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National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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No. NEPRA/DG(M&E)/LAD-01/ **4833**

April 03, 2024

Chief Executive Officer,
K-Electric Limited (KE),
KE House, Punjab Chowrangi,
39 – B, Sunset Boulevard, Phase-II,
Defence Housing Authority,
Karachi

Subject: **ORDER OF THE AUTHORITY IN THE MATTER OF SHOW CAUSE NOTICE
ISSUED TO K-ELECTRIC UNDER REGULATIONS 4(8) & 4(9) OF NEPRA
(FINE) REGULATIONS, 2021 ON ACCOUNT OF AT&C-BASED LOAD
SHEDDING**

Please find enclosed herewith, the Order of the Authority (total 15 pages) in the subject matter for information and compliance.

Enclosure: Order of the Authority (total 15 Pages)


(Engr. Mazhar Iqbal Ranjha)




National Electric Power Regulatory Authority

ORDER

IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO K-ELECTRIC LIMITED UNDER REGULATIONS 4(8) AND 4(9) OF NEPRA (FINE) REGULATIONS, 2021 ON ACCOUNT OF AT&C-BASED LOAD SHEDDING.

1. K-Electric Limited (KE) (the "Licensee") was granted a Distribution License (No. DL/09/2024) by the National Electric Power Regulatory Authority (the "Authority") on 19.01.2024, for providing Distribution Services in its Service Territory as stipulated in its said Distribution License, pursuant to section 20 read with 21 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 ("NEPRA Act").
2. During hearings in the matter of Monthly Fuel Price Adjustments (FPAs) for DISCOs and K-Electric being held on monthly basis, number of complaints regarding unscheduled load shedding by general public had been and are being received by the Authority. Upon inquiry, it was revealed that load shedding is being carried out on the basis of AT&C losses policy which is not in line with the provisions of the NEPRA Act, 1997, and Performance Standards (Distribution) Rules, 2005, and has never been recognized by NEPRA.
3. According to Rule 4 (f) of NEPRA Performance Standards Rules:
 - (i) *A distribution company shall have plans and schedules available to shed up to 30% of its connected load at any time upon instruction from NTDC. This 30% load must be made up from separate blocks of switchable load, which can be disconnected in turn at the instruction from NTDC. A distribution company shall provide copies of these plans to NTDC.*
 - (ii) *Wherever possible NTDC shall give distribution companies advance warning of impending need for load shedding to maintain system voltage and/or frequency in accordance with the Grid Code.*
 - (iii) *As per the provisions of the Grid Code, NTDC shall maintain an overview and as required instruct each distribution company the quantum of load to be disconnected and the time of such disconnection. This instruction shall be given in clear, unambiguous terms and related to prepared plans.*
 - (iv) *When instructed by NTDC, the distribution companies shall shed the load in the following order, namely: —*
 - (a) *Supply to consumers in rural areas; and residential consumers in urban areas where separate feeders exist.*
 - (b) *Supply to consumers, other than industrial, in urban areas.*



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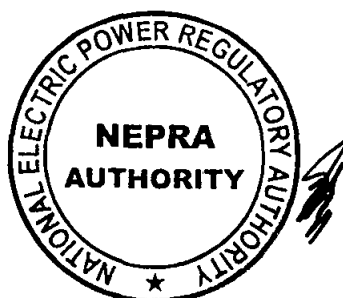
- (c) Supply to agriculture consumers where there is a dedicated power supply.
- (d) Supply to industrial consumers.
- (e) Supply to schools and hospitals.
- (f) Supply to defense and strategic installations.

(v) A distribution company shall prepare schedules of load disconnection, which demonstrate this priority order and which rotate load disconnections within the above groups in a non-discriminatory manner. The principle of proportionality shall be kept in mind so as not to excessively burden a particular consumer class.

4. The Authority further observed that the Licensee is even violating its own so-called AT&C policy and carrying out excessive load shedding as compared to the scheduled one. Moreover, few feeders were randomly selected, and observed that the Licensee has been failed to make improvements in technical and financial health of those feeders since last four years despite allowing colossal amounts under O&M head by NEPRA and continuing their operations in status quo, due to which, even good paying consumers are being suffered a lot.
5. Therefore, the Authority decided to initiate legal proceedings against the Licensee under NEPRA Fine Regulations, 2021.
6. In view thereof, an Explanation was served to the Licensee under Regulation 4(1) and 4(2) of NEPRA (Fine) Regulation, 2021 on January 03, 2023, on account of providing electricity on a non-discriminatory basis by carrying out AT&C-based load shedding and failure to comply with Performance Standards (Distribution) Rules. The Licensee vide its letter dated January 28, 2023, submitted its reply, and a hearing in this regard was held on March 01, 2023.
7. The response/submissions of the Licensee was analyzed, whereby the Authority observed that the response submitted by the Licensee against Explanation is unsatisfactory. Therefore, the Authority decided to issue a Show Cause Notice (SCN) to the Licensee under Regulation 4(8) & (9) of the NEPRA (Fine) Regulations, 2021.
8. Accordingly, a Show Cause Notice (SCN) along with the Order recording reasons for rejection of Explanation was issued to the Licensee on September 11, 2023. The salient features of the said SCN are narrated as under:

3. ***"WHEREAS, pursuant to section 21 (2) (b) of the NEPRA Act, the Licensee is responsible to provide distribution service and make sales of electric power within its territory on a non-discriminatory basis to all the consumers who meet the eligibility criteria laid down by the Authority; and***
4. ***WHEREAS, pursuant to section 21 (2) (f) of the NEPRA Act, the Licensee is required to follow the performance standards laid down by the Authority for distribution and transmission of electric power, including safety; and***
5. ***WHEREAS, Rule 4(f) of NEPRA Performance Standards (Distribution) Rules, 2005, states below:***

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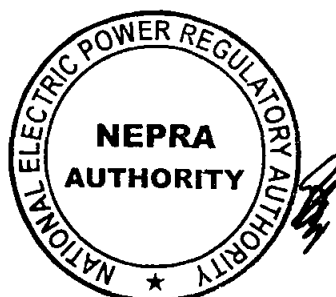


- (i) A distribution company shall have plans and schedules available to shed up to 30% of its connected load at any time upon instruction from NTDC. This 30% load must be made up from separate blocks of switchable load, which can be disconnected in turn at the instruction from NTDC. A distribution company shall provide copies of these plans to NTDC.
- (ii) Wherever possible NTDC shall give distribution companies advance warning of impending need for load shedding to maintain system voltage and/or frequency in accordance with the Grid Code.
- (iii) As per the provisions of the Grid Code, NTDC shall maintain an overview and as required instruct each distribution company the quantum of load to be disconnected and the time of such disconnection. This instruction shall be given in clear, unambiguous terms and related to prepared plans.
- (iv) When instructed by NTDC, the distribution companies shall shed the load in the following order, namely: —
- (g) Supply to consumers in rural areas; and residential consumers in urban areas where separate feeders exist.
 - (h) Supply to consumers, other than industrial, in urban areas.
 - (i) Supply to agriculture consumers where there is a dedicated power supply.
 - (j) Supply to industrial consumers.
 - (k) Supply to schools and hospitals.
 - (l) Supply to defense and strategic installations.
- (v) A distribution company shall prepare schedules of load disconnection, which demonstrate this priority order and which rotate load disconnections within the above groups in a non-discriminatory manner. The principle of proportionality shall be kept in mind so as not to excessively burden a particular consumer class.

6. **WHEREAS**, the Authority issued an Explanation to the Licensee under Regulation 4(1) and 4(2) of NEPRA (Fine) Regulation, 2021 on January 03, 2023, on account of AT&C-based load shedding and failure to comply with Performance Standards (Distribution) Rules. The salient points of the said Explanation are reproduced below:

6. **“WHEREAS**, contrary to above, the Licensee is carrying out load shedding in their service territories on the basis of the Aggregate Technical and Commercial (AT&C) losses policy following the criteria hereunder:

Category	Low Loss	Medium Loss	High Loss	Very High Loss	Total Number of Feeders
% AT&C Losses	Up to 25 (%)	25 – 35 (%)	35 – 50 (%)	Above 50 (%)	



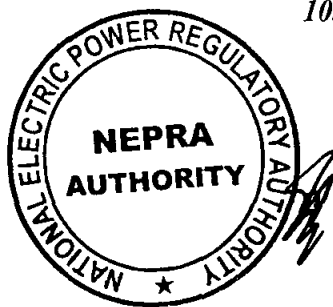
Load Shedding Hours	0 Hours	3 Hours	6 Hours	7.5 Hours	
No. of Feeders	1481	150	96	237	1964

7. **WHEREAS**, the load shedding carrying out by the Licensee following the above said criteria is not in line with the provisions of the NEPRA Act, 1997, and Performance Standards (Distribution) Rules, 2005, and has never been recognized by NEPRA. According to NEPRA Performance Standards Rules, the Licensee can never do load shedding on its own until & unless instructed by NTDC. Hence, the Licensee is prima facie in violation of Rule 4(f) of Performance Standards (Distribution) Rules, 2005 read with Section 21(2)(b) & (f) of the NEPRA Act and Article 11 of the terms & conditions of Licensee's License; and
8. **WHEREAS**, from the data of few randomly selected feeders for the period of four years FY 2018-19 to FY 2021-22), it is noted that their AT&C losses have increased, the details of which are given in the table below:

Sr. #	Name of Feeder	%AT&C losses in July 2018	%AT&C losses in June 2022	Increase/Decrease
1	PARSI TRUST SS	66.92	80.40	13.48
2	PIA SOCIETY	5.44	17.27	11.83
3	FAZAL SHAFIQ	64.57	72.18	7.61

9. **WHEREAS**, from the above data it is evident that despite spending colossal amount of billions of rupees under the investment head, the Licensee has failed to take measures to improve the technical & financial health of 11 kV feeders, rather they have found an easy way to carry out load shedding on such feeders based on AT&C policy; and

