



Registrar

National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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No. NEPRA/R/LAD-01/ 20439-44

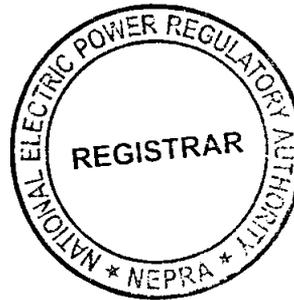
April 21, 2021

Chief Executive Officer,
K-Electric Limited,
KE House, 39-B, Sunset Boulevard, Phase-II,
Defence Housing Authority,
Karachi.
Contact No. 021-32637133

Subject: Determination of the Authority in the matter of Authority Proposed Modification (APM) in the Distribution Licence of K-Electric Limited.

Enclosed please find herewith determination of the Authority (24 Pages) in the subject matter for information and necessary action.

Enclosure: As above



(Ifikhar Ali Khan)
21/4/21

Copy to:

1. Secretary, Power Division, Ministry of Energy, A-Block, Pak Secretariat, Islamabad.
2. Secretary, Ministry of Privatization, 5-A EAC Building Constitution Avenue, F-5, Islamabad.
3. Secretary, Energy Department, Government of Sindh, 3rd Floor, State Life Building No. 03, Opp: CM Secretariat, Karachi.
4. Managing Director, NTDC, 414-WAPDA House, Lahore.
5. Chief Executive Officer, CPPA-G, ENERCON Building, Sector G-5/2, Islamabad.

National Electric Power Regulatory Authority
(NEPRA)

Determination of the Authority
In the Matter of Authority Proposed Modification in the
Distribution Licence of K-Electric Limited

April 21, 2021
Case No. LAD-01

The Authority in terms of Section 21, 25 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the "NEPRA Act") granted a Distribution Licence No. 09/DL/2003 to K-Electric Limited (KEL) on July 21, 2003 for a period of twenty (20) years expiring on July 20, 2023.

2. In terms of Section 21 of the NEPRA Act, KEL was allowed "Exclusivity" under Article 7 of its Distribution Licence to provide distribution services, make sales of electric power, make schemes and engage in incidental activities in the Service Territory and concession territory on a non-discriminatory basis.

3. The NEPRA Act was amended on May 02, 2018 vide the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2018 (XII of 2018) (the "Amendment Act") introducing significant changes in the relevant market structure to bring market reforms with the objectives to encourage participation by more market players to enhance efficiency to ensure better price, quality of service and choice for the consumers of electricity.

4. Pursuant to amendments in the NEPRA Act, the definition of "Distribution" in Section 2(v) of the NEPRA Act was amended omitting the word "sale" from it thereby restricting it to the delivery of electric power. Further, changes were also made in Section 21 of the NEPRA Act omitting the exclusive right granted to a Distribution Licensee. The relevant excerpts of the amended Section 21 of the NEPRA Act is reproduced as under:

"21. Duties and responsibilities of distribution licensees



(1) The Authority may, after such enquiry as it may deem appropriate and subject to the conditions specified, grant a licence for the distribution of electric power.

(2) The licensee shall —

(a) possess the right to provide, for such period as may be specified in the licence, distribution service in the service territory specified in the licence and to frame schemes in respect of that service territory.

Provided that a generation company may make sales of electric power to Bulk Power Consumers.”

5. In order to allow sale of electric power, a new provision of Section 23E was also introduced vide Amendment Act which is reproduced hereunder:

“Section 23E. Electric power supply licence

(1) No person shall, unless licensed by the Authority under this Act, engage in the supply of electric power to a consumer:

Provided that the holder of a distribution license on the date of coming into effect of the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2018 shall be deemed to hold a licence for supply of electric power under this section for a period of five (05) years from such date.”

6. In consideration of the above and in terms of Regulation 10(1)(a) of the NEPRA Licensing (Application and Modification Procedure) Regulations, 1999 (the “Licensing Regulations”) read with Section 26 of the NEPRA Act, an Authority Proposed Modification (APM) was communicated to the Licensee/KEL on November 23, 2018 wherein a proposed modification to Article 7 of Distribution Licence of KEL was forwarded for comments and feedback. The proposed modification attempted to remove exclusivity from the Distribution Licence of KEL and to incorporate the deemed licence granted to the KEL for “sale/supply” under the new bifurcated Section 23E of the Amended NEPRA Act. The proposed Article 7 of the Distribution Licence of KEL is reproduced hereunder:



“Article 7

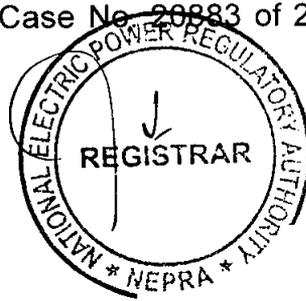
Duties and Responsibilities of the Licensee:

The License shall during the term of the Licence, provide distribution service in the Service Territory and frame schemes in respect of that service territory as per provisions of Article 3.2(i). The Licensee shall also make sales of electric power, make schemes and engage in incidental activities in the territory as a deemed supplier in terms of Section 23E of the Amended NEPRA Act.”

7. The Registrar in terms of Regulation-10(4) of the Licensing Regulations, published a notice about the APM in the newspaper on December 9-10, 2018, inviting the comments from the public. Further, letters were also sent to government ministries/departments and representative organizations, informing about the initiation of the APM and for filing comments in the matter.

8. In response, KEL vide its letter dated December 07, 2018 did not agree to the APM contesting that the same will have an adverse effect on its performance and on its service obligation. Further, KEL also highlighted that the provisions of the amendments of the NEPRA Act of May 02, 2018 do not have retrospective effect therefore, the terms and conditions of its Distribution Licence cannot be changed. In this regard, KEL also referred to that the provision of Section 50 of the NEPRA Act which protects anything done and any action taken under the pre-amended NEPRA Act. In this regard, KEL stressed that the APM should be withdrawn as the same according to it was illegal and in violation of its legal, vested and fundamental rights. Later on, KEL filed a Constitutional Petition No. 8623/2018 KEL vs. NEPRA etc. in the High Court of Sindh Karachi on December 11, 2018 whereby the APM proceedings were challenged. In this respect, the honourable Court on December 13, 2018 restrained the NEPRA to proceed further in the matter. Considering the said Stay Order, the APM proceedings were put on hold.

