

**National Electric Power Regulatory Authority  
[NEPRA]**

Case No. NEPRA/LAG-05/6947 dated 21 July 2009

Hearing 31<sup>st</sup> August 2009

**DECISION OF THE AUTHORITY UNDER SECTION 28 & 29 OF THE ACT  
ON THE SHOW CAUSE NOTICE ISSUED TO KESCL**

1. THE National Electric Power Regulatory Authority (hereinafter referred to as the "Authority") granted Generation License No. GI/04/2002 dated 18 November 2002 and Distribution License No. 09/DL/2003 dated 21.7.2003 respectively to M/s. Karachi Electric Supply Company Limited (hereinafter referred to as the "Licensee" or "KESCL") to construct, own or operate a generation facility, and to construct, own or operate or engage in the distribution of electric power in the licensed territory.
2. THE Authority, in exercise of its powers under Sections 28 and/or 29 of the NEPRA Act, issued a Show Cause Notice to the Licensee. The Show Cause Notice covered a series of communications of the Authority with the KESCL. The communications which were included and made part of the Show Cause Notice covered a period of more than one year. The Authority has been continuously writing to the KESCL on persistent violations committed by it including but not limited to successive power break downs, irregular electric power supply, underutilization of its available generation capacity, non-submission of reports under Article 3, 9, 10 of the Distribution License and Article 12 of the Generation License including a Show Cause Notice on the non-submission of the reports dated 25 August 2008, Show Cause Notice dated 22 October 2008 for non compliance with the terms and conditions of its Generation and Distribution Licenses, and Show Cause Notice dated 28 November 2008 under Rule 4(9) of the NEPRA Fine Rules, 2002 for non submission of information/reports and reply to Show Cause Notice.
3. THE Licensee's responses to the Show Cause Notices and communications of the Authority as mentioned in para 2 above entirely failed to address the issues raised by the Authority. The Authority through its letter dated 16 January 2009 therefore made it clear to the Licensee that the information provided by it was unsatisfactory and sketchy, specially in respect of its "power acquisition and investment plan" and "submission of annual performance report", and that many issues regarding the Licensee's breach of obligations under various provisions of its Distribution and Generation License, the NEPRA Act, Rules & Regulations remained unresolved.
4. THE Authority took serious cognizance of the severe power breakdown on 17 and 18 June 2009, the Licensee's failure for almost eighteen (18) hours to restore the electric power supply to the consumers of Karachi within the territorial jurisdiction of the Licensee's Distribution License, as also widely reported in the print and electronic media on 18 June 2009. The Authority formed a two-member committee to investigate, and prepare a report on the events of 17 and 18 June 2009 in Karachi, the report whereof revealed many acts of omission and commission on the part of the Licensee. In consequence of the report the Authority issued a notice to the Licensee asking for an explanation.
5. THE Authority conducted a hearing on 14 July 2009 during which the Licensee admitted that in view of its financial constraints it had failed to dispatch power from its own plants and its

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IPPs (Gul Ahmed Energy Limited and Tapal Power Energy Private Limited), thereby causing a reduction and a deliberate under-utilization of the available net generation capacity during the quarter October-December, 2008.

6. THE Ministry of Water & Power, Government of Pakistan through different letters as enumerated in the Show Cause Notice dated 21 July 2009 requested the Authority to take appropriate necessary action against KESCL under the rules for: (i) severe power break down on 17 & 18 June 2009; (ii) not signing the PPA with NTDC; (iii) not abiding by the ECC decision dated 26 August 2008 and various provisions of the Implementation Agreement entered into with GoP; (iv) not making timely payments to NTDC; (v) withdrawing excess power from the NTDC system in violation of its allotted quota of 650 MW; and (vi) consistent failure to make payments to Gul Ahmed Energy Limited (hereinafter referred to as "GAEL").

7. In view of the facts and circumstances set forth in para 2, 3 & 4 above and in exercise of its powers under Sections 28 and 29 of the NEPRA Act, the Authority issued a Show Cause Notice to the Licensee on 21 July 2009 on the following grounds:

- (I) The Licensee's failure to fulfill its service obligations in breach of Section 21 of the NEPRA Act read with of Rule 8(1)(b) of the NEPRA Licensing (Distribution) Rules, 1999, including, but not limited to, the Licensee's failure to ensure uninterrupted power supplies to the consumers within its service territory;
- (II) The Licensee's failure to dispatch power from its own plants and the IPPs (Gul Ahmed Energy Limited and Tapal Power Energy Private Limited) causing a reduction and deliberate under-utilization of the available net generation capacity at various times during the last one year and thereby resulting in the violation of Rule 8(3)(b) & (f) of the NEPRA Licensing (Generation) Rules, 2000;
- (III) The Licensee's failure to enter into a Power Purchase Agreement with NTDC and thereby violating Article 8.9 of the Amended Implementation Agreement dated 13<sup>th</sup> April 2009 as well as the Authority's Decision No. NEPRA/R/TRF-101/KESC-NTDC-2008/276-79 dated 29<sup>th</sup> September 2008, whereby the Licensee was required to enter into a Power Purchase Agreement with NTDC within two months of its notification.
- (IV) The Licensee's failure to fulfill its obligations under the ECC decision dated 26<sup>th</sup> August 2008, and various provisions of the Implementation Agreement dated 13<sup>th</sup> April 2009 entered into with the Government of Pakistan regarding making of timely payments to NTDC for supply of electric power to the Licensee thereby resulting in breach of Rule 8(3)(k) of the NEPRA Licensing (Generation) Rules, 2000.
- (V) The Licensee's failure to make payment of the amounts due and payable to its IPP, Gul Ahmed Energy Limited thereby resulting in breach of Rule 8(3)(k) of the NEPRA Licensing (Generation) Rules, 2000.
- (VI) The Licensee's act of withdrawing excess power in violation of its allotted quota of 650 MW as stipulated in the Government of Pakistan's Policy Guidelines dated

13<sup>th</sup> May 2009 and Implementation Agreement dated 13<sup>th</sup> April 2009 between the Licensee and the Government of Pakistan.

- (VII) Violation of Section 21(2)(f) of the NEPRA Act, which requires the Licensee to follow the performance standards laid down by the Authority for distribution and transmission of electric power, including safety, health and environmental protection instructions issued by the Authority or any Governmental agency;

8. The Licensee vide its letter CEO/SP/SCN-021/2009-0728 dated 28 July 2009, requested the Authority to extend the deadline for the response due from the Licensee by additional ten days. The Authority through its letter dated 3 August 2009 allowed additional 10 days to the Licensee to submit its reply to the Show Cause Notice.

9. The Licensee had also requested the Authority through letter No.ED/SP/NEPRA/FME-017/2009-0721 dated 21 July 2009 to approve its declaration of Force Majeure with regard to Long Unscheduled Power Interruption/Breakdown on 17 & 18 June 2009. KESCL also made a separate request through its letter No. ED/SP/NEPRA/FME-014/2009-0721 dated 21 July 2009 to approve its declaration of 18 & 19 July 2009 events as Force Majeure. Since the Authority had made the power interruption of 17 & 18 June 2009 basis for the Show Cause Notice, therefore, it decided to consolidate the Force Majeure application of KESCL with the Show Cause Notice proceedings and dispose it off through this decision. The Force Majeure application regarding July 2009 events, though frequently referred to in the KESCL's response to Show Cause Notice will be decided by the Authority through a separate decision.

