



Registrar

National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/DG(M&E)/LAD-02/16571

November 04, 2024

Chief Executive Officer
Islamabad Electric Supply Company Limited (IESCO),
Street 40, G-7/4, Islamabad

SUBJECT: ORDER OF THE AUTHORITY IN THE MATTER OF SHOW CAUSE NOTICE
ISSUED TO IESCO ON ACCOUNT OF DELAY IN APPROVAL OF GRID
INTERCONNECTION STUDIES SUBMITTED BY ACCESS SOLAR
(PRIVATE) LIMITED & ACCESS ELECTRIC (PRIVATE) LIMITED AND
SUBSEQUENT LOSS TO NATIONAL EXCHEQUER

Please find enclosed herewith the Order of the Authority along with Decision of Mr. Mathar Niaz Rana (nsc), Member (NEPRA) (total 24 pages) in the subject matter for information and compliance.

Enclosure: As above


(Wasim Anwar Bhinder)

National Electric Power Regulatory Authority



ORDER

IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO IESCO ON ACCOUNT OF DELAY IN APPROVAL OF GRID INTERCONNECTION STUDIES SUBMITTED BY ACCESS SOLAR (PRIVATE) LIMITED & ACCESS ELECTRIC (PRIVATE) LIMITED AND SUBSEQUENT LOSS TO NATIONAL EXCHEQUER.

1. Islamabad Electric Supply Company Limited (IESCO) (the "Licensee") was granted a Distribution License (No. 01/DL/2023) by the National Electric Power Regulatory Authority (the "Authority") on 06.04.2023, 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").

Background:

2. During the proceedings in the matter of applications of Access Solar (Private) Limited and Access Electric (Private) Limited to opt cost plus Tariff, the Authority observed that their previous Tariff lapsed as the companies could not be able to achieve their financial close due to delay caused by the Licensee in approval of their Grid Interconnection Studies.

Explanation:

3. In view thereof, an Explanation was issued to the Licensee under Regulation 4(1) and 4(2) of NEPRA (Fine) Regulation, 2021 on November 30, 2022, on account of delay in Interconnection Studies submitted by Access Solar (Private) Limited and Access Electric (Private) Limited, which translated loss to the national exchequer in terms of expensive electricity.
4. The Licensee vide its letters dated December 14, 2022 and December 20, 2022, submitted its response. Furthermore, in order to satisfy the requirement of law, a hearing in light of Regulation 4(5) of NEPRA (Fine) Regulations, 2021, was held on December 29, 2022, wherein, CEO of the Licensee along with his team participated and made submissions.

Show Cause Notice

The Authority considered the submissions of the Licensee and after detailed deliberations rejected the response submitted by the Licensee against the Explanation served upon it and directed to issue Show Cause Notice (SCN) to the Licensee under Regulation 4(8) & (9) of the NEPRA (Fine) Regulations, 2021 on account of violation of NEPRA Act, terms & conditions of license, NEPRA (Interconnection for Renewable

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Generation Facilities) Regulations, 2015, Distribution Code, repeated directions of the Authority and other applicable documents.

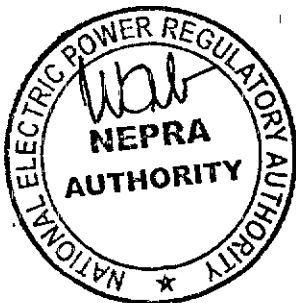
5. Accordingly, NEPRA vide letter dated May 12, 2023, issued a Show Cause Notice (SCN) along with the Order recording reasons for rejection of Explanation to the Licensee. The salient points of the served SCN are as follows:

8. **"WHEREAS**, the Authority issued an Explanation to IESCO under Regulation 4(1) and 4(2) of NEPRA (Fine) Regulation, 2021 on November 30, 2022, for delay in Interconnection with Access Solar (Private) Limited and Access Electric (Private) Limited and subsequent loss to the national exchequer. The salient points of the said Explanation are reproduced below:

3. **"...WHEREAS**, NEPRA granted Generation Licence No. SPGL/03/2013 dated 22.08.2013 to Access Solar (Private) Limited ("ASPL") for its proposed 11.5 MW Solar PV Power Plant and Generation Licence No. No. SPGL/05/2014 dated 26.06.2014 to Access Electric (Private) Limited ("AEPL") for its proposed 10 MW Solar PV Power Plant. Both the generation facilities located Near Village Hattar, Tehsil Pind Dadan Khan, District Jhelum in the Province of Punjab. As per the generation licenses of both projects, interconnection was proposed at IESCO's 132 kV Dandot Grid Station through two separate 11 kV feeders (osprey conductors) for each of the projects. The said companies (ASPL and AEPL) submitted separate interconnection studies (proposed at 11 kV) to IESCO and the same were vetted by TSW IESCO in 2012 and 2015 respectively with some conditions.

