWp solar PV project to be developed at Muzaffargarh, 23 km from the national grid (the "Project"), under the Framework Guidelines approved by the Federal Government.
3. After due process, the Authority vide its decision dated February 01, 2023, approved the RFP for competitive bidding of the Project. Subsequent to the said decision the Authority also issued its decision dated February 13, 2023, in terms of Section 7(2)(g) of the NEPRA Act read with Regulation 3(1) of the NEPRA (Review Procedure) Regulations, 2009 (the "Review Regulations") regarding approval of the RFP submitted by the AEDB (collectively referred to as "Decisions or impugned decisions")

**SUBMISSION OF THE REVIEW PETITION**

4. Being aggrieved with the said Decisions of the Authority, PPIB (also referred to as the Petitioner) filed a Motion for Leave for Review (the "Review Petition") dated August 23, 2023, under Regulation 3(1) of the Review Regulations. The grounds for the Review Petition are as under:
  - (a). Due to the fact that AEDB did not receive any bid in response to the Authority's approved RFP with a reverse auction scheme seeking a discount on a Benchmark Tariff as per the requirement of the NCBTR-2017 requiring changes in certain parameters of the approved RFP to be approved by the Authority;

Owing to certain amendments approved by the Federal Government in the Framework Guidelines for Fast Track Solar Initiatives, 2022 (the "Framework Guidelines") pursuant to which the RFP was earlier prepared and submitted to the Authority for approval; and





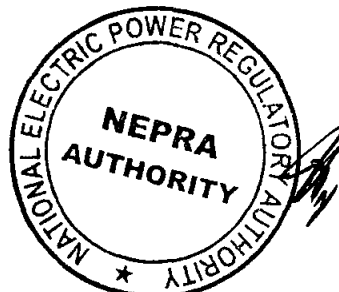
- (c). For seeking relaxation under Regulation 14(2) of the NCBTR-2017 in relation to the mandatory determination of Benchmark Tariff by the Authority as specified in Regulation 4 thereof for the purposes of competitive bidding.

### **ADMISSION OF THE REVIEW PETITION**

5. The Authority in its Regulatory Meeting (RM-23-400 held on August 25, 2023) admitted the Review Petition and decided to grant an opportunity of hearing to relevant parties on August 30, 2023. Accordingly, individual notices of the hearing to relevant parties were issued on August 28 and 29, 2023.
6. In this regard, a list of issues was framed and placed before the Authority for approval. The Authority considered the matter and after detailed deliberation approved the following issues for discussion/deliberation with the parties during the hearing:
- I. Whether the proposed open competitive bidding can be allowed under the NEPRA Competitive Bidding Tariff(Approval Procedure) Regulations, 2017?
  - II. What would be the mechanism for the assessment and approval of prudent tariff for the project after processing the project under open competitive bidding?
  - III. Whether the indexation/adjustments, i.e. 80% of the tariff with exchange rates coupled with coverage of LIBOR/SOFR and KIBOR variations, as proposed in the amended Framework Guidelines is prudent and justified?
  - IV. Which entity is going to be responsible for approving quarterly adjustments in tariff?
  - V. Whether the land acquisition arrangement, interconnection, or other relevant studies in the feasibility study, bid evaluation criteria, evaluation committee, security package documents, amounts of different fees and charges, as specified in the current RFP, are the same as of initial submissions or revised if revised state the reasons and details? and
  - VI. Any other issue proposed and framed by the Authority.

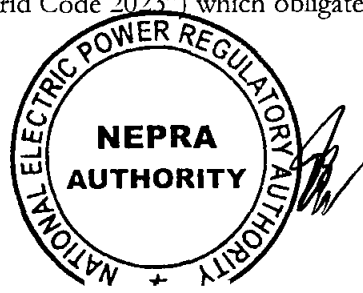
### **HEARING**

7. Accordingly, the Authority conducted the hearing as per the schedule on August 30, 2023, which was attended by various stakeholders both in-person and online via Zoom link, inter alia, including representatives of the Petitioner (PPIB), National Transmission and Despatch Company Limited (the "NTDC"), National Power Control Center of NTDC (the "NPCC"), Central Power Purchasing Agency (Guarantee) Limited (the "CPPA-G"), Ministry of Energy, Power Division (MoE), Punjab Power Development Board ("PPDB"), provincial energy departments, Mr. Nasir Ayyaz, and other relevant parties.



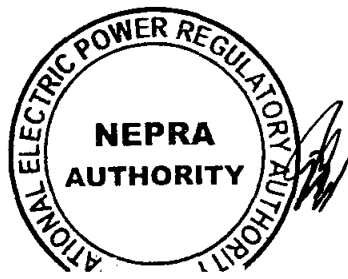


8. The representatives of the Petitioner gave a detailed presentation on the Review Petition during the hearing as summarized below.
9. The Petitioner submitted that the Framework Guidelines were approved by the Federal Government, inter alia, for the development of the Project. After approval of the Authority, the RFP was floated on February 15, 2023, with the deadline for submission of bids being May 31, 2023. The benchmark tariff that was determined by the Authority was US cent 3.4108/kWh. Twelve (12) potential bidders purchased the RFP; however, no bid was received within the deadline.
10. The Petitioner informed that feedback was sought from potential bidders over lack of response and it transpired that the project cost considered by the Authority was on the lower side i.e. around 335 million USD whereas the market rate is around 385-410 million USD. Further, the issue of high interest rates and indexation structure also surfaced during discussions with potential bidders. It was also highlighted that equipment prices and macro-economic conditions including country risk were not considered when determining benchmark tariff and further the timeline of twenty (20) months from the Energy Purchase Agreement (the "EPA") signing for delivery of the Project was overly aggressive.
11. In view of the above, the Federal Government approved amendments in the Framework Guidelines including allowing the option of open competitive bidding without determination of benchmark tariff by NEPRA. Further, 80% tariff indexation was allowed instead of the 70% allowed earlier and with an adjustment of the remaining 20% at the Commercial Operations Date (the "COD"). The Petitioner further informed that the interest rate adjustment mechanism as per precedents to neutralize impact for investors/government has also been allowed. Moreover, the Federal Government has also increased the timeline of the project from the earlier twenty (20) months to twenty-six (26) months with six (06) months allowed for Financial Close and twenty (20) months for construction. Further, the indexation adjustments mechanism has been approved to be automatic.
12. In addition to the above, the Petitioner submitted that technical parameters in the RFP have been revised and, in this regard, the Performance Ratio Test for every year has been introduced so that a functioning plant is transferred and handed over to GoP at the end of the project term. Further, annual O&M reports to check plant performance have also been added to the revised RFP. In addition, a mechanism has been introduced for a situation in which two parties bid the same tariff. In such case, the party that offers the maximum discount in a revised sealed bid shall be declared successful.
13. The Petitioner informed that a 15% special tax rate was proposed instead of regular corporate tax for the project; however, this requires changes in tax laws which are not possible without the National Assembly in session. The Cabinet, however, has approved the same. Therefore, it has been decided to charge a 15% tax rate to the developer whereas the remaining amount will be compensated in tariff. In addition, the mechanism for forecasting net delivered energy has been aligned with the New Grid Code (i.e. the "Grid Code 2023") which obligates the project company to submit an hourly forecast.





- The project company will be penalized in case of an error in the hourly forecast. It was submitted that although the market was not supportive of this, the provisions of the Grid Code 2023 have been adopted to avoid any inconsistency or amendments. It was further informed that the practice is that in case of any default, the Government of Pakistan (the “GoP”) can buy the complex by paying a compensation amount that is lower than the NEPRA considered rate and actual project finances at the time of occurrence of the default. However, since open competitive bidding is being proposed for this project, the compensation mechanism has been adjusted to allow lower among the amount in the term sheet at the time of bid or actual financing at the time of occurrence of the default.
14. On the framed issues, the Petitioner submitted that relaxation in the NCBTR 2017 may be allowed to opt for open competitive bidding without benchmark tariff. Since no bid was received on the benchmark tariff, it is suggested that open bidding is considered to discover the true market price for the Project.
  15. Regarding the prudence check for tariff, the Petitioner submitted that globally, the tariff arrived through market competition is considered prudent. However, IGCEP has optimized a quantum of solar projects at a certain reference cost and tariff which may be considered to check the prudence of the bid tariff. In addition, the marginal price of expensive fuels being displaced by the Project may also be considered for a prudence check.
  16. On the issue of tariff adjustment mechanism, the Petitioner submitted that quarterly adjustment of tariff is proposed to be automatic which is also in line with the Alternative and Renewable Energy Policy, 2019 (the “ARE Policy”).
  17. In this regard, CPPA-G submitted that the existing mechanism for tariff adjustment is more suitable. On this PPIB clarified that it is not a serious issue and either option is workable. The Authority directed the power purchaser and the Petitioner to discuss the issue and bring it before the Authority.
  18. Regarding interconnection, evacuation, and voltage level for the projects, the Petitioner clarified that the evacuation will be at 220 kV and there is a typographical error in the RFP which states 132 kV voltage level for evacuation.
  19. **Renewables First (the “RE First”)** in its submissions, pointed out that the foundation of bidding should be strong. The Framework Guidelines do not cover Category-III projects, which has caused a lot of bad sentiments in the market. Therefore, if a project is initiated by not giving a chance to pipeline projects like those in Category-III, it will negatively impact market sentiment. RE First further submitted that the quantum of 600 MW makes this such a big project and the country does not have experience doing such a large-scale project. Even developed countries like Denmark have limited their bidding to the tune of 300 MW. Therefore, it is better to allow a small quantum of projects and attract several investors instead of a single big investor. Reducing the quantum will also facilitate attracting

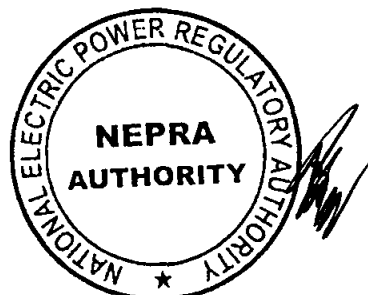




local investors which will be beneficial for the economy. Furthermore, it was pointed out that globally incentives are provided to domestic investors to facilitate them to participate in the bidding. However, in the instant matter, no special incentives are being offered to local investors. On the other hand, foreign investors, who normally take their profit abroad, are being offered incentives.

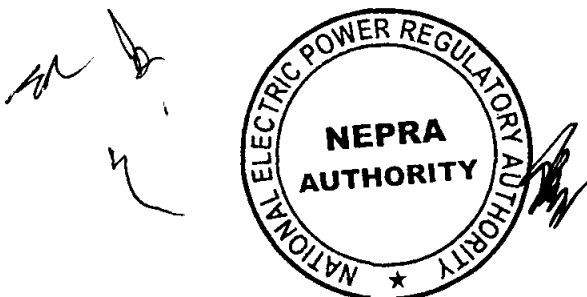
20. In response to the comments of RE First, PPIB stated that Category-III projects are not being sidelined. There were consensus issues with provinces, however, the last government made a high-level committee to address the issues, whose recommendations are with the cabinet for approval. Therefore, Category-III projects will be proceeded in parallel and are not being side-lined. Regarding smaller quantum projects, the Petitioner responded that 600 MWp project is for fuel(s) displacement and is proposed to be connected at 220 kV. If this is divided into, say, four projects of 150 MWp each, then evacuation at 220 kV will become difficult as many circuits will be required and this requires more investments. At 600 MWp, there are no major new works required for evacuation, and the quantum is also covered in the IGCEP, so it is proposed to go for 600 MWp projects rather than smaller quantum projects. PPIB further responded that there are no disincentives for local investors, and they can equally benefit from the offered incentives. Further, local investors are more comfortable with local environments, so they may have an added advantage in this regard.
21. **PPDB** emphasized that it is important for the Framework Guidelines to be consistent with the ARE Policy. It mentioned that the province of Punjab has certain concerns about the Project. Historically, as per the ARE Policy all projects were developed based on a "Build, Own, Operate" (BOO) basis. However, this project is being proposed under a "Build, Own, Operate, Transfer" (BOOT) basis, and is proposed to be handed over to the GoP as outlined in the RFP document. However, PPDB does not agree with this approach. Under various applicable power policies, BOOT-based projects are typically handed over to provinces after the concession period. This is also in line with the laws of the land, which also do not allow for such projects to remain under central control. Land allocation for power projects is generally done through the 1912 or 1884 Act. Therefore, maintaining consistency in this regard is crucial, and it is important for the Project to be handed over to the province after the term ends. PPDB reiterated that the master lease agreements in the RFP related to land allocation should be discussed with the Punjab Government (the "GoPb), specifically the Board of Revenue, to ensure that there are no inconsistencies. This is because these agreements have not been approved by the GoPb yet. Additionally, the exemptions or consents provided in the RFP regarding provincial matters should also be discussed with the Province of Punjab. Moreover, there is a lack of clarity regarding the Letter of Support (LOS) regime for this project. If the required Tripartite LOS is not issued, the GoPb may face difficulties in facilitating the Project. Therefore, it is essential to provide clear guidance on this matter.

