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12/5/22
Chairman
Secy (MRE/CD)
m (Lg 17)

✓ The Registrar

National Electric Power and Regulatory Authority
NEPRA Tower, Atta Turk Avenue (East)
G-5/I, Islamabad

SUBJECT: MOTION FOR LEAVE TO REVIEW AGAINST THE GRANT OF
GENERATION LICENSE, WITH SECOND TIER
AUTHORIZATION TO GRID EDGE (PRIVATE) LIMITED
(GEPL)

Dear Sir,

1. We are submitting this Motion for Leave to Review in terms of Section 7(2)(g) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (NEPRA Act) read with NEPRA (Review Procedure) Regulations, 2009 as amended by SRO 1036 (1)/ 2014 dated 19.11.2014 and otherwise, in the captioned matter for and on behalf of our Client, Faisalabad Electric Supply Company Limited. Faisalabad (the "FESCO").
2. The Motion is being filed by the Director (Legal & Labour) FESCO who is duly authorized in this behalf by the board of directors through its resolution (**Exhibit -A**).
3. The officer authorized is the well versant with facts of the case and can depose. His affidavit (**Exhibit B**) as to the correctness, authenticity and accuracy of the motion for review, documents and information is submitted along with the Motion.
4. The prescribed fee for the motion had paid vide Cheque No. 1842023951 (**Exhibit - C**)

REGISTRAR

Dy. No. 446
Date: 12.5.2022

alongwith eloge of Rs. 16786/-

5. This Motion (**Exhibit - D**) is within the prescribed period of limitation of 30 days; therefore, neither any request for condonation nor additional fees is required to be paid.
6. This motion for leave to review is being submitted on the facts and grounds as set out in detail herein after and raises important points of law which has not been discussed in the matter.

Regards,



Sheikh Muhammad Ali
Advocate Supreme Court

Rasikh Consilium
Advocates & Consultants
1 – C, LDA Apartments,
Lawrence Road, Lahore



FESCO
PHONE # 041-9220478

Faisalabad Electric Supply Company Limited

OFFICE OF THE
CHIEF EXECUTIVE OFFICER
FESCO FAISALABAD

No. 2102 /Legal

Dated 28/4/22

Sh. Muhammad Ali, Advocate Supreme Court
1-C, LDA Apartments, 55-Lawrence Road, Lahore.

**Subject:- MOTION FOR LEAVE TO REVIEW BEFORE NEPRA AGAINST THE
DECISION DATED 11.04.2022 IN THE MATTER OF GRANT OF
GENERATION LICENSE NO. SGC/162/2022 TO M/S GRID EDGE
PRIVATE LIMITED**

You are requested to defend FESCO in the above cited case. Power of Attorney duly signed by the competent Authority is enclosed herewith. The Department concerned is being requested to depute an officer well conversant with the facts of the case to brief you and supply the relevant record. In a recovery case of Electricity dues, the court be requested by proper application to direct the consumer to make payment of the disputed amount in the court till the final order in that case and also that the current bills should continued to be paid regularly for any difficulty that may arise in the conduct of the case, this office may be contacted immediately. The department officer be allowed briefing during the office hours.

Miscellaneous expenses upto 20% of the professional fee may be incurred & full & accurate be rendered to this office for re-imbursement. Certified copy of the Judgment, Comments may also be furnished to this office for examination.

The fee will be paid subject to the approval of the C.E.O / Director (HR&A) FESCO Faisalabad. The prescribed Performa duly filled in alongwith its enclosures duly attested, be sent to this office for determination and approval of your fee, while submitting your fee bill, kindly intimate the name of the office to which the case relates.

Kindly note that the fee bill will not be entertained unless it is accompanied by a copy of judgment of the Court attested by you. The copy of the judgment is to be supplied in every case by you whether the case is decided in favour or against the FESCO / Authority, if it is decided against the FESCO / authority, a certified copy of judgment will have to be supplied by you well before expiry of limitation period.

This case is being entrusted to you on behalf of FESCO kindly see that you do not accept any case against FESCO. You will be paid in accordance with the schedule of fee approved by the Authority/ FESCO.