9. Later on, due to excessive/unannounced load shedding and electrocution cases in Karachi, the honourable Supreme Court of Pakistan initiated *suo moto* proceedings in the Human Rights Case No. 20883 of 2018 and directed the NEPRA vide Order



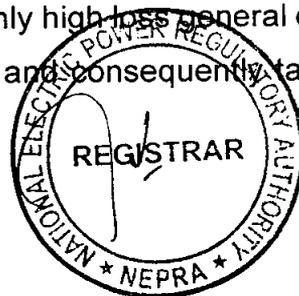
dated September 01, 2020 to proceed under Section 26 of the NEPRA Act and make its determination. The operative part of the said Order is reproduced as under:

“.....The learned Attorney General has contended that the issue of electricity in Karachi is that KEL has exclusive right of generation and distribution of electricity in the city of Karachi and therefore, to overcome the issue of exclusivity, the above quoted provision of law has to be given effect and the determination has to be made by the Authority. As the law has provided the provision, we do not see any impediment as to why the Authority is not empowered to give effect to the said provision of law. The Authority may proceed to implement section 26 of the Act of 1997 and make its determination. While making such determination, the Authority shall not be hampered by any Court, either by issuing of any injunctive order or issuing of any writ. The Authority, after making the determination, which it shall do within one month, will file a report before this Court.”

10. In compliance of the above directions of the honourable Supreme Court of Pakistan, the APM proceedings were reinitiated to exclude the exclusivity from the Distribution Licence of KEL. The APM was communicated to KEL on September 03, 2020 in terms of Regulation 10(1)(a) of the Licensing Regulations read with Section 26 of the NEPRA Act.

11. The Registrar in terms of Regulation 10(4) of the Licensing Regulations, published a notice about the APM in the newspapers on September 05-06, 2020, inviting the comments from the public. Further, letters were also sent to government ministries/departments and representative organizations, informing about re-initiating of the APM and for filing comments in the matter.

12. In response to the above, the KEL vide its letter dated September 07, 2020 opposed the APM taking the position that removal of its exclusivity will not benefit the general consumers. In fact if its licence is modified, its low loss consumers which contribute maximum revenue and already availing load shedding free electricity will be carved out leaving only high loss general consumers. The said situation will create serious financial issues and consequently tariff of general consumers will go higher

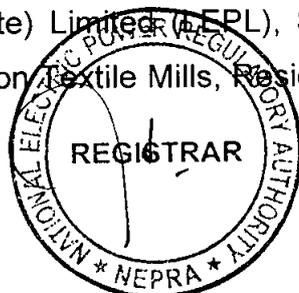


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therefore, the APM to do away with exclusivity is against the public interest. Further to the said, KEL highlighted that Section 50 of the NEPRA Act, protects its exclusive right for provision of distribution and supply of electric power services to its consumers therefore, its exclusivity cannot be excluded from its Distribution Licence. KEL also highlighted that it has been granted a Multi-Year Tariff (MYT) for seven (07) years and during the said period, any material change will be in violation of the own decision of the Authority. KEL also expressed that the APM for amending its Distribution Licence will have adverse and devastating effect on its performance, the quality of services to consumers and on the costs and tariffs of general consumers, therefore, the Authority must withdraw the same and maintain the status quo.

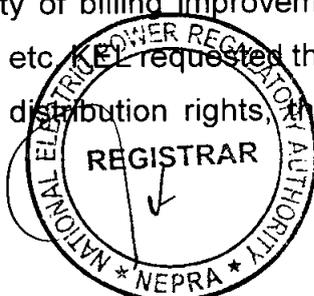
13. Further, an overwhelming/supportive response was also received from citizens, traders, associations, institutes, organizations, companies, political parties and residential/commercial/industrial consumers of Karachi through letters as well as emails. The consumers of Karachi strongly criticized the performance of KEL highlighting a number of issues being faced due to its monopoly for provision of supply of electric power services in the city of Karachi. It was highlighted that the utility has failed in totality to provide safe, reliable and un-interrupted electric power to its consumers. The citizens strongly supported the initiative of the Authority to exclude the exclusivity of KEL and introduction of more market players/new suppliers to promote competition in the electric power supply business.

14. In view of the above, the Authority in terms of Regulation 10(6) of the Licensing Regulations decided to hold a Public Hearing at Karachi on September 21, 2020. In the public hearing, along with representatives of KEL, a large number of inhabitants/consumers of Karachi, representatives of various organizations, institutes, associations, traders, companies, political parties and journalists participated. Some of the participants included the representatives of Karachi Chamber of Commerce and Industry (KCCI), Pakistan Association of Large Steel Producers (PALSP), Muttahida Qaumi Movement (MQM), Jamat-e-Islami (JI), Shams Power (Private) Limited (SPPL), Overseas Investors Chamber of Commerce (OICC), Shehri Citizen, Federal B Area Association of Trade & Industry (FBAAT&I), Corporate Pakistan Group (CPG), Lucky Energy (Private) Limited (LEPL), S.I.T.E Association of Industry, Mr. Abdul Sattar Jumani, Gadoon Textile Mills, Residents of DHA Karachi, SITE Superhighway



Association of Industry Karachi (SSAIK), Indus Hospital (IH), Administration Union Committee Singo Lane South Karachi (AUCSLSK), Layton Rehmatullah and Benevolent Fund Trust (LRBFT), Sindh Institute of Urology and Transplant (SIUT), Public Interest Law Association of Pakistan (PILAP), Chairman UC-42 and Karachi Timber Merchants Group (KTMG), Pakistan Business Council (PBC), Muhammad Sajid Jokhio (Member Provincial Assembly of Sindh), Mr. Adnan Afridi, Mr. Habib Hasan, the representatives of NTDC, SEPCO, HESCO, PTCL, PIAC, Pakistan Navy, STDC, Lasbela Industrial Estate Development Authority (LIEDA), journalists/news reporters of Dunya NEWS, 24 News, Nawa-i-Waqt, CNN Pak, the NEWS, GEO News, ARY News, Sama TV, GNN TV, HUM News, 92 News, AAJ TV and Awaz-e-Khalq Foundation etc.

