

National Electric Power Regulatory Authority
(NEPRA)

Determination of the Authority
in the Matter of Approval of Amendments in the Commercial Code
As Proposed by the Commercial Code Review Panel

February 17, 2020

(A). Background

(i). In order to set out procedures for carrying out the market operations including commercial operations, processes and functions by the Market Operator (MO) i.e., Central Power Purchasing Agency (Guarantee) Limited (CPPA-G), the Authority approved the Commercial Code notified vide SRO 542 (I)/2015 dated June 02, 2015.

(ii). Later on, based on requirements of the market, the Authority approved various amendments in the Commercial Code vide SROs dated September 7, 2015, and June 8, 2016. Furthermore, amendments were also made in the Commercial Code at the time of the Registration of CPPA-G as a MO vide Determination dated November 16, 2018.

(B). Submission of the Proposed Amendments

(i). In accordance with the procedure prescribed in the Commercial Code, the Commercial Code Review Panel (the "CCRP"), through CPPA-G, vide letter dated October 23, 2019, proposed certain amendments (the "proposed amendments") in the Commercial Code and submitted the same for review and approval of the Authority.

(ii). The proposed amendments in the Commercial Code mainly envisaged amendments in the Scope and Applicability of the Commercial Code, Billing & Settlement Mechanism, Payment System, and Information Sharing Mechanism.

(iii). The Authority considered the above submissions and decided to hold a Public Hearing in the matter as stipulated in Rule 13 (3) of the NEPRA (Market Operator Registration, Standards and Procedure) Rules, 2015.



(C). Public Hearing

(i). In consideration of the above, public notices were published in one (01) Urdu and one (01) English newspaper on November 9-10, 2019, informing the general public, interested, affected parties/persons and the relevant stakeholders about the Public Hearing and seeking their participation in the same. Further, letters were also sent to different Ministries, their attached departments and representative organizations on November 11, 2019, seeking their comments for the assistance of the Authority in the matter.

(ii). The Public Hearing in the matter was held on November 20, 2019, at the main office of NEPRA in Islamabad wherein representatives of different organizations participated. These included the representatives of CPPA-G, K-Electric Limited (KEL), Central Power Generation Company Limited (CPGCL/ GENCO-II), Uch Power (Pvt.) Limited (UPPL), Uch-II Power (Pvt.) Limited (UPPL-II), Zhenfa Pakistan New Energy Company (Pvt.) Limited (ZPNECPL), Nishat Power Limited (NPL), Lalpir Solar Power (Pvt.) Limited (LPSPL), Azad Pattan Power (Pvt.) Limited (APPL), Kohala Hydro Company (Pvt.) Ltd. (KHCL), Multan Electric Power Company Limited (MEPCO), Jamshoro Power Company Limited (JPCL), NASDA Green Energy (Pvt) Limited (NGEL), Artistic Wind Power (Pvt.) Limited (AWPL), Liberty Wind Power 1 (Pvt.) Limited (LPWL-I), Liberty Wind Power 2 (Pvt.) Limited (LPWL-II), Act 2 Wind (Pvt.) Limited (AWL-2).

(iii). The Authority provided an opportunity to the above participants to offer their comments in the matter of the proposed amendments. In this regard, CPPA-G submitted that as per the procedure defined in the Commercial Code, the meeting of the CCRP was held on October 15, 2019, to discuss the proposed amendments in the Commercial Code. The CCRP considered and finalized the proposed amendments and submitted the same for review and approval of the Authority.

(iv). KEL commented that the proposed amendments by the CCRP have not been discussed with it and do not safeguard its rights and interests. KEL requested the Authority to grant additional time to have meetings with CCRP to build a consensus on the proposed amendments.



(v). GENCO-II submitted that it has not been involved in the process and requested the Authority to grant additional time to discuss the proposed amendments with the CPPA-G/CCRP. Further, GENCO-II in its comments raised observations on various clauses of the proposed Billing & Settlement Mechanism and Payment System.

(vi). UPPL and UPPL-II in their comments raised concerns with respect to the settlement of overdue invoices as well as ensuring transparent and equitable payment mechanism to all IPPs.

(vii). ZPNECPL suggested amending the proposed date in Clause 2.2 of the Commercial Code, which relates to the applicability of the Commercial Code, from July 1, 2020, to July 1, 2021. Further, ZPNECPL suggested changes in the proposed Fund Allocation Methodology (i.e., Clause 9.2.3 of Payment System) to provide a mechanism for outstanding payments/ receivables of IPPs/Companies operative before July 1, 2017.

