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No. NEPRA/R/ADG(Lic)/LAG-222/4064-68

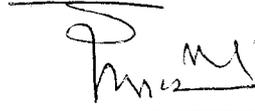
May 28, 2020

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Subject: **Determination of the Authority in the matter of Review Motions of National Grid Company & Distribution Companies in the Case of Fatima Energy Limited**

Enclosed please find herewith the subject Determination of the Authority dated 28.05.2020 (20 Pages) for information, record and further necessary action.

Encl: As above


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(Syed Safer Hussain)

National Electric Power Regulatory Authority
(NEPRA)

Determination of the Authority in the
Matter of Review Motion of National Grid Company &
Distribution Companies in the Case of Fatima Energy Limited

May 28, 2020
Case No. LAG-222

(A). Background

(i). Fatima Energy Limited (FEL) communicated a Licensee Proposed Modification (LPM) in its Generation Licence No. SGC/96/2013, dated December 31, 2013 and Modification-I dated September 14, 2015 on August 22, 2019 requesting the Authority for allowing addition of twenty two (22) more Bulk Power Consumers [BPC(s)].

(ii). The Authority after going through process and criteria prescribed in the NEPRA Licensing (Application & Modification Procedure) Regulations, 1999 (the "Licensing Regulations"), approved the communicated LPM without changes. The said approval resulted in the increase of the BPC(s) of FEL from existing four (04) to twenty six (26).

(B). Filing of Review & Admission

(i). The above decision of the Authority was communicated to all relevant stakeholders on December 31, 2019 including the Ministry of Energy (MoE), Central Power Purchasing Agency (Guaranteed) Limited (CPPAGL), National Transmission & Despatch Company Limited (NTDC) and Distribution Companies.

(ii). In this regard, Islamabad Electric Supply Company Limited, (IESCO), Faisalabad Electric Supply Company Limited (FESCO) and National Transmission & Despatch Company Limited (NTDC) collectively called the Petitioners/Parties being aggrieved with the above decision/determination of the









Authority, filed motion for review as stipulated in NEPRA (Review Procedure) Regulations, 2009 (the "Review Regulations").

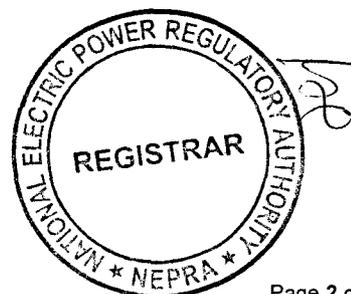
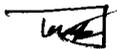
(iii). The Authority considered the submissions of the above distribution companies and NTDC in its regulatory meeting held on February 14, 2020 and decided to admit the motion for review. Further, the Authority in terms of Regulation-3(8) of the Review Regulations decided to provide an opportunity of hearing to the above Petitioners/Parties.

(C). Hearing of the Parties

(i). In consideration of the above, notices were issued to all the relevant stakeholders on February 27, 2020 informing about the proposed hearing to be held on March 11, 2020 at the main office of the Authority. In the said hearing, the representatives of the above mentioned organizations participated along with their legal counsels. Further, FEL was also represented in the hearing through its CEO and legal counsel to present its point of view.

(ii). During the hearing, the representatives of distribution companies and NTDC made similar submissions and stated that the Determination of the Authority allowing addition of twenty two (22) BPC(s) suffers from various errors, infirmities and is violation of the letter and spirit of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the "NEPRA Act") as amended from time to time.

(iii). In this regard, it was submitted that in the year 2018 major amendments have been made in the NEPRA Act and a number of new sections/clauses have been added in it. One of the sections added is the Section-23(E), according to which the supply of electric power to a consumer, which includes BPC, is prohibited unless an electric power supply licence is obtained from the Authority. In this regard, FEL has not obtained any such licence therefore, in the absence thereof, the modification made in its Generation Licence is against the specific intent of the law and, accordingly, liable to be reviewed.



(iv). It was further stated that under Section-14(B)(4) of the NEPRA Act and the NEPRA Licensing (Generation) Rules 2000 (the "Generation Rules"), FEL is obligated to make available its generation facilities to the National Grid Company i.e. NTDC for economic dispatch and operation. However, the Authority while giving its determination for modification has, *prima facie*, enabled FEL to bypass the said essential requirements of the NEPRA Act. In view of the said, the determination is liable to be recalled/reviewed.

(v). The representatives of the distribution companies and NTDC submitted that under Section-22(2) of the NEPRA Act, where a BPC intends to stop purchase of electric power from a distribution company, it is required to convey its intention by notice in writing one year before such stoppage. The Modification/the Determination allows several consumers of various distribution companies to stop purchasing power from the same without giving any formal and mandatory notice, as required under Section-22(2) of the NEPRA Act, which is violation of the NEPRA Act therefore, the Modification and the Determination are liable to be recalled/reviewed.