10. The Licensee vide its letter 10 August 2009 submitted its response to the Authority's Show Cause Notice. Pursuant to the Licensee's response and its application for declaration of 17 & 18 June 2009 events as Force Majeure, the Authority decided to summon the Licensee for a hearing on both the issues on 31 August 2009. The Authority also summoned Ministry of Water & Power, Ministry of Finance and Pakistan Electric Power Company Private Limited (hereinafter referred to as "PEPCO") to attend the hearing.

11. The Authority's grounds of the Show Cause Notice, the Licensee's responses thereto, the Ministry of Water & Power, Ministry of Finance and PEPCO's responses wherever applicable and the Authority's analysis and findings in respect of each of the grounds from I to VII are detailed hereunder:

- (I) **The Licensee's failure to fulfill its service obligations in breach of Section 21 of the NEPRA Act read with of Rule 8(1)(b) of the NEPRA Licensing (Distribution) Rules, 1999, including, but not limited to, the Licensee's failure to ensure uninterrupted power supplies to the consumers within its service territory.**

11.1.1. KESCL submitted that this issue has been brought under Section 21 of the Act, which sets out the duties and responsibilities of a distribution Licensee. KESCL also submitted that it was not clear which of these duties and/or responsibilities are alleged to have been breached by KESCL (with the exception of the issue of failing to provide an uninterrupted power supply) and it is not, therefore, possible to give a proper response to this issue in the absence of further details.

11.1.2. As per KESCL, Rule 8(1)(b) of the NEPRA Licensing (Distribution) Rules, 1999 sets

out the power of the Authority to appoint an administrator and to revoke or suspend a distribution licence where there has been, *inter alia*, a breach of the provisions of the applicable documents having the effects set out in Rule 8(b). Again, it was respectfully submitted that the Notice did not, except for the issues of failing to provide an uninterrupted power supply, offer any details of any breach of any applicable documents.

11.1.3. KESCL submitted that a failure to provide an uninterrupted supply of electrical power may arise from:

**(i) Force Majeure**

11.1.3.1. KESCL argued that a tornado struck the NTDC Transmission Facilities between Jamshoro and Dadu on 17 June 2009 thereby causing a cascade effect leading to the shutdown of the entire system while on 18 July 2009 lightning struck the NTDC Transmission Facilities and combined with a monsoon storm which was unusual in all respects for the city of Karachi to cause the system to shut down and leading to interruptions in power supply. In this case the triggering event was outside the control of KESCL being a natural event over which it had no control.

**(ii) Systemic Default**

11.1.3.2. KESCL states that a systemic fault as a result of which, despite the best efforts of the person involved, the system in use to generate, transmit and distribute electrical power has become, over a period of time, inefficient and unable to generate, transmit and distribute electrical power so as to ensure an uninterrupted supply thereof.

11.1.3.3. KESCL submitted that systemic defects cannot form the basis for the taking of any action against KESCL in the manner contemplated in the Notice insofar as such systemic defects have been inherited by the new management of KESCL and KESCL has taken all reasonable measures to cure such systemic defects (within the limited time its new management has had) by adopting a series of measures.

**(iii) Permitted Disconnection**

11.1.3.4. As per KESCL another reason for interruption in power supply can be attributed to a disconnection of the supply of electrical power to consumers pursuant to law as a result of non-payment of dues to KESCL or for other lawful default. Although, under section 2.1 of the Implementation Agreement, KESCL is bound to supply continuous power to the Strategic Customers, as identified within Schedule I of the Implementation Agreement. However, in the event of a breakdown or an event that disrupts or disconnects such supply, the fact that KESCL has taken all measures possible to restore power to such Strategic Customers shall satisfy such duty.

**(iv) Willful Disconnection**

11.1.3.5. KESCL submitted that where there has been an interruption in the supply of electrical power it has been the result of a combination of circumstances set out in sections (i), (ii) and (iii) above. In no case has KESCL willfully caused an interruption in the supply of electrical power to its consumers. Its key achievements thus far have been designed to improve its connectivity with its consumers as set out in this letter.

11.1.4. During the hearing, KESCL submitted that its system was designed to work in synchronization with NTDC and not in isolation. It stated that Hub setting was not properly configured and the fault traveled from NTDC system to KESCL system and due to that KESCL's system went down. KESCL further claimed that it is planning to have blackstart facility in the near future which will be the first time that it will be introduced in the thermal generation in Pakistan.

**FINDINGS:**

11.1.5. The Authority has thoroughly analyzed the response of KESCL. With regard to compliance with performance standards, the KESCL has claimed that it was not violating section 21 and rule 8(1)(b) of the NEPRA Licensing (Distribution) Rules, 1999. The KESCL, however, has claimed Force Majeure in respect of the 17 & 18 June 2009 and 18 & 19 July 2009 events.

11.1.6. Regarding the first issue of Performance Standards, section 21(f) of the Act obligates the Licensee to follow the performance standards laid down by the Authority for distribution and transmission of electric power, including safety, health and environmental protection instructions issued by the Authority or any governmental agency. Article 11 of the Generation License and Distribution License also direct the Licensee to conform to the relevant performance standards as may be prescribed by the Authority from time to time. The rule 8(1)(b) of the NEPRA Licensing (Distribution) Rules, 1999 state the events on the happening of which the distribution license can be suspended or revoked. The rule provides that the distribution license can be suspended or revoked if a breach by the Licensee of any of the provisions of the applicable documents which materially and adversely affects the standards, price and quality of service, the reliability and integrity of the distribution system, the transmission system or any generation facility, or the safe, reliable and efficient operation of the electric power industry, save where such breach occurs without the willful or negligent default of the Licensee.

11.1.7. The terms "quality of service", "reliability and integrity of the distribution system", "safe, reliable and efficient operation of electric power industry" are not defined in the Act or the Rules or the Regulations. This is a legal principle that the terms not defined in the legal instruments (the Act, the Rules, the Regulations or any other relevant document) shall be interpreted first by taking their plain meaning. The general meanings of these terms are those which a lay man understands or thinks when used before him. It is quite obvious that when these terms are used before a common man he thinks that he will have a very good distribution system if not an excellent one. The unplanned power outages in the system will be minimum and whenever such unplanned outages will occur they will be repaired in the most efficient manner so that the consumers could rely on the system and maximum power supply is ensured to consumers.

11.1.8. It is pertinent to clarify here that the Authority is not referring to the planned load-shedding here but to the unplanned and unscheduled power interruption. In the instant case KESCL has miserably failed to provide uninterrupted/reliable power supply service to its consumers. There have been planned power outages in the city of Karachi similar to the one being observed in the other cities of the country and then there have unplanned power outages of long durations. In short the consumers faced continuous interruption in power supply. The Authority received numerous complaints regarding the KESCL's poor performance. Moreover, there has been a lot of hue and cry in the print as well as in the electronic media discussing and highlighting worst power outages and tripping problems in Karachi. Furthermore, there have been public demonstrations against the Licensee for repeated system failures and discontinuation in

electric power supplies. The Authority accordingly took cognizance of the acts of omission and commissions by the Licensee in respect of its performance obligations. Hence the Authority finds that the Licensee has violated section 21 of the Act and rule 8(1)(b) of the NEPRA Licensing (Distribution) Rules, 1999.

