



Faisalabad Electric Supply Company Limited

OFFICE OF CHIEF EXECUTIVE OFFICER

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No. 6975

Dated: 11-09-2025

Disc

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REGISTRATION OFFICE
Diary No: 10928
Date: 15-9-25

Subject: - **AUTHORITY PROPOSED MODIFICATION IN THE ELECTRIC POWER SUPPLY LICENSE OF FESCO.**

Ref: 01. Your office letter No. NEPRA/R/D.G(Lic)/LAC-13/12536 dated 08.08.2025 (received on 11.08.2025).
02. This office letter No. 6917/MIRAD dated 26.08.2025.

- Faisalabad Electric Supply Company Limited (the "DISCO") respectfully submits its response to National Electric Power Regulatory Authority's (the "Authority") Proposed Modification dated 08 August 2025 (the "APM") to its Supply License (the "Supply License") and specifically Articles 3, 14 and 28 thereof.
- It is submitted at the outset that the Supply License and the terms thereof are subject to an ongoing Appeal filed by the DISCO (the "Appeal"). The Appeal is pending adjudication before the NEPRA Appellate Tribunal (the "Appellate Tribunal"), wherein the learned Appellate Tribunal has already passed interim orders in favor of the DISCO. The instant submissions are being filed without prejudice to the DISCO's Appeal, the position it has taken therein, and its rights and interests at law, which it hereby expressly reserves.
- Vide* the APM, the Authority has proposed to alter specific aspects of Clauses 3, 14 and 28 of the Supply License. In particular it has proposed to retain the overarching provision of Article 3, whilst amending the second proviso thereto with the following (the "Clause 3 Amendments"):

cc: DRO(I)

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NEPRA
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“Provided further that the Authority may grant a licence for Supplier of Last Resort to any Entity, holding a distribution licence in the Service Territory of a Licensee, and upon grant of such license, the Service Territory of Licensee shall stand automatically modified.”

4. The Clause 3 Amendments adversely impact the DISCO, particularly in context of those areas within its service territory wherein it is already performing the functions of the Supplier of Last Resort (the “**SOLR**”), and within which infrastructure investment has been approved by the Authority. In this respect the following may be noted with respect to the Clause 3 Amendments:

(a) The Clause 3 Amendments go against the express wording of the NEPRA Licensing (Electric Power Supplier) Regulations, 2022 (the “**Supplier Regulations**”) and the NEPRA Eligibility Criteria (Electric Power Supplier Licenses) Rules, 2023. The aforementioned laws envisage two (02) types of supplier licensees: competitive suppliers and SOLRs. A competitive supplier is defined in Regulation 2(1)(h) of the Supplier Regulations as:

“(h) “competitive supplier” means a person licensed under section 23E of the Act to supply electric power to only those consumers who are located in the territory specified in its licence and meet the eligibility criteria laid down by the Authority;”

Conversely, a supplier of last resort is defined in Regulation 2(1)(o) as:

“(o) “supplier of last resort” means a person who holds an electric power supply license for the service territory specified in its licence and is obligated to supply electric power to all consumers located in that service territory at the rates determined by the Authority and is also obligated to provide electric power supply to the consumers, located within its service territory, of any competitive supplier who defaults on its obligations of electric power supply.”

(b) Additionally, and more pertinently, Regulation 3(4) of the Supplier Regulations provides:

“(4) A licence for supply of electric power shall not be deemed to confer any exclusive right on the licensee to engage in supply of electric power within the service territory:

Provided that at any given time, subject to section 26 of the Act and sub-regulation (5) of regulation 9, there shall be only one supplier of last resort in a specific service territory however, there may be more than one competitive suppliers in that service territory.”