(viii). NPL and LPSPL submitted that the Commercial Code must not affect their rights, liabilities, and terms set forth in their respective Power Purchase Agreements/Energy Purchase Agreements. Further, NPL and LPSPL raised concerns on the proposed Fund Allocation Methodology (Payment System), disputes resolution procedure regarding Pass-Through Items (Billing & Settlement Mechanism), and Electronic Submission of Invoices (Information Sharing Mechanism).

(ix). APPL and KHCL supported the proposed amendments in the Commercial Code. MEPCO submitted to reconsider the proposed Invoice Settlement procedure (Billing & Settlement Mechanism) and requested to link it with the Authority's Determination of the Fuel Price Adjustment and Quarterly Adjustments.

(x). JPCL in its comments proposed to exclude Public Sector GENCOs from the Competitive Regime. It was submitted that GENCOs are public sector power companies and work under the umbrella of the Government of Pakistan as state-owned enterprises and may be allocated despatch to generate electricity for sale at the available fuel and exclude them from competitive regime to avoid them from default.






(xi). The projects related to wind power plants proposed the addition of words "apply, or be deemed to apply, or" in the proposed Clause 2.2 of the Commercial Code which relates to the applicability of the Commercial Code.

(D). Analysis/Findings of the Authority

(i). The Authority has examined the proposed amendments in detail along with the comments of the stakeholders made during the Public Hearing, submissions made in the written form and provisions of the NEPRA Act and the relevant rules.

(ii). It is pertinent to mention that Article 3.4 of the Commercial Code prescribes the procedure for proposing amendments in the same. The said Article, *inter-alia*, stipulates that the CCRP may propose amendments in the Commercial Code after consultation with the Market Participants and other relevant stakeholders.

(iii). In this regard, the Authority has observed that the CCRP considered and finalized various amendments proposed by different stakeholders including IPPs, KEL, and CPPA-G and submitted the same for review and approval of the Authority.

(iv). The Authority considers that Commercial Code is a vital document setting out the procedures, *inter-alia*, for carrying out market operations, processes and functions including commercial transactions, billing & settlement of invoices, and payment & information sharing mechanisms.

(v). Regarding the applicability of the Commercial Code, the Authority observes that this Commercial Code is applicable to the existing market structure. However, nothing in the Commercial Code will be construed or interpreted in a manner which may affect the rights, liabilities, and terms set forth in any Implementation Agreement, power purchase contract, or in any license of any licensee, before the commencement of the Competitive Trading Bilateral Contract Market.

(vi). The Authority has observed that the Market Participants especially IPPs and KEL have raised certain objections on various aspects of the proposed amendments including Billing & Settlement Mechanism, Payment System, Information Sharing Mechanism and Fund Allocation Methodology as mentioned above.

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(vii). In consideration of the above, the Authority is of the opinion that consensus of the Market Participants on the proposed amendments in the Commercial Code is essential for the smooth functioning of the power market. The Authority further observes that the CCRP should build a consensus of the stakeholders/Market Participants on the proposed amendments before submitting the same to the Authority for approval.

(E). Decision of the Authority


(i). In view of the above, the Authority hereby approves the amendments (Annex-1) on which there is a broad consensus of the Market Participants. Further, the proposed amendments on which the Market Participants have raised concerns are hereby returned to the CCRP with the direction to build a consensus of the stakeholders on the same and resubmit to the Authority for approval within thirty (30) days of the issuance of this determination.

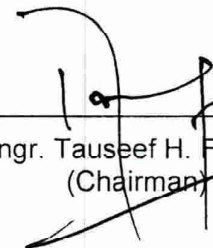
Authority


12/12/20
Rafique Ahmed Shaikh
(Member)


Rehmatullah Baloch
(Member)



12.2.2020
Saif Ullah Chattha
(Member)


Engr. Bahadur Shah
(Member/Vice-Chairman)


Engr. Tauseef H. Farooqi
(Chairman)

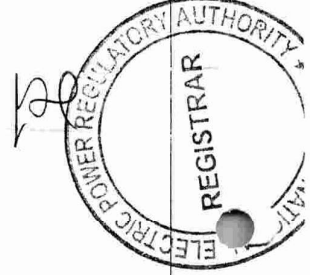





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Approved Amendments to Commercial Code

