



Registrar

National Electric Power Regulatory Authority Islamic Republic of Pakistan

NEPRA Tower, Attaturk Avenue (East), G-5/1, Islamabad
Ph: +92-51-8206500, Fax: +92-51-2600026
Web: www.nepa.org.pk, E-mail: registrar@nepa.org.pk

No. NEPRA/ADG(Lic)/LAD-38/1190-91

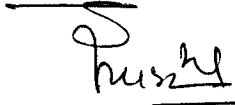
January 15, 2020

Chief Executive Officer, Lahore Electric Supply Company Ltd. 22-A, Queens Road, Lahore	Secretary DHA Defence Housing Authority, Main Office Complex, Sector A, Commercial Area, Phase VI Lahore Cantt.
---	---

Subject: **Order of the Authority in the matter of Review Petition filed by Lahore Electric Supply Company Limited against the Decision of the Authority dated December 21, 2016 in the matter of grant of Distribution Licence No. 23/DL/2016 dated December 26, 2016 to Defence Housing Authority Phase-XII (EME) Sector, Lahore**

Enclosed please find herewith the subject Order of the Authority (07 Pages) for information, record and further necessary actions, if any.

Encl: As above


15/01/20
(Syed Safer Hussain)



National Electric Power Regulatory Authority
(NEPRA)

Order of the Authority
in the Matter of Review Petition Filed by Lahore Electric Supply
Company Limited Against the Decision of the Authority dated
December 21, 2016 in the Matter of Grant of Distribution Licence
No. 23/DL/2016 dated December 26, 2016 to Defence Housing
Authority Phase-XII (EME) Sector, Lahore

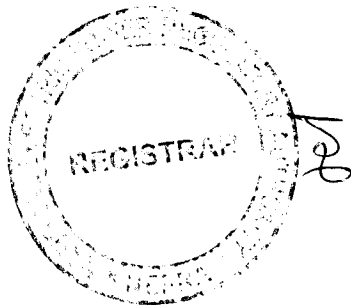
This order shall dispose of the Review Petition dated January 26, 2017 filed by Lahore Electric Supply Company Limited (LESCO) against the decision of the Authority dated December 21, 2016 whereby, the Authority granted a distribution licence No. 23/DL/2016 dated December 26, 2016 to Defence Housing Authority Phase-XII (EME) Sector, Lahore (DHAEME).

(A). Background

(i). The Authority in terms of Section-20 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the "NEPRA Act") granted a distribution licence No. 23/DL/2016 to DHAEME on December 26, 2016 for delivery and supply of electric power to the residents/occupants of EME Housing Scheme located at 14-KM, Multan Road, Thokar Niaz Baig Lahore.

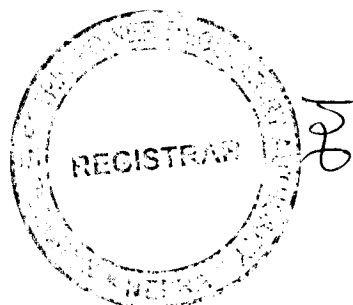
(B). Filing of Review Petition

(i). The determination of the Authority was communicated to all the relevant stakeholders including LESCO (hereinafter referred to as the "Petitioner"). Being aggrieved with the decision of the Authority, the Petitioner filed a Review Petition on January 26, 2017 raising various grounds as follows: -



- (a). DHAEME was granted a sanction to engage in the business of supplying energy on October 01, 1995 by the Government of Punjab (GoPb) for three (03) years and no extension was granted thereafter;
- (b). As per Article-7 of the distribution licence No. 03/DL/2002 dated April 01, 2002, the petitioner/LESCO has exclusive right to provide distribution services in its service territory;
- (c). The initial area in respect of which the sanction was granted was much less than the area mentioned in the application of DHAEME for the grant of distribution licence;
- (d). During processing of the application for the grant of distribution licence, the comments of the Petitioner were not considered;
- (e). No opportunity of hearing was granted to the Petitioner despite the fact that it was an important stakeholder and affected party in the matter;
- (f). The NEPRA (Supply of Electric Power) Regulations, 2015 (the "Supply Regulations") appears to be ultra vires and in direct conflict with the legal scheme and framework of the NEPRA Act as well as the rules framed there under;
- (g). Even DHAEME does not fulfill the eligibility criteria for the grant of distribution licence provided in the Supply Regulations as it does not have its own 132 KV grid station;
- (h). The Authority has improperly exercised its discretion under Regulation-5 of the NEPRA Licensing (Application and Modification Procedure) Regulations, 1999.

(ii). In consideration of the above-mentioned grounds, the Petitioner requested the Authority to withdraw/cancel its decision dated December 21, 2016 pertaining to the grant of distribution licence to DHAEME.



