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Advocates & Legal Consultants

06 November 2017

To:
THE COMMERCIAL CODE REVIEW PANEL,
Central Power Purchasing Agency (Guarantee) Limited,
ENERCON Building, Sector G/5-2,
Islamabad, Pakistan.

Subject: PROPOSED AMENDMENTS TO THE COMMERCIAL CODE

Dear Sir,

Clause 3.4.3 of the Commercial Code 2015 (the **Commercial Code**), allows for the System Operator, a Market Participant or any other interested party to file a written request to the Central Power Purchasing Agency (Guarantee) Limited (the **CPPA-G**) proposing amendments to the Commercial Code, with the corresponding justification and assessment of expected impact and benefits.

Unless otherwise defined, all capitalized terms used herein shall bear the meaning ascribed to them in the Commercial Code.

2. We, at **AXIS LAW CHAMBERS** (an interested party) are acting as project counsel to a large number of power / energy projects (Market Participants), many of whom are eagerly awaiting to sign their power / energy purchase agreement. We are writing on behalf of our clients / the Market Participants to suggest the amendments required to the Commercial Code, so that **CPPA-G** may be authorised to sign and perform its obligations under the standard power / energy purchase agreements and our clients' respective purchase agreements may be executed without further delay.

3. As per **CPPA-G's** memorandum and articles of association, the **NEPRA** (Market Operator Registration, Standards and Procedure) Rules 2015 (the **Market Rules**) and the Commercial Code, **CPPA-G** presently, does not have the power and authority to enter into and perform its obligations under the standard power purchase agreement / energy purchase agreement.

4. To ensure **CPPA-G** was provided adequate authority until new concession agreements (i.e. energy purchase agreement/ power purchase agreement / implementation agreement / **GOP** guarantee) and the power policy were revised and approved by the competent authorities, the Commercial Code was amended in June 2016 (this was the second amendment made to the Commercial Code (the **Second Amendment**)) to provide **CPPA-G** with the legal capacity, required consents, licenses, authorizations, approvals and permissions to enter into, execute and perform its obligations under the power purchase agreement / energy purchase agreement (**Legal Authority to Execute and Perform**).

5. Unfortunately, however, the definitions of "Energy Purchase Agreement (**EPA**)" and "Power Purchase Agreement (**PPA**)" in the Commercial Code (the **Definitions**) were, through the Second Amendment, linked to **CPPA-G** signing the **EPAs** / **PPAs** during the transition period of two years mentioned in rule 5 of the **Market Rules**.

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6. Rule 5 of the Market Rules state that until June 2017, “*CPPA-G shall be deemed to be authorized and registered as the market operator under these rules to commence and conduct the market operations and during this period shall apply for registration in accordance with the provisions of these rules*”. We understand that CPPA-G has applied to NEPRA for registration within the stipulated period. Whilst the Market Rules are silent on whether CPPA-G shall be deemed to be authorized and registered as the market operator after such period until NEPRA registers CPPA-G as the Market Operator, even if this was expressly provided for, the issue of the Definitions being linked to a hard-date (05 June 2017) would still remain (as after such date, the Definitions do not allow for CPPA-G to enter into any PPA/EPA).

7. In sum, an amendment to the Definitions is required, de-linking CPPA-G’s Legal Authority to Execute and Perform with the two years mentioned in rule 5 of the Market Rules (amendments proposed below):

“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 ~~during the transition period of two years mentioned in rule 5 of the Market Rules~~; and (c) any agreement signed by or to be signed by CPPA-G in furtherance of an agreement signed by the Islamic Republic of Pakistan and another State.

“Power Purchase Agreement (PPA)” means a 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 by or to be signed by CPPA-G in furtherance of an agreement signed by the Islamic Republic of Pakistan and another State.

8. We would be grateful if the proposed amendments are considered by the Commercial Code Review Panel at the earliest so that the same may be submitted to the Authority with the panel’s recommendations and the Commercial Code amended. Until such time, no project can execute an energy / power purchase agreement (at least not one that CPPA-G is fully authorised to enter into and perform).

Very truly yours,



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