



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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No. NEPRA/TRF-264/BTPL-2014/691-693
January 21, 2016

Subject: Decision of the Authority in the Matter of Petition filed by Bahria Town (Pvt.) Ltd. (BTPL) for Determination of Consumer-end Tariff for FY 2014-15 [Case # NEPRA/TRF-264/BTPL-2014]

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (10 pages) in Case No. NEPRA/TRF-264/BTPL-2014.

2. The Decision is being intimated to the Federal Government for the purpose of notification in the official gazette pursuant to Section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997) and Rule 16(11) of the National Electric Power Regulatory Authority Tariff (Standards and Procedure) Rules, 1998.

Enclosure: As above

(Syed Safer Hussain)

Secretary
Ministry of Water & Power
'A' Block, Pak Secretariat
Islamabad

CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.



**National Electric Power Regulatory Authority
(NEPRA)**

PETITION NO: NEPRA/TRF-264/BAHRIA-2014

**DECISION IN THE MATTER OF PETITION FILED BY
BAHRIA TOWN (PRIVATE) LTD (BTPL)
UNDER
NEPRA (TARIFF STANDARDS AND PROCEDURE) RULES , 1998
FOR
DETERMINATION OF CONSUMER END TARIFF FOR FY 2014-15**

Islamabad

21, January 2016



PETITIONER

Bahria Town (Pvt) Ltd.,
Corporate Office-II, Phase II, Bahria Town,
Rawalpindi.

INTERVENER

Bahria Town Residents Welfare Association,
692 - A, Road D, Phase III, Bahria Town, Islamabad.

COMMENTATOR

Islamabad Electric Supply Company Ltd., (IESCO),
Head Office, Street 40, G-7/4, Islamabad.

REPRESENTATION

Mr. Malik Riaz Hussain	Chairman
Mr. Ahmed Ali Riaz Malik	Chief Executive
Brig ^(R) Abdul Rauf Raja	Vice Chief Executive
Mr. Syed Shabbar Hussain Shah	Company Secretary / Chief Financial Officer
Engr. Muhammad Saleem	GM Tech & Co-Ordination (Power)
Mr. Rauf Mirza	GM Water and Power
Mr. Azhar Mahmood	Senior Manager Electricity
Mr. Masoom Akhtar, FCA	Financial Consultant



DECISION IN THE MATTER OF PETITION FILED BY BAHRIA TOWN (PRIVATE) LIMITED FOR DETERMINATION CONSUMER-END TARIFF FOR FY 2014-15. (CASE NO. NEPRA/TRF-264/BTPL-2014)

1. BACKGROUND AND BRIEF HISTORY:

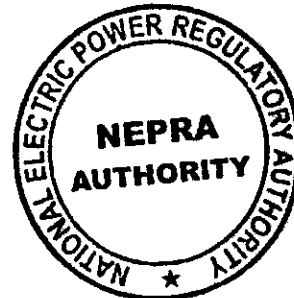
- 1.1 Bahria Town (Private) Limited (hereinafter "the Petitioner") is a private power distribution licensee incorporated under the Companies Ordinance, 1984. The Petitioner is principally engaged in real estate development business. The Petitioner was awarded distribution license # 20/DL/2010 on November 24, 2010 by the National Electric Power Regulatory Authority (NEPRA) for its distribution system in the locations developed by it located at Bahria Town, Rawalpindi/Islamabad, in the Province of Punjab and Islamabad Capital Territory (ICT). Bahria Town Private Limited has already developed Phase I to VIII, Safari Valley, Bahria Garden City while Phase IX and other surrounding areas are in the process of development. However, most of its distribution system is operational in the developed areas. Area consisting Phase I to VIII and Safari Valley are fully developed and almost 60% occupied.
- 1.2 Previously determination of consumer end tariff of the Petitioner was made on 1st November, 2011 by the Authority for the FY 2010-11 (Jan-June) & FY 2011-12. (CASE No. NEPRA/TRF-170/BTPL-2011) (hereinafter referred to as the "Determination 2011").

