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# National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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## Registrar

NEPRA/R/TCD-03.1/ 4362-63

June 02, 2010

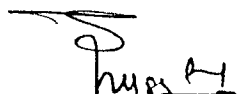
Mr. Ghazanfar Iqbal Aujla  
Chief Executive  
Aujla & Associate Town Developers (Pvt.) Ltd.,  
1<sup>st</sup> Floor, Mughal Plaza,  
Main WAPDA Town Road,  
Gujranwala.

Subject: REVIEW PETITION FILED BY MR. GHAZANFAR IQBAL AGAINST THE DECISION OF MEMBER (CONSUMER AFFAIRS) REGARDING CHARGING OF GRID SHARING COST AND ACQUIRING LAND BY GEPCO

Reference is made to your review petition dated September 2, 2009 against the decision of Member (Consumer Affairs) regarding charging of grid sharing cost and acquiring land by GEPCO.

2. Please find enclosed the decision of the Authority on review petition for your information.

Encl: As above

  
(Syed Safer Hussain)

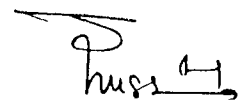
Copy to:

Chief Executive Officer,  
Gujranwala Electric Power Company Ltd. (GEPCO)  
565/A, Model Town, G.T. Road,  
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NEPRA/R/TCD-03.1/ 4364

June 02, 2010

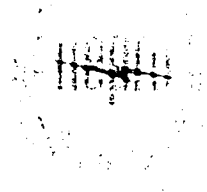
Forwarded for information, please.

  
(Registrar)

Sr. Advisor / Director (CAD)

CC:

- a) Chairman
- b) Member (CA)



**BEFORE THE**  
**NATIONAL ELECTRIC POWER REGULATORY AUTHORITY**  
**(NEPRA)**

CCR. No: 09/2009

Mr. Ghazanfar Iqbla Aujla ..... Petitioner

Versus

Gujranwala Electric Power Company ..... Respondent

Date of Hearing: March 08, 2010

Date of Decision: May 21, 2010

- Present:
1. Mr. Khalid Saeed (Chairman)
  2. Mr. Ghiasuddin Ahmed (Vice Chairman/Member)
  3. Mr. Maqbool Ahmad Khawaja (Member)
  4. Mr. Shaukat Ali Kundi (Member)
  5. Mr. Zafar Ali Khan (Member)

**On behalf of:**

Petitioner:

1. Mr. Ghazanfar Iqbla Aujla

Respondent:

1. Muhammad Ibrahim Majooka, CEO
2. Fayaz Hussain Siddiqui, Manager (P&I)

**IN THE MATTER OF:**

**REVIEW PETITION AGAINST THE DECISION OF MEMBER (CONSUMER AFFAIRS) IN**  
**THE MATTER OF COMPLAINT FILED BY MR. GHAZANFAR IQBLA AUJLA AGAINST**  
**GEPSCO REGARDING CHARGING OF GRID SHARING COST.**

DECISION

1. This Order shall dispose of the Review Petition preferred by M/s Aujla & Associates Town Developers (Pvt) Ltd. through Mr. Ghazanfar Iqbla Aujla, Chief Executive Officer (hereinafter referred to as 'the Petitioner') against the decision dated August 19, 2009 (hereinafter referred to as 'impugned decision') of the Member (Consumer Affairs) of the National Electric Power Regulatory Authority (hereinafter referred to as 'the Authority' or 'NEPRA').
  
2. The brief facts of the case are that the Petitioner on March 26, 2009 filed a complaint with the Authority against Gujranwala Electric Supply Company (GEPSCO) (hereinafter referred to as 'the Respondent') stating that the Petitioner is sponsoring a housing scheme under the name and style of Canal View Housing Scheme, Gujranwala. For electrification of the scheme, the Petitioner approached the Respondent and entered into negotiations with it. As a consequence of the negotiations, the Respondent agreed to the request of the Petitioner subject to fulfillment of the following conditions:
  - a. The complainant shall pay the full cost for construction of 132 KV Grid Station with 02 Nos. 10/13 MVA P.T/Fs along with 02 No. 132 KV line bays & other allied works and cost for construction of 132 KV D/C T/L to feed the said Grid Station to GEPSCO.
  - b. The Complainant shall transfer 32 Kanals of land for constructing of 132 KV G/S for the scheme free of cost to GEPSCO.
  - c. The external electrification work inside the housing society shall be carried out by the Complainant at his own through GEPSCO/WAPDA approved contractors after proper vetting of the design by GEPSCO and as per terms and conditions of the vetting, applicable for execution of external electrification works by the sponsors.
  - d. The Complainant shall pay 4.5% (Design vetting fee @ 1.5% & supervision charges @ 1.5% to GEPSCO and inspection charges @ 1.5% to Chief Engineer M&I) of the total estimated cost of G/S, T/Line and external electrification work when demanded by GEPSCO. However formal approval of the design shall be issued on the receipt of Design vetting fee and fulfillment of all the departmental formalities.

