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Islamic Republic of Pakistan

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No. NEPRA/TRF-613/K-Electric/Dist-2024/ 16729-37

October 20, 2025

Subject: **Decision of the Authority in the matter of Motions for Leave for Review filed by K-Electric, The Ministry of Energy, CPPA-G, Mr. Arif Bilwani, Syed Hafeezuddin, MNA and M/S Jamat-e-Islami through Mr. Monem Zafar Khan against MYT Determination of K-Electric for its Distribution function Dated 23.05.2025**

Please find enclosed herewith the subject Decision of the Authority (total 50 pages) on the subject matter in case No. NEPRA/TRF-613/K-Electric/Dist-2024.

2. The Decision is being intimated to the Federal Government for the purpose of notification in the official Gazette pursuant to Section 31(7) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 within 30 Calendar days from the intimation of this Decision. In the event the Federal Government fails to notify the subject tariff Decision within the time period specified in Section 31(7), then the Authority shall notify the same in the official Gazette pursuant to Section 31(7) of NEPRA Act.

Wasim Anwar

(Wasim Anwar Bhinder)

Enclosure: **As above**

Secretary,
Ministry of Energy (Power Division),
'A' Block, Pak Secretariat,
Islamabad

Copy to:

1. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad
2. Mr. Shehriyar Abbasi, Deputy Secretary, Cabinet Division, Cabinet Secretariat, Islamabad
3. Chief Executive Officer, K-Electric Limited (KEL), KE House, Punjab Chowrangi, 39-B, Sunset Boulevard, Phase-II Defence Housing Authority, Karachi.
4. Chief Executive Officer, Central Power Purchasing Agency Guarantee Limited (CPPA-G), Shaheen Plaza, 73-West, Fazl-e-Haq Road, Islamabad
5. Mr. Muhammad Arif Bilwani, 24-A, South Park Avenue, Pahase-2, DHA, Karachi
6. Syed Hafeezuddin (MNA), Tipu Sultan Road, House # 247, Mohallah M. Ali Society, Karachi
7. Mr. Monem Zafar, Ameer Jamaat-e-Islami, Karachi 503 Quaideen Colony, Off New M.A. Jinnah road, Opposite Islamia College, Karachi

DECISION OF THE AUTHORITY IN THE MATTER OF MOTIONS FOR LEAVE FOR REVIEW FILED BY K-ELECTRIC, THE MINISTRY OF ENERGY, CPPA-G, MR. ARIF BILWANI, SYED HAFEEZUDDIN, MNA, AND M/S JAMAT-E-ISLAMI THROUGH MR. MONEM ZAFAR KHAN AGAINST MYT DETERMINATION OF K-ELECTRIC FOR ITS DISTRIBUTION FUNCTION DATED 23.05.2025

1. BACKGROUND

1.1. A brief background of the case is that NEPRA, in the matter of a petition filed by K-Electric Limited (hereinafter, referred to as "**KE**") for the Determination of Distribution Tariff under Multi Year Tariff Regime for the control period from FY 2023-24 to FY 2029-30, announced the Distribution Tariff determination dated 23.05.2025 (hereinafter referred to as the "**Impugned Determination**"). Upon the issuance of the Impugned Determination, Motions for Leave for Review (hereinafter, referred to as "**Motions**") were filed by Ministry of Energy (Power Division) (MoE (PD), Central Power Purchasing Agency (Guarantee) Limited (CPPA-G), Mr. Muhammad Arif Bilwani, Mr. Monem Zafar and Mr. Syed Hafeezuddin (hereinafter, referred to as "**Petitioners**" and individually as "**Petitioner**"). A motion for leave for review was also filed by KE against the Impugned Determination.

2. FILING OF MOTIONS

2.1. The Petitioners filed their Motions pursuant to one or more of the following: Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the "**NEPRA Act**"), NEPRA (Tariff Standards and Procedure) Rules, 1998 (the "**Tariff Rules**") and NEPRA (Review Procedure) Regulations, 2009 (the "**Review Regulations**"). For clarity, Table 1 below illustrates the specific provision(s) invoked by each Petitioner and KE in support of filing their Motions, along with the corresponding date of filing.

Table 1

Sr. No.	Review filed by	Date of Filing	Review filed under
1	KE	03.06.2025	Regulation 3(2) of Review Regulations
2	MoE (PD)	03.06.2025	· Section 7(2)(g) of NEPRA Act · Rule 16(6) of Tariff Rules · Regulation 3(2) Review Regulations
3	CPPA-G	03.06.2025	· Section 7(2)(g) of NEPRA Act · Rule 16(6) of Tariff Rules · Regulation 3(2) Review Regulations
4	Mr. Muhammad Arif	29.05.2025	Regulation 3(2) of Review Regulations
5	Mr. Monem Zafar	05.06.2025	Regulation 3(2) of Review Regulations
6	Mr. Syed Hafeezuddin	03.06.2025	Section 7(2)(g) of NEPRA Act read with Review Regulations

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3. ADMISSION OF MOTIONS BY THE AUTHORITY

3.1. The Motions were admitted by the Authority, and subsequently notice was issued to each Petitioner for the hearing of their respective Motion. A separate hearing was conducted for each Motion, wherein the relevant Petitioner, the MoE (PD), and KE were invited for the hearing. It is noted that the hearing in the matter of the Motion filed by KE was initially scheduled on 29.09.2025; however, upon KE's request vide letter dated 23.09.2025 and in the interests of justice, the hearing was rescheduled to 03.10.2025. Consequently, the hearing in the matter of the Motion filed by CPPA-G was rescheduled to 29.09.2025, which was earlier scheduled for 03.10.2025. Table 2 below provides the date of admission and the schedule of hearing for each Motion.

3.2. The hearings were attended by CEO KE with his financial & technical Teams, CEO CPPA-G with his team, Additional Secretary Power on behalf of the Ministry of Energy along-with representatives from PPMC, Mr. Imran Shahid on behalf of Jamat-e-Islami, Mr. Arif Bilwani and Mr. Hafeezuddin.

Table 2

Sr. No.	Review filed by	Date of Admission	Date of Hearing
1	KE	24.06.2025	03.10.2025
2	MoE (PD)	29.08.2025	03.10.2025
3	CPPA-G	29.08.2025	29.09.2025
4	Mr. Muhammad Arif	29.08.2025	02.10.2025
5	Mr. Monem Zafar	29.08.2025	02.10.2025
6	Mr. Syed Hafeezuddin	29.08.2025	02.10.2025

4. KE's Oral Objections on Maintainability of MOTIONS

4.1. At the outset, KE raised objections regarding the maintainability of the Motions. At the beginning of each hearing, the Authority afforded KE an opportunity to present detailed submissions on the question of maintainability upon its request. In essence, KE's objections are as follows:

i. Admission of Motions without affording KE an opportunity to be heard;

ii. Motions filed by Petitioners at serial numbers 2, 4, 5, and 6 - as reflected in Table 1 - were not accompanied by the mandatory review fee;

iii. The Petitioners at serial numbers 2 to 6 - as set out in Table 1- do not fall within the definition of "party" under the Review Regulations;

iv. The Petitioners at serial numbers 2 to 6 – as set out in Table 1- did not file requests for interventions in the hearings pertaining to the Impugned Determination;

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v. The MoE (PD) has no legal capacity and locus standi to file the Motions. Being an administrative unit of the Federal Government it lacks the requisite authorization from the Federal Government to file the Motion; and

vi. The Motions do not introduce any new evidence, nor do they highlight any error apparent on the face of the record.

4.2. The Authority provided the Petitioners an opportunity to advance their detailed responses to the objections raised by KE, regarding the maintainability of the Motions. The responses, as given by the Petitioners, to KE's objections, based on their oral and written submissions, are delineated below.

5. RESPONSE BY MOE (PD)

5.1. MoE (PD) submitted that the NEPRA Act and the Tariff Rules expressly allow it to file review motions, as any party may seek review under Section 7(2)(g) of the NEPRA Act and Rule 16(6) of the Tariff Rules. MoE (PD) contended that there exists no restriction within either the NEPRA Act or the Tariff Rules that bars the MoE (PD) from filing a review motion. It was further submitted that MoE (PD) falls within the definition of "person" as provided in the NEPRA Act, and is also a party to the Impugned Determination, within the meaning of the Review Regulations.

5.2. MoE (PD) submitted that under Article 97 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter, referred to as "**Constitution**"), the executive authority of the Federal Government extends to the matters of electricity. They contended that under Article 99 read with Article 90 of the Constitution, the Federal Government is required to make rules for the allocation and transaction of its business. Accordingly, the Federal Government has framed and issued the Federal Rules of Business, 1973. Rule 3(3) was cited by the MoE (PD), which provides that "*The business of government shall be distributed among the Divisions in the manner indicated in Schedule II*". They further cited Rule 2(vi) of the Rules of Business, 1973, which defines "Division" as a "*…self-contained administrative unit responsible for the conduct of business of the Federal Government in a distinct and specified sphere and declared as such by the Federal Government.*"

5.3. MoE (PD) further submitted that it is competent to conduct business on behalf of the Federal Government in the following matters as per entry 31B of Schedule II of the Rules of Business, 1973: (a) Electricity; (b) Karachi Electric Supply Corporation and Pakistan Electric Agencies Limited. They contended that, evidently, the Rules of Business, 1973, have made the MoE (PD) responsible for, inter alia, KE-related matters, and being responsible for KE-related matters, the MoE (PD) routinely files 'motions', which are admitted and dealt with by NEPRA. Therefore,

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cognizant of the role of the MoE (PD) in this entire scheme, NEPRA involves the MoE (PD) in every tariff determination process, including in review motions filed by KE against the same determinations.

5.4. MoE (PD) further submitted that the power of review is conferred upon the Authority under Section 7(2)(g) of the NEPRA Act and any restriction placed upon the Authority's power of review or upon the right of any party to seek a review of a decision, order, or determination through subordinate legislation, such as the Review Regulations, would be inconsistent with and violative of the parent Statute. In support of this submission, MoE (PD) relied upon PLD 2018 Islamabad 20 (upheld by the Hon'ble Supreme Court of Pakistan), wherein it was held that:

> *"In light of the observations made by the Hon'ble Supreme Court of Pakistan, the Rules and Regulations framed by NEPRA are subservient to the parent Statute; hence, any restriction imposed on the right of any party to seek review of any decision, order or determination would be in violation of the parent Statute, i.e., the Act. Respondent No.1 needs to amend the Rules and Regulations to bring them in harmony with the Statute."*

5.5. Additionally, MoE (PD) submitted that in the event of any inconsistency between the provisions of the NEPRA Act and the subordinate legislation framed thereunder, the provisions of the Act must prevail. Reliance was also placed on 2016 SCMR 550, wherein the Honorable Supreme Court of Pakistan observed that:

> *"One must not lose sight of the fact that rules are subservient to the Statute. Rules must be interpreted in a manner that they remain within the confines of the Statute itself, and any interpretation that may outstretch the rules to take them beyond the pale of the Statute should be avoided."*

6. RESPONSE BY CPPA-G

6.1. CPPA-G submitted that it is entitled to file a review under the Tariff Rules and the Review Regulations. Reference was made to sub-rule (6), (8), and (9) of Rule 16 of the Tariff Rules, which provide as follows:

> *"(6) Within ten days of service of a final order, determination or decision of the Authority, a party may file a motion for leave for review*

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> *by the full strength of the Authority of such final order, determination or decision, as the case may be."*
>
> *"(8) The Authority shall act upon a motion for leave for review within ten days of receipt of such motion unless it gives notice to the parties, in writing, that a longer period of time will be required and specifies the additional length of time necessary to consider the motion.*
>
> *(9) The Authority may refuse leave for review if it considers that the review would not result in the withdrawal or modification of the final order, determination or decision."*

6.2. CPPA-G also made reference to the Review Regulations, wherein Regulation 2(1)(d) defines a "party" as:

> *"A party to any order or decision of NEPRA or a person who participated in the proceedings for tariff determinations as an 'intervener,' and it includes a party to the power purchase contract approved by NEPRA."*

6.3. CPPA-G further contended that it is a necessary and proper party to the instant proceedings, in light of 2014 CLC 261. The relevant part of the judgment quoted by CPPA-G is reproduced below:

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> *"Needless to state, that a necessary party is one, without whom no proper order can be made effectively, whereas a proper party is one, in whose absence, although, effective order can be made but presence of such party is a necessity for a complete and final adjudication of the questions involved in any proceedings."*

6.4. CPPA-G contended that in ICA No. 352/2017 titled *CPPA-G vs. Access Solar Pvt. Limited and others*, the Honorable Islamabad High Court has acknowledged the role of CPPA-G in the power sector. CPPA-G also submitted that NEPRA shared the Impugned Determination with it, which qualifies it as a party. Also, Authority admitted the Motion filed by CPPA-G and issued notices to relevant parties, including MoE (PD), thereby making CPPA-G a party.

6.5. It is noted that both CPPA-G and the MoE (PD), in their Motions, submitted that the Impugned Determination is contrary to and inconsistent with the principles enshrined in the NEPRA Act, the Tariff Rules, the NE Policy, the NE Plan, and other applicable legal frameworks governing tariff determinations. CPPA-G asserted that the Impugned Determination violates the NE Policy's mandate for affordable tariffs, that is, electricity at rates *"commensurate with* *consumers' ability to pay,* "and misapplies the law by seeking to treat provisions of the NE Plan as void. The NE Policy establishes affordability as a guiding principle and requires the Authority, while exercising its regulatory and tariff-setting functions, to ensure a fair balance between consumer interests and the financial sustainability of the power sector.

6.6. Furthermore, CPPA-G contended that the Impugned Determination constitutes a non-speaking order lacking adequate reasoning. It notes that the Authority omitted to respond to or consider key objections, including the MoE (PD)'s detailed guidelines, thereby failing to meet the legal requirement that every order be passed with adequate reasons as mandated under Section 24A of the General Clauses Act, 1897.