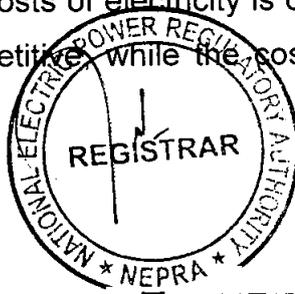
15. In the public hearing, KEL made a detailed presentation on the subject matter reiterating its earlier submissions/comments. In this regard, KEL stated that in order to achieve better efficiency, quality of service and provision of safe and reliable electricity, it has invested a huge amount in its transmission and distribution system/network. The generation capacity, number of grid stations and associated transmission lines have been increased. Similarly a substantial amount has been invested in the distribution system for reduction of losses and ensuring provision of better service of electricity to the consumers of Karachi. Resultantly, the number of interruptions, duration of interruptions and line losses have been reduced. KEL reported that as a result of key initiatives, it has been able to increase the load shed exempted areas over 75% through targeted investments of PKR 335 Billion across the value chain since privatization. The key initiatives include addition of 1057 MW generation capacity, reduction of transmission and distribution losses from 34.2% to below 20% in 2020, addition of eighteen (18) grid stations and transmission capacity enhancement by over 2800 MVAs (83%), increase in distribution capacity over 4000 MVAs (104%) through addition of 800 feeders and over 19500 PMTs and conversion of 9000 PMTs on to Arial Bundled Cable (ABC), community engagement initiatives to curb theft of electricity and improve recovery level. Whereas, many initiatives are being pursued including provision of new meters, area policing and community engagement post conversion, quality of billing improvement, rebates on past dues and revenue protection optimization etc. KEL requested the Authority to provide a level playing field as with the exclusive distribution rights, there is corresponding obligation on it to



supply electric power on non-discriminatory basis including high loss areas at regulated tariff. KEL expressed that new players would not be bound by any such obligation. KEL highlighted that its tariff is regulated and includes cross subsidy surcharge and stranded costs whereas, the tariff for new players will be mutually agreed which will encourage high-end consumers by avoiding cross-subsidy surcharge and stranded costs. KEL expressed that its service area includes high loss as well as low loss consumers whereas, new players will pick low loss consumers and there will be no obligation to serve the high loss consumers. KEL pointed out that in case the exclusivity is excluded, its low loss consumers which contribute maximum revenue and already availing load shedding free electricity will be carved out and only high loss general consumers will remain with it which will cause serious financial losses. KEL added that it will be facing network maintenance and investment related challenges whereas, new suppliers will use network of KEL through wheeling arrangement without incurring related costs. KEL submitted that the APM without any proper framework will have implications. KEL clarified that the Authority has initiated APM due to incidental load shedding issue in Karachi which was *force majeure* event and making any judgement on the basis of *force majeure* event is not justified. KEL submitted that the APM will also affect the privatization plans of Government of Pakistan (GoP) and is not in the public interest, therefore, the Authority must not pursue the same. KEL requested the Authority to provide a framework for an orderly transition post expiry of its Distribution Licence which is valid till July 20, 2023.

16. The Authority also offered an opportunity to stakeholders present physically at the place of public hearing as well as to those who decided to join online through ZOOM facility, to express their views in favour or against the APM.

17. In this regard, KCCI expressed that the exclusivity granted to KEL to undertake sale and distribution of electric power tantamount to creation of monopoly on a vital source of energy. The exclusivity granted to KEL has put the people of Karachi and its trade and industry at the mercy of KEL. Impact of monopoly of KEL over the last decade has been extremely damaging to the economy. The electric power is in fact a vital input for industrial production, exports and trade in commodities and consumer products. The high costs of electricity is one major factor which prevents export from being globally competitive while the cost of goods for domestic, consumption has



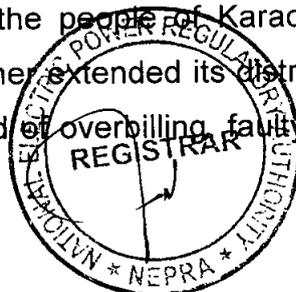
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sharply increased. Ultimately all such costs are passed on to general public, of which 40% is living below poverty line. KCCI through another letter informed that KEL is also opposing the APM on the premise that the process of sale of KEL to Shanghai Electric Power (SEP) will be effected. In this regard, KCCI expressed that it is against any kind of monopoly. KCCI expressed that taking over of KEL by a foreign company will complicate the matters and will result in additional burden on forex reserves due to repatriation of profits by the foreign company, if it enjoys the same monopoly. Further, the monopoly has in fact caused immense economic damage to the country and in violation of provisions of the Competition Act 2010, as well as the rights of citizens enshrined in the Constitution of Pakistan.

18. PALSP welcomed the proposed modification in the Distribution Licence of KEL for removal of exclusivity. PALSP expressed that the Authority is already aware about the worst load shedding carried out by KEL in the summer of 2020. The consumers should have rights and option to purchase electricity from any party or generate their own electricity. Further, the vulnerability of KEL's system is very clear during the rainy season, most of the city fell into darkness and many electrocution cases were reported. KEL makes supply agreements with its customers at its own terms and conditions due to its monopoly. Further, there are issues with respect to quality of supply. PALSP highlighted that the responses to corporate customer complaints is also not satisfactory.

19. Khawaja Izhar ul Hasan from MQM criticized the performance of KEL and showed his complete dissatisfaction over KEL regarding provision of uninterrupted supply of electric power to the consumers of Karachi. Mr. Izhar highlighted the issues of consumers which are facing misery of unscheduled load shedding, safety hazards over billing, etc. He also agitated the poor demand and supply management of KEL. Mr. Izhar supported the removal of exclusivity of KEL and requested the Authority to allow other power producers to supply electric power to the consumers of Karachi by ending the monopoly.

20. Engineer Hafiz Naeem-ur-Rehman of Jamat-e-Islami agitated that despite privatization of KEL, the people of Karachi are still facing load shedding issues. Further, KEL has neither extended its distribution system nor enhanced its capacity. The citizens have tired of overbilling, faulty meters and unscheduled load shedding.

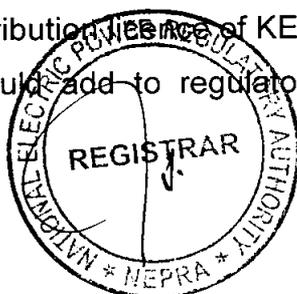


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Hafiz Naeem pointed out that KEL is meeting its electric power demand from Federal Government. The distribution system is un-safe, deteriorated and causing fatal/non-fatal accidents. JI requested the Authority to cancel the Distribution Licence of KEL.

21. SPPL expressed that over the past many years, poor performance of KEL is demonstrated and established in record. One can refer and rely upon the Industrial Reports issued by NEPRA from time to time. Then, KEL has been issued with Show Cause Notices from time to time. During the Public Hearing on Unprecedented Load Shedding in areas served by KEL, it was presented that KEL is relying on purchase of electricity from National Grid. Further, KEL has not invested the amount that it got approved in Tariff since many years, while the consumers of KEL are facing the excessive load shedding, safety hazards, excessive billing and other issues. SPPL submitted that the APM is in accordance with law and fitness of things since such modification is in accordance with the NEPRA Act, pre and post amendments. There is no question of adverse effect on the performance by KEL of its obligations. KEL has failed to coop with the situation and justify its licenses and privatizations. SPPL expressed that the APM shall bring the provisions of the licence of KEL in accordance with the provisions of the Competition Act 2010 and NEPRA Act as amended from time to time. Moreover, the APM would support in bringing the KEL case in line with that of NTDC who is barred in its Transmission Licence to engage in the generation or distribution activities, directly or indirectly. The consumers who are badly suffering from the non-performance by KEL shall be benefited by firm supply of power at competitive prices. Further, KEL would be able to revive itself for effective and efficient sustainability in the competitive market. SPPL submitted that induction of generation, transmission and distribution of power in competitive mode under regulatory regime shall ensure the continuous, safe and reliable supply of electric power to the consumers.