11.1.9. With regard to the power breakdown that occurred on 17 & 18 June 2009, the Authority has taken into consideration the report of its Inquiry Committee, which visited KESCL in early July 2009 to investigate the events thereof, and record the statements made by KESCL and other participants from PEPCO (National Power Control Center). The Authority considers that the breakdown in the KESCL system on 17 & 18 June 2009 can be divided into two parts. The first part concerns the initiation of fault and system behavior, whereas the second part is about the restoration efforts by KESCL.

11.1.10. The Authority, on the basis of the report of the inquiry committee, also asked KESCL to explain why its team was not working coherently and failed to perform in the desired manner. Moreover, a Show Cause Notice on the similar ground was issued to KESCL in March 2008, the Authority inquired KESCL what it had learned from the events happened during March last year? KESCL replied that they are not aware of that Show Cause Notice as the new management has taken over during September 2008. Regarding the performance, KESCL said that on 17<sup>th</sup> June 2009 five times fault traveled from Jamshoro to KESCL system, then it was decided to isolate the system and it was first time that KESCL worked in isolation. On the allegation that KESCL was not in contact with people at Bin Qasim power plant and due to incoherent and indifferent approach the fault could not be rectified soon, KESCL stated that they were continuously in touch with the people at Bin Qasim. KESCL also said that on 17<sup>th</sup> June 2009 relays performed the way they were supposed to. And during this crisis under-frequency was not the issue but frequency hunting was the issue.

11.1.11. According to PEPCO on 17 & 18 June 2009 and 18 & 19 July 2009, the Licensee's power system collapsed due to disruption of power import from NTDC system when NTDC network split into two parts due to outage of 500 KV Dadu-Jamshoro Double Circuit Transmission Line and 3X450 MVA, 50/220 kV auto transformer at Guddu respectively. On both occasions, northern part of NTDC network remained stable without any power interruption. System collapse in the area was averted through automatic load adjustment by the power plants and emergency load shedding carried out by the system operators. Had similar arrangements been available with the KESCL, its system would have withstood the withdrawal of power from the NTDC source especially when it is a 2400 system drawing just 1/4<sup>th</sup> of its requirement from the NTDC. If a similar fault occurs again, KESCL's system is likely to collapse again. KESCL should thus take technical measures and configure its transmission network in such manner that disruption of power supply from NTDC network does not result in total system collapse in KESCL area. In PEPCO's opinion a situation which is foreseeable/predictable cannot be termed as Force Majeure.

11.1.12. As for the initiation of fault, the Authority accepts KESCL's position that the fault was triggered due to problems in NTDC's system. The KESCL system however, did not operate as per standard utility operational practice. Its machines should have continued operating as one of the units at Bin Qasim Power Plant did. The records from Bin Qasim Power Plant confirm that Unit # 5 continued running while rest of the units tripped. Unit # 5 tripped subsequently but on its internal fault (turbine deaerator level high), therefore the KESCL's claim during the hearing that all of the units at Bin Qasim tripped immediately after the first occurrence of fault is not borne by

facts.

11.1.13. KESCL claim that its restoration efforts were carried out according to standard practices was also not found acceptable by the Authority on the following grounds:

- a. The continued efforts by KESCL management and operators to link with NTDC's system which was not stable, shows lack of necessary skills required for such operations. KESCL took the decision to de-link its system from that of NTDC, however it was at a much belated stage. That also suggests that either KESCL was not aware of the faults in the NTDC's system or if they were, it did not act promptly by de-linking its system much earlier. KESCL claim that its system is not designed to operate independently is also devoid of the facts as Gas Turbine Power Station, Faisalabad, Uch I, Kot Addu and Kotri currently have the blackstart facility. The Adviser to National Power Control Centre stated that KESCL's system had been operating independently and it was around 1995 that KESCL's system began to operate in parallel with NTDC's system. The Authority also considers that according to standard utility practice, necessary protection schemes should exist to separate the two systems in case of fault conditions. The Authority also noted the admission by the CEO that some of the protective relays might have been taken out of the system to keep the two systems running in parallel.
- b. It was also alleged that KESCL was not utilizing the power available with Gul Ahmed and Tapal Power Plants. KESCL replied that Gul Ahmed was not available and Tapal was though available but since it was on the west side of the city it was not possible to bring it to the other side. KESCL's inability to make use of electrical power from Gul Ahmed Energy and Tapal Energy also puts a question mark on the skill level of KESCL operators. KESCL document titled "System Operating Procedures - April 2008" under Chapter 8 entitled "Procedure for Restoration of supply in the Event of Total System Failure" part 3, options 2 and 3 at page 25 and 26 respectively provides detailed steps needed for the restoration of system (after black out) by utilizing power from Gul Ahmed Energy or Tapal Energy as black-start facilities. Failure of KESCL to restore its system, although power was available from these two power plants clearly shows lack of requisite skills in KESCL operators as they were not able to implement the instructions under their own Operating Procedure document.
- c. The NEPRA Inquiry Committee which visited KESCL on July 1 and 2 also noted similar gaps in KESCL's handling of the events of 17 June 2009. The Committee observed the lack of real time communication between KESCL and NTDC and within KESCL, as well as inadequate facilities at central dispatch center which is under construction for quite some time now. Another NEPRA Committee which visited KESCL in September 2008 also recommended expediting the Load Dispatch Project. Failure of KESCL to implement necessary Supervisory Control and Data Acquisition Facilities (SCADA) at LDC has proved to be a handicap for the utility.
- d. NTDC also provided comments on KESCL's handling of 17 June events. According to NTDC:  
"KESCL system which was connected to Southern PEPCO system should have withstood the loss of 610 MW from PEPCO through the protective relays (as was done by PEPCO Northern system), but completely collapsed due to its inability to sever itself from the PEPCO system-- an essential requirement for any stable network."

- e. PEPCO has also provided similar comments about KESCL's failure to restore its system through its letter NO. GI (CPPA)/3601 dated 30 August 2009.

11.1.14. The term "Force Majeure" is defined in the Performance Standards (Distribution) Rules, 2005. The term means an act of God that is reasonably not foreseeable by a distribution company or a force or cause beyond the reasonable control of a distribution company. This is quite clear that storms do some times hit the electric power system. The electric power systems are designed to cater for and sustain such storms so that reliable power supply could be maintained and dispatched to consumers. The electric systems fail when they are not properly maintained, the standard operating procedures are not followed or people are not trained as required and in case of emergencies every one acts in isolation disregarding a coherent and coordinated approach. After analyzing the response of KESCL and report of the committee constituted by the Authority to investigate the matter, it is proved that the KESCL system failed due to reasons mentioned in para a to e above.

11.1.15. KESCL's excuse that the new management has recently taken over and it is improving the system cannot be entertained by the Authority as the Authority deals with its Licensee and not the management. It is the responsibility of the company as a corporate/judicial person to maintain its system and not the management in isolation that in case the management goes the responsibility also goes with it. So the Authority cannot allow power interruption on the ground that the new management has recently taken over the control of the company. It has been full one year since the new management has taken over and the Authority has been continuously advising them to improve the system. Keeping in view the miseries and difficulties being faced by the consumers of Karachi and the functions & responsibilities of the Authority in this regard, the Authority cannot give unlimited time to KESCL for improvement in electric system. The maintenance and improvement of an electric system is a continuous process and the Authority being a custodian of the rights of consumers cannot remain indifferent on continual interruption in power supply on one pretext or the other.