DECISION

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2. The brief facts of the case are that the Petitioner on March 26, 2009 filed a complaint with the Authority against Gujranwala Electric Supply Company (GEPSCO) (hereinafter referred to as 'the Respondent') stating that the Petitioner is sponsoring a housing scheme under the name and style of Canal View Housing Scheme, Gujranwala. For electrification of the scheme, the Petitioner approached the Respondent and entered into negotiations with it. As a consequence of the negotiations, the Respondent agreed to the request of the Petitioner subject to fulfillment of the following conditions:
  - a. The complainant shall pay the full cost for construction of 132 KV Grid Station with 02 Nos. 10/13 MVA P.T/I's along with 02 No. 132 KV line bays & other allied works and cost for construction of 132 KV D/C T/L to feed the said Grid Station to GEPSCO.
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  - d. The Complainant shall pay 4.5% (Design vetting fee @ 1.5% & supervision charges @ 1.5% to GEPSCO and inspection charges @ 1.5% to Chief Engineer M&I) of the total estimated cost of G/S, T/Line and external electrification work when demanded by GEPSCO. However formal approval of the design shall be issued on the receipt of Design vetting fee and fulfillment of all the departmental formalities.

- e. The Complainant shall provide a Bank Guarantee equivalent to 25% of the total cost of external electrification work of the Housing Scheme, valid for the entire period upto completion of full electrification work.
- f. Maintenance and Operation of G/S and Distribution Network within the Housing Society shall be carried out by GEPCO. Therefore, electric connection to the individual consumers will be given by GEPCO on full cost deposit basis as per prevailing rules/procedure.

3. The Petitioner vide his letter No. 1016-17/AA-050 dated 21 May 2008 agreed to donate 4 (four) Acres of land to GEPCO for construction of Grid Station in future, having adequate access/approach from the road, preferably towards south of the Gujranwala city where the subject housing scheme is located. The Petitioner further wrote in the afore-referred letter that it reserve the right to satisfy itself that order for donation of land and payment of 25% share of the grid cost have lawfully been issued **however, this may not be treated as a precondition towards our consent given above.** As a consequence of the consent given by the Petitioner a Memorandum of Understanding (MoU) was signed by the Petitioner with the Respondent on 4 June 2008. The MoU, *inter alia*, included the following terms and conditions:

- 1) The ultimate load demand of Canal View Housing Scheme Gujranwala is assessed as 9.17 MW as per detail provided by the sponsor. He shall pay to GEPCO 25% share of the grid cost (excluding the cost of the land) for the load of 9.17 MW. Other than the payment of 25% share of the grid cost by the sponsor the individual applicants/plot owners shall also pay 25% share of the grid cost according to their load demanded to GEPCO at the time of sanctioning of individual connections.
- 2) A Grid Station will be built on minimum 32 Kanals of land by GEPCO in the near vicinity of the Housing Scheme of sponsor. That Grid Station shall help to provide relief to the Lahore road Grid Station of GEPCO so as to cater the ultimate demand of the sponsor's scheme. GEPCO shall have full right to use this Grid Station for any area to deliver Power. Maintenance & Operation of the Grid Station shall also be carried out by GEPCO.
- 3) In response to the letter No.29172/P&ID dated 19 May 2008 of GEPCO the sponsor has already given his consent vide his letter No. 1016-17/AA-050 dated 21 May 2008 that he will donate 32 Kanals land to GEPCO for construction of Grid Station for future needs near his scheme. He shall therefore purchase this piece of land within 1 kilometer of the housing scheme for construction of 132 KV Grid Station as said in Para 2 above. This

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land shall be transferred by the sponsor free of cost to GEPCO within 06 months of signing of this MoU. The transfer sale deed shall be executed in consultation with Manager Legal, GEPCO on stamp paper.