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22. PPIB in response explained that the Project has received approval from the Board of PPIB/AEDB, and it was done with the agreement of the GoPb, therefore, it is considered that the Province of Punjab is aligned on this project. It was further clarified that hydropower projects usually get handed over to provinces due to constitutional requirements and having a higher life than the control period. However, the instant project is more similar to a thermal project, which typically is not transferred to provinces. Additionally, the land for this project is being acquired privately under land laws, similar to how it's done for thermal projects, rather than being treated like hydropower projects. This means that the involvement of the province in this case is more limited. Nevertheless, PPIB suggested that these concerns could be addressed in future discussions with the PPDB.
23. **Mr. Nasir Ayyaz** stated that the scope of the review is limited, and the instant Review Petition is not maintainable. This is an attempt to circumvent the entire regulatory framework. As per the applicable framework, a review is filed to correct a mistake or bring new evidence that was not available at the time of original determination. However, this Review Petition is based on the premise that the proposal has failed to achieve the desired result whereas the decision was correct in its own nature. Mr. Nasir pointed out that the original decision was based on the Framework Guidelines which have now been amended. So, it is requested to consider whether this review is maintainable or not. It is entirely a new matter, and the grounds and evidence under the Review Petition are violation of the regulatory framework especially the NEPRA (Electric Power Procurement) Regulations, 2022 (The "Procurement Regulations"). It is proposed to conduct a new hearing as allowing a failed transaction under the review regime will set a bad precedent and its implications on investor confidence should be considered. Moreover, it appears that the PPIB board members are also not on board and it may be confirmed whether the board has actually allowed the submission of the Review Petition.
24. Mr. Nasir Ayyaz further submitted that the Framework Guidelines are in contrast with the ARE Policy and the incentives being offered like adjustment of exchange rates fluctuations and tax incentives which will be passed onto consumers are a recipe for disaster as the consumers will not be able to pay for the same. Moreover, the tariff is being linked to the foreign interest rate which is not in our control. It seems like a cost-plus tariff regime in the shape of open bidding which is in violation of the ARE Policy. Mr. Nasir Ayyaz stated that the automatic tariff adjustment is also not supported.
25. Mr. Nasir Ayyaz pointed out that there are other options like rooftop solar/net metering which should be considered rather than such expensive projects as they have lots of benefits, such as, no long-term contracts, no indexations, no must-run obligations and, no transmission cost rather they reduce such investments due to generation at the load center. It was stated that we should not commit to such large projects for 25 years considering the rapidly changing environment. It was commented that the project will further exacerbate stranded costs and will impact CTBCM.

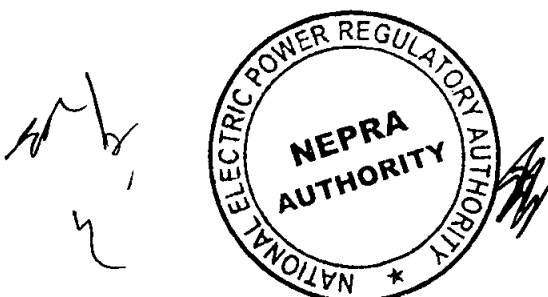




26. The Petitioner responded that the board resolution has been submitted. Further, this will not be a bad precedent as the instant Review Petition is different from other review petitions of cost-plus. This petition is for benchmark tariff review which was not successful and continuity of the same process. PPIB stated that successful competitive bidding is a dream and the comment that the project is like a cost-plus tariff is not agreed with. PPIB further stated that rooftop solar has a very limited scope and the System Operator can very well explain technical issues with rooftop solar. Notwithstanding, no one has discouraged this investment. Further, the requirement of 600 MWp is from the approved IGCEP and is not an arbitrary decision. Regarding tax incentives, it was clarified that there was no tax earlier so it is being introduced in a staggered manner as it will also have an impact on consumers.
27. **KAPCO** submitted that investors are of the view that the original benchmark tariff was on the lower side. The loan repayment assumption was on twenty-five (25) years which is not the case so ground realities need to be considered in this regard. It was stated that the instant project of 600 MW is a long-term solution to avoid importing fuel. It was further stated that KAPCO has shared detailed analysis about the tariff structure/assumptions with PPIB in earlier submissions and the earlier stance is reiterated.
28. **NPCC** stated that below the load requirement of 11 GW, fuel substitution may not be possible during winter as certain plants i.e., hydro (2500MW), Thar coal (2500MW), nuclear (3000MW), Solar/Wind/Bagasse (1000MW), CCGT (1000 MW) and Uch-I&II plants are required due to system stability requirements in the winter season and to avoid network splitting due to the voltage stability requirements of HVDC in the system. However, once the load requirement crosses 11 GW, fuel substitution is possible.
29. Subsequent to the hearing, the Authority received written responses from PPIB on the issues of the hearing. The Authority also received the following written comments from Mr. Nasir Ayyaz along with PPIB's rejoinder.

#### PRELIMINARY SUBMISSIONS OF NASIR AYYAZ

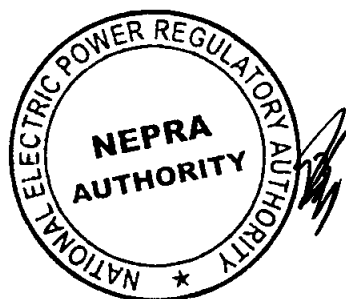
30. At the outset it is submitted that these comments are being submitted by the undersigned for assistance of the Authority as an intervener and concerned electric power consumer. The undersigned had also filed its comments on the earlier RFP and also filed a review petition in the matter that was dismissed on 29.08.2023 by the Authority. In continuation to my earlier submissions, it is stated that the undersigned fully supports renewable energy and steps being explored by the Authority for improving our energy mix. However, in my humble view, the proposed project may not be good for the economy and electric power consumers for inter alia following reasons:
- i. It will put a further burden on the government in the shape of sovereign guarantees;







- ii. Foreign exchange indexation will result in an uncontrollable spike in electric power prices as already being witnessed due to the rupee devaluation. The electric power consumers are not in a position to take foreign currency fluctuation risk. If the GoP considers it so very important, the GoP may take the foreign exchange rate risk at its end (though it may also not be advisable for the GoP to do that).
- iii. By allowing foreign exchange indexation of 100% at the COD stage we are actively dis-incentivizing localization that is not only against the ARE Policy but also our national interest in the long run.
- iv. The ARE Policy clearly stipulated that all future tariffs shall be in PKR however, the proposal to allow tariff in USD and on top of it to also allow indexation against foreign currency rates and SOFR, we are once again committing the same mistake that resulted in the destruction of our power sector.
- v. There are many other better options available in the shape of distributed generation, smaller projects near earlier established power grids, micro-grids, rooftop solar, net metering etc. that must be explored, and a cost benefit analysis be done before deciding on the viability of the proposed project. Although it may be argued that the RFP/project is not stopping these options, however, keeping in view limited resources and foreign exchange, the Authority may prudently decide which option is better.
- vi. The proposed project is not in line with the CTBCM framework and will further delay the establishment of a functioning electric power market in the private sector. The project shall add to stranded costs and bind the consumers for an unpredictable period of twenty-five years in a rapidly evolving technological development era. It may be prudent that the GoP does not take these risks in the shape of providing long-term commitments and sovereign guarantees and let the private sector and competition play its role by opening up the electric power supply market.
- vii. The RFP is being proposed and pushed in violation of the Council of Common Interest (CCI) approved ARE Policy, and the Procurement Regulations, without any lawful basis merely to circumvent the checks and balances established in the said framework to properly assess cost-benefit of the proposed project.
- viii. The Project is foreign investor centric that will in fact result in a greater burden on our foreign exchange reserves and consumers. The Project does not contain any incentives for local investment and/or localization that is itself a violation of the ARE Policy.
- ix. Neither PPIB nor the Authority has provided any calculations as to what impact the proposed project shall have on the consumer bills. In the absence of proper facts and figures, the RFP seems to be pushed in a hurried manner on the basis of bald claims. It is urged that proper databased analysis may be done before deciding on the project and such analysis may be made part of the Authority's determination (in case the Authority proceeds to decide the review on merits).

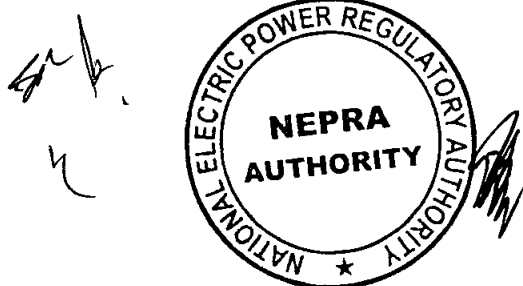




- x. Even if the Authority decides to proceed with the approval of the RFP, the Authority may kindly provide a working as to how the proposed project shall impact consumer tariff in a shrinking economy scenario.

**PRELIMINARY OBJECTIONS:**

31. That the captioned review petition is not maintainable as the process under earlier approved RFP has already been completed albeit unsuccessful. Thus, the earlier decision of the Authority having run its natural course has become a past and close transaction and the instant case does not fall within the purview of a review motion. Pertinently, it is admitted by the review petition that the Federal Government has changed the Framework Guidelines on the basis of which the earlier RFP was approved. Hence if a new RFP is drawn on the basis of new Framework Guidelines, the same amounts to a fresh case, and therefore, the review petition should have filed a fresh petition with the Authority for approval of the new RFP. It is evident that the instant Review Petition is ill-advised and apparently an attempt to circumvent the relevant regulatory framework more pertinently the Procurement Regulations.
32. That the Petitioner has raised various new grounds and matters in the petition that do not fall within the purview of review jurisdiction of the Authority and therefore, may not be entertained. Pertinently, the Petitioner is seeking to change the basic structure of the earlier RFP by claiming that the foreign exchange indexation be increased from 70% to 80%, the impact of interest rate changes may be allowed to be passed on, any change in tax may be allowed to be passed on the consumers. All these factors are new to the instant matter and cannot be adjudicated/decided in review jurisdiction as the scope of review is very limited.
33. That the captioned review motion is hopelessly time-barred. No reasons for condonation of the delay have been provided in the review petition. The review petition also does not disclose whether any fee is paid for the review petition. Hence, the review petition is not maintainable.
34. That the Review Petition is an attempt to circumvent mandatory provisions of the Procurement Regulations. Hence, it amounts to abuse of the process of law and may be dismissed.
35. That the Review Petition has been filed in violation of the ARE Policy, hence the same is not maintainable.
36. That the Review Petition does not disclose under what authority the same is being filed on behalf of the PPIB. Hence, the Review Petition is not maintainable.
37. That after approving the said RFP and the auction process being run under the said RFP, the Authority had become a functus officio and cannot approve any revision to the said RFP at this stage. The proper





legal course of action, therefore, will be to file a fresh request for approval of revised RFP subject to compliance with the Constitution, relevant law and regulatory framework.

38. That in the event the instant Review Petition is entertained and considered to be maintainable the same shall set a very wrong precedent and wipe out any certainty from the decisions of the Authority. It shall convey a negative message to the investors and stakeholders that there is no finality attached to the Authority's decision despite the lapse of the limitation period.