(emphasis added)

- (c) A conjunctive reading of Regulation 3 of the Supplier Regulations (reproduced above) along with the aforementioned definitions demonstrates that while competition in the electric power supplier market was introduced, this was *only to the extent of competitive suppliers*. With regards to SOLRs however, the applicable law envisages only *one* SOLR in a designated service territory which was obligated to supply electric power in the event that one or more competitive suppliers fails to do so. It is also a matter of basic logic and reasoning that if there are numerous competitive suppliers as well as SOLRs in one service territory, it would be unclear on which SOLR the obligation to supply electric power would fall in the event of a competitive supplier’s default.
- (d) Additionally, the language and overall framework designed by the Supplier Regulations clearly envisage that in a particular area where a DISCO already has its distribution network, it is the DISCO that shall perform the functions of an SOLR. The Clause 3 Amendments try to bypass the express mandate of the law by introducing a two-step procedure and by introducing a system of automatic “amendments” to first, the Distribution License of a DISCO, and then to its Supply License. The first step of this two-step procedure would be the conferment of a distribution license to an Entity, which would “automatically” amend the Service Territory in the Distribution License of the Licensee. It bears noting that this first step is currently only a work in progress and is the subject matter of proposed amendments to the Distribution License currently under consideration by the Authority. The second step would then be the conferment of an SOLR License to the same Entity which has already

obtained a distribution license. However, what this two-step procedure fails to take into account is that the Service Territory granted to a DISCO as an SOLR is governed by the terms of the Supply License alone and the amendment to the DISCO's service territory in its Distribution License would have no impact/change on the DISCO's Service Territory granted under the SOLR. This Service Territory, granted under the Supply License, cannot be amended to make room for new SOLRs, since the same is expressly barred by Regulation 3(4) of the Supplier Regulations.

- (e) Furthermore, the Clause 3 Amendments fail to take into account the fact that the DISCO is a public utility company, which does not undertake the supply function for a profit and works for the benefit of the consumers at large. On the other hand, an Entity, which is most likely a profit-making, private enterprise, has no interest or aim to protect the interests of the consumers and therefore has no incentive to ensure that its consumers have a continuous supply of electricity, making it more likely to default in its obligations.

5. Additionally, the Authority has proposed amendments to Clauses 28.1, 28.2, and 28.4 of the Supply License (the "**Clause 28 Amendments**" and collectively with Clause 3 Amendments as the "**Proposed Amendments**") by omitting the requirement for the supply and distribution business to be performed through two (02) distinct entities, demanding functional separation and removing the transitional provisions that enabled compliance with such mandate. In this respect the following may be noted:

- (a) The Clause 28 Amendments are vague and impossible to comply with. The proposed language imposes a blanket and obscure obligation on the DISCO for 'functional separation', without providing any guidance regarding what the same entails. There is also a lack of clarity about the timeline for achieving the modified "functional separation" standard. This structural defect in the Clause 28 Amendments is further problematic, since purported non-compliance therewith entitles the Authority to take penal action against the DISCO, including appointment of an administrator.

- (b) The Clause 28 Amendments delete transitional provisions that are necessary to enable the DISCO to restructure its operations in line with the law. The absence of transitional provisions hampers operational continuity and exposes the DISCO to unwarranted penal action for non-compliance with obscure instructions. The removal of transitional provisions represents a fundamental degradation of the regulatory framework that increases legal risk while reducing certainty - precisely the opposite of what effective regulation should achieve.
- (c) The Authority retains broad discretionary powers to determine compliance without specifying an objective standard for measuring whether “functional separation” has been achieved, how existing integrated operations are to be modified, and what documentation or reporting demonstrates compliance. The DISCO is therefore exposed to immediate vulnerability to enforcement action without clear compliance pathway.
6. While acknowledging the Authority's regulatory prerogatives to regulate the power sector, the DISCO is constrained from supporting the purported modifications proposed in terms of the APM (the “**Proposed Amendments**”) to the extent and in terms of the following:
7. The Authority is vested with the statutory power and bears the legal obligation to determine the terms of licenses it issues under the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the “**NEPRA Act**”). It is a statutory imperative that these terms be drawn and are developed to honor, adhere to and realize the broader statutory objectives framed under the NEPRA Act and laws subordinate thereto. Broad, obscure and ambiguous instructions jeopardize the rights and interests of the licensee, undermine its existing rights, compromise the investment and asset security, and expose it to abuse, exploitation and penal action without cause. They are *ultra vires* and violate the applicable law.