- 5) The sponsor shall build dedicated distribution system himself at his own cost according to the procedure laid down by GEPCO/WAPDA. Ultimately the system shall be handed over to GEPCO. The GEPCO shall provide individual connections and shall be responsible for its maintenance and operation.
  - 8) The supply of power to Canal View Housing Scheme shall be given through 2 No.11 KV independent feeders to be emanated from existing 132 KV Lahore road grid station of GEPCO which shall be constructed by the sponsor. He will provide two 11 KV panels and cables to connect these feeders with the grid station.
  - 10) The source feeder and external electrification work inside the housing society shall be built by the sponsor at his own cost through GEPCO/WAPDA approved contractors after proper vetting of the design by GEPCO and as per terms and conditions of the vetting, applicable for execution of external electrification work by the sponsor. The external electrification work shall be carried out by the sponsor as per criteria given below.
  - 13) Formal approval of the design shall be issued by the GEPCO on signing of this MoU. Before starting construction at site the sponsor shall pay supervision charges said in para 11 above to GEPCO.
  - 15) Any dispute arising out of the Implementation/interpretation of terms of MoU will be referred to Arbitration consisting of two Arbitrators, each appointed by both parties.
  - 17) Anything contained in this MoU contrary to the law of the land shall be considered an inadvertent error and shall be deemed to be in effective, non-operative & thus shall not be binding on either of the parties.
4. Consequent to the signing of the MoU, the land measuring 24 Kanals instead 32 Kanals (1 Acres) were transferred in the name of the Respondent through Registered Sale Deed of Land (Agriculture) dated 21 January 2009. Moreover, the Petitioner had made all the payments in response to the Demand Notice of the Respondent dated 9 June 2008 except the 25% Grid Sharing Cost for 9.17 MW load amounting to

Rs.11,306,610/-. The Respondent, however, deducted the amount i.e. Rs.11,306,610/- from the already paid amount of more than fourteen million for a deposit work lying with the Respondent and informed the Petitioner vide its letter No. 2506-10/GSC dated 31 July 2008.

5. The Petitioner vide his letter No.2941/AA-050 dated 10 November 2008 and pursuant to clause 17 of the MoU as afore-referred submitted an application to the Respondent requesting to delete Clause 1(a), 3 & 10 of the letter of approval issued by the Respondent for electrification of the housing scheme vide letter No. 33790-96/PE/Canal View dated 9 June 2008. The Respondent turned down the application vide letter No.72795-1 dated 19 November 2008. The Petitioner therefore, agreed vide letter No. 2968/AA-050 dated 22 November 2008 to transfer the land measuring 24 Kanals immediately in the name of the Respondent and assured to transfer the rest of 8 Kanals after arrangements for which he is making efforts.
6. The Petitioner, afterwards, filed a complaint before the Authority, *inter alia*, on the following legal grounds:
  - a. Under the provisions of section 7 sub-section (3) of the NEPRA Act only NEPRA has the powers to determine tariff, rates charges and other terms and conditions for supply of electric power services by the distribution companies.
  - b. It is power of the NEPRA under the provisions of section 46(2)(d) of the NEPRA Act to make rules for determination of rate, fees, charges and other terms and conditions of licensee and also under the provisions of section 47 the Authority may also make regulations, not inconsistent with the provisions of this Act or rule made for carrying out its functions under this Act.
  - c. Under the provisions of section 12(d) of the NEPRA Act, NEPRA can only make rules & regulations for the purpose of this Act and cannot delegate its power to any body else and shall remain the sole authority for this purpose.
  - d. In accordance with the power delegated to her, NEPRA has made rules called consumers eligibility criteria, 2003 which has been published with the approval of the Government of Pakistan vide notification dated 26 July 2003 (SRO No.743(1)/2003).
  - e. Under the provisions of section 21 sub-section (2)(d) of the NEPRA Act the licensee (i.e. distribution companies) are responsible to provide distribution services and make sale of electric power within its territory on a non discriminatory basis to all the consumers who meet the eligibility criteria laid down by the authority. Section 21 sub-section (2)(c) provides that the licensees are also required to make publicly available tariff, specifying the authority approved rates, charges and other term and conditions for distribution services and power sales to consumers.
  - f. In accordance with these rules, as said in section 4(1) an extension/reinforcement required to be made in the common distribution system within the service territory of the licensee in order to

provide an applicant electric power the licensee shall carry out the required extension/reinforcement at its own cost.

