



Registrar

National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/DG(M&E)/LAD-08/1959

February 03, 2025

Chief Executive Officer,
Hyderabad Electric Supply Company Limited (HESCO),
WAPDA House, Hussainabad,
Hyderabad

Subject: **ORDER OF THE AUTHORITY IN THE MATTER OF SHOW CAUSE NOTICE
ISSUED TO HESCO ON ACCOUNT OF THE ESTABLISHMENT OF SAFETY
DIRECTORATE/DEPARTMENT UNDER REGULATION 4(8) & 4(9) OF
NEPRA (FINE) REGULATIONS, 2021**

Please find enclosed herewith, the Order of the Authority (total 10 page) in the subject matter for information and compliance.

Enclosure: As above


(Wasim Anwar Bhinder)



National Electric Power Regulatory Authority

ORDER

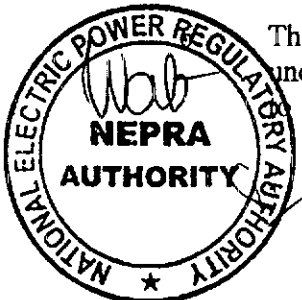
IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO HESCO ON ACCOUNT OF THE ESTABLISHMENT OF SAFETY DIRECTORATE/DEPARTMENT UNDER REGULATION 4(8) & 4 (9) OF NEPRA (FINE) REGULATIONS, 2021.

1. Hyderabad Electric Supply Company (HESCO) (the "Licensee") was granted a distribution license (No. DL/05/2023) by the National Electric Power Regulatory Authority (the "Authority") on 09.05.2023 pursuant to section 20 read with 21 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 ("NEPRA Act")

Background:

2. According to Section 7.1 of the Power Safety Code, all the Licensees are required to establish their independent directorate/department of Occupational Health Safety and Environment before December, 2021, and the same was informed to Licensee vide NEPRA letter dated 10.09.2021. Moreover, a reminder dated 02.03.2022 followed by a final notice dated 19.10.2022 were also issued. However, no response from Licensee was received despite lapse of the stipulated time.
3. Meanwhile, the same issue was raised during the hearing of Licensee dated 15.05.2023 at NEPRA in the matter of **Adjustment/Indexation Requests Filed by HESCO In Tariff Adjustment for FY 2023-24**. During the hearing, the Authority took serious notice and strictly directed Licensee to comply with the Authority's direction, within 30 days, failing which stern action shall be initiated.
4. Keeping in view the above directions, a letter dated 30.05.2023 was issued to Licensee and was again directed to comply with directions and establish an independent Health, Safety and Environment Directorate/Department. However, no response from the Licensee was received.
5. It is a matter of record that despite repeated and continuous correspondence, the Licensee has failed to comply with the direction of the Authority. It is matter of record that the Licensee has failed to establish independent Health Safety and Environment Directorate in its service territory despite a lapse of two years time. Moreover, non-submission of response by the Licensee reflects that it lacks interest towards inculcating safety culture in its service territory.

Therefore, the Authority decided to initiate legal proceedings against the Licensee under NEPRA Fine Regulations, 2021. Accordingly, the Authority directed Registrar send an Explanation to the Licensee on account of non-compliance with the

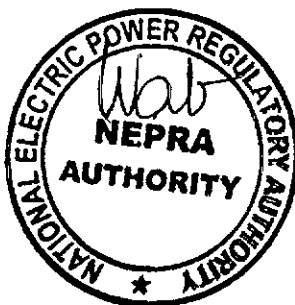


directions of the Authority. The Registrar issued the Explanation 18.08.2023. In response, the Licensee submitted its reply against the said explanation vide its letter dated 31.08.2023. After the detailed deliberation the Authority found it unsatisfactory and rejected and decided to issue Show Cause Notice to Licensee under Section 4 (8) & (9) of NEPRA Fine Regulation, 2021 on account of non-compliance with the provisions of NEPRA Act, Distribution Code, Power Safety Code and other applicable documents

Show Cause Notice:

7. In compliance to the Authority's decision, a Show Cause Notice along with the Order recording reasons of rejection of Explanation was issued to Licensee on 22.03.2024. Salient features of Show Cause Notice are narrated as under:
9. *WHEREAS, the Authority issued an Explanation to the Licensee under Rule 4 (1) and 4 (2) of NEPRA Fine Regulation, 2021 on 18.08.2023. The basis of Explanation to the Licensee included the following;*
8. *WHEREAS, the Authority always promotes the Occupational Health Safety and Environment in power sector of Pakistan, and from time to time different seminars/meetings with Licensees are conducted on HSE to promote HSE culture; and*
9. *WHEREAS, the Authority took serious notice of numerous number of fatal and non-fatal accidents occurring at workplaces in the power sector of Pakistan, and the Authority vide its letters dated September 10, 2021, followed by a reminder dated March 02, 2022, and Final Notice dated October 19, 2022, issued directions to its Licensee to establish an independent and functional directorate/department of Occupational Health, Safety and Environments latest by December 2021 with dedicated, experienced, qualified and trained HSE Staff, under the direct control of Chief Executive Officer or equivalent; and*
10. *WHEREAS, the Authority directed Licensee that the minimum number of HSE personnel shall be evaluated on a case-to-case basis, depending upon the level of risk, criticality of operational activities, and the need of supervision. Moreover, HSE positions shall not be filled by irrelevant officials without relevant qualifications and certification or charged for on ad-hoc basis/additional charge. The appointed/deputed HSE personnel shall have technical background and possess at least one of the approved safety qualifications; and*
11. *WHEREAS, the Authority during the hearing in the matter of Adjustment/Indexation request filed by Licensee for Adjustment in tariff for FY 2023-24 took serious notice for non-compliance with the Authority's directions issued to the Licensee and directed that a final chance is hereby given to the Licensee to comply with the Authority's direction and establish a Safety Directorate. The same was also communicated to the Licensee vide letter dated 30.05.2023; and*

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12. *WHEREAS, the Licensee vide its letter dated 27.06.2023 submitted that the matter is under consideration of BOD, however, the BOD resolved to hire services of an HSE professional as consultant as has been done by PESCO. Accordingly, the matter has been presented to the HR Committee in meeting and committee has recommended to BOD HESCO for hiring services of an HSE professional. The process shall be initiated as per PPRA Rules after approval of BOD; and*
13. *WHEREAS, the Authority considered the response of Licensee and observed that Licensee has prima facie failed to do actual progress on ground regarding establishment of Safety Directorate and submit generic statements along with vague excuses; and*
14. *WHEREAS, after a lapse of stipulated time frame given by the Authority, the Licensee has prima facie failed to comply with the directions of the Authority to establish the Health Safety and Environment directorate/department and to promote safety culture in its service territory; and*
10. *WHEREAS, the Licensee submitted its response vide letter dated 31.08.2023 against the above-mentioned Explanation. The same has been evaluated and found unsatisfactory. The Licensee has only submitted the generic response and after spending around 02 years, the Licensee has failed to establish a Safety Directorate in its service territory; and*
11. *WHEREAS, the Licensee has failed to satisfy the Authority with its replies and has committed the violations of section 7 (3) (b), 21 (2) (f), section 44, and section 48 of the NEPRA Act, and Section 5.1 and 7.1 Power Safety Code read with other enabling provision of rules and regulation and other applicable documents. Therefore, the Authority hereby rejects the response of Explanation submitted by the Licensee through an Order dated 22.03.2024 (Copy attached), recording the reasons of rejection; and*

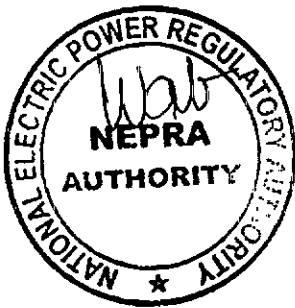
Response of Licensee:

8. In response, Licensee vide letter dated 08.04.2024 replied to Show Cause Notice, wherein, Licensee submitted as under;

Preliminary Objections and Submission:

2. That in the heading of the Show Cause Notice, word "Rule" is mentioned, and it is submitted that no Rules on the subject are there which could be referred as such.

