

# **KHYBER PAKHTUNKHWA HYDROPOWER POLICY**

**2016**



*JANUARY 2016*

**GOVERNMENT OF  
KHYBER PAKHTUNKHWA**

## ABBREVIATIONS

<b>AJK</b>	Azad Jammu and Kashmir
<b>BOOT</b>	Build-Own-Operate-Transfer
<b>FBR</b>	Federal Board of Revenue
<b>CPP</b>	Capacity Purchase Price
<b>COD</b>	Commercial Operation Date
<b>DISCOs</b>	Distribution Companies
<b>EPP</b>	Energy Purchase Price
<b>FBS</b>	Federal Bureau of Statistics
<b>GoKP</b>	Government of Khyber Pakhtunkhwa
<b>GOP</b>	Government of Pakistan
<b>IA</b>	Implementation Agreement
<b>ICB</b>	International Competitive Bidding
<b>IPP</b>	Independent Power Producer
<b>IRSA</b>	Indus River System Authority
<b>K Electric</b>	K Electric Company Limited
<b>kV</b>	Kilo Volt
<b>kW</b>	Kilo Watt
<b>kWh</b>	Kilo Watt Hour
<b>LOI</b>	Letter of Interest
<b>LOS</b>	Letter of Support
<b>MW</b>	Mega Watt
<b>NBP</b>	National Bank of Pakistan
<b>NEPRA</b>	National Electric Power Regulatory Authority
<b>NTDC</b>	National Transmission and Despatch Company
<b>PAEC</b>	Pakistan Atomic Energy Commission
<b>PEDO</b>	Pakhtunkhwa Energy Development Organization
<b>PEPCO</b>	Pakistan Electric Power Company
<b>PEPA</b>	Pakistan Environmental Protection Agency
<b>PESCO</b>	Peshawar Electric Supply Company
<b>PIDA</b>	Provincial Irrigation and Drainage Authority
<b>PPA</b>	Power Purchase Agreement
<b>PIIB</b>	Private Power and Infrastructure Board
<b>PPC</b>	Private Power Cell
<b>RFP</b>	Request for Proposals
<b>Rs</b>	Pakistan Rupees
<b>SECP</b>	Securities and Exchange Commission of Pakistan
<b>SRO</b>	Statutory Rules and Orders
<b>TESCO</b>	Tribal Area Electric Supply Company
<b>TFC</b>	Term Finance Certificate
<b>US \$</b>	United States Dollar
<b>WAPDA</b>	Water and Power Development Authority
<b>WPI</b>	Wholesale Price Index
<b>WUC</b>	Water Use Charges
<b>WUL</b>	Water Use License

# 1. INTRODUCTION

## 1.1 Prelude

1. Consumption of electrical energy is a universally accepted indicator of progress in the agricultural, industrial and commercial sectors of an economy and is also considered a benchmark of living standards of the people of any country. No major economic activity can be sustained without adequate, cost effective and reliable supply of power. It plays a critical role in employment generation, regional development and poverty eradication. Pakistan and specifically Khyber Pakhtunkhwa (KP) province is bestowed with enormous hydro power potential which, if exploited in a systematic, planned and transparent manner, can ensure our energy security on long term basis in a sustainable manner. The need for harnessing the immense hydropower potential in the province and rest of Pakistan cannot be over-emphasized. The topography of the area coupled with the water flows offers opportunities for development of high head, medium-head and low head run of river and storage dam power stations across the rivers and their tributaries across the length and breadth of the Province.
2. Most of the hydro power projects of Pakistan contributing reliable and cost effective electricity into the national grid including the historical Tarbela and Warsak Dams are located in Khyber Pakhtunkhwa. Pakistan has a hydro potential of about 60,000 MW of which only 6,600 MW has been tapped so far with nearly half of it installed in this Province. The Khyber Pakhtunkhwa has an estimated power potential of generating nearly 30,000 MW. While most of the hydro power projects under development are in public sector, the provincial government has embarked on a multi-pronged strategy for encouraging investment through Public, Private & Public Private Partnership sectors.
3. Government of KP is fully aware of the private investors' needs of having a simple and transparent framework for their investment by providing all facilities for safe investment in an environment of fair competitive concessions and attractive return on investment. The development narrative of the Provincial government so contained in the Strategic Development Partnership Framework (SDPF) and Economic Growth Strategy (EGS) recognize power generation as a definitive indicator of economic growth and has therefore, spelt out the objectives and processes in an enabling regulatory regime. Encouraging local and foreign investment is a key feature of the government policies in order to develop the infrastructure and power projects in KP. These concessions and incentives are fully in accord with the concessions and incentives provided by the Federal Government.

