



Registrar

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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

No. NEPRA/ADG(CAD)/TCD-05/14670-73

September 14, 2018

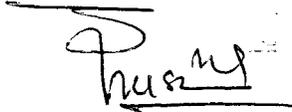
1. Chief Executive Officer
Lahore Electric Supply Company (LESCO),
22-A, Queen's Road,
Lahore.
2. Aashiana Shopping Center
78-D-1, Main Boulevard,
Near Liberty Chowk, Lahore.

Subject: **ORDER OF THE AUTHORITY REGARDING APPEAL FILED BY AASHIANA SHOPPING CENTER (ASC) UNDER SECTION 12-A OF THE NEPRA ACT, 1997 AGAINST THE ORDER OF THE MEMBER (CONSUMER AFFAIRS) DATED 29TH AUGUST 2017 IN THE MATTER OF ASC VS LESCO LESCO-68/2017**

Reference is made to Appeal filed by Aashiana Shopping Center (ASC) dated 10th January 2018 against the order of Member (Consumer Affairs) dated 29th August 2017 in the matter of case referred by LESCO regarding NOC for utilization of 11 kV ASC Feeder in the Central City Area, Main Boulevard, Gulberg, Lahore.

2. Please find enclosed herewith the Order of the Authority (05 Pages) regarding the subject matter for information and further necessary action.

Encl: As above


14 09 18
(Syed Safer Hussain)

Copy to:

- i. C.E./Customer Service Director
Lahore Electric Supply Company (LESCO)
22-A, Queen's Road, Lahore.
- ii. Boulevard Heights
11-K, Main Boulevard, Gulberg II,
Lahore



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No. LESCO-68/2017

Aashiana Shopping Center
78-D-1, Main Boulevard,
Near Liberty Chowk, Lahore.

.....

Appellant

Versus

Lahore Electric Supply Company (LESCO)
22-A, Queen's Road, Lahore.

.....

Respondent No. 1

Boulevard Heights
11-K, Main Boulevard, Gulberg II, Lahore.

.....

Respondent No. 2

Date of Hearing: 5th July 2018

Authority:

- | | | |
|----|------------------------|----------------------------|
| 1) | Mr. Tariq Saddozai | Chairman |
| 2) | Mr. Rehmatullah | VC/Member (CA)/(Licensing) |
| 3) | Mr. Saif Ullah Chattha | Member (M&E) |
| 4) | Mr. Himayat Ullah Khan | Member (Tariff) |

On behalf of:

Appellant: Sheikh Azfar Amin Advocate

Respondent No.1: Nemo

Respondent No.2:

1)	Mr. Rizwan Faiz	Advocate
2)	Mr. Afzal Khan Shinwari	Advocate
3)	Mr. Haroon Sharif	Advocate
4)	Mr. Amjad Saeed	Advocate



Subject: **ORDER OF THE AUTHORITY REGARDING APPEAL FILED BY AASHIANA SHOPPING CENTER (ASC) UNDER SECTION 12-A OF THE NEPRA ACT, 1997 AGAINST THE ORDER OF THE MEMBER (CONSUMER AFFAIRS) DATED 29TH AUGUST 2017 IN THE MATTER OF ASC VS LESCO**

ORDER

This Order shall dispose of the Appeal filed by Aashiana Shopping Center (hereinafter referred to as the "Appellant" or "ASC") dated 10th January 2018 against the order of Member (Consumer Affairs) dated 29th August 2017 in the matter of case referred by Lahore Electric Supply

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Company Limited (hereinafter referred to as the "Respondent" or "LESCO") regarding NOC for utilization of 11 kV Aashiana Shopping Center (ASC) Feeder in the Central City Area, Main Boulevard, Gulberg, Lahore.

2. LESCO vide letter dated 6th April 2017, approached NEPRA and submitted that the Appellant had undertaken external electrification of their commercial building. Approval for an ultimate load demand of 2872 kW was given to ASC on 7th May 2011 and supply of power was allowed through an independent 11 kV feeder (the **ASC Feeder**) from the 132 kV Garden Town Grid Station, as proposed by their consultant, M/s PowerCom. The construction of the feeder was completed by ASC and partial load of 1350 kW was allowed to ASC's building, since the sponsors had not provided a completion certificate from the LDA at the time.

