

## STUDY AND ANALYSIS REPORT ON FOREIGN CURRENCY- DENOMINATED PPAs सम्बन्धमा गठित समितिका सिफारिसहरू

### **Recommendations**

Based on the study and analysis of various relevant reports, international practices, GON policies and Action plans announced by the government from time to time, the task force has recommended the following measures pertaining to foreign currency denominated Power Purchase Agreements for hydropower projects scaled at different rated capacities.

**G.1** The RoR and PRoR/Storage based hydropower projects up to the rated capacity of 100 MW shall be subjected to the power purchase agreements denominated in 100% Nepali currency at the power purchase rates adopted (in the case of RoR projects) or to be adopted (in the case of PRoR/Storage projects) in future by NEA.

**G.2** The RoR and PRoR/Storage based hydropower projects for the rated capacity above 100 MW shall be subjected to power purchase agreements denominated in foreign currency in USD and local currency in NRs provided that some portion of debt investment is in foreign currency. For this purpose the equity portion of investment shall not be less than 20% of total investment. In order to achieve objective of “Action Plan on National Energy Crisis Mitigation and Electricity Development Decade, 2072” it is recommended that this principle of PPA will have to be implemented until 10,000 MW capacity is concluded with NEA.

**G.3** The currency mix ratio between USD and NRs in each generated bill shall be determined using the following formula:

Let x be the percentage of foreign loan in total investment of a hydropower project. Then,  
Foreign currency portion of Bill amount (A) =  $(x/100) * \text{Bill amount in NRs}$ .

And,

Nepali currency portion of Bill Amount (B) =  $(1 - x/100) * \text{Bill amount in NRs}$

“x” in the above formula shall be determined as per the substantiating documents regarding the loan in foreign currency to be used for the project and such documents shall be provided by the developer and verified by the offtaker prior to the conclusion of PPA for this purpose. The value of x will have to be adjusted to the COD based on actual proportion of foreign loan in total investment provided that it shall not exceed the proportion as agreed at the time of PPA.

The power purchase rates shall be negotiated between the offtaker and the developer such that the power purchase rates adopted (in the case of RoR projects upto 100 MW) or to be adopted (in the case of RoR, PRoR/Storage projects) in future by NEA shall be considered as the upper ceiling in the form of benchmark rate for such projects.

**G.4** The payment in foreign currency (USD) associated only with the foreign loan portion shall be made for the maximum period of 10 years or foreign loan payback period whichever is earlier from the Commercial Operation Date (COD) of the project. The payment on account of the energy bills shall be made in local currency thereafter.

**G.5** The rate and number of annual simple escalation applied to base tariff for all foreign currency (USD) denominated power purchase agreements shall be 3% and 8 respectively for RoR, PProR and storage projects.

**G.6** The energy bills shall be raised in Nepali currency. The amount of foreign currency (USD) based on the currency mix ratio as stipulated in G3 above shall be calculated by taking the foreign currency (USD) exchange rate published by Nepal Rastra Bank on the date of signing the power purchase agreement

**G.7** The developer shall be required to submit to the offtaker the updated account audit report including the documents substantiating the foreign direct investment for the sake of payment of energy bill(s) in foreign currency (USD).

**G.8** By adopting the aforementioned principles for PPA in USD, developer, NEA and Government will be exposed to foreign exchange risk. Particularly NEA exposure to such risks would be high because of present financial health of NEA and current trend of depreciation of Nepali Rupee against USD. The losses, if any, incurred upon offtaker (NEA) due to Foreign Exchange Rate Variation (FERV) must be covered by hedging fund or any other similar suitable funds or mechanism.

Central Bank, Nepal Rastra Bank shall explore the possibilities to create a hedging fund with suitable operational and regulation mechanism in Nepal in order to mitigate the risk of currency fluctuations. The hedging cost/premium shall be borne by GoN, offtaker and the developer appropriately. Likewise, it is also recommended to pursue possibility of some portion of investment from international concessional funding mechanism like Green Climate Fund which will further limit exposure of foreign exchange risks.

**G.9** Energy bills shall be submitted to the offtaker by the developer on monthly basis such that:

- All amounts due and payable by offtaker to the Company pursuant to the Power Purchase Agreement shall be made, in available funds, into the Designated Account(s) (a Dollar denominated bank account and/or a Rupees denominated bank account, as appropriate) designated in writing from time to time by the Company to the offtaker.

- Payment shall be made on or before the Due Date unless the relevant Due Date is not a Business Day, in which case such payment shall be made on the immediately succeeding Business Day.

**G.10** For all FDI-based hydropower projects with the rated capacity above 100 MW the letter of credit shall be established as follows:

- The offtaker shall, at its own expense, cause to be issued and maintained during the period from the Commercial Operation Date (COD) until the expiry date of the Power Purchase Agreement on a continuous (revolving) basis an irrevocable letter of credit in favor of the Company by one or more banks in Kathmandu, Nepal acceptable to the Company with a US Dollar denominated face amount in each Fiscal Year equal to the bill payment of the USD portion corresponding to two months having the highest and the second highest contract energy of the Fiscal Year. The Company shall provide a list of at least six (6) banks in Kathmandu acceptable to the Company no later than two (2) months before the Commercial Operation Date (COD).
- Such letter of credit shall be in a form and substance satisfactory to the Company and the Financing Parties and shall contain the following terms:
  - i) Such letter of credit shall require that, in case the offtaker fails to make its payment to the Company, the issue thereof shall unconditionally pay to the Company the full amount that the offtaker owes to the Company (up to the full amount then available for drawing thereunder) upon the demand of the Company without requiring any evidences from the Company other than the Company's notice to the offtaker specifying the offtaker's failure in its payment due to the Company.
  - ii) Such letter of credit shall be immediately replenished upon any payment thereunder to the Company by an amount equal to such payment, and shall be renewed upon its expiration without any interruption thereof;
  - iii) Such letter of credit shall have the longest commercially available term; and
  - iv) Such letter of credit shall allow the Company to transfer it to or for the benefit of Financing Parties or their assignees or designees, or to the Company's successors or permitted assigns.

**G.11** Other terms and conditions including Force Majeure, liability and indemnification, insurance and resolution of disputes to be incorporated in Power Purchase Agreement, except those which are stipulated above, shall be as mentioned in the Power Purchase Agreement signed between Nepal Electricity Authority and Kabeli Energy Limited concerning the Kabeli - A Hydroelectric Project (37.6 MW) signed on September 24, 2015 subsequent to its approval by the Government of Nepal through the cabinet decision and its adoption by Nepal Electricity Authority with some relevant modifications to it through the NEA Board decision. But if the terms and conditions there are in contrary to

the Project Development Agreement signed between GON and the company concerned, the terms and conditions mentioned in the PDA will supersede.

**G.12** It is recommended that three category of standardized PPA has to be prepared by NEA, respectively for the projects under 100 MW which will have feed in tariff (posted rate) in nepali currency; for the projects above 100 MW which will have total investment in nepali currency and for the projects above 100 MW which will have investment in foreign currency.