

FINDINGS OF THE AUTHORITY ON THE ISSUES FRAMED FOR CONSULTATIVE SESSION

The Authority granted distribution licenses to eight Ex-WAPDA distribution companies and K-Electric (DISCOs) for distribution and sale of electric power within their service territories to all consumers who meet the laid down eligibility criteria. In terms of section 21 of Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 ("**NEPRA Act**") read with the terms and conditions of their granted distribution licenses, the distribution companies are exclusively responsible for distribution and sale of electric power within their respective service territories to all consumers on non-discriminatory basis. However, it came to the knowledge of the Authority at different times through different complaints that a number of housing societies, high rise buildings and industrial estates are getting one point supply from the host distribution company and distributing and selling the same to all consumers within their areas on their own and charging different tariffs than that of the host DISCO. 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 and different tariffs faced by the consumers living in those areas, the Authority took cognizance of the matter and framed the following issues for consultation with all stakeholders and general public:

- i. Whether to issue distribution licenses to all Housing Societies /Colonies / Industrial Complex/High rise buildings engaged in resale of electricity before the grant of distribution licenses to DISCOs?
- ii. Whether it would be appropriate to initiate proceedings for carving out the territories of DISCOs and to grant distribution licenses 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) may be revised in the Act?

These issues were published in the newspapers on January 19, 2015 inviting written as well as oral evidence and a consultative session hearing was conducted on February 2, 2015. Consequently, various comments and suggestions were submitted by different stakeholders during and after the consultative session through written submissions which have been summarized and annexed herewith as **Annex-I**.

The Authority has considered the submissions made by different stakeholders and considers it appropriate to render its findings on the issues raised in the consultative session before moving forward. Follow

ing are the findings of the Authority on the consultative session and the same will be immediately available on the Authority's website for the knowledge of all concerned. Any person may submit written submissions/comments within 7 days of these findings:

I. Whether to issue distribution licenses to all Housing Societies/Colonies/Industrial Complex/High rise buildings engaged in resale of electricity before the grant of distribution licenses to DISCOs?

The Authority has received different views from various stakeholders in favour and against the grant of distribution licences in order to regulate all Housing Societies/Colonies/Industrial Complex/High rise buildings engaged in resale of electricity before and after the grant of distribution licenses to DISCOs. Primarily, the Punjab Industrial Estate, Devine Developers and Bahria Town have favoured the grant of distribution licences in this matter by giving various reasons to support their views, however, K-Electric has opposed this idea. The Authority has considered the submissions made by the stakeholders, relevant laws, rules and regulations and the findings of the Authority in this regard are as under:

- a). The Authority granted Distribution Licenses to eight (08) Ex-WAPDA DISCOs and K-Electric. The Authority granted exclusivity to the Ex-WAPDA DISCOs for providing distribution services within their respective area/service territory as stipulated under Section 21 of the NEPRA Act, 1997 and an Article 7 has been incorporated in the

Distribution License of each of the DISCOs. However, in terms of Article 3.2(i) of the Distribution License, the Service Territory of the DISCOs does not include the following:

- i) the area in use of the Armed Forces for defence purposes under an authorization by the Authority;
 - ii). **the area in the use of housing colony, plaza/complex, and other bulk power purchaser, already operating their own distribution systems on the date of issuance of the Distribution License to the DISCO; and**
 - iii). the area restricted to three meters on either side of the distribution system of a Small Power Producer (SPP).
- b). As per I(a)(ii) above, all housing colonies, plaza/complex, and other bulk power purchasers, already operating their own distribution systems on the date of issuance of the Distribution License to respective DISCO (Category-I consumers) are not subject to restrictions imposed by exclusivity under Article 7 of distribution licence of the respective DISCOs. However, it is pertinent to clarify here that although the said category of consumers may not fall in the Service Territory of a DISCO but this fact does not give them a right to resale electric power without following the relevant lawful process under the NEPRA Act, Rules and Regulations in this regard and they have to apply for the grant of distribution licences to NEPRA in the manner prescribed in law. The Authority has already issued public notice in this regard and has directed all such housing colonies, plazas/complexes, high rise buildings and other bulk power purchasers to apply to NEPRA for grant of distribution of licence and there is no legal bar in granting distribution licenses to them provided they fulfil the eligibility criteria for the grant of a distribution licence.