You will pursue the case vigorously and proceedings held in the court on each date of hearing may be informed to this office in writing.

This power of Attorney is being issued under the power delegated by BOD FESCO on behalf of all the defendants/Respondents.

Farrukh Aftab
Director (Legal & Labor)

C.C.

1. G.M. (CS) FESCO Faisalabad / DG (MIRAD) FESCO Faisalabad with reference to U.O Note dated 28.04.2022.
It is requested to depute an officer well conversant with facts of the case to brief the Advocate & supply the relevant record before the date of hearing it is also requested to be present in the court on each date of hearing to assist the Advocate & watch the proceedings & intimate the same to Authority promptly. In case of adverse Judgment the comments whether an appeal should be filed or not, may also be sent with the period of limitation alongwith certified copy of the Judgment depicting the stamp of copying agency.



Faisalabad Electric Supply Company Limited

FESCO
Tel # 041-9220478
Fax # 041-9220233
<http://www.fesco.com.pk>
E-Mail: dir_11@fesco.com.pk

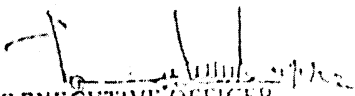
LEGAL DIRECTORATE
FESCO FAISALABAD

No. 13165 /

Dated: 12/01/22

OFFICE ORDER

In pursuance of Board of Directors Resolution No 04 dated 27.12.1999, Recommendations / Directions of HR Nomination & Legal Committee BOD FESCO circulated vide No 75/CO-HR dated 23.11.2021, the undersigned authorizes Director (Legal & Labour) for filing / defending suits, other proceedings, signing, verifying, complaints, written statements, other pleadings, applications, appeals, Revisions & issuance of Power of Attorneys in favour of counsel on behalf of FESCO in Civil Courts, POH Electric Inspectors, Consumer Courts, Labour Courts, NEPRA, District & Sessions Courts / Appellate Courts, Tribunals, NIRC, High Courts & Supreme Court of Pakistan.


CHIEF EXECUTIVE OFFICER
FESCO FAISALABAD

CC:

1. All Chief Engineers under FESCO.
2. Chief Financial Officer FESCO Faisalabad.
3. DG (HR&Admn) FESCO Faisalabad.
4. Addl DG (HR) Admn FESCO Faisalabad.
5. Director (CM) FESCO Faisalabad.
6. Project Director Construction / GSC Faisalabad.
7. All SEs under FESCO.
8. Muster File.

FAISALABAD ELECTRIC SUPPLY COMPANY

MINUTES OF 70th MEETING OF HR, NOMINATION & LEGAL COMMITTEE HELD ON 18th NOVEMBER, 2021

No. 75/CO-III/ Committee

Date: 23.11.2021

A meeting of HR, Nomination & Legal Committee (the Committee) of the Board of Faisalabad Electric Supply Company Limited (the Company/FESCO) was held on Thursday, 18th November, 2021 at 11:00 a.m. at FESCO HQ Faisalabad. Following Directors and Officers of the Company attended the meeting.

Present:

- | | | |
|--------------------------------------|------------|----------------------|
| 1. Barrister Dr. Irfan Ahmad Chattha | Convenor | |
| 2. Mr. Bashir Ahmad | Member/CEO | |
| 3. Rana Atif | Member | |
| 4. Mr. Suleman Najib Khan | Member | |
| 5. Mr. Muhammad Anwer Sheikh | Member | (Through video link) |
| 6. Lt. Col. (R) Syed Saleem Ahmad | Member | |

On Special Invitation:

- | | |
|-------------------------|----------------------|
| 1. Syed Hasnain Haider, | Chairman, BOD FESCO. |
|-------------------------|----------------------|

In attendance:

- | | |
|----------------------------|-----------------------------|
| 2. Mr. Nasar Hayat Maken | DC (HR&Admin) FESCO |
| 3. Mr. Ghulam Mujtaba Khan | Coordinator / Secretary |
| 4. Mr. Mehmood Ahmad | Dy. Director (HR & A) FESCO |

Quorum

The Committee was apprised that quorum of the meeting was completed. It was also apprised that Rana Atif, Mr. Suleman Najib Khan, Lt. Col. (R) Syed Saleem Ahmad and Mr. Muhammad Anwer Sheikh would participate through video link. The Coordinator/Secretary of the Committee welcomed the members of the Committee and proceedings of the meeting started with recitation of Holy Quran.

