



Faisalabad Electric Supply Company Limited

OFFICE OF CHIEF EXECUTIVE OFFICER

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No. 4688/MIRAD

Dated: 09-09-2025

Registrar,

NEPRA Tower, Attaturk Avenue (East),
Sector G-5/1, Islamabad.

Addl. DG	DD-I	Addl. Dir	DD-I
AD-I	RC	PS	E/S
TA	OA-I	OA-II	OA-III

Subject: - **AUTHORITY PROPOSED MODIFICATION IN THE DISTRIBUTION LICENSE OF FESCO.**

Ref: 1. Your office letter No. NEPRA/R/D.G(Lic)/LAD-04/12534 dated 08.08.2025 (received on 11.08.2025).
2. This office letter No. 6918/MIRAD dated 26.08.2025.

- Faisalabad Electric Supply Company Limited (the "DISCO") respectfully submits its response to National Electric Power Regulatory Authority's (the "Authority") Proposed Modification dated 08 August 2025 (the "APM") to its Distribution License (the "Distribution License") and specifically Articles 3 and 33 thereof.
- It is submitted at the outset that the Distribution License and the terms thereof are subject matter of an ongoing Appeal filed by the DISCO (the "Appeal"). The Appeal is pending adjudication before the NEPRA Appellate Tribunal (the "Appellate Tribunal"), wherein the learned Appellate Tribunal has already passed interim orders in favor of the DISCO. The instant submissions are being filed without prejudice to the DISCO's Appeal, the position it has taken therein, and its rights and interests at law, which it hereby expressly reserves.
- Vide the APM, the Authority has proposed to alter specific aspects of Clause 3 and 33 of the Distribution License. In particular it has proposed to retain the overarching provision of Article 3, whilst substituting the first and second proviso thereto (the "Existing Provisos") with the following (the "Clause 3 Amendments"):

cc: D20(3)

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1. Chairman 2. M (Tech)
3. M (Law) 4. M (Dev)

REGISTRAR OFFICE
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“Provided that the Authority may grant a Distribution Licence to any Entity, in the Service Territory of a Licensee, and upon grant of such license, the Service Territory of Licensee shall stand automatically modified.”

4. The Clause 3 Amendments adversely impact the DISCO, particularly in context of those areas within its service territory that already feature its distribution network, and within which infrastructure investment has been approved by the Authority. In this respect the following may be noted with respect to the Clause 3 Amendments:
 - (a) Deletion of the Existing Provisos removes critical protective mechanisms that the Authority had specifically framed to shield the DISCO from arbitrary territorial intrusion and modification.
 - (b) The first Proviso qualified the DISCOs Service Territory by excluding areas where other Entities had pre-existing distribution networks at time of issuance of the DISCO’s license.
 - (c) Similarly, the second Proviso provided the DISCO with territorial expansion opportunities by allowing Service Territory extension into areas where Entities failed to secure distribution licenses within the prescribed period.
 - (d) Deletion of the Provisos would adversely affect the DISCO. The Authority may now ignore pre-existing infrastructure and confer overlapping licenses to Entities within DISCO’s territory, without regard to the DISCO’s prior or approved investments, or established service arrangements. Furthermore, it eliminates the DISCO’s legal right to territorial growth and natural consolidation of service areas, effectively capping territorial development while simultaneously exposing existing territory to arbitrary reduction.
 - (e) The Clause 3 Amendments effectively convert defined territorial rights into revocable variables, fundamentally altering the legal nature of the DISCO’s Distribution License itself. The original Provisos created vested territorial

interests with specific protections and expansion mechanisms. Their removal now transforms the license into an uncertain commercial arrangement where Service Territory becomes subject to unilateral Authority modification without provision/condition for cause, compensation, or procedural protection controlling such modification. As such, the Clause 3 Amendments effectively nullify the security essential for infrastructure investment and long-term planning for the DISCO.

