



Registrar

**National Electric Power Regulatory Authority
Islamic Republic of Pakistan**

NEPRA Tower, Attaturk Avenue (East), G-5/1, Islamabad.
Tel: +92-51-9206500, Fax: +92-51-2600026
Web: www.nepra.org.pk, E-mail: registrar@nepra.org.pk

No. NEPRA/DG(M&E)/LAD-35/ 12455

August 08, 2024

Chief Executive Officer,
Sukkur Electric Power Company Limited (SEPCO),
Administration Block, Thermal Power Station,
Old Sukkur

Subject: **Order of the Authority in the matter of Explanation dated 18.08.2023 issued to SEPCO on account of the Establishment of Safety Directorate/Department-Under Regulation 4(1) & (2) of NEPRA Fine Regulations, 2021**

Please find enclosed herewith, the Order of the Authority (total 08 pages) in the subject matter for information and compliance.

Enclosure: **As above**

Wasim Anwar Bhinder
(Wasim Anwar Bhinder)



National Electric Power Regulatory Authority

ORDER

**IN THE MATTER OF EXPLANATION DATED 18.08.2023 ISSUED TO SEPCO ON
ACCOUNT OF THE ESTABLISHMENT OF SAFETY DIRECTORATE/
DEPARTMENT - UNDER REGULATION 4 (1) & (2) OF NEPRA FINE
REGULATIONS, 2021**

1. Sukkur Electric Power Company (SEPCO) (the "Licensee") was granted a distribution license (No. DL/21/2011) by the National Electric Power Regulatory Authority (the "Authority") on 18.08.2011 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 the Licensee vide NEPRA letter dated 10.09.2021 followed by a reminder dated 02.03.2022 and a final notice dated 19.10.2022 were also issued. However, no response from the 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 SEPCO 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 again directed to comply with directions and establish an independent Health, Safety and Environment Directorate/Department well within time. However, no response from Licensee was received.
5. It is a matter of record that despite repeated and continuous correspondence, the Licensee had failed to submit response to the direction of the honorable Authority. The Licensee also failed to establish independent Health Safety and Environment Directorate in its service territory despite a lapse of two years. The Licensee should have understood that the HSE is a basic requirement of any organisation. Moreover, the non-submission of response by the Licensee reflects that it lacks interest towards inculcating safety culture in its service territory.
6. Therefore, the Authority decided to initiate legal proceedings against the Licensee under NEPRA Fine Regulations, 2021.

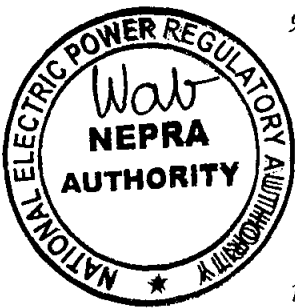
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Explanation:

7. In view thereof, an Explanation was served to the Licensee under Regulation 4(1) and 4(2) of NEPRA (Fine) Regulation, 2021, vide NEPRA's letter dated August 18, 2023, on account of the violation of Performance Standards, Distribution Code, Power Safety Code, and other applicable documents. The salient points of the Explanation are as under:

3. WHEREAS, the Rules and Regulations framed under the NEPRA Act as well as the Distribution License and Distribution Code fall within the definition of "applicable documents" as defined under NEPRA (Fines) Regulations 2021, (Fine Regulations) and for any violation of the applicable documents, fine could be imposed by the Authority; and
4. WHEREAS, pursuant to the section 21 (2) (f) of the NEPRA Act, the Licensee is required to follow the performance standards laid down by the Authority for distribution and transmission of electric power, including safety, health and environmental protection; and
5. WHEREAS, pursuant to section (48) of the NEPRA Act, the Authority shall have 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 hereunder; and
6. WHEREAS, pursuant to section 5.1 of Power Safety Code, 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) Regulations, 2021; and
7. WHEREAS, pursuant to section 7.1 of Power Safety Code, 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. Licensee shall cover all its operational sites and adopt industry's best practices and standards related to its work activities besides compliance to Power Safety Code and other requirements; and
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



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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 establish a Safety Directorate. The same was also communicated to the licensee vide letter dated 30.05.2023; and*
12. *WHEREAS, the licensee was directed in light of Section (48) of NEPRA Act to comply with the directions of the Authority and submit a compliance report within stipulated time, if the licensee fails to comply with directions of the Authority, legal proceedings may be initiated against licensee under applicable laws; and*
13. *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*
14. *WHEREAS, the Licensee has prima facie failed to respond to the Authority directions and has committed violations of Section 7.1 and 5.1 of Power Safety Code, read with Section 21(2)f of NEPRA Act, Article 11 of the terms and conditions of Licensee's Distribution Licensee, and is in non-compliance with the repeated directions of Authority, thereby, is also in violation of section 48 of the NEPRA Act; and*