11.1.16. In view of the foregoing reasons, the Authority decides that the power supply breakdown and KESCL's failure to restore the power supply in a timely manner on 17 and 18 June 2009 cannot be declared as Force Majeure. KESCL's request through letter No.ED/SP/NEPRA/FME-017/2009-0721 dated 21 July 2009 to approve its declaration of Force Majeure with regard to Long Unscheduled Power Interruption/Breakdown on 17 & 18 June 2009 stands disposed off as having been not accepted by the Authority. The Authority further decides that KESCL has violated the provisions of the Act, the Rules and the Regulations and instructions/orders of the Authority given during the last one year and has therefore failed to provide uninterrupted power supply to its consumers. .

- (II) The Licensee's failure to dispatch power from its own plants and the IPPs (Gul Ahmed Energy Limited and Tapal Power Energy Private Limited) causing a reduction and deliberate under-utilization of the available net generation capacity at various times during the last one year and thereby resulting in the violation of Rule 8(3)(b) & (f) of the NEPRA Licensing (Generation) Rules, 2000.**

11.2.1. The Licensee submitted that the Rule 8(3)(b) of the NEPRA Licensing (Generation) Rules, 2000 refer, inter alia, to the breach by a Licensee of the provisions of the applicable documents in the circumstances set out in said Rule. According to the Licensee, the Show Cause



Notice did not refer to any such document nor did it set out any breach thereunder. Rule 8(3)(f) refers to reduction of net capacity in the generation facilities for reasons other than a planned or maintenance outage or supervening impossibility beyond the control of the Licensee.

11.2.2. According to the Licensee, the Rule 8(3)(b) and Rule 8(3)(f) do not make any specific reference to the underutilization of available capacity and even under the Implementation Agreement 2005, the Licensee has made no commitment to increase its generation capacity; conversely it is undertaken by GoP that it shall facilitate KESCL's enhancement of its licensed capacity by 1000MW under Article XI, however KESCL has still increased its generation capacity thus it is not clear to KESCL as to how this issue falls within the scope thereof.

11.2.3. KESCL argued that it had an accumulated backlog of payments due to both Tapal and Gul Ahmed of PKR 4.7 billion in September 2008, and worked to progressively reduce the outstanding amounts due to these companies over the 6 months from September 2008 to March 2009. All amounts outstanding to these companies are charged late payment interest at a very high rate, and given the already rising cost of borrowing, KESCL had to try and minimize the overall impact of financial costs. It was therefore prudent and absolutely necessary to rationalize dispatch of these plants for a short period to allow KESCL to reduce overall outstandings and to try and control the massive cash bleed being suffered by the company.

11.2.4. KESCL submitted that the prudent utilization of expensive generation does not amount in any way to a breach of the NEPRA rules cited above. In particular, it is not clear how this amounts to a breach of an "applicable document" as KESCL is not obliged to uptake capacity under an applicable document. Further, as stated above, Rule 3(f) of the Generation Rules is framed so as to apply to the owner of generation facilities and not to a power purchaser.

11.2.5. KESCL submitted that at no time it had underutilized capacity deliberately, and had only been forced to rationalize its sources of power in the face of a massive financial crunch. Delayed payments from Government-owned entities, continued non-payment by local government authorities such as Karachi Water and Sewerage Board (hereinafter referred to as "KWSB") and a lack of action on circular debt, which has worsened due to the fact that the ECC decision on this matter was not implemented in a timely manner.

## **FINDINGS:**

11.2.6. The Licensee has admitted the under-utilization of generation capacity, however, it has tried to justify the same on different grounds. It is evident from KESCL's response that KESCL made a conscious decision to carry out load shedding while keeping its own plants and IPPs at reduced out put. This is against the spirit of the Rule 8(3)(b) and (f) of the NEPRA Licensing Generation Rules, 2000 which provides that full available supply to the consumers be maintained. Rule 8(3)(b) and (f) provide that a Licensee will commit breach if it fails to comply with prudent utility practices and its action affects the Quality of Services willfully and due to negligence. It is obvious that reducing power output and resorting to load shedding for the consumers to whom KESCL has an obligation to supply is not a prudent utility practice while it certainly affected quality and reliability of service.

11.2.7. The KESCL has willfully and deliberately taken the decision to reduce electric power withdrawal from IPPs which it cannot do under the rules. The economic dispatch doctrine as claimed by KESCL cannot be accepted as the economic dispatch criterion is used to economize

on fuel bill while not compromising on the electricity demand of consumers while in this case the act by KESCL of deliberate underutilization of its available capacity has resulted in depriving the consumers from electricity.

11.2.8. KESCL has attributed the decision to the financial constraints being faced by it. It should be clearly understood that arrangement and management of funds and its cash flows on day to day basis is the sole responsibility of KESCL. Neither the GoP nor the consumers have any role to play in this regard. The underutilization of power capacity from Gul Ahmed and Tapal Energy which was available in the system resulted in energy shortfall in the KESCL system thus adding to the load shedding hours for the consumers of Karachi. KESCL had to pay these IPPs the full capacity charges even if no energy was drawn from these IPPs. This financial burden was in addition to the late payment charges being incurred by KESCL in the form of high bank interest which could have been reduced or avoided had KESCL utilized the full capacity of these IPPs and sold the additional electric power to the consumers.

11.2.9. The contention of KESCL that underutilization of its capacity was not tantamount to breach of applicable documents is not acceptable by the Authority. The NEPRA Licensing (Generation) Rules, 2000 define the applicable documents as under:

“applicable documents” means the Act, the NEPRA rules, and regulations, any documents or instruments issued or determinations made by the Authority under any of the foregoing or pursuant to the exercise of its powers under the Act, the grid code, the applicable distribution code, if any, or the document or instruments made by the Licensee pursuant to its generation licence, in each case of a binding nature applicable to the Licensee or where applicable, to its affiliates and to which the Licensee or any of its affiliates may be subject.”

11.2.10. The definition clearly states that the documents or instruments made by the Licensee pursuant to its generation license are applicable documents. KESCL has entered into Power Purchase Agreement with IPPs and under rule 8(3)(f) it cannot reduce its net generation capacity. The rule 8(3)(f) provide as under:

“Subject to the provisions of sub-rules (2) and (4), and without limiting the generality of sub-rule (1), the occurrence of the following events shall constitute failure of the Licensee to comply with corresponding obligations which shall, unless expressly excluded or modified, be deemed to have been incorporated in each generation licence, namely:-

...

- (f) reduction in net capacity of the generation facilities for reasons other than a planned or maintenance outage or supervening impossibility beyond the control of the Licensee which is not remedied within the time specified in this behalf in the applicable documents;”

11.2.11. In view of the foregoing para, the Authority is of the opinion that the Licensee has intentionally underutilized the generation capacity and has intentionally reduced the utilization of available generation capacity which it is not allowed under the NEPRA Licensing Generation Rules, 2000. The violation of the license conditions by KESCL which require it to comply with the rules may result in initiation of action by the Authority under section 28 & 29 of the Act. The

Authority is of the considered opinion that KESCL has committed the violation of Rule (8)(3)(b) and (f) of the NEPRA Licensing Generation Rules, 2000, hence making it liable under section 28 & 29 of the Act.