2. ADMISSION OF PETITION:

- 2.1 In terms of rule 4 of the NEPRA (Tariff Standards and Procedures) Rules, 1998 (hereinafter referred to as the "Rules"), the Petition was admitted by the Authority on 26 June 2014. In compliance of the provisions of rule 4(5)(6) of the Rules, notices of admission and hearing were sent to the parties which were considered to be effected or interested and advertisement by publication of the title and brief description of the petition was also published on 09th August 2014. Comments/Replies and filing of intervention request in terms of rule 6 (3); if any, were desired from the interested persons within 7 days of the publication.

3. FILING OF REPLY/ INTERVENTION REQUEST/ COMMENTS:-

- 3.1 No comments or intervention request was filed within the stipulated time in response to the notice of admission. However, IESCO filed its comments after the public hearing on August 26, 2014 which were considered by the Authority and for giving an opportunity of being heard in this regard another hearing was also conducted on October 17, 2014. Additionally, an intervention request from Bahria Town Residents Welfare Association (BTRWA) was received on 22nd August, 2014, which was duly accepted by the Authority during the hearing. However, the same was later withdrawn by BTRWA on a statement given by the Petitioner on the, *inter alia*, ground that it is not seeking any increase in tariff but only claiming amount of subsidy.

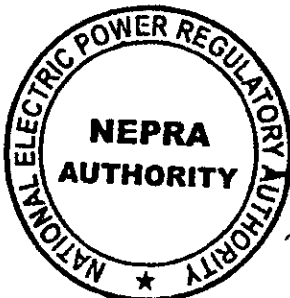




4. **FRAMING OF ISSUES:**

4.1 For the purpose of hearing the following issues were framed for presenting written as well as oral evidence and arguments:-

- a. Whether the directions issued by the Authority in the Determination 2011 have been complied with?
- b. Whether the Petitioner's projected purchase of 107.70 M kWh and sales of 98.54 M kWh units for the FY 2014-15, are reasonable?
- c. Whether the Petitioner's proposed transmission and distribution losses of 8.5% for the FY 2014-15 based on a actual losses of 8.5% for FY 2013-14, are justified?
- d. Whether the Petitioner's projected Power Purchase cost of Rs. 1,450.98 million (Rs 14.72 /kWh) for the FY 2014-15, is justified as against actual cost of Rs. 13 /kWh for FY 2013-14?
- e. Whether the Petitioner's projected O&M Cost of Rs 61.66 million (Rs 0.63/kWh) for the FY 2014-15 based on the actual cost of Rs. 53.44 million (Rs. 0.71 /kWh) for FY 2013-14 after accounting for inflation/increments, is justified?
- f. Whether the Petitioner's proposed depreciation charge of Rs 95.12 million (Rs 0.97 /kWh) for the FY 2014-15 as against the actual cost of Rs. 97.09 million (Rs. 1.28 /kWh) for FY 2013-14 after accounting for projected additions to fixed Assets, is justified?
- g. Whether the Petitioner's projected Return on Regulatory Asset base of Rs 285.91 million (Rs 2.90 /kWh) for the FY 2014-15 as against the actual return of Rs.293.37 million (Rs. 3.87/kWh) for FY 2013-14, is justified?
- h. Whether the proposed revenue requirement of Rs 1,893.67 million at an average sale rate of Rs 19.22 /kWh for the FY 2014-15, is justified as against the actual average sale rate of Rs. 18.86 /kWh for the FY 2013-14?
- i. What is the financing mechanism of the Petitioner for investment in long terms assets? How the electricity distribution network system was financed?
- j. Whether the over charged amount from the consumers of the Petitioner was refunded accordingly?
- k. What is the forecast of demand over next five to ten years along with sources of meeting that demand?
- l. Whether the cost of service study carried out by the Petitioner?





m. Whether the concerns raised by the commentators/interveners are justified?