22. OICC strongly supported all regulatory steps to ensure a transparent competitive environment in all aspects of business. OICC appreciated the effort of the Authority to introduce competition in the power sector, however, pointed out that the Authority should go through a detailed analysis on the implications if exclusivity is excluded from distribution licence of KEL. Any changes to the regulatory regime in an abrupt manner could add to regulatory uncertainty and effect the confidence of

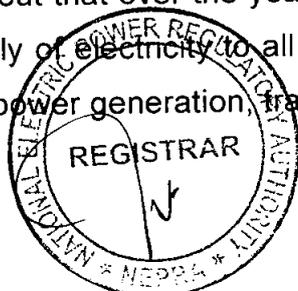


investors and private investment in Pakistan. Further, it is important to consider the legal rights and obligations provided to stakeholders of the KEL based on which privatization was carried out and investments were made.

23. Shehri Citizen and FBAAT&I fully supported grant of more licences to reputable companies within the due legal framework. It was stated that any initiative to introduce competition in any sector particularly energy, in the interest of improving service delivery and operational efficiencies, is a move in the right direction since the safe, continuous and reliable supply of electric power is a primary prerequisite to boost and maintain industrial output of the city of Karachi.

24. CPG stated that any initiative to introduce competition in any sector particularly energy, in the interest of improving service delivery and operational efficiencies, is a move in the right direction since the safe and reliable supply of power is pre-requisite to boost and maintain industrial output of the city, as well as to ensure the socio-economic growth of the city and its residents. However, CPG also raised a few issues for consideration of the Authority including; (a). will the new entrants be required to invest in transmission and distribution or will they use the existing network of KEL? (b). if new entrants will use the existing network and only invest in generation, how will this lead to improved service and reduction in load-shedding? (c). the recent report issued by the committee formed to probe matters of the power sector has appreciated privatization of KEL and recommended reforms of XW-DISCO(s) through privatization, will prematurely ending exclusivity of KEL not serve as a blow to privatization efforts? (d). also, since there is already excess capacity in the National Grid, will this not lead to more idle capacity, and thus more capacity payments and the need for increased subsidization? (e). will the new entrants be allowed to cherry-pick the blue-chip customers, or will they also be mandated to provide power to all areas included high-loss areas? (f). if not, has the regulator thought about how these communities will be served and how it will ensure sustainability of KEL if it loses its best customers to new entrants? (g). plans for continued supply of electricity to Infrastructure Support Departments as they extend essential services to the city and its residents.

25. LEPL pointed out that over the years, KEL has failed to provide, safe, reliable and continuous supply of electricity to all corners of the society. Further, it has also failed to invest in its power generation, transmission and distribution network/system.



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In this regard, not only the industrial and commercial activities have been badly affected but also many precious lives of citizens of Karachi have lost especially during rainy season. LEPL mentioned that it is critical to note that the exclusivity was granted to predecessor of KEL which was state owned public entity and not to KEL which is a private entity owned by a business group that strives to achieve maximum profits rather than serving millions of citizens of Karachi. Further, KEL is deriving the benefit of absence of competition. Further, KEL has failed to meet the load demand of Karachi over the past fifteen (15) years when it was privatized. LEPL highlighted the issues of unscheduled load shedding and over billing and requested the Authority to modify the Distribution Licence of KEL. The LEPL supported the wheeling arrangement on reasonable price and also recommended that the power producers shall be allowed to construct their own distribution system (if safe, reliable and cost efficient) in order to develop alternatives and to reduce monopolistic dependency on the network of KEL.

26. S.I.T.E. Association supported the APM and showed its intention to make the competitors against KEL for supply of power to the citizens of Karachi. S.I.T.E. Association recommended that the generation and distribution business of electric power should be unbundled. The generation should not be exclusive, but the network may be exclusive. However, distribution system of KEL may be used after payment of wheeling charges.

27. Mr. Abdul Sattar Jumani was of the view that KEL has miserably failed to deliver despite privatization. The incapability of KEL has affected not only their businesses but also daily life. The consumers are facing misery of excessive load shedding, power break downs, electrocution, excessive billing, corrupt practices, faulty/sluggish meters, low voltage problems, junk services and other issues. Small traders, cottage industries, industrial homes, schools, colleges, educational institutions, healthcare units, shopkeepers, photo copiers, tailors, tyre puncture shops, tools & spare parts manufacturing workshops, grocery shops, small scale service providers, etc. all are suffering due to unscheduled load shedding mostly during their business hours. It was expressed that Karachi is the commercial and industrial hub of Pakistan, contributing a major portion of revenue for the country. In addition, a major portion of export earnings in shape of much needed foreign exchange, employing millions of residents and migrants from every part of the country. However, even after fifteen (15) years of



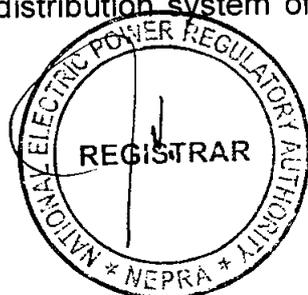
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privatization, KEL is unable to meet the demand of this economic hub. It was highlighted that in the absence of competition and alternates, every person in Karachi, whether a common resident, businessman, business houses, industrialists, healthcare centres or service providers have suffered the inefficiency, incapability and mismanagement of KEL. Further, it was also recommended that the exclusivity of KEL may be excluded from its Distribution Licence immediately. KEL should be demerged into generation and distribution segments and distribution system of demerged KEL should be used to distribute the electricity generated by all the existing or new entrants in power generation business to their consumers, distribution should be retained with KEL to facilitate wheeling arrangements for other electricity producers to sell their electricity to their consumers directly at competitive terms & conditions, so that consumers shall have the option and choice of power producers. The commentator expressed that the decision of the Authority for removing monopoly and allowing competition in the sale/supply of electric power to residents of KEL will be beneficial for future generations.

28. The representatives from Gadoon Textile Mills (Mr. Iftikhar) supported the APM stating that exclusivity of KEL is hampering the economy of the city of Karachi. Monopoly is always a problem in all economic sense. No economy can grow when there is monopoly. If exclusivity of KEL is excluded, more players will come to compete KEL and as a result better services will be provided to the people. If we want our economy to grow, we will have to exclude the exclusivity of KEL.