- (f) The removal of expansion rights while simultaneously introducing territorial reduction vulnerability also creates an asymmetric framework favoring new entrants over established operators, fundamentally undermining investment incentives and operational viability for existing distribution companies.
 - (g) The substitute proposed to be added by the Authority, confers unrestricted discretion on the Authority to confer distribution licenses to any Entity within the DISCO's established Service Territory, with automatic territorial modification upon such grant. This mechanism operates without temporal limits, geographical constraints, or procedural safeguards, and without regard to the approved or established infrastructure functioning within the service territory.
 - (h) The Clause 3 Amendments effectively transform the DISCO's Distribution license from a secure territorial framework into a perpetually vulnerable arrangement subject to arbitrary reduction at any time, without regard for the infrastructure approved by the Authority or already in place.
5. Additionally, the Authority has proposed amendments to Clauses 33.3 and 33.4 of the Distribution License (the "**Clause 33 Amendments**" and collectively with Clause 3 Amendments as the "**Proposed Amendments**") by omitting the requirement for the supply and distribution business to be performed through two (02) distinct entities, demanding functional separation and removing the transitional provisions that enabled compliance with such mandate. In this respect the following may be noted:

- (a) The Clause 33 Amendments are vague and impossible to comply with. The proposed language imposes a blanket and obscure obligation on the DISCO for ‘functional separation’, without providing any guidance regarding what the same entails. There is also a lack of clarity about the timeline for achieving the modified “functional separation” standard. This structural defect in the Clause 33 Amendments is further problematic, since purported noncompliance therewith entitles the Authority to take penal action against the DISCO, including appointment of an administrator.
 - (b) The Clause 33 Amendments delete transitional provisions that are necessary to enable the DISCO to restructure its operations in line with the law. The absence of transitional provisions hampers operational continuity and exposes the DISCO to unwarranted penal action for non-compliance with obscure instructions. The removal of transitional provisions represents a fundamental degradation of the regulatory framework that increases legal risk while reducing certainty - precisely the opposite of what effective regulation should achieve.
 - (c) The Authority retains broad discretionary powers to determine compliance without specifying an objective standard for measuring whether “functional separation” has been achieved, how existing integrated operations are to be modified, and what documentation or reporting demonstrates compliance. The DISCO is therefore exposed to immediate vulnerability to enforcement action without clear compliance pathway.
6. While acknowledging the Authority's regulatory prerogatives to regulate the power sector, the DISCO is constrained from supporting the purported modifications proposed in terms of the APM (the “**Proposed Amendments**”) to the extent and in terms of the following:

7. The Authority is vested with the statutory power and bears the legal obligation to determine the terms of licenses it issues under the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the “**NEPRA Act**”). It is a statutory imperative that these terms be drawn and are developed to honor, adhere to and realize the broader statutory objectives framed under the NEPRA Act and laws subordinate thereto. Broad, obscure and ambiguous instructions jeopardize the rights and interests of the licensee, undermine its existing rights, compromise the investment and asset security, and expose it to abuse, exploitation and penal action without cause. They are *ultra vires* and violate the applicable law.
8. DISCOs operate and develop their infrastructure under a comprehensive statutory framework that is premised on a regulatory asset base mechanism and drawn to advance public interest. This framework mandates that investments/infrastructure development be sanctioned by the Authority if it is prudent and in public interest. The Authority’s approval in this respect, is a declaration of the prudence, viability and feasibility of the investment and the costs associated therewith. This is why Cost recovery for such investment/infrastructure is effected through the public i.e. consumer tariffs approved by the Authority pursuant to established revenue requirement methodologies.
9. It is critical to note that these investments are proposed, developed and implemented by the DISCO in legitimate reliance upon territorial certainty and asset security - upon assured cost recovery through services performed using this infrastructure in its identified service territory over the asset life. Any modification that affects the DISCO’s approved infrastructure, recovery of its costs, including alteration of the territory being serviced by DISCO, would violate valuable rights and interests of the DISCO, creating cascading adverse effects: stranded asset costs socialized among remaining consumers, distribution company financial viability compromised through unrecoverable investments, and national energy security objectives undermined through investment uncertainty contrary to established regulatory compact principles governing Pakistan’s power sector.