4. **WHEREAS**, afterward, in 2019, ASPL and AEPL again approached IESCO for approval of revised Interconnection Studies for both projects. However, the same were disapproved by IESCO. IESCO proposed interconnection at 132kV level due to savings in terms of lower technical losses and less outages (SAIDI) at 132kV compared to outages at 11kV. Further, IESCO was of the view that since the coordinates of both the plants referred in interconnection studies are same therefore these plants may be considered as one plant with a cumulative capacity of 21.5MW.

5. **WHEREAS**, the matter was taken up by the Authority, whereby it was observed that in the Generation Licenses and Tariff Determinations of ASPL and AEPL, the interconnection at 11 kV was approved by the Authority and both the plants have separate LOI and LOS by AEDB. In addition, Islamabad High Court (IHC) and Cabinet Committee on Energy (CCoE) also approved these plants as two separate entities/projects for implementation. Further, NEPRA (Interconnection for Renewable Energy Projects) Regulations 2015 also provided that for Renewable Energy Projects up to 15MW each, interconnection at 11 kV may be provided with the condition that the losses remained under the limit of 3.5%. Therefore, NEPRA vide letter dated 22.04.2020 directed IESCO to proceed further into the matter and allow interconnection at 11 kV level at IESCO's Dandot Grid Station for the implementation of 11.5 MW ASPL and 10 MW AEPL Solar PV Power Plants. However, IESCO did not allow ASPL and AEPL to interconnect at the 11kV level



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for their proposed Solar PV Power Plants, despite NEPRA's directions. Therefore, IESCO failed to comply with the directions of the Authority.

6. **WHEREAS**, both ASPL and AEPL filed a cost-plus tariff petition on 24.03.2020 which was decided by the Authority vide decision dated 30.12.2020. The said Tariff was modified on 19.07.2021 to allow Prior Period Development Cost ("PPDC") to the company before the Financial Close. Under the said tariff, the company was required to achieve Financial Close by 30.12.2021. However, due to the delay caused by IESCO by withholding approvals of Grid Interconnection Studies in clear disregard to CCoE's decision dated 04.04.2019 and NEPRA directions dated 22.04.2020, it could not achieve the said milestone, as result thereof the said tariff lapsed.
7. **WHEREAS**, ASPL and AEPL again approached NEPRA on 11.01.2022 for the determination of a new tariff. The companies submitted that the delay in the projects, due to the fault of IESCO, has not only derailed the process of achieving various milestones but has adversely affected several cost parameters related to the projects, especially the cost of modules and transportation. Further, their EPC contractor has expressed its inability to meet the EPC price as stipulated in the previous determination. The Authority issued tariff determinations on 07.09.2022, wherein the overall project cost for ASPL has been increased from 7.478M USD to 8.771M USD and the project cost for AEPL has been increased from 6.412M USD to 7.543M USD.
8. **WHEREAS**, due to the delay caused by IESCO in approving Interconnection Studies, firstly the overall project costs have been increased which will be passed on to the consumers in terms of a higher tariff. Secondly, if total energy generation (GWh) for the FY 2021-22 is kept constant, it is estimated that the overall reduction/savings would be around Rs. 703 Million, if these two projects would have been added to the grid on time to replace expensive fuel.
9. **WHEREAS**, IESCO has prima facie, violated Regulation 4 of NEPRA (Interconnection for Renewable Generation Facilities) Regulations, 2015, Clauses 6.7 and 7 of Connection Code of NEPRA Distribution Code, 2005, and is in non-compliance with the directions of the Authority."
9. **WHEREAS**, the Licensee was given fifteen (15) days to submit reply against the aforementioned Explanation. In response, the Licensee submitted its reply vide letters dated December 14, 2022, and December 20, 2022, and hearing in the matter was also held on December 29, 2022. Consequently, the Authority after detailed deliberations concluded that the delay in approval of grid interconnection studies caused due to Licensee's negligence. Further, the Authority constrained to believe that due to this delay, not only consumers were deprived of the cheaper power but also the overall project costs have been increased which will be passed on to the consumers in terms of a higher tariff in the future. Hence, the Licensee has failed to submit a satisfactory response against the Explanation served to it; and