3. That as per the earlier issued "explanation" and the subject "show cause" notice, it is being alleged that the Licensee, i.e., HESCO inter-alia has failed to comply with the directions of NEPRA regarding establishment of an independent directorate of Health, Safety and Environment in this territory. It is submitted that through the NEPRA (Fines) Regulations, 2021 under which the subject proceedings are being initiated are totally ultra vires to the provisions of



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NEPRA Act, 1997 especially sections 46 and 47 thereof for the reasons that for any contravention of the provisions of the applicable documents, the procedure to be contemplated in "Rules" as per section 46(2)(d) of NEPRA Act, 1997 are to be followed, however, no such "Rules" are in field, therefore, all the proceedings on the subject are void abinitio.

4. That the "Regulations" under which the "show cause notice" has been issued are ultra vires to the provisions of NEPRA Act, 1997 in so far as section 47 does not provide for formulation of any regulations for imposition of fines, rather the law requires formulation "Rules", therefore, the subject "show cause notice" is against the provisions of NEPRA Act, 1997.

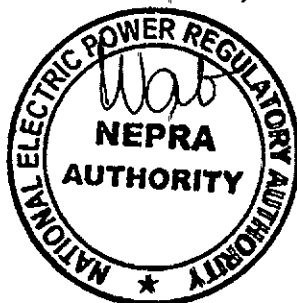
5. That the subjects for which "Rules" are to be framed are listed in section 46 of the NEPRA Act whereas the subject for which "Regulations" are to be framed are mentioned in section 47 of the Act. The reasons given in the order of the Authority for rejection of response to the earlier "explanation" issued to HESCO are that due to word "may" the Authority is not required to frame Rules. These reasons are totally not maintainable for the reason that there is plethora of the judgments of the superior courts of the country whereby a principle is settled that when a thing is prescribed by law to be done in a particular manner the where a principle is settled that n the same should have been done in that manner and not otherwise. Reference in this behalf may be made to the case reported as PLD 2010 Supreme Court 759 wherein with reference to a Judgment cited as PLD-1980-Quetta-1, it was held as under:-

"It is well settled principle of law that in a case where statute provides a procedure for doing of a thing in a particular manner, that thing should be done in that manner and in no other way or it should not be done at all. Indeed, such statute impliedly prohibits doing of thing in any other manner; particularly when the procedure is laid down for taking proceedings before a Tribunal or a Court where such procedure before a Court or Tribunal is usually construed to be an imperative one as doing of the act or a thing under that statute is a condition precedent to conferring upon the jurisdiction on a Court or a Tribunal, as the case may be. The compliance of such act or thing in no way could be either ignored or dispensed with. Their noncompliance would certainly invalidate all the proceedings, orders made or passed by the same authority or any other authority either superior or inferior thereto in respect of the same"

6. That for manner and procedure of show cause notices, it is the requirement of section 47(2)(f) of NEPRA Act, 1997 to specify the "Regulations", however, no such legal enactment is in field, therefore, prima facie, the instant proceedings are without any lawful authority.

7. That in the subject "show cause", Safety Code of NEPRA is also referred. In the said Code, in section 5.1, it is provided that "if Licensee fails to comply with the requirements of Power Safety Code and other applicable documents. NEPRA may initiate legal proceedings against the Licensee or registered persons under NEPRA (Fines) Rules, 2002". (emphasis added). The

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relevant Rules are no more in field; therefore, the subject proceedings are totally against the law on the subject.

8. That the reference of section 48 of NEPRA Act given in the order of Authority for rejection of explanation is also not relevant because under that section, power of the Authority is to issue directives, circulars, guidelines, etc. The same are to be issued to all concerned for guidance etc. However, in the explanation and show cause notice, word "violation of directions" is mentioned and not directives which is totally for some other purposes. Hence the subject show cause notice cannot be held to be legally issued.

9. That the Licensee is a Company to be managed by its Board of Directors. In the NEPRA Safety Code, it is provided in section 7.1 that the Licensee shall establish, implement, maintain and communicate "Occupational Health, Safety & Environment (HSE) Management System Manual" depending upon its own requirements, organizational needs, types of activities, processes, products, services and risks aspects. Therefore, to formulate any system, the Code provides for a discretion for the Licensee to establish as per its own requirements etc. Thus no violation as such is there for which any penal action could be initiated against HESCO. The directions being referred may be tantamount to interference into the powers and functions of the Board of Directors of the Company. However, notwithstanding the given legal position, HESCO has already initiated the process for establishment of the Safety Manual System in line with the directions of the Honorable Authority and has developed a Request for Proposal dated 23rd of July, 2023 regarding hiring of services of some Consultant for the establishment and development of HESCO Safety System for whole of HESCO Network. The process has since been started and shall be finalized in due course of time. Thus prima facie, there are absolutely no violation on the part of HESCO regarding implementation of any directions from NEPRA.

