

National Electric Power Regulatory Authority
(NEPRA)

Determination of the Authority
In the Matter of the Distribution Licence Application of
Sukkur Electric Power Company Limited

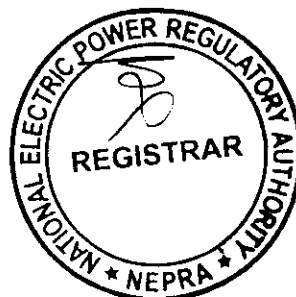
August 16, 2011
Application No. LAD-35

(A). Background

(i). The Authority granted a Distribution Licence (No. 05/DL/2002, dated April 23, 2002) to Hyderabad Electric Supply Company Limited (HESCO) to engage in Distribution Services and to make sales of electric power to the consumers in the province of Sindh except the Metropolitan city of Karachi and its adjoining areas where KESC is providing these Services.

(ii). Due to vast area of its Service, HESCO had been suffering from various operational and managerial problems in its working. In order to improve the performance of HESCO for better serving the customers of the province of Sindh, the Authority advised PEPCO for bifurcating HESCO. Accordingly, PEPCO bifurcated HESCO into HESCO (modified) and Sukkur Electric Power Company Limited (SEPCO).

(iii). According to the envisaged scheme of bifurcation, SEPCO will provide the distribution services in the districts of Sukkur, Ghotki, Khairpur, Kashmore/Kandhkot, Jaccoabad, Shikarpur, Larkana, Kamber/Shahdadkot, Dadu and some portions of Jamshoro, Naushehro Feroze, Shaheed Benazirabad and Rahimyar Khan. Whereas, HESCO (modified) will be responsible for providing distribution services in rest of the province of Sindh, except the area served by KESC.



(B). Filing of Distribution Licence Application by SEPCO

(i). SEPCO in accordance with Section 20 of the Regulation of Generation, Transmission and Distribution of electric Power Act, 1997 (i.e. NEPRA Act), filed an application on January 17, 2011 requesting for the grant of Distribution Licence for the above areas of the province of Sindh.

(ii). The above mentioned application was processed under the NEPRA Licensing (Application and Modification Procedure) Regulation, 1999 (hereinafter referred to as "the Regulations"). The initial review of the application revealed certain deficiencies. Accordingly, SEPCO was directed to submit the missing information/documentation. SEPCO finally submitted the information required for processing on March 14, 2011. Accordingly, the matter was submitted to the Authority for admission of the application or otherwise. The Authority considered the matter in its Regulatory Meeting (RM-11-162), held on April 05, 2011 and decided to admit the application for consideration of a Distribution Licence. The Authority also decided to take into account the observations of Member (Consumer Affairs) as part of the processing of the application as considered by the Authority in its Regulatory Meeting (RM-11-012), held on January 18, 2011.

(iii). Pursuant to Regulation 8 of the Regulations, a Notice of Admission (NoA) was published in the press on April 07, 2011 seeking comments from the interested/affected parties and general public. Moreover, separate notices were also sent to Experts, Government Ministries and Representative Organizations etc. for submitting their views and comments in the matter.



(C). Comments of Stakeholders

(i). In reply to the above NoA, the Authority received comments from Power Department, Government of Sindh (PDGoS) and Faisalabad Electric Supply Company Limited (FESCO).

(ii). The salient points of the comments offered by the above stakeholder (s) are summarized in the following paragraphs.

(a). PDGoS stated that Distribution Licence may be granted to SEPCO as per Rules/Laws.

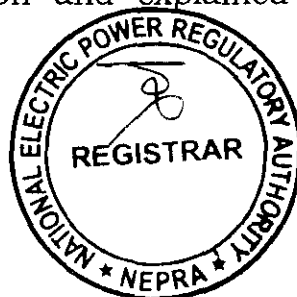
(b). FESCO while expressing its views stated that in the present scenario SEPCO is a company under PEPCO. The area for which the distribution licence has been demanded was covered under HESCO. FESCO has no objection to the grant of Distribution Licence to SEPCO.

(iii). Although the relevant stakeholders offering comments supported the grant of Distribution Licence however, in view of the interests of the general public and to arrive at an informed decision, the Authority decided to hold a Public Hearing in the matter. The general public and other stakeholders were informed about the public hearing through an advertisement in the press published on June 04, 2011.