29. The residents of DHA Karachi informed that KEL has failed to ensure continuity of electric supply in DHA. The duration of load shedding varies from ten (10) to fifteen (15) hours daily.

30. Apart from the above, SSAIK, IH, AUCSLSK, LRBFT, SIUT, PILAP, Mr. Mohibullah (the ex-Chairman UC-42), KTMG, PBC, Muhammad Sajid Jokhio and Mr. Adnan Afridi etc. opposed the APM. The said stakeholders expressed that exclusion of the exclusivity of KEL will be imprudent decision of the Authority and will create complexities in the distribution system of KEL which is against the interests of the consumers.



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31. SSAIK commented that since KEL was privatized, the electric power system of Karachi has improved considerably. SSAIK added that to ensure the smooth business operations across the city of Karachi, it is in the interest of everybody to support continued performance and service improvement by KEL.

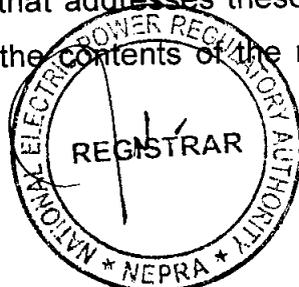
32. IH highlighted that it is state of the art, free of cost, tertiary level healthcare unit with a focus on research. Its association with KEL is since 2012 and over the years, KEL has contributed immensely towards its cause. KEL has provided Indus Hospital with subsidized and uninterrupted power supply and has played its role towards the provision of better health facilities for the people of Karachi by investing into the power infrastructure.

33. Mr. Habib Hasan (ex-coordinator) AUCSLSK opposed the APM stating that the supply of electric power in the city of Karachi is far better than the past. In the past, citizens were facing load shedding of many hours. In case the distribution licence of KEL is amended, then KEL will not invest in the poor areas. Mr. Habib submitted that he is enjoying load shedding free electricity in its area.

34. LRBFT expressed that the decision about exclusion of exclusivity will have negative repercussions not only for KEL but also for other stakeholders. KEL will suffer financial loss due to possible shifting of Bulk Power Consumers BPC(s) to new entrants. Investment will take a hit and less privileged population of Karachi will suffer.

35. SIUT expressed that it provides specialized medical care facilities to the population at large suffering from kidney, liver and related cancers completely free of cost with dignity. This initiative has received enduring support from KEL through their sustainable investment programme whereby free electricity to SIUT hospitals in Karachi has been provided since 2012.

36. PILAP commented that the prevailing concerns regarding electric supply in the city of Karachi as recently observed by the SCP and identified in the notice are, excessive load shedding, safety hazards, excessive billing, and other distribution related issues. In order to address the said issues, the aim should be to formulate a solution/mechanism that addresses these issues/problems across the board. It was submitted that from the contents of the notice of APM, it appears that the general

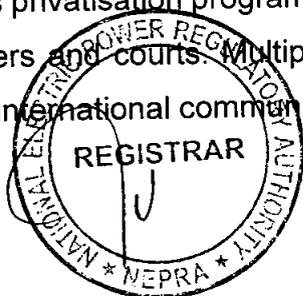


consumers may not get relief because, the new suppliers would not be interested in targeting the problematic low-profit areas. PILAP expressed its concern that the subject modification might destabilise the provision of electricity and create additional difficulties for the consumers if the same is carried out abruptly. PILAP requested the Authority to disclose a detailed model pertaining to the implementation of the non-exclusivity so that stakeholders can also assess the plan.

37. Mr. Mohibullah (the ex-Chairman UC-42) expressed that he has upgraded/augmented the distribution system of its area in collaboration with KEL. Due to the said, the load shedding issue in its area has been resolved. Mr. Mohibullah requested the Authority to let KEL continue its work and avoid any new experiment and withdraw the proceedings of APM as the same will create problems for the residents.

38. KTMA submitted that recently there has been noise in the media that exclusivity of KEL is under threat and the regulator wants to create competition in the market. In theory it sounds good, but what plans does NEPRA have to ensure that all consumers will benefit under the new scheme. Further, KEL has also invested significantly in the surrounding area to make their feeders load shed free. Due to these infrastructure developments, many of the markets, such as Lyari Timber Market, Landhi Babar Market, Saddar Co-operative Market, Shoe-Market and Boulton Market are benefitting greatly in their businesses and commercial ventures. KTMA stated that if exclusivity is omitted, how will the power supply of Karachi will be ensured? KTMA expressed that they are not able to build their own power plants, therefore, the decisions of the Authority should be in the best interest of economy of Karachi and public interest in general. KTMA requested that the Authority to strongly consider the impact of removing exclusivity of KEL on small and medium businesses across the city of Karachi.

39. Mr. Adnan Afridi strongly disagreed with the proposed amendments being considered with respect to exclusivity in the Distribution Licence of KEL. Mr. Adnan submitted that Pakistan is already facing a severe deficiency in Foreign Direct Investment (FDI) and its privatisation program due to widely considered faulty decisions on the part policy makers and courts. Multiple International arbitration awards further confirm the view of the international community with respect to arbitrary and retroactive



decisions taken by Pakistan against investors. This would represent yet another instance which would severely hamper both KEL sale to investor as well as stop other power companies being privatized. Further, KEL has adequately demonstrated that relative to other DISCO(s), it has brought down its T&D losses since privatization. If Distribution Licence of KEL is modified, why would KEL have any incentive to meet their end of contractual arrangement in-fact for few players, the transmission would still be based on reliability of KEL so how will the end consumer be any better off? Moreover, how KEL or any player for that matter be allowed to 'cherry pick' customers or be forced to provide energy to non-paying customers without any cross-subsidy. Without this the average cost for providing energy to all customers will go up thereby increasing the incentive to cheat for compliant customers as well. KEL has committed to a massive investment program in generation. If the Authority wants to help Karachi customers it should provide certainty to KEL, enabling it to accelerate its investment program while at the same time introducing new players in a phased and equitable manner.

40. The Authority also allowed rest of the participants to express their views in favour or against the APM. It was noted that majority of the participants are in favour of excluding the exclusivity. The participants criticized the performance of KEL and highlighted a number of issues. It was highlighted that the utility has totally failed to provide safe, reliable and un-interrupted electric power to its consumers. The participants strongly supported the initiative of the Authority to exclude the exclusivity of KEL and introduction of more market players/new suppliers to promote competition in the electric power supply business. The participants requested the Authority to help them out of monopoly of KEL.