10. As discussed above, the Clause 3 Amendments, both in their language and effect enable third parties to usurp the DISCO's service territory, affecting its approved and installed investment infrastructure and incapacitating the DISCO from making adequate recovery of its costs from its service, as planned and approved by the Authority. Sanction for such action, as conferred in terms of the Clause 3 Amendments, undermines the Authority's own declaration of '*prudence*', '*public interest*' and '*financial viability*' that such infrastructure and investments embody.
11. The DISCO's development of its infrastructure represents substantial financial investments exceeding billions of rupees in lines, grid stations, substations, transformers, and associated equipment. These were undertaken pursuant to the Authority's own infrastructure development approvals and represent permanent works of substantial character.
12. The DISCO enjoys legal and proprietary rights of ownership and use over such infrastructure. Similarly, the Authority's approval of the DISCO's infrastructure development and investment, itself creates valuable rights and interests in favor of the DISCO. Any action that violates, compromises or affects these rights, including the physical safety, integrity and DISCO's use of its infrastructure, and the realization of the Authority's approval, is illegal and *void*.
13. The proposed automatic territorial modification mechanism in terms of the Clause 3 Amendments, operates entirely outside established statutory frameworks governing license revocation and territorial adjustment. Therefore, such modifications constitute arbitrary deprivation of valuable rights, which violate fundamental constitutional protections by enabling property divestiture without adherence to established legal procedures and safeguards.
14. The Clause 3 Amendments contradict the National Electricity Plan (the "**Plan**") and its underlying policy framework. The Plan and its framework emphasize integrated planning and optimal infrastructure utilization and specifically mandates that procurement and infrastructure expansion shall be informed by the plans approved by

the Authority. Automatic reduction in the service territory, affecting existing and planned infrastructure and procurement, at the instance of a private profit making entity renders the Clause 3 Amendments inconsistent with the applicable legal and regulatory regime. Additionally, the Clause 3 Amendments:

- (a) Disrupt systematic infrastructure coordination within the DISCO's operation. Such disruption undermines the holistic approach fundamental to the smooth and efficient operations power sector reform strategy;
 - (b) Promote infrastructure duplication rather than optimization. As such they contradict the policy instruction of the National Electricity Policy 2021 (the "**National Electricity Policy**") of "*optimal utilization of ... resources*" and "*integrated planning approach*";
 - (c) Create territorial fragmentation which increases rather than minimizes system-wide costs. They, therefore, violate cost-effectiveness principles established in the Plan's financial viability framework, which emphasizes development on "*least-cost basis*" and "*cost-reflective tariffs*".
15. Moreover, the Plan specifically recognizes the critical importance of distribution network strengthening, its security and systematic enhancement. The Plan acknowledges that "*transmission and distribution networks face persistent constraints*" and emphasizes the necessity for "*concerted efforts towards development of transmission and distribution networks*". The proposed Clause 3 Amendments directly undermine these objectives by:
- (a) Fragmenting established distribution networks that have been systematically developed to serve integrated service territories efficiently;
 - (b) Creating operational inefficiencies that violate the Plan's emphasis on "*strengthening and expanding the T&D network*" for "*optimal utilization*" of distribution capacity;