10. That if for the sake of arguments, it is presumed that the NEPRA (Fines) Regulations are competently framed, then too, those provide for action for violation of applicable documents which are defined in the said regulations as under: -

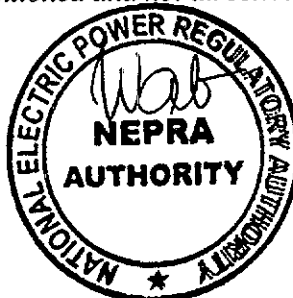
"Applicable documents" means the rules, regulations, terms and conditions of any license, registration, authorization and any codes issued or approved under the Act".

The "directions of the Authority" are not included within the definition of the "applicable documents"; therefore, the proceedings are liable to be quashed on this score alone.

Para wise reply of the Show-Cause Notice:

Paras 6 Not admitted as stated. Under section 48, Authority may issue directives, circulars, guidelines, etc. The same are to be issued to all concerned for guidance etc. However, in the explanation and show cause notice, word "violation of directions" is mentioned and not directives which is totally for some

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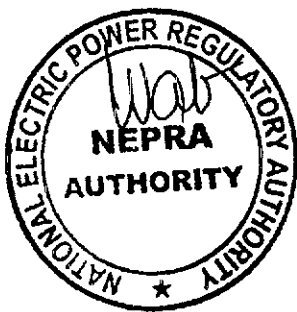


other purposes. Hence the subject show cause notice cannot be held to be legally issue.

Para 7 Not admitted as stated. In this para, the initiation of proceedings under NEPRA (Fines) Regulations, 2021 are mentioned whereas in the referred "Safety Code" as available on NEPRA Website as on 30.8.2023, the NEPRA Fines (Rules) 2002 are mentioned which are not in field. Therefore, the subject 'explanation' is totally against the given legal position on the subject by NEPRA itself.

Para 8 In reply to this para, it is submitted that in the NEPRA Safety Code, it is provided in section 7.1 that the Licensee shall establish, implement, maintain and communicate 'Occupational Health, Safety & Environment (HSE) Management System Manual' depending upon its own requirements, organizational needs, type of activities, processes, products, services and risks aspects. Therefore, to formulate any system, the Code provides for a discretion for the Licensee to establish as per its own requirements etc. Thus, no violation as such is there for which any penal action could be initiated against HESCO. However, notwithstanding the given legal position, it is reiterated that Public and Employee Safety is a matter of highest concern for HESCO as it is for the Authority and HESCO is taking positive steps in this direction. The Management has formulated a structured corrective action plan which is being implemented as we speak. A few milestones achieved so far are given below:

- a. A Safety Consultant from Power Sector has been hired to complete the Safety Management System Development and Implementation Project on fast track basis and is already working since last two months in the field.
- b. The reporting of Safety Directorate has been made directly to the CEO.
- c. A detailed gap analysis of PSC 2021 and other applicable HSE Laws, Regulations and codes have been completed; the areas of improvement have been identified and an implementation plan is underway to address the challenges. The corrective action plan shall comprise of "Short Term Measures" (6 to 12 months), Medium Term Measures (1 to 2 years) and Long Term Measures (3 to 5 years). This will ensure that Safety Management is achieved in a structured manner.
- d. The basic structure of existing Safety Department is being expanded (from 7 to 20 persons) to enable it to implement Safety benchmarks more effectively. For this customized Job Descriptions for each member of the Safety Department Staff have been prepared (sample attached) HESCO is now ready to start the process for hiring of dedicated HSE qualified staff for the Safety Department from the market. This will ensure that there is no conflict of interest between the Safety and Operations. This process is likely to be completed within next three months.