7. RESPONSE BY MR. HAFEEZUDDIN

7.1. The Petitioner referred to Articles 4 and 8 of the Constitution and submitted that the issue before the Authority is of public interest. It was emphasized that it was the Authority's responsibility to properly address the issues before it.

8. KE'S WRITTEN RESPONSE TO MOE (PD)

8.1. Upon conclusion of the arguments presented by the Petitioners at serial numbers 2 to 6, the Authority permitted KE to rebut the responses of the said Petitioners. The Authority also provided the opportunity to all the Petitioners, including KE, to submit written arguments within seven (7) days.

8.2. KE, in its written response, dated 10.10.2025, submitted that in the absence of payment of the requisite fee, the Motions could not have been validly presented before the Authority. Reference was made to Regulation 4A of the Review Regulations, which states that, *"a motion for review will not be entertained unless it is accompanied by fees specified in the schedule from time to time."*

8.3. KE further contended that the legal character of MoE (PD) is not in the form of an association of persons, concern, company, firm or undertaking authority, or body corporate set up or controlled by the Federal Government, as provided in the definition of "person" under the NEPRA Act, and being an administrative division/unit of the Federal Government, the MoE (PD) does not fall within the definition. Moreover, the MoE (PD) was not a party to the Impugned Determination as it chose not to participate in the proceedings nor was it admitted as an intervener, and therefore lacks the *locus standi* to seek a review.

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8.4. KE also submitted that the Honorable Supreme Court in *Mustafa Impex v Government of Pakistan* (PLD 2016 SC 808) held that the term "Federal Government" refers to the collective authority of the Federal Cabinet and not just the Prime Minister or any individual ministry acting on its own. KE argued that the MoE (PD) had to be authorized by the Federal Government to file the Motion before the Authority, whose authorization was not shared; hence, the Motion was incompetently filed. It further added that the Motion fell entirely outside the narrow and exceptional scope of review permitted under the law, and the MoE (PD) was attempting to convert the review process into a de facto appeal.

8.5. Additionally, KE submitted that as per Regulation 3(2) of the Review Regulations, a review may be entertained upon submission of new and important evidence, on the occurrence of some mistake or error apparent, and for other "sufficient reasons". However, the Motions raise numerous issues that are neither based on new evidence nor constitute errors apparent on the record. Instead, the Motions attempts to re-argue matters that have already been adjudicated and are beyond the permissible scope of review. In support of its contention, KE quoted the following case laws: 2025 SCMR 60 SC, 2025 SCMR 153 SC, PLD 2023 SC 825, and 2024 SCMR 107.

9. <u>KE'S WRITTEN RESPONSE TO CPPA-G</u>

9.1. KE submitted that CPPA-G was not a party to the Impugned Determination as it chose not to participate in the proceedings nor was admitted as an intervener, and therefore it lacked the *locus standi* to seek a review. Further, it was contended that through the determination made by the Authority dated 30.04.2025 titled 'Determination of the Authority in the Matter of Request of CPPA-G Limited for Transfer of its License for Market Operator', CPPA-G's license has been modified and its role has been limited to carrying out functions in respect of legacy contracts pertaining to IPPs in its role as a Special Purpose Agent.

9.2. KE asserted that the Motions fall entirely outside the narrow and exceptional scope of review permitted under the law, and CPPA-G was attempting to reopen the issues at the time of the review to convert the review into a de facto appeal. Further, KE submitted that as evident from Regulation 3(2) of the Review Regulations, a review may be entertained upon submission of new and important evidence, on the occurrence of some mistake or error apparent, and for other "sufficient reasons". However, CPPA-G's Motion raises numerous issues that are neither based on new evidence nor constitute errors apparent on the record. KE submitted that the CPPA-G's Motion attempts to re-argue matters that have already been adjudicated and are beyond the permissible scope of review. In support of its contention, KE quoted the following case laws: 2025 SCMR 60 SC, 2025 SCMR 153 SC, PLD 2023 SC 825, and 2024 SCMR 107.

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10. KE'S RESPONSE TO PETITIONERS AT SERIAL NUMBERS 4 TO 6 (TABLE 1)

10.1. KE submitted that Petitioners 4 to 6 did not pay the requisite fee at the time of filing their respective Motions. KE further added that without the fee, the Motions could not be validly presented before the Authority. KE referred to Regulation 4A of the Review Regulations, which states that *"a motion for review will not be entertained unless it is accompanied by fees specified in the schedule from time to time."*

10.2. KE contended that Petitioners 4 to 6 do not qualify as a party under the Review Regulations. The Petitioners 4 to 6 were not a party to the Impugned Determination as they chose not to participate in the proceedings nor were admitted as interveners; therefore, they lack the *locus standi* to seek a review. It was argued by KE that the Motions of Petitioners 4 to 6 fell outside the limited scope of review permitted under the Review Regulations and that the Petitioners were attempting to convert the review process into a de facto appeal.

10.3. Further, it was submitted that as evident from Regulation 3(2) of the Review Regulations, a review may be entertained upon submission of new and important evidence, on the occurrence of some mistake or error apparent, and for other "sufficient reasons". However, the Motions raise numerous issues that are neither based on new evidence nor constitute errors apparent on the record. Instead, the Motions attempt to re-argue matters that have already been adjudicated and are beyond the permissible scope of review. In support of its contention, KE quoted the following case laws: 2025 SCMR 60 SC, 2025 SCMR 153 SC, PLD 2023 SC 825, and 2024 SCMR 107.

11. ANALYSIS, FINDINGS & DECISION OF THE AUTHORITY ON MAINTAINABILITY OF MOTIONS

11.1. A total of six Petitioners filed Motions against the Impugned Determination. All the Petitioners, including KE, were accorded a fair and adequate opportunity to be heard on the questions of maintainability and merits. Subsequent to the hearing, the Petitioners were directed to submit their written comments; however, CPPA-G and MoE (PD) requested that their oral presentations be treated as their written submissions, and KE was granted an additional period of seven (7) days to submit written comments or objections, which it duly furnished on the issues of maintainability and merits.

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11.2. The Authority has duly examined the submissions advanced by the Petitioners and KE in their Motions. Due regard has also been given to the written contentions made by KE subsequent to the hearings.

11.3. In undertaking this exercise, the Authority has also paid due regard to the larger public interest and ensured that the proceedings are conducted in consonance with the principles of natural justice and procedural fairness. Upon due consideration of the pleadings and submissions, the Authority's findings and decisions on the objections to the maintainability of the Motions are divided into the following parts which reflect the issue of maintainability of the Motions:

i. Whether the Petitioners qualify as Parties & whether MoE (PD) has the necessary authorization to file its Motion?
ii. Whether the Motions are maintainable in light of the criteria specified under Regulation 3(2) of the Review Regulations?
iii. Whether the non-payment of the requisite fee makes the Motions non-maintainable?
iv. Whether the motion filed by Petitioner 2 of Table 1 is maintainable when its representation before the Authority is undertaken by third parties without demonstrable legal authority?
v. Conclusion on Maintainability

I. WHETHER THE PETITIONERS QUALIFY AS PARTIES & WHETHER MOE (PD) HAS THE NECESSARY AUTHORIZATION TO FILE ITS MOTION

11.4. The definition of party is provided under Regulation 2(1)(d) of the Review Regulations, which states as follows:

> *"2(1) (d) party means a party to any order or decision of NEPRA or a person who participated in the proceedings for tariff determinations as "intervener" and it Includes a party to the power purchase contract approved by NEPRA."*

11.5. KE has objected that MoE (PD) is not a "party" to the Impugned Determination because it neither participated in, nor was admitted as, an intervener in the original proceedings. KE further submits that MoE (PD), being an administrative unit of the Federal Government, does not meet the statutory definition of a "person" with independent legal capacity to sue or be sued. Section 2(xxi) of the NEPRA Act defines "person" as follows:

> *"Person shall include an association of persons, concern, company, firm or undertaking [authority, or body corporate set up or controlled by the Federal Government or, as the case may be, the Provincial Government]."*

11.6. On a plain reading of Section 2(xxi) of the NEPRA Act, MoE (PD) does not fall in the category of an association of persons, concern, company, firm, authority, or a body corporate set up or controlled by the Federal Government; it is an internal division/unit of the Federal Government. Accordingly, MoE (PD) does not fall within the Act's definition of a "person."

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11.7. The Honorable Supreme Court in *Mustafa Impex v. Government of Pakistan* (PLD 2016 SC 808) held that the term "Federal Government" refers to the Federal Cabinet acting collectively, not to any individual Ministry or Division acting independently. The Court also invalidated statutory formulations equating the Ministry of Information Technology and Telecommunication Division with the "Federal Government" (e.g., Section 2(fa) of the Pakistan Telecommunication (Re-organization) Act, 1996) as being ultra vires the Constitution.

11.8. Accordingly, MoE (PD)'s assertion that, as a self-contained Division, it may exercise the Federal Government's authority to initiate legal proceedings is misconceived and unlawful. Similarly, the MoE (PD), acting alone, cannot claim to represent the Federal Government before NEPRA unless duly authorized by the Cabinet, which is consonant with the contention advanced by KE.

11.9. Further, the manner of initiation of legal proceedings by a division/department is enumerated under Appendix-F of the Secretariat Instructions issued under Rule 5(15) of the Rules of Business, 1973. The relevant part of the provision is as follows:

> *"No-civil suit <u>or legal proceedings</u> shall be instituted or initiated on behalf of the Federal Government by any Division/Department without the prior consultation with the Law and Justice ** [**] Division"*
>
> *[Emphasis added]*

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11.10. No evidence has been placed on record that MoE (PD) obtained the requisite consultation or authorization. This omission goes to the root of maintainability, meaning thereby that compliance with Appendix-F is a mandatory precondition for instituting legal proceedings on behalf of the Federal Government. The Motion filed by MoE (PD) is therefore procedurally defective and, on this ground alone, non-maintainable.

11.11. CPPA-G contends it qualifies as a "party" under the Review Regulations because it is a signatory to the Power Purchase Agency Agreement (PPAA) with KE. The Review Regulations, however, extend "party" status to signatories to a power purchase contract approved by the Authority. CPPA-G and KE have executed no such Authority-approved power purchase agreement. The only instrument executed among CPPA-G, and KE - the PPAA - was entered pursuant to Cabinet Committee on Energy decisions dated 19.06.2020 and 27.08.2020 to enable the supply of additional electricity to KE, and it was never approved by the Authority. Since the PPAA was never approved by the Authority, CPPA-G does not meet the definition of a "party" for purposes of the Review Regulations, notwithstanding its status as a PPAA signatory.

11.12. This conclusion is reinforced by the legislative history. The definition of "party" was introduced into the Review Regulations vide S.R.O. 1036(I)/2014. At that time, the Authority was approving power purchase agreements under the erstwhile *Interim Power Procurement (Procedures and Standards) Regulations, 2005*, in exercise of its powers under Regulation 5(1). Accordingly, the phrase "power purchase contract approved by the Authority" in the Review Regulations refers to those Authority-approved PPAs and not to the subsequent PPAAs, which are a distinct, tripartite agency arrangement and were not approved by the Authority. Since CPPA-G is not a counterparty to any Authority-approved PPA with KE, and the PPAA does not fall within that category, therefore, CPPA-G does not qualify as a "party" for purposes of the Review Regulations. Equating the PPAA with a PPA would, therefore, conflate two legally distinct instruments.

11.13. In view of the foregoing, none of the Petitioners, except KE, fall within the definition of a "party," as they were neither parties to the Impugned Determination, nor persons who participated in the proceeding that led to the issuance of the Impugned Determination. None of the Petitioners filed an intervention request to be admitted as interveners in the Impugned Determination, despite the issuance of public hearing notices. Accordingly, the Petitioners lack the requisite *locus standi* to invoke the Authority's review jurisdiction; therefore, KE's objection on the *locus standi* of the Petitioners 2-6 of Table 1 has merit.

II. Whether the Motions meet the Criteria specified under Regulation 3(2) of the Review Regulations?

11.14. Regulation 3(2) of the Review Regulations provides the manner in which the Authority may review its order/determination upon a motion filed by a party and is reproduced below:

> *"3(2) Any party aggrieved from any order of the Authority who, from the discovery of new and important matter of evidence, or on account of some mistake or error apparent on the face of the record, or from any other sufficient reasons, may file a motion seeking review of such order."*

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11.15. While the Petitioners were heard at substantial length, they failed to bring their case within the contours provided under Regulation 3(2) of the Review Regulations, as the contents of the Motions and submissions made by the Petitioners, during the hearings, clearly indicate that none of the three grounds enumerated under Regulation 3(2) have been satisfied.

11.16. It is also important to highlight that the contentions of the Petitioners, regarding merits, pertained to matters already adjudicated upon by the Authority, in the Impugned

Determination, therefore, they cannot be invoked under NEPRA's review jurisdiction, especially when an efficacious (appellate) remedy is available under Section 12G (1) of the NEPRA Act. It is a well-settled principle that a review is not an appeal in disguise, nor does it afford a party a second opportunity to reargue a matter already adjudicated on the merits. The Supreme Court in the case of *Sajid Mehmood versus Muhammad Shafi* (2008 SCMR 554) held that: -

> *"The exercise of review jurisdiction does not mean a rehearing of the matter and, a decision, even though it is erroneous per se, would not be a ground to justify its review."*

11.17. Further, the jurisdictional contours governing the scope of a review petition are well-settled and have been constantly delineated by the Superior Courts. In the case of *Mehmood Hussain Lark and others v. Muslim Commercial Bank Limited and others reported* as 2010 SCMR 1036, it was observed as under:

> *"We are of the view that before an error can be a ground of review, it is necessary, <u>that it must be one which is apparent on the face of the record and that it must be so manifest, so clear, that no Court could permit such an error to remain on record. Incorrectness of a conclusion arrived at after a conscious perusal of record and in-depth examination of evidence cannot be made a ground for review because to permit a review on the ground of incorrectness would amount to granting the Court jurisdiction of re-hearing appeals against its own judgment</u>."*
>
> *[Emphasis added]*

11.18. In the celebrated case, *Justice Qazi Faez Isa and others v. President of Pakistan and others* reported as PLD 2022 SC 119 it was held that under Order XLVII of the Code of Civil Procedure, 1908 three grounds for review are provided: (1) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of, or could not be produced by, the party seeking review at the time when the decree was passed or order made; (2) some mistake or error apparent on the face of the record; (3) or any other sufficient reason. The third ground has been interpreted by the courts to be read *ejusdem generis* in the context of the two preceding grounds.