3. Subsequently, LESCO received an application for electrification of another nearby commercial building, M/s Boulevard Heights (hereinafter referred to as the "Respondent No. 2" or "BHS"), for a load of 3469.06 kW. Supply of power to BHS's building was proposed, through the consultant M/s PowerCom, by grouping the 11kV ASC Feeder. After receiving an NOC/written consent from ASC, being sponsors of the ASC Feeder, the case was processed by LESCO and the SOP for BHS's building was allowed via a grouped 11kV ASC Feeder. This grouping of feeders between commercial buildings and plazas was executed by LESCO under their policy, dated 6th October 1998.

4. Following the foregoing events, ASC were aggrieved by the grouping of their ASC Feeder for electrification of BHS, and agitated that the concerned NOC purportedly issued by them was fake.

5. Thereafter, LESCO proceeded to file a complaint before the Authority, dated 6th April 2017, to adjudicate on the issue of whether LESCO had the unfettered authority to convert feeders within its service territory from a Sponsored Dedicated Distribution System (**SDDS**) to a Common Distribution System (**CDS**), namely whether the ASC Feeder could be unilaterally converted into a feeder category that allowed other consumers to utilize it, and to further discern the amount payable to ASC in lieu of their converted feeder.

6. Hearings were conducted on the matter and Order was passed on 29th August 2017 with the following findings and directions:

"8. Under clause 4A(3) of CEC 2003, it is abundantly clear that a Distribution Company is provided the unqualified right to change the status/category of a distribution system where (1) public interest is fulfilled and (2) mutually agreed compensation is paid by the Distribution Company to the system's sponsor. The said clause does not provide a sponsor the power to curtail or restrict a Distribution Company for changing the status/category of a distribution system by any means, including by withholding consent. In light of such, the Authority concurs with LESCO's view, that the Distribution Company does not require any permission, approval, consent or NOC from Respondent 1 to group the Aashiana Feeder for external electrification of other buildings, plazas, etc (i.e. convert the feeder from an SDDS to a CDS).

9. Further, LESCO has apprised that right-of-way in Lahore's Central Area (Main Boulevard, Gulberg) is a critical concern and it is in the best interest of work that electrification is done through grouping feeders for multiple buildings/projects. This is a valid public interest concern and provides LESCO with reasonable cause to undertake such policies, for achieving consummate electrification of the area and its inhabitants.



10. The second matter to be addressed is the issue of compensation. Under clause 4A(3) of CEC 2003, the Authority shall adjudicate upon the matter of compensation where the concerned parties fail to reach agreement. LESCO, in its letter dated 06-04-2017, has highlighted that they have intimated Respondent 1 regarding refund of cost of the Aashiana Feeder and have in turn received no response or confirmation. Hence, they have approached the Authority for resolution of the matter. In light of such, the Authority is empowered to resolve the issue of compensation to be paid by LESCO to Respondent 1 under clause 4A(3) of CEC 2003 and hereby determines that the compensation to be paid shall be equal to the actual costs incurred for the concerned Distribution System.

13. In view of the foregoing, it is hereby determined that LESCO may proceed with the conversion of the Aashiana Feeder from a Sponsored Dedicated Distribution System to a Common Distribution System, notwithstanding any approval, consent or NOC from ASC, and pay compensation to Respondent 1 equal to the actual cost incurred by Respondent 1 for the Aashiana Feeder.”

7. Being aggrieved by the order, ASC filed the Writ Petition No. 75870/2017 before the Honorable Lahore High Court who, vide order dated 12th December 2017, disposed the petition on grounds of maintainability due to availability of appeal under law. In view thereof, ASC proceeded to file the instant appeal before the Authority, vide letter dated 10th January 2018, under Section 12-A of the NEPRA Act, 1997. The Appeal was admitted by the Authority and hearing in the matter was initially scheduled for 3rd May 2018, however, on request of BHS, the hearing was adjourned. Later, the hearing was re-scheduled for 24th May 2018, however, the same was again adjourned on request of ASC. Finally, the hearing was held on 5th July 2018 wherein representatives of ASC and BHS participated. LESCO failed to attend the hearing.

