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**SUB: AUTHORITY PROPOSED MODIFICATION DATED 08.08.2025  
TO THE DISTRIBUTION LICENSE**

**REF:** 1. Your letter no.NEPRA/R/DG(Lic)/LAD-05/ 12529 dated 08.08.2025  
2. This office letter no.27891-93 dated 25.08.2025

REGISTAR OFFICE  
Dairy No. 12962  
Date: 16-9-25

Authority Proposed Modification (APM) to LESCO's distribution license has been reviewed by our legal counsel. Based on their opinion, LESCO submits the following comments and observations for consideration during the processing of the Authority proposed modification.

1. Lahore 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.
2. We would like to start by stating that the Distribution License and the terms thereof have been challenged by way of Appeal (the "**Appeal**") which is pending adjudication before the Learned Appellate Tribunal (the "**Appellate Tribunal**"). We are submitting our position to you in good faith and in a spirit of mutually beneficial dialogue.
3. 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**"):  
"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. We submit our apprehensions that the Clause 3 Amendments may 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 may expose the DISCO to detrimental commercial consequences.
  - (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.

*CC: DRO (S)*

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

*✓ 16/9*

- (d) Deletion of the Provisos could adversely affect the DISCO pre-existing infrastructure within DISCO's territory, without adequately considering 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 may have the effect of converting 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 transforms the license into an uncertain commercial arrangement where Service Territory becomes subject to modification without provision/condition for cause, compensation, or procedural protection controlling such modification. As such, the Clause 3 Amendments effectively could 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) As such, the substitute proposed to be added, it is feared would have the effect of granting an unlimited number of licenses to other Entities, which may have the effect of adversely affecting the substantive investments the DISCO has made in infrastructure.
- (h) The Clause 3 Amendments also do not have any time limits. Thus, the apprehensions noted above may come into effect at any time.

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 does not comprehensively elaborate 'functional separation', as well as the time limit for doing so. The DISCO submits that clarity may kindly be provided on this aspect.
- (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 could increase legal risk while reducing certainty.
- (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.
- (d) It is also unclear that what constitutes a violation of the Proposed Amendments, and what criteria and/or procedure may be adopted to

determine whether the DISCO has committed any violation. The DISCO submits that clarifications may be issued in this respect as well.

6. The DISCO submits that the ambiguity may be addressed if the Authority, being regulator under the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the “**NEPRA Act**”, addresses the concern of the DISCO.
7. 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.
8. 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 socialised 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.
9. 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.
10. 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.
11. 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, risks being contrary to law, equity, and justice.

12. The proposed automatic territorial modification mechanism in terms of the Clause 3 Amendments risks enabling property divestiture without adherence to established legal procedures and safeguards.

13. The Clause 3 Amendments have the potential to 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 could have the effect making the Clause 3 Amendments inconsistent with the applicable legal and regulatory regime. Additionally, the Clause 3 Amendments:

- (a) Could 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) Could 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) Could result in territorial fragmentation which increases rather than minimizes system-wide costs. They, therefore, may run the opposite of cost-effectiveness principles established in the Plan’s financial viability framework, which emphasizes development on “least-cost basis” and “cost-reflective tariffs”.

14. 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 may have the effect of limiting the practical realization of these objectives by:

- (a) Dividing established distribution networks that have been systematically developed to serve integrated service territories efficiently;
- (b) Result in operational inefficiencies that violate the Plan’s emphasis on “strengthening and expanding the T&D network” for “optimal utilisation” of distribution capacity;
- (c) Limiting infrastructure investment recovery mechanisms essential for sustained network development as envisioned in the Plan.

15. 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, may have the effect of:

- (a) Diminishing the benefits of productive public assets representing millions in infrastructure investment, and undertaken in compliance with Authority-approved expansion plans, which detrimentally affects public interest, This, it is submitted, would not advance in the public interest;
- (b) compromising consumer-contributed resources, that were sponsor and finance DISCO infrastructure. This wastage, it is submitted, may violate

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, may contradict the National Electricity Plan's emphasis on integrated planning and optimal resource utilization.

16. Moreover, the proposed modification, it is feared, may have the unintended consequences of resulting in 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, may result in 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.

17. These changes could affect the settled principles in the context of Pakistan's power sector. What this covers is:

- (a) Cost recovery certainty for Authority-approved investments, ensuring that regulated entities can systematically recover reasonable costs incurred in public service. Without this, it will not make sense purely from an economic stand point.
- (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.

18. Automatic territorial modification mechanism effectively constitutes a revocation of the DISCO's service territory and established license rights, which can only be carried out in accordance with the applicable procedures. The Proposed Amendments however violate established procedural safeguards by 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; and

(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'. This, it is submitted, is a precondition for any subsequent action.

19. Extensive areas within DISCO's Service Territory present 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.

20. 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.

21. The guidance of law found in Pakistani administrative law, states the difference 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.

22. Justification for the Proposed Amendments i.e. to ensure "consistency with GEPCO" does not conform to the decisions found in administrative law and regulatory best practices. This deficiency may be inconsistent with:

- (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 not considered any concrete public interest exactly, 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, at present, lacks the required detailed reasoning, as well as discussion on the factual background which is necessary for undertaking such significant license modification.

23. Furthermore, we are of the view that detailed research on whether this serves society has not yet been conducted. We say this as the following essential aspects have not been adequately discussed:

- (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. It is essential that such a study must address competitive disadvantages created by legacy cost burdens on established distribution companies;

24. The doctrine of promissory estoppel is also applicable in the present situation. The said doctrine bars modification of territorial rights upon which the DISCO reasonably relied (to its detriment) to set up an extensive distribution infrastructure. The estoppel came into effect and operates based on a systematic series of representations made by the Authority, upon which the DISCO relied, which is evidenced from 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 projects, validates and reinforces the DISCO's reasonable reliance expectations. These approvals, consequently, constitute binding representations supporting territorial stability expectations and infrastructure investment security.

25. Furthermore, the DISCO holds a well-founded legitimate expectation that Authority-approved infrastructure investments will be systematically protected or by demonstrating 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 would not be able to defile such established expectations without demonstrable public interest justification, procedural compliance, and consideration of alternative measures.

26. 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.
27. The proposed Clause 33 Amendments impose an obligation of functional separation, however, the text is not clear as to how such separation is to be carried out. Such vagueness, it is submitted, is beyond the permissible limits of established Administrative Law.
28. Furthermore, they promote irrationality: The removal of specific transitory compliance mechanisms while maintaining severe penalties creates a regulatory framework that would be hard to comply with.
29. 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.
30. The deletion of Clause 33.3’s transitional provisions eliminates 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.
31. 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.
32. 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.

33. 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 list pending before the higher appellate forum is impermissible and holds no force at law.
34. The amendments in their current form, seem to give unstructured and unbridled discretion to the Authority. While it is true that Section 26 allows license modifications, nonetheless, the same has to be carried out as per established principles of Administrative Law and exercise of discretion. What is happening is that the scheme is being changed from specific legal requirements (corporate separation, license transfer applications) to unclear and undefined functional mandates. Such lack of clarity risks being contrary to established principles of law, and thus, may be declared legally void.
35. Finally, it is submitted that the submissions narrated are above are without prejudice to all rights and remedies available under the law to DISCO, including, inter alia Constitutional rights guaranteed under Article 199 of the Constitution, appeals procedures under applicable regulations, and participation in public hearings as mandated under the licensing framework.

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No. 29392-94 /MIRAD-62

Dated: 10/09/2025