4. In view of the above, the GoKP has decided to announce a new hydro power policy which offers enhanced incentives and simplified processing mechanism for setting up of power generation plants to bridge the demand supply gap in the minimum time through generation of affordable electricity. . To achieve these purposes, the GoKP has designated Pakhtunkhwa Energy Development Organization (PEDO) as the one window facilitator and implementation agency of this policy.
5. This Hydro Power Policy 2016 offers profitable business opportunity, modern engineering and technical processes, lower costs of doing business so that local and international investors may fully participate as partners in the development of hydro power projects.

## **1.2 Objectives of the Khyber Pakhtunkhwa Hydro Power Policy – 2016 (hereinafter the Power Policy)**

6. The main objectives of the Power Policy are:
  - To provide least cost power generation
  - To encourage private sector investment through full cost recovery and attractive rates of return
  - To ensure fast track and transparent development of power projects
  - To encourage and ensure participation of investors in the development and implementation of hydro power projects
  - To ensure participation, development and welfare of all stakeholders
  - To provide green energy

## **1.3 Scope of the Power Policy**

7. The scope of this Power Policy entails development and implementation of power generation projects and transmission lines in the province of Khyber Pakhtunkhwa, and after approval of the relevant competent authorities, to other provinces and adjoining territories by:
  - Private Sector;
  - Public sector under the Independent Power Producer (IPP) model where relevant concessions under Power Policy are applicable
  - Public Private Partnerships where relevant concessions under Power Policy are applicable; and
  - Captive Power Plants

## **1.4 Types of Hydro Power Projects**

8. Under this Power Policy, hydropower generation projects of any size, capacity, configuration, technology can be developed for supply of power to power purchaser(s).
9. The following types of hydropower projects are covered under this Power Policy:

### **1.4.1 Hydro Power Projects (Track A)**

- i. Raw site hydropower projects, for which neither feasibility study nor, detailed engineering design is available and identified by the sponsors/investors themselves;
- ii. Semi-raw site hydro power projects where site has already been identified based on pre-feasibility study or otherwise
- iii. Hydropower projects with complete bankable feasibility study or detailed engineering design carried out by private or public sectors;

### **1.4.2 Hydro Power Projects (Track B)**

- iv. Hydropower projects under Public Private Partnership or any other mode of investment;
- v. Private, Public or Public Private Partnership Hydropower Projects initiated and or awarded by PEDO under the Power Policy where:
  - a. Power Purchaser is a Federal Entity or Provincial Entity
  - b. Transmission and Distribution Network of a Federal Entity or Provincial Entity is used
  - c. Tariff is determined or approved by NEPRA or GoKP or Provincial Regulator and
  - d. GOP Guarantee is required.

The aforesaid projects, on request of the PEDO, may be further processed by Private Power Infrastructure Board (PPIB) or Alternate Energy Development Board (AEDB) under Tripartite Letter of Support (LOS) regime.

## **1.5 Processing of Hydropower Projects**

10. For development of hydro power projects of any size, capacity, configuration, technology, projects will be processed under the following modes:
  - i. International Competitive Bidding (ICB) for projects will be conducted where a bankable feasibility study or detailed engineering design are available. The project will be awarded based on the lowest evaluated levelized tariff along with any other bid parameter that may be

specified in the RFP. The selection procedure for solicited sites will include, prequalification, issuance of RFP, bidding and bid evaluation as per RFP criteria. The power tariff will, however, be subject to approval by NEPRA and or the GoKP or the Provincial Regulator, as the case maybe.

- ii. For semi-raw site projects, proposals will be solicited through advertisement and the projects will be awarded to the highest ranked applicant. The ranking criteria will be identified in the Qualification Document (QD) / Expression Of Interest (EOI) document. The LOI will be issued by the PEDO for carrying out the feasibility study.
- iii. For Raw-Site projects which are identified by investor/sponsor and are not with PEDO or any other public and/or private sector entity, will be registered on first come first serve basis and subsequently awarded for implementation provided the sponsor fulfills the requirements as prescribed in the QD / EOI document
- iv. Hydropower projects may be processed under upfront tariff regime where such tariff is announced by NEPRA or the Provincial Regulator.
- v. Hydropower projects may be processed under public private partnership mode where the private partner is selected through international competitive bidding or highest ranked proposal in accordance with the criteria specified in the QD/EOI/RFP duly advertised;
- vi. Hydropower projects including transmission and distribution lines, may on the recommendations of the Provincial Cabinet, be processed under Government to Government (G to G) or Intergovernmental Agreements pursuant to the terms and conditions of and mechanism prescribed under such Agreements.
- vii. Notwithstanding any other provision so contained in this Policy, requirements relating to advertisement, competitive bidding, competition and response times shall not apply to:
  - (a) Projects where the project sponsor or if it is a consortium, the majority shareholder therein is an entity, agency, corporation, company or other body or institution established by or under a Federal law or a Provincial law or an entity, agency, corporation, company or other body or institution owned or controlled by the Federal Government or a Provincial Government;