**On Merits:**

- (i). That the para relating to the "Name of the Petitioner" is misconceived and hence denied as framed. Pertinently, the Petitioner was first and foremost to establish the authority under which he is acting on behalf of the PPIB. However, the same has not been disclosed therein. Hence, the Petition is not maintainable.
- (ii). That the para relating to "Legal Basis" is incorrect and hence denied. The Petition is hopelessly time-barred. Moreover, the Petitioner does not have any legal basis for filing a review petition in the matter as the matter has already attained finality and if at all any new RFP was to be submitted to the Authority for its consideration and approval, the same must be filed as a fresh case subject to the relevant applicable regulatory framework.
- (iii). That the para relating to "Initiative" is totally misconceived and hence denied. Pertinently, the Petitioner has not shown any facts and figures to substantiate its claim. The Petitioner may be put to strict proof thereof. In fact, it is evident from the prayer being made in the Review Petition that the Project is likely to further deplete our foreign reserves as the investors shall be seeking repatriation of project costs and earnings in foreign currency. That the para relating to "Incorporation by reference" is against the Constitution and law hence denied. Pertinently, conflicting correspondence by the Petitioner with the regulator on the RFP shows that the RFP was not properly conceived and presented to the Authority which ultimately resulted in failure of the auction proceedings. The Petitioner appears to have consulted many investors but none of the general public or other stakeholders. The one-sided approach of the Petitioner which is a statutory body is against the principles of transparency and fairness.

**Reply to Motion for Leave for Review:**

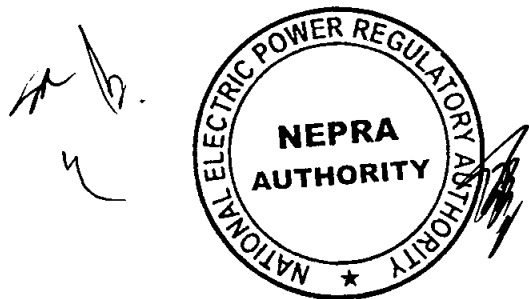
- (iv). That the contents of Para No.1 are denied being incorrect. A review petition cannot be filed in "furtherance" of the Authority's Decision. Detailed submissions are made above that are reiterated in reply to this para.
- (v). That the contents of Para No.2 are denied being against the relevant laws. Pertinently, if no bids were received by the Petitioner under the earlier approved RFP, the same does not provide a





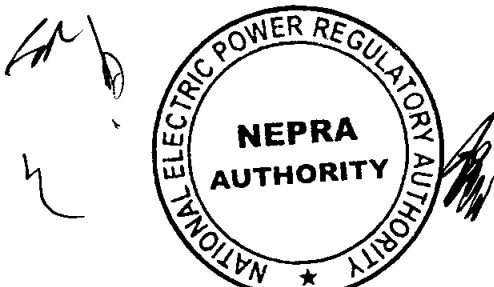
basis for filing a review. Moreover, the NCBTR-2017 has already been repealed therefore, neither an exemption can be sought under the repealed regulations, nor any such exemption can be granted by the Authority.

- (vi). That the contents of Para No.3 are denied being totally misconceived and misleading. Pertinently, the Petitioner has not disclosed any mistake or error in the impugned decisions of the Authority. Moreover, the Petitioner has also not provided any discovery of new and important matters of evidence that could have impacted the impugned decision of the Authority. In fact, the instant Review Petition is being filed on the basis of subsequent events and not any evidence or fact that was not discovered at the relevant time. The Petitioner does not fall within the definition of “aggrieved party” as no legal rights of the Petitioner have been infringed by the impugned decisions.
- (vii). That the contents of Para No.4 are denied. The Petitioner does not have any legal basis for filing the instant Petition.
- (viii). That the contents of Para No.5 are denied being incorrect. Detailed reply has been submitted above.
- (ix). That the contents of Para No.6 do not need any reply as the same pertains to record. However, it may kindly be noted that the NCBTR-2017 had already been repealed before the competitive process was initiated or submitted to the Authority. Thus, the Petitioner’s request was required to be processed under the Procurement Regulations.
- (x). That the contents of Para No.7 pertain to record. Detailed reply has been submitted above.
- (xi). That the contents of Para No.8 are denied being misconceived. Pertinently, if the Petitioner was not satisfied with the Decisions of the Authority, it could have challenged the Decisions within the limitation period. The Petitioner having accepted the impugned decisions and conducted an auction process thereunder, is now estopped by its conduct from challenging the impugned decisions of the Authority. Even otherwise, the statement that the tariff was too low is a vague statement. The Petitioner has not provided any facts or figures to support its claim as to why the figure was too low and what could be a prudent figure. Moreover, the assertion of the Petitioner that the investor needs to be provided protection against KIBOR/SOFR fluctuations is in fact discriminatory. Pertinently, no such protections are provided to the net metering license holders. Thus, any such protection provided to the prospective investor will not only be catastrophic for the power sector as being proved already as we are witnessing the highest ever generation costs but also violate the relevant provisions of the Constitution and law.
- (xii). That the contents of Para No.9 do not need any reply as the same pertains to the record.





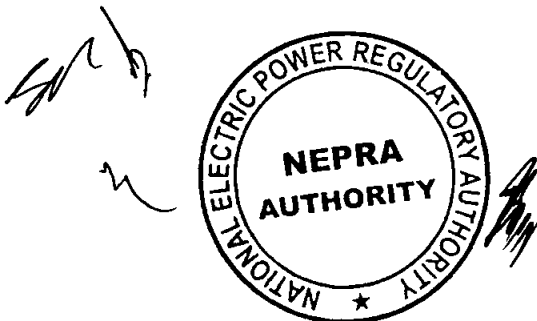
- (xiii). That the contents of Para No.10 are denied as being totally misleading, false, and frivolous. The Petitioner has not provided any evidence to substantiate its claim that no bids were received due to the alleged error in the earlier Framework Guidelines. Pertinently, even if it were so, the same does not provide a basis for filing a review against the impugned decisions of the Authority. Moreover, the revised Framework Guidelines are contradictory to the ARE Policy in general and in particular to the following provisions:
- a. 1.4.2 Competitive Bidding
  - b. 1.4.3 IGCEP's Primacy in Procurement Decisions
  - c. 1.4.4 Displacement of Expensive Energy
  - d. 1.4.5 Tariffs
39. It is also pertinent to mention here that no fluctuation can be allowed on the basis of any change in the "interest rate" as the same has been held by the Honourable Federal Shariat Court as ultra vires to the Constitution. The Federal Government had also withdrawn its review petition against the said decision of the Federal Shariat Court.
40. That the contents of Para 10 are denied as being totally false and misleading. The Petitioner is making bald claims without offering any proof. The Petitioner is in fact inviting the Authority to violate the approved policy of the Council of Common Interest and its own regulations that is not permissible under the law. The Petitioner, in sheer disregard of its mandate under the law, has not offered any plausible data and/or analysis as to what exactly the impact of the proposed solar project shall be on the consumer-end tariff. Without providing proper facts and figures to substantiate its assertions, the Petitioner cannot expect the Authority to rely on its bald claims.
41. The assertion with regard to the increase of foreign exchange indexation from 70 to 80 percent is in fact an admission on the part of the Petitioner that it has even given up trying to achieve the objectives of the ARE Policy in particular its clause 1.4.6 (Indigenisation and Local Content). It may kindly be appreciated that our consumers earn in PKR and therefore, linking their electricity bills with foreign exchange fluctuations that are not even under their control, will be highly unjust and further add to the miseries of the consumers instead of bringing any relief to them.
42. Adjustment of SOFR/KIBOR Variation: The Petitioner has claimed that interest rate fluctuations should be a pass on item to the consumer. Pertinently, interest has been declared un-Islamic by the Federal Shariat Court and the Federal Government has even withdrawn its appeal against the said decision of the Federal Shariat Court. Therefore, it appears that the Federal Government was once again not properly assisted while issuing the revised Framework Guidelines. As far as any financing rate fluctuations are concerned, it may kindly be noted that net metering licensees are not allowed any





such fluctuations thus allowing such concessions for the proposed project shall be highly discriminatory and in violation of the Constitution of Pakistan that guarantees equal protection of law to all citizens.

43. Project Timelines: The review Petitioner has not shared any evidence of the claimed “market feedback”. In the absence of proper evidence of any such feedback and a rational analysis thereof, the request of the Petition is highly arbitrary.
44. That the contents of Para No.12 are denied being totally incorrect. The suggested changes in the RFP are not in any sense “improvements” rather the same are highly regressive and against the larger public interest.
45. That the contents of Para No.13 are denied in light of the above submission.
  - (a). The correct position is that the Framework Guidelines are binding only to the extent that the same are in furtherance of the CCI approved Policy. However, as submitted above, the same are not in line with the CCI approved Policy.
  - (b). The contents of Section 14A (1) of the NEPRA Act are self-explanatory. However, the Federal Government has not provided any such plan to date, and therefore, in the absence of such a plan, approval of a long-term project ostensibly involving huge foreign exchange obligations may not be appropriate.
  - (c). It is a matter of record that National Electricity Policy, 2021 (the “NE Policy”) is approved.
  - (d). Even if a National Electricity Plan (the “NE Plan”) is prepared, it may be in the fitness of things, if any decision in the matter is taken only once the plan is approved in accordance with the law.
  - (e). The NE Policy does not authorize the Federal Government to contradict the ARE Policy.
  - (f). Totally misconceived. The NE Policy does not authorize the Federal Government to override ARE Policy. Moreover, it does not suit the Petitioner to refer to an unapproved Plan.
  - (g). The assertion made in this sub-para is totally false and misleading. In fact, the NE Policy protects the ARE Policy. Thus, it is highly inappropriate for a Federal Government entity to allege that a CCI approved Policy has been repealed when it is not the case. Even otherwise, if the Petitioner had any confusion in this regard, it could approach the CCI through the Federal Government for a clarification as the CCI is the only forum to decide on such matters. Moreover, the Petitioner has not shown even a single provision of the NE Policy that explicitly contradicts ARE Policy. As evident from the above and also enshrined in the principle of harmonious interpretation, the NE Policy compliments ARE Policy.





46. That the contents of para 14 are denied being incorrect. The Petitioner has not provided any grounds for review of the Authority's decision.
47. That the contents of Para 15 are denied as being incorrect. The Petitioner must disclose its full case and cannot be allowed to plead its case in piece meals without providing full disclosure to other parties. Even if the Authority allows the Petitioner to raise any additional grounds/assertions, a right to examine the same and reply may kindly be provided to the undersigned.

#### **Review Sought**

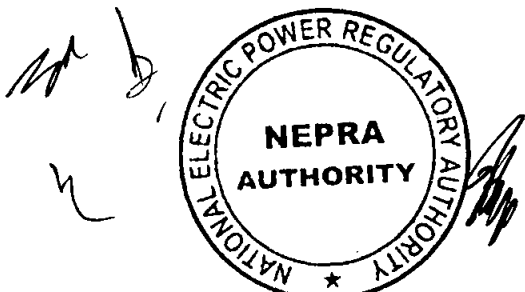
48. That the contents of Para 16 are denied as follows:
- (i). No grounds whatsoever have been provided for condoning the delay hence the review Petition is liable to be dismissed.
  - (ii). The review Petition is liable to be rejected.
  - (iii). The requested changes may not be allowed to the RFP and the Petitioner may be directed to file a fresh request for approval of the revised RFP in line with the prevalent regulatory framework.
49. The Authority reviewed/examined the above comments of Mr. Nasir Ayyaz and considered it appropriate to seek the perspective of the Petitioner on the same. In response, the Petitioner through its letter dated September 04, 2023 submitted its rejoinder on the same, as provided in the following.

#### **RESPONSE OF PPIB ON THE COMMENTS OF MR. NASIR AYYAZ**

50. In response to the above-written comments of Mr. Nasir Ayyaz, PPIB has submitted a detailed reply stating as follows: That this Written Representation (the "Representation") is being filed by the PPIB/Petitioner under the Review Regulations read with Rule 8 of the NEPRA (Tariff Standards and Procedure) Rules, 1998 (the "Tariff Rules"), in response to objections (the "Statement" or "Objections") by Mr. Nasir Ayyaz (the "Objector") following Authority letter no. NEPRA/Consultant (CTBCM)/RFP-06/32310 dated September 01, 2023, so as to assist the Authority (without admitting that the Statement has been validly filed under the Review Regulations and Tariff Rules). The contents of the Review Petition may kindly be read as a concomitant part of this Representation. The Petitioner's *ad seriatim* response to the Commentator's Statement is as follows:

#### **IN RESPONSE TO PRELIMINARY SUBMISSIONS**

51. That the Objector is neither a respondent (as the Petitioner has not impleaded him so), an intervener (as no separate intervention request was made and decided by the Authority under Rule 6 of Tariff Rules) or a commentator (as he has not elected to send Statement of Comments prior to hearing in accordance with Rule 8 of Tariff Rules) nor is a person who has filed any Statement of Communication or Petition within the meaning and as contemplated under Rule 3 of the Tariff Rules. Therefore, his



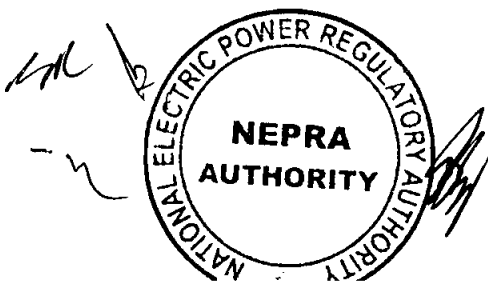


Statement neither does constitute a Petition nor a Statement of Communication, an Intervener Request or Statement of Comments within the meaning of Tariff Rules that even necessitates a response/representation from the Petitioner let alone a rejoinder which under the Tariff Rules is required to be filed only in response to a Reply to the Petition filed by any respondent impleaded so by the Petitioner in the Petition. Hence his Statement/Objections at this belated stage and submitted in clear disregard and contravention to the Review Regulations and Tariff Rules is/are liable to be rejected/dismissed on this score alone and without much ado.