Para 16. Not admitted. There is absolutely no violation on the part of HESCO regarding any "applicable documents" The referred directions (which do not come within the ambit of violations as provided in the definition of "applicable documents", are beyond the jurisdiction of Honorable Authority as those may tantamount to internal management as to the affairs of the Licensees such as regarding prescribing qualifications, mode of appointment and internal

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management of the concerned professionals. As per understanding of the Licensee, these matters are to be dealt with by Licensee as per its internal SOPs and subject to prescribing the qualifications and manners of appointment of concerned persons by the competent authority, i.e., the Board of Directors of the HESCO.

Para 17-18. In reply to these paras. it is submitted that a Safety Consultant from Power Sector has been hired to complete the Safety Management System Development and Implementation Project on fast-track basis and has already been working for last two months in the field. It is further to submit that there are absolutely no violations on the part of HESCO regarding any applicable document and non-acceptance of the reply to the explanation and issuance of the subject "show cause notice" is totally not warranted.

In view of the aforementioned it is requested that Authority may consider the practical actions being taken by HESCO Management as its commitment to make Safety as its top priority. HESCO on its part is willing to share the progress on its Safety Management System Development and Implementation Project with the Authority on Quarterly Basis or more frequent as decided by the Authority. Any penalties at this stage will only demoralize the organization and damage the financial aspects of its Safety Management System Development and Implementation Project.

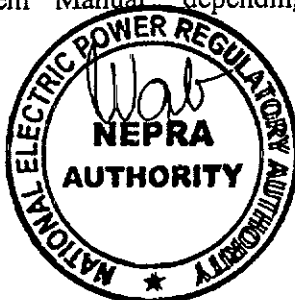
Hearing:

9. Keeping in the view of above and in the best interest of justice, an opportunity of hearing was granted to the Licensee and the said hearing was scheduled for 09.10.2024. During hearing, following submissions were made by CEO of the Licensee and its team:
 - i. DG (HR) HESCO submitted that on the directions of BOD HESCO, a consultant to be hired to assess the requirements for safety directorate i.e., manpower & other needs of HESCO.
 - ii. Accordingly, in pursuance to the directions of BoD HESCO on 01.09.2024 EoI was published, in response HESCO has received 04 bids which are under technical evaluation and hopefully by the end of this month i.e., Oct-24 their financials will also be finalized.

Finding/Analysis:

10. Keeping in view the submissions of the Licensee given in its reply against Show Cause Notice and during the hearing, following are the findings:
 - i. The Licensee has submitted that in the NEPRA Safety Code, it is provided in section 7.1 that the Licensee shall establish, implement, maintain and communicate "Occupational Health, Safety & Environment (HSE) Management System Manual" depending upon its own requirements,

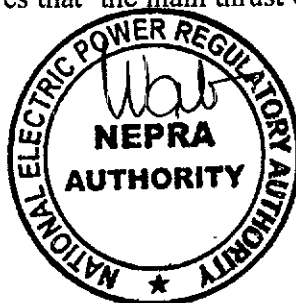
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organizational needs, types of activities, processes, products, services and risks aspects. Therefore, to formulate any system, the Code provides a discretion for the Licensee to establish as per its own requirements etc. Thus, no violation as such is there for which any penal action could be initiated against HESCO. The directions being referred may be tantamount to interference into the powers and functions of the Board of Directors of the Company.