5. **HEARING:**

5.1 Considering the nature of the said petition various hearings were conducted in order to arrive at a just and informed decision. IESCO being the commentator filed the following comments:

6. **ISLAMABAD ELECTRIC SUPPLY COMPANY LTD. (IESCO, COMMENTATOR)**

6.1 The commentator's objected to NEPRA's approval of BTPL's consumer end tariff as IESCO has never accepted NEPRA's carving out an area out of IESCO's exclusive service territory and neither has IESCO accepted BTPL's status as a distribution company and has challenged NEPRA's modification of IESCO's distribution license.

6.2 The Authority is well aware that Writ Petition 2860/2012, is still pending adjudication and the matter is now fixed for final arguments in the Islamabad High Court Order.

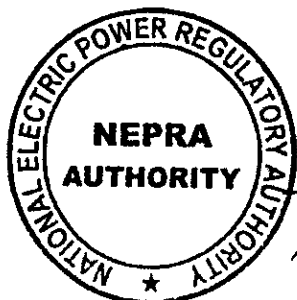
6.3 The Cabinet Committee on Privatization (CCOP) has directed and approved IESCO in the Privatization Programme for Early Implementation and the Expression of Interest (EOIs) & Terms of Reference (TORS) for hiring of Financial Advisors (FAs).

6.4 The commentator would like to inform the Authority that the Government of Pakistan has also appointed the FA's in this respect pursuant to the (Hiring of Financial Advisors Regulations 2007).

6.5 The Authority is well aware that once an entity like IESCO has been placed on the list of privatization its assets which in this case is the distribution license cannot be modified pursuant to Section 26 of the NEPRA Act 1997. Additionally, pursuant to Section 35 of the Privatization Commission Ordinance 2000, whereby any enterprise or management which is approved by the Cabinet as eligible for privatization shall not perform any action that would result in the assets of the company or business or undertaking or property being lost or wasted.

6.6 Furthermore, the Government of Pakistan. intends to privatize IESCO within the next eight (8) months and sell its stake in IESCO to a strategic investor. As is apparent from the Indicative Implementation Plan set out on page ten (10) of the TORS.

6.7 IESCO placed further reliance on Shaukat Ali Kundi's dissenting note dated 7th October 2010 wherein he has stated that the crossing of lines in IESCO's territory to supply BTPL areas located at distances Rawalpindi/Islamabad cannot be allowed. NOC's from NHA and RDA cannot take away the right of IESCO to carry out "Distribution" pursuant to its license and the Act. The Act recognizes through





definition's 2 (v) and 2 (vii) any such activity as "Distribution" and M/s BTPL cannot perform the function of Distribution" without getting such arrangement also carved out of IESCO territory and does not agree to the Authority's Proposed Modification of the DL of IESCO in favor of M/s BTPL.

6.8 IESCO reiterates and requests that NEPRA may approve a specific policy on power supply for all Housing Societies including but not limited to such as BTPL, High Rise buildings , Shopping Plaza's , Complexes and Bulk Power Purchasers.

7. PETITIONER'S RESPONSE TO ISLAMABAD ELECTRIC SUPPLY COMPANY LTD., (IESCO, COMMENTATOR)

7.1 The commentator's (IESCO) Objection to the petitioner's Consumer End Tariff is not relevant as the petitioner's Distribution Licensee area has never ever been part of IESCO's exclusive service territory. Moreover, the Petitioner has not requested for increase in Tariff, instead has prayed for provision of subsidy and rationalization of its C-3 purchase rates.

7.2 As far as writ petition is concerned, after 24 April 2014, there have been two hearings and the case is adjourned with no fresh/final date. If the case takes five years or so, does it mean that the Petitioner shall keep suffering throughout this period? Court decision as and when arrives shall be followed in letter and spirit. Even there is no status quo order passed by honourable Islamabad High Court and there is no relevancy regarding the instant matter pending before Authority.

