



Registrar

National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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No. NEPRA/ADG(CAD)/TCD-05/189/16-19

July 23, 2020

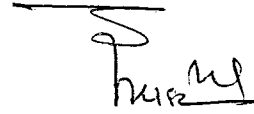
Chief Executive Officer,
Lahore Electric Supply Company (LESCO),
22-A, Queen's Road,
Lahore.

Subject: **DECISION OF THE AUTHORITY ON THE REVIEW MOTION FILED BY LESCO AGAINST DIRECTIVES OF THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY UNDER SECTION 48 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 REGARDING CESSATION OF ILLEGAL MAINTENANCE AND EXTENSION / REINFORCEMENT OF DISTRIBUTION SYSTEM IN HOUSING SOCIETIES**

Reference is made to the Review Motion filed by LESCO vide Letter No. 19073-79 dated April 17, 2019, against the directives of the Authority dated February 04, 2019.

2. Please find enclosed herewith the Decision of Authority (04 Pages) for compliance and necessary action.

Encl: As above

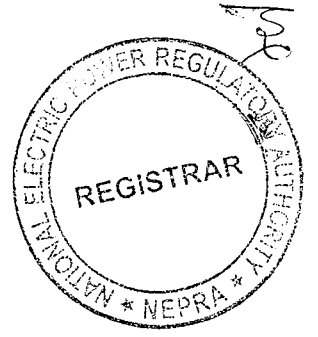


23.07.20

(Syed Safer Hussain)

Copy to:

1. Chief Engineer/Customer Services Director,
Lahore Electric Supply Company (LESCO),
22-A, Queen's Road, Lahore.
2. Chief Engineer P&D
Lahore Electric Supply Company (LESCO),
22-A, Queen's Road, Lahore.
3. Manager (Commercial),
Lahore Electric Supply Company (LESCO),
22-A, Queen's Road, Lahore.



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Auhtority:

- | | | |
|----|--------------------------|--------------------|
| 1) | Mr. Touseef H. Farooqi | Chairman |
| 2) | Engr. Bahadur Shah | VC/Member (M&E) |
| 3) | Mr. Saif Ullah Chattha | Member (Tariff) |
| 4) | Mr. Rehmatullah Baloch | Member (CA) |
| 5) | Mr. Rafique Ahmed Sheikh | Member (Licensing) |

Subject: **DECISION OF THE AUTHORITY ON THE REVIEW MOTION FILED BY LESCO AGAINST DIRECTIVES OF THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY UNDER SECTION 48 OF THE REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT 1997 REGARDING CESSATION OF ILLEGAL MAINTENANCE AND EXTENSION/REINFORCEMENT OF DISTRIBUTION SYSTEM IN HOUSING SOCIETIES**

DECISION

This decision shall dispose of the review motion filed by LESCO against directives of the National Electric Power Regulatory Authority under section 48 of the Regulation of Generation, Transmission, and Distribution of Electric Power Act 1997 dated February 04, 2019 regarding cessation of illegal maintenance and extension/reinforcement of distribution system in housing societies.

2. Brief facts of the instant case are that it was noticed by the Authority that distribution system/network in private housing societies were maintained by the societies themselves despite the fact that the systems had already been taken-over by the DISCOs for metering and billing purpose and the same are parts of Common Distribution System (CDS) of the DISCOs.

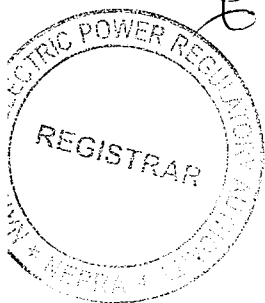
3. Accordingly, all DISCOs were directed vide letter dated February 4, 2019 that "all operation, maintenance, upgradation, extension or reinforcement of distribution systems

4. In response, none of the Distribution Companies had raised any observation against the said directions of NEPRA except LESCO which submitted a Review Motion vide letter dated April 17, 2020. The Authority observed that LESCO had submitted the request through simple letter, instead of filing a review against the directives of Authority dated February 4, 2019. The procedure of NEPRA (Review Procedure) Regulations, 2009 had not been complied with and therefore, the same was returned vide letter dated June 17, 2019. However, LESCO submitted a reminder vide letter dated January 15, 2020 whereby the review motion earlier filed by LESCO was referred and NEPRA was requested for an opportunity of hearing to provide detailed submissions before to the Authority. NEPRA vide its letter dated January 20, 2020 while replying to the reminder informed LESCO that NEPRA has already responded to the request made by LESCO vide letter dated April 04, 2019 and there is nothing pending at NEPRA in this regard.

5. Subsequently, LESCO vide letter dated April 14, 2020 resubmitted Review Motion against the earlier directions of the Authority. LESCO, in the said Review Motion has inter alia submitted as under:

- (i) That neither any opportunity of hearing or notice has been given to LESCO prior to reaching the decision nor did it form part of any stage of the decision making. The Authority is obligated under Section 7(6) of the NEPRA Act to protect the interests of the companies providing electric power services, including LESCO. By virtue of the aforesaid provision, the NEPRA Act has given the status of key stakeholder to LESCO, which demands that it should be consulted before any such decision is made or discretion is exercised against its rights and interests. Any actions taken in contravention of the aforesaid, such as the Decision, would be liable to be set aside for being ultra vires the NEPRA Act.
- (ii) That the Authority has wrongly invoked Section 48 of the Act to make the decision and the same is without jurisdiction and beyond the NEPRA Act. It is an admitted position that the powers under Section 48 of the NEPRA Act have been invoked to purportedly give effect to the provisions of LESCO's Distribution License dated April 01, 2002.
- (iii) That it is a settled law that thing required to be done in prescribed manner must be done in such manner alone and any deviation there from would be unlawful. Consequently, the decision is liable to be set aside for being without jurisdiction and any legal basis.