(vi). In addition to the above, it was stated that post amendments of the NEPRA Act, it is not obligatory on the distribution companies to distribute electric power sold by generation companies to the bulk power consumers under the Amendment NEPRA Act. The omission of the term 'bulk power consumers' from Section-23 of the NEPRA Act depicts the intention of the legislature in this regard. Therefore, the Modification and the Determination are contrary to the said provisions of the NEPRA Act and is liable to be reviewed/ recalled.

(vii). It was submitted that under Section-7(6) of the NEPRA Act, the Authority is required to protect the interests of the consumers and investors involved in the sector in a transparent and impartial way. The Modification has been issued in disregard of the aforesaid principles due to the reasons that several deficiencies are present in the existing NEPRA (Wheeling of Electric

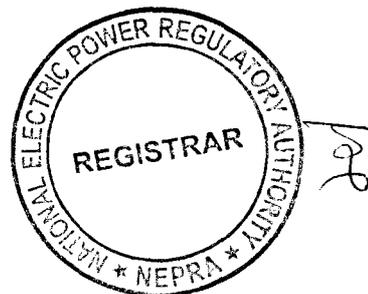


Power) Regulations, 2016 (the "Wheeling Regulations") including (a). lack of specialized role of entities performing market operation, dispatch and settlement functions; (b). recovery of network losses; (c). use of system charges; (d). cross-subsidy; (e). cost of stranded assets; (f). discriminatory impacts due to difference of consumer charges; (g). economic dispatch; (h). banked energy; (i). wheeling of renewable energy and (j). hybrid nature of BPC. In this regard, several deliberations/ consultative Sessions have been held to address said deficiencies. During the existence of the deficiencies, the approval of the Modification is contrary to the above mentioned provision of the NEPRA Act.

(viii). It was stressed that the existing legal, regulatory and technical framework is not enabled to deal with the type and form of wheeling arrangement envisaged in the Modification. Furthermore, the current Grid Code and Distribution Code also do not enable such an arrangement. Thus, the Determination will, *inter alia*, lead to several difficulties, including those of technical nature, and shall also affect the performance standards of distribution and transmission sector.

(ix). The legal counsels of the distribution companies stressed that the Modification and the Determination will result in lowering the revenue generating streams for the utilities and the same may lead to financial repercussions for the same. As such, it is neither in the interests of these distribution companies, nor their respective consumers.

(x). The representatives of distributions companies stated that the current tariff structure prescribes for cross subsidization for the small consumers and is applicable on all consumers irrespective of the source of purchase of electricity. The Modification is prejudicial to such an arrangement reflected in the current regime. Therefore, the Determination may kindly be reviewed.



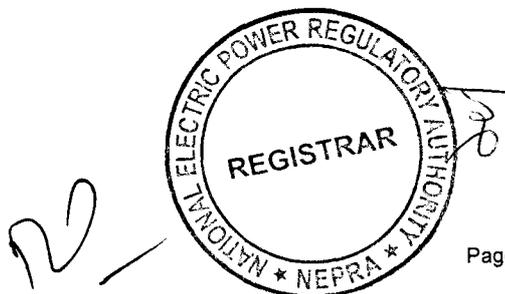
(xi). It was stated that under the respective licenses of the distribution companies, the exclusive rights have been granted to the utilities to engage in provision of distribution services or sale of electric power in the Service Territory. However, by virtue of the Modification and the Determination, the said assurance has been dispensed contrary to its legitimate expectations and settled principles of law.

(xii). The representatives of distribution companies and NTDC expressed that in terms of Regulation-10(5) of the Licensing Regulations, while approving the modification the Authority is to *inter alia* consider that the modification on (a). does not cause it 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 sub-ordinate legislation made thereunder; (b). is or is likely to be beneficial to the consumers; and (c). is reasonably necessary for the licensee to effectively and efficiently perform its obligations under the licence. The Determination has been issued against the principles enshrined under the above mentioned regulations and is liable to be recalled/reviewed.

(xiii). The Authority also offered an opportunity to the representatives of FEL and its legal counsel to present their point view on the various observations made by the distribution companies and NTDC. The representatives of the FEL submitted that the Regulation-3(2) of the Review Regulations stipules that the review is to be filed if there is a discovery of new and important evidence or there is an apparent mistake/error on the face of record. However, distribution companies and NTDC have not complied with these two conditions and in view of the said their petitions should be dismissed being non-maintainable.