- (b) Projects where the project sponsor or if it is a consortium, the majority shareholder therein is a state owned enterprise, entity, agency, corporation or a company, owned or controlled, either directly or indirectly, by a foreign State.
- (c) Projects undertaken in result of international obligation or commitment of the Provincial or Federal Government arising out of an international agreement with a foreign state or states, or any international multilateral financial institution.

Provided that for processing a project under this mode, PEDO may specify special procedure for due diligence and other modalities through guidelines.

11. Where feasibility study is required to be carried out or updated, sponsors shall conduct the feasibility study at their own cost and resources through reputable consultants as per the terms and conditions specified in the LOI. The conduct of feasibility study will be monitored by a Panel of Experts (POE) appointed by PEDO. Members of the POE will be qualified professionals from hydropower engineering, finance, law and other related disciplines in private sector, public sector, PEDO, Energy & Power Department or any other organization.
12. The terms of reference for the feasibility study shall be issued with the LOI, along with the milestones for carrying out the Feasibility Study, and compliance thereof shall be monitored strictly. The term could be extended by mutual negotiations between PEDO and the Sponsor for reasons beyond the control of the sponsors and where the progress of the feasibility study is satisfactory.
13. Where detailed engineering design is required to be carried out or updated, sponsors shall conduct the detailed engineering design at their own cost and resources through reputable consultants as per the terms and conditions specified in the LOI or Tri-partite LOS or LOS, as the case maybe. The conduct of detailed engineering design will be monitored by a Panel of Experts (POE) appointed by PEDO. Members of the POE will be qualified professionals from hydropower engineering, finance, law and other related disciplines in private sector, public sector, PEDO, Energy & Power Department or any other organization.
14. Where the feasibility study or detailed engineering design is available in the public sector or private sector or other organizations, it may be made available to the private sponsors against a fee which will cover at least the audited cost of such studies. These will be paid by the sponsors, prior to issuance of LOI or the Tri-partite LOS or LOS, as the case maybe.

15. PEDO does not guarantee the contents or conclusions of the feasibility study or detailed engineering design. The sponsor will have the right, at its own cost, to examine, evaluate and form its own opinion and conclusions on any or all aspects of the feasibility study or to carry out any additional studies and investigations to determine its own assessment about the feasibility and or the design of the project as part of its due diligence. For the purpose, PEDO and or any other entity of the Federal or Provincial Government may act as a facilitator and execute a non-disclosure agreement between the sponsor and entity owning or possessing the feasibility study or detailed engineering design.
16. The feasibility study, inter-alia, shall contain detailed financial models of the project after taking into consideration all financial and technical parameters associated with the project. Simultaneously, a detailed environmental and social impact assessment of the project will be carried out along with the cost of compensation for resettlement of the affected communities. Key determining factors for a project's viability shall include financial internal rates of return i.e. FIRR.
17. There shall be a Committee of experts constituted by PEDO Board that will evaluate the recommendations submitted by the management of PEDO and subsequently propose projects for award by the Board. The Committee will also be competent to evaluate and recommend upon any aspect of the project that may affect its timely implementation and or progress for consideration of Board of Director of PEDO.
18. Tariff will be determined or approved as per NEPRA's or Provincial Regulator's mechanisms for tariff determination or approval or any other procedure notified by NEPRA or Provincial Regulator from time to time.
19. All the hydro power projects under the Power Policy where the power stations are located in the Province of Khyber Pakhtunkhwa will be implemented on Build Own Operate Transfer (BOOT) basis and shall therefore be transferred to GoKP or its entity at Rs. 1 at the expiry of concession period. The concession period shall not be longer than thirty (30) years from the commercial operations date of the power project as defined in the concession documents. For power projects located in more than one provincial jurisdiction, the transfer of the power station



and sharing of other benefits will be decided among the stakeholders through an Agreement on case to case basis keeping in view the principle of transfer of power project to the province where the power station is located.

20. The projects holding valid LOIs or the Tri-partite LOSs or LOSs s under the previous power policies of GoKP will have an option to transfer to the Power Policy and eligible for all the concessions and incentives hereunder. For the purpose, the sponsors will be required to execute the necessary documents and or agreements with PEDO.