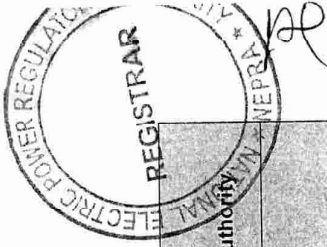
Sr. No.	Previous Clauses of Commercial Code (CC 2015)	Amended Clauses of Commercial Code (CC 2018)	Changes Proposed by Generation Companies, K-Electric & CPPA-G in CC 2018	CCRPs Recommendation	Decision of the Authority
1	<p align="center">2</p> <p>Section 1 (Definitions) Clause 8: CPPA-G means a company performing the functions listed in clause 5 of this Commercial Code and authorized by Authority as Market Operator under the Market Rules;</p>	<p align="center">3</p> <p>Section 1 (Definitions) Clause 8: "CPPA-G" means the Central Power Purchasing Agency (Guaranteed) Limited;</p>	<p align="center">4</p> <p>No change required.</p>	<p align="center">5</p> <p>Agreed by CCRP</p>	<p align="center">6</p> <p>The Authority approves the recommendation of CCRP as given in Column 5.</p>
2	<p>The definition of the Date of Registration was not included in the Old Commercial Code</p>	<p>Section 1 (Definitions) Clause 10: "Date of Registration" means the date of issuance of the registration under Rule-3 of the Market Rules (it is a new insertion in the Commercial Code)</p>	<p>No change required.</p>	<p>Agreed by CCRP</p>	<p>The Authority approves the recommendation of CCRP as given in Column 5.</p>
3	<p>Section 1 (Definitions) Clause 10a: "Energy Purchase Agreement (EPA)" means an energy purchase agreement: (a) signed by NTDC with an IPP (to procure power on behalf of Distribution Companies); (b) signed or to be signed by CPPA-G (to procure power on behalf of Distribution Companies) with an IPP or GENCO during the transition period of two years mentioned in Rule-5 of the Market Rules; and (c)</p>	<p>Section 1 (Definitions) Clause 27: "power purchase contract" means an agreement for the procurement or purchase of electric power and shall include Power Purchase Agreements, Energy Purchase Agreements, and agreements signed by WAPDA with an IPP under or prior to the 1994 Policy, signed by the NTDC (to procure power on behalf of Distribution</p>	<p>Agreed with the changes made by NEPRA. However, PPA referred in any place of the code may be replaced with power purchase contract</p>	<p>Agreed with CPPA-G's proposal.</p>	<p>The Authority approves the changes proposed by CCRP in Column 5.</p>



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1	<p>2</p> <p>any agreement signed or to be signed by CPPA-G in furtherance of any agreement signed by the Islamic Republic of Pakistan and another State</p>	<p>3</p> <p>Companies) with an IPP or signed by the NTDC with a GENCO or WAPDA Hydel;</p>	<p>4</p>	<p>5</p>	<p>6</p>
	<p>Section 1 (Definitions) Clause 2.6: "Power Purchase Agreement (PPA)" means the power purchase agreement (a) signed by WAPDA with an IPP under or prior to 1994 Policy; (b) signed by NTDC (to procure power on behalf of Distribution Companies) with an IPP; (c) signed by NTDC with a GENCO and WAPDA Hydel; (d) signed or to be signed by CPPA-G (to procure power on behalf of Distribution Companies) with an IPP or GENCO during the transition period of two years mentioned in Rule-5 of the Market Rules and; (e) any agreement signed or to be signed by CPPA-G in furtherance of any agreement signed by the Islamic Republic of Pakistan and another State;</p>			<p style="text-align: center;"><i>Handwritten signature</i></p>	



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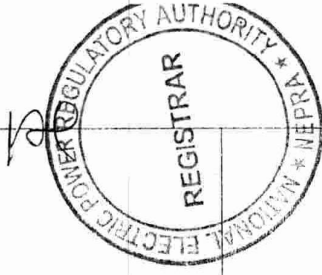