(C). Admission of Review and Hearing

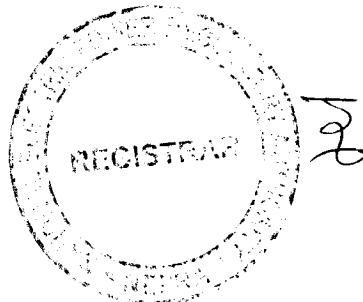
(i). The Authority considered the Review Petition and decided to admit the same on February 15, 2017 for further proceedings. In order to proceed further, the Authority decided to hold a hearing of the parties (i.e. LESCO and DHAEME). Initially, the hearing was scheduled for March 30, 2017, however, the same was adjourned many times either on the request of the Petitioner or DHAEME. Finally, the hearing was held on April 03, 2019 at NEPRA head office Islamabad whereby, the Authority directed the parties to provide their point of view in writing.

(D). Submissions of the Petitioner

(i). The Petitioner submitted that DHAEME did not have any exception provided in Article-3.2(i)(b) of the distribution licence because, the sanction of GoPb expired four (04) years prior to the issuance of the distribution licence to LESCO. The Petitioner highlighted that grant of distribution licence to DHAEME is violation of the exclusivity of LESCO under Article-7 of its distribution licence because DHAEME is located in the exclusive service territory of LESCO. The Petitioner submitted that the initial area of the EME Housing Scheme in respect of which the sanction of GoPb was granted was less than the area mentioned in the application for the grant of distribution licence.

(ii). The Petitioner also contested that during processing of the application for the grant of distribution licence, neither its comments were considered, nor opportunity of hearing was provided to LESCO despite the fact it was an important stakeholder. The Petitioner mentioned that the sale of electric power to bulk power consumer (BPC), allowed under Section-22 of the NEPRA Act, was envisaged for fifteen (15) years i.e. till December 16, 2012, however, the distribution licence was issued to DHAEME on December 26, 2016. Now, DHAEME is neither a generation company nor a BPC for the purposes of Section-22 of the NEPRA Act. The Petitioner added that grant of distribution licence to DHAEME is in contravention to Section-35 of the PC-Ordinance and the decision of the Cabinet Committee on Privatization whereby the Petitioner was included in the privatization program of the Government of Pakistan. The Petitioner mentioned that the decision of the Authority regarding

TSK



grant of distribution licence to DHAEME has caused financial losses to LESCO. Therefore, the Authority may withdraw/cancel its decision/determination dated December 21, 2016 regarding grant of distribution licence to DHAEME.

(E). Submissions of DHAEME

(i). DHAEME submitted that it was engaged in the re-sale of electric power business under an authorization/sanction of the GoPb well before the existence of the Petitioner i.e. since 1995, therefore, it does not fall under the exclusive service territory of LESCO as envisaged in Article-3.2(i)(b) of the distribution licence of LESCO/the Petitioner. DHAEME submitted that when the authorization/sanction was expired, it decided to hand over its distribution network to LESCO but it did not agree to the said.

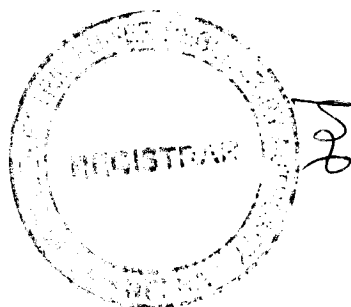
(ii). Later on, DHAEME applied for extension of load and in response, the utility/LESCO asked to get distribution licence from the Authority. Regarding extension of area of EME Housing Scheme, DHAEME clarified that no such extension has been made in the EME Housing Scheme. DHAEME submitted that it is paying its bills regularly and bearing all technical losses of distribution system of the EME Housing Scheme therefore, the stance of the Petitioner to the affect that grant of distribution licence to DHAEME is its business loss is not valid.

(F). Evaluation/Observations of the Authority

(i). The Authority considered the review petition and subsequent submissions of the parties and observed that the Article-3 of the distribution licence of DISCO(s) deals with the Service Territory of the licensee and in terms of Article 3.2(i)(b), the Service Territory of the licensee shall not include:-

"the areas in the use of housing colonies, plazas/complexes and other bulk purchasers, at the option of the organizations or bodies representing the occupiers or owners thereof, which were already operating their own distribution systems within the said areas on the date of issue of the Licence".

[Handwritten mark]



[Handwritten mark]

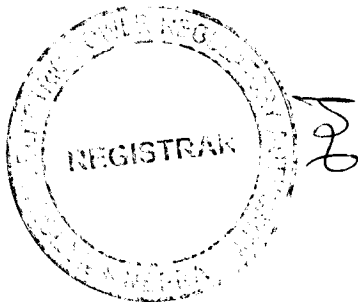
(ii). The Authority has observed that DHAEME was operating its distribution system within its own area prior to issuance of distribution licence to LESCO, therefore, the area for which DHAEME has been grant of distribution licence is excluded from the service territory of LESCO.

(iii). The Authority considered the Review Petition and subsequent submissions of the parties. Regarding the issue of expiry of the sanction provided by the GoPb, the Authority is of the considered opinion that although no record is available regarding extension of authorization of GoPb but, the Petitioner had been entertaining extension of load requests of DHAEME on different times which shows that DHAEME has been doing business with the consent of the Petitioner.