## **1.6 Concessions and Incentives in the Policy**

21. Hydropower projects under the Power Policy will be eligible for following concessions and incentives:

### **1.6.1 Financial Incentives**

22. The financial incentives in the Power Policy are as under:

- i. Permission for power generation companies to issue corporate registered bonds;
- ii. Permission to issue shares at discounted prices to enable venture capitalists to be provided higher rates of return proportionate to the risk;
- iii. Permission for foreign banks to underwrite the issue of shares and bonds by the private power companies to the extent allowed under the laws of Pakistan;
- iv. Non-residents are allowed to purchase securities issued by Pakistani companies without the State Bank of Pakistan's permission and subject to the prescribed rules and regulations;
- v. Independent rating agencies are operating in Pakistan to facilitate investors in making informed decisions about the risk and profitability of the project company's Bonds/TFCs;
- vi. Investment of equity in associated undertakings without any limits;
- vii. Hundred percent (100%) foreign ownership and equity of companies is permissible;
- viii. PEDO will provide full support and facilitation to project sponsors in acquisition of land through local government of project area or PEDO may acquire land for the project concerned and lease to the project company on mutually agreed terms and conditions for the term of the project;
- ix. PEDO will provide full support and facilitation to project sponsors in approvals of environmental and social economic studies and assessments;
- x. PEDO through the GoKP and law enforcement agencies will facilitate provision of adequate external security for project and its personnel in the province on mutually agreed terms.

### **1.6.2 Fiscal Incentives**

23. The fiscal incentives in the Power Policy are as under:
- i. An attractive Return on Equity / IRR shall be allowed in the tariff by NEPRA or the Provincial Regulator.
  - ii. The exemption from Income Tax under Clause 132 of Part-1 of the Second Schedule to the Income Tax Ordinance, 2001 shall be available to the new IPPs and PPP projects.
  - iii. Exemption of sales tax on plant, machinery and equipment used for production of taxable electricity.
  - iv. Exemption of provincial sales tax on power project and generation and sales of electricity;
  - v. Exemptions from requirements under the Provincial Electricity Act 1910 or subsequent enactments for the generation, sale and supply of electricity;
  - vi. Sponsors of the power project will be allowed to import plant and equipment not manufactured locally at a concessionary rate of 5% custom duty. The EDB will notify in advance list of locally manufactured goods in relation to power generation projects.
  - vii. Companies will also be completely exempted from the payment of income tax, including turnover rate tax, and withholding tax on imports.
  - viii. Repatriation of equity along with dividends is freely allowed, subject to the prescribed rules and regulations.
  - ix. Parties may raise local and foreign finance in accordance with regulations applicable to industry in general. GOP approval may be required in accordance with such regulations.
  - x. Non- Muslims and Non-residents shall be exempted from payment of Zakat on dividends paid by the company.
  - xi. Maximum indigenization shall be promoted.

### **2.0 PEDO: One Window Facility**

24. PEDO will provide one window facility to the investors and sponsors in setting up hydropower projects in Khyber Pakhtunkhwa under the Power Policy. It will provide support to investors and sponsors in dealing with various provincial and federal government entities. It will carry out the following functions:
- (i) Prepare and draft standardized pre-qualification & bidding documents;
  - (ii) Prepare and draft standardized security package documents;
  - (iii) Pre-qualify the sponsors, evaluate bids and award projects;

- (iv) Assist and facilitate sponsors and project companies in seeking necessary consents and permissions from various public sector entities;
- (v) Issue LOI, LOS and enter into security package documents where required;
- (vi) Arrange guarantees for securing the contractual obligations of GoKP or Federal entities as specified in the security package documents;
- (vii) Facilitate the private sponsors in settlement of environmental, security and land acquisition issues during implementation of projects;
- (viii) Coordinate with the sponsors and the GoKP's and other public sector departments, ministries and their entities for the timely implementation of the power projects.

25. PEDO may prescribe fee and charges structure for processing and providing facilitation under the Power Policy

### **3.0 Tariff Structure**

#### **3.1 Currency of Tariff**

26. The tariff will be denominated in Pakistan Rupees.

#### **3.2 Capacity and Energy Components**

27. The Tariff will comprise of two parts:

- (a) Capacity Purchase Price (CPP)
- (b) Energy Purchase Price (EPP)

28. The EPP will comprise water use charge, variable O&M or any variable component determined by NEPRA or the Provincial Regulator. The EPP will be paid based on the amount of kWh (Rs / kWh) delivered at the point of delivery.

29. The EPP may also include fixed component to cover the development cost of the water resource. The CPP will comprise Fixed O&M, Return on Equity, Debt Servicing, Insurance, Cost of Working Capital, and or any other fixed component determined by NEPRA or the Provincial Regulator.