11.19. Reference may also be made to the case of neighboring jurisdiction reported as *State of West Bengal and others v. Kamal Sengupta and another*, wherein it was held that;

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"The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order XLVII, Rule 1, C.P.C."

[Emphasis added]

11.20. Perusal of the afore-cited cases indicates that an error on the face of the record must be such an error that strikes one on mere looking at the record and would not require any in-depth process of reasoning on the points where there may conceivably be two opinions. Thus, an error that is required to be detected by a process of reasoning can hardly be said to be an error on the face of the record. The fundamental condition for entertaining a review motion is the demonstration of an error apparent on the face of the record, the correction of which is imperative to prevent a miscarriage of justice. The scope of review is confined to correcting manifest errors and does not extend to reconsideration of already adjudicated issues.

11.21. In summary, the Petitioners have neither demonstrated discovery of new and important matter nor identified any mistake or error apparent on the face of the record nor raised any other sufficient reasons; their submissions seek to re-argue issues already adjudicated, which is impermissible in review. Accordingly, the Motions do not satisfy Regulation 3(2) of the Review Regulations and are non-maintainable. For the avoidance of doubt, this finding is without prejudice to the Authority's independent power under Section 7(2)(g) of the NEPRA Act to review its own orders where warranted.

III. Whether the non-payment of the requisite fee makes the Motions non-maintainable?

11.22. Regulation 4A of the Review Regulations mandates that a motion for review needs to be accompanied by the requisite fee, and is reproduced as under:

"4(A)A motion for review will not be entertained unless it is accompanied by fees specified in the schedule from time to time."

[Emphasis Added]

11.23. With respect to CPPA-G and MoE (PD), while they have filed the requisite fee; however, the Petitioners listed at Serial Numbers 4 to 6 of Table 1 have failed to pay the required fee.

11.24. It is settled law that if a party demonstrates a continuous default towards payment of the fee or exhibits a delinquent conduct continuously in making good the deficiency thereof, then neither law nor equity nor justice can grant him such a premium. The superior courts have also dismissed matters where, throughout the proceedings, a delinquent party avoided the payment of the Fee despite acknowledging its payability and quantum.

11.25. Therefore, to the extent of Petitioners listed at Serial Numbers 4 to 6 of Table 1, the Motions are non-maintainable on this count alone.

IV. Whether a petitioner's motion is maintainable when its representation before the Authority is undertaken by third parties without demonstrable legal authority?

11.26. Moreover, it emerged during the proceedings that MoE (PD) had been represented by officers of PPMC, assisted by external legal counsels, Mr. Munawar-us-Salam and Mr. Hassan Pervaiz, which the Authority noted with concern. Upon inquiry, MoE (PD) presented a letter dated 03.10.2025, wherein it was mentioned that, *"considering the urgency and importance of the matter involving critical decision related to the consumer end tariff in hearing proceedings, Power Division has authorized PPMC along with its legal counsel, M/s. CLM Pakistan, CPPA-G, and their allied teams are to assist this division during the hearing."* Conspicuously, no power of attorney issued in favor of the aforementioned external legal counsels was provided, despite repeated requests.

11.27. In view of the foregoing analysis, it is evident that the motion filed by the MoE (PD) suffers from multiple defects. KE objected to the engagement of private counsel by the MoE (PD) in view of the relevant provisions of the Rules of Business, 1973. In this regard, reference is made to the judgment of the Honorable Supreme Court in Rasheed Ahmed v. Federation of Pakistan and others (PLD 2017 SC 121), wherein the Court held that the Constitution and the Rules of Business, 1973 do not specifically permit the Federal Government to engage private counsel, except in exceptional circumstances involving complex or highly technical questions of law and only upon formal certification by the Attorney General or other law officers of their inability to attend to the matter.

V. Conclusion on Maintainability

11.28. The Petitioners 2-6 of Table 1 were heard at substantial length; however, they have not been able to bring their case within the contours of review jurisdiction. KE has also raised pertinent objections concerning the maintainability of the motions, which, upon examination, are found to possess considerable merit. In view of the detailed deliberations, it is evident that the Motions filed by the Petitioners at 2-6 of Table 1 are not maintainable.

12. Exercise of the Authority's Review Jurisdiction

12.1. While the Motions are procedurally and legally non-maintainable, the matter does not conclude there. The Authority is vested with the power to review its decisions, orders, and determinations under Section 7(2)(g) of the NEPRA Act, and the exercise of this power is not dependent upon a party-initiated review. Therefore, an examination of the Authority's statutory power of review, and matters connected thereto, is imperative.

12.2. The Authority notes that the Petitioners, in their respective roles, ought to have participated in the original proceedings as formal interveners to ensure their perspectives were integrated into the primary determination process. Their failure to do so is a procedural lapse. However, these entities have now chosen to file the Motions before the Authority, raising matters of significant importance. Therefore, to dismiss the matter purely on technical grounds would be to prioritize procedural form over substantive public interest, an outcome that would be contrary to the fundamental objectives of the NEPRA Act and well-settled jurisprudence of the Superior Courts. The points raised, though presented in procedurally flawed Motions, are of sufficient consequence to trigger the Authority's own jurisdiction of review.

12.3. In particular, the Petitioners articulated concerns about the fiscal implications of the Impugned Determination – namely, the strain on the national exchequer, alignment with IMF-mandated subsidy-reduction objectives, and the burden on consumers - as well as internal inconsistencies within the tariff framework. While these are weighty matters, the proper avenue to have them addressed was through formal intervention during the hearing proceedings, which spanned more than two years and culminated in the Impugned Determination. Raising them at this belated stage undermines the finality and orderly conduct of tariff proceedings. Nevertheless, the Authority, being mindful of its mandate and in furtherance of the public interest and principles of natural justice, has considered the issues flagged in the Motions to the extent necessary.

12.4. Before turning to the statutory analysis, the Authority notes the guiding jurisprudence favoring the attainment of substantial justice over rigid procedural form. The determination of a multi-year tariff for the utility serving Pakistan's largest metropolis and economic hub is unequivocally such a matter. The parameters set by the Authority have far-reaching consequences for millions of consumers, the financial viability of a strategic utility, and the national exchequer.

12.5. It is a well-settled principle that substantial justice should be prioritized over a rigid adherence to procedure and technicalities. The Honorable Supreme Court of Pakistan in the case of *S.D.O / A.M. Hasht Nagri Sub-Division, PESCO, Peshawar v. Khawazan Zad* (PLD 2023 SC 174) held as follows:

> *"Having examined the scope of the above-cited rules of procedure contained in the C.P.C., we must reiterate the principle, which is by*

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now well settled, that 'the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights... *Any system, which by giving effect to the form and not to the substance defeats substantive rights, is defective to that extent. The courts, thus, always lean in favor of adjudicating the matters on merits rather than stifling the proceedings on procedural formalities. The rules of procedure are meant to facilitate the court proceedings for enforcing the rights of litigants, not to trap them in procedural technicalities for frustrating their rights."*

[Emphasis added]

12.6. At this stage, it is appropriate to examine the Authority's statutory powers of review. Although the Motions are not maintainable, the legal basis for the Authority's power to review its own decisions (including through review on its own motion) is not contained in any single clause, but is embedded in a hierarchical legal framework. This structure begins with a broad enabling provision in the parent statute, the NEPRA Act, and is given explicit procedural form through delegated legislation, namely the Tariff Rules and the Review Regulations. Understanding this architecture is crucial to appreciating the nature and scope of the Authority's review power.

12.7. A detailed examination of Section 7 of the NEPRA Act, which outlines the "Powers and functions of the Authority," reveals a comprehensive list of responsibilities. Among these is the general and significant power provided to the Authority under Section 7 (2) (g) of the NEPRA Act, which states as follows:

> *"7 (2) In particular and without prejudice to the generality of the foregoing power, only the Authority, but subject to the provisions of sub-section (4), shall:*
>
> *(g) review its orders, decisions or determinations;"*

[Emphasis added]

12.8. The aforementioned provision, though concise, is the legislative bedrock upon which the entire review mechanism is built. The legislature, in granting this power in such broad terms, effectively delegated the task of defining the specific procedures and triggers for review to the regulator itself. This legislative approach suggests an intent to afford NEPRA with the necessary flexibility to design a review process that is fit for purpose and responsive to the unique and evolving demands of the power sector.

12.9. It is pertinent to mention that the Authority has the power to determine tariff on a *suo moto* basis and is not dependent upon a petition to determine tariff. Rule 3(1) of the Tariff Rules, in particular, unequivocally vests the Authority with the jurisdiction to initiate proceedings on its own motion (*suo motu*), independent of any party's application, and is reproduced below:

> *"3 (1) Any licensee, consumer or person interested in the tariff may file a petition with the Authority by filing it with the Registrar along with such fees as may be determined by the Authority from time to time. The Authority may also initiate proceeding suo moto."*
>
> *[Emphasis applied]*

12.10. The Review Regulations, specified under Section 47 of the NEPRA Act, give procedural form to powers granted to the Authority under Section 7(2)(g) of the NEPRA Act. Therefore, the NEPRA Act provides the grant of power, and the Review Regulations define its operational mechanics.

12.11. Regulation 3(1) of the Review Regulations provides the unequivocal textual basis for the Authority's power to initiate a review on its own motion. It states as under:

> *"The Authority may, at any time, on its own motion, review any order passed by it and on so reviewing modify, reverse or confirm the same."*
>
> *[Emphasis added]*

12.12. Section 7(2)(g) of the Act and subordinate legislation created thereunder provide ample power to the Authority to review its determinations, and empower the Authority to exercise review. Further, the Authority's power to initiate a review is not constrained by any period or ground-based limitations.

12.13. The failure of the Petitioners to meet the procedural requirements of Regulation 3(2) does not, in any way, curtail or extinguish the Authority's independent and broad power under Section 7(2)(g) of the NEPRA Act and as further specified under Regulation 3(1) of the Review Regulations. By finding the Motions non-maintainable, the Authority upholds the procedural integrity of its legal framework governing party-led reviews. By simultaneously exercising its own review, the Authority is lawfully exercising its distinct self-review power, which is the procedural embodiment of its statutory mandate under Section 7(2)(g) of the Act.

12.14. Further, MoE (PD), CPPA-G, and KE, in their Motions. also invoked Section 7(2)(g) of the NEPRA Act. Therefore, the Authority has decided to exercise its review jurisdiction under Section 7(2)(g) of the NEPRA Act, read in conjunction with all other enabling provisions, to consider the matters highlighted by the Petitioners.

12.15. The Authority's past precedents confirm that, where warranted in the public interest, it may revisit its own determinations on its own basis, notwithstanding procedural defects in party-initiated applications. In earlier determinations, the Authority recognized and exercised this self-review jurisdiction under the NEPRA Act, the Tariff Rules, and the Review Regulations to correct errors and align outcomes with sectoral realities. These previous decisions serve as a definitive blueprint, confirming that the Authority has consistently held that its inherent power to review and correct its determinations in the interest of justice is not constrained by procedural defects in applications brought before it. The Authority can self-review its determinations to address anomalies or to align its determinations with evolving sector dynamics, reinforcing this as a standard and necessary regulatory tool.

12.16. The Authority has already conducted extensive, marathon hearings on the Motions, which were attended by senior representatives of MoE (PD), CPPA-G, KE, and other stakeholders. These hearings were not confined to the preliminary issue of maintainability. On the contrary, all parties were given a full and unfettered opportunity to present detailed arguments on the substantive merits of each and every point raised for review. The record of these hearings confirms that a comprehensive debate on all substantive issues has already taken place. Post-hearing, KE also submitted a letter dated 07.10.2025, setting out its positions on all merit-based issues, including asserted tariff impacts on cash flows, covenant compliance, and sectoral consequences. Accordingly, the letter reflects that KE's stance was fully captured on the record, and the Authority proceeds on that record.

12.17. The Authority is therefore in complete possession of the arguments, counter-arguments, and supporting evidence from all sides on the merits of the case. To conduct a second round of hearings on the very same issues would be a redundant exercise, serving only to delay the final resolution of this important matter. The Authority is satisfied that the requirements of natural justice have been met, and its obligation to hear the affected parties has been fulfilled.

12.18. In view of the foregoing analysis, reasoning, and findings, the Authority hereby determines as follows:

1. That for the reasons recorded in this Determination, the Motions filed by the Petitioners, except KE, against the Impugned Determination are found to be non-maintainable.

2. That, notwithstanding the non-maintainability of the said Motions, the Authority in view of the substantive issues of public and sector-wide importance raised therein, which have significant financial implications for consumers and the national exchequer, hereby decides that a deliberation upon the substantive merits is incumbent upon the Authority to discharge its obligations under the NEPRA Act.

13. ISSUES

13.1. The Authority, based on the pleadings made by KE and other Petitioners, in their Motions, identified the following major issues related to the Distribution tariff;

i. Tariff Control period
ii. O&M costs and adjustment mechanism
iii. Opening Transaction Cost & Loan spreads
iv. Non-Consideration of losses in hedging arrangement
v. Working Capital Allowance
vi. Other Income
vii. Late payment Surcharge
viii. Return on Equity (RoE)
ix. Recovery Loss
x. Pass through costs
xi. Distribution Loss target
xii. Sales Mix impact on Distribution Losses
xiii. Transmission Loss target
xiv. Disregard of Stakeholders Comments
xv. Inflated CAPEX
xvi. Demand Forecast/ Projections

13.1. In addition, KE also requested certain clarifications on different points of the Determination.

14. ISSUE-WISE DISCUSSION, ANALYSIS, AND DECISION OF THE AUTHORITY

14.1. Based on the pleadings/submissions made by KE, other Petitioners in their Motions, subsequent comments during the hearing & in writing by the Petitioners, and available record, the issue-wise discussion and findings of the Authority are given hereunder:

15. TARIFF CONTROL PERIOD

15.1. **Syed Hafeezuddin** submitted that the seven-year tariff control period granted to KE lacks performance guarantees and a mid-term review mechanism. It exceeds industry norms and permits undue regulatory leniency; therefore, the tariff control period may be reconsidered and reduced to four years with mandatory mid-term review.