(xiv). In addition to the above, it was submitted that the Petitioners are using the Determination dated December 31, 2019 as a proxy for reviewing the determination of original Generation Licence (No. SGC/96/2013 dated December 31, 2013) as the grounds agitated herein revolve around the

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right of FEL to sell electric power to BPC(s) given in the said determination rather than in the Determination dated December 31, 2019 which merely sanctions the inclusion of additional BPC(s) for selling electric power.

(xv). In this regard, it was submitted that the grounds taken in the review petitions were forgone and not agitated during the proceedings whereby the Authority allowed addition of twenty two (22) more BPC(s). Therefore, the grounds cannot be raised for the first time during the stage of review. The review remedy unlike an appeal, is limited to errors on the face of the record and discovery of a new fact or evidence which were not available at the time of the Determination of the original Generation Licence. In view of the said, FEL stressed that the review petitions need to be dismissed being non-maintainable.

(xvi). About the observations of distribution companies and NTDC that FEL has not obtained a Supplier Licence under the relevant provisions of the NEPRA Act and therefore it cannot supply to BPC(s), it was submitted that sale to BPC(s) is a standalone and independent provision under Section-22 of the NEPRA Act. It is a non-obstante clause stating that notwithstanding anything contained in Section-21 of the NEPRA Act (which provides for duties and responsibilities of the distribution licensees), it is the power and function of the Authority to permit the sale of electric power to the BPC(s) located in the service territory of the holder of a licence under the NEPRA Act.

(xvii). In addition to the above, it was submitted that the BPC has been defined to mean a consumer which purchases or receives electric power, at one premises, in an amount of one (01) MW or more or in such other amount and voltage level and with such other characteristics as the Authority may specify and the Authority may specify different amounts and voltage levels and with such other characteristics for different areas. That this definition of BPC is in contradistinction to the meaning of consumer which means a person or his successor-in-interest which purchases or receives electric power for consumption and not for delivery or re-sale to others,

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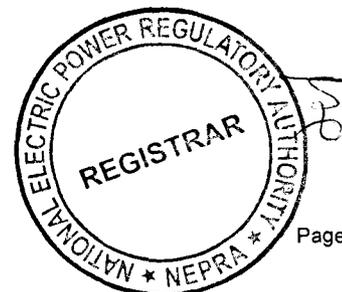


including a person which owns or occupies a premises where electric power is supplied.

(xviii). It was stated that the Section 23E of the NEPRA Act which has been pressed by the petitioners is limited to grant of licence to person which shall engage in the supply of electric power to a consumer. It does not relate to supply of electric power to a BPC which is dealt under Section-22 of the NEPRA Act. The wisdom of the legislature is evident that it does not require electric power supply licence to be issued to persons engaged in the supply of electric power to a BPC and it is restricted to the consumers of the distribution business.

(xix). It was explained that the Generation Licence No. SGC/96/2013 dated December 31, 2013 of FEL is coupled with the integral right to supply and sale of electricity to the BPC(s) as without such right the Generation Licence will be meaningless. FEL stated that reference is made to Rule-7 of the Generation Rules which deals with second tier supply business defined under the said rules to mean the authorized business if any of the licensee or any of its affiliates as a supplier of electric power or ancillary services to a BPC. It is the exclusive power of the NEPRA/Authority to authorize a licensee to engage in second tier supply business on such terms and conditions and for such period as may be specified in the second-tier supply authorization. FEL has been granted Generation Licence and modifications thereto under and pursuant to Section-22 of the NEPRA Act read with Rule-7 of the Generation Rules and further read with other enabling sections of the NEPRA Act, Rules and Regulations made thereunder. In view of the above, it is clear that the Section-23E of the NEPRA Act is related to grant of licence for supply of electric power to a consumer of the distribution business and not related to supply of electric power to a BPC as stipulated under Section-22 of the NEPRA Act.

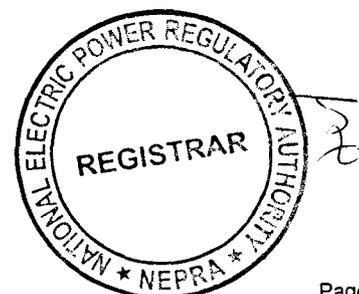
(xx). About the observation that under Section-14(B)(4) of the NEPRA Act and the relevant rules, FEL is obligated *inter alia* to make



available its generation facilities to NTDC for economic dispatch and operation etc., it was confirmed that generation facility of FEL shall be available for the dispatch by the System Operator for safe and reliable operations of national grid company. However, FEL submitted that the criteria for economic dispatch will not be applicable to it as it is not providing electric power services to the national grid rather it is providing services to its BPC(s) through the National Grid by using the wires of the DISCO(s)/NTDC for which it is paying the Use of System Charges (UoSC) as determined by the Authority. In this regard, FEL confirmed that it shall be bound to follow economic dispatch criteria as and when it supplies electric power to the National Grid. Further, FEL confirmed that in any case the dispatch provisions and role of System Operator will be dealt within the Connection Agreement to be signed with the DISCO(s)/NTDC as the case may be.