**(III) The Licensee's failure to enter into a Power Purchase Agreement with NTDC and thereby violating Article 8.9 of the Amended Implementation Agreement dated 13<sup>th</sup> April 2009 as well as the Authority's Decision No. NEPRA/R/TRF-101/KESC-NTDC-2008/276-79 dated 29<sup>th</sup> September 2008, whereby the Licensee was required to enter into a Power Purchase Agreement with NTDC within two months of its notification.**

11.3.1. KESCL submits that the Authority through its decision No. NEPRA/R/TWM01/KESC-NTDC-2008/276-79 dated 29 September, 2008, required it to enter into a Power Purchase/Sale Agreement (hereinafter referred to as "PPA") with NTDC within two months of the issuance of such notification. Article 8.9 of the Amendment Agreement was signed on 13 April 2009 and states, in material part, that:

*"GoP shall cause NTDC to enter into a power purchase agreement with Company., on terms and conditions which are mutually acceptable to Company and NTDC. "*

11.3.2. In the opinion of KESCL it has exchanged considerable correspondence with NTDC with a view to expediting agreement on the terms of the PPA. Despite the best efforts of KESCL to agree the terms of the PPA with NTDC this has not been possible due to different reasons. KESCL argues that it is unclear how the inability of the parties to agree upon the terms of the proposed PPA can be said to amount to a violation of either Section 28 or Section 29 of the Act. An agreement to enter into an agreement is an executory contract. Failure to be able to enter into such agreement because the parties are unable to agree, despite the use of their reasonable efforts is not a breach of the law or the Amendment Agreement. It is submitted that the inability of the parties to agree to the terms of the Amendment Agreement is not justifiable under Sections 28 and/or 29 of the Act and does not fall within the matters contemplated therein.

11.3.3. CPPA-NTDC submitted to the Authority that it has, time and again, asked KESCL to enter into a Power Purchase Agreement through numerous correspondence and bilateral meetings even in the Ministry of Water & Power. KESCL is deliberately lingering on the finalization of the PPA on one pretext or the other. In a meeting held on 13 August 2009 most of the outstanding issues were resolved however some issues pertaining to billing due date, mode of payment, such as type of L/C and its size remained unresolved. KESCL vide its letter dated 25 August 2009 once again reiterated the same stance as discussed in the said meeting. NTDC takes this state of affairs as delaying tactics towards finalization of the PPA.

11.3.4. The Ministry of Water & Power is of the view that KESCL is deliberately adopting delaying tactics in signing the PPA with NTDC. Over half a dozen meetings have taken place between KESCL and NTDC and every time KESCL comes up with an excuse and disputes the interpretation of the clauses in the PPA. In spite of best efforts on the part of the PEPCO and NTDC, KESCL is not signing the PPA upto now despite efforts of the Ministry of Water and Power and specific instructions given by the Cabinet Committee on Energy Crisis in this regard to KESCL.

**FINDINGS:**

11.3.5. KESCL has admitted its failure to sign the PPA with NTDC, however, KESCL has attributed its failure/delay in signing PPA to the unresolved outstanding issues with the NTDC. It has justified it by stating that despite reasonable efforts, if it could not enter into PPA with NTDC, its failure should not be taken as violation of section 28 and 29 of the Act.

11.3.6. During the hearing KESCL stated that all the issues have been resolved except two issues i.e. (i) Delivery/Metering points; and (ii) Maximum Demand which have been referred to the Authority for decision/arbitration. KESCL and NTDC also stated, on the Authority's inquiry, that they will accept and abide by the decision of the Authority. The Authority, however, found that, as against KESCL's claim the matter is referred to it by NTDC. The Authority decided to immediately call a hearing on these specific issues of both the parties and decide the matter at the earliest.

11.3.7. With regard to the KESCL's claim that not signing the PPA does not tantamount to violation of section 28 and 29 of the Act, the Authority is of the opinion that it is very much covered under the Licensing (Generation) Rules, 2000. The Article 2 of the Generation Licence provides that the licence is granted subject to the provisions of rules as amended from time to time. The Rule 8 (3) provides as under:

“Subject to the provisions of sub-rules (2) and (4), and without limiting the generality of sub-rule (1), the occurrence of the following events shall constitute failure of the Licensee to comply with corresponding obligations which shall, unless expressly excluded or modified, be deemed to have been incorporated in each generation licence, namely:-

...

(b) breach of, or failure in compliance by the Licensee with prudent utility practices, any provision of the applicable documents, any instructions issued pursuant to the applicable documents or any codes, programmes or a manual required to be prepared pursuant to the applicable documents which materially and adversely affects the standards, safety, reliability, integrity, price and quality of services, the reliability and integrity of the transmission system, a distribution system, a generation facility or the safe, reliable and efficient operation of the electric power industry except where such breach or failure of compliance occurs without the willful or negligent default of the Licensee, including with out limitation, because of the breach by any other party to a power acquisition contract between such party and the Licensee where such breach could not have been prevented by the Licensee through adoption of reasonable measures;

...

(g) reduction in net capacity of the generation facilities for reasons other than a planned or maintenance outage or supervening impossibility beyond the control of the Licensee which is not remedied within the time specified in this behalf in the applicable documents;”

11.3.8. To better understand the above mentioned provision it is important to understand the meaning of “Applicable Documents”. The NEPRA Licensing (Generation) Rules, 2000 define the Applicable Documents as under:

DECISION ON SHOW CAUSE NOTICE TO KESCL U/S 28 & 29 OF THE ACT

“applicable documents” means the Act, the NEPRA rules, and regulations, any documents or instruments issued or determinations made by the Authority under any of the foregoing or pursuant to the exercise of its powers under the Act, the grid code, the applicable distribution code, if any, or the document or instruments made by the Licensee pursuant to its generation licence, in each case of a binding nature applicable to the Licensee or where applicable, to its affiliates and to which the Licensee or any of its affiliates may be subject.”

11.3.9. The above mentioned definition of applicable documents clearly states that any documents or instruments issued or determinations made by the Authority under the Act are applicable documents. The Licensee has signed/executed the Implementation Agreement or Amendment Agreement pursuant to the License issued by the Authority. The determinations made by the Authority are as such enforceable on a Licensee. The Amendment Agreement in Article 8.9 clearly requires both (NTDC and KESCL) to enter into PPA. The Authority through its decision dated 29 September 2008 required KESCL to enter into PPA with NTDC within two months of the its notification. KESCL has neither followed the instructions/directions given through the determination of the Authority nor has it complied with the mandatory provisions of the Amendment Agreement which are both applicable documents. It is pertinent to mention here that KESCL has admitted in response to Ground IV below that public documents and determinations are applicable documents. Therefore, its denial that Implementation Agreement or Amendment Agreement are applicable documents is self contradictory. KESCL is taking two different positions in the same document i.e. reply to Show Cause Notice. There cannot be two opinions that Implementation Agreement or Amendment Agreement and decisions/determinations of the Authority are both public documents. Hence KESCL admission that public documents are applicable documents was noted and considered by the Authority.

11.3.10. In the light of the above mentioned discussion it is very clear that by not signing the PPA, KESCL is violating the mandatory provisions of the Act and the rules and is therefore liable under section 28 & 29 of the Act. However, the Authority feels that since both KESCL and NTDC are trying to settle their issues and in this regard they have also forwarded two issues to be decided by the Authority. The Authority feels that non-signing of PPA is not due to the faults of KESCL only. Hence the Authority takes a lenient view of the issue and directs KESCL to sign the PPA within four weeks of the decision of the Authority on the two issues referred to it by the parties. The KESCL shall intimate the compliance of the orders/instructions of the Authority within the time frame as mentioned hereinabove.