15.2. **Jamat-e-Islami** submitted that NEPRA failed to assess the impact of a seven-year tariff control period on Karachi's industrial competitiveness, household affordability, and inflationary pressures on SME sectors; therefore, no such MYT regime should be allowed without full socio-economic modelling.

15.3. Both the Petitioners reiterated their submissions during the hearing.

15.4. The Authority observed that at the time of the Determination of KE's Distribution tariff, the control period was discussed as a separate issue, wherein complete justification for allowing a 7-year tariff control period was provided. It is again noted that KE was initially allowed a MYT for a period of 07 years from 2002 to 2009, in view of its privatization. With its re-privatization, the applicability of the allowed MYT was further enhanced for another period of 07 years till June 2016. Subsequently, upon expiry of the MYT in June 2016, KE was again awarded a MYT for a control period of seven years till June 2023. Therefore, the contentions of the Petitioner that the allowed period exceeds industry norms are not correct.

15.5. The Authority at the time of Determination already considered the fact that nearly two years of the proposed MYT control period have already passed; therefore, allowing a tariff control period of five years, which effectively would result in three years, may not provide the necessary stability and predictability as envisaged under the NEPRA Act. The Authority also noted that while approving the investment plan of KE, the Authority decided to appoint an independent third-party for evaluation of the allowed investment plan, and the allowed amounts would be subject to adjustment in light of the independent 3rd party report.

15.6. The Petitioners have highlighted the lack of performance guarantees and a mid-term review mechanism. In this regard, it may be noted that while approving the investment plan of KE, the Authority decided to appoint a third-party audit/monitoring firm to perform quarterly audit/monitoring of the allowed investment plan, and the amounts allowed shall be subject to adjustment in light of the Audit/Monitoring by 3rd party. Further, indexation/ exchange rate variations for the approved investment amounts are allowed only for the time period allowed for completion of such investments. In case KE is able to complete the investment earlier than the allowed completion time, then the actual time period will be considered for allowing exchange rate variations. In case of delay in the completion of the project(s), no exchange rate variation or any other adjustment shall be given beyond the allowed completion period against each project. Thus, the concerns raised by the Petitioners in terms of lack of performance guarantees and a review mechanism already stand addressed.

15.7. In view of the aforementioned discussion and the fact that no cogent reasons have been provided by the Petitioners, the Authority has decided to maintain its earlier decision in this matter.

16. O&M COST AND ADJUSTMENT MECHANISM

16.1. **KE on the issue of O&M costs submitted** that allowing reference O&M for next year based on the lower of actual or allowed of the previous year is

- ✓ unprecedented (not applied to entities granted multi-year tariffs).
- ✓ would disincentivize the utility to bring any efficiency and save costs, as all savings would unduly reduce the allowed amount for the remaining control period.
- ✓ would make operations unviable in a period of low inflation – this is particularly important as NEPRA has not considered any increase factor for increase in O&M needs pursuant to the projected network expansion, capacity enhancements, increase in consumer base, to cover for increase in number of grids, etc.

16.2. KE also stated that a sharing mechanism of 50:50 between KE & consumers, in case actual O&M for the year turns out to be lower than the allowed, has been introduced, which is also unprecedented as it is not included in tariffs for XWDISCOs, NTDC, and other Transmission licensees.

16.3. KE accordingly requested to review the decision so that the reference O&M cost for future years is based on the indexed allowed O&M of the previous year only. KE reiterated its submissions during the hearing.

16.4. **The MoE (PD) and CPPA-G on the issue of O&M cost** submitted that the Authority has based KE's O&M cost for the FY 2023-24 on KE's unaudited financial statements. Instead, the approved O&M costs for the last year of the previous MYT, i.e. FY 2022-23, should have been used as base/ reference, particularly as the Impugned Determination is intended to apply over a seven-year Tariff Control Period. Furthermore, X-factor equal to 30% of CPI has been introduced, but only with effect from FY 2025-26, allowing KE a 2-year transitory period. KE has been operating under a performance-based MYT regime for nearly two decades and can no longer be considered in a transitional phase. The fundamental objective of the X-factor is to incentivize efficiency and cost reduction by gradually tightening the O&M allowance. Granting KE an additional two-year exemption undermines this principle and dilutes the core intent of the MYT framework.

16.5. It was also stated that, as per the Impugned Determination, any O&M cost savings are to be shared equally between KE and consumers on a 50:50 basis. This decision to share O&M cost savings equally between KE and its consumers is at odds with the treatment of other DISCOs, where 100% of efficiency gains in O&M costs are passed onto the consumers. More critically, the 50:50 cost-sharing formula may create perverse incentives for KE to implement aggressive cost-cutting measures that could adversely impact reliability, preventive maintenance, and overall service quality. Such risks directly affect consumer welfare and long-term system sustainability. The MoE (PD) accordingly submitted that the Impugned Determination is liable to be reviewed keeping in view the foregoing.

16.6. **The MoE (PD) & CPPA-G, during the hearing, while reiterating their submissions, stated** that approved O&M Costs for the last year of the previous MYT (i.e. 2022-23) should be used instead of unaudited accounts. The approved O&M Costs for the previous year (i.e. 2022-23) serve as a requisite benchmark that has also been vetted and approved by the Authority. Similarly, the purpose of X-factor is to incentivize efficiency by gradually reducing O&M costs over time. KE is not in a transitional phase and has been in the MYT regime for the last 2 decades; therefore, allowing a further transitional period of 2 years at this stage does not make sense. It was also reiterated that sharing of O&M costs on a 50% - 50% basis is inconsistent with the treatment accorded to other DISCOs, where entire benefit of savings is passed on to the consumers. The MoE (PD) requested to reset the base year using the O&M cost approved for the final year of the previous MYT, apply X-factor from the start of the current tariff control period (i.e., FY2023–24),and allow 100% pass-through of O&M savings to the consumers.

16.7. **Mr. Hafeezuddin** submitted that O&M costs and working capital allowances lack efficiency factors and promote financial mismanagement, without any claw back provisions or benchmarks.

16.8. **Jamat-e-Islami** submitted that, unlike best practice (e.g., Tata Power Delhi), KE's MYT includes no efficiency (X) factors, loss reduction targets, and project execution penalties.

16.9. **KE,** while responding to the submissions of the MoE & CPP-G during the hearing and in writing, submitted that, as per NEPRA Guidelines 2015, the base year can be chosen from historical audited results or projections. KE had requested O&M costs based on actual O&M as per its FY 23 audited financial statements with CPI indexation in line with other DISCOs. A detailed assessment was done on the actual unaudited O&M cost for the FY 2024, and the requested indexed O&M. KE's actual unaudited O&M cost was lower than the requested; therefore, the same was reduced accordingly. The Impugned Determination further states that if KE's actual O&M cost for the FY 2023-24, once its audited accounts for FY 2023-24 are available, is lower than the amount being allowed, the entire difference shall be passed on to the consumers.

16.10. **On the point of X-factor, KE stated** that application of X-Factor from the 3rd year of the control period is consistent with the multi-year tariff regime and aligned with the treatment of other DISCOs. The staggered application allows KE time to optimize its operations before efficiency targets take full effect. Therefore, the X-Factor of 30% CPI is imposed from FY 2025-26 onwards, ensuring balance between consumer protection and KE's operational readiness. In addition to the above, KE faces significantly higher operational challenges as compared to DISCOs where due to lack of planning and influx of Katchi Abadis, KE has to deal with significant amount of KUNDA connections, carry out several thousand disconnections each month, manage complaints due to frequent and in many cases unauthorized/uninformed road cutting/digging etc. which results in increase in O&M requirements. Despite this, KE is the most efficient in O&M in comparison with other DISCO's operating in Pakistan in per unit terms. Furthermore, the sharing mechanism added would incentivize KE to reduce its costs below the allowed levels.

16.11. KE in its written response submitted that the issue was deliberated in detail during the hearing where it was highlighted that the O&M is allowed to KE on the basis of the unaudited FY 2024 financial statement as mentioned under **para 19.10**. Further, the Authority clarified that as per NEPRA Guidelines 2015, the base year can be chosen from historical audited results or projections. Therefore, detailed assessment was done on the actual unaudited O&M of FY 2024 and the requested indexed O&M based on FY 2023 numbers. However, KE's actual unaudited O&M was lower than the requested, the same was reduced accordingly. It is also pertinent to mention that KE is the most efficient DISCO in term of per unit O&M with compare to all other DISCOs.

16.12. KE further submitted that the Authority has incorporated a performance-based framework to ensure accountability and cost efficiency. The sharing mechanism is designed to incentivize KE to operate below the allowed cost levels. The specific performance benchmarks have been established, including financial KPIs such as loss reduction, where any failure to meet targets results in KE bearing the associated costs. In addition, KE is subject to regulatory standards pertaining to reliability and safety, with defined penal provisions in place for non-compliance.

16.13. With reference to the comments regarding the absence of efficiency incentives or penalties, KE highlighted that efficiency factors have been applied to KE's O&M cost under **Para 19.22** of the distribution tariff Determination. Further, yearly targets for T&D loss & recovery have been given, and in case of non-achievement of these targets, the impact of the same will be borne by KE.

16.14. Regarding submissions of the MoE (PD) and CPPA-G, the Authority noted that continuation of the O&M cost allowed for the last year of the previous MYT i.e. FY 2022-23, as reference/ base, would have resulted in higher O&M costs for the FY 2023-24, compared to what has been allowed. On the point of sharing of O&M cost savings, the Authority noted that in the matter of XWDISCOs no sharing of O&M savings is made with the consumers, rather the entire benefit is retained by XWDISCOs, except for Pay & Allowances and Post retirement benefits, which are actualized both upward or downward. Thus, the approach adopted in the case of assessment of KE's O&M costs and its future indexation mechanism is more consumer-centric, but at the same time ensures that KE is also allowed its prudently incurred costs. KE itself has stated that the allowed sharing mechanism would incentivize KE to reduce its costs below the allowed levels.

16.15. For the application of X-factor from 3rd year onward during the new MYT, the Authority has already deliberated & discussed this issue in detail in the Impugned Determination and decided to apply the same from 3rd year of the MYT in line with DISCOs. Here it is also pertinent to mention that the cost for the 1st year of the MYT 2024-30 has already been actualized based on the audited numbers, which has further reduced. This also addresses the concerns of Jamat-e-Islami.

16.16. On the point raised by KE to allow reference O&M cost for future years based solely on the indexed allowed O&M of the previous year, it is important to clarify the regulatory intent. The purpose of allowing lower of actual or indexed O&M cost, as a reference for the subsequent year, is to ensure that any efficiency gains or cost reductions achieved in a particular year are allowed to KE and consumers for the year, and its impact is not continued for the entire tariff control period. In instances where KE achieves a significant reduction in O&M expenditure in a given year, allowing the indexed reference O&M of the previous year as the basis for the subsequent year, without taking into account the lower actual cost, would result in overstated allowable costs. This approach would effectively embed a higher cost level into future tariffs, enabling KE to derive a perpetual benefit from a one-time efficiency. Such treatment may not be prudent as it could lead to an evident over-recovery from the consumers during the control period. By applying the lower of actual or previously allowed O&M cost, the Authority has ensured that the immediate benefit of cost savings is appropriately recognized and equitably shared between consumers and the utility.

16.17. In view of the aforementioned discussion, the Authority has decided to maintain its earlier decision in this matter.

17. <u>OPENING TRANSACTION COSTS, UNAMORTIZED BALANCES & UPDATED BENCHMARK OF LOAN SPREADS</u>

17.1. **KE on the issue of Opening Transaction costs, unamortized balances & updated benchmark of loan spreads** submitted that under the previous MYT, the transaction costs were allowed as part of spreads of loans maturing post FY 2023 on an IRR basis, which reflects that these were allowed to be recovered on the full tenor of the loans without any adjustment during the control period. Hence, in the previous MYT, such costs were not considered to be allowed to be fully recovered within the MYT period and were to be allowed based on the loan tenor. Accordingly, the unrecovered portion pertaining to the period falling post expiry of the previous MYT is required to be considered. Based on the above, the unrecovered transaction costs pertaining to opening loans amounting to Rs.115 million may be allowed being a prudent unrecovered cost. It further submitted that under the previous MYT, KE was allowed loan spreads of 2.5% for local loans and 4.5% for foreign loans and hedging cost (calculated on a KIBOR minus LIBOR), and the actual spreads incurred on loans were lower than the benchmarks allowed during the previous MYT period. A comparison of the spread previously allowed and actual spread as provided by KE is presented below:

Description	Benchmark in previous MYT	Actual
Foreign loan – GuarantCo.	4.5% + Kibor – Libor	5.5% + Kibor – Libor – 1.3%

17.2. KE stated that the aforementioned table demonstrates that the actual cost of this loan was within the allowed benchmark, where the effective spread after netting off the hedge spread is 4.2% which is within the benchmark of 4.5%. Accordingly, while rebasing this loan, the actual cost of this loan may be considered instead of the updated allowed benchmarks. Other loans with actual spreads below the updated allowed benchmarks under the new MYT have also been recognized at their actual lower rates on an individual basis, thereby passing on the benefit of lower spreads to consumers. KE accordingly requested that the actual spread on this loan should be considered within the NEPRA applicable allowed limits.