Submissions of licensee:

8. In response, the Licensee vide its letter dated 17.10.2023 submitted the response against said Explanation. The summarized points of the same are as under:

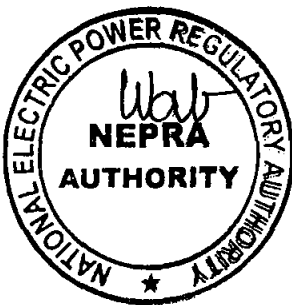
It is believed that from the perusal of the reply, the worthy Authority will close the proceedings. However, in case, it is decided to proceed further into the matter, then we reserve our right to raise any further ground considering the facts and circumstances of the case. Further that, an opportunity of hearing is also requested.

Preliminary Objections and Submission:

That it is respectfully submitted at the outset that SEPCO, being a distribution licensee of NEPRA is fully aware of its responsibilities to provide safe and reliable electric power services to its consumers and has always endeavored to fulfil its obligations in accordance with the applicable laws.

That as per NEPRA Act, 1997, "the contraventions" are to be dealt with as per the procedure to be prescribed through Rules in terms of section 46(2)(d) of the Act, but it is a matter of record that no such "Rules" are in field, hence the subject proceedings are prima facie against the provisions of NEPRA Act, 1997.

That the subject explanation is issued on the alleged violation of the provisions of inter-alia Safety Code. In this regard, it is to submit that even in the Safety Code of NEPRA itself, it is provided in section 5.1 that "if Licensee fails to comply with the requirements of Power Safety Code and other applicable documents, NEPRA may initiate legal proceedings



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against the licensee or registered persons under NEPRA (Fines) Rules, 2002". The relevant Rules are not in field, therefore, the subject proceedings are totally against the law on the subject.

That the explanation has been issued under NEPRA (Fines) Regulations, 2021 which are framed under section 47 of the NEPRA Act, 1997 (the Act). It is submitted with respect that section 47 of the Act does not authorize the Authority to frame "Regulations" for the purposes of imposition of fines owing to any contravention of the provisions of NEPRA laws. Instead, section 46 (2) (d) requires inter-alia that for the procedure in case of any contravention of any provision of the Act, Rules are to be framed. Such Rules are not in field, therefore, prima facie the subject "explanation" is against the provisions of the NEPRA Act, 1997.

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 SEPCO. However, notwithstanding the given legal position, the Board of Directors of SEPCO has already accorded approval for the Health, Safety and Environment (HSE) Department within SEPCO with a special Resolution dated 22.6.2023 (copy of minutes attached) in line with the directions of the Honorable Authority. The Department is almost functional, however, certain recruitments are pending as per details provided in para 7 of factual reply. Thus prima facie, there is absolutely no violation on the part of SEPCO regarding non-implementation of any directions from NEPRA.

Para wise reply of the Explanation:

Paras 1 to 5 of the "explanation" are factual in nature; therefore, no response is required as such.

Para 6. 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 7 In reply to these paras, it is submitted that SEPCO being a responsible Company, is already implementing the directions/instructions of the Honorable Authority and it can never even think of making any violation thereof. It needs to be clarified that in the NEPRA Safety Code, it is provided in section 7.1 that the licensee shall establish, implement, maintain and communicate the "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 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 SEPCO. However, notwithstanding the given legal position, the Board of Directors of SEPCO has already accorded approval for the Health,

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Safety and Environment (HSE) Department within SEPCO with a special Resolution dated 22.6.2023 (copy of minutes attached) in line with the directions of the Honorable Authority. Said Department has since been established in June 2023 and notified on 04/07/2023, however, the same could not be conveyed to the Honorable Authority which has resulted in issuance of the subject explanation. As regards induction of the incumbents in said Department, the posts could not be filled due to a ban imposed by the Election Commission of Pakistan vide its notification dated 15.8.2023. It is also to inform that SEPCO has already sent a request to the Power Division seeking permission for new recruitment, however, till that time, SEPCO has posted a Junior Engineer in HSE Department who is a HSE Certified professional having NEBOSH JOSH certification. Since his joining the HSE team in August 2023 he has been performing the following activities:

- *Surprise Visit in Different Sub Divisions*
- *Safety Audit And Training 12 Proforma*
- *Letter Issued to different SDOs for implementation of Safety SOPs*
- *Conducted inquiry Fatal or Non Fatal accidents with DD Safety*
- *Update monthly Fatal and Non-Fatal accident on NEPRA Data Exchange Portal*
- *Data shared regarding monthly Fatal and Non Fatal accident with NEPRA*
- *Visited and checked PPE's qualities of different Distribution companies like K-Electric & FESCO*
- *Revision Work on the SEPCO Safety Manual is in progress as NEPRA has revised its Power Safety Code for Licensee.*

Para 8 *No comments*

Paras 9-11 *In reply to these paras, it is submitted that the Board of Directors of SEPCO has already accorded approval for the Health, Safety and Environment (HSE) Department within SEPCO with a special Resolution dated 22.6.2023.*

Para 12 *In reply to this para, it is submitted that SEPCO has already initiated a process regarding establishment of Safety Management System. The Board of Directors of SEPCO through a Special Resolution dated 22.6.2023. Further details have been provided in para 7 above. Thus it is very much clear that SEPCO is already in the process of implementing the directions of the Authority.*

Paras 13-16 *In reply to these paras, it is submitted that there is absolutely no violation on the part of SEPCO regarding any applicable document.*

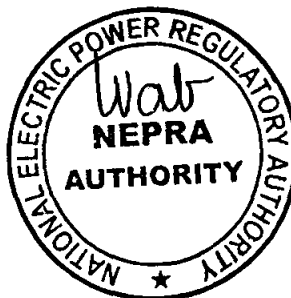
The above given explanation may kindly be considered by the Authority with a request to close the proceedings in the interest of justice.

HEARING:

9. Moreover, a hearing on the subject matter was scheduled for 30.1.2024, wherein, the following submissions were made by the Licensee's representatives:

- i. The Representative of licensee averred that, in June 2023 licensee in compliance with the direction of the honorable Authority and approval of the BoD established an HSE department in SEPCO, wherein a professional (Junior Engineer) who possesses the

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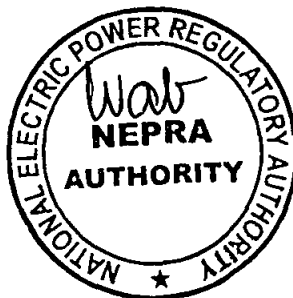


- HSE certifications i.e. IOSH and NEBOSH is dedicatedly working and the department is fully functional in SEPCO.
- ii. Moreover, he submitted that there are certain positions vacant in the HSE department. However, when the process for approval of the HSE department was initiated, at that time SEPCO was in the process of hiring junior engineers. As the SEPCO completed the process of hiring junior engineers, Election Commission imposed a ban on new hiring.
 - iii. In continuation to the worthy Authority's directions SEPCO took up the matter with the ministry and got approval from the Ministry of Energy for hiring last Friday (referred to the day of the hearing). Meanwhile, a letter has been sent to the Election Commission to seek approval for the hiring of HSE professionals in SEPCO.
 - iv. Further, Licensee representative stated that, although the strength of HSE professionals is not sufficient in the department, it cannot be said that it is not functional in SEPCO. A junior engineer who possesses safety certifications is dedicatedly working in the safety directorate under a safety director, and gradually SEPCO is developing a fully functional HSE Directorate in all aspects.
 - v. Moreover, there are certain legal issues for which our legal counsel is not present currently due its personal engagements.

FINDING/ANALYSIS

10. The licensee has asserted that it is fully aware of its responsibilities to provide safe and reliable electric power services to its consumers and has always endeavored to fulfill its obligations in accordance with the applicable laws. The Authority has considered the submissions of licensee and observes that the same are far away from ground facts. In last 05 years, 19 Employees and 39 Public Persons have been electrocuted in the service territory of licensee due to serious safety hazards, which licensee has failed to rectify. Moreover, Despite explicit directives by the Authority instructing the Licensee to establish a Safety Directorate and implement safety standards in its daily operations, the Licensee has not taken such directives seriously, even after a period exceeding two years. This highlights the Licensee's lack of responsibility and commitment to adhere to NEPRA's applicable documents. Therefore, it can be said that the submissions given by the Licensee are not justified.
11. The Licensee has contended that as per NEPRA Act, 1997, "the contraventions" are to be dealt with as per the procedure to be prescribed through Rules in terms of section 46(2)(d) of the Act, but it is a matter of record that no such "Rules" are in field. The Licensee has further argued that the subject explanation is issued on the alleged violation of the provisions of inter-alia Safety Code. Whereas, the Safety Code of NEPRA itself provides in section 5.1 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". The relevant Rules are no more in field. However, the explanation has been issued under NEPRA (Fines) Regulations, 2021 which are framed under section 47 of the NEPRA Act, 1997 which does not authorize the Authority to frame "Regulations" for the purposes of imposition of fines.
12. The Authority has considered the submission of licensee and observes that the reference of NEPRA Fine Rules, 2002 in safety code cannot be substituted with the Fine Regulations which were framed with intent of substituting Fine Rules. The proceedings are initiated under Fine Regulations and NEPRA is fully empowered to proceed and determine the matter accordingly. Specific breaches of the Licensee are set out in explanation with