41. In addition to the above, few stakeholders/individuals in principle supported the exclusion of exclusivity of KEL, however, highlighted certain issues for consideration of the Authority. The stakeholders expressed their apprehensions such as (i). whether new suppliers will invest in transmission and distribution segment?; (ii). how the new entrants will ensure quality of service and provide load shedding free electricity to the consumers when same network is intended to be used?; whether the new entrants will provide electricity to all types of consumers i.e. general as well as bulk?; will prematurely ending KEL's exclusivity not serve as a blow to privatization efforts? etc.



42. Apart from the above, the Authority received written comments from Federal and Provincial Governments and attached departments including Energy Department Government of Sindh, (EDGoS), Punjab Power Development Board Energy Department (PPDB), Competition Commission of Pakistan (CCoP), Ministry of Planning, Development and Special Initiatives (Energy Wing)-MoPD&SI, Multan Electric Power Company Limited (MEPCO) and Tribal Area Electricity Supply Company Limited (TESCO) in the matter.

43. EDGoS requested the Authority to share the basis for the change in the Distribution Licence of KEL. It was highlighted that other Distribution Companies DISCO(s) operating in the province of Sindh have more issues, excessive number of consumer complaints on various matters such as load shedding but the Authority is focussing on excluding the exclusivity of KEL only. Further, under the existing exclusive Distribution Licence, KEL is obligated to provide power across its service territory including high loss areas. In this regard, what assessment and analysis has NEPRA done on the possible implications on current licensed obligations of KEL post removal of exclusivity i.e. whether KEL will continue to provide power across the entire city or will it be free to choose the consumers at its own choice? Moreover, to ensure reliable supply of power to consumers, it is imperative that requisite investments are made in the network / infrastructure on continued basis. The Authority needs to provide clarity that with removal of exclusivity, whether new distributors / suppliers will lay their own network or distribution network of KEL will be used. If no new network is installed and network of KEL is utilized, then how will service levels be improved? Further, setting up / laying of new network will require Right of Way (RoW) approvals. Assessment of related issues such as managing RoW practically and administratively if multiple distributors / suppliers lay down their own network in the same vicinity is required and therefore, how the Authority will handle this issue. Moreover, supply of un-interrupted power to strategic installations and public sector consumers is critical to ensure smooth functioning of the city. Therefore, necessary clarification should be provided by the Authority if new distributors / suppliers will be obligated to also provide un-interrupted power supply to these strategic installations and public sector consumers. Has the regulator done any analysis / deliberation in this regard prior to proposing this modification as to how the fundamental objective of enhancing efficiency, ensuring better price and quality of service will be achieved and has the



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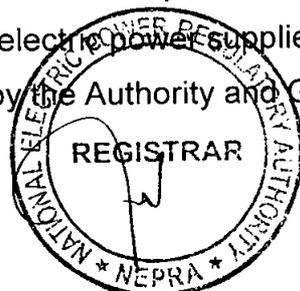
Authority shared the same with the stakeholders? In view of the said and considering the significance of this matter for the city of Karachi and province of Sindh, GoS, being a key stakeholder requests the Authority to take a holistic view of the issue and decide the matter in a way which is acceptable to all stakeholders.

44. PPDB pointed out that the end consumers of KEL are suffering from extended load shedding/power break downs and electrocution cases. These being non-performing indicators in addition to required network additions, augmentations and provisions. Further, the competitive regime is working in so many countries and also envisioned in Pakistan power sector as whole sale electricity market.

45. CCoP expressed various concerns on certain malpractices of KEL including monopoly, load shedding, over billing, faulty meters, tariff and slab rate differences, using silver wire instead of copper wire in the distribution system and price discrimination based on peak and off peak hours and on categories such as residential, commercial and industrial consumers.

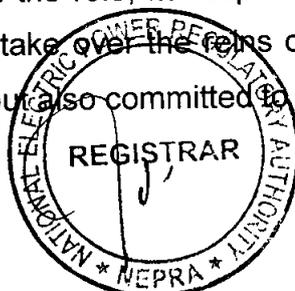
46. MoPD&SI supported the APM subject to conditions that the Authority may approve the CTBCM model first, the exclusivity may not be specific to KEL, plan for network and retail business separation should be in place, unbundling of network and retail business is required to be part of reform plan, a central planning body should be strengthened to carry out future planning of distribution networks in XW-DISCO(s) including KEL. MoPD&SI opined that removal of exclusivity will shift the burden the demand-supply planning & infrastructure expansion to central planners for generation, and to the system operators at T&D levels which should be carefully looked at, allowing wheeling may be the first step in changing exclusivity in retail business for which the Authority should prescribe a fully cost reflective tariff model.

47. The XW-DISCO(s) including TESCO and MEPCO submitted that the Amendment Act has introduced significant changes in the electricity market structure, however, no legal framework has been framed as yet. Further, the NEPRA Amended Act protects all the decisions/orders of the Authority passed before the amendment dated May 02, 2018 as stipulated in Section 50 of the Amendment Act. The utilities expressed that electric power supplier eligibility criteria, rules and regulations have not been finalized by the Authority and Government of Pakistan. DISCO(s) submitted that



from technical prospective, operation of two (02) distribution service providers is not feasible in a single service area.

48. In addition to the above, KES Power Limited (KESPL) which is majority shareholder of KEL (i.e. 66.40%) highlighted a number of serious concerns pertaining to recent events in relation to KEL/the utility. KESPL expressed that it has accepted criticism in the past weeks in relation to the power situation in Karachi, however, in the interest of public, ignored the media hysteria and focused on continuing to deliver supply electricity to the citizens of economic hub of Pakistan. KESPL pointed out that it requested Government of Pakistan repeatedly that KEL needs the support of all stakeholders including gas and furnace oil procurement in which company is reliant on entities under the control of the Federal Government, the Ministry of Power, NTDC, Ministry of Finance and the NEPRA. The KESPL stated that both GoP and KEL have a shared responsibility to deliver electricity to the end-user, unless the stakeholders work together with common objective this important responsibility will be compromised. KESPL submitted that KEL was a utility suffering from severe operational deficiencies, costing the GoP billions of rupees every year. In 2005, KESP acquired a majority stake and operational control of KEL and one of its main objectives was to lower the cost to the GoP and contribute to the improvement of energy supply in Pakistan. This investment was based on the enabling policy of GoP for the power sector (including long term licenses and tariff structures) and an investor-friendly environment. This context led KESPL to invest over USD 700 million in KEL which, to date, constitutes the single largest Foreign Direct Investment in Pakistan from a private entity. In addition, we have reinvested all profits made since 2005, without a single dividend declared. As a result, KEL was able to invest capex of approximately USD 3.3 billion over the last fifteen (15) years, focused singularly on the improvement of generation, transmission, and distribution infrastructures of Karachi over and above what was promised at the time of privatization. By significantly enhancing infrastructure of power, it has lowered the cost of electricity for consumers via an efficient generation fleet, significantly reduced electricity theft, improved supply reliability and streamlined the workforce, ultimately resulting in savings of hundreds of billions of rupees for GoP. Having effectively performed the role, its responsibility was to find a reputable and long-term strategic investor to take over the reins of KEL. This led to SEP agreeing not only to purchase the stake but also committed to be part of the process, to inject several billion