(iv). On the issue of violation of the exclusivity of the Petitioner under Article-7 of its distribution licence, the Authority is of the view that the distribution licence was granted to the Petitioner for provision of distribution services, sale of electric power, making scheme and engaging in incidental activities in its service territory, as stipulated in Article-7 of the distribution licence. However, the Authority while defining the service territory, excluded a number of entities including the areas in the use of housing colonies, plazas/complexes and other bulk purchasers from the service territory of distribution licensees. The Authority considers that DHAEME had been supplying electricity to the residents of EME Housing Scheme after obtaining one-point supply from the Petitioner prior to grant of distribution licence to the Petitioner/LESCO. Therefore, the EME Housing Scheme is not part of exclusive service territory of the Petitioner.

(v). Regarding the expansion of area of supply by DHAEME, the Authority is of the view that the Petitioner did not submit any supporting document/material or any evidence which could prove that DHAEME has expanded the area of supply. On the other hand, DHAEME submitted that it had not made any change in the original area/scheme of the EME Housing Scheme.

(vi). About the non-consideration of comments of LESCO and non-provision of opportunity of hearing, the Authority clarifies that the Petitioner did not submit its comments within the stipulated time. The comments of LESCO were



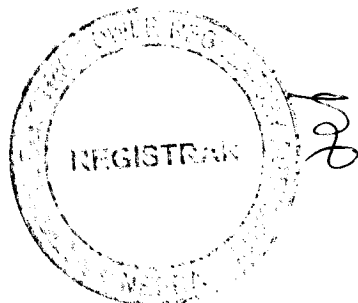
received very late and by that time the distribution licence was approved. Regarding the opportunity of hearing, the Authority is of the view that the Petitioner did not seek any such opportunity from the Authority.

(vii). Regarding supplying power to BPC, allowed under Section-22 of the NEPRA Act, the Authority considers that the Petitioner has inappropriately quoted Section-22 of the NEPRA Act as DHAEME is not a BPC of the Petitioner but a bulk power purchaser which receives electric power at one point and re-sale the same to the residents of the EME Housing Scheme for which the Authority has granted a distribution licence.

(viii). On the stance of the Petitioner that the determination is in contravention to Section-35 of the PC-Ordinance, the Authority considers that the stance of the Petitioner is not true as no asset of the Petitioner has been taken away. The Authority is of the view that the area of EME Housing Scheme, the distribution network, equipment and machinery were never the assets of the Petitioner.

(ix). Regarding financial loss of the Petitioner, the Authority clarifies that no territory of the Petitioner has been carved out. In terms of Article-3.2(i)(b) of distribution licence of the Petitioner, the licensee/DHAEME is not part of service territory of the Petitioner. Only the activity of sale of electric power has been regularized through grant of distribution licence. DHAEME is carrying out all the activities including meter reading, billing, operation and maintenance of distribution system. DHAEME is bearing all the technical/non-technical losses therefore, there is no financial loss of the Petitioner.

(x). The Authority has observed that DHAEME is getting electricity in bulk from LESCO for further distribution to the consumers of EME Housing Scheme. The Authority has noted that the ultimate load of EME Housing Scheme is 38.42 MW. In order to meet the ultimate load, a 132/11 KV grid station is being constructed. The grid station is approved by LESCO and inaugurated by the representatives of the Petitioner/LESCO. The Authority has noted that the construction of the grid station will be carried out by DHAEME whereas, transmission line will be constructed by LESCO. After energization, the grid station will be handed over to LESCO for operation and maintenance.




(xi). The Authority also hereby clarifies that the exclusive distribution right granted to the existing distribution licensees is subject to conditions specified in the NEPRA Act which imposes certain conditions on a distribution licensee and that licensee cannot enjoy exclusivity without corresponding obligations to provide safe, continuous and reliable electricity to the electricity consumers. Therefore, a distribution licensee cannot claim the exclusive right as an absolute right for the reason that the NEPRA Act does not intend to create a monopoly to sell electricity to consumers being bonded consumers.


(G). Decision of the Authority

In view of the foregoing, the Authority hereby decides to reject the Review Petition filed by the Petitioner against the decision of the Authority dated December 21, 2016 in the matter of grant of distribution licence to DHAEME and decides to uphold its earlier decision dated December 21, 2016.

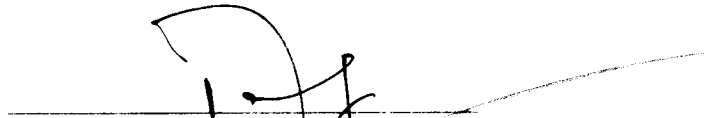
Authority


Rafique Ahmed Shaikh
(Member)

(Did not Attend the Meeting)
Saif Ullah Chattha
(Member)


Rehmatullah Baloch
(Member)

(Did Not Attend the Meeting)
Engr. Bahadur Shah
(Member/Vice Chairman)


Tauseef H. Farooqi
(Chairman)




15 of 20