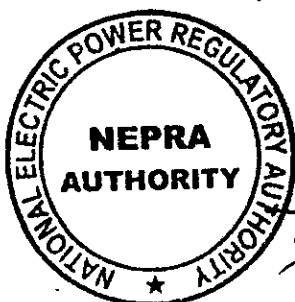
7.3 The commentator was in the list of entities earmarked for privatization even before the issuance of Distribution License to the petitioner. However, this also is not related to the petitioner's territory which has never been part of IESCO's territory even at the time of issuance of Distribution License to IESCO in 2001.

7.4 The petitioner's distribution territory has never been part of IESCO and IESCO has no assets and business in the petitioner's territory. All Grid stations and distribution network in distribution territory of the Petitioner has been installed with its own resources, being operated and owned by the petitioner.

7.5 The relief that the Petitioner requests, in any way does not affect the commentator's privatization time frame. As explained above the petitioner's territory has not been part of the commentator, therefore will have no effect.

7.6 The Petitioner stated that no lines are being crossed from the commentator's territory in the instant case. Even otherwise the dissenting note was already decided and brushed aside under the NEPRA Authority by the majority of members and a review petition was also filed by the commentator.

7.7 The Petitioner stated that it has no objection to commentator's stance and that its only request is to make it a viable entity; it's Purchase price should not be higher





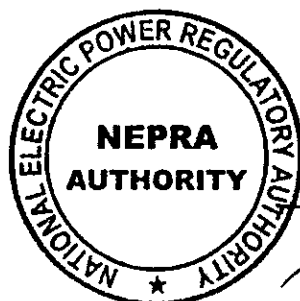
than its Sale price and that it's consumers get the same subsidy as is applicable to IESCO and other DISCO's consumers.

8. **CONSULTATIVE SESSION:**

- 8.1 Considering the above discussion, particularly comments of IESCO reiterated in 6.8 above and different complaints received by the Authority making various submissions, the Authority took a serious notice of various housing colonies/high rise buildings/industrial estates which are not licensees of NEPRA and charging different tariffs from their consumers without approval of the Authority, as in the case of BTPL. As the matter in hand was very serious and had huge legal and financial implications, the Authority considered it necessary to conduct consultative sessions involving all the stakeholders to deal with the tariff methodology of housing colonies/high rise building/industrial estates. In order to streamline the arrangement of re-sale of power by housing societies, high rise buildings and industrial estates after obtaining one point supply from the concerned distribution companies and to address the issues of service territory, different tariffs faced by the consumers living in those areas and other allied issues, the Authority took cognizance of the matter and framed the following issues for consultation with all stakeholders and general public.

9. **ISSUES FOR CONSULTATIVE SESSION:-**

- 9.1 For the purpose of consultative session, the Authority frames, *inter alia*, the following issues for presenting written as well as oral evidence and arguments by the concerned parties:-
- i. Whether to issue distribution license to all Housing Societies/Colonies/Industrial Complex/High rise buildings engaged in resale of electricity before grant of distribution license to DISCOs?
 - ii. Whether it would be appropriate to initiate proceedings for carving out the territories of DISCOs and to grant license to all Housing Societies/Colonies/Industrial Complex/High rise buildings engaged in resale of electricity?
 - iii. Whether the proposed Single Tariff Formula for BTPL consumers can also be applied to the consumers of other Housing Societies/Colonies/Industrial Complex /High rise buildings?
 - iv. Whether introduction of a separate category tariff of DISCO to DISCO sale is required and what should be the rationale to determine such tariff under section 23 of NEPRA Act?
 - v. Whether the definition of Bulk Power Consumer (BPC) be revised in the Act?