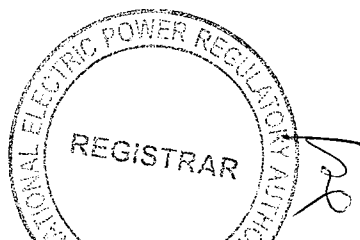


- (iv) That under Section 5(2) read with Section 48 of the NEPRA Act, the decision was to be made by at least three members of the Authority, who would constitute the quorum under the NEPRA Act. However, from a perusal of the decision, it appears that the same has been made by the office of the Deputy Registrar. Furthermore, there is nothing on record to suggest delegation of any such powers under Section 12 of the NEPRA Act to the Deputy Registrar.
- (v) That the assumption "Authority allows recovery of costs incurred towards such maintenance, upgradation, extension and reinforcement of distribution systems through respective distribution tariff charged to consumers" on which the decision is based is incorrect. Thus, the decision effectively denies costs and is prejudicial to the interests of the Company and amongst various provisions of the NEPRA Act, violates Section 7(6) thereof.

6. The review motion submitted by LESCO has been considered. As per the provisions of LESCO's Distribution License, the Distribution Code and NEPRA Consumer Eligibility Criteria, 2003 (CEC 2003), operation, maintenance, upgradation, extension and reinforcement of Common Distribution Systems within a Service Territory is the obligation of the concerned Distribution Company. Moreover, the Authority allows maintenance charges in tariff for upgradation, extension and reinforcement of distribution system either financed by the distribution company itself or by the consumer/sponsor. Once the billing/metering is taken over by the distribution company then operation, maintenance, upgradation, extension or reinforcement of distribution system undertaken by a person/ sponsor, other than the concerned Distribution Company, is unlawful and abdication of the concerned Distribution Company's obligations to undertake its responsibilities.

7. The rules and regulations regarding duties of the distribution company to undertake maintenance, extension, or reinforcement of the distribution system are pretty clear. According to NEPRA Consumer Eligibility Criteria, 2003 once the distribution system is taken over by the distribution company; the operation and maintenance responsibilities rest with the licensee. In view of the said there was no need to conduct a hearing in this regard. Unnecessarily conducting hearings not only hinders the Authority to perform its duties under the Act, delays the work and also puts financial burden upon distribution companies.

8. LESCO in its review has submitted that the Authority is obligated under Section 7(6) of the NEPRA Act to protect the interests of the companies providing electric power services, including LESCO. The fact remains that the Section 7(6) of the NEPRA Act, mandates NEPRA to protect the interests of both; the companies providing electric power services and consumers as well in accordance with the principles of transparency and impartiality. The consumers living in housing schemes suffer due to non-availability of electricity supply whenever any transformer damages or



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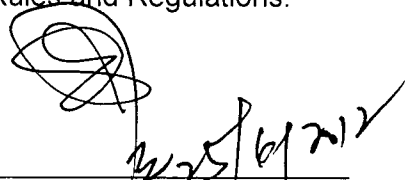
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face low voltage problems in case of over loading despite the fact that such consumers make payment of their electricity bills to LESCO regularly.


9. The Section 48 of the NEPRA Act, 1997 envisages that the Authority shall have the power to issue such directives, codes, guidelines, circulars or notification as are necessary to carry out the purposes of the Act and rules and regulations made hereunder. By taking cognizance of the matter being of very important natures, the Authority issued directives to all DISCOs to cease demanding housing schemes to carry out maintenance at their own. Accordingly, the Authority directed Registrar office NEPRA to issue these directions of all DISCOs including LESCO. However, none of the DICOs except LESCO has raised any objection against these directives.

10. Perusal of the directions sought to be modified/reviewed clearly indicates that all material facts and representations made were examined in detail and no new evidence/ground was placed on record by LESCO. Therefore, the Authority is convinced that there is no need to withdraw or modify the impugned directions. Hence, the Review Motion filed by LESCO is declined and the earlier directions dated February 04, 2019 are upheld.

11. LESCO is further directed to implement the decision of the Authority in its true letter & spirit; failing which proceedings will be initiated against LESCO under NEPRA Act and other enabling Rules and Regulations.



(Rehmatullah Baloch)
Member

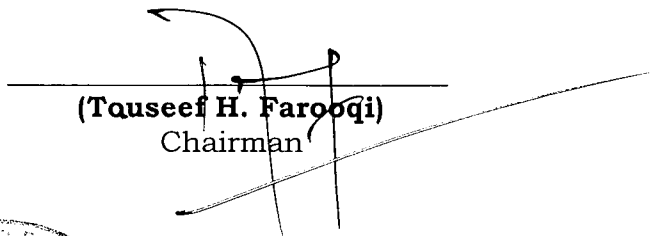


(Rafique Ahmed Sheikh)
Member



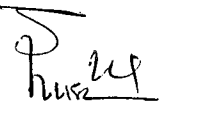
(Saif Ullah Chattha)
Member
6-7-2020

(Engr. Bahadur Shah)
YC/Member



(Tauseef H. Farooqi)
Chairman





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