10. **WHEREAS**, NEPRA vide letter No. NEPRA/DG(M&E)/LAD-01/15280 dated August 16, 2022, directed the Licensee to start load shedding at PMT level instead of feeder level basis through remote disconnection/reconnection of the power supply as the Licensee itself reported that it has installed around fifty thousand (50,000) meters on its all PMTs. In response, the Licensee vide letter dated September 06, 2022, submitted that its distribution transformers (DTs) are covered with current transformer (CT) operated meters and these meters cannot be operated directly for disconnection/re-connection of load shedding at DT level. The submissions of the Licensee were examined and observed that the Licensee is achieving all commercial benefits through AMI/AMR meters, however, it is not ready to provide relief to its consumers by carrying out load shedding at PMT level. The Licensee also mentioned disconnection/re-connection to



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improve recovery as one of the benefits of AMI/AMR meters. However, it submitted number of challenges and made it unfeasible on account of load management at PMT level. If this target cannot be achieved, then there is no significant benefit to the consumers by investing such a huge amount. Moreover, a hearing in the matter was also held on October 04, 2022, whereby the Licensee was directed to find a possibility for remote disconnection/re-connection of meters through exploring design and development opportunities. Further, online meetings with the Licensee's team were also held and some solutions were also shared by the NEPRA team in this regard. However, the compliance from the Licensee, regarding the submission of PMT-wise load-shedding plan instead of feeder-wise is still awaited. Therefore, the Licensee has, prima facie non-complied with the directions of the Authority; and"

7. **WHEREAS**, the Licensee was given fifteen (15) days to submit reply against the aforementioned Explanation. In response, the Licensee submitted its reply vide letter No. KE/RA&GR/NEPRA/2023/032 dated January 28, 2023, and hearing in the matter was also held on May 18, 2023. Consequently, the Authority after detailed deliberations concluded that the Licensee has failed to provide any satisfactory reply to the Explanation served to it; and
8. **WHEREAS**, the Licensee has failed to satisfy the Authority with its replies and prima facia, has committed the violations of Rule 4(f) of Performance Standards (Distribution) Rules, 2005, read with Section 21(2)(b) & (f) of the NEPRA Act and Article 11 of the terms & conditions of Licensee's License, and is in non-compliance with the directions of the Authority. Therefore, the Authority hereby rejects the response of the Licensee against the Explanation served, and an Order dated September 11, 2023, is attached herewith, mentioning the reasons of rejection; and

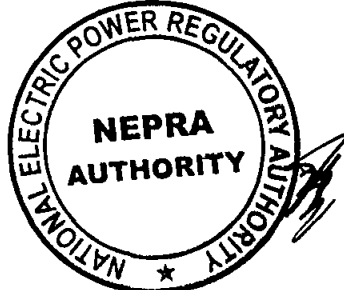
9. In response, the Licensee vide its letter dated September 26, 2023, has submitted its reply, and interalia requested the Authority for an opportunity to be heard. The summarized points of the submitted reply of the Licensee are as below:

"Preliminary Objections:

That the Said Notice read together with the Said Order does not consider or peruse the facts, evidence and prevailing circumstances placed on record through submissions made by KE vide its letters dated September 06, 2022, and January 18, 2023, and hence as such contains legal infirmities of non-appreciation of facts and non-reading of evidence. Further, without prejudice to it rights, KE hereby puts forward the following preliminary objections with respect to the maintainability of the Said Notice for consideration of NEPRA as under:

- a. That the Said Notice read together with the Said Order does not peruse the fact that the country overall has been facing exceptional circumstances / external challenges, which have adversely impacted the macro-economic landscape of the country resulting in increased inflation with corresponding exorbitant increase in electricity tariff due to continuously increasing fuel prices affecting consumers payment propensity, thus affecting recovery of bills by the Distribution Companies including KE. Therefore, these unfortunate socioeconomic circumstances have resulted in

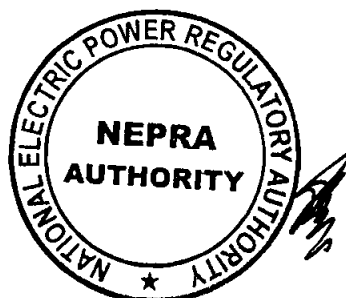
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decline in recovery and consequent increase in commercial losses, thus resulting in upward revision in load shed categories of certain feeders.