8. DISCOs operate and develop their infrastructure under a comprehensive statutory framework that is premised on a regulatory asset base mechanism and drawn to advance public interest. This framework mandates that investments/infrastructure development be sanctioned by the Authority if it is prudent and in public interest. The Authority's approval in this respect, is a declaration of the prudence, viability and feasibility of the investment and the costs associated therewith. This is why Cost recovery for such investment/infrastructure is effected through the public i.e. consumer tariffs approved by the Authority pursuant to established revenue requirement methodologies.
9. It is critical to note that these investments are proposed, developed and implemented by the DISCO in legitimate reliance upon territorial certainty and asset security - upon assured cost recovery through services performed using this infrastructure in its identified service territory over the asset life. Any modification that affects the DISCO's approved infrastructure, recovery of its costs, including alteration of the territory being serviced by DISCO, would violate valuable rights and interests of the DISCO, creating cascading adverse effects: stranded asset costs socialized among remaining consumers, distribution company financial viability compromised through unrecoverable investments, and national energy security objectives undermined through investment uncertainty contrary to established regulatory compact principles governing Pakistan's power sector.
10. As discussed above, the Clause 3 Amendments, both in their language and effect, enable third parties to usurp the DISCO's service territory, and would create regulatory confusion regarding the identity of the SOLR in a particular area. Additionally, the Clause 3 Amendment would adversely affect the DISCO's approved and installed investment infrastructure and incapacitate the DISCO from making adequate recovery of its costs from its service, as planned and approved by the Authority. Sanction for such action, as conferred in terms of the Clause 3 Amendments, undermines the Authority's own declaration of '*prudence*', '*public interest*' and '*financial viability*' that such infrastructure and investments embody.

11. The DISCO's development of its infrastructure represents substantial financial investments exceeding billions of rupees in lines, grid stations, substations, transformers, and associated equipment. These were undertaken pursuant to the Authority's own infrastructure development approvals and represent permanent works of substantial character.
12. The DISCO enjoys legal and proprietary rights of ownership and use over such infrastructure. Similarly, the Authority's approval of the DISCO's infrastructure development and investment, itself creates valuable rights and interests in favor of the DISCO. Any action that violates, compromises or affects these rights, including the physical safety, integrity, and DISCO's use of its infrastructure, and the realization of the Authority's approval, is illegal and void.
13. The proposed automatic territorial modification mechanism in terms of the Clause 3 Amendments, operates entirely outside established statutory frameworks governing license revocation and territorial adjustment. Therefore, such modifications constitute arbitrary deprivation of valuable rights, which violate fundamental constitutional protections by enabling property divestiture without adherence to established legal procedures and safeguards.
14. The Clause 3 Amendments contradict the National Electricity Plan (the "**Plan**") and its underlying policy framework. The Plan and its framework emphasize integrated planning and optimal infrastructure utilization and specifically mandates that procurement and infrastructure expansion shall be informed by the plans approved by the Authority. Automatic reduction in the service territory, affecting existing and planned infrastructure and procurement, at the instance of a private profit making entity renders the Clause 3 Amendments inconsistent with the applicable legal and regulatory regime. Additionally, the Clause 3 Amendments:
 - (a) Disrupt systematic infrastructure coordination within the DISCO's operation. Such disruption undermines the holistic approach fundamental to the smooth and efficient operations power sector reform strategy;

- (b) Promote infrastructure duplication rather than optimization. As such they contradict the policy instruction of the National Electricity Policy 2021 (the “**National Electricity Policy**”) of “*optimal utilization of ... resources*” and “*integrated planning approach*”;
 - (c) Create territorial fragmentation which increases rather than minimizes system-wide costs. They, therefore, violate cost-effectiveness principles established in the Plan's financial viability framework, which emphasizes development on “*least-cost basis*” and “*cost-reflective tariffs*”.
15. Moreover, the Plan specifically recognizes the critical importance of distribution network strengthening, its security and systematic enhancement. The Plan acknowledges that “*transmission and distribution networks face persistent constraints*” and emphasizes the necessity for “*concerted efforts towards development of transmission and distribution networks*”. The proposed Clause 3 Amendments directly undermine these objectives by:
- (a) Fragmenting established distribution networks that have been systematically developed to serve integrated service territories efficiently;
 - (b) Creating operational inefficiencies that violate the Plan's emphasis on “*strengthening and expanding the T&D network*” for “*optimal utilization*” of distribution capacity;
 - (c) Undermining infrastructure investment recovery mechanisms essential for sustained network development as envisioned in the Plan.
16. The DISCO's comprehensive infrastructure development has been methodically funded through tariff collections approved by the Authority under established cost recovery mechanisms. These funds, consequently, represent public resources entrusted

specifically for infrastructure serving DISCOs designated territorial service obligations. The proposed modifications would systematically result in:

- (a) Abandonment of productive public assets representing millions in infrastructure investment undertaken in compliance with Authority-approved expansion plans. Such abandonment, directly contradicts the public trust doctrine governing utility operations and the Plan's infrastructure optimization mandates;
- (b) Wastage of consumer-contributed resources that were collected specifically through regulated tariffs for infrastructure serving DISCO's designated Service Territory. This wastage, additionally, violates fundamental principles of prudent utility management established in the National Electricity Policy.
- (c) Uneconomical duplication of infrastructure in overlapping service areas, creating system-wide cost increases ultimately borne by consumers. Such duplication, furthermore, contradicts the Plan's emphasis on integrated planning and optimal resource utilization.

17. Moreover, the proposed modification systematically creates structural inefficiencies fundamentally contrary to established public interest principles by systematically generating:

- (a) Stranded cost accumulation, wherein fixed infrastructure costs remain constant while the revenue base systematically diminishes due to territorial reduction. This phenomenon, furthermore, creates unsustainable financial dynamics explicitly recognized as problematic in Pakistan's power sector reform literature;
- (b) Cross-subsidization burden imposed upon remaining consumers who must absorb unrecoverable infrastructure investments through progressively higher

tariffs. Such burden, additionally, contradicts the Plan's principles of fair cost allocation and tariff rationalization;

- (c) Market fragmentation that systematically prevents realization of economies of scale in distribution operations, thereby increasing per-unit costs across the entire system. Such fragmentation, consequently, undermines the competitive market development objectives central to Pakistan's power sector reform agenda.

18. Additionally, the proposed modifications contravene well-established prudent utility principles that inform the operations and development of Pakistan's power sector. These principles specifically require:

- (a) Cost recovery certainty for Authority-approved investments, ensuring that regulated entities can systematically recover reasonable costs incurred in public service. Without such certainty, furthermore, infrastructure investment becomes economically irrational and contrary to financial viability objectives established in national policy;
- (b) Service territory stability essential for long-term infrastructure planning and systematic optimization as mandated in the Plan. This stability, moreover, enables efficient resource allocation and prevents wasteful overbuilding specifically identified as problematic in sector reform studies;
- (c) Infrastructure optimization rather than duplication, which maximizes public benefit from utility investments and aligns with integrated planning mandates. Such optimization, consequently, serves consumer interests through cost minimization and system efficiency.