Convenor

Barrister Dr. Irfan Ahmad Chattha took the chair to preside the meeting and Committee took up the agenda as follows:-

FAISALABAD ELECTRIC SUPPLY COMPANY

7	i). Cases/ Review before the Wafaqi Mohtasib	Rs.8000/-
8	(ii). Representation before the President.	Rs.20,000/-
9	NEPRA Appellate Board	Rs. 35,000/- Professional fee + (Rs. 2500/- Misc. & Rs. 2500/- clerkage) Total Rs. 40,000/- + TA/DA as admissible to BPS-19 officer
10	NEPRA Tribunal	Rs. 40,000/- Professional fee + (Rs. 2500/- Misc. & Rs. 2500/- clerkage) Total Rs. 45,000/- + TA/DA as admissible to BPS-19 officer
11	Review before NEPRA	Fee / Special fee when claimed by a counsel is to be assessed / recommend by Chief Law Officer / Director (Legal) keeping in view the nature of the case, quantum of work involved in the case for seeking approval of CEO/FESCO.
12	Drafting and vetting of Legal Instruments	Rs. 20,000/-
13	Drafting & reply to Legal Notice	Rs. 15,000/-
14	Legal Opinion	Rs. 20,000/- in ordinary cases. Fee / Special fee when claimed by a counsel is to be assessed / recommend by Chief Law Officer / Director (Legal) keeping in view the nature of the case, quantum of work involved in the case for seeking approval of CEO/FESCO.

8.5. DIRECTION: 70-HRC-D/02

HR, Nomination & Legal Committee of BOD FESCO directed the management that following directions should be implemented for smooth running of affairs of Legal Directorate FESCO;

- a. Special fee bills of the Advocates will be processed by Law Directorate through Chief Law Officer / Director (Legal & Labour), who will assess the reasonability of the fee claimed, justify & recommend special fee and forwarded the same to CEO FESCO for seeking approval,*
- b. Professional fee bills of the Advocates prosecuting FESCO shall be processed and payment thereof shall be ensured within a period of one month after submission by the counsel with all required documents,*
- c. All Civil / Criminal cases of the company should be dealt at Headquarters level. Chief Law Officer & Director (Legal & Labour) will issue Power of Attorneys for the engagement of counsel,*
- d. FIRs involving theft of energy are not pursued vigilantly and proactively by the controlling officers. In future all such cases should be pursued / contested vigilantly and report thereof in this regard will be forwarded to Law Directorate FESCO on daily/ regular basis,*
- e. Letters should be written to each counsel that all out efforts should be made to get the long outstanding cases expedited,*
- f. Performance of the lawyers will be monitored on monthly basis and cases should be marked on rotation basis keeping in view the performance of the counsel.*

(Responsibility to execute this decision - DG (HR & Admn))

FAISALABAD ELECTRIC SUPPLY COMPANY

Khan and Mr. Bashir Ahmad to chalk-out program for the betterment and re-structuring of the Design and Procurement Departments of FESCO.

10.2. After brief discussion, the Committee passed the following recommendation;

10.3. RECOMMENDATION: 70-HRC-R/08.

HR, Nomination & Legal Committee recommended that Mr. Suleman Najib Khan and Mr. Bashir Ahmad are requested to chalk-out program for the betterment / re-structuring of the Procurement & Design Departments of FESCO. FESCO Board may be intimated accordingly.

HR, Nomination & Legal Committee noted that it was imperative that FESCO must increase its customer base and in line with international best practices, recommended that BOD FESCO be requested to allow FESCO to approach NEPRA for revision of policy and allow approval of connection on the basis of forecast rather than sanctioned load for such cases as FIEDMIC.

(Responsibility to execute this decision - CEO FESCO)

There being no other business, meeting ended with the vote of thanks.

Minutes issued after the approval of Convenor, HR, Nomination & Legal Committee of BOD FESCO.