- (c) Undermining infrastructure investment recovery mechanisms essential for sustained network development as envisioned in the Plan.
16. The DISCO's comprehensive infrastructure development has been methodically funded through tariff collections approved by the Authority under established cost recovery mechanisms. These funds, consequently, represent public resources entrusted specifically for infrastructure serving DISCOs designated territorial service obligations. The proposed modifications would systematically result in:
- (a) Abandonment of productive public assets representing millions in infrastructure investment undertaken in compliance with Authority-approved expansion plans. Such abandonment, directly contradicts the public trust doctrine governing utility operations and the Plan's infrastructure optimization mandates;
 - (b) Wastage of consumer-contributed resources that were collected specifically through regulated tariffs for infrastructure serving DISCO's designated Service Territory. This wastage, additionally, violates fundamental principles of prudent utility management established in the National Electricity Policy.
 - (c) Uneconomical duplication of infrastructure in overlapping service areas, creating system-wide cost increases ultimately borne by consumers. Such duplication, furthermore, contradicts the National Electricity Plan's emphasis on integrated planning and optimal resource utilization.
17. Moreover, the proposed modification systematically creates structural inefficiencies fundamentally contrary to established public interest principles by systematically generating:
- (a) Stranded cost accumulation, wherein fixed infrastructure costs remain constant while the revenue base systematically diminishes due to territorial reduction.

This phenomenon, furthermore, creates unsustainable financial dynamics explicitly recognized as problematic in Pakistan's power sector reform literature;

- (b) Cross-subsidization burden imposed upon remaining consumers who must absorb unrecoverable infrastructure investments through progressively higher tariffs. Such burden, additionally, contradicts the Plan's principles of fair cost allocation and tariff rationalization;
- (c) Market fragmentation that systematically prevents realization of economies of scale in distribution operations, thereby increasing per-unit costs across the entire system. Such fragmentation, consequently, undermines the competitive market development objectives central to Pakistan's power sector reform agenda.

18. Additionally, the proposed modifications contravene well-established prudent utility principles that inform the operations and development of Pakistan's power sector. These principles specifically require:

- (a) Cost recovery certainty for Authority-approved investments, ensuring that regulated entities can systematically recover reasonable costs incurred in public service. Without such certainty, furthermore, infrastructure investment becomes economically irrational and contrary to financial viability objectives established in national policy;
- (b) Service territory stability essential for long-term infrastructure planning and systematic optimization as mandated in the Plan. This stability, moreover, enables efficient resource allocation and prevents wasteful overbuilding specifically identified as problematic in sector reform studies;
- (c) Infrastructure optimization rather than duplication, which maximizes public benefit from utility investments and aligns with integrated planning mandates.

Such optimization, consequently, serves consumer interests through cost minimization and system efficiency.

19. The proposed automatic territorial modification mechanism constitutes a revocation of the DISCO's service territory and established license rights without compliance with mandatory statutory procedures established. This circumvention operates by effectively nullifying substantive license rights through territorial reduction rather than utilizing formal revocation processes specifically designed for such purposes. Consequently, it systematically violates established procedural safeguards by deliberately avoiding:
 - (a) Article 35 of the Distribution License which expressly and unambiguously requires demonstration that "*the Licensee is not discharging its functions*" before partial or complete revocation by way of territorial reduction can be lawfully considered. This provision, furthermore, establishes a clear performance-based threshold for adverse license action, which threshold has not been met in DISCO's case;
 - (b) Section 28 of the NEPRA Act which mandates specific revocation grounds and prescribes compliance with comprehensive procedure before license termination or substantial modification, which can only be effected '*for cause*'. It is respectfully submitted that the Authority cannot effect territorial modification in complete absence of demonstrated licensee default, performance inadequacy, or established statutory cause.
20. Extensive areas within DISCO's Service Territory present insurmountable technical barriers to parallel infrastructure installation due to existing development patterns and geographical constraints specifically recognized in distribution planning literature. These barriers include:
 - (a) Densely populated urban centers where additional distribution lines cannot be physically accommodated without massive displacement of existing structures.

Such areas, furthermore, lack the spatial capacity for duplicate infrastructure systems without compromising public safety;

- (b) Geographically constrained locations including riverine areas, canal systems, and mountainous terrain with inherent space limitations that preclude additional infrastructure development. These constraints, additionally, create substantial safety hazards for construction activities;
- (c) Existing infrastructure saturation in established industrial zones where multiple utility systems already occupy all available easements and rights-of-way. Such saturation, consequently, makes additional infrastructure installation not merely difficult but technically unfeasible.