17.3. KE, in its written response, highlighted that in the previous MYT, KE was allowed loan spreads of 2.5% for local loans and 4.5% for foreign loans and hedging costs. However, the actual spreads incurred on loans net off hedging costs were lower than the benchmarks allowed during the previous MYT period. Despite being lower than allowed under the previous MYT, while rebasing the MYT, NEPRA deducted the spread of these loans as per new benchmarks, which is an oversight/error, as KE acted within NEPRA allowed benchmarks. It is also important to highlight that other loans with actual spreads below the updated allowed benchmarks under the new MYT have also been recognized at their actual lower rates on an individual basis, thereby passing on the benefit of lower spreads to consumers, and overall actual spreads of KE are within the allowed limits of 2% & 4.5% for local & foreign loans respectively. Accordingly, KE requested that actual spreads on these loans should be considered within the NEPRA applicable allowed limits.

17.4. With respect to exchange rates to be used for computation of Cost of Debt, KE submitted that rates published by official sources such as the State Bank of Pakistan (SBP) or National Bank of Pakistan (NBP) often differ from the actual rates at which loan-related payments are executed by the borrower, as these are determined through negotiations with the respective financial institutions. Since KE has been allowed recovery of actual cost incurred, instead of a periodic Indexation mechanism, actual exchange rates applicable at the time of payment i.e. actual cost incurred, shall be considered, subject to the submission of verifiable documentary evidence substantiating the same.

17.5. The submissions of KE have been analyzed. The Authority observed that KE was allowed a spread of 4.5% on foreign loans plus hedging cost in the previous MYT, and the allowed cost of debt, including margins, was not subject to any adjustments. The Authority in the instant MYT also allowed cost of debt for foreign financing based on 3 months LIBOR or SOFR + 4.5%

spread and hedging cost, if applicable. Hedging cost would be the difference between 3 months KIBOR and 3 months LIBOR / SOFR, as the case may be plus hedging spread, if any. Thus, same spread i.e. 4.5% for foreign loans as allowed in the last MYT has been allowed in the instant MYT. As KE has reported a negative hedge spread of 1.3% for the loan obtained from GuarantCo., therefore, the same has been adjusted while working out the total Cost of Debt in the instant MYT. The submissions of KE, therefore, to allow a spread of 5.5% do not merit consideration. On the point to allow transaction costs pertaining to previous MYT, the Authority has already deliberated this issue in the Impugned Determination, whereby it was decided not to allow such costs as these costs were incurred by KE in the previous MYT, the control period of which has ended on 30.06.2023. In view thereof, the Authority has decided to maintain its earlier decision in the matter of transaction costs and debt spreads.

17.6. With respect to exchange rates to be used for the computation of Cost of Debt, the Authority considers the request of KE as justified and has decided to use actual exchange rates applicable at the time of payment, subject to the submission of verifiable documentary evidence.

17.7. Regarding spread on loans for future financing, the Authority has analyzed the KE existing loan portfolio and observed that KE has raised financing below the spread benchmarks already allowed by the Authority. The Authority understands that KE would be able to raise future financing on such lower spreads in the future as well. In view thereof, the Authority has decided to revise the spread benchmarks for future loans. For local loans, the allowed spread shall be 1.5% as a maximum cap, subject to downward adjustment only, based on individual loans as per the mechanism already provided in the Impugned Determination, in case the actual spread remains lower. Similarly, for foreign financing, the allowed spread shall be 2.25%, as a maximum cap subject to downward adjustment only, based on individual loans as per the mechanism already provided in the Impugned Determination, in case the actual spread remains lower. However, for existing loans, the spread already allowed vide Impugned Determination dated 23.05.2025 shall remain applicable.

18. NON-CONSIDERATION OF LOSSES IN HEDGING ARRANGEMENTS

18.1. KE on the issue of losses on hedging submitted that hedging arrangements are typically undertaken for the full tenor of the underlying loan. As a result, exchange rate fluctuations may result in gains in some years and losses in others; however, over the life of the hedge, these tend to net out, resulting in minimal or no long-term impact. To elaborate, amounts as per KE's historical financial records pertaining to a cross-currency swap hedging arrangement entered with commercial banks to hedge a loan taken from Guarant Co., where gains/losses ultimately settle at the end of loan tenor, are presented below:

Mate.

NEPRA AUTHORITY

Period	Net (gains) / losses
FY 20	(160)
FY 21	153
FY 22	(76)
FY 23	(1)
FY 24	77
FY 25	7
Total	-

18.2. KE mentioned that as per the table above, (gains) that arise in FY 20, FY 22 & FY 23 are ultimately set off with the losses that arise in other years, ultimately having no impact in the longer term. The mechanism for determination, which allows only the gains to be passed through in tariff, does not fully appreciate the hedging mechanism and would lead KE out of pocket by PKR 237 million, as no gains have actually been earned. In light of the above, KE requested Authority treat both exchange gains and losses on hedging arrangements consistently and allow them as pass-through items in the tariff or exclude them in entirety, to ensure fair and balanced treatment. KE also stated that the Impugned Determination inadvertently refers to the term "Hedge Instruments" for this mechanism; however, the matter and the amount pertain to the overall hedge arrangement, which includes the net impact of gains and losses on both the hedge items and the hedge instruments. Therefore, to ensure clarity and avoid potential future disputes, KE requested that terminology be updated from "Hedge Instruments" to "Hedge arrangement" to more accurately reflect the nature of the transaction and its financial implications.

18.3. The Authority in the Impugned Determination decided that any gain on hedging instruments shall be adjusted as part of Other Income, but any loss on such account shall not be passed on to consumers. However, considering the submissions of KE that these gains/ losses tend to net out over the life of the hedge, resulting in minimal or no long-term impact, the Authority has decided to also allow losses incurred on hedging arrangements during the MYT control period i.e. from FY 2024 to FY 2030. Any such loss shall only be allowed to be offset against gains from that particular hedging arrangement, which has been adjusted as part of Other Income, during the MYT FY 2024-30. Any such loss in excess of gains adjusted as Other Income shall not be allowed.

19. LATE PAYMENT SURCHARGE (LPS)

19.1. Regarding Late Payment Surcharges (LPS), KE submitted that in case of delayed payment by the consumer, KE manages its obligation through bank borrowings, unlike XWDISCOs, which create circular debt by stopping payments to CPPA-G. Hence, KE should be allowed to retain

LPS in lieu of working capital costs incurred. Further, as the matter pertains to the Supply segment, the detailed arguments would be given in the supply tariff. KE accordingly requested that it should be allowed to retain LPS received from consumers, as it is a legitimate cost recovery mechanism for financing the cost that is incurred due to delayed consumer receipts beyond the 30-day period allowed in the tariff's working capital component. KE reiterated its submissions during the hearing.

19.2. Regarding submissions of KE to allow retention of the entire amount of LPS, the Authority has allowed working capital to KE, to the extent of the difference between its total receivables and payables, keeping in view the allowed number of days for payments/ recoveries.

19.3. The Authority noted that to compensate KE for delayed recoveries from consumers, KE has already been allowed retention of LPS to the extent of supplemental charges, if any, which KE may incur owing to such delays, except supplemental charges billed by CPPA-G, as KE has entered into an MCA arrangement with CPPA-G. This treatment is also in line with the methodology adopted in the matter of XWDISCOs.

19.4. In view of the aforementioned discussion, the Authority has decided to maintain its earlier decision in this matter.

20. DISTRIBUTION LOSS ADJUSTMENT DUE TO CHANGES IN SALES MIX

20.1. On the issue of Distribution Loss owing to a change in sales mix, KE submitted that changes in sales mix, including shift to the open market by BPCs, impact its overall Distribution losses. Therefore, for the distribution business, the distribution loss target should be adjusted; otherwise, it will result in under /over recovery of prudent cost. KE stated that as part of CTBCM implementation, clarity would be needed before implementing how any cost of over or under recovery would be allowed/adjusted in the tariff. KE also highlighted that any changes in distribution losses are not solely driven by CTBCM implementation, but are also significantly influenced by external factors such as fluctuations in the country's economic conditions, revision in tariff rates, and shift to solar/net metering, etc., which impacts consumption. KE accordingly requested that distribution loss targets may be allowed to be annually adjusted in accordance with the sales mix adjustment mechanism proposed in the tariff petition.

20.2. The Authority observed that similar submissions were made by KE on this issue during the proceedings of its Distribution tariff Petition. The Authority, after taking into account all these submissions and analyzing the impact of changes in KE's sales mix on its distribution losses over a period of five years, decided not to allow any such adjustment, and is in line with the practice in vogue for XWDISCOs. However, the Authority decided that it would consider this issue going forward across the sector for all DISCOs, once CTBCM becomes operational and after evaluating its impact.

20.3. In view of the aforementioned discussion, the Authority does not see any rationale to change its earlier decision, and hence has decided to maintain its earlier decision in this matter.

21. OTHER INCOME SHARING

21.1. On the issue of Other Income, the MoE (PD) and CPPA-G made similar submissions, stating that KE has been allowed to retain liquidated damages (LDs) to be recovered from contractors in cases involving unapproved cost overruns. However, in the previous MYT regime, such LDs were included in the "Other Income" category, and their benefit was accordingly passed on to consumers. Similarly, KE has also been allowed to retain interest income on bank deposits, up to the extent of the allowed Return on Rate Base (RoRB) and depreciation. The MoE (PD) and CPPA-G further submitted that since KE is already compensated for these items, such interest income should be passed on in full to consumers. The same principle may also be extended to interest income earned on MCA as well. Further, interest earned by KE from the Government due to the delayed disbursement of Tariff Differential Subsidy (TDS) should also be included in Other Income, to ensure transparent regulatory treatment and consumer benefit.

21.2. It was also mentioned that the Impugned Determination allows KE to retain 20% of income generated from the Regulatory Asset Base (RAB) for non-regulated business activities. Since RAB is funded through consumer tariffs, any income derived therefrom, whether from regulated or non-regulated use, should be fully credited back to the consumers.

21.3. The MoE (PD) & CPPA-G reiterated their submissions and requested the Authority to fully pass on all types of other/additional incomes/gains to the consumers.

21.4. KE, while responding to the submissions of the MoE (PD) & CPPA-G during the hearing and in writing, submitted that interest income is not derived from primary operations / regulated activities of KE. It relates to KE's financial management and cash optimization strategies. It reflects how the company manages its liquidity and excess funds, which is separate from the cost of providing electricity. Hence, in the Impugned Determination, the Authority has considered KE's submissions as meritorious and therefore allowed KE to retain interest income on deposits and return on bank deposits to the extent of allowed RoRB and Depreciation.

21.5. KE also stated that it requested no adjustment in the working capital component pertaining to cash retained by banks under the MCA arrangement, which, as per KE, is a binding obligation as per the underlying agreements. MCA is a security arrangement provided by KE to CPPA-G for the PPAA. The interest income on MCA is against KE's cash stuck in the MCA arrangement to honor its obligations under the PPAA, and accordingly, KE has to make borrowings to fund its working capital needs, adjustment for which is not allowed under the working capital component of the tariff. In case MCA interest income is treated as pass-through, the corresponding adjustment for interest rate on borrowing (which is generally higher) would also need to be allowed, which would result in a higher tariff. Hence, the Authority in the Impugned Determination allowed KE to retain income from MCA on merits.

21.6. KE also mentioned that the Impugned Determination allows KE to retain LDs from its contractors/ suppliers, only in case the Authority does not allow any cost overruns/time extensions etc, for the said works. Mere inclusion of LD in other income in previous tariffs does not form a valid justification for making it completely passthrough in the current tariff. The Authority in the Impugned Determination stated that KE shall not be allowed any cost arising out of account of delay in tariff determinations/adjustments and consequently delay in release of TDS claims of KE by the GoP. Therefore, any interest earned by KE from the GoP on account of the delay in the release of TDS shall also not be captured through other income. Moreover, since the working capital is also restricted, therefore, KE will not be able to sustain if the cost of markup claimed by CPPA-G is not passed through, and other income from the delay in TDS is passed through. Regarding interest income on delayed TDS, KE would like to submit that the PPAA and TDS agreement between KE and GoP are interlinked. KE has provided MCA as a security arrangement and agreed to LPS for delays under PPAA. Similarly, the TDS Agreement provides LPS for delays by the GoP to KE. As stated in Para 20.16 of the Impugned Determination, since KE is not allowed any cost arising out of account of delay in tariff determinations/adjustments, hence, any interest earned by KE from the GoP on account of delay in release of TDS shall also not be captured through other income.

21.7. KE also submitted that, as per the Impugned Determination, any additional income generated from the use of RAB for activities outside its regulated business should, in principle, be shared with consumers; however, passing on the full benefit of such income to KE's consumers would diminish KE's incentive to engage in such activities. Therefore, the Authority decided that any such gains, if they arise, shall be shared in an 80:20 ratio between the consumers and KE.

21.8. KE also raised the issue of gain/loss on disposal of Property Plant & Equipment (PPE) during the hearing, and submitted that the Impugned Determination directs KE to only pass-through gain on disposal of PPE to consumers as part of other income. Disallowing losses creates an imbalance, crediting gains to consumers, while penalizing KE in case of losses and undermining KE for effective utilization / disposal of asset. KE accordingly requested consistent treatment of gains and losses either, both as pass-through or neither.

21.9. The Authority noted that while deciding the Distribution Tariff petition of KE, each head of other income was discussed and deliberated in detail and accordingly KE was allowed to retain other income under some heads. On the point raised by the MoE (PD) & CPPA-G, for allowing retention of LDs, the Authority noted that KE was allowed to retain LDs from its contractors/ suppliers only, in case the Authority does not allow any cost overruns/ time extensions, etc., for the said works. If LDs from contractors/ suppliers are to be adjusted as part of other income, then any cost incurred by KE on account of overruns/ time extensions, etc., would need to be compensated to KE.