- b. That even otherwise, it may please be noted that in addition to defaulters of regular bills, other external factors such as direct theft through illegal tampering of KE's distribution network and illegal abstraction of power through electric meter, also pose a significant dent on KE's recovery ratio resulting in loss of sales and accordingly planned load management is necessitated to manage/restrict such unwarranted pilferage of power.
- c. That it is humbly submitted that KE as part of its load shed policy reviews the loss profile of its feeder population on a quarterly basis, after which their loss categories are revised, where necessitated, thus mitigating the impact of load shed.
- d. That KE teams have been working on exploring the best possible solution for load shed on PMT level to minimize the number of consumers affected from load shed and as per directions of the Authority and is in discussions with vendors / consultants to identify and opt for the best possible solution as communicated vide KE letter Ref # KE/RA&GR/NEPRA/2023/526 dated August 18, 2023. Accordingly, issuance of the Said Notice read together with the Said Order is premature and arbitrary in nature. Detailed response to this point is elaborated in Para C(III) of this letter.
- e. That it is humbly submitted that the policy(s) of the Government is binding upon government departments, agencies, regulatory bodies, etc. who must adhere to its provisions. Load-shed based on theft and recovery loss, i.e. on Aggregate Technical & Commercial (AT&C) losses was provided for in the National Power Policy 2013. In this regard, it may please further be noted that the NEPRA Performance Standards (Distribution) Rules, 2005 were implemented in the year 2005 and provides for technical load shedding. Accordingly, in absence of guidance for commercial load shed, guidance for the same was drawn from the Government notified Power Policy(s), which are also binding upon NEPRA, government departments and KE. Here, it may please be noted that the same practice is also being followed by other distribution companies across the country. Therefore, it is humbly submitted that KE cannot be penalized for adhering to prevailing guidelines for commercial load shed as per approved policy of the Federal Government.
- f. That the show-cause notice for alleged violations of provisions i.e. Section 21(2)(b) & (f) of the NEPRA Act, Article 11 of the KE's Distribution License read with Rule 4(f) of the NEPRA PS DR 2005 and the Said Order does not correlate with the alleged violation as mentioned in the Said Notice and Said Order, hence is without lawful effect and it is liable to be set-aside/withdrawn.
- g. That the provisions of NEPRA PS DR 2005 do not bar KE from commercial load-shed. It is a well-settled principle of law that anything not expressly prohibited under the law is permitted and the same cannot be penalized for it, especially whilst adhering to the policy guidelines duly approved by the Federal Government. Hence, the Said Notice and Said Order are liable to be set-aside/withdrawn in *limine*.

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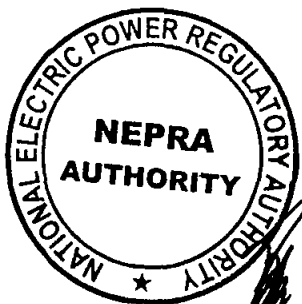
KE's RESPONSE To THE CONTENTS OF THE NEPRA ORDER (THE SAID ORDER)

Without prejudice to the foregoing and in furtherance to the preliminary objections of this response, KE humbly submits its response to the Analysis and Findings mentioned in Paras 9 to 14 of the Said Order:

- I. In response to Para 9, 10 and 11 of the Said Order, it is humbly submitted that there are two aspects to load shed namely technical load shed and commercial load shed. Technical load shed pertains to load-shed or load-management due to generation shortage and transmission constraints, which is complied with by both NTDC and KE in the perspective of being system planners and operators of their respective service territory. Here, it is humbly submitted that with capacity additions in generation and transmission, no load shedding is being carried out due to generation shortage or transmission constraints and in case of any load shed due to generation shortage or transmission constraint carried out, the same is communicated to NEPRA and due relief is provided to consumer class faced with additional load shed. With respect to commercial load shed, the same is dependent upon loss and recovery profile of feeder(s), which among others have been severely impacted by the challenging socio-economic conditions and increase in consumer-end tariffs over the last 2 years, thus resulting in a major decline in consumers' propensity to pay.

Further, the other aspect of load shed relates to load shed being implemented on distribution level by the XW-DISCOs and KE in their respective service territories based on AT&C Losses of feeders, which can be substantiated by the fact that the same has been acknowledged by the Honorable Supreme Court in its Judgement in Para 36 of the Human Rights Cases No.14392/2013 & 790-G/2009 in the matter of unprecedented load shedding and increase in electricity prices dated November 26, 2013 as well as affirmed by the Honorable Authority in Para 53.4 KE's Multi-Year Tariff (MYT) determination dated March 20, 2017 and Para 19.7 of the Review Decision of the Authority in the matter of KE's MYT dated October 09, 2017, and the load shed advertisement published by the Power Division in the year 2015 for compliance by XW-DISCOs, as also acknowledged by the Authority in Para 12 of the Said Order. Further, when the PMT based load shed is rolled out, the same will also be implemented on the basis of AT&C loss profile of PMTs instead of feeders.

Further regarding load shedding being implemented on 25% of KE's feeders, it is humbly submitted that KE through careful planning and conscious implementation of its AT&C loss-based load shed policy followed by targeted investments has been successfully able to exempt over 70% of its territory from load shed which at the time of privatization stood at 6% only.

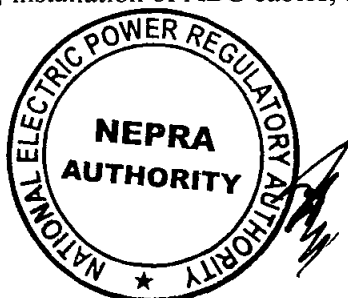


Moreover, it may please be noted that KE in compliance with Rule 4(f) of the NEPRA Performance Standards Distribution Rules (PSDR), 2005 prepares its load shed schedules which are carried out in a non-discriminatory manner within a particular class of consumers which encompasses its functions as a system planner, operator, and distributor/supplier of electric power by virtue of separate licenses KE possesses for all of its three (03) business segments, thus aptly managing demand in its service territory on the basis of generation shortage, transmission constraints and as well as performing equitable load shed.

In view of the foregoing KE humbly denies any contravention to Rule 4(f) of the NEPRA Performance Standards (Distribution) Rules, 2005.