30. The CPP will be expressed in Rs./kW/hour or Rs./kW/month which is payable provided the plant is made available for dispatch by the company as per the standards defined in the security package documents.

31. The CPP of hydro power projects based on historical hydrology have a relatively low EPP as compared

to fossil fuel power plants and will be approximately 90% to 95% of the total tariff.

32. The CPP will be paid provided the power plant is available for despatch in accordance with the standards defined in the security package documents. The EPP will be paid on the basis of the energy metered and delivered during each month.
33. In order to ensure sustained interest of the Sponsor during the entire life of the project, the sum of EPP and non-debt related CPP (computed on a kWh basis at the reference plant factor) will remain constant or increase over time. The debt related CPP stream may match the loan repayment stream and decrease over time.
34. In order to mitigate the exchange rate variation risk, specified adjustments for exchange rate variations of US Dollar, Pound Sterling, Euro and Japanese Yen shall be allowed. The adjustment related to debt servicing shall be allowed for the aforesaid currencies.
35. The power generation company shall negotiate the tariff with the power purchaser in the application to NEPRA or the Provincial Regulator for approval of the tariff and for obtaining the license from NEPRA or the Provincial Regulator. In case of International Competitive Bidding, the power generation company shall submit the lowest evaluated tariff and other applicable documents to the NEPRA or the Provincial Regulator in accordance with the applicable laws, rules and regulations.

### **3.3 Tariff Design and Indexing Parameters**

36. During life of the project operations, quarterly adjustments/indexations for local inflation, foreign inflation, exchange rate variations and interest rate variations will be made on 1st July, 1st October, 1st January and 1st April each year based on latest available date with respect to CPI notified by the Federal Bureau of Statistics (FBS), US CPI issued by US Bureau of Labor Statistics and revised TT&OD selling rate of foreign currencies (US Dollar, British Pound Sterling, Euro and Japanese Yen) issued by the National Bank of Pakistan. The method of indexation will be as follows:

Tariff Components	Tariff Indexation & Adjustment
Water Use Charge	Pakistan CPI
Variable O&M (Foreign)	US\$ to Pak Rupees & US CPI
Variable O&M (Local)	Pakistan CPI
Fixed O&M (Foreign)	US\$ to Pak Rupees & US CPI
Fixed O&M (Local)	Pakistan CPI

Cost of Working Capital	Adjustments for relevant KIBOR Variations
Return on Equity	US\$ to Pak Rupees
Principal Repayment (Foreign Currency Loan)	US\$/Euro/Yen/Pound to Pak Rupees (based on borrowing by the project company)
Interest/Mark-Up payment (Foreign Currency Loan)	Adjustments for relevant LIBOR or other applicable interest rate benchmark and variations in exchange rate for Foreign Currency (US\$/Euro/Yen/Pound)
Interest/Mark-Up payment (Local Currency Loan)	Adjustments for relevant KIBOR Variations

#### 4.0 Point of Delivery

37. The power tariff will be based on the point of delivery indicated by the Power Purchaser. The delivery point will either be the bus bar of the power plant or a specific location on the grid of the Power Purchaser, depending upon one of the following options:

- i. The transmission line & interconnection with the grid upto the power complex will be built, owned, maintained and operated by the Power Purchaser.
- ii. The transmission line & interconnection with the grid from the power complex to the Power Purchaser's grid will be built by the project company and transferred to the Power Purchaser, who will then own and operate the transmission line.
- iii. The transmission line & interconnection from the power complex to the Power Purchaser's grid will be built by the Power Purchaser and the Sponsors jointly and will then be transferred to the Power Purchaser, who will then own and operate the transmission line.
- iv. Any other arrangement envisaged under the GOP's or the GoKP's transmission line policy for private sector or wheeling policy as announced from time to time

#### 5.0 Water Use Charge (WUC)

38. The details of the WUC are as under;

- i. WUC will be paid @ Rs. 0.425/kWh by the power projects under the Power Policy to the GoKP for projects located in KP.
- ii. The rate of WUC may be reviewed every five years by the GoKP.
- iii. For power projects located in more than one provincial jurisdiction, the sharing of WUC will be decided among the stakeholders on case to case

- iv. For captive power use, the project sponsor will in lieu of WUC pay lease money/price to PEDO as specified in section 13.0

## **6.0 Capital Structure**

39. Financing of the projects will in the form of equity and debt, to be arranged by the sponsors. The minimum equity shall be 20% and the maximum shall be 30%. However, if the equity is more than 30% of the capital cost, equity in excess of 30% shall be treated as debt.