(xxi). About the observations of distribution companies and NTDC that perquisite given under Section-22 of the NEPRA Act has not been fulfilled, FEL stated that provision of notice is an obligation of the BPC(s) which is not related to it. FEL confirmed that these issues are related to the Energy Wheeling Agreement (EWA) and the same will be looked into at the appropriate time and not at the stage of modification in the Generation Licence.

(xxii). Regarding the observations of distribution companies and NTDC that under the amended NEPRA Act, it is not obligatory on the distribution companies to distribute electric power sold by generation companies to the BPC(s), it was submitted that the obligations, duties, responsibilities of the distribution licensees are to be dealt with Section-21 of the NEPRA Act and not in accordance with Section-23 of the NEPRA Act. Under Section-21 of the NEPRA Act, the exclusivity to distribute power in the service territory of the DISCO(s) have been eliminated by the proviso, which provides the right to the generation company to make sale of electric power to the BPCs and the distribution shall be done by the relevant DISCO. Further,



the Rule-11 of National Electric Power Regulatory Authority Licensing (Distribution) Rules, 1999 (the "Distribution Rules") gives right of use of system of DISCO(s) by generating companies for supplying power to BPC(s). Further, the Wheeling Regulations impose an obligation to the concerned DISCO for allowing use of its system to transport electric power from the power plant to the premises of the BPC. Lastly, the Authority has observed in the Generation License Determination that ...all the Distribution Companies in terms of Article 9 of their Distribution Licenses are required to and are obligatory to provide access to any prospective generation company or prospective BPC for using its Transmission System for which it is entitled to receive UoSC...

(xxiii). About the observations of distribution companies and NTDC that under Section-7(6) of the NEPRA Act, the Authority is required to protect the interests of the consumers and investors involved in the sector in a transparent and impartial way whereas the modification in the case of FEL has been issued in disregard of the aforesaid principles, FEL submitted that the Generation Licence inclusive of the right to sell electric power to BPCs and the Impugned Determination is in line with the provisions of the NEPRA Act and the Rules/Regulations framed thereunder. Even otherwise, the Petitioners did not participate in the hearing of the Generation Licence therefore, have surrendered its right to raise any objections at such a belated stage. Even Otherwise, the Authority has rightly made its Determination dated December 31, 2019 that the grounds pertaining to tariff or EWA(s) should not be raised during the proceedings of modification of licence but rather at a later stage and at the appropriate forum for instance at the time of filing of petitions for the tariff of the distribution companies.

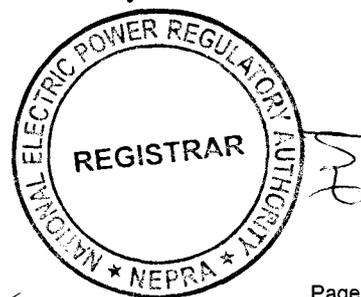
(xxiv). Regarding the comments that the modification and the Determination dated December 31, 2019 will lower the revenue streams of the distribution companies, FEL stated that such matters are not related to the potential/future wheeling arrangements. These issues were even there before



the commercial operations of the generation facility of the FEL and are attributed to the mismanagement and negligence of the of the distribution companies for which it cannot be reprimanded for the actions of the others including distribution companies.

(xxv). In relation to the comments that the current tariff structure prescribes for cross subsidization for the small consumers and is applicable on all consumers irrespective of the source of purchase of electricity, FEL submitted that cross subsidization is an issue of the tariff therefore, the same cannot be reviewed in the purview of the Review Petition. Nonetheless, the subsidy or cross subsidy to some of the consumers is a policy decision of Federal Government and applicable to consumers off-taking power from network. Currently consumers which are generating and consuming electricity privately as well as being consumers of DISCO network are not compensating for the cross subsidy or payment of capacity charges to DISCO then question of consumers of FEL paying such subsidies/charges is irrelevant. Even otherwise, these issues are already covered in the UoSC(s) which are currently enforced. Presently, as admitted in the instant Review Petition that the Authority is separately in the process of reviewing the pricing structure of wheeling and has held consulting sessions with the stakeholders. Therefore, till the time the Authority reviews such pricing structure and the existing Wheeling Regulations, the present UoSC(s) should remain applicable.