52. That prior to filing the instant Statement/Objections the Objector has also filed a review motion earlier with respect to the captioned decisions of the Authority, agitating and raising, inter alia, grounds, and objections which were directly and substantially similar to those he has raised in his Statement. The said review motion was dismissed by the Authority vide decision dated August 29, 2023, with detailed reasoning. Therefore, raising such grounds and objections again under the Statement being contrary to the well-established principle of res judicata (as stipulated under Section 11 of the Civil Procedure Code which being the general procedural law of the land in the absence of any specific contrary provision is applicable to the proceedings) are liable to be rejected summarily.

(i). That it appears that the Petitioner has raised the issue of burden in the form of the GoP Guarantee without even giving an iota of thought to what is under consideration before the Authority. A government guarantee against the payment obligations of the GoP entities is a major concession that not only makes the projects bankable but also reduces the cost of the transaction to the ultimate benefit of the end consumers. It may be appreciated that given the financial health of the DISCOs or CPPA-G in case the GoP as a matter of policy does not backstop their obligation in the form of a Guarantee, the investors as a substitute would require a robust commercial guarantee either in the form of revolving SBLC or a Bank Guarantee involving significant additional cost to such entities. Therefore, till the time DISCOs' or CPPA-G's financial health improves to a level that their credit rating is acceptable to lenders and investors, the GoP Guarantee shall continue to remain part of the security package documents. In this regard, clause 2.4 of the ARE Policy categorically provides for the continuity of issuance of the GoP guarantee for payment obligations of the purchaser. Hence, the objection sans any substance and devoid of reasoning is liable to be ignored and rejected.

(ii). As regard para (ii), the Petitioner has submitted its position in detail through the Review Petition and answers submitted in response to issues framed by the Authority. In addition, it may be appreciated that given the pressure on the GoP's reserves due to rise in expensive imported fuels for power generation, the Framework Guidelines enjoin that all foreign cost of the Project to be incurred in foreign currencies is required to be raised from foreign resources. A foreign investor who has invested in foreign currency therefore would naturally expect that it is not exposed to

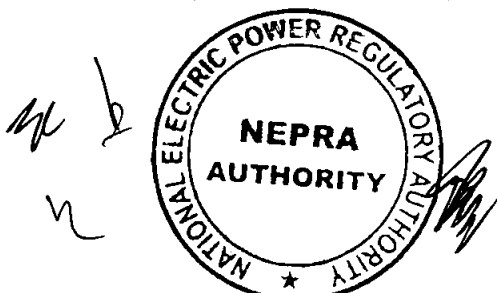






risk of devaluation of local currency since the tariff under the applicable policy is to be denominated in Pak Rupee. Furthermore, the Authority in recent tariff determinations has allowed tariff to be indexed with Foreign Exchange (FX) fluctuation in the range of 85-87% of the total tariff. Accordingly, the Framework Guidelines and RFP initially provided 70% of the tariff to be indexed with FX fluctuations. However, it was after market feedback where serious concerns were raised as to FX risks due to recent sharp decline in the value of Pak Rupee, that such 70% percentage has been increased to 80%, which is still significantly lower than what the Authority has approved in recent tariffs. On the other hand, in case the Authority does not allow such FX indexation, the investors would either price such risk of FX fluctuations by jacking up the tariff or arrange hedging through buying currency swaps or other financial instruments that would again involve recurring cost in the shape of premiums. In both the cases, investors/bidders will include the additional cost in the tariff that will be passed on to the consumers. Disallowing such coverage in the current circumstances would make it very onerous for the GoP to attract FDI for the subject Project. For this very reason, clause 2.3 of the ARE Policy also aptly allows indexation against FX fluctuations. The Petitioner, therefore, submits that indexation mechanism as propose in the RFP is justified and is even lower than that is provided in Authority's earlier precedents.

- (iii). That the contents of para (iii) are ambiguous and the Petitioner do not see any correlation of localization with the indexation mechanism proposed in the RFP. Nonetheless, it is clarified at the cost of repetition that neither is there any bar or restriction in the RFP with respect to the participation of local investors nor is there any constraint or limit imposed on locally manufactured goods and equipment.
- (iv). That para (iv) clearly exhibits, how naively the Objector has approached the matter in hand and that too under the influence of inexplicable haste. He has not even bothered to check that the bid tariff and its formula are both denominated in Pak Rupee in line with the Framework Guidelines and ARE Policy, however, as per proposed formula the bid tariff will be indexed on account of FX fluctuations against a reference rate. Mere 80% indexation of Pak Rupee tariff with FX fluctuations does not convert the tariff into a Dollar denominated tariff. Hence, contents of para (iv) are based on wholly misconceived and factually incorrect facts.
- (v). The para (v) is again an attempt to twist facts to justify wrong conclusions drawn in the Statement. Plethora of data, information and material is available to establish that the distributed generation by way of rooftop solarization is primarily beneficial for the individual households or industrial units but they do not impact the basket price for the end consumers of the DISCOs, hence it will not serve the purpose of fuel substitution as envisaged in the Framework Guidelines and ARE Policy. In addition, the Objector is also oblivious to the benefits of economies of scale which is

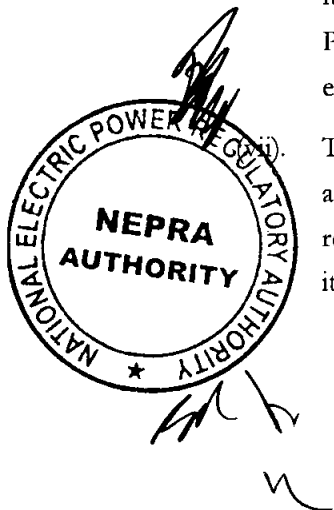




only possible with bigger size projects. Needless to mention that subject initiatives under the Framework Guidelines in any way do not discourage or stop any market player to explore other options to reduce the cost of the energy in Pakistan.

- (vi). That in terms of regulatory framework of CTBCM though some progress has been made, still a lot needs to be desired with the regard to development of new power generation policy framework under the NE Policy and NE Plan pursuant to which all future procurements will be made. Such policy framework will surely have impact on regulatory framework as well and may also require revision in various rules and regulations. Since such policy framework is still under consideration by the GoP, a full-scale commercial application of CTBCM may not be on the cards in the near future and is dependent on various other factors. On the other hand, the regulatory and policy framework of single buyer model is in vogue and provides a robust contractual framework which can be readily offered to the prospective investors towards realization of the GoP's policy objective of substitution of expensive fossil fuels to arrest further bleeding of the economy. This by all means is a low hanging fruit, and it should not be let sacrificed at the altar of procedural preferences/carping or other expediciencies. From the planning standpoint, the subject initiative has been picked up from the quantum of solar energy as approved in the IGCEP which in our understanding takes into account the costs and fuel substitution. On the other hand, the question that why a long term contract of 25 years is being proposed that will bind us with a technology that is subject to rapid change can be answered from two standpoints: (a) since a lot needs to be done to create a robust and dynamic wholesale and retail power market in Pakistan, at this stage it will be near impossibility to convince investors/lenders to enter into a shorter term contract with the GoP/Purchaser when there is no system or guarantee that after end of such short term concession it will have enough customers who will be ready to off-take power from his facility for the remaining life of the Project; as a result we will get fully front-end loaded tariff even for shorter term contracts; (b) a longer term concession contract is quite beneficial for the procuring agencies since at one end it ensures security of supply on a long term basis and second it locks the price for the procuring agency throughout the term of project which allows it to plan better for the future. Nonetheless, at the end of the day tariff is the major determinant factor for which the Petitioner has requested that it should be left for the market to determine, subject always to a reasonability test. Hence the Petitioner considers that contents of the para (vi) being misleading and based on surmises merit emphatic dismissal by the Authority.

That contents of para (vii) are false and incorrect which are emphatically denied. The Petitioner at the RFP approval stage has already made detailed submissions with respect to policy and regulatory framework that is applicable with respect to subject Project and in more specific terms it has also added and clarified certain facts and made submissions in the Review Petition where

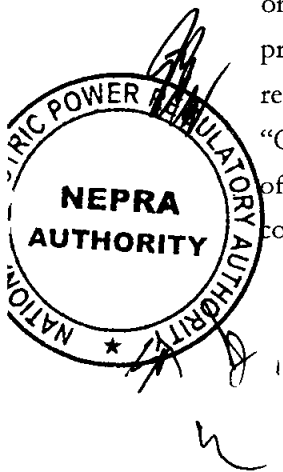




- all policy and regulatory have been dilated upon. All such submissions, pleadings, communications and representations etc. by the Petitioner at the time of RFP approval and Review Petition are hereby reiterated by reference. The Petitioner unhesitatingly submits that the proposed RFP is not inconsistent with the NEP, NE Plan or ARE Policy.
- (viii). That the contents of the para (viii) are based on misconceived facts and non-reading of the RFP and Security Package Documents that form part of RFP according to which the competition for the proposed Project is open for foreign as well as local investors and there is no discrimination being meted out with either of them.
- (ix). That the Petitioner is not a planning agency within the policy and regulatory framework. It has processed the RFP for the subject Project after obtaining the consent of the Purchaser and size of the Project was found to be within the quantum set out under the approved IGCEP 2022-31. Hence assertion of the Objector is devoid of any merit and substance.
- (x). That para (x) appears to have been addressed to the Authority. Nonetheless, in order to assist the Authority in this regard, it is submitted that since the bidding model being proposed in the RFP is open competitive bidding without any ceiling tariff, for the purposes of ensuring its prudence and reasonability, the Authority may consider and evaluate the lowest bid tariff on the touchstone of least cost principle and displacement cost of expensive imported thermal energy, as deemed appropriate.

#### **PRELIMINARY OBJECTIONS:**

53. The instant comment is vehemently denied for the reasons and objectives stated in the Review Petition, which are reiterated herein. The Review Petition has been filed strictly in accordance with the requirements of the Review Regulations read with Tariff Rules, thus it is fair and square maintainable and merits consideration by the Authority. It will be pertinent to note here that for the purposes of the Review Regulations and the Authority, the completion of the process is contemplated only when the decision of the Authority with respect to application for approval of tariff by the successful bidder is intimated to the Federal Government for notification in the official gazette under Regulation 12 (10) of the NCBTR-2017. Therefore, merely non-receipt of bids to the procuring agency, or declaration of any bid as non-responsive or rejection of bids does not mean and amount to completion of process for the Authority under the NCBTR-2017. Thus, Review Petition by all means is continuity of the original process or approval of RFP. Given the scheme of the NCBTR-2017 and nature of procurement process, the Petitioner even otherwise considers that a formal review motion was not required for seeking an amendment in the RFP which could have been easily handled through a "Communication" as defined and contemplated under the Tariff Rules. Furthermore, seeking approval of the Authority for an amendment in the approved RFP, that too for the same project having same concession package with minimal changes (e.g. opening up of bidding parameters to seek true market

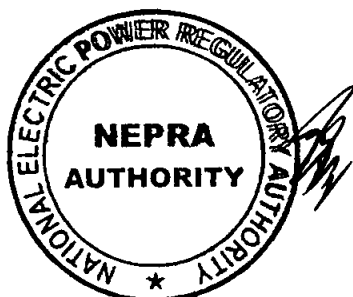




response, change in project implementation timelines or provision of necessary protections already provided in the relevant policy), is in accordance with Regulation 9(5) of the NCBTR-2017. Thus, until an intimation of Authority's decision with respect to approval of the tariff of the successful bidder to the Federal Government for notification in the official gazette is given, any action of the Authority with respect to same Project or RFP therefor, in exercise of its statutory powers and the relevant rules or regulations, will be construed as continuity of the same process. Hence the para (1) being outcome of misconceived facts and misreading of the applicable regulatory framework is not worth consideration by the Authority.