21.10. Similarly, income from MCA maintained for payment of energy procured from CPPA-G, the Authority did not allow any cost for maintaining the MCA account to KE in the tariff and accordingly, any income from such account has also not been adjusted as part of other income. In case income from the MCA is to be adjusted as part of Other Income, then prudency demands that the cost of maintaining the MCA may also be allowed to KE. Similarly, adjustment of interest earned by KE from the Government due to delayed disbursement of Tariff Differential Subsidy (TDS), would also require allowing costs arising on account of delay in tariff determinations/ adjustments and consequently delay in release of TDS claims of KE by the GoP.

21.11. On the point of KE to allow loss of disposal of PPE as well, the Authority decided not to allow any loss on sales of assets, as all assets are financed through tariff whereby KE is allowed to recover its cost through depreciation. Moreover, KE is also allowed O&M costs to efficiently maintain such assets.

21.12. In view of the aforementioned discussion, the Authority does not see any rationale to change its earlier decision, and hence has decided to maintain its earlier decision in this matter.

22. WORKING CAPITAL ALLOWANCE

22.1. Regarding working capital allowance, the MoE (PD) submitted that KE has been allowed a working capital cost of Rs. 836 million at a markup of 23.91%. This allowance deviates from both the previous MYT methodology and treatment accorded to XWDISCOs. KE's purported working capital needs to be assessed and examined in line with the principles set forth in Section 31 of the NEPRA Act, read with Rule 17 of the Tariff Rules, particularly in the context that KE has already been allowed working capital for its generation and transmission segments. The MoE (PD) accordingly requested to disallow the working capital cost of Rs.836 million, and also reclassify profit or interest on consumer security deposits as "Other Income".

22.2. CPPA-G also made similar submissions by stating that the Authority has erroneously allowed and recommended a working capital cost of Rs. 836 million for FY 2023-24 to KE at a markup of 23.91%. This represents a clear departure from both:

- ✓ the methodology adopted in the Previous MYT for KE; and
- ✓ the treatment accorded to XWDISCOs in their corresponding tariff determinations.

22.3. CPPA-G further stated that the Impugned Determination fails to conduct any prudency assessment of KE's working capital requirement for its distribution business. Additionally, KE has already been allowed working capital coverage for its generation and transmission segments. Granting an additional allowance for the distribution and supply business, without scrutinizing actual need, opens the door to double recovery. Furthermore, there is no time lag between the collection of consumer bills and the settlement of payments to power producers that would necessitate such financing. It also mentioned that the Authority has not allowed any cost of working capital to the XWDISCOs in their recently determined distribution and supply tariffs. The current allowance to KE is therefore inconsistent, discriminatory, and without any reasoning for such preferential deviation from established regulatory treatment. CPPA-G accordingly requested that the Authority should disallow the working capital cost of Rs. 836 million and reclassify the profit/ interest earned on the security deposits under "Other Income" to ensure consistency and transparency, or direct KE to pass on the benefit thereof to the consumers as per the mechanism provided in the Previous MYT.

22.4. The MoE (PD) and CPPA-G reiterated their submissions during the hearing.

22.5. Mr. Arif Bilwani submitted that allowing working capital, double-counting of IDC, and float income without proper validation is against NEPRA Guidelines. Consumers are being denied benefits from float income, gains on scrap/disposals, and efficient cash management.

22.6. Jamat-e-Islami submitted that KE's structure already allows sufficient liquidity through billing cycles. Still, it has been allowed full working capital costs and FX debt cost pass-through based on assumed rather than actual SOFR, KIBOR, and spreads. All such costs should be trued-up annually and capped to actual rates with proper scrutiny. It has also been highlighted that KE is allowed to recover Interest During Construction (IDC) and working capital interest without verifying overlap. Similarly, float income, disposal gains, and cash flow efficiencies are not shared with consumers. This is in violation of NEPRA Guidelines and obscures true cost justification.

22.7. KE, while responding to the submissions of the MoE (PD) & CPPA-G during the hearing and in writing, submitted that in the matter of XWDISCOs, the Authority only allows them to retain the amount of LPS, to the extent of Supplemental charges to meet their working capital requirements, and any amount over and above supplemental charges is adjusted back. The working capital is a prudent cost and is allowed to NTDC as well, and is essential to manage timing mismatches between expenses and cost recovery, ensure adequate inventory of critical spares, and address cash flow gaps. Therefore, disallowing it merely on the basis that these costs are not part of XWDISCO's tariffs would not be an appropriate rationale, as in the case of XWDISCOs, these become part of their losses, which burdens the government, leading to the creation of circular debt and ultimately gets charged to the consumers in the form of PHL surcharge. Furthermore, the working capital component approved under the Generation and Transmission tariffs, Distribution, and Supply tariffs are already cross-referred and do not include any duplication.

22.8. The Authority has carefully analyzed the comments submitted by the MoE (PD), CPPA-G, and other stakeholders. The Authority, on the point that XWDISCOs are not allowed any working capital, noted that XWDISCOs are allowed to retain the amount of LPS to the extent of supplemental charges. Moreover, XWDISCOs do not raise any short-term loans on their books for the purpose of working capital requirements; instead, any shortfall is parked in circular debt, to be subsequently paid by the consumers through surcharges. On the point that KE has already been allowed working capital for its generation and transmission segments, it needs to be understood that the working capital requirement of KE for the purpose of the Distribution function has been worked out, based on the revenue requirement allowed for the Distribution function only. Therefore, the points that KE has already been allowed working capital for its generation and transmission segments do not hold any merit for disallowing working capital requirements for the Distribution function.

22.9. Regarding the issue of reclassification of "Interest on Security Deposit" as part of other income, the Authority observed that KE utilizes the amount of Security Deposit to meet its working capital requirements; therefore, the amount of security deposit was adjusted as part of working capital. Hence, consumers have been provided the benefit of interest/ profit on the security deposit through a reduction in the cost of working capital. However, as the interest/ profit on Security deposits is primarily related to the supply function, therefore, while working out the working capital requirement of KE for the supply function, this amount has been adjusted.

22.10. In view of the aforementioned discussion, the Authority has decided to maintain its earlier decision; however, Cash and Bank balances requirement has been excluded from the working capital calculations against the earlier assumed number of 15 days, for KE's Distribution Function.

22.11. In view of the above discussion, the revised worked out cost of working capital and taking into account the actual data as provided by KE is tabulated below;

Description	Factors	FY 24
Sales		**16,047**
Stores and Spares (3% of GFA)	3%	5,190
Trade debt (30 days of Revenue Receivable)	0.08	3,217
Total Current Assets		**8,407**
Current Liabilities	67%	**5,604**
Working Capital requirement		**2,802**
Average working capital Balance		2,802
Cost of Debt Local		23.06%
Working Capital Cost		**646.2**
Receipt Against Deposit Work		8,592
Cost/Profit on D.W		1,981
Total Cost of working capital		**(1,335)**
Rs./kWh		**(0.08)**

Future Adjustment

Revised cost of working capital = Working capital requirement as per given formula x Cost of debt on allowed parameters

- ✓ Working capital requirement for future years shall be calculated based on assessed revenue requirement under each head for relevant year.
- ✓ Cost of debt shall 3 Months KIBOR + 1% spread as maximum cap, subject to downward adjustment at the end of each financial year.

Actualization of Previous year based on allowed revenue as PYA

Current Assets

- ✓ Lower of 30 days receivables based on allowed revenue (including the impact of allowed adjustments), but excluding WC current cost and WC PYA, **OR** Actual average receivables for the Financial Year (excluding opening receivables).
- ✓ Stores & spares- Lower of 3% of Avg. GFA (opening + closing)/2 **OR** Actual average stores & spares. GFA on historical cost basis, based on the Audited account and 3rd Party evaluation to the extent of allowed Investment.

Current liabilities

- ✓ 2/3rd of the aforementioned current assets

- ✓ Average balance of receipt against deposit work (opening + closing)/2 figure will be actualized based on the audited financial statement initially, and finally based on third-party evaluation.
- ✓ For the purpose of the 3-Month KIBOR, the actual weighted average KIBOR of finance cost incurred by KE for WC shall be considered. Similarly, for the purpose of spread, the actual spread incurred by KE shall be considered. In case the actual spread is lower than 1% cap, the same shall be adjusted downward only. No upward adjustment of spread is allowed.
- ✓ Any under/over recovery of the allowed cost of working capital shall also be adjusted as part of PYA next year.

22.12. The aforementioned cost is made part of the revenue requirement on a provisional basis, subject to adjustment once the Audited financial statements for FY 2023-24 are available and KE also provides the relevant documentary evidence required for such adjustment.

23. WORKING CAPITAL ON ANNUAL PYA ADJUSTMENTS

23.1. KE requested the inclusion of working capital costs associated with PYA, which arise at the end of each year upon actualization / true-up of tariff components. KE submitted that this is a legitimate and prudent cost, typically financed through short-term borrowings. These PYA adjustments *(which should be ideally recovered in the same year to which they relate)* are approved at year-end with a systematic lag due to regulatory proceedings and their recovery is also deferred to the subsequent year through the reference tariff. This timing mismatch imposes a financing burden on KE, which is beyond its control. KE accordingly requested to consider and allow the working capital cost on annual PYA adjustments to ensure full cost recovery and support KE's financial sustainability. KE reiterated its submissions during the hearing.

23.2. The Authority observed that similar submissions were made by KE on this issue, during proceedings of its tariff Petitions. The Authority deliberated the issue of lag in recovery of FCA, quarterly tariff adjustments and annual adjustment for over/under recovery in detail in the Supply Tariff determination of KE dated 27.05.2025 under para 17.11 to 17.16, whereby the Authority decided that interest or mark-up or any such cost for any delay in processing of the tariff adjustment/ petitions etc., is not allowed.

23.3. In view of the aforementioned discussion, the Authority does not see any rationale to change its earlier decision, and hence has decided to maintain its earlier decision in this matter.

24. ALLOWED LEVEL OF LOSSES

24.1. **MoE (PD) and CPPA-G stated** that the Authority has approved a Distribution loss allowance of 13.90% for KE. This figure is based on findings contained in the Investment Plan Determination , which is currently under review and pending before the Authority. The allowance granted to

KE is notably higher than the levels applied to other distribution companies. The approved margin appears to include a component for commercial losses associated with law-and-order issues. However, this treatment differs from the approach typically applied to XWDISCOs, including those operating in regions with more pronounced security challenges. This differential treatment can have a material impact on the supply tariff and, by extension, on end consumers. For FY 2023-24 alone, the financial implication of the increased distribution loss target is estimated to be approximately Rs. 14 billion and Rs. 99 billion for the Tariff Control Period. In addition, KE has been allowed to retain 25% of the gains from any reduction in distribution losses. While it is important to incentivize performance improvements, it is important that such mechanisms are balanced and consistent with broader sector practices to ensure fairness, particularly where entire gain in the context of XWDISCOs is passed on to consumers. This approach erroneously and disproportionately benefits KE and undermines consumer protection and contradicts the core principle that efficiency gains should primarily benefit consumers, not licensees. Furthermore, it is noted that the distribution loss figure stated in the Investment Decision was 13.46%, whereas the figure adopted in the Impugned Determination is 13.90%. Given the potential financial implications, estimated at approximately Rs. 3.1 billion for FY 2023-24 and Rs. 21 billion for the Tariff Contril Period, the MoE (PD) requested that Impugned Determination may kindly be reviewed. In view of the foregoing, the Authority is requested to revise the distribution loss target in line with the approved benchmark comparable to better performing XWD1SCOs, including the law-and-order margin, recommended to be zero and ensure that the full benefit of any loss reduction is passed on to consumers. It was also requested that the Impugned Determinations do not determine separate voltage-wise losses for 220 kV and above, 132 kV, and 11 kV, therefore, the Authority may also determine voltage-wise losses separately for the KE region.

24.2. Mr. Bilwani submitted that Transmission CAPEX of Rs. 120 billion and aggressive distribution expansion plans are unjustified in light of stagnant peak demand forecasts and overambitious consumer growth assumptions. CAPEX approval should be linked to at least 80% asset utilization, to ensure cost efficiency and safeguard consumers from inflated tariffs. It also stated that approved transmission loss target of 1.30% is arbitrary and inconsistent with KE's historical audited loss data (ranging between 0.83% and 1.11%). A rational, declining glide-path starting from 0.90% in FY24 and reaching 0.75% by FY30 is necessary to protect consumers from inefficiency pass-through. Mr. Bilwani proposed to reinstate a declining, performance-based loss reduction target.

24.3. Jamat-e-Islami submitted that NEPRA has approved nearly PKR 400 billion in CAPEX (PKR 120 billion transmission alone) based on inflated demand forecasts and unproven growth assumptions. No mandatory link to 80% asset utilization was imposed-leading to risk of tariff inflation without consumer benefit. The approved transmission loss target of 1.30% exceeds

KE's audited historical losses (0.83%-1.11%), therefore, a declining glide-path starting from 0.75% in FY24 to 0.60% by FY30 being rational and consumer-protective may be allowed.

24.4. Mr. Hafeezuddin submitted that system allows cost pass-through from illegal connections ('Kundas') and high-loss feeders, harming paying consumers and fostering lawlessness.

24.5. The Authority noted that issue of assessment of T&D losses pertains to KE's investment plan, and has been deliberated in detail in the said decision, therefore, need not be discussed again in the instant decision.

25. DISREGARD OF STAKEHOLDER SUBMISSIONS

25.1. Mr. Arif Bilwani, submitted that despite active participation from multiple parties, the Authority has summarily rejected all objections without reasoned consideration. Specific bullet-pointed objections made by various stakeholders on both transmission and distribution matters, as recorded in the Impugned Determination, were dismissed without adequate reasoning. This constitutes a violation of the principles of natural justice and regulatory due process.

25.2. Jamat-e-Islami also submitted that the Authority failed to reasonably consider detailed written and verbal submissions by multiple stakeholders including Muhammad Arif, Abu Bakar Ismail, GEPCO, Shehri, and the Ministry of Energy. This blanket dismissal of stakeholder objections violates principles of natural justice, transparency, and due process.