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1	<p>2</p> <p>Clause 14 of Article 1 – Definition</p> <p>"GENCOs" means all electricity generating companies incorporated pursuant to unbundling of WAPDA and licensed to carry out generation functions by Authority.</p>	<p>3</p> <p>Clause 15 of Article 1 – Definition</p> <p>"GENCOs" means all electricity generating Companies incorporated pursuant to unbundling of WAPDA and licensed to carry out generation functions by Authority.</p>	<p>4</p> <p>GENCOs" means all electricity generating companies incorporated pursuant to unbundling of WAPDA and licensed to carry out generation functions by Authority. Provided that for the purposes of this Commercial Code, the terms GENCOs and Generation Company(ies), wherever used, shall not include K-Electric."</p>	<p>5</p> <p>Clause should be amended as under:</p> <p>GENCOs" means all electricity generating companies incorporated pursuant to unbundling of WAPDA and licensed to carry out generation functions by Authority, excluding K-Electric.</p>	<p>6</p> <p>The Authority approves the changes proposed by CCRP in Column 5.</p>
4	<p>Section 2 (Scope and Applicability)</p> <p>Clause 2.1:</p> <p>The Commercial Code shall be applicable on the existing market structure, i.e. the single buyer model as well as current practices being carried out by the CPPA of NTDC.</p>	<p>Omitted</p>	<p>Clause 2.1 to be added in CC 2018</p> <p>The Commercial Code shall be applicable on the existing market structure, i.e. the single buyer model as well as current practices being carried out by the CPPA-G</p>	<p>Agreed with CPPA-G's proposal</p>	<p>The Authority approves the recommendation of CPPA-G and CCRP, given in Column 4 and 5, as following. "The Commercial Code shall be applicable on the existing market structure as well as current practices being carried out by the CPPA-G"</p>
5	<p>Section 2 (Scope and Applicability)</p> <p>Clause 2.4: NTDC shall provide Transmission Services (with its transmission assets) and system operation and dispatch services...</p>	<p>Clause 2.4 of previous Commercial Code becomes Clause 2.1 of Section 2 (Scope and Applicability) of amended Commercial Code</p>	<p>Clause 2.1 of CC 2018 will be re-numbered as 2.4</p>	<p>CCRP Agreed with CPPA-G's proposal</p>	<p>The Authority approves the change proposed by the CCRP in Column 5 as following, Clause 2.1 of the CC 2018 shall be renumbered as Clause 2.2 and Clause 2.2 of the CC 2018 shall be renumbered as Clause 2.3</p>
6	<p>Section 2 (Scope and Applicability)</p> <p>Clause 2.5: This Commercial Code is applicable to all market participants, provided, however, that nothing herein shall apply, or be</p>	<p>Clause 2.5 of previous Commercial Code becomes Clause 2.2 of Section 2 (Scope and Applicability) of amended Commercial Code with some changes as underlined:</p>	<p>Nothing herein shall apply, or be deemed to apply, or</p>	<p>Clause should be amended as under:</p> <p>Nothing herein shall be construed or interpreted in a manner which extinguishes, reduces, derogates from, is inconsistent or at</p>	<p>The Authority approves the recommendation of CCRP given in Column 5 as following. In Article 2, the Clause 2.3 shall be substituted with the following words, "Nothing herein shall be construed or interpreted in a manner which</p>

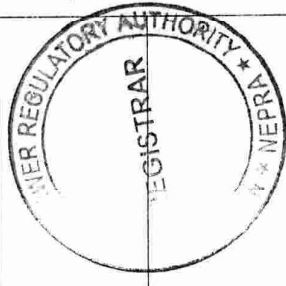
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1	<p>2</p> <p>deemed to apply, or be construed or interpreted in a manner which extinguishes, reduces, derogates from, is inconsistent or at variance with or otherwise adversely affect, any rights, liabilities and terms set forth in any Implementation Agreement, Power Purchase Agreement, Energy Purchase Agreement or in any license of any licensee</p>	<p>3</p> <p>Nothing herein shall apply, or be deemed to apply, or be construed or interpreted in a manner which extinguishes, reduces, derogates from, is inconsistent or at variance with, or otherwise adversely affects, any rights, liabilities and terms set forth in any Implementation Agreement, power purchase contract, or in any license of any licensee, any rights, liabilities and terms set forth in any Implementation Agreement, power purchase contract, or in any license of any licensee, executed or granted prior to the Date of Registration</p>	<p>4</p> <p>be construed or interpreted in a manner which extinguishes, reduces, derogates from, is inconsistent or at variance with, or otherwise adversely affects, any rights, liabilities and terms set forth in any Implementation Agreement, power purchase contract, or in any license of any licensee, executed or granted up to the start of Competitive Market Operation as per Schedule-I of the Market Rules</p>	<p>5</p> <p>variance with, or otherwise adversely affects, any rights, liabilities and terms set forth in any Implementation Agreement, power purchase contract, or in any license of any licensee, executed or granted up to 1st July 2020 or any other later date for the commencement of the competitive Market Operations as such date is confirmed by NEPRA from time to time.</p>	<p>6</p> <p>extinguishes, reduces, derogates from, is inconsistent or at variance with, or otherwise adversely affects, any rights, liabilities and terms set forth in any Implementation Agreement, power purchase contract, or in any license of any licensee, executed or granted up to 1st July 2020 or any other later date for the commencement of the competitive Market Operations as such date is confirmed by NEPRA from time to time.</p>
8	<p>Section 3 (General Conditions) Clause 3.1.1(ii): To promote and enable the development of competitive power markets in accordance with schedule I of the Market Rules.</p>	<p>Omitted</p>	<p>Agreed with the change</p>	<p>CCRP Agreed with the change made by NEPRA</p>	<p>The Authority approves the proposal of CCRP as given in Column 5.</p>
9	<p>Section 4 (Market Participation & Termination) Clause 4.1.1 (ii): is an authorized company from another country that</p>	<p>Section 4 (Market Participation & Termination) Clause 4.1.1 (ii): is an authorized</p>	<p>Clause 4.1.1 (ii) is an authorized company from another country that participates in regional / international power trade through a contract with or</p>	<p>CCRP Agreed with the CPPA-G's proposed</p>	<p>The Authority approves the changes proposed by the CPPA-G and CCRP as given in Column 4 and 5.</p>