- II. In response to Para 12 and 13 of the Said Order, it is humbly submitted that a major component of AT&C-loss based load shed policy is the recovery ratio based on which the feeders are categorized into respective load shed categories. In view of the foregoing, it may please be considered that, over the years the paying propensity of the consumers has been significantly impacted due to the ongoing economic condition of the country. This has led to significant challenges on the recovery front, distorting the recovery ratio, especially in the last 12 months, consequently affecting the loss profile of feeders. In this respect, KE, in line with Clause 8.2.4 of the NEPRA Consumer Service Manual promptly disconnects all such defaulters/non-payers of bills. However, loss of sales occurs in areas which are highly infested with illegal kunda connections and where illegal theft of electricity is rampant. To combat this menace, KE has been constantly converting its bare cables into Aerial Bundled Cables (ABCS) to restrict access and conducting kunda removal drives regularly as part of its governance measures.
- III. In response to Para 14 of the Said Order, it is humbly submitted that as communicated vide KE letter # KE/RA&GR/NEPRA/20231526 dated August 18, 2023, KE in line with the directions of the Honorable Authority to carry out load shed at Distribution Transformers (DT) level through remote Disconnection/Reconnection (DC/RC) is in discussions with the vendors/consultants to identify and opt for the best possible solution. In this respect and as communicated vide KE # letter KE/RA&GR/NEPRA/2023/526 dated August 18, 2023, KE shall share a road map outlining the details of the plan for implementation of load shed at DT level. In view of foregoing, KE humbly requests the Authority to keep further proceedings in the instant matter in abeyance until submission of detailed plan by KE.
10. In order to proceed further as per law, a hearing in the matter of SCN issued to the Licensee was scheduled and held on January 03, 2024, wherein, the CEO KE along with his team participated and made the following submissions:
- Load Shedding is a complex issue and KE is committed to meet the growing demand of Karachi.
 - The detailed roadmap for reduction of losses and ultimately reduction of load shedding have been submitted by KE in Tariff determination.
 - At present, in the service territory of KE, around 70% feeders are exempted from load shedding and by 2030, KE is targeting to exempt 95% feeders free from load shedding.
 - There is no discrimination in selecting those 70% feeders, as these feeders are purely based on actual data.
 - In order to move from 70% to 95%, operational measures are being taken such as removal of hook connections, installation of ABC cables, etc.

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- vi. KE is focusing on PMT level load shedding and efforts are being taken in this regard.

11. FINDINGS/ANALYSIS:

- i) The Licensee has submitted that the Said Notice read together with the Said Order does not peruse the fact that the country overall has been facing exceptional circumstances/external challenges, which have adversely impacted the macro-economic landscape of the country resulting in increased inflation with corresponding exorbitant increase in electricity tariff due to continuously increasing fuel prices affecting consumers payment propensity, thus affecting recovery of bills by the Distribution Companies including the Licensee. Therefore, these unfortunate socioeconomic circumstances have resulted in decline in recovery and consequent increase in commercial losses, thus resulting in upward revision in load shed categories of certain feeders.

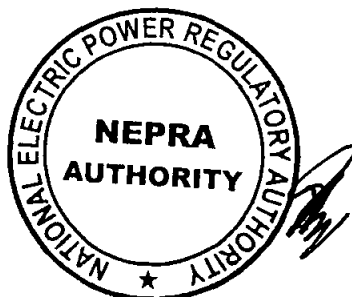
The Authority has considered the submissions of Licensee and observes that the aforementioned challenges highlighted by the Licensee do not absolve the Licensee from its responsibility to manage its operations efficiently. It is a matter of fact that certain factors such as increased inflation and rising fuel prices may affect consumer payment propensity, however, it does not justify the inability of the Licensee to effectively recover bills. The Licensee should have implemented strategies to mitigate these challenges, however, it adopted an easy way to burden its consumers by carrying out AT&C-based load shedding in order to control its losses, which unfairly burden consumers and could have been avoided through better management practices and governance. Moreover, being a prudent utility, the Licensee is mandated to provide un-interrupted power supply to its consumers, however, it failed to do so.

- ii) The Licensee has submitted that in addition to defaulters of regular bills, other external factors such as direct theft through illegal tampering of the Licensee's distribution network and illegal abstraction of power through electric meter, also pose a significant dent on the Licensee's recovery ratio resulting in loss of sales and accordingly, planned load management is necessitated to manage/restrict such unwarranted pilferage of power.

The Authority has considered the submissions of the Licensee and observes that being a distribution licensee, the Licensee should have implemented robust measures to prevent such occurrences rather than resorting to load management strategies that penalize law-abiding consumers by fully disconnecting the feeders. Moreover, AT&C-based load shedding should not be used as a primary means to address theft and tampering issues; rather, the Licensee should go for individual disconnection of the defaulters, seek support from law enforcing agencies and provincial government, and prioritize investment/O&M funds efficiently to curb these illegal activities while ensuring fair, equitable, and uninterrupted distribution of electricity among all consumers.