25.3. The Authority observed that relevant comments were incorporated in the Impugned Determination (para 8.1 to 8.42) and, were appropriately addressed, where necessary.

26. INFLATED CAPEX AND FLAWED DEMAND PROJECTIONS

26.1. Regarding demand projections, Mr. Arif Bilwani highlighted that demand forecasts ignoring the effects of rooftop solar and captive generation results in inflated capacity expansion and excessive capacity payments. Tariff revisions must be aligned annually with actual trends and technological shifts.

26.2. Jamat-e-Islami also raised similar concerns by submitting that forecasts ignore current and growing impact of rooftop solar, captive generation, and energy conservation. These unrealistic projections result in unnecessary grid expansion and overcapacity payments, inflating end-user tariffs.

26.3. The Authority noted that issue of Demand Projections relates with KE's investment plan, and has been discussed in the said decision, therefore, need not be discussed again in the instant decision.

27. ECONOMIC IMPACT ANALYSIS

27.1. Jamat-e-Islami submitted that NEPRA failed to assess how the 7-year tariff affects;

- ✓ A Karachi's industrial competitiveness
- ✓ Household affordability
- ✓ Inflationary pressures on SME sectors
- ✓ No such MYT regime should be allowed without full socio-economic modelling.

27.2. Mr. Hafeezuddin submitted that Impugned Determination will result in higher electricity costs for all categories of consumers, including domestic, commercial, and industrial users. The cumulative burden from excessive tariff components such as inflated O&M costs, USD-based returns, and pass-through of inefficiencies will directly impact inflation, erode household incomes, and reduce consumer purchasing power. This will not only stoke public dissatisfaction but could also lead to social unrest in affected areas. It is essential that NEPRA reassesses the decision with a clear focus on protecting public interest and ensuring affordability for all segments of society.

27.3. Mr. Hafeezuddin also submitted that permitting KE to pass on recovery shortfalls and taxes (WWF, WPPF, super tax) to consumers penalizes the honest and paying public, including industrial consumers. Therefore, the Authority should disallow pass-through of recovery shortfalls, theft-related losses, and non-operational taxes. It was also submitted that approved costs (Rs. 3.84/kwh for distribution) will inflate industrial input prices and adversely impact exports and competitiveness without clear productivity benefits.

27.4. KE while responding to these comments submitted that consumers are charges on the basis of notified uniform consumer end tariff, hence KE's tariff has no impact on the consumers. With reference to the comments regarding negative impact of tariff on industrialization as well as general public, KE would like to submit that the issue has been deliberated in Para 28 of Distribution determination. A cost reflective tariff for KE with appropriate returns is necessary for KE to ensure system reliability, stable network, continued efficiency and performance improvements. Moreover, due to uniform tariff policy, which is based on tariff of XWDISCOs, KE tariff has no direct link to industrialization or general public. Further, regarding tax pass-through, KE operates under a cost-plus tariff regime where only prudent costs are allowed to be recovered, and since WWF/WPPF/Tax in line with practice followed for other power sector entities and KE's previous MYT. Moreover, KE submitted that WPPF has been already addressed in detail in Para 22 of the Impugned Determination.

28. RETURN ON EQUITY (ROE)

28.1. The MoE (PD) submitted that KE has been allowed a 14% USD-based Return on Equity (RoE), which translates to approximately 29.68%, when converted into PKR terms. This treatment marks a notable departure from the approach adopted for other utilities such as XWDISCOs, where RoE is determined in PKR without any currency indexation. KE's distribution business is entirely denominated in PKR, with no reported equity injections in USD or material expenses linked to foreign exchange. Despite this, the Impugned Determination applies a USD-based return, converting the PKR-denominated Regulatory Asset Base (RAB) into USD. This introduces unnecessary foreign exchange risk to consumers, even though KE's operations, revenues, and investments are all domestic. This approach places an undue burden on consumers without providing any clear value in return.

28.2. The MoE (PD) further submitted that this disparity is particularly striking when compared to FESCO, which has been allowed a 14.47% RoE in PKR terms. In contrast, KE's 29.68% PKR-equivalent RoE results in an estimated additional burden of Rs. 3.7 billion annually and over Rs. 35.6 billion across the Tariff Control Period. In view thereof, the MoE (PD) requested that the Impugned Determination may kindly be reviewed, and KE's RoE reassessed in PKR terms to align with sectoral norms and consumer interest.

28.3. The MoE (PD) during the hearing submitted that KE has been allowed USD-based 14% RoE, translating into an excessive 29.68% PKR return. Conversely, DISCOs undertaking same business have been allowed much lower ROE, i.e. FESCO has recently been allowed a 14.47% RoE in PKR. The current approach creates a discriminatory gap with significant financial implications of about PKR 35.6 billion over the tariff period. The MoE (PD) requested Reconsider the USD-based RoE and align KE's return structure with a PKR-based framework, ensuring fairness, cost-reflectivity and consistency with sectoral precedents; and to safeguard consumers from undue exchange rate risk.

28.4. CPPA-G submitted that the Authority has allowed KE a US dollar-based 14% RoE, which translates into an excessive 29.68% rupee-based return. This approach lacks any basis since granting USD-based RoE on regulatory assets is inconsistent with the regulatory treatment afforded to other comparable entities, particularly XWDISCOs operating under substantially similar conditions. Such indexing mechanism exposes consumers to exchange rate risk without any added value or benefit, while simultaneously undermining the Government's capacity to provide targeted subsidies in the public interest. A PKR-based RoE structure ensures fairness, cost-reflectivity, and long-term sustainability, principles which the Authority has disregarded in the Impugned Determination. CPPA-G requested to allow PKR based RoE aligned with returns allowed to comparable utilities operating under similar regulatory framework. For instance, FESCO has recently been allowed a 14.47% RoE in PKR, demonstrating the established regulatory precedent. The discriminatory difference between 29.68% and 14.47% has substantial financial implications amounting to PKR 3.7 billion for FY-24 (approximately PKR 35.6 billion over the entire Tariff Control Period), which burden would be borne by the consumers through tariff increase and/or the national exchequer. Moreover, such arrangements would have severe implications with respect to the privatization arrangements being considered. CPPA-G reiterated its submissions during the hearing.

28.5. Mr. Bilwani submitted that permitting USD-based ROE without actual foreign investment, and in the absence of rupee devaluation in many years, is an undue financial burden. The RoE should be benchmarked in PKR based on PIB + appropriate risk premium. Similarly, FX debt servicing should be trued-up based on actual SOFR and exchange rates + verified spread. Mr. Bilwani opined that the Authority's decision to treat KE akin to an Independent Power Producer (IPP) allowing dollar-based returns, guaranteed ROE, and full pass-through costs is wholly unfounded in law. There exists no provision in the Implementation Agreement (2005) or the Amended Implementation Agreement (2009) that grants such status or financial privileges to KE. This mischaracterization has led to unjust enrichment at the cost of consumers.

28.6. Jamat-e-Islami submitted that 15-16.67% USD-based RoE allowed to KE is unjustified as KE's shareholders have not brought in new foreign equity since privatization. The RoE must be linked to a PKR-denominated benchmark (e.g., PIB + risk premium) in line with NEPRA policy for other DISCOs and PKR devaluation risk should not be passed to consumers. KE was erroneously granted USD-based Return on Equity (RoE) and cost recovery privileges akin to Independent Power Producers (IPPs), despite not being covered under the 2002 Power Policy or IPP framework. Neither the 2005 Implementation Agreement nor the 2009 Amended Agreement grant KE these privileges.

28.7. Mr. Hafeezuddin stated that allowed USD-based RoE discriminates against other DISCOs and violates NEPRA's tariff parity principles. KE is not an IPP and should not receive dollar-indexed returns, and the same should be aligned with other DISCOs.

28.8. KE during the hearing and in writing, while responding to the submissions of the MoE(PD), CPPA-G and other stakeholders, stated that the Authority in para 16.7 till 16.10 of Impugned Determination of Distribution Tariff clarified that the rationalization of returns should align with the adjustment of risks outlined in the new tariff scheme without undermining investor confidence, particularly since KE remains the only privatized utility in the country. Submissions of KE were examined, deliberated and accepted by the Authority. KE also stated that it is important to note that KE was granted a USD base return in previous MYT, keeping in view the foreign investments, and while Authority allowed continuation of USD RoE, it reduces the allowed % from 15% to 12% in Transmission, 16.67% to 14% in Distribution.

28.9. KE also stated that in MYT FY 2017-23, KE was allowed USD based ROE of 16.67% for distribution segment. Specifically, para 24.4 of the Transmission Determination dated 23.05.2025 and para 16.5 of the Impugned Determination reflect that these issues were not only raised during the hearing process but were also considered in detail. KE's submissions on both matters were carefully examined, deliberated upon, and ultimately accepted by the Authority, as documented in para 24.6 to 24.8 of the Transmission Determination dated 23.05.2025and para 16.7 to 16.10 of the Impugned Determination. KE also submitted that private investors in the power sector benchmark their return to dollarized levels, as is the case with other private investments in Pakistan (IPPs and HVDC). KE's investors have invested approximately USD 700 Mn as well as reinvestment of all profits, which has enabled more than 4 billion USD in Capex since privatization, which has helped improve performance and lowered tariffs.

28.10. KE also submitted that the Authority in para 16.9 & 16.10 of Impugned Determination clarified that the rationalization of returns should align with the adjustment of risks without undermining investor confidence, especially considering that KE is a privatized utility. Therefore, to maintain regulatory continuity and ensure reasonable returns, the Authority allowed RoE of 14% USD-based (instead of 16.67% as allowed under the previous MYT) for KE's distribution function. Moreover, as per the Organization of Islamic Cooperation (OIC) agreement, which includes KE's shareholders who are from member countries signatories to the OIC agreement, all investments, including the returns generated therefrom, shall be treated as capital under this Agreement. In accordance with Para 4 of Article 1 of the OIC Treaty, whether in the form of profits, dividends, interest, or other income, is considered an integral part of the original investment. Given that the investment is denominated in U.S. dollars, the corresponding returns shall likewise be regarded and settled in U.S. dollars, ensuring consistency in financial treatment. In addition to the above, under Para 1 of Article 10, the host state is obligated to protect investors from any action that could directly or indirectly affect their ownership, control, or use of their investment. This means that the investor's basic rights, capital and the returns generated from it are secured. The state cannot take or permit any measure that deprives the investor of their rights, benefits, or control over the investment, ensuring that the investment and its returns remain protected, stable, and free from unjust interference.

28.11. The submissions of KE (KE), the Ministry of Energy (MoE (PD)), CPPA-G, and other stakeholders have been duly considered by the Authority.

28.12. The Multi-Year Tariff (MYT) regime for KE commenced with the period 2002–2009, which was subsequently extended until FY 2016. They said MYT was incentive-based, wherein KE was encouraged to enhance profitability through operational efficiency and sustained investments across its generation, transmission, and distribution segments. To safeguard consumer interests and to prevent excessive profitability, a *Claw Back Mechanism* was incorporated under which KE was required to share profits exceeding 12% on the allowed Regulatory Asset Base (RAB) with consumers.

28.13. In the MYT for FY 2017–23, the Authority initially allowed KE a Rupee-based Returns on Equity (RoE), but subsequently revised the same to USD-based Returns, based on the reconsideration request filed by MoE (PD)(PD). The allowed USD-based Return was still not a guaranteed number and was contingent upon achievement of certain regulatory targets, including but not limited to improvements in T&D losses, recoveries, and achievement of sent-out benchmarks.

28.14. For the MYT 2024-30, the Authority also allowed KE a USD based return of 14% in order to maintain consistency and provide predictability as envisaged in NEPRA Act, however, it is also a fact that KE has been allowed actualization of sent-outs in the MYT 2024-30, meaning thereby that allowed revenue requirement of KE is now protected from any downside risks of lower sales, which is a major policy shift and incentive for KE. This shift thus necessitates a corresponding rationalization of the allowed returns, in order to maintain regulatory balance between risks and rewards.

28.15. The Authority also observed that both the MoE (PD) and CPPA-G, being major stakeholders in the power sector, and other stakeholders, have raised serious concerns about allowing USD-based returns to KE. The Authority also understands that GoP holds a 24.6% shareholding in KE. It has been argued that this approach lacks any basis and is inconsistent with the regulatory treatment afforded to other comparable entities, particularly XWDISCOs operating under substantially similar conditions. The MoE(PD) also highlighted that such an indexing mechanism exposes consumers to exchange rate risk without any added value or benefit, while simultaneously undermining the Government's capacity to provide targeted subsidies in the public interest. It has also been highlighted that over the seven-year Tariff control period, the financial implication may exceed Rs. 36 billion, ultimately to be borne either by the consumers through tariff hikes or the national exchequer through subsidies. The Authority also understands that, as the MoE (PD) is actively pursuing privatization of other XWDISCOs, the instant submissions made by the MoE (PD) in its Motion for not allowing USD-based returns, can be construed as a policy decision, meaning that similar treatment will be offered to future privatized DISCOs.

28.16. Based on the above discussion and the submissions of the MoE (PD), CPPA-G, and other stakeholders, the Authority has decided to allow RoE of 14.47% PKR based to KE for its Distribution function for the MYT control period of FY 2024-30. This would ensure consistency/ uniformity in the regulatory treatment across the distribution sector. Since now KE has been allowed a return in PKR, therefore, no adjustment of exchange rate variation shall be admissible on the allowed return of 14.47%.

28.17. For the purpose of true up of RoRB during the MYT period, (RAB shall be considered based on historical cost), the allowed return on equity shall be recomputed to account for the impacts of variation in RAB, in light of the Investment decision. For the purpose of true-up of allowed RoRB, additions in RAB during the year shall be adjusted provisionally based on audited accounts and finally based on 3rd party evaluation, keeping in view the allowed investment.

29. RECOVERY LOSS

29.1. Mr. Imran Shahid submitted that KE has been allowed recovery margins based on rates as low as 92.76%, despite achieving 96.7% in 2022. No such allowance is given to other DISCOs, especially not in Punjab. Passing this burden to paying consumers is inequitable.