(xxvi). On the comments that licences of the distribution companies grant them exclusive right to engage in provision of distribution services or sale of electric power in the Service Territory whereas the Modification has dispensed the assurance, FEL submitted that Section-21 of the NEPRA Act provides that the monopoly and the right to exclusively distribute power in the service territory of the concerned DISCO has been eliminated and it provides the right to the generation company to make sale of electric power to the BPCs and the distribution shall be done by the relevant DISCO. Even otherwise, Rule- 11 of the Distribution Rules gives right of use of system of DISCOS by



generating companies for supplying power to BPCs. Moreover, the Wheeling Regulations put an obligation to the concerned DISCO for usage of its system to transport power from the power plant to the premises of the BPC. The Authority in this regard has observed in the determination of the Generation License that all the Distribution Companies (in terms of Article-9 of their Distribution Licences and Rule-11 (7) of the Distribution Rules are obligatory to provide access to any prospective Generation Company or prospective BPC for using its Transmission System for which it is entitled receiving UoSC. Similarly, NTDC in terms of Article-10 of its Transmission Licence (No. TL/01/2002, dated December 31, 2002) is obligated to provide open access to any prospective Generation Company or prospective BPC Generation Company or prospective BPC for using its Transmission System for which it is entitled receiving UoSC(s).

(D). Evaluation/Findings

(i). The Authority has examined the entire case in detail including the already granted licence, the modifications made in the said licence, submission made by the distribution companies and NTDC against the determination of the Authority dated December 31, 2019 in their review petitions and the submissions made by FEL in the matter.

(ii). In this regard, the Authority observes that through its determination dated December 31, 2019 it approved LPM/Modification-II in the Generation Licence (No. SGC/96/2013, dated December 31, 2013, Modification-I September 14, 2015) of FEL increasing the number of its BPC(s) from existing four (04) to a total of twenty six (26). In consideration of the said and being aggrieved with the decision of the Authority NTDC, IESCO and FESCO filed motion for leave for review on January 29-30, 2020, *inter alia* on similar grounds mainly raising the issues that (a). the supply of electric power to a consumer including a BPC is prohibited unless an electric power supply licence is obtained from the Authority under Section-23E of the NEPRA Act; (b). in terms of Section-14(B)(4) of the NEPRA Act and Rule-10 of the Generation Rules, a generation company is



required to make its generation facility available to the National Grid Company for the safe, reliable, non-discriminatory economic dispatch and operation of the National Grid and connected facilities. However, through the current Modification and the Licence, the Authority has, *prima facie*, enabled FEL to bypass these essential requirements of the NEPRA Act; (c). under Section-22(2) of the NEPRA Act, certain formalities are required to be fulfilled specially the notice in writing one year before a BPC stops purchasing electric power from a distribution company. The Modification and the Determination allows several consumers of various distribution companies to stop purchasing power from the same without giving any formal and mandatory notice, as required under Section-22(2) of the NEPRA Act; (d). it is not obligatory on the distribution companies to distribute electric power sold by generation companies to the BPC(s) under the amended NEPRA Act; (e). several deficiencies have been identified in the existing wheeling regime for which deliberations and consultative sessions have been held to address and reform the same. Pending such reform and during the existence of such deficiencies, the approval of the Modification by the Authority is contrary to Section-7(6) of the NEPRA Act; (f). the existing legal, regulatory and technical framework is not enabled to deal with the type and form of wheeling arrangement envisaged in the Modification. Furthermore, the current Grid Code and Distribution Code also do not enable such an arrangement; (g). The Determination will, *inter alia*, lead to several difficulties, including those of technical nature, and shall also affect the performance standards of distribution and transmission sector; (h). The Modification and the Determination will lower the revenue generating streams for the distribution companies and may lead to financial repercussions for the same. As such, it is neither in the interests of the distribution companies, nor their respective consumers; (i). The current tariff structure prescribes for cross subsidization for the small consumers and is applicable on all consumers irrespective of the source of purchase of electricity; and (j). The Determination dated December 31, 2019 was made against the principles enshrined under Regulation 10(5) of the Licensing Regulations. In this regard the Authority considers it appropriate to address all the issues raised by the distribution companies and NTDC through this determination as explained in the following



paragraphs.

(iii). In the review petitions the distribution companies and NTDC have raised similar grounds stating that for supplying electric power to BPC(s), the generation company i.e. FEL (in the present case) will be requiring a Supplier Licence. In this regard, the Authority will like to refer to the specific provisions of Section-2(ii) and Section-2(iv) of the NEPRA Act wherein the terms “BPC” and “Consumer” have been defined. In view of the said, the interpretation of BPC and the Consumer is to be dealt strictly in accordance with the said provisions and therefore, the same cannot be mixed with in anyway. Further, the Authority observes that the relevant provision pertaining to supply to a BPC is dealt under Section-22 of the NEPRA Act wherein it has been clearly stated that a permission can be granted to a holder of a licence supplying to a BPC located in the service territory of the holder of a licence under the NEPRA Act. In this regard, the Authority hereby clarifies that under the said section there is no explicit provision directing a generation company to have a Supplier Licence. In view of the said, the assertion of the distribution companies and NTDC that for supplying electric power to the BPC(s), a Supplier Licence will be required is not in line with the provisions of NEPRA Act.