(D). Proceedings of the Hearing

(i). The Public Hearing in this regard was held on June 14, 2011 in the main office of NEPRA, which was attended by the representatives of SEPCO, HESCO and PEPCO.

(ii). During the hearing, the representatives of SEPCO presented salient features of the application and explained that PEPCO vide its

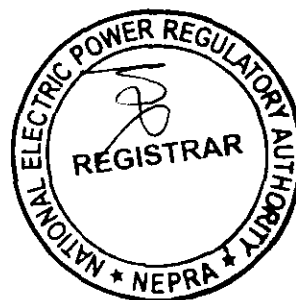


notification (No. MDP / GM /HR /Dir/ (O&M)/PEPCO /1632-99, dated July 26, 2010), notified that HESCO stands bifurcated into HESCO (modified) and SEPCO. A new company has been incorporated (under the Companies Ordinance 1984) in the name of SEPCO and it has started functioning (w.e.f. August 16, 2010). HESCO has also surrendered its historical limits, falling in the proposed jurisdiction of SEPCO and has issued the required No Objection Certificate (NOC).

(iii). Chief Executive Officer (CEO) of SEPCO gave an introduction of the profile of the team of his Senior Management including the Board of Directors of SEPCO. The CEO explained that the total Service Area of SEPCO would be consisting of 56,300 square kilometer, consisting of three (03) Operational Circles, One (01) M&T Circle, One (01) GSO Circle, One PD (GSC), one PD Construction, thirteen (13) Operation Divisions, fifty six (56) Operation Sub Divisions, three (03) C/R Divisions, two (02) SS&T Divisions and two (02) M&T Divisions.

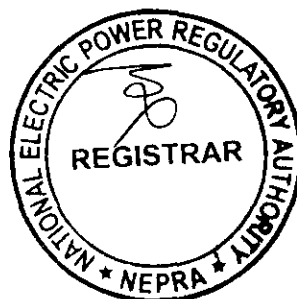
(iv). The applicant presented its case and other participants/interested persons were also heard during the hearing. The participants proffered their comments and submitted arguments supporting their stance. The following relevant salient points were discussed during the hearing and commented on by other participants: -

- (a).** for the reconstruction, amalgamation, or division of any company, approval/order of the High Court is required as stipulated under the Companies Ordinance 1984. Whether HESCO and SEPCO have completed the required formalities and an order of the concerned High Court has been obtained or not?
- (b).** Did PEPCO initiate/complete all necessary legal steps and fulfilled all requirements necessary for such bifurcation?



Was proper lawful procedure followed to do so before the issuance of the notification in this regard?

- (c). HESCO signed a "Business Transfer Agreement" (BTA) on June 29, 1998 and "Supplement Business Transfer Agreement" (SBTA) on September 29, 2004 with WAPDA regarding transfer of WAPDA assets (distribution network plant and machinery such as poles, lines, distribution transformers, grid stations, land/buildings as well as human resource under Area Electricity Board Hyderabad) and issuance of shares of HESCO to WAPDA/GOP in lieu of transfer of said assets and business. Question arises as to what will be the status/fate of these two agreements when HESCO is bifurcated into HESCO (Modified) and SEPCO?
- (d). There is a regular Agreement between HESCO and WAPDA of dated June 27, 1998 for supply of electricity whereas as SEPCO is nowhere in the deal so far. What will be the legal status of the supply of electricity in the territory of SEPCO?
- (e). Whether any Electricity Supply Agreements has been executed between SEPCO and NTDC?
- (f). What is the scheme for transfer of assets from HESCO to SEPCO whereas the fact of the matter is that the entire assets of WAPDA's Hyderabad Area Electricity Board have not yet been transferred i.e. transfer in the name of HESCO?

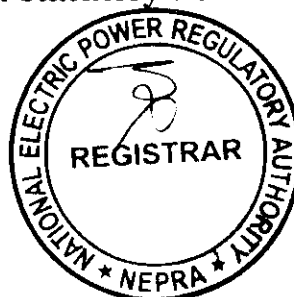


(g). How will SEPCO issue shares to WAPDA in lieu of the assets coming under it?

(h). Is there any Business Transfer Agreement between SEPCO and WAPDA?