## **7.0 Hydrological Risk**

40. The Power Purchaser will bear the risk of non-availability of water for hydro power projects, by making payment of CPP of the Tariff to the project company in accordance with the monthly average hydrology. The security package documents will specify arrangements to monitor, meter and record water flows. Any impoundments caused by the GoKP or its entities that diverts, reduce, or stores water which results in reduction in the available capacity and energy of the power plant, it will be compensated by the GoKP in accordance with the security package documents.

## **8.0 Security Package**

41. The security package documents for the power projects provide the following salient features:
  - (i) Standardized Implementation Agreement (IA), Power Purchase Agreement (PPA), Water Use Agreement (WUA), shall be prepared for power projects under the Power Policy to eliminate the need for protracted negotiations. The following agencies shall be the executors of the security package documents to cover implementation and operational rights and obligations of the power project stakeholders:
    - a. LOS between PEDO & sponsors and in case of Tripartite LOS between the PEDO, PPIB / AEDB and the sponsors.
    - b. IA between PEDO / PPIB / AEDB and the Sponsors as the case maybe.
    - c. PPA between the Power Purchaser and Sponsors.
    - d. WUA between Provincial Irrigation and Drainage Authority (PIDA) of GoKP.
  - (ii) GoKP and/or GOP will:
    - a. guarantee the contractual obligations of the Provincial government and its entities and where federal government entities are a party to any agreement included in the security package documents, GoKP shall facilitate process of obtaining the guarantee of the Federal

Government and where the provincial entities are party to any agreement included in the security package documents, PEDO shall facilitate process obtaining the guarantee of the Federal or the Provincial Governments as provided in the security package.

- b. provide protection against specified political and change in law force majeure risks.
  - c. implement taxes and duties regime and protect against any subsequent changes made by GoKP and or GOP.
  - d. ensure convertibility of Pakistan Rupees into US Dollars at the then-prevailing exchange rate and the remit-ability of foreign exchange to cover necessary payments related to the projects, including debt servicing and payment of dividends. Tariff components, however, will be adjusted and indexed in accordance with this Power Policy, against exchange rate variation, inflation, etc
  - e. prepare social and corporate action plan with the sponsors to ensure that the local inhabitants in the project area benefits from the power project and its development and operation is not disrupted.
- (iii) Minimum take or pay or minimum take and pay provisions may be included in the PPA.
- (iv) Laws of England will be allowed for the foreign lenders participating in the projects as the governing law for the Direct Agreements (IA & PPA), which will contain an indemnity to the effect that if the IA, PPA, WUA or the GOP or GoKP Guarantee becomes unenforceable, illegal or invalid due to change in law, the GOP shall indemnify the project company or the Lenders for any cost, loss or liability resulting from such unenforceability, illegality or invalidity.

## **9.0 Lock-in-Period**

42. The Sponsor identified as the "Main Sponsor" in the application for pre-qualification, having a lead role and possessing sufficient financial and technical strength, will be required to hold at least 20% of the equity of the project company during the "lock-in period" which will be from the date of award of project until the sixth anniversary of the successful commissioning of the plant. The Main Sponsor together with other pre-qualified sponsors must collectively hold 51% of the equity of the project company for the lock-in period. GoKP may allow changes in the shareholding structure of the project company within lock-in period in terms of mechanism prescribed in the Guidelines

## **10.0 Bank Guarantee, Bid Bond, Letter of Intent, Letter of Support**

### **10.1 Bank Guarantee**

43. PEDO/GoKP will accept Bank Guarantee in US Dollars. However, the Bank Guarantee may be payable in equivalent Pak Rupees at the prevailing exchange conversion rates (US\$ to Pak Rs.) at the date of encashment.

## **10.2 Bid Bond**

44. For ICB projects and solicited proposals, the bidders will be required to submit bid bond in the form of Bank Guarantee @ US\$ 1000/MW in favor of PEDO along with the bids.

## **10.3 Letter of Intent (LOI)**

45. Upon fulfillment of requirements of the Policy, RFP and approval of PEDO Board, PEDO will issue LOI to sponsors against submission of Bank Guarantee by the Sponsors @ US\$ 1000/MW in favor of PEDO.
46. The Validity of LOI will depend on the size and type of the project.
47. The LOI will require the Sponsors to: (a) carry out a complete feasibility study to be monitored by the POE appointed by PEDO except for projects awarded through ICB; and or (b) approach NEPRA for acceptance/approval of upfront tariff or determination of tariff within the time period specified in the LOI, and (c) fulfill any other condition/milestone stipulated in the LOI.
48. If the Sponsors fail to meet the relevant milestones/standards, PEDO will be entitled to encash the Bank Guarantee and terminate the LOI.