(iv). Regarding the comments that as per the provision of the NEPRA Act and the relevant rules, FEL is required to make its generation facility available to the National Grid Company whereas through Determination dated December 31, 2019, the Authority has, *prima facie*, enabled it to bypass these essential requirements. In consideration of the said, the Authority will like to highlight various provisions relating to the observations made. The Section-14B(4) of the NEPRA Act clearly states for a generation facility connecting directly or indirectly to the transmission facilities of the National Grid Company, shall make available its generation facility for the safe, reliable, non-discriminatory, economic dispatch and operation of the national transmission grid and connected facilities, subject to the compensation fixed by the Authority for voltage support and uneconomic dispatch directed by the national grid company. In this regard, the Authority will like to



highlight that prior to the amendments in 2018 in the NEPRA Act a similar provision was existing then under Section-15(4) of the NEPRA Act. It is pertinent to mention that terms mentioned in Section-14B(4)/earlier Section-15(4) including (a).safe; (b). reliable; (c). non-discriminatory; and (d). economic dispatch and operation etc. were neither defined in the original NEPRA Act nor in the amended NEPRA Act. In order to clarify these terms, the Authority framed the Generation Rules defining these terms for their specific interpretation. According to the Rule-10 of the Generation Rules, a generation company is required to make available its generation facilities for economic dispatch by the National Grid Company consistent with the Grid Code and any applicable Distribution Code and subject to the "Pooling and Settlement" arrangement. It is pertinent to mention that the term "Pooling and Settlement" is defined in Rule 2(1)(xxii) of the Generation Rules and according to which it is an arrangement for establishing or implementing a wholesale market for the sale and purchase of electrical energy, net capacity or ancillary services under the relevant NEPRA rules and regulations. In view of the said explanation, it is clear that the provision of Section-14B(4) of the NEPRA Act can only be applied once there exists a competitive market which is still not operative. This is the very reason that the Authority while framing and notifying the Wheeling Regulations kept the provision of the self-despatch which was never opposed by any of the stakeholders, including these distribution companies and NTDC. Therefore, the Authority determines that in the absence of the competitive/whole sale market the provision of the above mentioned Wheeling Regulations will prevail. However, the Authority will continuously review this aspect and whenever, the necessary infrastructure is available especially in the light of the proposed competitive market being pursued by CPPAGL, the provisions for self-despatch will be reviewed and necessary amendments will be made in the relevant regulations, if deemed appropriate.

(v). About the observation that under Section-22(2) of the NEPRA Act, certain formalities are required to be fulfilled, the Authority considers that through the Determination dated December 31, 2019 it has accorded the approval of the communicated LPM meaning thereby principle approval to FEL to supply to



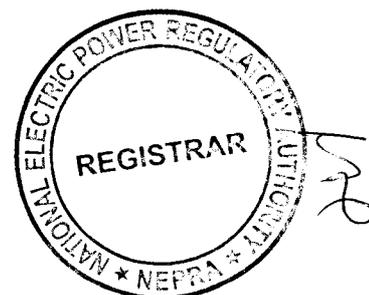
BPC(s) subject to compliance of the required formalities as stipulated in the relevant Section of the NEPRA Act. The Authority considers that the actual supply to BPC(s) will only start once the EWA between FEL and DISCO(s) are executed. In view of the said, the Authority considers that unless the necessary legal binding documents are in field, it is not possible for the consumers of DISCO(s) to give the required notice of disconnection of supply. In this regard, FEL and BPC(s) have confirmed that the required notice as stipulated in the NEPRA Act will be served once EWA is signed.

(vi). The Authority has observed that distribution companies and NTDC in their review petitions have taken the position that they are not obligated to distribute the electric power sold by generation companies to the BPC(s) under the Amendment NEPRA Act. In this regard, the said entities have based their arguments that the term BPC has been omitted from the Section- 23 of the NEPRA Act which indicates the intention of the legislature in this regard. The Authority considers that the submissions of the distribution companies and NTDC are contrary to the terms and conditions of their respective licences. In this regard, the Authority clarifies that all the distribution companies in terms of Article-9 of their distribution licences are obligated to make their system available for any licensee interested to become a second tier supplier by charging the UoSC(s) determined by the Authority. Similarly, NTDC in terms of Article-9 of its Transmission Licence is obligated to offer a non-discriminatory open access transmission inter-connection service to any party or parties. In this regard, the contention of the distribution companies and NTDC that legislator has omitted BPC from Section-23 of the NERA Act is contrary to their earlier stance whereby it was insisted that for supplying to a BPC a Supplier Licence is required. In this regard, the Authority is of the considered opinion that distribution companies have been consistently taking the position that in terms of Section-50 of the NEPRA Act their rights and privileges granted under the previous NEPRA Act have a saving and the granted exclusivity cannot be withdrawn despite the fact that the amended NEPRA Act has done away with the exclusivity. The Authority considers the