- g. In accordance with section 3 sub-section 3 of the NEPRA rules (sic) eligibility criteria, 2003, the charges to be deposited by the applicant shall be estimated in accordance with the prudent utility practice, instructions issue by the licensee and order of the NEPRA issued from time to time.
- h. Under the provisions of section 3 sub-section 1(b) of the NEPRA rules (sic) eligibility criteria, 2003 the applicant is to deposit the charges for the proposed dedicated distribution system only, upto the inter connection point including metering installation.

7. The Petitioner finally prayed to the Authority:

- a. The receipt of the share of grid cost from the complainant & the prospective consumers of her housing scheme by the licensee alongwith the land obtained may kindly be declared as illegal and unlawful.
- b. The Licensee may please be directed to refund back the payment of Rs.18,629,784/- received from the Complainant on account of 25% share of the grid cost and expense incurred on the transfer of 24 Kanals of land.
- c. The licensee may also please be directed to refund back the payment received from the individual consumers of the scheme of the Complainant on account of share of the grid cost & should not demand the same from the prospective consumers.
- d. The licensee may please be reframed (sic) to demand 8 more Kanals of land from the Complainant.

8. As a consequence of this, the complaint was forwarded to the Respondent vide letter No: FCD.03/337-2009 dated 30 March 2009 for report in the matter. The Respondent submitted its report/parawise comments vide Memo No.26902/P&E dated 30 April 2009. After giving history of the case, the Respondent submitted that procedure regarding electrification of new Housing Schemes by sponsors through own contractors/consultants circulated by G.M. (PE&S)WAPDA vide letter No. H67-80 dated 21 May 1998 is followed by all the DISCOs. The draft terms and conditions as per prevalent rules/practices were sent to the consultant for seeking his consent so that MoU could be finalized accordingly. The draft terms and conditions of MoU were in accordance with instructions issued by the licensee (WAPDA/GEPCO) from time to time and there was nothing in contravention of Consumer Eligibility Criteria.



9. The Respondent also gave copies of the policy regarding recovery of grid sharing cost from the housing schemes issued vide letter No. 19-31/GM(C&M)P/E-5 dated 2 January 2003 read with letter No.3397-3408/GM(C&M)P/E-172 dated 22 July 2004 and approval of Board of Director regarding transfer of 04 to 06 Acres of land for construction of new grid station to the Petitioner. The Respondent further clarified that no discriminatory treatment has been give to the petitioner regarding recovery of grid sharing cost since grid sharing cost is being recovered by the Respondent and all other DISCOs from all the new housing schemes in compliance of Circular No.19-31GM (C&M)P.E-5 dated 2 January 2003 and letter No.3397-3408/GM(C&M)P/E-172 dated 22 July 2004. The Grid sharing cost includes the sharing cost of Grid Station, T/Line and cost of land. As far as demand regarding transfer of 04 Acre land to the Respondent for construction of new Grid Station is concerned, all new housing schemes which have their ultimate load demand above 5.0 MW are requested by the Respondent to transfer 04 to 06 Acre land approval of which was obtained from the Board of Directors of the Respondent on 7 May 2008. The Respondent also attached copies of similar demand regarding transfer of land raised to G. Mangnolia housing scheme and D.C Colony housing scheme in the Respondent's area with the report for ready reference. The Housing Scheme which has ultimate load demand above 5.0 MW is charged with proportionate cost of Grid and Transmission Line only and 04 to 06 Acres of land is obtained instead of proportionate cost of land. Accordingly, 25% proportionate cost of Grid & T/Line @ Rs.1.233 Million per MW (Rs.1,233/- per KW) has been charged to the Petitioner.
10. The Respondent further submitted that Demand Notice dated 9 June 2008 was issued to the Petitioner for depositing Rs.13,177,948/- including 25% grid sharing cost of Rs.11,306,610/- by 8 July 2008 according to the agreed MoU signed on 4 June 2008. It was agreed by the Petitioner in MoU that 25% grid sharing cost (share cost of Grid and T/Line components only excluding cost of land) shall be paid by him to the Respondent and 04 Acre Land shall be transferred to the Respondent (in place of share cost of land). But the Petitioner made payment of Rs.1,871,338/- only through forgery. The Petitioner had not paid the balance amount of Rs.11,306,610/- despite the fact that the whole H.T network constructed by the Petitioner has been energized and his urgent demand for energization of 13 No. electricity connections have also been met by the Respondent. The Respondent further submitted that it had recommended the adjustment of recoverable amount of Rs.11,306,610/- as grid sharing cost from the refundable amount of the above Deposit Work since the Petitioner has not still paid 25% grid sharing cost despite lapse of 10 months.
11. The Respondent submitted that the Petitioner agreed, as per MoU, that he will transfer 04 Acre land to the Respondent by 04-12-2008 but he transferred only 3 Acre land only to the Respondent so far and