8. The Appellant, in his appeal and arguments during the hearing, has presented the following grounds:

- i. The NOC being relied upon by LESCO is bogus and was not issued by the Appellant. This is illegal collusion by LESCO and BHS to the detriment of the Appellant and is criminal.
- ii. This criminal activity (i.e. creation of fake NOC and reliance by public utility on the same) has been reported to the FIA who is investigating the matter.
- iii. An SDDS may only be converted into a CDS in the public interest. In the instant case, the ASC Feeder is being converted for the benefit of a single party/consumer, which fails to fulfil any wide public interest;
- iv. A stay order from the Lahore Civil Court, dated 29th August 2015, was in field at the time of passing of the order by NEPRA under appeal. Therefore, the impugned order could not be passed and is liable to being struck down;
- v. A factual discrepancy has been observed in the matter. It was submitted that the covered area of BHS is much greater as compared to that of ASC, In effect, BHS was granted a lower load requirement, even though they maintain a higher covered area. This shows concealment of facts and mala-fide on part of LESCO.

9. During the hearing, the representative of BHS stated that the Appeal of ASC is time barred, as the Appellant approached the wrong forum, therefore risk rests with the Appellant. Moreover, the scope of Appeal is limited. BHS added that the case was decided by NEPRA after providing opportunity of hearing to the Appellant, framing of issues, perusal of record and conclusive



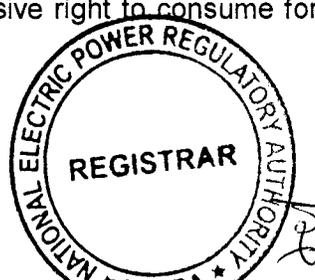
adjudication on all facts in light of the applicable law. Therefore, the instant appeal holds no merit and may be dismissed.

10. Since LESCO was not present during the concerned hearing, the Authority directed the same to depute its Chief Engineer (Planning), along with relevant record, for a meeting on 10th July 2018. Accordingly, Additional Manager (Planning) and Deputy Manager (Planning), LESCO attended the said meeting. The said officials submitted that the area where ASC Feeder exists is quite a congested area and it is not possible to construct separate independent feeder(s) due to problem of right of way. Therefore, the Petitioner's application for provision of electricity was sanctioned by laying feeder on existing 45-foot HT structures which already had four feeders, and no cost of structures was charged to the Petitioner. Upon receipt of request from BHS for provision of electricity, different options were explored. The existing feeders running on the said HT structures provide supply to mixed load and could not cater to the load of BHS. It was concluded that the existing feeder of ASC could cater to the load if its re-conductoring is carried out. Accordingly, the Consultant of ASC, which was also the consultant of BHS, provided NOC for provision of supply to BHS from ASC Feeder. Thereafter, LESCO proceeded with re-conductoring of the feeder and at the time of energization, ASC raised its objections. The LESCO representatives further assured that proper voltage as per standards and required load will be provided to ASC. Further, LESCO vide its letter dated 10th August 2018 has submitted that the existing 11 kV network in the vicinity of ASC is heavily loaded, and as per LESCO practice, a load up to 2500 kW can be accommodated on mixed load feeders in case of commercial tariff. Any load greater than 2500 kW is accommodated on independent/grouped feeders. LESCO has assured that if ASC requires an extension of load in future, LESCO will provide the same as per standing instructions and after fulfillment of all departmental formalities.

11. The Authority has examined this case in detail and in light of the relevant documents, arguments advanced during the hearings and the applicable law. The main contention of the Appellant advanced in these proceedings has been the authenticity of the concerned NOC and the criminal breach occurring therefrom. In this regard, reference is made to paragraph 8 of the impugned order wherein the matter has been discussed and addressed conclusively. The Member (Consumer Affairs) has found that, as per clause 4A(3) of the Consumer Eligibility Criteria 2003, a distribution company does not require any NOC or authorization from a sponsor to convert a SDDS to a CDS, provided that compensation is paid to the sponsor and that a public interest is being met. Therefore, the authenticity of the concerned NOC, as agitated by the appellant during these proceedings and the proceedings of the impugned order, is an irrelevant factor in the operation of clause 4A(3) and LESCO's actions thereunder.