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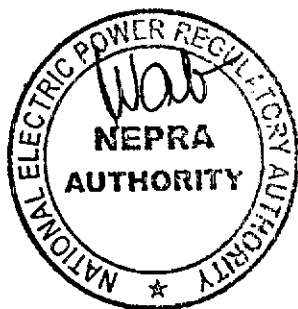
10. *WHEREAS, the Licensee has failed to satisfy the Authority with its replies and prima facie, has committed the violations of Regulation 4 of NEPRA (Interconnection for Renewable Generation Facilities) Regulations, 2015, Clauses 6.7 and 7 of Connection Code of NEPRA Distribution Code, 2005, and is 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 10th May 2023 is attached herewith, mentioning the reasons of rejection; and"*

Submissions of the Licensee:

6. In response, the Licensee vide its letter dated June 07, 2023 submitted its reply against the served Show Cause Notice. The salient points of the submitted response of IESCO are as follows:

Preliminary Legal Objections

- A. *The exercise of power by the Registrar under Regulation 4(1) of the NEPRA (Fines) Regulations, 2021 ("Fine Regulations") to seek an "Explanation" is ultra vires in view of the procedure of "Enforcement" set out in Chapter IIIA of the NEPRA Act, notwithstanding that the explanation itself was sought after the expiry of fifteen (15) days period prescribed in the Fine Regulations. Therefore, the SCN is based on a provision of the Fine Regulations which is inconsistent with the provisions of the NEPRA Act and is liable to be withdrawn.*
- B. *Since "Enforcement" under Chapter IIIA of the NEPRA Act entails penal provisions and other consequences, the intention of the legislature under Sections 27A(1) and 27A(2) of the NEPRA Act is clear that the Authority shall first conduct an investigation with respect to any alleged or perceived violation of the NEPRA Act (or the rules, regulations, codes made thereunder or the conditions of a licence or registration granted under the NEPRA Act). Further, the investigation can only be initiated by the "Authority" as defined in Section 2(i) read with Section 3 of the NEPRA Act (and not the "Registrar"), by appointing, through a notice, two officers. Accordingly, no enforcement action, including the issuance of the SCN, with respect to any alleged or perceived violation of the NEPRA Act or the rules thereunder can be initiated without two officers of the Authority conducting the investigation. Section 27A(2) of the NEPRA Act also provides that "a copy of the notice of investigation shall be provided to the persons under investigation". It is a matter of record that the Authority has not complied with this requirement.*
- C. *Under Section 27B of the NEPRA Act (and any regulatory intention to impose any fines) a show cause notice can only be issued after the precondition of an investigation required to be conducted under Section 27A of the NEPRA Act has been met. The investigation has to first determine that the Licensee (in this case, IESCO) has violated the NEPRA Act (or the 'applicable documents' issued thereunder) and then the Authority may proceed on the basis of the investigation report. As no investigation took place in the matter, the issuance of the SCN is illegal and without any statutory basis.*



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- D. There is no provision in the NEPRA Act that allows the Registrar to call for an 'Explanation' of any alleged violation of the NEPRA Act (or the 'applicable documents' issued thereunder) and for the Authority to then proceed, pass an order, show cause or penalize on the basis of the Explanation provided by the Licensee.
- E. The Authority cannot circumvent the procedure set out in the special law i.e., the 'NEPRA Act', by not fulfilling the requirement to first carry out an investigation under Section 27A of the NEPRA Act, and illegally proceed on the basis of the Regulations 4(1), 4(5) and 4(7) of the Fine Regulations by asking for an Explanation.
- F. Regulations 4(1), 4(5), and 4(7) of the Fine Regulations regarding calling an "Explanation" have been made by the Authority in excess of the powers granted to it by the legislature. In this regard, Section 47(1) of the NEPRA Act clearly provides the following restriction on the Authority: "The Authority may, for performance of its functions under this Act and by not notification in the official Gazette, make regulations not inconsistent with the provisions of this Act and the rules."
- G. The power granted to the Authority under Section 47(2)(f) of the NEPRA Act to make regulations for "manner and procedure of show cause notices" is subject to the restrictions set out in Section 47(1) of the NEPRA Act in that the procedure for enforcement in the NEPRA Act (or the 'applicable documents' issued thereunder) cannot be inconsistent with the NEPRA Act.
- H. The process of seeking an Explanation under Regulation 4(1) and (2) of the Fine Regulations, without any statutory basis has deprived IESCO of the right to join the investigation and satisfy the Authority that it has not violated or breached any provision of the NEPRA Act (or the 'applicable documents' issued thereunder). In effect, IESCO's fundamental right to be dealt in accordance with the law and due process & fair-trial under Articles 4 and 10-A of the Constitution of Pakistan, 1973 ("Constitution") has been breached in the present circumstances and IESCO reserves the right to raise the constitutional grounds of challenge at the appropriate stage before the competent court of constitutional jurisdiction.