(v). The representatives of PEPCO and SEPCO unanimously submitted that it is true that there are certain provisions of the Companies Ordinance, 1984, which are related to the reconstruction or amalgamation of companies. However, the same do not apply in the present instance. The registration of a new company has been validly made by the Registrar of Companies, and the new company is now before the Honorable Authority, and is simply applying for a distribution licence. The new company is seeking the distribution licence for part of a territory which is presently licenced by NEPRA to another company. These arrangements are intended to be made for bringing about further improvements in the distribution of electrical power in the geographical territory which is currently licenced by the Honorable Authority to HESCO for distribution of electrical power. We submit that what has been proposed is merely a bifurcation of the distribution territory in line with the earlier valuable advice of the Honorable Authority, which had been to the effect that the existing distribution territory of HESCO may be bifurcated for the sake of improving efficiency. Thus the matter is fully within the purview of NEPRA. Permission from the Honorable High Court is not requisite, under either the Companies Ordinance or under the NEPRA Act, in the circumstances of the case. In the past also, the Honorable Authority has considered and decided such cases itself. For example, the distribution territory of Peshawar Electric Supply Company Limited (PESCO) was split up and no reference to Part IX of the Companies Ordinance, 1984, was considered to be applicable.

(vi). It was submitted that the notification of PEPCO was not intended to take place of the Honorable Authority's determinations and decisions. It does not purport to be a statutory notification, and it cannot be



deemed to possess legally binding effect and consequences until and unless the proposed bifurcation of the distribution territory is approved and a distribution licence is duly granted to SEPCO by NEPRA. It is merely an administrative step to take forward a process which is, at all relevant times, subject to NEPRA's approval. However, it conforms to the Authority's advice and was appreciated by the Honorable Authority vide letter No. LAD-08/1817-19, dated August 23, 2010.

(vii). Regarding the agreements between HESCO and WAPDA were in relation to the territory formerly being served by the Area Electricity Board, Hyderabad, it was submitted that the said agreements can either be amended or new agreements can be put in place so that the process, which has been commenced in the light of the Honorable Authority's valuable advice, may be suitably taken forward. Since all such agreements are to be subject to the Authority's approval, the companies should proceed accordingly.

(viii). Since the Honorable Authority has been pleased to grant an independent licence to NTDC, which inter alia covers the supply of electrical power to the Ex-WAPDA distribution Companies (XW-DISCOs), therefore SEPCO will be entering into the relevant contract agreement with the NTDC/CPPA (i.e., the electricity supply agreement shall not be with WAPDA), once the Honorable Authority kindly gives the green signal for SEPCO to approach the NTDC in this regard.

(ix). We believe that the fact which has been mentioned above, that a number of assets are still in the name of WAPDA (i.e., not yet transferred to the name of HESCO), will tend to simplify the process of transfer to SEPCO, rather than to complicate it, considering the intention that the relevant assets will be reverted by HESCO to WAPDA, and WAPDA will in turn transfer the same to SEPCO.

(x). SEPCO will place the amount under "Deposit for Shares" to the extent of Net Assets coming under it, as was done in all XW-DISCOs upon



de-bundling from WAPDA and shares will be issued subsequently. SEPCO does not have any funds for making cash payments for the assets. The assets will be transferred on the book value and in consideration thereof, SEPCO will issue its shares in favor of the transferor of the assets.

(xi). WAPDA has already surrendered the distribution business in line with the NEPRA regime relating to the distribution of electrical power. However, the business will only come to SEPCO if and when the company is granted the distribution licence. As regards the transfer of other assets and liabilities, those transfers will be covered through suitable legal agreements and in consultation with the auditors concerned.

(xii). After detailed deliberations on the above mentioned issues, the Authority directed PEPCO and SEPCO to obtain a clarification from the external Corporate Lawyer on the applicability of the Part-IX of the Companies Ordinance, to confirm as to whether HESCO and SEPCO have completed the required formalities and an order of the concerned High Court has been obtained or not?

(E). Post Hearing Proceedings

(i). In accordance with the above directions of the Authority, PEPCO engaged the services of Akther Ali Monga, Law Associates (AAMLA) for obtaining independent legal opinion on the issue as explained above.