- ii. The Licensee has further submitted that, notwithstanding the given legal position, HESCO has already initiated the process for establishment of the Safety Management System in line with the directions of the Honorable Authority. Moreover, a Request for Proposal dated 23rd of July, 2023 has also been developed regarding hiring of services of some Consultants for the establishment and development of HESCO Safety System for whole of HESCO Network. The process has since been started and shall be finalized in due course of time.
- iii. The Authority while considering the submissions of Licensee, observes that direction of the Authority does not interfere with the functioning of the BoD of the Licensee. Under section (48) read with sections 5.1 & 7.1 of power safety code, the Authority has the power to issue such directives, codes guidelines, circulars or notifications as are necessary to carry out the purpose of this Act and the rules and regulations made. If the Licensee fails to comply with the requirements of Power Safety Code and other applicable documents, NEPRA may initiate legal proceedings against the Licensee or registered persons under NEPRA (Fines) Regulations, 2021;
- iv. The Licensee is blowing hot & cold at the same time. On one hand, it has challenged that the Authority has no powers to issue such direction, whereas on the other hand, the Licensee itself stated that it has initiated the process of establishment of safety management system in line with the directions of the honorable Authority. This shows that the Licensee is hiding its inefficiencies by giving such vague statements which has no legal backing.
- v. The Licensee has to establish an HSE department in its service territory. However, Licensee has failed to do so in the given time frame despite repeated direction of the Authority and failed to submit any satisfactory response. This shows the careless and lethargic approach of Licensee towards health and safety which resulted in the 09 fatal accidents during FY 2023-24.
- vi. Additionally, the Licensee has stated that a consultant has been hired to assist in establishing a safety directorate. However, during a hearing on 09.10.2024, the DG – HR of Licensee indicated that an Expression of Interest (EOI) had been published, bids were received, and evaluation is in progress. Both statements of HESCO are contradictory with each other, which means that Licensee is trying to mislead the Authority by making false and frivolous statements. Furthermore, to date, the Licensee has not provided any record or evidence regarding all the statements as claimed by it in the above paragraphs.
- vii. Moreover, the submissions of the Licensee have been gone through at length and the Authority observes that the main thrust of arguments of Licensee are

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that no regulations for the issuance of Show Cause Notice has yet been notified and in its absence, the Authority is not legally allowed to issue Show Cause Notice.

In this regard, it is clarified that the Authority has initiated legal proceedings under Fine Regulations 2021 and in terms of Regulation 4, the Authority may direct the Registrar to issue an Explanation to the Licensee for consistent failure in adhering the provisions of NEPRA Act, rules & regulations made thereunder and terms & conditions of its license. It is categorically mentioned in Article 19 of the distribution license of the Licensee that it will comply with the Power Safety Code (PSC) and it is further mentioned in the PSC that the Licensee has to establish a Health & Safety Directorate/Department Furthermore, it is well established principle that rules/regulations are made to facilitate but not hinder the enabling legislation; therefore, absence of rules/regulations cannot take away Authority's statutory powers to issue a Show Cause Notice. In view thereof, the argument of Licensee is hereby rejected.

11. Foregoing in view, it is concluded that the Licensee has failed to submit a satisfactory response against the served Show Cause Notice. Therefore, it can be said that the Licensee has failed to formulate/establish a Safety Management System for the purpose to construct, operate and maintain its distribution system in accordance with the Performance Standards, Distribution Code, Power Safety Code, and other applicable documents. Overall, it can be said that the Licensee is responsible for fatal/non-fatal accidents in its territory, and it is in violation of section 7 (3) (b), 21 (2) (f), section 44, & section 48 of the NEPRA Act, and Section 5.1 & 7.1 Power Safety Code read with other enabling provision of rules and regulation and other applicable documents.

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Decision:


12. Keeping in view the submissions of the Licensee, evidence available on record and provisions of relevant NEPRA laws and terms and conditions of distribution license issued to the Licensee, the Authority observes that the Licensee has failed to perform its statutory obligation and to establish a Health, Safety and Environment Directorate in its service territory and is clearly in violation of , NEPRA Act, Power Safety Code and other applicable documents. In view of foregoing, the Authority hereby imposes a fine of Rs. 10,000,000/- (Ten Millions) on the Licensee.
13. Further, the Licensee is directed to pay the fine amount of Rs. 10,000,000/- (Ten Millions) in designated bank of the Authority within a period of 15 days from the date of issuance of this order and forward a copy of the paid instrument to the Registrar Office for information, failing which the Authority may recover the amount due under section 41 of the NEPRA Act as arrears of the land revenue or through any other appropriate legal means in addition to taking any other appropriate legal action against the Licensee for non-compliance.

AUTHORITY

Rafique Ahmed Shaikh
Member (Technical)



Engr. Maqsood Anwar Khan
Member (Licensing)



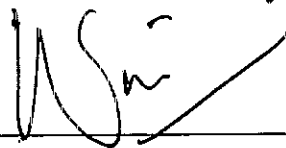
Mathar Niaz Rana (nsc)
Member (Tariff & Finance)



Amina Ahmed
Member (Law)



Waseem Mukhtar
Chairman



Dated 03 Feb 2025