II. Whether it would be appropriate to initiate proceedings for carving out the territories of DISCOs and to grant distribution license to all Housing Societies/Colonies/Industrial Complex/High rise buildings engaged in resale of electricity?

In addition to the aforesaid category of consumers existing before grant of distribution licences to DISCOs and KE, another category for the same type of consumers is ‘post-licensing’

Housing Societies/Colonies/Industrial Complex/High rise buildings (Category-II consumers) engaged in the resale of electricity. These Category-II consumers are taking one point bulk supply from the host DISCO and distributing and selling the same to the consumers within their own areas through the distribution systems laid down by them in majority of the cases. This arrangement is continuing for the last many years in spite of the fact that the DISCOs have been granted exclusive rights to distribute and sell electricity within their service territories in terms of section 21 of NEPRA Act and their distribution licenses and in most of the cases, this distribution and sale of the electricity by this class of consumers is well within the knowledge of the concerned DISCO. Though this distribution and sale of electricity is continuing for the last many years and the concerned DISCOs have failed to fulfil their service obligations to distribute and supply electricity to all consumers within their service territories, however, to streamline and regulate this arrangement, keeping in view the spirit of the NEPRA Act, the Authority, where appropriate and in public interest, may initiate proceedings under section 26 of NEPRA Act to carve out the service territory of the Concerned DISCO and grant distribution licence to such housing societies, high rise buildings, industrial complexes and like entities. This arrangement, however, has been specifically opposed by KE. The Authority has considered all aspects of this issue and is of the considered view that the Authority has ample power to initiate appropriate proceedings in public interest under section 26 of NEPRA Act. To deal with this issue the Authority considers that firstly, such entities/bulk power consumers desirous to obtain distribution licenses, will be asked to obtain NOC from the concerned DISCO and in case of refusal by a DISCO to provide NOC, the Authority may initiate proceedings under section 26 of NEPRA Act in public interest. However, the Authority, while determining the public interest may, amongst others, consider the following factors:

- a. In terms of section 7(6) of the NEPRA Act, the protection of consumer interest is one the prime responsibility of NEPRA however in case of above arrangement, the consumers of such societies/buildings/ industrial estates are charged exorbitant and unreasonable tariffs and they have no grievance redressal mechanism in case of charging and quality of service issues therefore bringing such entities in regulatory ambit will protect the interest of general public living there.

- b. The above arrangement is in place for the last many years and in majority of the cases, the DISCOs never objected to distribution and sale of electricity by such entities/bulk power consumers therefore they have acquiesced to this activity and are estopped by their conduct to object to the same now.

Eligibility for the grant of Distribution Licence

While streamlining the arrangement of distribution and sale by such entities/bulk power consumers, it is important to ensure that only technically and financially qualified entities get the distribution licenses from the Authority. The Authority, shall consider, *inter alia*, the following factors to determine the technical, financial and organizational capabilities of any of such applicant for the grant of a distribution licence;

- i). The current net load of such entity/bulk power consumers which in any case shall not be less than 5 MW and the applicant shall own a grid station of the requisite capacity to qualify for the grant of a distribution licence.
- ii). Evidence of adequate and necessary technical and financial ability/standing of such entity/bulk power consumer to construct, develop and maintain the distribution system.
- iii). Evidence demonstrating the ability of such applicant to fulfil the requirements of section 21 NEPRA Act, NEPRA Licensing(Distribution) Rules,1999 and other relevant provisions of the applicable law.
- iv). Previous experience of the applicant regarding construction and operation of the distribution system.