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reasonable detail. The assertion that no contravention of law has been alleged is baseless and deliberately misleading.

13. The licensee has submitted that according to Section 7.1 of Power Safety Code, 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 discretion for the licensee to establish as per its own requirements etc. Upon reviewing the Licensee's assertions, the Authority has observed with surprise that, despite a lapse of two years, the Licensee has not established an HSE directorate even considering its own requirement. The licensee is misinterpreting the word discretion. It does not allow the licensee to not establish safety directorate, to not inculcate safety culture and play with the lives of innocent people. The Authority views this non-compliance with apparent concern, interpreting it as a sign of the Licensee's lack of commitment to fostering a safety culture within its service territory. The Authority concludes that the Licensee seems unaware of the importance of developing a safety management system and accuses it of jeopardizing human lives through unlawful practices, thereby rendering the system more susceptible. The absence of a Safety Directorate is seen as a missed opportunity to prevent a significant number of fatalities.
14. The Licensee has contended that it has commenced the establishment of the Safety Management System in accordance with the directives of the esteemed Authority. Through a special resolution dated 22.06.2023, approval was obtained from the BOD SEPCO for the formation of a Safety Directorate. The Authority while going through the submission of the licensee noted that, the Licensee was initially instructed in December 2021 to establish a Safety Directorate, with subsequent reminders and verbal directives during hearings on other matters. However, the Licensee did not respond, leading to the issuance of a subject explanation. It is now claimed by the Licensee that the process has been initiated and will be completed in due course. This highlights the Licensee's seemingly casual attitude towards complying with the Authority's directives, as no specific timeline has been provided for full compliance. The Authority has further observed that the Licensee initiated the process only after two years had elapsed since legal proceedings were initiated by NEPRA, a step that could have been taken much earlier to prevent the occurrence of unfortunate accidents.
15. During the hearing on the matter, licensee stated that the department is partially operational, with a junior engineer overseeing the HSE department. Upon examination of licensee's submission, the Authority observes that the vast area of 56,300 Sq. km under licensee's jurisdiction is being managed solely by a junior engineer in terms of system safety, which appears impractical. The licensee's assertion in this regard seems aimed at misleading the Authority. Further, it can be obviously said that the Licensee has made notional compliance but not substantial.
16. Foregoing in view, it is concluded that the Licensee has failed to comply with the Authority's directions to establish an independent directorate of Health Safety and Environment in its territory despite repeated correspondence. Further, the Licensee has also failed to submit a satisfactory response against the served explanation. Therefore, the Licensee is in violation of Sections 7.1 and 5.1 of the Power Safety Code, read with Section

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21(2)f of the NEPRA Act, Article 11 of the terms and conditions of Licensee's Distribution Licensee, and is in non-compliance with the repeated directions of Authority, thereby, is also in violation of section 48 of the NEPRA Act.

Decision

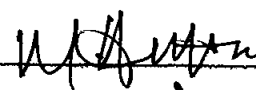
17. After due deliberations and taking into account the submissions/arguments made by the Licensee during the hearing and in light of the NEPRA Act, NEPRA (Fine) Regulations, 2021, and other applicable documents, the Authority is of the considered opinion that the Licensee has failed to provide any satisfactory reply to the Explanation served to it, therefore, the Authority hereby decides to issue a Show Cause Notice to the Licensee in terms of Regulations 4(8) & (9) of the NEPRA (Fine) Regulations, 2021.

AUTHORITY

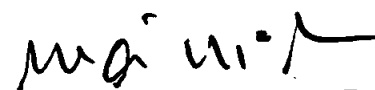
Rafique Ahmed Shaikh
Member (Technical)



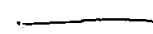
Engr. Maqsood Anwar Khan
Member (Licensing)



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



Amina Ahmed
Member (Law)



Waseem Mukhtar
Chairman



Dated August 08, 2024