(ii). AAMLA through its letter No. AAMLA/DGPC/01 dated August 3, 2011 submitted its independent legal opinion in the matter wherein it was concluded that under the given circumstances there was no need either for HESCO or SEPCO to apply to the Court under Section 284/287 of the Companies Ordinance.

(iii). In view of the very fact that the submitted opinion of AAMLA was found prima facie contrary to the opinion of the in house Legal



Professionals of NEPRA, the matter was placed before the Authority for a decision. The Authority in its Regulatory Meeting (RM-11-388), held on August 10, 2011 considered the matter and after detailed deliberation concurred with the opinion of AAMLA and decided that under the circumstances there was no need asking either HESCO and SEPCO to seek the approval of the scheme of arrangement from the court for bifurcation as explained above.

(F). Grant of Distribution Licence

(i). The Supply Chain of the Electric Power consists of Fuel/Gas Supply Companies, different Generation Companies, the Transmission Companies, the Distribution Companies and retail Consumers.

(ii). In the said supply chain, the importance of the Distribution Companies is of paramount importance. The performance of the Distribution Company not only affects the operations of the other companies involved in the chain but also the retail customers. The 1992 Strategic Plan of restructuring of the Power Sector of the country envisaged bringing efficiency in different segments of the sector by dividing the vertically integrated WAPDA into relatively smaller manageable Companies. With the passage of time, it has been realized that one of the main reason for the below par performance of some of the Distribution Companies, is that their areas of service are relatively much larger than those of other Distribution Companies performing better.

(iii). In view of this the Authority is of the consider^{ed} opinion that bifurcation of existing HESCO into HESCO (modified) and SEPCO is



justified and SEPCO be granted Distribution Licence. The step is expected to bring operational efficiency in the area previously served by HESCO.



(iv). The term of a Distribution Licence is fixed in accordance with Rule 5 of the NEPRA Distribution Rules. According to this Rule, except where an applicant for distribution licence consents to a shorter term, the term of a distribution licence shall not be less than twenty (20) years. In its application, SEPCO did not explicitly mention about the term of the proposed Distribution Licence however, considering the very fact that the Authority in the case of other eight (08) XW-DISCOs and KESC had set the term of their Distribution Licences to twenty (20) years therefore, on similar lines the Authority fixes the term of the Distribution Licence of SEPCO to twenty (20) years from the date of its issuance.

(v). The Authority is well aware of the fact that the Service Territory for which SEPCO had applied for the Distribution Licence is presently included in the Distribution Licence of HESCO. However, HESCO has already given a No Objection Certificate (NOC) in favor of SEPCO for surrendering the required Service Territory. Similarly, according to Article 7(1) of the existing Transmission Licence of NTDC, CPPA is allowed to purchase power on behalf of eight (08) XW-DISCOs only which does not include SEPCO right now. However, NTDC/CPPA has issued an NOC for issuing a Distribution Licence to SEPCO. In order to allow the immediate functioning of SEPCO, the Authority has decided to take up the modification issues in the Distribution Licence of HESCO and Transmission Licence of NTDC as explained separately, through different Authority Proposed Modifications as stipulated in Regulation 10 of the Regulations.

(vi). In consideration of the above, the Authority hereby decides to approve the grant of Distribution Licence to SEPCO for providing Distribution Services in the districts of Sindh (including Sukkur, Ghotki, Khairpur, Kashmore/Kandhkot, Jaccoabad, Shikarpur, Larkana, Kamber/Shahdadkot, Dadu, some portions of Jamshoro, Naushehro Feroze, Shaheed Benazirabad) and some portion of the province of Punjab (i.e. some portion of district Rahim Yar Khan). The grant of this licence will be subject



to the provisions contained in the NEPRA Act, rules, regulations and applicable documents, made thereunder.

(vii). The Authority also directs SEPCO to immediately prepare a comprehensive consumer service manual, for the approval of the Authority.

Authority

Ghiasuddin Ahmed
Member (Licensing)

Ghiasuddin
16/8/2011

Zafar Ali Khan
Member (Tariff)

Zafar Ali Khan
17/8/11

Maqbool Ahmad Khawaja
Member (Standards &
Privatization)

Maqbool

Shaukat Ali Kundi
Member (CA)/V. Chairman

Shaukat Ali Kundi

Khalid Saeed
Chairman

Khalid Saeed

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