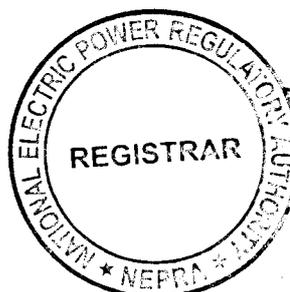
position taken by the distribution companies and NTDC as blowing hot and cold at the same time which cannot be allowed. Therefore, the Authority is of the considered opinion that all the distribution companies and NTDC under the terms and conditions of their licenses are obligated to provide their system for open access to generating companies for connecting to BPC(s).

(vii). The Authority has observed that the distribution companies and NTDC in their comments submitted that under Section-7(6) of the NEPRA Act, it is required to protect the interests of the consumers and investors involved in the sector in a transparent and impartial way which was done while allowing LPM of FEL. Further to the said, the said entities according to their own understanding highlighted several deficiencies in the existing Wheeling Regulations as explained in the preceding paragraphs which are to be addressed before allowing a generating company to supply to a BPC through wheeling. In consideration of the above the Authority considers distribution companies and NTDC through the current review motion and CPPAGL through separate correspondence raised various issues not related to the LPM of FEL but in fact related to the Power Sector of the country including (a). lack of specialized role of entities performing market operation, dispatch and settlement functions; (b). recovery of network losses; (c). UoSC(s); (d). cross-subsidy; (e). cost of stranded assets; (f). discriminatory impacts due to difference of consumer charges; (g). economic dispatch; (h). banked energy; (i). wheeling of renewable energy and (j). hybrid nature of BPC. In this regard, the Authority has already initiated a consultative process to arrive at a judicious decision for protecting the interest of all the stakeholders. In this regard, the Authority confirms that whatever the outcome of the consultative session may be it will be applicable across the board including all the generating companies, NTDC, distribution companies and BPC(s). It is pertinent to mention that FEL and its BPC(s) have submitted an undertaking that decision of the Authority to be taken as part of the consultative process on wheeling will be binding.



(viii). The Authority has noted that in their comments in the Review Petitions the distribution companies and NTDC have made the observations that the existing legal, regulatory and technical framework is not enabled to deal with the type and form of wheeling arrangement envisaged in the allowed modification. Also the above mentioned entities highlighted that the current Grid Code and Distribution Code also do not enable such an arrangement envisaged in the allowed modification of FEL. In his regard, the Authority considers that in light of the explanation given in the preceding paragraph the required legal, regulatory and technical framework including the existing Grid Code and Distribution Code, is sufficient to allow the implementation of the wheeling. In this regard, the Authority will like to highlight that previously it approved a wheeling arrangement between FEL and Multan Electric Power Company Limited (MEPCO) under which FEL has wheeled electric power to its different BPC(s) against payment of UoSC(s) to the utility. In view of the said, the Authority does not consider the comments of the distribution companies and NTDC for any further deliberations but assures the stakeholders that during the implementation of wheeling arrangement, if some issues arise the same will be fixed accordingly.

(ix). The Authority has noticed that one of the major observation made by the distribution companies and NTDC is that the Modification allowed to FEL will lower the revenue generating streams for the utilities resulting in financial problems for the same. Therefore, it is neither in the interests of the distribution companies, nor their respective consumers to allow the modification to FEL. In consideration of the said, the Authority considers that the offered comments are contrary to the factual position. In this regard, the Authority refers to the methodology for determination of tariff for the distribution companies. According to the said, the revenue requirements of a distribution company are always ensured and any short fall in the matter is adjusted through prior year adjustment in the tariff. Therefore, the contention of the distribution companies are not in line with factual situation and the same



are not worth considering. In this regard, the Authority considers it appropriate directing the distribution companies to take initiatives to expand their revenue base and approach the potential consumers who are interested in getting connection. Further, the Authority directs the distribution companies to clear their backlog and improve their services so that consumers do not consider approaching other generating companies for supply of electric power.