remaining 01 Acre of land is yet to be transferred by him. The Respondent has not taken any action against the Petitioner for breach of MoU and for committing forgery by making less payment of Demand Notice. The demand of Grid Sharing cost and 32 Kanals of land to meet full load of the society is in accordance with the instructions issued by the licensee (WAPDA/GEPCO) from time to time and there is nothing contrary to the provisions of "Consumer Eligibility Criteria".

12. To further explore the matter and know about the facts of the case, a meeting was also held on 15 June 2009 at NEPRA Head Office regarding the subject matter which was chaired by the Senior Advisor/Director (Consumer Affairs) in which both the parties participated.

13. During the hearing both the parties reiterated their arguments as submitted in the pleadings. The Member (Consumer Affairs) analyzed the whole case in the light of rules and regulations and decided as follows:

"Your case has been reviewed in detail under the prevalent rules and regulations. Rules formulated by WAPDA in the subject matter (these are not in violation of any NEPRA rules/regulations) are applicable to all Ex.-WAPDA DISCOs till such time NEPRA rules are formulated and notified. It has been decided that:-

- (1) Grid sharing cost charged by GEPCO is covered under the rules, hence justified;
- (2) As far as land is concerned, 24 kanal land has been transferred by you to GEPCO for construction of Grid Station through a memorandum of understanding dated June 4, 2008 with GEPCO and mutated in the name of GEPCO. Therefore, asking for return of land at this belated stage is not justified. GEPCO shall construct the grid station on this 24 kanal of land which is sufficient enough for construction of Grid Station and shall not demand more land from you."

14. In response to the decision, the Petitioner preferred a Review Petition on 02 September 2009. In the review petition, *inter alia*, the following points were raised:

- 1) The prevalent rules and regulations are those which are called Consumers Eligibility Criteria, 2003 which have been published by NEPRA with the approval of the Government of Pakistan. In accordance with these rules (sic) any extension/ reinforcement required to be made in the common distribution system is the responsibility of the licensee.
- 2) The dedicated distribution system built for the housing scheme of the complainant consists of 11 KV and 400 Volt lines only. 132 KV grid station from which the supply has been

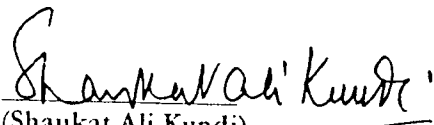
given to the housing scheme of the complainant is a common distribution system as it feeds a lot of other customers as well. Only 2 out of 19 feeders from the grid station are feeding to the housing scheme of the complainant.

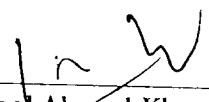
- 3) In the decision NEPRA has not substantiated by referring the Rules which justify the charging of grid share cost by the Licensee to the complainant to strengthen common distribution system in his territory.
  - 4) NEPRA has already made the rules for supply of electricity to the applicants by the Licensee i.e. ECR, 2003. It is not clear from the order that which are those rules which have not been promulgated by NEPRA so far even after 12 years of the establishment of the Authority. After the promulgation of the NEPRA Act, 1997 under Clause No 45, the rules adopted by WAPDA in the subject matter have become null and void and cease to have any effect from the date this Act comes into force.
  - 5) MoU was signed by the complainant being driven by the stick of monopoly held by the Licensee. An important clause of the MoU i.e. clause no 17 is a decisive clause which states that "anything contained in this MoU contrary to the law of the land shall be considered an inadvertent error and shall be deemed to be ineffective, non operative and thus shall not be binding on either of the parties".
  - 6) In the order of NEPRA the act of the licensee to demand 32 Kanals of land has not been considered lawful act however his demand up to 24 Kanals has been declared lawful. The order has not been substantiated by referring the relevant clause of the NEPRA Act/ Rules which permit the Licensee to get donation of 24 Kanals of land from the complainant and does not permit more than 24 Kanals.
  - 7) Our complaint was heard by the sub-ordinate officers we request that this review petition may please be heard by the full Authority herself or at least by any Member/ Chairman.
15. The Authority admitted the review Petition on 17 November 2009 and directed that both the parties i.e. Mr. Ghazanfar Iqbal Aujla and GEPCO be called to appear before the Authority for hearing to present their case. The hearing was held on 08 March 2010 in which both the parties participated and presented their point of view in the matter.
16. The Authority analyzed the case in the light of proceedings of the hearing and found that the grounds taken by the Petitioner have already been considered in the decision by Member (Consumer Affairs). The Petitioner has not agitated any new ground or provided any new evidence in the Review Petition.
17. The decision of the Member (Consumer Affairs) was based on the policy of WAPDA/GEPCO, as NEPRA rules/regulations in the matter are yet to be notified and are silent at present. The Petitioner has wrongly stated that the electricity being provided to him is from common distribution system. This is a temporary arrangement made by the Respondent. The dedicated Grid Station for the society shall be constructed once all the formalities are fulfilled. Even today the two feeders from which the electricity is