**(IV) The Licensee's failure to fulfill its obligations under the ECC decision dated 26<sup>th</sup> August 2008, and various provisions of the Implementation Agreement dated 13<sup>th</sup> April 2009 entered into with the Government of Pakistan regarding making of timely payments to NTDC for supply of electric power to the Licensee thereby resulting in breach of Rule 8(3)(k) of the NEPRA Licensing (Generation) Rules, 2000.**

11.4.1. KESCL submitted that even if the Implementation Agreement and the Amendment Agreement are "applicable documents" they do not contain any provision regarding the making of timely payments by KESCL to NTDC, but do provide that interest at the rate of the treasury bill rates be paid on all outstanding amounts. Overall, payment provisions (and the time of making payments) is a subject that is always covered by the PPA and does not form

part of an Implementation Agreement, and, therefore, the provisions of Rule 8(3)(k) are not attracted in the present case and the issue, as framed in the Notice, is not sustainable.

11.4.2. KESCL argued that despite the fact that it is experiencing a considerable liquidity crunch and is caught up in a circular debt problem, it has still allocated its tariff subsidy to the payment of NTDC bills, as is proved by the letters issued to the GoP and NTDC, it has been agreed between all parties concerned that GoP would make direct payment of the subsidy amount to NTDC and since KESCL has long since requested GoP to release such payment to NTDC, it is not in fact KESCL who has caused the delay in making payment to NTDC, but in fact the GoP, whose actions KESCL is in no position to expedite.

11.4.3. PEPCO, in its response, has referred to Clause IV of Schedule-I to Amendment Implementation Agreement (IA) dated 13 April 2009 which provides that:

“KESCL will pay current bill for import of power from 15-10-2008 and final agreed total outstanding arrears up to 14<sup>th</sup> October 2008 as per payment plan agreed in CC decision dated 14<sup>th</sup> October 2008 alongwith markup of 6-months Treasury bill rate on the net outstanding dues. As regards the current balance of payment with effect from 15-10-2008, KESCL will make this payment upfront immediately after signing of IA.”

11.4.4. Hence, as per PEPCO, KESCL narration that IA and the Amendment Agreement do not contain any provision regarding making of timely payments by KESCL to NTDC is neither logical nor maintainable. PEPCO requested that NEPRA may prevail upon KESCL to clear all outstanding dues and ensure timely payment to NTDC.

11.4.5. NTDC has been requesting KESCL for payment of its current and past dues but all in vain. KESCL has not made any payment after June 2009. There is no commitment by the GoP that the subsidy to be provided by it will be set-off against the payment that KESCL has to make to NTDC. PEPCO also alleged that KESCL is even not making payment which is over and above the subsidy amount. Even the committed amount of arrears which is to be paid by KESCL in installments is not being paid by it for the last four months.

11.4.6. Ministry of Water & Power stated in their response that KESCL is not making any payments to NTDC on account of the power purchased. As of today, the total NTDC dues outstanding against KESCL are Rs.41.664 billion. The Ministry of Water & Power and PEPCO contended that they have tried their level best to pursue KESCL to make payments to NTDC. These efforts have however, not yielded any result and KESCL is violating Article 8.9 of the amended IA by not signing the PPA with NTDC. KESCL is, therefore, liable for penal action under the law/rules.

11.4.7. The Ministry of Finance has conveyed to the Authority that the Finance Division has not made any formal arrangement with KESCL regarding adjustment of Company's subsidy towards NTDC's outstanding dues. However, a meeting was held on 05-01-2009 under the Co-chairmanship of Minister for Water & Power and Finance Minister (Former Advisor to PM on Finance) in the Ministry of Water & Power, and in that meeting it was, *inter alia*, decided on the issue as under:

“It was decided that KESCL should start making regular payments of its current dues to

PEPCO on monthly basis while Finance Division will make 80% payment to PEPCO directly from the budgeted subsidy of KESCL for Financial Year 2008-09 and the balance 20% shall be released to KESCL. The meeting also advised KESCL and PEPCO to reconcile the amount payable by KESCL to PEPCO".

#### **FINDINGS:**

11.4.8. The Authority has analyzed and finds that the KESCL has not denied the delay in making the payments to NTDC, however, it has attributed the delay to GoP as allegedly there is an agreement between the parties that GoP will directly pay the amount of subsidy to the NTDC on behalf of KESCL and therefore it is the GoP and not KESCL which is responsible for the delay in making payments to NTDC. The Rule 8(3) provides as under:

"Subject to the provisions of sub-rules (2) and (4), and without limiting the generality of sub-rule (1), the occurrence of the following events shall constitute failure of the Licensee to comply with corresponding obligations which shall, unless expressly excluded or modified, be deemed to have been incorporated in each generation licence, namely:-

- ...  
(k) any default by the Licensee in making any payment, other than the license fee, required to be made by it under the applicable documents within ninety days of the due date thereof;"

11.4.9. KESCL's stand that the matter is covered under the PPA and therefore not relevant as an issue framed in the notice, is not acceptable. Any breach under rule 8 (3) (k) by not making payments which directly affects the performance of NTDC which in turn would affect the service to the consumers. NEPRA being the sector regulator cannot condone such conditions. The KESCL should also keep in mind that the non-payment of NTDC invoices will ultimately result in power disruption and outages and the Authority cannot ignore such acts of the Licensee which directly affect on the life of the common man.

11.4.10. In view of the above, this is very clear that the KESCL has committed violation of Rule 8(3)(k) of the NEPRA Licensing (Generation) Rules, 2000. The Authority however, in view of the collateral liabilities of the GoP and KESCL is of the opinion that there is no formal agreement as stated by the Finance Division vide Letter U.O.No.F.5(16)CF-1/2006-07/1746 dated 1-09-2009 between KESCL and the Finance Division regarding adjustment of Licensee's subsidy towards NTDC's outstanding dues. Hence the Authority hereby warns KESCL to make timely payments to NTDC and even if the Finance Division will adjust the subsidy towards NTDC's outstanding amounts it is the job and responsibility of KESCL to follow that up and make sure the payment is made to NTDC.

- (V) **The Licensee's failure to make payment of the amounts due and payable to its IPP, Gul Ahmed Energy Limited thereby resulting in breach of Rule 8(3)(k) of the NEPRA Licensing (Generation) Rules, 2000.**

11.5.1. KESCL submitted that the PPA with GAEL is a "stand alone" document which contains its independent remedies that are available to GAEL in the event of a dispute or a breach of the terms of the PPA. These remedies remain available, equally to GAEL and to KESCL in the event of a breach. The use of Rule 8(3)(k) as means of intervening in a dispute

between two private sector parties would amount to pre-empting their rights and obligations arising under the PPA and would render the dispute resolution provisions thereof meaningless. The context of the definition of "applicable document" refers to public documents and determinations and not to private contracts between parties.

11.5.2. As per KESCL, despite suffering from a significant cash shortfall, it has continued to make payments to GAEL to the fullest extent. Given the mismatch between the actual cost of power purchase and the compensation provided for this in the tariff, KESCL does not generate enough cash to meet the full cost. Therefore, payables to both companies rose again to a current level of over PKR 6.0 billion at the end of June 2009. As we have stated earlier, the mismatch between the actual cost of power purchase and the tariff component for this has led to this situation.

11.5.3. KESCL stated that it will not be possible to resolve the circular debt issue, which has worsened due to the fact that the ECC decision was not implemented in a timely manner, nor has the Authority addressed KESCL's Tariff petition that has been filed since July 2008 in order to seek a one time increase and modification in the current adjustment mechanism in order to successfully comply with the pass through principles of the Multi Year Tariff ("MYT"), unless the GoP and other provincial and local government authorities also make full payments of amounts due to KESCL. As of 30 June 2009, the total outstanding dues from GoP and other government entities amounted to over PKR 32 billion. Without payment of these overdue amounts and the correction of the multiple anomalies in its tariff, it is impossible for KESCL to meet all its payment obligations on a timely basis. KESCL submitted that holding KESCL to account on this matter is futile unless the other parties owing payments to KESCL are also made to settle their long overdue bills.