In case the Authority observes that an applicant does not fulfil the eligibility criteria for the grant of distribution licence or is not willing to continue as a distribution licensee, the Authority may direct the concerned DISCOs to enter into an Operation & Management (O&M) Contract with that entity/bulk power consumer and in that case, the O & M Contractor shall be eligible to claim a management fee as determined by the Authority.

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?

The Authority has considered different views and concerns put forwarded by various stakeholders in respect of tariff during the consultative session. It has been proposed by the Punjab Industrial Estate that a separate tariff category (C-4) may be introduced in the SOT of a DISCO. The Punjab Industrial Estate also suggested that a tariff category of DISCO to DISCO sale may be introduced. Divine Developers and Power Telecommunication and Project Management Consultants are of the view that a Single Tariff Formula / One Part Tariff like BTPL may be allowed, however, this has been opposed by the WAPDA Employees Co-operative Housing Society and BTPL. The Authority appreciates the aforesaid suggestions made by different stakeholders and is of the view that:

- i) A separate category of tariff along with terms and conditions shall be introduced by NEPRA in accordance with section 7 and 23 of the NEPRA Act read with Rule 3 of Tariff Standards & Procedure Rules, 1998 in the DISCOs' schedule of tariff for sale to other DISCOs.
- ii) The tariff for DISCO to DISCO sale shall comprise of Energy Transfer Charge, Capacity Transfer Charge as per the Transfer Price Mechanism approved and notified in the case of National Transmission and Despatch Company (NTDC) and Use of System Charge (UoSC) determined for a DISCO for its different voltage levels.
- iii) The DISCOs shall also be allowed to procure power directly from the power producers at a rate duly approved by NEPRA to cater for its shortfall after procuring electric power from the electricity pool as per the prescribed mechanism. The DISCO shall be entitled to retain the gain, if any, from the sale of power procured directly from the power producers as far as this does not increase the consumer-end rate approved by NEPRA.

- iv) While determining UoSC for different voltage level the Distribution Margin (DM) shall be adjusted for technical losses for the respective voltage levels at which the sale is intended to be made.
- v) For determining DISCO to DISCO sale Tariff DM allowed in the distribution margin of the selling distribution company shall be allowed only to the extent of investment made at the voltage level at which a DISCO receives electricity. There will however no adjustment in the tariff of selling DISCO on account of other income.
- vi) The revenue requirement of the DISCO purchasing power from other DISCO shall include Power Purchase Cost, allowance for technical losses and O&M (Salaries & wages, maintenance expenses for repair & maintenance of distribution network and other administrative expenses), which shall be supported with duly verifiable documentary evidence.

Consumer-end Tariff

While determining consumer-end tariff following considerations will be kept in view:

- i. The costs are prudently incurred to meet the load growth for demonstrated needs of the consumer.
- ii. The cost of service to consumer groups with similar service requirement.
- iii. Stability and predictability of tariffs for consumers.
- iv. Tariff is comprehensible, free of misinterpretation stating explicitly each component along with necessary details to explain the basis of all charges to be made.
- v. If the DISCO is a housing colony or industrial estate, a high-rise building, the following shall not be included in the revenue requirement;
 - Depreciation expense
 - Return on Assets
- vi. Any adjustment in the tariff components of Power Purchase Rate or generation cost shall be passed on to the consumers in accordance with the approved mechanism.

V. Whether the definition of Bulk Power Consumer (BPC) may be revised in the Act?

It has been proposed by different stakeholders i.e. Devine developers, BTPL & KE, that the definition of Bulk Power Consumer (BPC) provided in the NEPRA Act may be revised. However, in view of the Authority, the definition of Bulk Power Consumer needs not to be revised as it will not serve the required purpose. Needless to mention here that the BPC, in any case, will still be a consumer and as per definition of ‘consumer’ provided in the NEPRA Act, the purchase of electricity for delivery or re-sale to others would still not be allowed.