21. Bypassing these natural barriers would create significant public safety risks through:

- (a) Electrical safety hazards arising from overlapping distribution networks operating at different voltage levels with incompatible protection schemes. Such overlapping systems, furthermore, create complex fault coordination problems that fundamentally endanger public safety and system reliability;
- (b) Construction risks in densely populated areas where excavation and installation activities threaten existing utilities, residential structures, and public safety. These risks, additionally, include potential catastrophic damage to existing infrastructure during new construction activities;
- (c) Maintenance access complications for both operators attempting to service parallel systems in constrained spaces, creating operational conflicts and substantial safety hazards. Such complications, consequently, compromise system reliability for all consumers and create ongoing public safety concerns.

22. Furthermore, Pakistani administrative law establishes clear jurisprudential boundaries between permissible license modification and fundamental alteration requiring fresh

application procedures. The proposed changes systematically exceed these established parameters by:

- (a) Altering core license premises upon which DISCO's substantial infrastructure investments were predicated and formally approved by the Authority. These alterations, furthermore, retrospectively undermine the investment assumptions that guided infrastructure development and regulatory approval processes;
- (b) Retrospectively modifying fundamental license assumptions regarding territorial stability and investment recovery mechanisms, creating an impermissible ex post facto alteration of contractual terms and regulatory commitments.

23. The Authority's justification citing mere "consistency with GEPCO" fundamentally fails to satisfy reasoned decision-making requirements established under Pakistani administrative law and regulatory best practices. This deficiency systematically violates:

- (a) The NEPRA Licensing (Application, Modification, Extension, and Cancellation) Procedure Regulations, 2021 which mandate comprehensive reasoning supporting proposed modifications and demonstration of public interest served. The Authority's generic reference to consistency with GEPCO's distribution license provides no substantive analysis of the APM's necessity, benefits, or alignment with established policy objectives;
- (b) Section 26 of the NEPRA Act which requires clear demonstration of specific public interest served by proposed modifications. The Authority has failed, additionally, to establish any concrete public interest beyond administrative convenience or precedential consistency;
- (c) Administrative law principles which demand rational basis, proportionality, and adequate justification for regulatory action affecting substantive rights.

The Authority's reasoning, consequently, lacks the analytical depth and factual foundation required for such significant license modification.

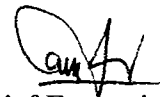
24. Additionally, and respectfully, the Authority appears not to have conducted any comprehensive analysis establishing how the proposed modification serves identified public interest through its failure to provide:
 - (a) Comprehensive cost-benefit analysis examining infrastructure duplication impacts, consumer cost implications, system efficiency effects, and alignment with the Plan's objectives. Such analysis, furthermore, is essential for demonstrating legitimate public interest in utility regulation;
 - (b) Consumer protection assessment regarding stranded cost pass-through mechanisms, tariff implications for existing consumers, and compliance with national policy cost recovery principles. This assessment, additionally, must address competitive disadvantages created by legacy cost burdens on established distribution companies;
25. The doctrine of promissory estoppel bars modification of territorial rights upon which the DISCO has reasonably and detrimentally relied in establishing extensive distribution infrastructure. This estoppel operates through a systematic series of Authority representations and the DISCO's consequent reliance demonstrated through its comprehensive infrastructure development program, including grid station upgrades, transmission line rehabilitation, system expansion, and consumer service establishment, and the Authority's endorsement/approval thereof. The Authority's affirmative approval and endorsement of specific investment programs and infrastructure project, validates and reinforces the DISCO's reasonable reliance expectations. These approvals, consequently, constitute binding representations supporting territorial stability expectations and infrastructure investment security
26. Furthermore, the DISCO holds a well-founded legitimate expectation that Authority-approved infrastructure investments will be systematically protected absent

demonstrated licensee default or performance deficiency. This expectation arises from both the original license terms, the Authority's consistent practice of infrastructure approval and cost recovery authorization, and the policy framework established in the Plan requiring infrastructure investment protection. Consequently, the Authority cannot defeat such established expectations without demonstrable public interest justification, procedural compliance, and consideration of alternative measures.