54. That the contents of Para 2 are also denied being incorrect and devoid of legal basis. The Review Petition has been filed in accordance with the requirements of the Review Regulations, based on facts and sufficient reasons stated therein, which are reiterated mutatis mutandis herein by reference. For the sake of abundant clarity, it is submitted that the fact that erstwhile AEDB did not receive any bid in response to earlier approved RFP due to various factors as fully delineated in the Review Petition was the evidence that could only be brought before the authority post hoc. If we consider the argument of the Objector right, then for all practical and legal purposes the procurement process will have to be started afresh even for a limited and narrow reconsideration of matters within the ambit of RFP setting the earlier procurement at naught. The Petitioner is afraid that such approach in the procurement process is detrimental not only for the very efficiency that a procurement process demands in a dynamic and challenging market like Pakistan where upping against ante for no arguable reasons is favourite hobby for many, it would also open pandora box of procedural snags that will unduly entangle the Authority and the Petitioner being the procuring agency into pedantic issues thereby practically choking all future power procurements. It is therefore important for the Authority to nip Objector's mundane arguments at the very inception in such a way that there remains no ambiguity in the process revolving around competitive bidding.
55. That the contents of para 3 are based on misconceived facts which are vehemently rejected. The Objector did not even bother to check the relevant record of the Authority. The Petitioner has filed an application for condonation of delay stating therein full reasons and necessity to file the same, contents whereof are reiterated herein by reference. Further, fee under the Review Regulations has also been paid albeit under protest since its quantum is disputed for which the Petitioner a separate determination in view of arguments advanced by the Petitioner.
56. In view of contents of Review Petition which are reiterated herein and above submissions in re to continuity of the earlier process of approval of RFP, the contents of Para 4 are denied being incorrect and misleading. For the sake of record, Regulations 37 of the Procurement Regulations, have clearly excluded from its ambit and scope all those processes which had earlier initiated under the NCBTR-2017.

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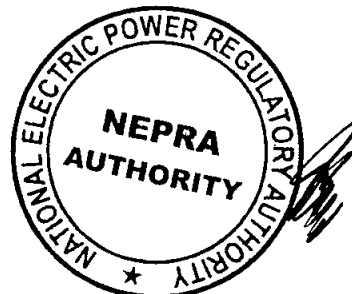


57. That contents of para 5 are addressed hereinabove, hence need not to be repeated again.
58. That the contents of Para 6 being against the facts on record are emphatically denied being untrue. The Letter of Authority of the signatory along with other necessary documents has been duly submitted by the Petitioner. Hence objection as to legal authority of the signatory has no legal foot to stand.
59. That the instant comment is denied for the reasons and basis stated in the Review Petition and submissions made hereinabove. It is iterated at the cost of repetition that Review Petition has been lawfully and validly filed and assertions of the Objector that Petitioner should file a new RFP under EPPR is only an attempt to sabotage the whole substitution initiative in the garb of procedural quibbles. It is therefore respectfully submitted that the Authority should completely ignore such objections which merely are technicalities having no bearing on the main RFP. Too much focus on bringing in technicalities to hinder the process instead of raising any points on other major clauses of RFP speaks volumes of the intentions of the Objector.
60. That the content of Para 8 are again false and incorrect interpretation of the relevant provision of the Review Regulations and applicable Regulatory Framework. As a matter of record, the Review Petition is the first by the Petitioner whereas the Objector has already filed one review petition which has already been rejected by the Authority. Now the Objector without any lawful basis and in the garb of the Statement has raised the same issues or grounds which have been heard and finally decided. The Objector is now legally estopped to raise the same issues and arguments that have been duly considered and rejected by the Authority. On the other hand, it is submitted that the Review Petition is a lawful process and is to be decided keeping in view the peculiar facts and circumstances of a particular case. Furthermore, the review has been filed in accordance with the requirements of the Review Regulations and after consultation and feedback from the investors, hence no question arises as to any investor being prejudiced through Review Petition. On the other hand, the Petitioner expects that in case RFP is approved as proposed, it will provide a level playing field to all the investors who may offer their best bids without being worried against risks of interest rate and FX fluctuations or timelines constraints.

**PPIB's RESPONSE TO MR. NASIR AYYAZ ON "ON MERITS"**

61. That the Objector is clueless as to the relevant facts and record. By virtue of the Private Power and Infrastructure Board (Amendment) Act 2023, the former AEDB has been dissolved and all of its functions, rights and liabilities, amongst others, also stood transferred to PPIB. The Letter of Authority, authorizing filing of the Review Petition was duly issued by competent authority of PPIB and was accordingly submitted to the Authority.

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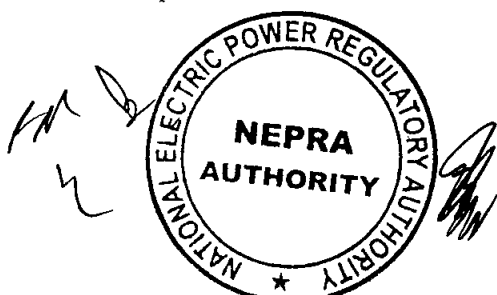




62. That for the reasons and basis stated in the Review Petition and the submissions made hereinabove, the instant para is denied.
63. That the Para is denied being based on surmise and conjecture. Since the underpinning of the Solar Substitution Initiative under the Framework Guidelines is to substitute the fossil fuel-based power which is very expensive, it is no brainer that deployment of solar PV projects, though will require incurring of initial capital cost, will surely arrest depletion of foreign reserves significantly. Had this been untrue, IGCEP would not have picked up huge quantum of solar power projects on least cost principle. On the other hand, it is legitimate expectation of an investor bringing in foreign investment in shape of foreign currency to repatriate its gains/profits in free transferable currency such as dollars. Considering the foreseeable state of economy in Pakistan, it will be very difficult to convince any local or foreign investor to invest in power sector of Pakistan with interest rate and FX fluctuation risk parked on it.
64. That the comment itself is vague, nevertheless, contrary to the fact as alleged, it is placed on record that thorough consultations were undertaken with respect to this initiative, RFP and Security Package Documents including with international consultants, IFIs, Banks etc. Even at the time of RFP approval open hearings were conducted by the Authority in which public at large could participate and as a matter of record many comments and objections were raised which were duly addressed through Communication by the Petitioner. The Petitioner reckons that after feedback from the market major reasons for no response to the RFP from the investors were clearly conveyed to the Authority that necessitated revision in certain parameters of RFP. Hence with respect to RFP there was no dearth of clarity on the part of Petitioner.

**PPIB's RESPONSE TO NASIR AYYAZ ON "MOTION FOR LEAVE FOR REVIEW"**

65. That the comment is denied for the reasons and basis stated in the Review Petition and submissions made hereinabove, which are reiterated and be read as incorporated herein by reference.
66. Same as above.
67. Same as above.
68. Same as above.
69. That the Petitioner requests for decision by the Authority on law and merits along with other requests have been objected to by the Objector. Nonetheless, the Authority is competent to decide the Review Petition in accordance with law, applicable rules and regulations in view of the Petitioner's submissions made herein and therein.
70. That as a matter of record, the Petitioner initiated the case under the NCBTR-2017 on November 22, 2022 i.e. prior to notification of the Procurement Regulations, therefore, the EPPRs are not applicable

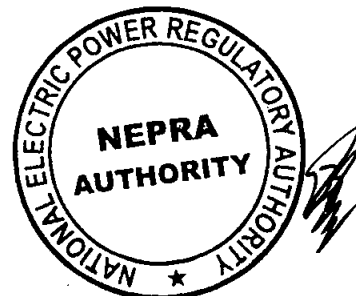




in the instant matter which is required to be governed under the NCBTR-2017. The submissions made hereinabove and in the Relevant Documents are also reiterated herein.

71. Pertains to record.
72. That contents of Para 12 are denied being vague, misconceived and baseless, the Petitioner reiterates its submissions made herein as well as in the Review Petition.
73. Pertains to record.
74. That the contents of instant comment are denied on the basis of submissions made hereinabove and the Review Petition. It is reiterated that the GoP's solar initiative is in line with the NE Policy and ARE Policy. With respect to Honourable Federal Shariat Court (FST)'s decision, it is to note that the FST vide its judgment dated 28<sup>th</sup> April 2022 has declared Riba prohibited as per injunctions of Islam and ordered, amongst others, that the Government will take measures for implementation of the decision within 5 years. It is worth noting that the above judgment of FST will take practical effect after five years and as per information made available to the Petitioner certain other interested persons or entities have challenged the judgment of FST by way of appeals before the Hon'ble Supreme Court. Therefore, legal status of "riba" or "usury" is still open before the Hon'ble Supreme Court. Further, as is said "cross the bridge when you come to it", it is not advisable for the Petitioner to structure its documents at this stage inconsistent with the applicable policy framework and financial system in Pakistan. It is further clarified that there is no restriction on the bidder/investor to structure its finances in accordance with Shari'ah principles and security package documents are fully aligned in regard therewith.
75. That the contents of instant para are denied for the reasons and on basis of submissions made hereinabove and in the Review Petition.
76. That the facts and stance as portrayed in the instant para including sub-paras, are denied. for the reasons and basis as submitted hereinabove and the Review Petition. Further, it is confirmed that Federal Government has recently approved the NE Plan. That the instant comment is denied for the reasons and on the basis of submissions made hereinabove and the Review Petition. That the Petitioner has disclosed all the relevant facts and has all the right to present, plead and submit to the Authority, to enable and assist the Authority to arrive at just and informed decision while the Authority is competent to decide the matter in accordance with the law and on the merits of the case.
77. That the Objector's Statement merits no consideration at all by the Authority on the basis of the submissions made hereinabove and the Review Petition and in view of the Authority's decision dated August 29, 2023, with respect to his review motion.

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78. In view of the foregoing, it is respectfully submitted that the Statement of the Objector being devoid of merit and having no legal footing to stand may kindly be dismissed with costs.
79. Any other relief which the Authority deems appropriate in the circumstance may also be granted.

**REVIEW AND FINDINGS OF THE AUTHORITY ON THE ISSUES FRAMED IN THE MATTER**

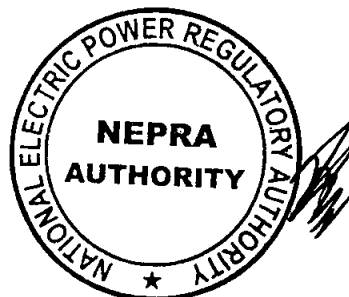
80. The following are the review and findings of the Authority in regards of the issues framed in the matter.

**ISSUE No.1 Whether the proposed open competitive bidding can be allowed under the NEPRA Competitive Bidding Tariff (Approval Procedure) Regulations, 2017?**

**Submission of the Petitioner and Commentator.**

81. The Petitioner submitted that with the onset of the COVID-19 pandemic and later due to the ongoing Ukraine war, the World in general and Pakistan, in particular, is facing unprecedented macroeconomic challenges due to which market conditions have become volatile and uncertain. Further, the tariff structure given under the Framework Guidelines is first of its own kind and there is no tariff before the Authority that has been determined/reached on such structure either through cost-plus mode or competitive bidding process.
82. The Petitioner submitted that considering the fact that no bid was received on the earlier Benchmark Tariff determined by the Authority for the 600MWp Kot Addu/Muzaffargarh solar PV project, it will be more prudent that the Authority instead of a reverse auction scheme where discount is solicited on a given Benchmark Tariff, allow an open competitive bidding process without any ceiling tariff enabling discovery of true market price and fast track implementation of the project. Such a mechanism is also allowed under the Framework Guidelines approved by the Federal Government.
83. For this purpose, Regulation 14 of the NCBTR – 2017 provides ample power to NEPRA to remove any difficulty or relax any requirements given under the NCBTR-2017. Furthermore, since the Review Motion is the continuity of the earlier process, it has been filed in strict compliance and within the parameters as set out in the NCBTR-2017. Furthermore, since the Review Petition is the continuity of the earlier process, it has been filed in strict compliance and within the parameters as set out in the NCBTR-2017.
84. Mr. Nasir Ayyaz commented that the NCBTR-2017 has been repealed, and the scope of the review is limited. He argued that a review is filed to correct a mistake or bring new evidence that was not available at the time of original determination, and that the instant review petition is therefore not maintainable since it arises from the fact that the proposal failed to achieve the desired result, not due to any error in the original decision.