10. **FILING OF COMMENTS FOR CONSULTATIVE SESSION**

10.1 Comments for consultative session were received from the following stakeholders:-

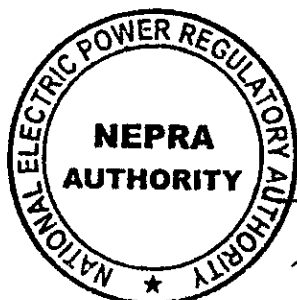
1. Bahria Town Services
2. Bismillah Energy (Pvt) Ltd.(Al-Rehman Garden Housing Scheme)
3. Divine Developers (Pvt) Ltd.,
4. Nishat Mills Limited
5. K-Electric
6. DHA Islamabad Phase II

11. **NEPRA (SUPPLY OF ELECTRIC POWER) REGULATIONS, 2015**

11.1 In order to streamline the arrangement of sales by distribution companies to other distribution companies and other related issues on the basis of comments, pleadings, evidence/record produced and arguments raised during the session for issues framed, findings of the Authority uploaded the issues and its findings on the NEPRA's website for further comments before notifying the appropriate regulations. Further an advertisement in this regard was published in the newspapers i.e. The News & The Express on June 28, 2015 granting 7 days time for comments against findings of the Authority.

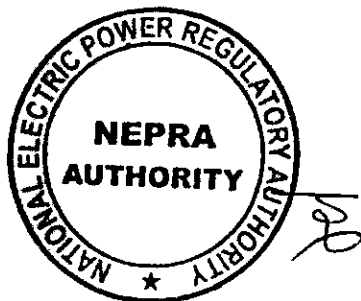
11.2 After detailed deliberations and having considered the input from stakeholders during various consultative sessions and on findings, the Authority notified NEPRA (Supply of Electric Power) Regulations, 2015 vide SRO 1134/(I)2015 dated 13-11-2015 (hereinafter referred to as the "Regulations 2015").

11.3 As the purpose of the Regulations 2015 is to establish a uniform framework for the regulation of supply of electric power by a distribution company to other distribution companies or by becoming an Operation and Maintenance (O&M) Operator under O&M Agreement etc., therefore, the Authority is of the view that the instant petition may be returned with a direction to file afresh in the form and manner prescribed under the Regulations 2015. However, considering the nature of the following issues which have remained unresolved despite a previous order of the Authority vide the Determination 2011, the Authority considers it appropriate to give its finding on the issues mentioned below on the basis of pleadings, evidence/record produced and arguments raised during the hearing:





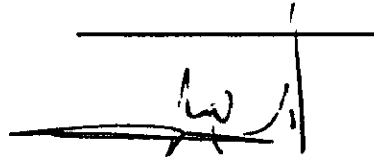
12. Whether the directions issued by the Authority in the last determination have been complied with? (Issue # 1 above)
- 12.1 The Petitioner replied during the hearing that the directions issued by the Authority in the Determination 2011 have been fully complied with. Although there has been objection by the intervener that the Petitioner violated the directions of the Authority and over charged the consumers against the approved tariff/charges as per IESCO applicable tariff.
- 12.2 The Authority while taking notice that the Petitioner did overcharge the consumers from November 2013 to April 2014 had directed the Petitioner to stop over charging as against the IESCO's applicable tariff. The Petitioner was also directed to refund the excess amount recovered from the consumers. The Petitioner however complied with the Authority's directions partially and started billing in accordance with the IESCO's applicable tariff. The amount over recovered from the consumers has not still been refunded. It has also been noted that the Petitioner is not passing on the impact of monthly fuel charge adjustment to the consumers. These are very serious issues and are considered violation of licensing terms as well as Authority's tariff determination with respect to BTPL. The Authority expects that BTPL implements Authority's decisions and directions in letter and spirit failing which the Authority will initiate penal proceedings under the relevant provisions of Act, Rules and regulations.
13. Issue # 10 Whether the over charged amount from the consumers of the Petitioner was refunded accordingly?
- 13.1 The Petitioner started charging higher tariff in the month of November 2013 against the allowed and applicable tariff of IESCO and violated the Authority's order. The Intervener i.e. Bahria Town Residents Welfare Association (BTRWA) filed a complaint against charging higher tariff than applicable tariff of IESCO which was decided by the Authority with the order of refund of the amount over recovered from the residents of Bahria Town. It was also noted that the impact of negative adjustment on account of fuel price adjustment was also not passed on to the consumers.
- 13.2 Responding to the aforesaid objection with respect to over-recovery, the Petitioner stated that it is charging the same amount as is being charged by IESCO although it is providing uninterrupted supply of power during load shedding hours at its own cost.
- 13.3 The Authority noted that the Petitioner could not provide satisfactory response to the aforesaid objections. The Petitioner is obligated to charge only such tariff as has been approved by the Authority in accordance with the provisions of the Act and Rules made thereunder. Charging of any tariff other than the tariff approved by NEPRA is a violation of the relevant licensing terms, NEPRA Act, rules and regulations. In view thereof the Petitioner is directed to refund/adjust the amount overcharged to the consumers of Bahria Town with immediate effect.