29.2. Mr. Hafeezuddin also submitted that permitting KE to pass on recovery shortfalls and taxes (WWF, WPPF, super tax) to consumers penalizes the honest and paying public, including industrial consumers.

29.3. KE in its written comments submitted that the issue of Recovery Loss has been already addressed in detail in Para 34 of Supply Tariff determination dated 27.05.2025. However, recovery losses also exist in XWDISCOs territories but since these are government owned entities, all their losses form part of circular debt and are funded by fiscal support (Tax payers) and surcharges (consumers) like PHL surcharge. Contrarily, KE has been given an improvement curve, and any deviation from the allowed target is to be borne by KE shareholders, thereby having no impact over the consumers. Moreover, National Electricity Policy 2021 (para 5.3.2) also recommends that the target setting for losses and collection should be in line with the ground realities to ensure the sustainability of the distribution and supply segment. Therefore, the targets set by NEPRA are in line with NE Policy and are justified.

29.4. Further, regarding tax pass-through, KE operates under a cost-plus tariff regime where only prudent costs are allowed to be recovered, and since WWF/WPPF/Tax is in line with practice followed for other power sector entities and KE's previous MYT. Moreover, KE would like to submit that WPPF has already been addressed in detail in Para 22 of the Distribution tariff determination.

29.5. The Authority noted that the issue of Recovery Loss pertains to KE's Supply Tariff, and has been deliberated in detail in the said decision; therefore, does not merit discussion in the instant decision.

30. CLARIFICATIONS/ UPDATES

30.1. **In addition, KE has also sought certain clarifications/ updates** over the Distribution Tariff determination as mentioned hereunder;

"Other income" computation in the Distribution reference tariff

30.2. KE sought clarity on the retention of LDs from contractors/suppliers and return on bank deposits by submitting that these have been provisionally deducted from the reference tariff, and these would accordingly be adjusted on true-up as part of the annual adjustment if they meet the actualization criteria mentioned in the Impugned Determination.

30.3. The Authority in the Impugned Determination decided as under;

"The Authority has decided to allow KE to retain LDs from its contractors/suppliers, only in case the Authority does not allow any cost overruns/time extensions etc., for the said works. However, LDs recovered from IPPs/ captive suppliers as per their approved PPAs shall be adjusted in tariff. Further, LDs charged by KE on its fuel suppliers, shall be passed through in tar ifs for such power plants, where KE has been allowed capacity charges, despite non-availability of plant on such fuel."

"The Authority understands that KE's submissions merit consideration, therefore, has decided that interest income on deposits and return on bank deposits to the extent of allowed RoRB and Depreciation, needs to be retained by KE. However, interest income on deposits and return on bank deposits, excluding interest income on amount allowed to KE for RoRB and Depreciation, shall be passed on to the consumers as part of other income."

30.4. In view of the above, the entire amounts of LDs, as reported by KE, were adjusted while calculating Other Income for the FY 2023-24. KE needs to provide complete details /break-up of all LDs, in terms of LDs from contractors/ suppliers and IPPs/ captive suppliers, etc. The Petitioner further needs to substantiate that it has not been allowed any cost overruns/ time extensions for the works carried out by contractors/ suppliers, from which LDs have been charged. Once the requisite details are provided, the relevant amounts of LDs would be adjusted in line with the Impugned Determination.

30.5. For Other income, KE in the Impugned Determination was directed to ensure that all required disclosures are properly reflected in its financial statements in order to work out the correct amount of other income. Accordingly, for return on bank deposits, KE needs to provide proper disclosure in its Audited accounts in terms of return earned on deposits related to RoRB & Depreciation and other amounts. Once such disclosure is available, the amount of interest on bank deposits would be adjusted in line with the Impugned Determination.

Pass-through payments related to WWF/WPPF etc.

30.6. Regarding pass through of WWF/WPPF on an actual payment basis, KE stated that the Impugned Determination covers the following laws;

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i. Companies Profit (Workers' Participation) Act 1968

ii. Workers Welfare Fund Ordinance, 1971.

30.7. KE also stated that in addition to above, the Sindh and Baluchistan Governments have also levied WPPF and WWF under the following laws which should also be added in the Impugned Determination:

i. Sindh Workers Welfare Fund Act, 2014.

ii. Sindh Companies Profits (Workers' Participation) Act 2015

iii. Baluchistan Workers Welfare Fund Act, 2022

iv. Baluchistan Companies Profits (Workers' Participation) Act 2022

30.8. In view thereof, KE requested to include the laws duly enacted by Federal and Provincial Authorities, including any subsequent amendments, so as to cover the payments thereof made by KE to the Federal as well as to the Provincial Authorities under their respective laws.

30.9. The Authority in the matter of WWF/ WPPF decided in the Impugned Determination as under;

"Regarding WWF and WPPF, the Authority has also decided to allow these costs as pass through, on actual payment basis, as part of annual PYA, subject to provision of verifiable documentary evidences, in the subsequent tariff adjustments. However, in case there is a policy decision not to allow WWF or WPPF as pass through costs in future owing to recent negotiations being carried out with power companies, the Authority may consider to review its decision for KE as well."

30.10. The Authority clarifies that WPPF and WWF paid under law duly enacted by Federal or Provincial Authorities, including any subsequent amendments, would be allowed as pass-through on a payment basis, as part of the annual PYA, subject to the provision of verifiable documentary evidence. However, in case there is a policy decision not to allow WWF or WPPF as pass through costs in future owing to recent negotiations being carried out with power companies, the Authority may consider to review its decision for KE as well.

<u>Corporate Tax</u>

30.11. **KE submitted that the Impugned Determination allows corporate tax to KE** as pass-through to the extent of current tax paid after netting off all adjustable taxes. In this regard, KE highlighted that corporate tax is paid during the year in the following forms:

- ✓ As per the law, a taxpayer is required to pay advance income tax under section 147 of the ITO 2001 on a quarterly basis during the financial year (tax year) on its estimated income tax liability.
- ✓ Similarly, under Part V of the Income Tax Ordinance advance/WHT income tax is deducted at source, like on imports, payments against goods and services etc, which are adjustable against the final corporate tax liability.

30.12. KE further stated that since these deduction of taxes at source and advance tax paid under section 147 are in for the form of advance payments, therefore, are deductible against final tax liability including Minimum Tax under Section 113, Alternate Corporate Tax (ACT) under Section 113C and Super Tax under 4C as per the law and balance, if any, is paid at the time of filing of return and hence total tax liability should be allowed to KE. However, any tax credits (including investment rebate), if any, are adjustable under the prevailing law with corporate tax liability and result in savings in corporate tax; the same shall be adjusted.

30.13. Accordingly, KE has requested to allow the aforementioned tax liability to be discharged, including in the form of advance tax and withholding tax in full as pass-through to KE, and clarify the Impugned Determination decision accordingly.

30.14. The Authority in the matter of corporate tax decided in the Impugned Determination as under

> *"In view thereof, the Authority has decided to allow corporate tax to KE as pass through, to the extent of current tax paid after netting off all adjustable taxes (without the impact of deferred tax) subject to provision of verifiable documentary evidences, and shall be allowed through adjustment in tariff on annual basis as part of PYA."*

30.15. The Authority clarifies that Tax Liability (without the impact of deferred tax), as per tax return under applicable Income Tax Ordinance 2001, as amended from time to time, discharged in form of advance tax, withholding tax and payment at the time of return filing is to be allowed as pass through, subject to provision of verifiable documentary evidences. However, in case there is any refund towards the relevant tax Authorities, against the allowed amount of tax, the same shall be adjusted as part of PYA.

<u>CAPEX nature O&M</u>

30.16. On the point of CAPEX nature O&M, KE highlighted that since these investments are of a Capital nature, therefore, requirements vary each year, and specific yearly investment requirements for each year have been given in the investment plan decision. KE understands that the mechanism of indexation and carry forward for underspent amount for CAPEX nature O&M would be consistent with the indexation mechanism and carry forward mechanism prescribed for other CAPEX-related Investments in the investment plan review motion currently under determination of the Authority. Accordingly, NEPRA is requested to clarify the same.

"The Authority however has decided to maintain its earlier decision, whereby CAPEX nature O&M is to be made part of O&M cost, and accordingly the CAPEX nature O&M cost is being allowed to KE as a part of its O&M cost as a separate line item. As mentioned earlier KE, as per its unaudited numbers has reported actual expenditure for such costs as Rs.225 million for the FY 2023-24. The same is being allowed to KE as maximum cap, and as a separate line item under the O&M cost, subject to downward adjustment only, once the Audited accounts for the FY 2023-24 are available. KE is directed to clearly disclose such costs separately in its audited accounts and shall exclude the same from its RAB and Deprecation charges for the relevant year accordingly, for the purpose of tariff adjustments. KE shall provide verifiable documentary evidence for such cost."

30.17. Since the matter pertains to the Investment plan decision of KE, therefore, the issue has been discussed and deliberated in that decision.

31. TRUE UPS FOR THE FY 2023-24

31.1. The Impugned Determination provides adjustment/ true-ups of certain cost items i.e. O&M, Working Capital, RAB, Depreciation, Other Income, Cost of Debts, etc., based on Audited Accounts of the Petitioner and actual exchange rates and interest rates, etc.

31.2. KE has announced its financial results for the FY 2023-24, however, the detailed audited accounts along with notes to the accounts have not yet been made public. Since the instant Motions have been filed against the determined tariff for the FY 2023-24, which has already lapsed, it is imperative to adjust the relevant heads/ costs, which are required to be actualized/ trued up based on audited accounts, interest rates, and exchange rates etc., in light of the mechanism provided in the Impugned Determination.

31.3. Pursuant thereto, relevant information regarding these heads/ costs was obtained from KE. Based on the information provided by KE, adjustment/ true up of such heads has been worked out, and the impact thereof has been reflected in the allowed revenue requirement for the FY 2023-24 of the Distribution Segment as detailed below. As already mentioned, the audited accounts for the FY 2023-24 are still pending publication; therefore, these allowed adjustments would further be subject to adjustments, if required, once the complete audited accounts for the FY 2023-24 become available.

O&M Cost

31.4. Regarding O&M, the Authority decision is as under;

<u>In case KE's actual O&M cost for the FY 2023-24, once its audited accounts for FY 2023-24 are available, is lower than the amount being allowed for the FY 2023-24, the entire difference shall be passed on to the consumers.</u>

31.5. In light of the above decision, actual O&M data was obtained from KE, whereby its actual O&M cost is Rs. 26,012 million as compared to the allowed amount of Rs.26,016. Accordingly, Rs.4.2 million has been deducted in the Revenue requirement of KE for FY 2023-24 on a provisional basis. Once the Audited financial statements are provided, the final true-up would be made in accordance with the Impugned Determination. The said amount has been reflected under O&M cost instead of PYA.

<u>Other Income</u>

31.6. As per the MYT tariff, Other Income is to be actualized based on audited accounts. In this regard, KE has reported actual Other Income for the Distribution Function for FY 2023-24 amounting to Rs. 4,213 million (excluding return on bank deposits).

31.7. For the purpose of provisional actualization, the total Other Income of Rs. 4,421 million, including the impact of return on bank deposits, has been considered, subject to adjustment upon availability of the audited accounts for FY 2023-24. As per the MYT, KE is allowed to retain income from bank deposits to the extent of RORB and depreciation. However, due to the non-availability of audited financial statements, the relevant disclosure is not yet available to the Authority. The final adjustment shall be made once the audited accounts are published, in accordance with the provisions of the MYT tariff.

31.8. In view of the above discussion Revenue requirement for FY 2023-24 has been adjusted by taking into account the Other Income of Rs.4,421 million for the distribution function instead of the already allowed amount of Rs. 5,096 million. The said amount has been reflected under Other Income instead of PYA.

<u>Cost of debt</u>

31.9. The cost of Debt has been trued up/adjusted as per the mechanism provided in the Impugned Determination, resulting in net adjustment of Rs.620 million as detailed below; The said amount has been reflected as part of RORB instead of PYA.

	Rs.Mln Distribution
Cost of Debt - original	**14,219**
Cost of Debt - Revised	13,599
Net Negative Adjustment	**(620)**

31.10. The above adjustment has been made based on the data provisionally provided by KE and is subject to revision upon availability of the audited financial statements for FY 2023-24 and submission of all requisite documentary evidence by KE to support the true-up adjustment.

Corporate Tax FY 2023-24

31.11. MYT determination states that the Minimum tax / WWF / WPPF is pass-through and as per KE, the impact of the same is around Rs.8,443 million. In light of the above, the requested amount is being allowed as part of PYA, subject to adjustment once the complete Audited financial statement for the FY 2023-24 is available and KE provides the relevant record as required under the MYT Determination. This amount has been accounted for while working out the overall PYA in the Supply business.

32. In view of the discussion made in preceding paragraphs and accounting for the adjustments discussed above, the revised Revenue requirement of the Petitioner for its Distribution Function for the FY 2023-24 has been worked out as under;

Description	Unit	Distribution Allowed Revenue Requirement
Setouts	GWh	**17,768**
K.E System	GWh	7,471
Power Purchase	GWh	1,758
CPPA-G	GWh	8,538
T&T loss	%	0.75%
Distribution loss	%	9.00%
Total T&D loss	%	9.68%
Total T&D loss	GWh	1,720
Units Sold	GWh	**16,047**
Distribution Margin		
O&M Cost	Rs. Mln	26,011
Working Capital	Rs. Mln	(1,335)
Capex O&M	Rs. Mln	225
Gross Margin	Rs. Mln	**24,902**
Other Income	Rs. Mln	(4,421)
Depreciation	Rs. Mln	8,802
RORB	Rs. Mln	17,177
Net Margin	Rs. Mln	**46,459**
Total Revenue Requirement	**Rs. Mln**	**46,459**
Average Tariff	**Rs./kWh**	**2.90**

The decision of the Authority is hereby intimated to the Federal Government in terms of section 31(7) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.

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