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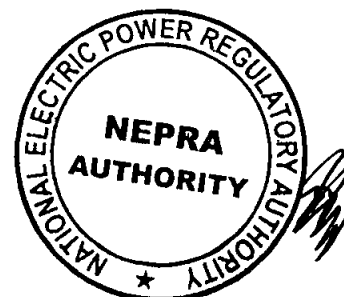




### Authority's Findings

85. The Authority has analysed the matter in detail and considered that so far as the repeal of the NCBTR-2017 by the Procurement Regulations is concerned, it may be noted that the current competitive process for the award of this project was initiated prior to the repeal of the NCBTR. Furthermore, Regulation 37(2) of the Procurement Regulations provides as follows:
- Notwithstanding any repeal effected by these regulations, for any competitive process initiated or submitted to the Authority prior to notification of these regulations, the procedure for notification of successful bidder and approval of tariff shall be the same as provided for in the National Electric Power Regulatory Authority Competitive Bidding Tariff (Approval Procedure) Regulations, 2017.*
86. The NCBTR-2017 was notified by the Authority to **“lay down the procedure for approval of tariff arrived at through a competitive bidding process.”** Under the NCBTR-2017, the competitive process culminates with the Authority’s approval of the ‘application for the approval of tariff’ of the successful bidder which is to be intimated to the Federal Government for notification in the official Gazette in pursuance of Section 31(7) of the Act. Consequently, the competitive process initiated and earlier submitted in relation to the RFP was still under the control of the Authority at the time the NCBTR-2017 was repealed by the 2022 Regulations. Therefore, given Regulation 37(2) of the Procurement Regulations, the NCBTR-2017 remains applicable to the project under consideration (including in relation to the Authority’s powers under the NCBTR-2017 to approve the RFP or to relax any requirement of the NCBTR-2017). Accordingly, NEPRA can review its decision, as the whole process of competitive bidding, as stipulated in NCBTR-2017, has not been completed.
87. The Authority further noted that there is a separate issue that has been raised in relation to the scope of the review proceedings. It has been contended that since various aspects of the RFP (and the Framework Guidelines) have been changed, hence the review petition under consideration is not competent but should have been submitted as a fresh petition. This contention is misguided.
88. The Authority is of the view that it is essential to grasp, as a preliminary point, the distinct nature of administrative review proceedings, such as those governed by the Review Regulations cannot be understood only by comparison to judicial review proceedings. That difference arises from the fact that the role of a regulator, such as NEPRA, is much broader than the role of a court. NEPRA’s powers while considering a petition for review are thus not limited to correcting errors made by it but include the power to amend or modify its earlier decision if the intervening facts have changed. This power is recognized and acknowledged in Regulation 3(2) of the Review Regulations, which provides that the Authority may exercise its powers of review following the “discovery of new and important matter of evidence” and for “any other sufficient reasons.”

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89. In accordance with the submissions made by PPIB, the benchmark tariff as approved by NEPRA was on the lower side and not reflective of market conditions. Further, the petitioner added that it did not request for the appropriate indexations. Resultantly, the RFP, with the above-said benchmark tariff and indexations, failed to attract any investors for the development of the project. The Authority holds the position that the said outcome validates the PPIB's submissions and qualifies as a justifiable and sufficient reason to review the original decision.
90. The Authority considered the foregoing and has decided to relax the requirement of determination of benchmark tariff in this instance case, pursuant to the provision of Regulation 14(2) of the NCBTR-2017, with the conditions explained in Issue (2) below.

**ISSUE No.2 What would be the mechanism for the assessment and approval of prudent tariff for the project after processing the project under open competitive bidding?**

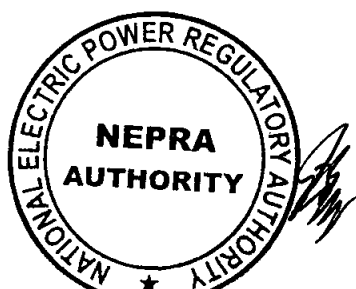
**Petitioner's oral and written response**

91. During the hearing the Petitioner stated that to check the prudence of tariff different aspects can be considered. According to the Petitioner, it is an established principle internationally that market is the best determinant of price which will have project cost and risk associated with it. Secondly on account of prudence IGCEP has accepted about 8,500 MWp of solar by using PLEXOS at a certain price. That could also be used as comparison or benchmark. This is just the beginning as we now only discuss 600 MWp while IGCEP talks about 8,500 MWp. These two could be very good checks on prices. A third check could be from displacement cost for which marginal cost of units are to be displaced. According to PPIB this is a secondary argument. The primary argument is the price at which 8500 MWp solar is accepted in IGCEP in the grid till 2031.
92. The Petitioner in its written response on the issue submitted that IGCEP 2022 provides for a sufficient quantum (5,514 MW) of power to be procured from solar PV projects based on the least cost principle given under the NE Policy for expansion in generation capacity. Furthermore, the prime objective of the solar PV projects to be procured under the Framework Guidelines is to displace the existing expensive imported thermal energy. In this context, it would be prudent that the Bid Tariff offered by the Successful Bidder may be assessed/approved by the Authority considering the least cost principle & energy cost of such expensive imported thermal power projects.

**Authority's Findings**

93. The Authority has reviewed the oral and written comments of the Petitioner and it was noted that under section 4(5) of the NCBTR-2017, the Relevant Agency—which in the instant case will be PPIB or the Petitioner—was empowered to reject the bids in case the quoted rates were higher than the NEPRA approved benchmark tariff. The relevant provision of the NCBTR-2017 is given below:

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4(5) Where applicable, the Relevant Agency may reject all bids if the quoted rate is equal to or higher than the Benchmark Tariff

94. The Authority also observed that in the RFP submitted under the title “Important Notice to All Bidders” reproduced below the PPIB already has the overarching power to reject bids without assigning any reason.

***“PPIB has the right at any time to change the bidding process, terminate the bidding process, accept a bid without having to justify the reasons for its choice, and to reject any bid at any time without having to disclose the reasons therefore”***

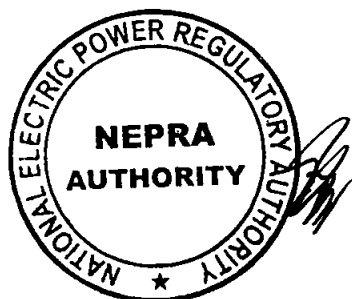
95. Therefore, in case of open competitive bidding, the Authority has decided that for this purpose the bid evaluation report submitted by the petitioner will include analysis on whether the lowest bidder's tariff aligns with the government's given Framework Guidelines and objectives of other applicable documents in consultation with CPPA-G and NTDC for displacement of expensive based on a current or fresh iteration of the IGCEP by NTDC. The declaration of Successful Bidder after fulfilment of condition in the bid evaluation report may be approved by relevant government forum(s).

**ISSUE No.3 Whether the indexation/adjustments, i.e., 80% of the tariff with exchange rates coupled with coverage of LIBOR/SOFR and KIBOR variations, as proposed in the amended Framework Guidelines is prudent and justified?**

**Petitioner’s Oral and Written Response:**

96. The Petitioner during the hearing informed that since such adjustment has been approved by the highest forum, the Federal Cabinet, this amendment in Framework Guidelines stands justified. The Petitioner further stated that since the Framework Guidelines have been approved therefore the “proposed” word appearing in the wording of the issue may not be correct.
97. Subsequent to the hearing, PPIB vide letter dated August 31, 2023 submitted that based on the feedback received from the market for successful development of the projects, the Federal Government found it prudent to amend the Framework Guidelines wherein percentage for adjustment on account of exchange rate variations (USD/ PKR) has been increased from 70% to 80% and adjustment on interest rate variations has been allowed. Furthermore, it is pertinent to mention here that under the existing tariff regimes, the projects have been allowed exchange rate variations to the tune of approximately 85-87% together with the coverage of interest rate variations and CPI (local & foreign) indexations (please refer to tariff determinations in respect of Zhenfa Pakistan & Zorlu Solar).
98. Nasir Ayyaz during the hearing stated that these changes will make tariff adjustments more like cost plus defeating the spirit of competition. He further stated that USD and LIBOR linkage are

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uncontrollable variables the risk of which should not be passed on to consumers. He further stated that allowing such indexation is a violation of ARE Policy.

99. KAPCO during the hearing stated that a debt tenor of 20-25 years was assumed previously. As per KAPCO neither such extended loan was available then nor available now. This was negatively impacting the project cash flows hence no one submitted the bid. Therefore, representative of KAPCO was of the opinion that this time this aspect may kindly be addressed.

#### Authority's Findings

100. The Authority noted that previously indexation formula was simple as given in the Framework Guidelines as only USD variation to the extent of 70% of levelized benchmark tariff was to be allowed. However, this time 70% has been increased to 80% while at the same time adjustment with respect to LIBOR and KIBOR variation have been allowed. The relevant terms of tariff and corresponding indexations, the earlier one and amended in the revised Framework Guidelines, are given below:

#### Original indexation allowed

*(ix) NEPRA will determine a unit based (PKR per kWh) benchmark tariff for conducting the competitive bidding by AEDB."*

*"(xi) Seventy percent (70%) of the total tariff will be indexed on quarterly basis with exchange rate variation (USD/ PKR). No other indexation will be provided for the term of the project."*

*"(xiii) Projects are required to achieve COD within twenty (20) months from the date the EPA and LA are signed."*

**Federal Government vide its decision in case No. 137/25/2023 dated 9th August 2023 has amended section 2.1.2 (ix), (xi) and (xiii) of the Framework Guidelines in the following terms:**

*(ix) NEPRA may determine a unit based (PKR per kWh) benchmark tariff for conducting the competitive bidding by PPIB. The competitive bidding may also be carried out without setting up of a benchmark tariff.*

*(xi) Only the following indexations / adjustments shall be allowed:*

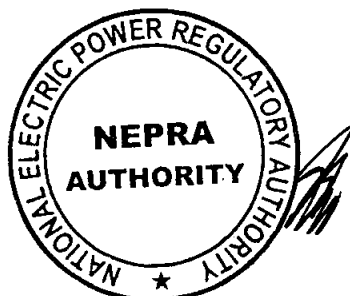
*(a) Eighty percent (80%) of the total tariff shall be indexed for exchange rate variations (USD/ PKR) at COD and thereafter quarterly throughout the term;*

*(b) Remaining twenty percent (20%) of the total tariff shall be adjusted one-time at COD; &*

*(c) Interest rate indexation for LIBOR/SOFR and KIBOR shall be provided*

*(xiii) Projects are required to achieve Financial Closing (FC) within six (06) months of issuance of the Letter of Support (LOS) and COD within ten (10) to*

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101. Unlike in the past, this time no comments were sought from NEPRA on the amended Framework Guidelines before submission to the Cabinet for approval. Accordingly, the RFP was revised by PPIB and the following formula was inserted in the RFP:

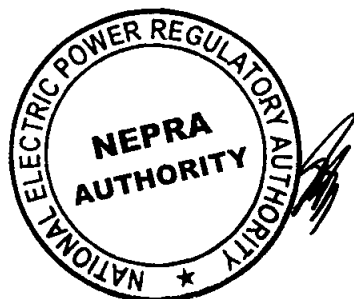
Tariff (Rev)	=	$\left\{ (Awarded\ Tariff(Ref) * 80\%) + \frac{ER(Rev)}{ER(Ref)} \right\} +$ $\left\{ (Awarded\ Tariff(Ref) * 20\%) + \frac{ER(Rev_{COD})}{ER(Ref)} \right\} + \left[ (Z * A + \frac{SOFR(Rev)}{SOFR(Ref)} + (Z * B + \frac{KIBOR(Rev)}{KIBOR(Ref)}) - Z) * \frac{ER(Rev)}{ER(Ref)} \right]$
Where:		
Tariff (Rev)	=	Revised Tariff of which (i) 20% adjusted one-time at COD for exchange rate variation; (ii) 80% adjusted at COD and thereafter Quarterly throughout the Term for exchange rate variations; and (iii) [●] % adjusted at COD and thereafter Quarterly throughout the Term for interest rate variations
Awarded Tariff (Ref)	=	Tariff offered by the Bidder in the Bid and approved by NEPRA
ER(Ref)	=	The reference TT & OD selling Rate of Rs. 290/US\$
ER(Rev)	=	The revised TT & OD selling rate of US Dollar as notified by the National Bank of Pakistan (NBP) on the preceding day of the COD and thereafter the exchange rate of the last working day of the preceding Quarter
ER(Rev <sub>cod</sub> )	=	The revised TT & OD selling rate of US Dollar as notified by the National Bank of Pakistan (NBP) on the preceding day of the COD
SOFR(Ref)	=	The reference interest rate of [●] <sup>4</sup>
SOFR(Rev)	=	The revised interest rate notified by the US Federal Reserve on the preceding day of the COD and thereafter the interest rate of last working day of the preceding Quarter
KIBOR(Ref)	=	The reference interest rate of [●] <sup>5</sup>
KIBOR(Rev)	=	The revised interest rate notified by the State Bank of Pakistan on the preceding day of the COD and thereafter the interest rate of last working day of the preceding Quarter
Z	=	(Awarded Tariff (Ref) * X)
X	=	[●] % <sup>6</sup>
A	=	Proportion of Foreign Debt
B	=	Proportion of Local Debt
Sum of A and B shall be equal to 100%		

<sup>4</sup> NEPRA to provide for incorporation in this table

<sup>5</sup> NEPRA to provide for incorporation in this table

<sup>6</sup> NEPRA to determine the percentage for incorporation in this table.