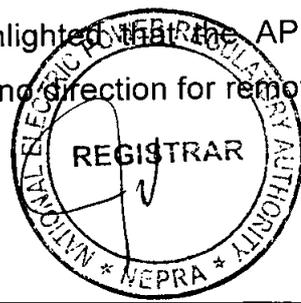
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dollars into the further development of infrastructure of Karachi, the criticality of which was only emphasized after the strains brought by the heavy rains in the city. KESPL expressed that the Authority is considering prematurely terminating its distribution exclusivity. This development is extremely concerning as it would have disastrous implications and will seriously damage operational performance of KEL especially in poor segments of the city will be adversely affected. Further, it will also severely compromise the value of the investment. The anticipated action of the Authority may have a negative impact on ongoing capex initiatives of KEL, including a critical 900 MW power project. If the financial close on this project is delayed, it is expected that a disastrous power situation with severe generation shortfall in Karachi next summer. The doing away of the exclusivity of KEL will jeopardize acquisition of SEP, denying Karachi the benefit of a multi-billion-dollar investment program. Therefore, any action that unfairly and unreasonably results in a premature termination of exclusivity of KEL will likely discourage foreign investors from considering Pakistan as an investment destination in the future.

49. It is pertinent to mention that some important comments were also received after the public hearing including point of views of the Ministry of Privatization (MoP), Ministry of Energy (Power Division) (MoEPD), Hamdam Welfare Organization (HWO) (NGO) and Mr. Moin M Fudda (an individual) etc.

50. MoP expressed that it is not clear what workable alternate and time lines has been envisaged if APM is approved. The MoP highlighted that KESPL and SEP are independent companies with no involvement from Privatization Commission (PC) in their corporate and strategic decision making, including the proposed 66.4% sale/purchase of shares of KEL. In this regard, SEP have expressed their reservations if KEL's exclusivity is not maintained as per the licence. MoP opined that the Authority may seek comments from KES Power Limited and SEP directly as well as from relevant Ministries under applicable Regulations and review those comments and implications (if any) under the regulatory lens of public interest while it makes determination pursuant to Section 26 of the NEPRA Act and in compliance with the directives of honourable Supreme Court of Pakistan in HR No. 20883 of 2018.

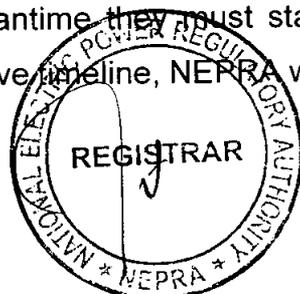
51. MoEPD highlighted that the APM will result in increase in burden on the taxpayers, there is no direction for removal of the exclusivity in the amended NEPRA



Act. The Authority may revise the rules and regulations to bring them into conformity with the provisions of amended NEPRA Act. Further, the Policy for development of electricity market and CTBCM model are yet to be finalized. MoEPD expressed that abrupt opening of market for all consumer groups may have serious repercussions.

52. Mr. Aziz Siddiqui (Co-Chairman Hamdam Welfare Organization-HWO) requested to probe the matter of privatization and performance of KEL through National Accountability Bureau. HWO informed that KEL has deliberately started load after the public hearing was carried out which is causing severe headache for the residents of Karachi. HWO requested the Authority to re-hear the matter in Karachi and the NGO's may also be allowed to participate in the hearing.

53. Mr. Moin M Fudda expressed that as highlighted during the hearing, PTCL privatization of not giving exclusivity to its buyer and thereafter allowing new players to enter into the telecom sector has been of a great advantage resulting in improved quality of service at an affordable price. Contrary to it, privatization of KEL has not been successful on many counts and hence majority of those present therein welcomed the initiative of the Authority of holding the Public Hearing for APM which raised hopes for citizens of Karachi. While welcoming the competition, the management of KEL asked for level playing field, yet their legal counsel opposed it on the ground that exclusivity granted to the company is valid till 2023. At the same time a couple of supporters of KEL with a blind fear that the new entrants may target only high revenue areas, did not favour grant of new licenses. Needless to say, it may take minimum of two (02) years for new entrants to start providing service and therefore to avoid any likely legal battle with the utility, which could jeopardize the whole process, placed below is a way forward for your kind consideration. Mr. Fudda expressed that the Authority may notify rules/regulations for new entrants interested in the business and among other to ensure level playing field, making it mandatory for participation simultaneously in high and low revenue areas as well as separation of generation from distribution. In the first quarter of the year 2021 expression of interest together with business plan is invited and by the end of second quarter of 2021 those qualified be granted the licenses with a condition that services may be offered post July 2023 whereas in the meantime they must start the ground work. To achieve the above mentioned aggressive timeline, NEPRA will need highly experienced team to evaluate



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the applications at a fast track for which selection process of the experts must commence immediately. Mr. Fudda submitted that it is expected that the above proposal being in the larger national interest will be viewed positively by KEL since it does not interfere in its exclusivity. Instead it will result in saving the time for developing the required infrastructure which otherwise would commence in 2023. During the intervening period, as opposed to relying solely on much awaited foreign investment, KEL may also consider separating its own generation from distribution and given that Karachi can easily accommodate new players. Finally, to take the KEL out from financial crunch, GoP should step-in immediately for speedy settlement of its dues so that load-shedding which during last one week has reduced considerably, perhaps owing to forthcoming hearing by honourable Supreme Court of Pakistan may not resume again.

54. The Authority has examined/reviewed the entire case in detail including the already granted Distribution Licence to KEL, the APM initiated by the Authority, comments of stakeholders, response/comments of KEL, proceedings of public hearing and relevant rules and regulations. In this regard, the Authority has observed that in terms of Regulation 10(1) of the Licensing Regulations, it is empowered to modify a licence in accordance with an APM. In this regard, Regulation 10(5) of the Licensing Regulations prescribes the criteria to modify a licence through an APM subject to and in accordance with such further changes as it may deem fit if, in the opinion of the Authority such modification (a). does not adversely affect the performance by the licensee of its obligations; (b). does not cause the Authority to act or acquiesce in any act or omission of the licensee in a manner contrary to the provisions of the NEPRA Act or the rules or regulations made pursuant to it; (c). is or is likely to be beneficial to the consumers; (d). is reasonably necessary for the licensee to effectively and efficiently perform its obligations under the licence; and (e). is reasonably necessary to ensure the continuous, safe and reliable supply of electric power to the consumers keeping in view the financial and technical viability of the licensee.