Ghulam Mujtaba Khan
Director (CM) FESCO
Coordinator

HR, Nomination & Legal Committee

CC:-

1. Syed Hasnain Haider, *Chairman, BOD FESCO*
2. Barrister Dr. Irfan Ahmad Chattha, *Convenor, HR Committee of BOD FESCO*
3. Rana Atif, *Member, HR Committee of BOD FESCO*
4. Lt. Col. (R) Syed Saleem Ahmad, *Member, HR Committee of BOD FESCO*
5. Mr. Suleman Najib Khan, *Member, HR Committee of BOD FESCO*
6. Mr. Muhammad Anwer Sheikh, *Member, HR Committee of BOD FESCO*
7. Mr. Bashir Ahmad, *CEO / Member, HR, Nomination & Legal Committee of BOD FESCO*
8. Company Secretary FESCO, Faisalabad.
9. SO to CEO / Dy. Company Secretary FESCO, Faisalabad.
10. Chief Financial Officer FESCO, Faisalabad
11. DG (HR&Admin) FESCO, Faisalabad
12. Master File

For
information
please

For necessary
action

OFFICE OF THE
CHIEF EXECUTIVE OFFICER
FESCO (WAPDA) FAISALABAD

Dated 08/05/06

OFFICE ORDER

In pursuance of Board of Directors FESCO Resolution No.4
dated 27.12.1999, the undersigned authorizes Director (HR&A), for
filing/defending suits, other proceedings, signing, verifying complaints, written
statements, other pleadings, applications, appeals, revisions and issuance of
Power of Attorney in favour of Counsel on behalf of FESCO in cases
pertaining to High Court and Supreme Court of Pakistan.

Brig®
TARIQ RASUL
CHIEF EXECUTIVE OFFICER
FESCO FAISALABAD

- C.C.
1. Chief Engineer/Director (Technical) FESCO Faisalabad
 2. Director Finance FESCO Faisalabad
 3. Manager (Operation) 1st Circle FESCO Faisalabad
 4. Manager (Operation) 2nd Circle FESCO Faisalabad
 5. Manager (Operation) Jhang Circle FESCO Jhang
 6. Manager (Operation) Sargodha Circle FESCO Sargodha
 7. Manager GSO Circle FESCO Faisalabad
 8. Manager GSC FESCO Faisalabad
 9. Manager (Project Construction) FESCO Faisalabad
 10. Manager (Technical Services) FESCO Faisalabad

c/47
BOP

RESOLUTION BY CIRCULATION UNDER ARTICLE 44 OF THE
ARTICLES OF ASSOCIATION

(5)

RESOLUTION No. 4 DATED 27-12-1999

AUTHORIZATION TO INSTITUTE AND TO DEFEND CASES IN COURTS, ETC.,
ON BEHALF OF THE COMPANY,
AND TO ENGAGE COUNSEL AND GIVE POWERS OF ATTORNEY

Resolved [in continuation of this Board's Resolution No. 5th(3) dated 13-4-99] that the Chief Executive be and is hereby authorized, and shall be deemed to have always been so authorized, to institute suits, file petitions, prefer appeals, make applications, submit written statements, and file any other proceedings, for and on behalf of the Company, before arbitrators (where there exists a duly approved arbitration agreement), courts of law, tribunals and commissions, in all matters and manners of arbitration and litigation; and, further, to engage and appoint and instruct counsel, and to give all necessary powers of attorney to such counsel to appear and act for the Company in such arbitration and litigation.

Resolved further that the Chief Executive be and is hereby authorized to extend the abovesaid authority, or part thereof, to any other Officer of the Company, and further that the Chief Executive be and is hereby authorized to withdraw such authority, whether in full or in part, from any such Officer, at his discretion, by an order in writing.

Resolved further that the Chief Executive be deemed and shall hereby be deemed to have always been authorized and invested with the powers conferred on him in terms of the resolutions contained in the preceding paragraphs.

[Note for guidance of the Company Secretary: The text given above within square brackets is to be used only if a resolution on a similar subject was passed earlier by the Board of Directors.]