- iii) The Licensee has submitted that its teams have been working on exploring the best possible solutions for load shed on PMT level to minimize the number of consumers affected from load shed and as per directions of the Authority and is

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in discussions with vendors/consultants to identify and opt for the best possible solution.

While considering the submissions of the Licensee, the Authority observes that the efforts taken by the Licensee with regard to load shed at PMT level are considered. In this way, a small fraction of the consumers will be affected, however, that practice is still against the NEPRA laws. Rather than shedding the load on an entire feeder is better than shedding the load through PMTs, a number of consumers will get relief as only the worst paying/defaulters PMTs will be targeted. However, even if a single consumer is paying the bill, he is entitled to the provision of uninterrupted and reliable power supply irrespective that the consumer is connected to a PMT or a feeder.

- iv) The Licensee has submitted that the policy(s) of the Government is binding upon government departments, agencies, regulatory bodies, etc. who must adhere to its provisions. Load-shed based on theft and recovery loss, i.e. on Aggregate Technical & Commercial (AT&C) losses was provided for in the National Power Policy 2013.

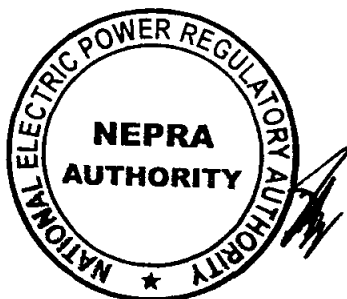
The Authority has considered the submissions of the Licensee and is of the view that National Power Policy 2013, has been repealed and been superseded by National Electricity Policy 2021, wherein there is no such provision of AT&C-based load shedding rather NEP-2021 clearly envisages that such type of load shedding will be gradually decreased, however, the Licensee is carrying out such so-called load shedding since many years, which is against the spirit of even NEP-2021.

- v) The Licensee has further submitted that the show-cause notice for alleged violations of provisions i.e. Section 21(2)(b) & (f) of the NEPRA Act, Article 11 of the Licensee's Distribution License read with Rule 4(f) of the NEPRA PSDR 2005 and the Said Order does not correlate with the alleged violation as mentioned in the Said Notice and Said Order, hence is without lawful effect and it is liable to be set-aside/withdrawn.

The Authority has considered the submissions of the Licensee and observes that the Order dated September 11, 2023, is speaking order and extensively argued on the basis of alleged violations. The provision relating to Section 21 of the NEPRA Act, 1997, indicates that the failure of DISCO to provide requisite service to its territory in accordance with the eligibility criteria performance standards, safety, health, and environment protections which are also made obligatory under article 11 of ICE distribution licensee and Performance Standard Rules.

- vi) The Licensee has also submitted that the provisions of NEPRA PSDR 2005 do not bar the Licensee from commercial load-shed. It is a well-settled principle of law that anything not expressly prohibited under the law is permitted and the same cannot be penalized for it, especially whilst adhering to the policy guidelines duly approved by the Federal Government. Hence, the Said Notice and Said Order are liable to be set aside/withdrawn in limine.

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The Authority has considered the submissions of the Licensee and observes that the issue of commercial load-shedding has been in conformity with the quality of service which must be satisfied and a performance failure thereof on account of increased commercial based load-shedding cannot be left on the discretion of the Licensee. In this regard, NEPRA Licensing (Distribution) Rules, 1999, and NEPRA Consumer Eligibility Criteria (Distribution Licensees) Regulations, 2022 state as follows:

NEPRA Licensing (Distribution) Rules, 1999

9. Obligation to connect and supply:-

(8) The licensee shall connect and supply electric power to any consumer satisfying the consumer eligibility criteria specified in the NEPRA rules and regulations, who seeks connection and supply of electric power in a manner not inconsistent with the consumer service manual or the terms of the distribution licence or which does not result in the licensee being in breach of the Laws or the applicable documents.

NEPRA Consumer Eligibility Criteria (Distribution Licensees) Regulations, 2022

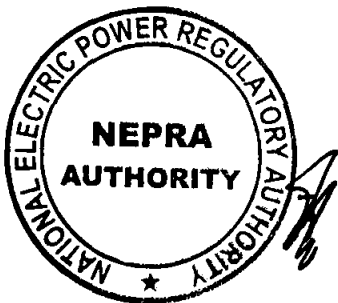
11. Non-discriminatory and equitable treatment. - (1) A distribution licensee shall ensure that all applicants and consumers are treated in a non-discriminatory, fair, transparent and just manner.

(2) Where an applicant does not meet any part of the eligibility criteria, the distribution licensee shall explain the relevant deficiency in writing within ten working days and provide reasonable opportunity to the applicant to rectify the same before a final decision on the application.

- vii) The Licensee has submitted that the law does provide for technical load-shed but at the same time does not restrict the Licensee from conducting commercial load-shed in compliance with Government notified Power Policy(s). Hence, the Said Notice and Said Order have no legal sanctity.

The Authority after considering the submissions of the Licensee is of the view that, likewise technical load shedding is not to be undertaken with the understanding that such ability is unfettered, unregulated, and outside the purview of the Regulator. Moreover, the Authority also observes that National Power Policy 2013, has been repealed and superseded by National Electricity Policy 2021, wherein there is no such provision of AT&C-based load shedding rather NEP-2021 clearly envisages that such type of load shedding will be gradually decreased, however, the Licensee is carrying out such so-called load shedding since many years, which is against the spirit of even NEP-2021.