12. The Appellant has further challenged the impugned order on the grounds of lack of public interest, specifically that LESCO's actions may be construed as favoring a singular party/consumer that fails to satisfy any interest held by the public at large. In this regard, reference may be made paragraph 9 of the impugned order, where the subject of public interest has been discussed. The specific public interest being served by the converting the impugned feeder to a CDS pertains to achieving consummate provision of electricity to consumers by way of grouping of feeders for multiple buildings/projects. LESCO has submitted that the concerned area where the ASC Feeder is situated contains numerous right-of-way issues that inhibit the distribution company's electrification efforts. Therefore, LESCO is following a policy for grouping existing feeders in order to provide electricity to the most number of consumers within the relevant technical and legal constraints, which is the same policy implemented in the instant case.

13. Furthermore, the Appellant has neglected to appreciate that LESCO's exercise of clause 4A(3), i.e. conversion of the ASC Feeder from a SDDS to a CDS, is not limited to servicing of a single consumer. A 'Common Distribution System' (CDS) as defined under clause 2(1)(ii) of the Consumer Eligibility Criteria, read with LESCO's distribution licence, is defined as the distribution system administered by LESCO for all consumers within its service territory. Conversion to the CDS category does not create an exclusive right to consume for a single consumer, rather the



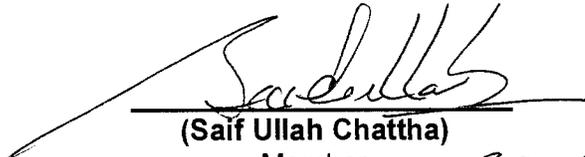
opposite. Therefore, the contention that conversion to a CDS feeder by LESCO is tantamount to favoring a single consumer, and thereby not fulfilling any public interest, is an erroneous construal of facts and is untenable.

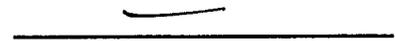
14. Another challenge brought by the Appellant is the the operation of a stay order of the Lahore Civil Court that affects the impugned order. Again, it is highlighted that the issue has been examined in the impugned order, in paragraph 12, wherein the Member (Consumer Affairs) found that the Civil Court has expressly provided that any proceedings before a competent authority shall not be affected by the order.

15. Lastly, the Appellant has highlighted mala-fide on part of LESCO from the record, specifically a discrepancy between authorized sanctioned loads for ASC and BHS. These facts have no bearing on the impugned exercise of authority by LESCO, i.e. conversion of the ASC Feeder, and therefore hold no merit in these appellate proceedings.

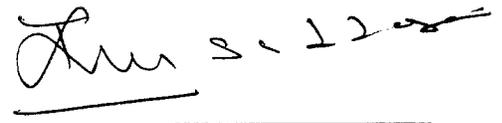
16. Foregoing in view, the Authority has perused the documents available on record, and examined the circumstances of the case, and hereby modifies the impugned order on the following terms:

- i. LESCO will proceed with the conversion of the Aashiana Shopping Center (ASC) Feeder form a Sponsored Dedicated Distribution System (SDDS) to a Common Distribution System (CDS), notwithstanding any approval, consent or NOC from ASC and pay compensation to ASC on present market rates instead of actual cost incurred;
- ii. LESCO will ensure provision of extension in load to Aashiana Shopping Center after completion of all codal formalities;
- iii. LESCO will ensure that voltage parameters are not compromised and Aashiana Shopping Center is provided voltage as per standards.

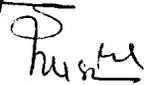

(Saif Ullah Chattha)
Member 12-9-2018


(Himayat Ullah Khan)
Member


(Rehmatullah)
VC/Member 6/9/2018


(Tariq Saddozai)
Chairman




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