Name & designation

Signatures

Gen. Zulfiqar Ali Khan, Chairman & Director

Brig. H. Aslam Khan, Chief Executive & Director

Mr. Rashid Ali, Director

Mr. M. Asghar Qureshi, Director

Mr. Abdul Mannan, Director

Mr. Arshad Nadeem, Director

Mr. Mukhtar Ahmed, Director

[Signature]

[Signature]

[Signature]

[Signature]



0391 ABDULLAHPUR BRANCH
FAISALABAD-WEST CANAL ROAD

Cheque No 1842023951

Date

3 0 0 4 2 0 2 2

Pay

NEPRA

or bearer

Rupees

***One Hundred Sixty-Seven Thousand One Hundred Eighty-Six

PKR 167186/-

Only***

PK59 MUCB 0039 1010 1000 7932

DIRECTOR OF A/C AEB WAPDA

Please do not write below this line.

Faisalabad Electric Supply Co. Ltd. Faisalabad

Assistant Manager Accounts Signature Manager

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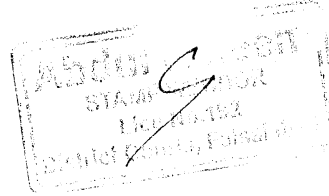
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E-Stamp ID : PB-FSD-1964A41710B409C3
Stamp Type : Low Denomination
Amount : Rs 100/-

Description : AFFIDAVIT - 4
Applicant : FARAKH AFTAAB[38401-3713946-7]
S/O : AFTAAB ALI
Address : FSD
Issue Date : 11-May-2022 2:03:37 PM
Delisted On/Validity : 18-May-2022
Amount in Words : One Hundred Rupees Only
Reason : FESCO
Vendor Information : Abdul Kareem | PB-FSD-192 | District Court Faisalabad



نوٹ: یہ ٹرانزیکشن تاریخ اجرا سے سات دنوں تک کے لیے قابل استعمال ہے۔

AFFIDAVIT

I, Farrukh Aftab, the Director (Legal & Labour) FESCO duly being the authorized officer by the Board of Director FESCO to sign and submit the Motion for Leave to Review for and on behalf of FESCO deposes on oath that,

1. This affidavit is being submitted as the integral part of the Motion for Leave to Review being filed by FESCO in the matter of the determination whereby the generation licence along with second tier has been granted to the Grid Edge (Private) Limited.
2. The contents of the accompanying Motion for Leave to Review in terms of Section 7(2)(g) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (NEPRA Act), including all supporting documents are true and correct to the best of my knowledge and belief, and nothing material or relevant thereto has been concealed or withheld therefrom.
3. All further documentation and information to be provided by the Company in connection with the aforesaid Motion for Leave to Review shall be true and correct to the best of my knowledge and belief.

I also verify that the contents of this Affidavit are true and correct to the best of knowledge and belief.

Deponent

Director (Legal & Labour)
FESCO, Faisalabad



ATTESTED
A. 22/5/22
SIL. ABDUL WAHID
ADVOCATE
Faisalabad

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A. REVIEW MOTION SUMMARY

1. The Petitioner seeks the review of,
 - (I) NEPRA's Determination and orders granting the Generation Licence (bearing No. SGC/ 162/ 2022) to M/s Grid Edge (Private) Limited ("GEPL"), and
 - (II) the Second Tier Authorization under Section 22 of Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 ("NEPRA Act") and Rule 7 of the NEPRA (Generation) Rules 2000 ("NEPRA Rules") to the GEPL for sale of power to the consumer namely Crescent Textile Mills Limited, Sargodha Road, Noorpur, District, Faisalabad, Punjab ("CTML").
2. The Motion was filed, after due compliance of the requirements NEPRA within the limitation by the Director (Legal & Labour) FESCO who is duly authorized in this behalf by the board of directors through its resolution.