## **10.4 Letter of Support (LOS)**

49. Once the tariff is approved/determined by NEPRA or provincial regulator, PEDO and or PPIB will issue Tri-partite LOS or LOS as the case maybe to sponsors against submission of Bank Guarantee by the Sponsors @ US\$ 5000/MW in favor of PPIB and or PEDO.
50. The sponsors will have an option to terminate the Tri-partite LOS or LOS and any of the project agreements executed at any time before the required date for Financial Closing as per terms and conditions of Tri-partite LOS or LOS. The termination option may be exercised by forgoing a portion of the Bank Guarantee equal to the face value of the Bank Guarantee multiplied by the number of months since the issuance of the Tri-partite LOS or LOS (rounded up to the next whole number) divided by the total number of months allowed in the Tri-partite LOS or LOS to achieve Financial Closing.
51. The Bank Guarantee will be en-cashable on call in accordance with mutually agreed terms and conditions between PPIB and or PEDO. Neither the Sponsors nor the project company shall have any claims against the Govt. of Khyber Pakhtunkhwa or any of its Components/ Organizations/Institutions on any ground(s) whatsoever. Until Financial Closing, the Tri-partite LOS or LOS will govern the project and supersede all documents and agreements; thereafter the security agreements will supersede



the Tri-partite LOS or LOS. If the Tri-partite LOS or LOS expires on account of failure to achieve financial closing, the IA, PPA and WUA and all other agreements with any governmental entity, will automatically terminate.

## **11.0 Project Implementation**

52. The successful bidder will be required to submit to PEDO, on a format specified by PEDO, a mutually acceptable implementation schedule with specific milestones for progress monitoring. PEDO and the Power Purchaser will require the successful bidder/sponsor to submit periodic progress reports regarding the status of contractual obligations, consents, financial and physical progress reports including a summary table showing progress towards achievement of such milestones.
53. Delays in achieving the Commercial Operation Date (as defined in the PPA) of the power complex, shall incur liquidated damages as specified in the PPA. Equitable compensations against parties concerned may be specified in the IA/PPA for not meeting specified milestones under the security agreements.
54. In order to ensure that sponsors of projects move expeditiously with subsequent steps for implementation of the project:
  - i. The project company and or sponsors will be eligible for a one time extension of LOI or LOS as the case may be, provided valid grounds for extension exist and are acceptable to PEDO and provided further that more than one time extension may be considered in case of force majeure events
  - ii. The period of validity of the Bank Guarantee for LOI shall be 3 months beyond the expected date for issuance of Tri-partite LOS or LOS by PPIB and or PEDO – in this regard, the schedule will be decided and made part of the LOI. However, if such required period of validity of the Bank Guarantee is more than two (02) years, the sponsors may be allowed to post the Bank Guarantee initially for a period of eighteen (18) months, with the provision to extend it further for the period remaining till three (03) months beyond the expected date for issuance of Tri-partite LOS or LOS by PPIB and or PEDO;
  - iii. If any extension in the validity of LOI or Tri-partite LOS or LOS, as the case may be, is necessitated, sponsors will be required to submit a Bank Guarantee in double the original amount and valid beyond three months of the extended LOI period or beyond three months of the extended Tri-partite LOS or LOS period to qualify for extension in validity of the LOI or Tri-partite LOS or LOS;
  - iv. However, if any extension in the validity of LOI or Tri-partite LOS or LOS as the case may be is necessitated due to delays on part of GoKP / GOP entities or for the reasons which are beyond reasonable control of the sponsors, the Board of PEDO / PPIB may consider such extension without doubling of the Bank Guarantee with appropriate terms and conditions.

Public Sector Entities shall be exempt from payment under this para to the extent of their shareholding in the Power Projects

## **12.0 Corporate Social Responsibility**

55. There shall be deliberate effort by the Sponsors to develop social, health, and educational projects in the project area as part of their Corporate Social Responsibility and Community Welfare Development Programme. Provinces shall also spend reasonable amount of Water Use Charge (WUC) for projects in local area.
56. In case any power project earns income through carbon credits of Clean Development Mechanism (CDM), sharing of this income between the IPP and the Power Purchaser shall be in line with the mechanism prescribed in the National CDM Policy.
57. To promote indigenization, the local engineering industry will be encouraged to form joint ventures with foreign companies in order to develop power projects.
58. Skilled and semi-skilled local manpower shall be given preference with regard to employment on merit basis. Internships shall be provided on merit basis in order to train and hire local personnel of that particular area.