55. As explained in the preceding paragraphs, the Authority initiated the APM in the Distribution Licence of KEL to do away with exclusivity, inter alia, on the different grounds including (a). amendments in Section 21 of the NEPRA Act wherein the exclusivity has been eliminated, (b) the performance of the KEL has not been



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satisfactory at all during the term of the licence as it failed to expand/upgrade its distribution network and resultantly could not fulfil its obligations to supply electric power to all consumers in its service territory. In this regard, KEL explicitly opposed the APM, inter alia, on the ground that the APM is conflict with provision of Section 50 of the Amendment Act. Further, KEL also gave its submissions on various initiatives it has undertaken to improve its distribution system and to serve its consumers in a better way. In this regard, the Authority has examined the various comments of the stakeholders received in the matter including that of MoEPD and PC etc. In consideration of the said, the Authority is of the considered opinion that it granted KEL a Distribution Licence No. 09/DL/2003 dated July 21, 2003 strictly in accordance with the provisions of the pre-amended NEPRA Act which allowed an exclusivity in terms of Section-21 of the said Act. However, the exclusivity was not *carte blanche* in nature and had other related terms and conditions which were made part of the terms and conditions of the said licence specially (a). provisions of Section 22 of the NEPRA Act allowing supplying to BPC(s) from the generating companies in the territory of KEL (Article 7 of the Distribution Licence); provisions for offering to connect to the system of KEL/open access (Article 9 of the Distribution Licence) and automatic exclusion of the part of the concessional territory, if the Licensee does not respond to electrify (Article 3 of the Distribution Licence).

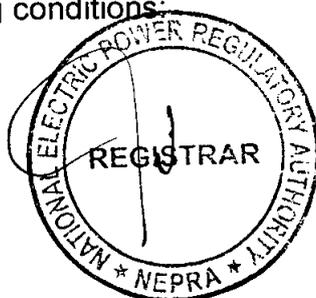
56. In this regard, the Authority has observed that KEL through its action has been claiming that it has exclusivity in absolute terms which is totally contrary to the provisions of the NEPRA Act and the terms and condition of its Distribution Licence. In order to liberalize and to introduce competition in this sector, the legislature through the NEPRA (Amendment) Act, 2018 has introduced certain basic changes in the legal frame work of the power sector. The major changes introduced include segregation the distribution and supply business, restricting the distribution function to laying of distribution network/ lines/feeders/infrastructure etc. and disallowing exclusivity in the distribution segment. In this regard, the Authority has observed that Section 23E of the Amended NEPRA Act relating to the function of the Supplier has come into effect immediately and to allow smooth functioning, all the distribution licensees are also to be considered as deemed Suppliers. Further, the Section 50 of the Amended NEPRA Act has also provided saving to the actions of the Authority and its determinations/decisions made prior to the NEPRA (Amendment) Act, 2018.



no

57. In this back drop, the APM was initiated which the Licensee/KEL had opposed vehemently on various grounds as explained in the preceding paragraphs. In this regard, the Authority also held a public hearing which was participated by a number of stakeholders which expressed dissatisfaction on the performance of the utility/KEL as distribution company. In view of the said, the Authority is of the considered opinion that there is a case to eliminate the exclusivity of the KEL in the public interest. Further to the said, the Authority has considered the comments of different stakeholders submitted in the matter of the APM and has noted that a number of the stakeholders have supported the exclusion of exclusivity. Further to the said, a large number of stakeholders have expressed through their written and verbal submissions that exclusivity should be maintained and the APM be rejected. Apart from the said, the comments of Govt. Ministries and their attached departments have been received which are in favour of maintaining the exclusivity of KEL at least for current tenure of its Distribution Licence i.e. till July 20, 2023.

58. The Authority has considered the above submissions and also has carried out its own due diligence on the pros and cons of removing the exclusivity. In this regard, the Authority is of the considered opinion that there are valid reasons to remove the exclusivity and at the same time there are strong arguments to maintain the same due to potential implications on the future investments in KEL as well as lack of immediate alternate arrangement. The Authority is cognizant of the fact that Section 21 of the NEPRA Act has been amended after the NEPRA (Amendment) Act, 2018 and the exclusivity has been done away with, therefore KEL, as such, cannot claim exclusivity in its Service Territory. Further, KEL cannot claim one sided right to exclusivity when it has failed to fulfil its legal obligations to the consumers. Accordingly, the Authority believes that KEL has no exclusivity after the NEPRA (Amendment) Act, 2018. However, considering the potential implications on the future investment of KEL, privatization and other related matters as highlighted by Privatization Commission and Ministry of Energy and exclusivity of KEL as provided in Article 7 of its Distribution Licence, the Authority has decided to honour the terms of Distribution Licence of KEL and maintain its exclusivity till the expiry of its Distribution Licence i.e. July 02, 2023 subject to the following conditions:



- (a) The Service and Concessional Territories of KEL will be strictly governed in terms of Article 3 of its existing Distribution Licence No. 09/DL/2003 dated July 21, 2003.
- (b) The exclusivity of KEL will be strictly in terms of Article 7 of its existing Distribution Licence which categorically allows BPC(s) to obtain the supply from any generating company.
- (c) KEL will be obligated to allow use of its system to any third party for supplying/wheeling of electric power to any BPC in terms of Article 9 of its Distribution Licence.

Authority

Rafique Ahmed Shaikh
(Member)


21/4/21

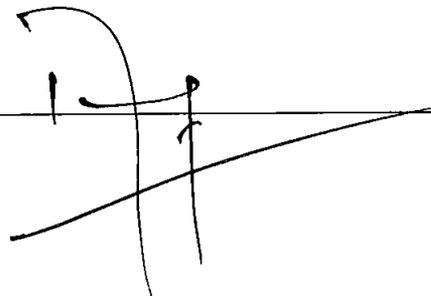
Rehmatullah Baloch
(Member)

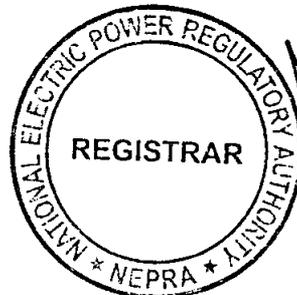


Saif Ullah Chattha
(Member)

_____ (RETD)

Tauseef H. Farooqi
(Chairman)






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