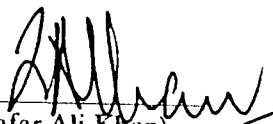
being supplied are dedicated for the Petitioner. Hence it will be wrong to conclude that the regulation 4(1) of the ECR, 2003 shall be applicable in this case. This is a dedicated distribution system and the sponsor has to bear the cost for its extension/reinforcement.


18. The NEPRA regulations are silent on the electrification of housing societies/development of Sponsored Dedicated Distribution System. That is why the Authority approved amendments in the ECR, 2003 in February 2010 which are in the process of gazette notification. Till such time amendments in the NEPRA regulations are gazette notified, the WAPDA instructions being not inconsistent with the NEPRA Act, rules and regulations shall have the legal effect and force of law. Moreover, in the absence of NEPRA regulations/instructions, the Board of Directors of the Respondent shall be competent to issue instructions in this regard. This practice is not unique to the Respondent but is being followed by all DISCOs. Therefore, the WAPDA/GEPSCO instructions are neither contrary to the section 45 of the Act nor inconsistent with the ECR, 2003.
19. The grid sharing cost has been charged by the Respondent in accordance with the prevailing practice in the country and no discrimination has been made with the petitioner. The land has already been transferred by the Petitioner to the Respondent under the MoU and mutated in the name of the Respondent. The Respondent has provided connections from existing grid station in response to the MoU signed between the Petitioner and the Respondent. The complainant has taken benefit of 08 Kanal of land under the decision of Consumer Affairs in which the Respondent has been directed that the grid station shall be constructed on 24 Kanal of land which is sufficient for construction of grid station and should not demand more land (08 Kanal) from the complainant.
20. In view of the foregoing, the Authority decides that:
  - i) The Petitioner has not brought any new grounds/evidence for consideration of the Authority. The decision of the Member (Consumer Affairs) was based on the policy/instruction issued by WAPDA and decision of the Board of Directors of the Respondent and no discrimination has been made with the petitioner rather it has resulted in benefit of 8 kanals of land to the petitioner.
  - ii) The cost required for development of a society/project is ultimately recovered from their allottees. Sponsor/agency/developer acquires land and then develops sectors of different categories. It means that respondent is playing the role of a developer and does not fall under the definition of a consumer under ECR, 2003 and it has no merit under ECR, 2003. To overcome this issue, amendments

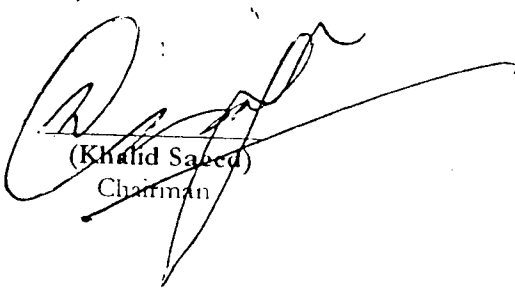
- pertaining to Sponsor Dedicated Distribution System are being made in ECR, 2003 which will address these issues in future.
- iii) The Review Petition is hereby rejected and the Petitioner is directed to comply with the decision as communicated to him earlier in its true letter and spirit.

  
(Shaukat Ali Kundi)  
Member 24.05.2010

  
(Maqbool Ahmad Khawaja)  
Member

  
(Zafar Ali Khan)  
Member 26/5/10

  
(Ghiasuddin Ahmed)  
Vice Chairman/Member 27/5

  
(Khalid Saeed)  
Chairman

Islamabad, May 19, 2010