11.5.4. Ministry of Water & Power states that it is a fact that KESCL has defaulted in making regular payments to IPPs including Gul Ahmed Energy. The Cabinet Committee on Energy during its meeting held at Karachi on 29 July 2009 strongly condemned this attitude and warned KESCL to purchase maximum available power from IPPs and clear their dues.

#### **FINDINGS:**

11.5.5. With regard to the objection raised by the Licensee that PPA is a stand alone document and it is not covered under the definition of applicable documents, the Authority is of the opinion as discussed in detail under Ground III above that PPA is very well covered under the definition of applicable documents. If the Authority due to any reason closes its eyes from such types of negligence that are being committed by the Licensee then the consumers of the country in general and consumers of the metropolitan city of Karachi in particular will suffer a lot due to non-payment of dues and disruption in electricity supply by the IPPs with whom KESCL has signed PPAs.

11.5.6. The KESCL argument that there is mismatch between the actual cost of power purchase and the compensation provided for this in the tariff, KESCL does not generate enough cash to meet the full cost does not justify its stopping payments owed by it.

11.5.7. The Authority has accordingly noted that KESCL's arguments as given in para 11.5.1 and 11.5.2, giving justification for non-payment of its dues to GAEL do not hold ground. While the Authority does not want to intervene in a commercial contract between the parties it cannot



remain oblivious to the impact of any default by a contracting party on the consumers of electricity in Karachi. Under the circumstances, a persistent failure of KESCL leading to disruption of electric supply from IPPs shall make it liable for penal action for violation of the applicable documents as noted in the findings of the Authority under Ground II above. KESCL's logic that its efforts to improve its cash flows by reducing utilization of Gul Ahmed Energy Limited is not acceptable. If KESCL's logic is accepted then the utility may altogether stop its operation so that its "payables" remain within limits. The Authority considers that under section 21 (b) of the Act KESCL is responsible to provide distribution services and make sales of electric power within its territory on a non discriminatory basis to all the consumers who meet the eligibility criteria laid down by the Authority.

11.5.8. In view of the above, the Authority finds that the Licensee has violated the Rule 8(3)(k) of the NEPRA Licensing (Generation) Rules, 2000. The Authority accordingly warns KESCL to ensure that the failure to make timely payments to IPPs does not result in disruption of electricity to its customers.

**(VI) The Licensee's act of withdrawing excess power in violation of its allotted quota of 650 MW as stipulated in the Government of Pakistan's Policy Guidelines dated 13<sup>th</sup> May 2009 and Implementation Agreement dated 13<sup>th</sup> April 2009 between the Licensee and the Government of Pakistan.**

11.6.1. KESCL submitted that the Implementation Agreement and the Amendment Agreement do not contain any express restriction on the import of any quantity of electrical power by KESCL from NTDC. The Amendment Agreement does contain the following provision which is relevant to the present context:

*"GOP shall cause NTDC to enter into a power purchase agreement with the Company for the sale of up to 650 MW of electrical power in a quantity which is reasonably required to meet the requirements of the Company for a period of not less than five years from the date of effectiveness of such power purchase agreement, all on terms and conditions which are mutually acceptable to the Company and NTDC, "*

This provision, in the opinion of KESCL, is relevant in the context of the PPA to be entered into between KESCL and NTDC and allows the process of negotiation to be carried out between the parties.

11.6.2. As per KESCL, it has only drawn negligible amounts over and above its allocated quota of 650 MW, that also for very limited periods. On average for any given month, the average capacity drawn and actual energy utilized in any month have been at or well below the agreed level of 650 MW.

11.6.3. As per KESCL multiple meetings have been held between KESCL and NTDC/PEPCO officials regarding the calculation of Maximum Demand Indicator ("MDI") in the monthly bills of power export to KESCL by NTDC. KESCL has submitted that the MDI should be the simultaneous sum of the lines feeding KESCL on the same half hour period basis as opposed to the individual sums of the maximum of the two MDIs added together and then taken as a single MDI for billing purposes. Due to this practice, the current method used by NTDC results in an MDI which is an inflated version of the actual MDI or the maximum demand raised by KESCL.

on a cumulative basis at any given time as per the billing mechanism in any month.

11.6.4. KESCL argues that the amount of power drawn by it from NTDC is approximately within the quota provided to KESCL, and any significant excess is attributed to a difference of calculation methodology. It has been requested by KESCL that the difference in the figures should be reconciled by utilizing the simultaneous half hourly data of supply of power from the two interconnections in order to verify the invoices of NTDC for the bills of the months from August 2008 to May 2009.

11.6.5. PEPCO in its response stated that KESCL is continuously violating the allotted quota of 650 MW. The quota does not mean that KESCL should draw 650 MW round the clock. The fact of the matter is that export of the 650 MW is the maximum limit which may be reached at times. Excess withdrawal of power by KESCL results in increase of load-shedding in the rest of the country, causing unrest in the distribution companies.

11.6.6. Ministry of Water & Power stated in their response that inspite of extensive discussions held with KESCL and advice to them, KESCL does not remain within its quota in withdrawing power from NTDC and often withdrawn more than 650 MW specially during peak hours. The power withdrawn by them fluctuates in the range between 500-800 MW. This is a serious violation of the Implementation Agreement. There is no mechanism available with PEPCO to curtail their withdrawal except cutting off the whole supply by NTDC/PEPCO which is not in the interest of people of Karachi.

#### **FINDINGS:**

11.6.7. KESCL has admitted drawing excess quota from NTDC in violations of its allocated quota. However, it has claimed that the excess drawings are negligible and that too for a limited period. KESCL has also submitted that the amount of power drawing by it from NTDC is approximately within its prescribed limit any significant excess is attributed to a difference of calculation methodology.

11.6.8. The Authority understands that the concept of Maximum Demand Indicator is always related with the time period. Daily maximum demand drawn by KESCL has to be the coincidental recorded on the half hourly demand basis on all NTDC circuits feeding KESCL while the monthly maximum demand shall be maximum figure of the month. Although the KESCL's definition of MDI is correct yet, at times, KESCL has drawn coincidental maximum demand beyond its limits of 650 MW and the table on Page-28 of the KESCL's reply to Show Cause Notice clearly reflects extra withdrawal by KESCL which is against the Head of Terms (HOT) of the proposed PPA.

11.6.9. In the hearing KESCL stated that the NTDC never produced the meter print outs and only the manual readings have been sent to KESCL. The NTDC could not rebut this point except stating that the print outs are available.

11.6.10. The Authority feels that it is a serious matter and adversely affects the interest of NTDC and DISCOs during peak load hours. The NTDC and KESCL should use the same calculation methodology as explained in para 9.6.8 above. The issue under examination is maximum power drawn by KESCL in a day and not the average power drawn by it. The Authority, therefore, decides to warn and direct KESCL not to withdraw excess power from the

NTDC system and to the maximum rely on its own generation facilities and its IPPs so that the DISCOs do not experience unscheduled power load shedding.