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1	<p>2</p> <p>participates in regional / international power trade through a contract with or novated to or administered by CPPA-G and</p>	<p>3</p> <p>company from another country that participates in regional international power trade through a contract with or novated to or administered by and</p> <p>Section 4 (Market Participation & Termination) Clause 4.1.1 (iii): has a Commercial Metering System at each Common Delivery Point, as established in the Grid Code and defined in relevant clauses of the concerned power purchase contract and this Commercial Code</p>	<p>4</p> <p>novated to or administered by CPPA-G; and</p> <p>Agreed with the Change</p>	<p>5</p> <p>CCRPs Agreed with the change made by NEPRA.</p>	<p>6</p> <p>The Authority approves the changes proposed by the CPPA-G and CCRP as given in Column 4 and 5.</p>
10	<p>11</p> <p>a) Clauses 4.1.5 and 4.3.2 of Chapter 4 (b) Clauses 6.1.2 and 6.1.4 of Chapter 6 (c) Clauses 11.1.1 and 11.1.4 of Chapter 11; and (d) Clause 12.1 (iii) of Chapter 12.</p>	<p>6</p> <p>(a) Clauses 4.1.5, 4.3.1 and 4.3.2 of Chapter 4 (b) Clauses 6.1.2 and 6.1.4 of Chapter 6 (c) Clauses 11.1.1 and 11.1.4 of Chapter 11; and (d) Clause 12.1 (iii) of Chapter 12.</p>	<p>All references to "DISCO", "DISCOs", "Distribution Company" or "Distribution Companies" in the Clauses mentioned in the first column of this row shall mutatis mutandis be replaced with references to "Market Participants Representing Demand".</p>	<p>CCRPs Agreed with K-Electric's proposed amendments</p>	<p>The Authority approves the changes proposed by K-Electric and CCRP as given in Column 4 and 5.</p>
12	<p>12</p> <p>Section 5 (CPPA-G Functions) Clause 5.1.1: CPPA-G is responsible for the administration,</p>	<p>Section (CPPA-G Functions) Clause 5.1.1: CPPA-G is responsible for the</p>	<p>Agreed with the changes subject to the review motion against the certificate of registration filed by CPPA-G to</p>	<p>CCRPs Agreed with CPPA-G's proposed amendment subject to the review motion against the certificate of</p>	<p>Approved. Further, it is clarified that the review petition filed by CPPA-G has been rejected dated February 19, 2019.</p>



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1	<p>2</p> <p>maintenance and the implementation of the Commercial Code, supervision of compliance by Market Participants and performing such functions as provided in Schedule II of the Market Rules.</p>	<p>3</p> <p>administration, maintenance and implementation of the Commercial Code, supervision of compliance by Market Participants and performance of such functions as provided for in Schedule II of the Market Rules and the registration granted under Rule 3 of the Market Rules.</p>	<p>4</p> <p>NEPRA</p>	<p>5</p> <p>registration filed by CPPA-G to NEPRA</p>	<p>6</p> 
13	<p>Section 6 (Commercial Transactions) Clause 6.1.1:</p> <p>The invoices for energy and capacity sold by generation companies, for each billing period, shall be sent to CPPA-G, pursuant to the terms reflected in the Power Purchase Agreements</p>	<p>Section 6 (Commercial Transactions) Clause 6.1.1:</p> <p>The invoices for energy and capacity sold by generation companies, for each billing period, shall be sent to CPPA-G.</p>	<p>Section 6 (Commercial Transactions) Clause 6.1.1:</p> <p>The invoices for energy and capacity sold by generation companies, for each billing period, shall be sent to CPPA-G, pursuant to the terms reflected in the power purchase contracts</p>	<p>CCRP Agreed with CPPA-G's proposed amendment</p>	<p>The Authority approves the changes proposed by the CPPA-G and CCRP as given in Column 4 and 5</p>

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