B. FACTUAL BACKGROUND

3. The Petitioner/ Faisalabad Electric Power Company ("FESCO") is a distribution company that has been granted the 'Distribution License' (bearing No. 02/DL/2002) by the National Electric Power Regulatory Authority ("NEPRA") under the provisions of NEPRA Act and whereunder FESCO has developed its network to supply the electricity to its around 4.6 million consumers who are situated in the 'Service Territory' comprising of the geographical districts of Faisalabad, Sargodha, Mianwali, Khushab, Jhang, Bhakkar, T.T Singh and Chiniot in the Province of the Punjab.
4. GEPL is a company incorporated under the Companies Act 2017 and has the registered office at Karachi, Pakistan. GEPL applied for the grant of Generation License in respect of its 3.451 MWp PV based Generation Facility to be located at the premises of CTML which is a textile mill that has obtained two connections from the FESCO in category B-3,

- a. Consumer No. 28-13128-5313870 with 4.78 MW sanctioned load, and
 - b. Consumer No. 28-13128-5313880 with 4.90 MW sanctioned load.
5. The Authority invited FESCO and other stakeholders on the application for grant of Generation Licence by GEPL. CPPA & FESCO filed their comments. FESCO explicitly objected the application of GEPL.
6. On 13.04.2022 FESCO received the Letter NEPRA/R/DL/LAG 503/4935-40 dated 11.04.2022 which was issued by the learned Registrar NEPRA and conveyed the Determination of the Authority in the subject matter along with the Generation Licence No. SGC/ 162/ 2022 granted in terms of Section 14-B of NEPRA Act as well as the Second Tier Authorization granted under Section 22 NEPRA Act read with Rule 7 of the NEPRA Rules.
7. FESCO is since aggrieved of this Determination and consequential grant of the Generation License as well as the Second Tier Authorization for reasons as shall be stated hereinafter, therefore, is submitting this Motion for Leave to Review under the relevant provisions of NEPRA Act read with the NEPRA (Review Procedure) Regulations, 2009 against the impugned orders ("**Motion**").

C. IMPUGNED ORDER

8. Following are impugned (jointly and severally),
 - a. Determination in the subject matter;
 - b. Consequential grant of the Generation License; and
 - c. The Second tier Authorization.

D. GROUNDS FOR THE REVIEW MOTION

9. There is a consistent approach of NEPRA that the Review Petition should bring such facts in the knowledge of the Authority those were either not considered earlier or were not in the knowledge of the parties. FESCO

submits this Motion, *inter alia*, before or have been wrongly relied or referred to on the Impugned Orders.

10. There are sufficient grounds, those are given below and shall be enlarged during hearing/ proceedings, for Review that may modify the Impugned Order.

I. Legal Grounds

11. The Authority has considered that GEPL plans and supplying the electricity to CTML as the Bulk Power Consumer ("BPC") through cables located on the private property owned by the BPC. The Authority also observed and discussed the definitions of "BPC" and "Distribution" as appearing in the NEPRA Act. Doing that, in sub-para (vii) of para (C) of the Impugned Determination, the Authority concluded that the *facilities to be used for delivery of the electric power to above BPC are located on private property... and will be owned, operated, managed and controlled by the BPC therefore the supply of power to CTML by GEPL does not constitute a distribution activity under the NEPRA Act and Distribution Licence will not be required by the company*. The above observation is seconds the submission of FESCO that the entire object of the activity is that CTML should *own, operate, manage and control a generation facility* for its own use and therefore the CTML would not require the generation license. Otherwise, the generation of power from one facility (GEPL) and its sale & supply to the other entity (CTML) *essentially is an activity which include the "distribution"*. Therefore, the determination and findings of the Authority are incorrect on plane reading of the NEPRA Act.
12. There is no cavil that renewable energy has its own impacts on consumer mix and environmental standards. The observation of the Authority that generation mix is skewed towards the thermal power plants (licensed by NEPRA itself) or value of RE energy is of no independent value in the present case where FESCO is a purchaser of the energy from national grid while the energy to be generated under this proposal, as observed by

NEPRA, is on a private property and cannot be effective against the national energy mix.