(x). The Authority has observed that the distribution companies and NTDC have highlighted that the existing structure for tariff prescribes cross subsidization for the smaller consumers however, it is not clear how this aspect will be addressed if wheeling for the subsidising (i.e. large consumers) is allowed? In this regard, the Authority reiterates that CPPAGL has highlighted this issue and on the basis of the said, a consultative process for fixing such issues has already been initiated to arrive at an informed decision. The said process is in advance stage and it is expected that a decision in this regard will be reached soon. Whatever decision is taken in this regard, the same will be applicable across the board without any exception. As explained in the preceding paragraphs, FEL has given an undertaking that the decision of the Authority in this regard will be binding and will be followed in letter and spirit.

(xi). The Authority while considering the comments of distribution companies has observed that under their respective licence, exclusive rights have been granted to engage in provision of distribution services or sale of electric power in their respective Service Territory. However, through the Modification the said assurance has been dispensed contrary to its legitimate expectations and settled principles of law. In consideration of the said, the Authority will like to highlight that it is true that distribution companies were granted an exclusive licence however, the same was subject to the provisions of the Section-22 of the NEPRA Act as enshrined in terms of Article-7 of the granted distribution licences. In view of the said, the Authority is of the considered opinion that by allowing the modification of FEL the provisions of





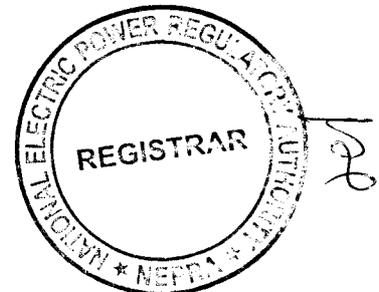


the NEPRA Act have been strictly adhered with and therefore, no infringement of exclusive rights of distribution companies has occurred.

(xii). The Authority while considering the various observations /objections of the distribution companies and NTDC has noticed that the said entities have alleged that in its Determination dated December 31, 2019 the Authority has not followed the principles stipulated in Regulation 10(5) of the Licensing Regulations. The Authority takes a serious notice of the frivolous comments of the above mentioned companies which have been made without actually going through the content of the Determination dated December 31, 2019. In this regard, the Authority highlights that in its Determination dated December 31, 2019 under paragraph E(ii)-E(iii) wherein the provisions of the relevant regulations has been addressed and are reiterated. In view of the said, the Authority considers that all the observations of the distribution companies i.e. FESCO, IESCO and NTDC stand addressed.

(xiii). In consideration of the above, it is highlighted that during the processing of the Review Petitions of FESCO, IESCO and NTDC, the Authority also admitted on April 23, 2020 two more Review Petitions filed by Hyderabad Electric Supply Company Limited (HESCO) and Lahore Electric Supply Company Limited (LESCO) on similar grounds as that of FESCO, IESCO and NTDC which have been deliberated/discussed and addressed in the current determination as explained at Para E(i)-E(xii) above.

(xiv). In this regard, the Authority decided to club the proceedings of Review Motions of HESCO and LESCO with that of FESCO, IESCO and NTDC. Accordingly the findings and decision of the Authority in this regard will also be applicable for the said Review Petitions of HESCO and LESCO.



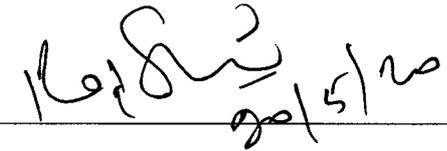
(E). Rejection of the Review Petitions

(i). In light of the above explanation, the Authority is of the considered opinion that the concerned distribution companies (i.e. FESCO, HESCO, IESCO and LESCO) and NTDC have failed to justify their stance in terms of the NEPRA Act, relevant rules, regulations framed thereunder and the other applicable documents in the matter.

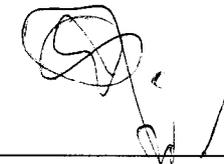
(ii). Therefore, the Authority decides to reject the review petitions of the above mentioned companies and maintains its earlier decision/determination of allowing LPM of FEL. Accordingly, the Authority directs all the stakeholders to comply with its determination dated December 31, 2019 in letter and spirit for enabling wheeling of electric power to BPC(s).

Authority

Rafique Ahmed Shaikh
(Member)



Rehmatullah Baloch
(Member)



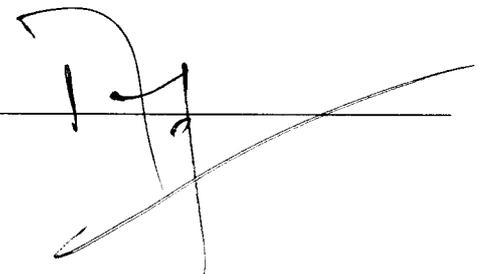
Saif Ullah Chattha
(Member)


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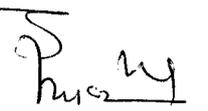
Engr. Bahadur Shah
(Member/Vice Chairman)



Tauseef H. Farooqi
(Chairman)






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