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102. The above formula requires NEPRA to determine value of X, reference KIBOR & SOFR and PKR to USD exchange rates. Further, NEPRA is also required to determine values of A and B which denote foreign and local debt components respectively. While reviewing the formula, it was noted that an error has inadvertently been mentioned in the formula, i.e. if the formula as given above is to be applied, local debt servicing will also get ER adjustment. It was noted that allowing USD to PKR variation on KIBOR based financing contradicts economic fundamentals, as KIBOR consistently surpasses USD based interest rates as it inherently encompasses coverage for USD to PKR fluctuations. Due to this reason, USD to PKR variations is not allowed on local financing to any project by NEPRA. Additionally, the Authority also observed that linking the percentage of SOFR/LIBOR and KIBOR variations with the actual mix of financing, as proposed in the RFP, may also create a situation where some portion of tariff may be indexed with both USD and KIBOR variations. Therefore to address this the Authority decided to include the following indexation formula:

$$\text{Revised AT} = \text{AT} * Kx\% \left[ \frac{\text{Rev KIBOR}}{\text{Ref KIBOR}} - 1 \right] + \text{AT} * Sx\% \left[ \frac{\text{Rev SOFR}}{\text{Ref SOFR}} - 1 \right] + \text{AT} * 80\% * \left[ \frac{\text{ER Rev}}{\text{ER Ref}} - 1 \right] + \text{AT}$$

*AT = Awarded Tariff*

*Kx% = Percentage of AT to be indexed with KIBOR variation which in the instant case is 13%*

*Sx% = Percentage of AT to be indexed with SOFR variation which in the instant case is 6%*

*Rev SOFR = quarterly revised Term or Daily SOFR, as the case may be based on GoP policy decision on the transition from LIBOR to SOFR, as on the last day of the preceding quarter*

*Rev KIBOR = quarterly revised 3 month KIBOR, as on the last day of the preceding quarter*

*Ref KIBOR = 23.08%*

*Ref SOFR = 5.4039%*

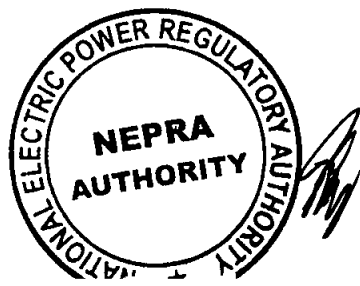
*ER Ref = 300.5 Rs./USD*

*ER Rev = The revised exchange rate as on the last day of the preceding quarter*

103. The bidders will have the flexibility in choosing the mix of debt-to-equity, including the mix of the local and foreign debt, along with debt tenor. However, the above formula shall not be subject to change due to actual debt-to-equity ratio and any combination of local and foreign financing, and shall apply to the awarded tariff
104. For the submission of the bids, the following reference values shall be taken into account by the bidders:

Description	Values	Remarks
Reference KIBOR	23.08%	3 Month KIBOR as of August 25, 2023 (SBP)
Reference SOFR	5.4039%	Terms SOFR as of August 25, 2023.
Exchange Rate (ER)	300.5	PKR/US\$ as of August 25, 2023 (NBP)

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105. The timeline for the bidding process shall be as per the NCBTR-2017.
106. In response to Mr. Nasir Ayyaz's comments, it is important to note that if restrictions are imposed on these indexations for investors, the investors would be augmenting their overall bids purported to ensuring adequate compensation against uncontrollable factors like Exchange Rate (ER) and interests on foreign loan, and eventually, these costs might be transferred to consumers. It was also noted that various past and ongoing policies, grounded in the same rationale, permit tariffs to encompass provisions for such adjustments and variation.
107. Regarding the tariff references of Zorlu and Zhenfa given by PPIB, it is important to clarify that the tariff of these projects was given based on 100% foreign loan. With local financing, the percentage of their tariffs linked with the exchange rates would reduce, and the quantum would depend on how much portion of loan they obtain on local financing.

**ISSUE No.4 Which entity is going to be responsible for approving quarterly adjustment in tariff?**

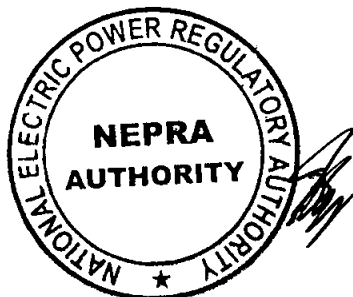
**Petitioner's Oral and Written Response:**

108. The Petitioner expressed its view during the hearing that CPPA-G should be responsible for approving such requests.
109. Subsequent to the hearing PPIB vide letter dated August 31, 2023 submitted that NEPRA will approve the quarterly adjustment criteria / formula as proposed in the RFP which will become part of the Tariff Approval after competitive bidding process. Based on such approved criteria / formula, the quarterly adjustment shall be automatic and will be dealt under the EPA by the Power Purchaser.
110. CPPA-G however was of the opinion that NEPRA should instead be approving such adjustments.
111. Mr. Nasir Ayyaz during the hearing stated that PPIB essentially is saying that since NEPRA is taking time in approving adjustments therefore, such adjustment should be approved by other entity. This according to Mr. Nasir Ayyaz is an unjustified argument.

**Authority's Findings**

112. The Authority is aware that under Section 2.3 of ARE Policy, "Indexation of tariff components will be automatic, based on predetermined formulae and reference parameters specified in the bid documents; AREP will not have to approach NEPRA periodically for tariff indexation." Similarly, under section 4.1 (c) of the instant submitted RFP it was reiterated that Quarterly indexation/ adjustment shall be automatic and will not be require the approval of NEPRA.
113. The Authority deliberated on the entity responsible for approving automatic tariff adjustments, as outlined in Section 2.3 of ARE Policy and Section 4.1 (c) of the submitted RFP and decided that

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Power Purchaser shall approve the automatic quarterly indexation/adjustment of tariff components.

**ISSUE No.5: Whether the land acquisition arrangement, interconnection, or other relevant studies in the feasibility study, bid evaluation criteria, evaluation committee, security package documents, amounts of different fees and charges, as specified in the current RFP, are the same as of initial submissions or revised if revised state the reasons and details?**

**Petitioner's Oral and Written Response:**

114. During the proceeding of the hearing, PPIB confirmed that the land acquisition arrangement, interconnection, other relevant studies in the feasibility study, bid evaluation criteria, bid evaluation committee and different fees and charges, as specified in the current RFP, are the same as were in initial submissions. PPIB further clarified that the mention of the interconnection of the project at 132 kV instead of 220 kV is a typo and may considered corrected.
115. PPIB in its written submission dated August 31, 2023, on the issue, PPIB submitted that besides improving the overall structure of the RFP document, the main changes/amendments made in the existing approved RFP and SPDs are as under:

**Benchmark Tariff** - Revised RFP provides for an open competitive bidding process without any benchmark tariff enabling discovery of true market price and fast-track deployment.

**Indexations/Adjustments** - Exchange rate variations adjustment has been increased from 70% to 80% and tariff adjustment on account of interest rate variations (SOFR & KIBOR) has been allowed.

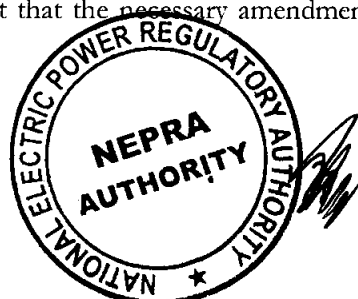
**Project Timelines** – 06 months have been allowed for the achievement of Financial Closing (FC) from the LOS issuance date and 20 months for the achievement of the Commercial Operations Date (COD) from FC.

**Technical Parameters** – The performance Ratio (PR) Test of the Complex to ascertain the Complex's performance as part of the Reliability Run Test (RRT) is incorporated in the EPA. Furthermore, the submission of detailed annual O&M reports confirming the fitness of Complex in accordance with the requirements of the EPA is also incorporated.

**Selection of Successful Bidder** - The existing approved RFP document did not provide any criteria for the selection of the Successful Bidder in the event that the lowest Bid Tariffs are equal. Accordingly, in the revised RFP documents, in such event where the lowest Bid Tariffs are equal, the Bidder offering the maximum discount on the Bid Tariff will be declared as a Successful Bidder.

**Income Tax** - As per the approved Framework Guidelines, the profits and gains derived from the sale of electricity by an IPP shall be subject to 15% income tax for the term of the Project. However, considering the fact that the necessary amendment to this effect in the relevant law has not been

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made till date, any income tax on profit and gains derived from the sale of electricity that exceeds 15% is considered as Pass-Through under the EPA in the revised RFP documents. The bidders are accordingly required to assume 15% income tax on profit and gains for submission of their bids.

**Forecasting of Net Delivered Energy-** Forecasting requirements given under the EPA have been aligned with the new Grid Code (revised EPA is attached herewith).

**Compensation Element -** As competitive bidding is now being proposed without any benchmark, the project cost for the calculation of Compensation Amounts under the IA will be the lower of the one given in the Term Sheet and Financing Documents.

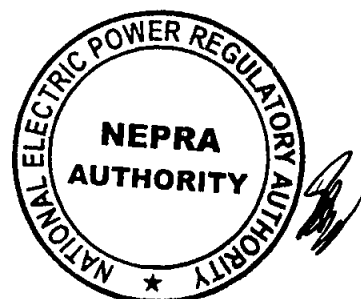
### Authority's Findings

116. The Authority observed that there is no change in the relevant studies therefore, PPIB has not submitted any revised document/feasibility study with the instant Review Petition. Further, there is no change in the bid evaluation criteria, bid evaluation committee, and different fees and charges relating to the processing of the RFP. The Authority further noted that the incorporation of the performance ratio test, the requirement for the submission of annual O&M reports, selection criteria in the event of equal lowest Bid Tariffs by two or more bidders, and alignment of the forecasting requirement with the new Grid Code 2023, are positive additions/improvements in the RFP and agreed to the same.
117. Further with regards to land related cost the Authority decided to maintain its earlier decision. Therefore, the impact of land may not be included in the evaluation of bids and may be treated as a separate line item.

### OTHER ISSUES

118. The matter of consistency of the Framework Guidelines with CCI's approved ARE Policy was raised during the hearing by Mr. Nasir Ayyaz as well as in his written comments as mentioned above.
119. On this matter PPIB in the Review Petition has submitted that:
  - (a) Whilst there is no doubt that the Framework Guidelines are binding policy directions given by the Federal Government, there is equally no doubt that such Framework Guidelines cannot be in conflict with the Council of Common Interest (CCI) approved NEP.
  - (b) Section 14A(1) of the NEPRA Act states that the Federal Government shall, from time to time, with the approval of the Council of Common Interests, prepare and prescribe a national electricity policy for development of power markets. Similarly, Section 14A(4) of the NEPRA Act states that the Federal Government, in consultation with the Provincial Governments, shall prepare a national electricity plan in accordance with the policies prepared and prescribed under subsection (1) and notify such plan once in five years.