13. The vital question for the Authority's determination was the impact of this (or such) arrangement on the system as a whole. The proposal has the technical, financial and legal impacts. As noted above, the proposed RE generation facility will not be benefiting the national grid and will be out of the purview of the Distribution Code. On the other hand, FESCO for all times will have to keep the load demand of the CTML in consideration and has to procure power accordingly. The in/ out without prior notice may lead to safety issues, system instability etc. while affecting the overall sale of energy (from the national grid) to the consumers. It shall cause increase for the consumer who are the buyer from the national grid alone. As such, there is an element of discrimination among the classes of consumers and shifting of the cost to such consumers. These aspects, in *prima facie*, have lost the regulatory capture of NEPRA despite specific submission/ comments by the CPPA.
14. In sub-para (v) of para (D) of the Impugned Determination, the Authority has observed noted that "*relevant regulations in this regard are still under formation*". There are even no rules on the issues relevant for the determination. The law is settled that the exercise of discretion must be structured according to the law (Act) and the Rules. It is also important to submit that the subordinate legislation (Regulation) may not be used to take over or replace the Rules. Otherwise, on proper interpretation of the law, it may amount to excessive subordinate legislation offending the objective parameters for powers to make the Regulations.
15. In sub-para (vi) of para (D) of the Impugned Determination, the Authority has referred to Section 21 of the NEPRA Act which is to be read in line with Sections 22 & 23 of the NEPRA Act – and in this case the amendments made to the NEPRA Act in 2018 shall have no force/ application due to the provisions of Section 50 of the NEPRA Act after the amendment ("**Post Amendment NEPRA Act**").

16. Section 22 of the NEPRA Act requires that where a BPC intends to stop the purchase of power from the Distribution Company, it shall give three years advance notice and shall pay the amount of cross subsidy for uneconomic services. Even the Post Amendment NEPRA Act require the notice; though, for a period of one year and without payment of the amount of cross subsidy. In this case, FESCO has not received any notice of stoppage from the CTML who has been declared as the BPC by NEPRA in the Impugned Determination.
17. This is more significant in this case where the BPC had two connections/facilities in (what it calls know as) "*one premises*". The BPC (as noted above) has two connections of 4.7 MW and 4.9 MW sanctioned loads whereas the proposed generation facility is of 3.451 MWp (which as per NEPRA amounts to 7% of the sanctioned load). Moreover, it is based on an around 8 hours availability of the solar. Thus, the BPC shall be dependent on FESCO and will not terminate the supply rather will have another independent source. The determination has failed to consider the legal and financial impacts of this proposal (and on other such proposals). Though immaterial, but for sake of record, it is also apprised that the Impugned Determination is also unclear that will the proposed facility be on roof-top facility or otherwise.
18. In sub-para (x) of para (D) of the Impugned Determination, the Authority has noted three comments of the stakeholders, including CPPA & FESCO. The questions noted by the Authority are related to (i) misuse of tariff, (ii) exclusivity, and (iii) non-service of the notice required under Section 22 of the NEPRA Act. As submitted before, the comments of CPPA as to the impact of such arrangement on the recovery of the pool purchase price (mix-generation) is not considered except holding that the "*...the Authority considers that due to the current structure of the tariff the observation of CPPAGL and FESCO carries significance, however, at the same time it is worth considering that GEPL will only be supplying a very small fraction (7.00%) of the sanctioned*

load with can be attributed to its natural growth meaning there will not be any adverse impact on the base line consumption pattern of CTML from the utility".

19. In addition to submissions in para. 16 above, it is pointed that neither the application nor in any other comments, CTML suggest of any "natural growth" in load demand; rather, it is uncertain that the proposed facility will be used to supply power to any particular Unit (I or II) or will be an additional facility and there will be no impact on FESCO's existing sale status. Moreover, in that case, the matter lies with CTML and not GEPL.
20. Even otherwise, the threshold of 7% noted by the Authority may not be applicable in any other case of such a proposal when the threshold is different. The determination, humbly submitting, must not be based on a particular factual arena of a case rather should be based on law and principle and doctrine of necessity may not be applied.
21. The assumption of "natural growth" by NEPRA favours FESCO's position that the CTML is intending to have the independent facility to circumvent the otherwise due increase/ change in consumer category to B-4.
22. The impact of this vague submission on part of the CTML (through GEPL) is that the Authority has observed in sub-para xi of para (D) of the Impugned Determination that "...CTML has confirmed that it will continue to maintain its supply from FESCO therefore the question of notice period does not arise". Unilateral variation in load and obtaining / entering into a contract for the supply for another source is not permissible under the law – notwithstanding the omission of the Proviso clause of Section 21 (b), NEPRA Act through the Post Amendment NEPRA Act.
23. The submissions made in Para 15 above are reiterated to submit that the determination of NEPRA (in sub-para xi of para (D) of the Impugned Determination) with regard to Section 22 of the NEPRA Act is without taking into account the complete submissions of FESCO.