**(VII) Violation of Section 21(2)(f) of the NEPRA Act, which requires the Licensee to follow the performance standards laid down by the Authority for distribution and transmission of electric power, including safety, health and environmental protection instructions issued by the Authority or any Governmental agency.**

11.7.1. KESCL submitted that NEPRA itself has acknowledged this fact, since it has granted KESCL an exemption from Rule 1(2)(i) of the Performance Standards (Distribution) Rules, 2005 up to and including the 31 December 2009. On this basis, KESCL is currently exempted from any penalty that may be applicable for any perceived or alleged violation of the performance standards under Section 21 (2)(f) of the NEPRA Act 1997.

11.7.2. KESCL also submitted a Force Majeure application to NEPRA on the 19<sup>th</sup> June 2009 under section 10 of the Performance Standards (Distribution) Rules, 2005. NEPRA accepted the application submitted on 19 June 2009, and KESCL submitted a further application in an amended format on 21<sup>st</sup> July 2009 to NEPRA, KESCL has also filed a similar application for Force Majeure for the events of July 17 to 19, which were clearly the result of act of God, and by their very nature, must be considered force majeure events. Given this, it is not reasonable to hold KESCL accountable for a lapse of performance standards at any time.

#### **FINDINGS:**

11.7.3. KESCL has not denied the violation of the performance standards, however it has attributed the same to the Force Majeure conditions for which the application is already lying with the Authority. Furthermore, KESCL has submitted that the performance standards do not apply to KESCL as they have specific exemption till 31 December 2009.

11.7.4. The Authority understands that KESCL has exemption till 31 December 2009 however this exemption does not mean that the Licensee is not required to follow the Performance Standards. The exemption is only relevant for the purpose of penalty and not for the purpose of observance of performance standards. The Licensee is obligated to follow the standards so that when the exemption period is over its system is compliant with the Performance Standard (Distribution) Rules, 2005. Hence the Authority hereby warns the Licensee to follow the standards in letter and spirit. KESCL is directed to prepare a plan for the enforcement and compliance with Performance Standard (Distribution) Rules, 2005 and submit to the Authority within four weeks. With regard to the Force Majeure application by KESCL, the decision of the Authority under Ground I regarding the Licensee's failure to ensure uninterrupted power supplies to the consumers within its service territory is already given above.

#### **ORDER:**

12. In view of the above discussion, perusal of documents and arguments extended in the hearing the Authority under section 28 and 29 hereby passes the following order:

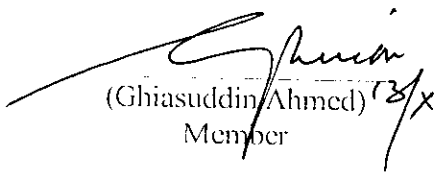
1. In respect of Ground I the Authority hereby imposes a fine of Rs.300,000/- to be paid by the Licensee within 30 days of the issuance of this decision. Furthermore, the

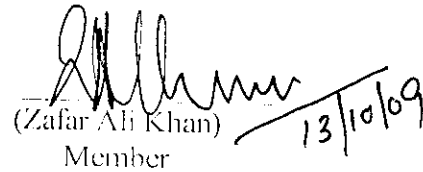
Authority directs KESCL to:

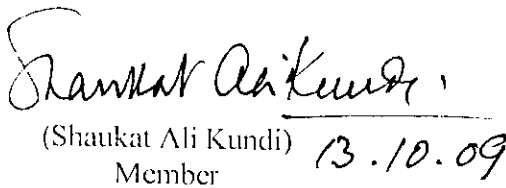
- (a) form a joint team with the NTDC for making and following operating procedures for handling situations like 17 & 18 June 2009 and 18 & 19 July 2009. KESCL shall provide a report on the formation of the joint team and framing of relevant procedures within four weeks of the decision;
  - (b) follow and/or update, if required, a System Operating Procedure Document to restore its system after black out conditions as it appears that on 17 June 2009 either the System Operating Procedure Document though followed could not achieve the desired objectives or the operating procedures were not followed completely by the operators. KESCL is further directed to provide necessary training to its operators/employees;
  - (c) provide a firm time frame for the completion of its load dispatch centre within four weeks of the decision;
  - (d) immediately restore its black start facilities at Korangi Gas Turbine Station and Site Gas Turbine Station and submit detailed report to the Authority in this respect within four weeks of the decision;
  - (e) either conduct in-house studies through its own experts or appoint consultants to carryout detailed system studies (including transient analysis) and the study on its protection schemes, including those at power plants. The relevant study reports shall be submitted to the Authority within twelve weeks of the decision;
  - (f) strengthen its planning functions to satisfy the objectives as outlined under the "Planning Code" of the Grid Code and submit their plan within twelve weeks of the decision; and
  - (g) install sequence-of-event recorders and alarm printers on all of its power plants and 220 kV substations within twelve weeks of the decision.
- (II) In respect of Ground II the Authority hereby imposes a fine of Rs.300,000/- to be paid by the Licensee within thirty days of the issuance of this decision. If KESCL continues with the practice of reducing or underutilizing its generation capacity from IPPs strict punitive action will be taken against it in future.
- (III) In respect of Ground III the Licensee is warned to comply with the orders, instructions and determinations of the Authority and is hereby directed to sign the PPA within four weeks of the decision of the Authority on the issues (delivery/metering points and maximum demand) referred to the Authority by the NTDC and KESCL failing which the Authority shall take appropriate action including but not limited to imposition of fine on the Licensee.
- (IV) In respect of Ground IV, the Authority hereby warns and directs KESCL to make regular and timely payments to NTDC and the matter be resolved at the earliest. The Authority understands that it is the sole responsibility of KESCL to follow and make sure that timely payments are made to NTDC.
- (V) In respect of Ground V, the KESCL is hereby directed to ensure timely payment to IPPs so that the electricity is available with it all the time which shall ultimately result in reduction of load-shedding for the consumers.

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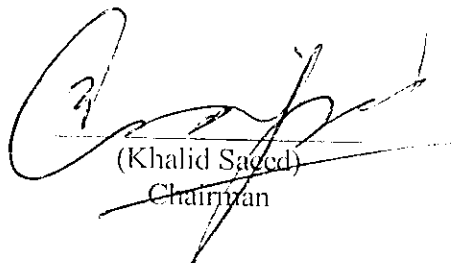
- (VI) In respect of Ground VI, the Authority warns KESCL not to draw excess power (beyond 650 MW) from NTDC system and purchase & utilize all the power available in the system through its own generation facilities and/or IPPs i.e. Gul Ahmed Energy Limited and Tapal Energy Limited.
- (VII) In respect of Ground VII, the Licensee is warned to strictly adhere to section 21(f) of the Act and the Performance Standards (Distribution) Rules, 2005 and give accurate and comprehensive information to the Authority as and when demanded. KESCL is further directed to prepare a plan for the enforcement and compliance with Performance Standards (Distribution) Rules, 2005 and submit the same for the approval of the Authority within four weeks.
- (VIII) In case the Licensee does not pay the fine within 30 days or does not comply with the orders/instructions of the Authority as given hereinabove separate legal proceedings shall be initiated under section 41 of the Act read with rule 7 & 8 of the NEPRA Fine Rules, 2002 or any action under section 28 of the Act.

  
(Ghiasuddin Ahmed) 13/10  
Member

  
(Zafar Ali Khan) 13/10/09  
Member

  
(Shaukat Ali Kundi) 13.10.09  
Member

  
(Maqbool Ahmed Khawaja)  
Member

  
(Khalid Saeed)  
Chairman