- viii) The Licensee has submitted that there are two aspects to load shed namely technical load shed and commercial load shed. Technical load shed pertains to load-shed due to generation shortage and transmission constraints, which is



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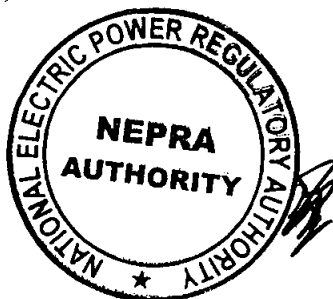
complied with. The Licensee has further submitted that with capacity additions in generation and transmission, no load shedding is being carried out due to generation shortage or transmission constraints and in case of any load shed due to generation shortage or transmission constraint carried out the same is communicated to NEPRA and due relief is provided to consumer class faced with additional load shed. With respect to commercial load shed, it is humbly submitted that the same is dependent upon loss and recovery profile of feeder(s), which among others have been severely impacted by the challenging socio-economic conditions and increase in consumer-end tariffs over the last 2 years, thus resulting in a major decline in consumers' propensity to pay.

After considering the submissions of the Licensee, the Authority is of the considered opinion that the licensee's responsibility extends beyond merely complying with generation and transmission constraints. Moreover, despite claims of capacity additions in generation and transmission, the Licensee should have implemented proactive measures to address the challenges posed by the socio-economic conditions and consumer-end tariff increases over the past two years. Merely communicating instances of load shedding due to generation shortage or transmission constraints to NEPRA does not absolve the Licensee of its obligation to ensure reliable and uninterrupted electricity supply to consumers. The decline in consumer's propensity to pay may indeed be a factor, but the Licensee should have adopted strategies to mitigate these challenges rather than resorting to load shedding, which disproportionately affects consumers and exacerbates their financial burden. Apart from this, the Licensee submissions clearly indicate an admittance that it carries out commercial load shed which is in violation of NEPRA laws and has never been recognized by NEPRA. Being a distribution and supply licensee, the Licensee is obligated to provide power supply to all the consumers on a non-discriminatory basis, which it has failed to do so.

- ix) The Licensee has submitted that the other aspect of load shed relates to the load shed being implemented on distribution level by the XW-DISCOs and the Licensee in their respective service territories based on AT&C Losses of feeders, which can be substantiated by the fact that the same has been acknowledged by the Honorable Supreme Court in its Judgement in Para 36 of the Human Rights Cases No.14392/2013 & 790-G/2009 in the matter of unprecedented load shedding and increase in electricity prices dated November 26, 2013, as well as affirmed by the Honorable Authority in the Licensee's Multi-Year Tariff (MYT) determination dated March 20, 2017.

The Authority has considered the submissions of the Licensee and is of the considered opinion that the honorable Supreme Court, held that efforts must be made to provide uninterrupted supply of electricity. However, if load shedding is the only way out, it should be administered without having any distinction between rural and urban areas as well as domestic, commercial, and industrial sections. By no stretch of imagination, the Supreme Court validated or allow AT&C-based load shedding. Thus, the Licensee should have devised a strategy

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to penalize only the non-paying consumers by disconnecting them in line with the criteria and timelines given in the Consumer Service Manual (CSM), rather than opting for load shedding on the entire feeder and penalizing the paying consumers as well. It is pertinent to mention here that as per Clause 8.2.4 of the CSM, in case of non-receipt of payment and upon expiry of the due date given on the second month's bill, the supply of the defaulting premises shall be disconnected. Further, the Authority is of the view that the reference of the Supreme Court (SC) is not relevant and can be distinguished. The Licensee cannot hide behind the SC judgment based on self-serving interruptions to cover inefficiencies and failure in the provision of distribution services. Moreover, the MYT of the Licensee allowed the Utility to maximize its profit by higher sales growth, therefore an incentive was provided to the Licensee to minimize load shedding in order to increase its sales and earn higher profits, which would also benefit the consumers in the shape of exemption from load shedding and provision of reliable supply.

- x) The Licensee has submitted that through careful planning and conscious implementation of its AT&C loss-based load shed policy followed by targeted investments, it has been successfully able to exempt over 70% of its territory from load shed which at the time of privatization stood at 6% only. Additionally, with respect to announcing of load shed policy to be implemented across the country unanimously, kind attention is drawn to Para 53.4 of the Licensee's MYT determination dated March 20, 2017, wherein it has been duly acknowledged by the Authority that the same principle/practice for load shed is being followed by other distribution companies and it was stated that to address this issue, separate proceedings shall be initiated in due course, which are still pending conclusion.

The Authority while considering the submissions of the Licensee observes that exempting over 70% of its territory from load shedding is a claim of the Licensee which needs to be verified. However, the Licensee is still overburdening the remaining 30% class of its consumers in a manner which is incorporated with the NEPRA laws. Moreover, the Licensee should carry out load shedding across its all consumers only in case of any generation shortage or transmission constraints. Further, citing provisions from previous determinations to justify current practices does not absolve the Licensee of its responsibility to adhere to NEPRA laws and ensure equitable treatment of all consumers. Although, the provision quoted by the Licensee does not allow the Licensee to carry out such load shedding. It can be concluded that the Licensee lacks serious understanding with respect to this issue.