27. The transition to competitive electricity markets makes infrastructure cost recovery even more critical for overall system sustainability and consumer protection. In this evolving market structure, distribution companies must systematically recover substantial infrastructure investments through Use of System Charges and Distribution Margins as specifically provided in regulatory frameworks. The proposed territorial modification, therefore, directly undermines this cost recovery framework by arbitrarily reducing the customer base over which infrastructure costs can be allocated, thereby creating systemic financial instability that contradicts policy objectives.
28. The proposed Clause 33 Amendments propagate an illegality: By imposing undefined obligation of functional separation without any guidance, the amendments exceed the bounds of lawful administrative action.
29. Furthermore, they promote irrationality: The removal of specific transitory compliance mechanisms while maintaining severe penalties creates an irrational regulatory framework that no reasonable authority could justify.
30. The Clause 33 Amendments also vest the Authority with unconstrained discretion to determine compliance without objective criteria—a practice condemned by Pakistani courts. It is settled law that “*discretion should be controlled and structured by the law itself*”. The proposed text violates this principle by providing no measurable standards for “functional separation”, omitting compliance benchmarks or reporting requirements and creating potential for arbitrary enforcement through administrator appointment.

31. The deletion of Clause 33.3's transitional provisions eliminate essential procedural safeguards. These provisions previously ensured that the DISCO could maintain business continuity while restructuring operations—a fundamental aspect of natural justice in administrative proceedings. Their removal creates immediate legal jeopardy without affording reasonable opportunity for compliance, violating established principles that administrative authorities must provide fair notice and reasonable time for compliance.
32. The Distribution License was granted to the DISCO for consideration in terms of the license fee and other amounts regularly paid by the DISCO in respect thereof. Consequently, the DISCO acquired rights conferred thereon by and in terms of the grant for which it incurred a detriment. It is impermissible to make any modification to the Distribution License that fundamentally alters the licensed entitlements to the detriment of the DISCO, particularly those that affect the viability and feasibility of the DISCO's service and business. This is particularly so since the DISCO has relied on these licensed entitlements and has incurred costs on the public's behalf to fulfill its statutory obligation and perform its licensed activity within its Service Territory.
33. As the Authority is aware, the DISCO is one of the entities undergoing the privatization process under and in terms of the Privatization Commission Ordinance, 2000. The Privatization Commission Ordinance, 2000 statutorily requires that no entity subject to the privatization process be subjected to any reduction in its assets or any action that has the effect of reducing its assets. Admittedly, the DISCO's Service Territory, the consumers present within that Service Territory, and its infrastructure in that Service Territory, approved or installed, are all invaluable assets of the DISCO that contribute towards and inform its value. The DISCO cannot be subject to any treatment that is detrimental to its asset base or value.
34. Additionally, the terms of the Distribution License that the Authority now seeks to amend are currently the subject matter of the DISCO's Appeal and are *sub judice* before the Appellate Tribunal. Any action that compromises or effects the *lis pendens* before the higher appellate forum is impermissible and holds no force at law.

35. The amendments may constitute an ultra vires exercise of the Authority's modification powers. While Section 26 permits licence modifications, it does not authorize the creation of undefined obligations with penal consequences. The transformation from specific legal requirements (corporate separation, licence transfer applications) to vague functional mandates exceeds the Authority's statutory remit and potentially renders the modifications legally void for uncertainty.
36. Finally, while expressing continued respect for the Authority's regulatory mandate, DISCO must reserve all legal rights and remedies available under law, including constitutional petition rights under Article 199 of the Constitution, appeal procedures under applicable regulations, and participation in public hearings as mandated under the licensing framework.



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