24. FESCO has made a detailed presentation, followed by the written submissions, on its renewal of license application and believes that the impact of the Islamabad High Court judgment is not until the "validity of the license period" alone. The Authority's kind attention is guided to the provisions of the NEPRA Act, Post Amendment NEPRA Act, Islamabad High Court judgment and the ground realities and facts those still surround the otherwise volatile power market with least regulatory control. Further, the attention is invited to the fact that even the Post Amendment NEPRA Act does not make it mandatory to take away the exclusivity but it is in discretion of the NEPRA to make decision in appropriate cases under structured exercise of discretion for which Rules are still to be notified by the Federal Government.

II. Factual Grounds for Review Motion

25. It is contented that this facility will be on grid system whereas it provides for an *isolated distribution facility* through underground cables from the Generation resource to the consumer point of supply.
26. Details regarding interconnection arrangement are vague as it simply says that Power generated will be supply to *different units* of CTML which is inconsistency with application for supply to Unit-I in Unit-II.
27. The 2nd tier authorization has been allowed for CTML whereas the case involved two connection holders/ consumers of FESCO who both fall under the definition of the BPCs – i.e., CTML Unit-I (4.78 MW) and CTML Unit-II (4.90 MW). The application and licence portray CTML as a single consumer having load requirement of around 9.65 MW. Such Consumer should have the connection of Category B-4 and single connection at the site.
28. There is no appropriation of generation to Unit – I and Unit – II which both are fed through independent feeders of FESCO.
29. Unlike NEPRA's assumption of the natural growth in the load demand there is no such contention/ claim on record. Even the single line diagram

failed to pin point the point of installation, its nature (solar form, roof top etc.) feeder lines, panel room, feeders and the location of Units on basis of the units or composite CTML as single premises. Therefore, but without conceding the legal submissions, Authority is requested to reconsider.

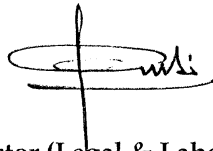
III. Other Grounds for Review Motion

30. The Determination has not taken in to the consideration that what could be the impact of the Impugned Orders on the cross subsidization that is to prevail in all events.
31. To continue, there is an essential financial impact on the Petitioner who has to pay the Power Purchase Price inclusive of the 'Fixed Charges'. The power plants were made available under different power policies of the government of Pakistan to ensure provision of the power that admittedly is far better now. This regime, is an unignorable hurdle in the direct purchase of power by the consumer from a generation unit which is not selling to the national grid.

E. PRAYER

It is therefore, humbly submitted that this Motion for Leave to Review be graced with acceptance and the Generation License granted vide Impugned Orders be cancelled; the second-tier authorization be withdrawn and the application of Grid Edge Private Limited be declared not-maintainable as well as incomplete and rejected.

It is prayed that pending decision of the Review Motion, the operation of Impugned Order may please be kept suspended. Any other relief that it is deemed necessary for equitable and legal disposal of the Review may also be granted.



Director (Legal & Labour)
Faisalabad Electric Supply Company Limited

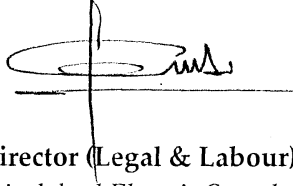
Director (Legal & Labour)
FESCO, Faisalabad

FESCO's MOTION FOR LEAVE TO REVIEW
Against the Authority's Orders dated 11.04.2022

Certificate:

It is certified that, in understanding of FESCO, this Review Motion are on sufficient grounds those shall result in modification and withdrawal of impugned Determination.

Moreover, the requirements stipulated in the application laws are complied with to the best of knowledge and belief.



Director (Legal & Labour)
Faisalabad Electric Supply Company Limited

Director (Legal & Labour)
FESCO, Faisalabad