As far as para 53.4 of the MYT of the Licensee is concerned, the Authority categorically highlighted that the load shed policy of DISCOs is inconsistent with the NEPRA Performance Standards (Distribution) Rules, and will be separately dealt. Therefore, it has nothing to do with subject proceedings. Moreover, the Authority also directed the licensee to take certain measures installation of AMR meters, ABC cable, etc, in order to reduce and gradually eliminate load shedding in Karachi within three years. However, the licensee has

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failed to do so, as the practice of AT&C is continued even after the lapse of said MYT.

- xi) The Licensee has submitted that a major component of AT&C-loss based load shed policy is the recovery ratio based on which the feeders are categorized into respective load shed categories. In view of the foregoing, it may please be considered that, over the years the paying propensity of the consumers has been significantly impacted due to the ongoing economic condition of the country. This has led to significant challenges on the recovery front, distorting the recovery ratio, especially in the last 12 months, consequently affecting the loss profile of feeders.

While considering the submissions of the Licensee, the Authority observes that attributing economic conditions alone overlooks potential internal inefficiencies and shortcomings in the Licensee's operations and management. Moreover, instead of solely relying on recovery ratios as the basis for load-shedding policies, the Licensee should explore alternative measures to address financial challenges, such as improving billing and collection processes, reducing technical losses, and enhancing consumer awareness regarding the importance of timely payments. Additionally, the Licensee should prioritize transparency and accountability in its operations to rebuild consumer trust and ensure fair treatment for all consumers regardless of economic conditions.

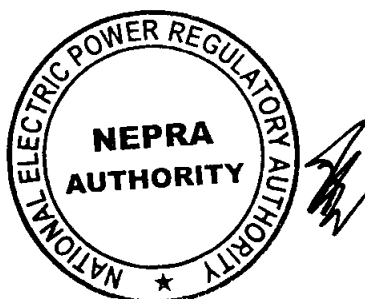
- xii) The Licensee has also submitted that in line with Clause 8.2.4 of the NEPRA Consumer Service Manual, the Licensee promptly disconnects all such defaulters/non-payers of bills. However, loss of sales occurs in areas which are highly infested with illegal kunda connections and where illegal theft of electricity is rampant. To combat this menace, the Licensee has been constantly converting its bare cables into Aerial Bundled Cables (ABCS) to restrict access and conducting kunda removal drives regularly as part of its governance measures.

The Authority has considered the submissions of the Licensee and observes that despite the aforementioned efforts being taken by the Licensee, there is still AT&C-based load shedding on 30% of the Licensee's feeders. In light of the weekly monitoring of load shedding reports by the Regional Office, Karachi, it has been observed that the Licensee is not even following its so-called AT&C-based load shedding criteria and the consumers are experiencing extended hours of load shedding even more than their scheduled hours. Therefore, the claims of the Licensee seem not valid.

12. **Conclusion:**

It is quite evident from the aforementioned provisions of applicable documents that it is obligatory for KE being a prudent distribution utility to provide and ensure fair, reliable, equitable, and uninterrupted distribution of electricity services to its territory in accordance with the eligibility criteria, performance standards, safety health, and environment protection which are also made mandatory under Article 11 of KE Distribution Licence.

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13. **Decision:**

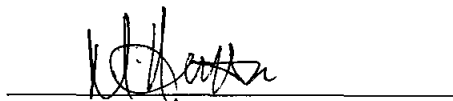
Keeping in view the submissions of the Licensee, the evidence available on record, and provisions of relevant NEPRA laws and terms and conditions of distribution license issued to the Licensee, the Authority hereby rejects the response of the Licensee against the served Show Cause Notice dated September 11, 2023, and imposed a fine of Rs 50 Million on the Licensee under NEPRA Act, and NEPRA (Fine) Regulations, 2021 for violation of Rule 4(f) of Performance Standards (Distribution) Rules, 2005, Rule 9(8) of NEPRA Licensing (Distribution) Rules, 1999, Regulation 11(2) of NEPRA Consumer Eligibility Criteria (Distribution Licensees), Regulations, 2022, read with Section 21 (2)(b) & (f) of the NEPRA Act, and Article 11 of the terms & conditions of its Distribution License. Additionally, the Licensee is non-compliant to the directions of the Authority.

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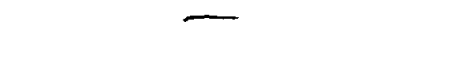
Rafique Ahmed Shaikh
Member (Technical)



Engr. Maqsood Anwar Khan
Member (Licensing)



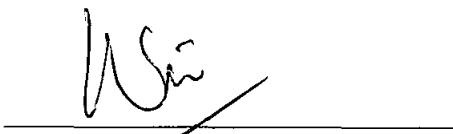
Mathar Niaz Rana (nsc)
Member (Tariff)



Amina Ahmed
Member (Law)



Waseem Mukhtar
Chairman



Dated 03/04/2024