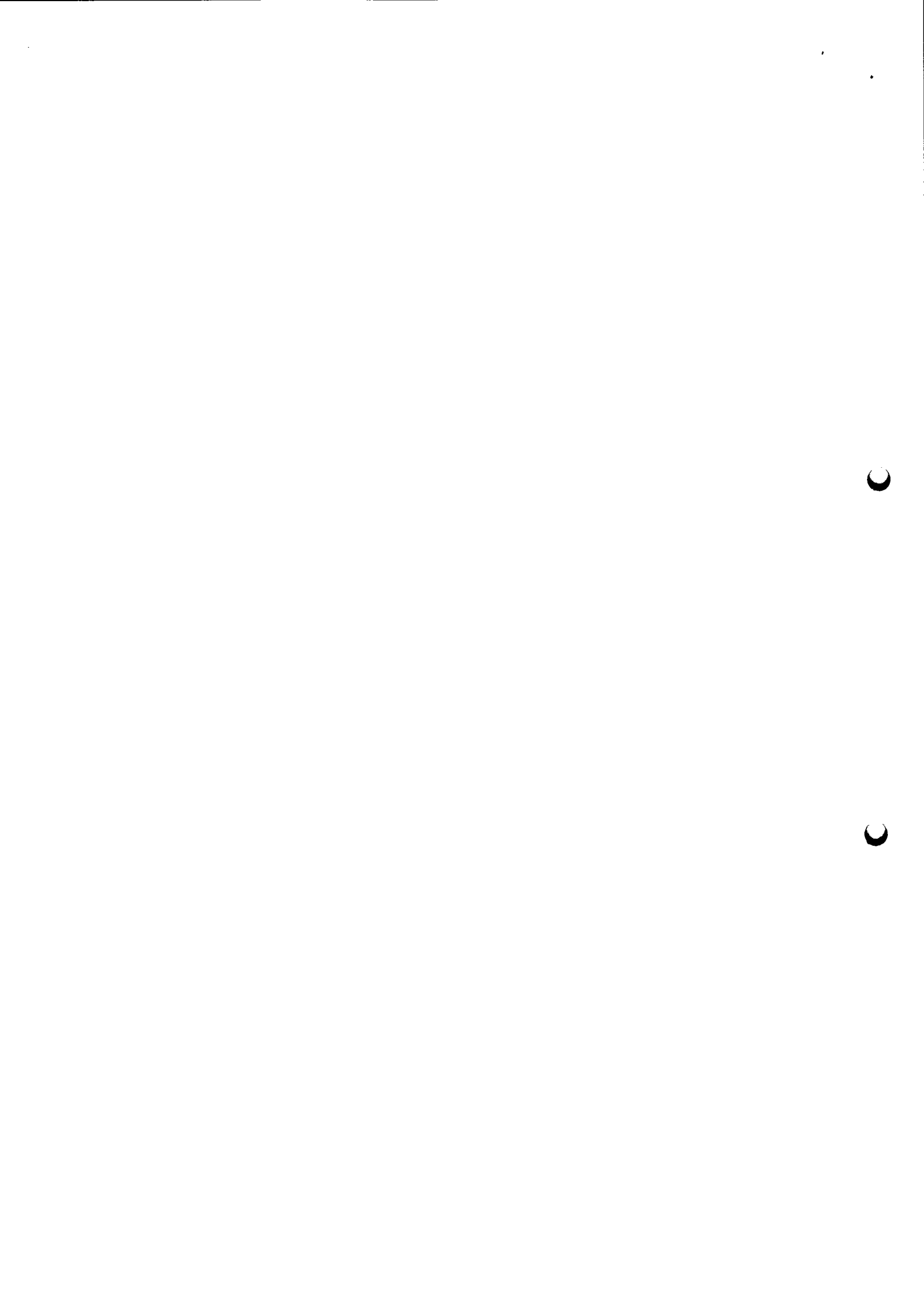
19. The proposed automatic territorial modification mechanism constitutes a revocation of the DISCO's service territory and established license rights without compliance with mandatory statutory procedures established. This circumvention operates by

effectively nullifying substantive license rights through territorial reduction rather than utilizing formal revocation processes specifically designed for such purposes. Consequently, it systematically violates established procedural safeguards by deliberately avoiding:

- (a) Article 32 of the Supply License which expressly and unambiguously requires demonstration that "*the Licensee is not discharging its functions*" before partial or complete revocation by way of territorial reduction can be lawfully considered. This provision, furthermore, establishes a clear performance-based threshold for adverse license action, which threshold has not been met in DISCO's case;
- (b) Section 28 of the NEPRA Act which mandates specific revocation grounds and prescribes compliance with comprehensive procedure before license termination or substantial modification, which can only be effected '*for cause*'. It is respectfully submitted that the Authority cannot effect territorial modification in complete absence of demonstrated licensee default, performance inadequacy, or established statutory cause.