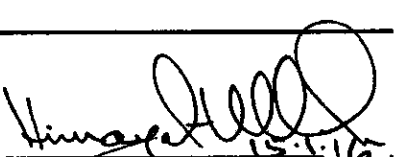


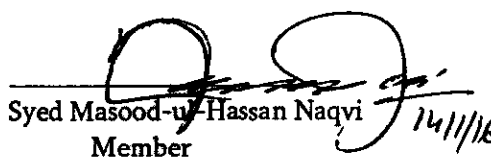


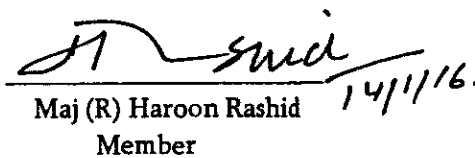
14. Additionally, during the proceedings, the Authority pointed out that contrary to IESCO's stance regarding issuance of distribution license, IESCO has issued an NOC to one of the housing society named Satellite Town, Jhelum vide letter No. 13605/CEO / IESCO / CE(P&F)/HS-315 dated 1st July 2014 for obtaining Distribution License from NEPRA for provision of electricity at S/Town, Jhelum. The Authority also inquired IESCO's legal counsel if any NOC has been issued to other Housing Society. The legal counsel in response stated that he was not aware of NOC issued by IESCO and would respond after getting the details from IESCO. However, no response was given.
- 14.5 Having considered the arguments of IESCO being the commentator, it was observed it failed to provide any cogent reason in its support on the licensing issue. Therefore the Authority decided to maintain its decision as per 6.5 of the determination vide No. NEPRA/TRF-170/BTPL-2011 / 10182-10184 November 1, 2011 and decline the IESCO's request in this regard.
15. **DECISION**
- 15.1 In view of the above discussion at para 8 and onwards and as required NEPRA (Supply of Electric Power) Regulations, 2015, the Authority hereby directs the Petitioner to file a new tariff petition in accordance with the notified regulations.
- 15.2 Furthermore, the Authority maintains its earlier decision & Order vide its determination No. NEPRA/TRF-170/BTPL-2011 / 10182-10184 November 1, 2011 and the Authority directs the Petitioner to comply with the same in letter and spirit. The Petitioner is further directed to refund/adjust the amount overcharged from its consumers and submit a report on quarterly basis in this regard.

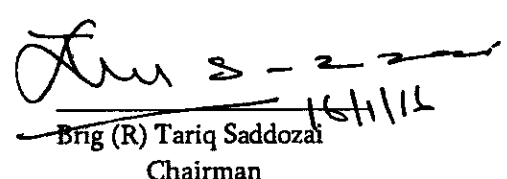
AUTHORITY

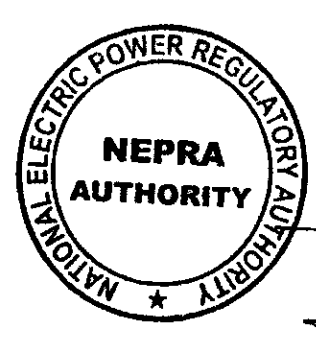

Khawaja Muhammad Naeem
Member

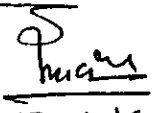

Himayat Ullah Khan
Member


Syed Masood-ul-Hassan Naqvi
Member


Maj (R) Haroon Rashid
Member


Brig (R) Tariq Saddozai
Chairman


NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
NEPRA
AUTHORITY


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