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- (c) The NE Policy has been duly approved by the CCI and is currently in force.
- (d) The Federal Government has prepared the NE Plan for the realization of the policy goals for the power sector in accordance with the NEP.
- (e) In line with Section 6.1.3 of NE Policy, the Federal Government has issued a specific framework to facilitate implementation in a particular sub-sector i.e., the “Framework Guidelines” for auction of solar project. Section 6.1.3 of the NE Policy states as follows:

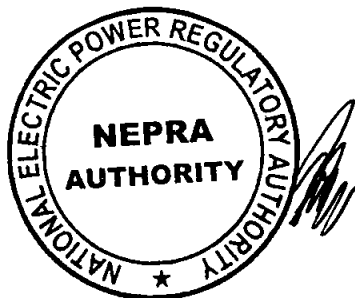
*“The National Electricity Plan shall provide guidelines, implementation mechanisms and tools for the realization of the policy goals for the power sector. It will entail high-level tasks, timelines and responsibilities of respective sector entities to meet policy directives. Pursuant to the National Electricity Plan, the Government may issue specific frameworks to facilitate implementation in a particular sub-sector. Any provision of the National Electricity Plan that is inconsistent with the National Electricity Policy shall be void.”*

- (f) The NE Policy is a CCI approved policy and expressly permits the Federal Government to make the NE Plan (not inconsistent with the NEP) and pursuant to the NE Plan, specific frameworks to facilitate implementation in a particular sub-sector. The Framework Guidelines are in line with the NE Policy and NE Plan.
- (g) As per Section 6.3.1 of the NEP, the previous policy (in this case, the ARE Policy) is to remain in field (to the extent it is not in conflict with the NEP) till such time revised policy frameworks are prescribed, or the existing policies are amended /modified by the Federal Government. Given the foregoing, the Framework Guidelines issued by the Federal Government cannot be challenged as being inconsistent with the ARE Policy because the NE Policy is subsequent in time, supersedes the ARE Policy, and provides that while existing policies may continue, such existing policies (including relevant provisions of the ARE Policy) may be amended or modified by the Federal Government.

### Authority’s Findings

120. The Authority is of the view that the underlying issue involved here is whether Section 6.3.1. of the NE Policy is constitutionally valid to the extent it authorizes the Federal Government to issue specific frameworks, which may override certain provisions of the ARE Policy not otherwise expressly or impliedly repealed by the NE Policy (the latter, on account of inconsistency). However, the constitutionality of the powers conferred by the NE Policy on the Federal Government is not an issue that can be examined and interpreted by NEPRA as NEPRA is a sub-constitutional statutory body. Instead, NEPRA must proceed on the basis that the NE Policy (including sections 6.1.3 and 6.3.1) is valid.

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## Order

121. In view of the foregoing, the Authority hereby decides as follows:

- (i). With regard to allow open competitive bidding under the NCBTR-2017, the Authority considered that the NCBTR-2017 remains in force and valid for the purposes of the instant project. Accordingly, the Authority decided to relax the requirement of benchmark tariff determination in the instant case, pursuant to Regulation 14(2) of the NCBTR-2017, with the conditions provided in Point (2) below.
- (ii). Regarding the mechanism for assessment and approval of prudent tariff, the Authority considered that the relevant Agency, specifically PPIB, in light of the NCBTR-2017 is empowered to reject bids that exceed NEPRA's approved benchmark tariff. The RFP also empowers the relevant agency to reject bids without needing to provide reasons. In case of open competitive bidding, the Authority decides that for this purpose the bid evaluation report submitted by the Petitioner will include analysis on whether the lowest bidder's tariff aligns with the government's given Framework Guidelines and objectives of other applicable documents, in consultations with CPPA-G and NTDC for displacement of expensive fuel based on a current or fresh iteration (for reference) of the IGCEP by NTDC. The declaration of Successful Bidder after fulfilment of condition in the bid evaluation report may be approved by relevant government forum(s).
- (iii). As regard to prudence of proposed indexation/adjustments, the Authority is of the view that simultaneous KIBOR and USD variations in the granted tariff, as proposed in the RFP, are not justified as per the reason given above. Therefore to address this the Authority decided to include the following indexation formula:

$$\text{Revised AT} = \text{AT} * Kx\% \left[ \frac{\text{Rev KIBOR}}{\text{Ref KIBOR}} - 1 \right] + \text{AT} * Sx\% \left[ \frac{\text{Rev SOFR}}{\text{Ref SOFR}} - 1 \right] + \text{AT} * 80\% * \left[ \frac{\text{ER Rev}}{\text{ER Ref}} - 1 \right] + \text{AT}$$

*AT = Awarded Tariff*

*Kx% = Percentage of AT to be indexed with KIBOR variation which in the instant case is 13%*

*Sx% = Percentage of AT to be indexed with SOFR variation which in the instant case is 6%*

*Rev SOFR = quarterly revised Term or Daily SOFR, as the case may be based on GoP policy decision on the transition from LIBOR to SOFR, as on the last day of the preceding quarter*

*Rev KIBOR = quarterly revised 3 month KIBOR, as on the last day of the preceding quarter*

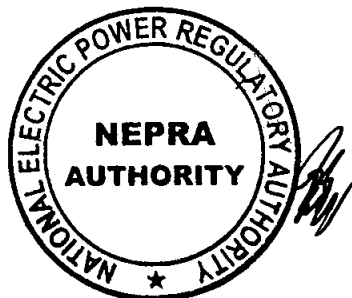
*Ref KIBOR = 23.08%*

*Ref SOFR = 5.4039%*

*ER Ref = 300.5 Rs./USD*

*ER Rev = The revised exchange rate as on the last day of the preceding quarter*

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- a. The bidders will have the flexibility in choosing the mix of debt-to-equity, including the mix of the local and foreign debt, along with debt tenor. However, the above formula shall not be subject to change due to actual debt-to-equity ratio and any combination of local and foreign financing, and shall apply to the awarded tariff
- b. For the submission of the bids, the following reference values shall be taken into account by the bidders:

Description	Values	Remarks
Reference KIBOR	23.08%	3 Month KIBOR as of August 25, 2023 (SBP)
Reference SOFR	5.4039%	Terms SOFR as of August 25, 2023.
Exchange Rate (ER)	300.5	PKR/US\$ as of August 25, 2023 (NBP)

- (iv). The **timeline** for the bidding process shall be as per the NCBTR-2017.
- (v). With regard to the issue of entity responsible for approving quarterly adjustments, the Authority deliberated on the entity responsible for approving automatic tariff adjustments, as outlined in Section 2.3 of ARE Policy and Section 4.1 (c) of the submitted RFP and decided that Power Purchaser shall approve the automatic quarterly indexation/adjustment of tariff components.
- (vi). As regards to the issue of changes in relevant studies in the feasibility study, RFP, security package documents, bid evaluation criteria, evaluation committee, and amounts of different fees and charges, the Authority observed that there is no change in the relevant studies therefore, PPIB has not submitted any revised document/feasibility study with the instant Review Petition. Further, there is no change in the bid evaluation criteria, bid evaluation committee, and different fees and charges relating to the processing of the RFP. The Authority further noted that the incorporation of the performance ratio test, the requirement for the submission of annual O&M reports, selection criteria in the event of equal lowest Bid Tariffs by two or more bidders, and alignment of the forecasting requirement with the new Grid Code 2023, etc., are positive additions/improvements in the RFP and agreed to the same. Further with regards to land related cost the Authority decided to maintain its earlier decision. Therefore, the impact of land may not be included in the evaluation of bids and may be treated as a separate line item.
- (vii). With respect to the questions related to Framework Guidelines, it was noted that the underlying issue, whether Section 6.3.1. of the NE Policy is constitutionally valid to the extent it authorizes the Federal Government to issue specific frameworks, which may



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override certain provisions of the ARE Policy not otherwise expressly or impliedly repealed by the NE Policy (the latter, on account of inconsistency) however, the constitutionality of the powers conferred by the NE Policy on the Federal Government is not an issue which can be examined and interpreted by NEPRA as NEPRA is a sub-constitutional statutory body. Instead, NEPRA must proceed on the basis that the NE Policy (including sections 6.1.3 and 6.3.1) is valid.

122. Accordingly, the earlier decisions of the Authority in the matter, dated February 01, 2023, and February 13, 2023, stand modified/revised to the extent of the above.

Authority

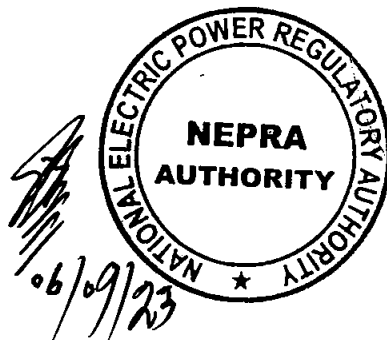
Engr. Maqsood Anwar Khan  
(Member)

Rafique Ahmad Sheikh  
(Member)

Mathar Niaz Rana (nsc)  
(Member)

Amina Ahmad  
(Member)

Waseem Mukhtar  
(Chairman)





# National Electric Power Regulatory Authority

## Islamic Republic of Pakistan

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No. NEPRA/Director(Technical)/RFP-05/ 33123

September 12, 2023

### Managing Director

Private Power and Infrastructure Board (PPIB)  
Ground & 2nd Floor, Emigration Tower  
Plot No. 10, Mauve Area, G8/1 Islamabad

Subject: **DECISION OF THE AUTHORITY IN THE MATTER OF REVIEW MOTION FILED BY THE PPIB IN THE MATTER OF APPROVAL OF REQUEST FOR PROPOSAL (RFP) DOCUMENT FOR COMPETITIVE BIDDING OF 600 MWp SOLAR PV PROJECT**

This is with reference to your subject letter No B/3/5/Policy/Solar-Initiatives/22 dated September 08, 2023, wherein PPIB has stated that although NEPRA in the subject decision, issued on September 06, 2023, has allowed a one-time adjustment of 20% of the Bid Tariff at COD for exchange rate variations, however, the indexation/adjustment formula approved by the NEPRA in the said decision did not consider the same. Further, PPIB has requested to provide the revised indexation/adjustment formula, considering the one-time adjustment of 20% of the Bid Tariff at COD for exchange rate variation.

2. In this regard, it is clarified that the 20% of the Awarded Tariff will be adjusted one-time at COD using the average of the exchange rates of each day during the maximum construction period of 20 months, starting from the date of Financial Close, and accordingly the revised formula is given hereunder:

$$\text{Revised AT} = \text{AT} * \text{Kx}\% \left[ \frac{\text{Rev KIBOR}}{\text{Ref KIBOR}} - 1 \right] + \text{AT} * \text{Sx}\% \left[ \frac{\text{Rev SOFR}}{\text{Ref SOFR}} - 1 \right] + \text{AT} * 80\% * \left[ \frac{\text{ER Rev}}{\text{ER Ref}} - 1 \right] + \text{AT} * 20\% * \left[ \frac{\text{ER Rev (one time)}}{\text{ER Ref}} - 1 \right] + \text{AT}$$

Where:

*AT = Awarded Tariff*

*Kx% = Percentage of AT to be indexed with KIBOR variation which in the instant case is 13%*

*Sx% = Percentage of AT to be indexed with SOFR variation which in the instant case is 6%*

*Rev SOFR = quarterly revised Term or Daily SOFR, as the case may be based on GoP policy decision on the transition from LIBOR to SOFR, as on the last day of the preceding quarter*

*Rev KIBOR = quarterly revised 3-month KIBOR, as on the last day of the preceding quarter*

*Ref KIBOR = 23.08%*

*Ref SOFR = 5.4039%*

*ER Ref = 300.5 Rs. /USD*

*ER Rev = The revised exchange rate as on the last day of the preceding quarter*

*ER Rev (one time) = The revised exchange rate as average of the exchange rates of each day during the maximum construction period of 20 months starting from the date of Financial Close. Thus, making this portion of tariff fixed throughout the control period.*

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3. Further, the findings of the Authority at para 95 and 121(ii) of the decision dated September 06, 2023 are self-explanatory. However, PPIB may consider making NTDC's report dated September 09, 2023 as part of competitive bidding process, if deemed appropriate.

  
12/09/23  
(Engr. Mazhar Iqbal Ranjha)

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