20. Extensive areas within DISCO's Service Territory present insurmountable technical barriers to parallel infrastructure installation due to existing development patterns and geographical constraints specifically recognized in distribution planning literature. These barriers include:

- (a) Densely populated urban centers where additional distribution lines cannot be physically accommodated without massive displacement of existing structures. Such areas, furthermore, lack the spatial capacity for duplicate infrastructure systems without compromising public safety;
- (b) Geographically constrained locations including riverine areas, canal systems, and mountainous terrain with inherent space limitations that preclude



additional infrastructure development. These constraints, additionally, create substantial safety hazards for construction activities;

- (c) Existing infrastructure saturation in established industrial zones where multiple utility systems already occupy all available easements and rights-of-way. Such saturation, consequently, makes additional infrastructure installation not merely difficult but technically unfeasible.

21. Bypassing these natural barriers would create significant public safety risks through:

- (a) Electrical safety hazards arising from overlapping distribution networks operating at different voltage levels with incompatible protection schemes. Such overlapping systems, furthermore, create complex fault coordination problems that fundamentally endanger public safety and system reliability;
- (b) Construction risks in densely populated areas where excavation and installation activities threaten existing utilities, residential structures, and public safety. These risks, additionally, include potential catastrophic damage to existing infrastructure during new construction activities;
- (c) Maintenance access complications for both operators attempting to service parallel systems in constrained spaces, creating operational conflicts and substantial safety hazards. Such complications, consequently, compromise system reliability for all consumers and create ongoing public safety concerns.

22. Furthermore, Pakistani administrative law establishes clear jurisprudential boundaries between permissible license modification and fundamental alteration requiring fresh application procedures. The proposed changes systematically exceed these established parameters by:

- (a) Altering core license premises upon which DISCO's substantial infrastructure investments were predicated and formally approved by the Authority. These

alterations, furthermore, retrospectively undermine the investment assumptions that guided infrastructure development and regulatory approval processes;

- (b) Retrospectively modifying fundamental license assumptions regarding territorial stability and investment recovery mechanisms, creating an impermissible ex post facto alteration of contractual terms and regulatory commitments.

23. The Authority's justification citing mere "consistency with GEPCO" fundamentally fails to satisfy reasoned decision-making requirements established under Pakistani administrative law and regulatory best practices. This deficiency systematically violates:

- (a) The NEPRA Licensing (Application, Modification, Extension, and Cancellation) Procedure Regulations, 2021 which mandate comprehensive reasoning supporting proposed modifications and demonstration of public interest served. The Authority's generic reference to consistency with GEPCO, MEPCO and LESCO's supply licenses provides no substantive analysis of the APM's necessity, benefits, or alignment with established policy objectives;
- (b) Section 26 of the NEPRA Act which requires clear demonstration of specific public interest served by proposed modifications. The Authority has failed, additionally, to establish any concrete public interest beyond administrative convenience or precedential consistency;
- (c) Administrative law principles which demand rational basis, proportionality, and adequate justification for regulatory action affecting substantive rights. The Authority's reasoning, consequently, lacks the analytical depth and factual foundation required for such significant license modification.

24. Additionally, and respectfully, the Authority appears not to have conducted any comprehensive analysis establishing how the proposed modification serves identified public interest through its failure to provide:
- (a) Comprehensive cost-benefit analysis examining infrastructure duplication impacts, consumer cost implications, system efficiency effects, and alignment with the Plan's objectives. Such analysis, furthermore, is essential for demonstrating legitimate public interest in utility regulation;
 - (b) Consumer protection assessment regarding stranded cost pass-through mechanisms, tariff implications for existing consumers, and compliance with national policy cost recovery principles. This assessment, additionally, must address competitive disadvantages created by legacy cost burdens on established distribution companies;
25. The doctrine of promissory estoppel bars modification of territorial rights upon which the DISCO has reasonably and detrimentally relied in establishing extensive distribution infrastructure. This estoppel operates through a systematic series of Authority representations and the DISCO's consequent reliance demonstrated through its comprehensive infrastructure development program, including grid station upgrades, transmission line rehabilitation, system expansion, and consumer service establishment, and the Authority's endorsement/approval thereof. The Authority's affirmative approval and endorsement of specific investment programs and infrastructure projects, validates and reinforces the DISCO's reasonable reliance expectations. These approvals, consequently, constitute binding representations supporting territorial stability expectations and infrastructure investment security
26. Furthermore, the DISCO holds a well-founded legitimate expectation that Authority-approved infrastructure investments will be systematically protected absent demonstrated licensee default or performance deficiency. This expectation arises from both the original license terms, the Authority's consistent practice of infrastructure approval and cost recovery authorization, and the policy framework established in the

Plan requiring infrastructure investment protection. Consequently, the Authority cannot defeat such established expectations without demonstrable public interest justification, procedural compliance, and consideration of alternative measures.