## **13.0 Captive Use Of Power**

59. The sponsor of a project may utilize power from the project for captive use. In case of captive use, the project sponsor will in lieu of WUC pay lease money/price to PEDO at the rate of Pak Rs 1,500 / kW / Annum after commissioning of the power plant (the lease money/price amount may vary from time to time as per approved Guidelines of PEDO).
60. If captive use is for an integrated industry of any type, the Govt. of Khyber Pakhtunkhwa will offer the following special incentives for establishing the industry provided that the commercial production from the Industry starts within a specified period from the date of commercial operation of the power plant:
  - i. 5% duty on import of machinery required for the industry
  - ii. Lease of public land for the life of the industrial plant, if available

## **14.0 The Environment**

61. The requirements as laid down by the Provincial Environmental Protection Agency (Khyber Pakhtunkhwa-EPA) and rules or regulations there under relating to National Environmental Quality Standards (NEQS) and Environmental and Social Impact Assessment (EIA) shall have to be met. The

Assessment should cover the cost of mitigation including compensation to and resettlement of the affected people.

## **15.0 Specific Provisions**

### **15.1 Despatch**

62. The load Despatch center shall Despatch plants in accordance with the most economical despatch criteria (without any bias) wherever it applies, which will be on the basis of the lowest energy cost component, transmission line losses, system stability and reliability and other economic considerations. Because of their very low variable cost, run of the river hydro power plants are likely to have a high priority. A close coordination between the plant operator and the load dispatcher will be needed to ensure the best use of available water in order to achieve the required and or designated plant factor as specified in the tariff approval and or determination for ensuring financial sustainability of the project without any adverse effect on the tariff.
63. Sponsors will be asked to quote their plant's generation efficiency curve. If the efficiency of the power plant goes down, or the generation of electricity is reduced for any reason other than a reduction in water flows, the project company will be liable for the value of the electricity lost due to a fall in efficiency or reduced availability of the power complex and appropriate penalty / liquidated damages will be specified in the security package documents. For run of the river projects with storage for daily peaking, specific measures will be specified in the RFP and the security package documents for monitoring plant performance.

### **15.2 Feasibility Studies**

64. The feasibility studies will identify basic parameters of the proposed projects, such as, the hydrological characteristics of the site, geological conditions, optimum net capacity, estimated annual plant factor, estimated monthly profile of energy, transmission line requirements, identification of power delivery point, interconnection voltage, resettlement plans, environmental and social and economic assessment etc. The transmission voltage may be 132kV, 66 kV or 11 kV or any other appropriate voltage depending upon the generation capacity and dispersal requirements.
65. While feasibility studies will be carried out in accordance with internationally acceptable standards, the Govt. of Khyber Pakhtunkhwa will not guarantee their content or conclusions. The bidder/sponsor will have the right, at its own cost, to examine, evaluate and from its own conclusions on any or all aspects

of the feasibility study, and to carry out any additional studies and investigations to make its own assessment about the feasibility and viability of the project, as part of its due diligence.

### **15.3 Fees**

66. Fees for various stages of the project development shall be prescribed by the Board of PEDO from time to time.

### **16.0 Public - Private Partnership**

67. The PEDO encourages establishment of power projects in public- private partnership. In line with the objectives set forth herein above, the incentives/concessions specified in Section 6.1 herein available to private power projects will also be available to projects implemented under public-private partnership. The Public Private Partnership will be affected through the legal framework of Joint Development Agreement (JDA), Shareholders Agreement and the Security Package Documents. The Public Private Partnership shall in the form of private partner taking the lead or alternatively the public partner will take the lead for the completion of activities in relation to the build, own, operate and transfer of the project in accordance with the roles and responsibilities as laid out in the JDA or the Shareholders Agreement.

### **17.0 Public Sector Projects**

68. All relevant and applicable incentives, concessions and provisions under this Policy are applicable to public sector projects

### **18.0 Designated Projects That Are Covered Under Bilateral Agreements Between PEDO/GoKP/GOP And Foreign Governments**

69. Where an obligation or commitment of PEDO, GoKP and or GOP arises out of an international treaty or an agreement with a State or States, such obligation or commitment will override the modes for award and processing of the project(s) under this Power Policy.

### **19.0 Guidelines**

70. In order to ensure the highest quality and long term sustainability in the development and operation of

hydro power projects and transmission and distribution lines, Policy Guidelines under the Power Policy shall be prepared and approved by the Board of PEDO. The Guidelines shall be notified through the Rules under the SHYDO Act 1993 as amended by the PHYDO (Amendments) Act 2013.

## **20.0 Repeal & Saving**

71. The Provincial Hydro Power Generation Policy 2006 is hereby repealed. Notwithstanding the repeal, all actions taken, acts done, approvals given, orders made and proceedings initiated under the repealed policy shall be deemed to have been validly done, given, made & initiated Power projects, if any processed under the repealed policy shall continue to be governed there-under, unless opted and transferred under the Power Policy

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