27. The transition to competitive electricity markets makes infrastructure cost recovery even more critical for overall system sustainability and consumer protection. In this evolving market structure, distribution companies must systematically recover substantial infrastructure investments through Use of System Charges and Distribution Margins as specifically provided in regulatory frameworks. The proposed territorial modification, therefore, directly undermines this cost recovery framework by arbitrarily reducing the customer base over which infrastructure costs can be allocated, thereby creating systemic financial instability that contradicts policy objectives.
28. The proposed Clause 28 Amendments propagate an illegality: By imposing an undefined obligation of functional separation without any guidance, the amendments exceed the bounds of lawful administrative action.
29. Furthermore, they promote irrationality: The removal of specific transitory compliance mechanisms while maintaining severe penalties creates an irrational regulatory framework that no reasonable authority could justify.
30. The Clause 28 Amendments also vest the Authority with unconstrained discretion to determine compliance without objective criteria—a practice condemned by Pakistani courts. It is settled law that “*discretion should be controlled and structured by the law itself*”. The proposed text violates this principle by providing no measurable standards for “functional separation”, omitting compliance benchmarks or reporting requirements and creating potential for arbitrary enforcement through administrator appointment.
31. The deletion of Clause 28’s transitional provisions eliminate essential procedural safeguards. These provisions previously ensured that the DISCO could maintain business continuity while restructuring operations—a fundamental aspect of natural

justice in administrative proceedings. Their removal creates immediate legal jeopardy without affording reasonable opportunity for compliance, violating established principles that administrative authorities must provide fair notice and reasonable time for compliance.

32. The Supply License was granted to the DISCO for consideration in terms of the license fee and other amounts regularly paid by the DISCO in respect thereof. Consequently, the DISCO acquired rights conferred thereon by and in terms of the grant for which it incurred a detriment. It is impermissible to make any modification to the Supply License that fundamentally alters the licensed entitlements to the detriment of the DISCO, particularly those that affect the viability and feasibility of the DISCO's service and business. This is particularly so since the DISCO has relied on these licensed entitlements and has incurred costs on the public's behalf to fulfill its statutory obligation and perform its licensed activity within its Service Territory.
33. As the Authority is aware, the DISCO is one of the entities undergoing the privatization process under and in terms of the Privatization Commission Ordinance, 2000. The Privatization Commission Ordinance, 2000 statutorily requires that no entity subject to the privatization process be subjected to any reduction in its assets or any action that has the effect of reducing its assets. Admittedly, the DISCO's Service Territory, the consumers present within that Service Territory, and its infrastructure in that Service Territory, approved or installed, are all invaluable assets of the DISCO that contribute towards and inform its value. The DISCO cannot be subjected to any treatment that is detrimental to its asset base or value.
34. Additionally, the terms of the Supply License that the Authority now seeks to amend are currently the subject matter of the DISCO's Appeal and are *sub judice* before the Appellate Tribunal. Any action that compromises or effects the *lis* pending before the higher appellate forum is impermissible and holds no force at law.
35. The amendments may constitute an *ultra vires* exercise of the Authority's modification powers. While Section 26 permits licence modifications, it does not

authorize the creation of undefined obligations with penal consequences. The transformation from specific legal requirements (corporate separation, licence transfer applications) to vague functional mandates exceeds the Authority's statutory remit and potentially renders the modifications legally void for uncertainty. The proposed amendments to Clause 14 of the Supply License do not bring about any substantive change and only re-arrange the order of the language already contained in the clause.

36. Finally, while expressing continued respect for the Authority's regulatory mandate, the DISCO must reserve all legal rights and remedies available under law, including constitutional petition rights under Article 199 of the Constitution, appeal procedures under applicable regulations, and participation in public hearings as mandated under the licensing framework.


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