Accordingly, since the process of calling the Explanation under Rule 4(1) and (2) of the Fine Regulation was illegal, the supra-structure built thereon, including the Authority's Order dated 10.05.2023 and the SCN are without jurisdiction and illegal.

- J. The SCN is liable to be withdrawn as it is based on the Order dated 10.05.2023, which Order has not been passed upon conclusion of any investigation by the Authority under Section 27A(1) of the NEPRA Act. Rather, the Order is based on assumptions and conjectures - which is why, in paragraph No. 9 of the SCN, the Authority has used the phrase "constrained to believe" as opposed to the Authority stating that it has established a breach by IESCO of the NEPRA Act (or the 'applicable documents' issued thereunder).

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- K. The SCN and the Order dated 10.05.2023 have been issued in violation of Section 24A of the General Clauses Act, 1897.

Para-wise Reply

1. The allegation of the Authority regarding non-compliance of the decision regarding not allowing ASPL and AEPL to interconnect at 11kV level issued vide NEPRA letter dated 22.04.2020 is not correct as IESCO approved interconnection of both solar power plants at 11kV vide letter No. 5391-95 dated 28.05.2020 addressed to CEO ASPL & AEPL, further copy to Registrar NEPRA vide his letter dated 22.04.2020 and GM TSW w.r.t his letters No. 426 dated 09.07.2019 & 301 dated 11.05.2020.

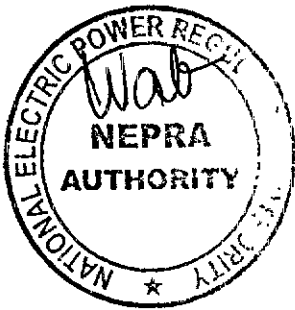
Further, please note that it is standard practice that during approval/vetting of studies, the report regarding constraints in the overall system, rather than specified area only, has to be generated and further instructions are provided regarding approval of protection schemes and testing procedures that need to be adopted as per IEC standards. Therefore, the study was declared as satisfactory and instructions were given regarding protection schemes and tests at commissioning stage i.e., before COD. Therefore, the approval provided on 28.05.2020 was clear. The conditions set out in the approval dated 28.05.2020 are in view of the overall system constraints and some instructions were provided in that regard which were to be fulfilled before commissioning of the project. If the Authority desires, all approvals/vetting's of interconnection studies to date can be shared.

2. IESCO has approved interconnections from time to time:
1st interconnection approved on 2012.
2nd interconnection approved on 2012.
3rd interconnection approved on 28.05.2020.
After directions of the Authority on 22.04.2020.

However, each time the sponsor failed to execute the project in time and filed tariff petitions on every occasion, either against tariff determinations or on account of a change in technology. Therefore, when IESCO approved the interconnection study on 28.05.2020, the sponsor had already filed a cost-plus tariff petition, which was approved by the Authority on 30.12.2020 and further modified on 19.07.2021. This shows that the delay was not on account of IESCO as IESCO approved the interconnection study on 28.05.2020, however, the sponsor failed to comply as they had filed a petition for cost-plus tariff.

PMS report on demand and network expansion plan changes every year, either due to an increase or decrease in demand or a change in the timeline of projects. Therefore, due to the failure of the sponsor to complete the project on time, the sponsor had to revise the interconnection study on multiple instances.

3. As already established, IESCO approved interconnection studies on various occasions, however, the sponsor delayed the project as they had filed a petition against tariff approvals by the Authority. Further, after getting approval of the interconnection study from IESCO in May 2020, AEPL &



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ASPL were required to get the interconnection approved from NTDC as per the Authority's Directive No. 4046-57 dated 24 June 2016. Instead of obtaining the approval from NTDC AEPL & ASPL, as per their practice, again failed to comply with the Authority's Directive until it was highlighted by IESCO vide letter No. 11478-84 dated 8 December 2020.

It is also worth noting that IESCO vide letter No. 37015-16 dated 12 July 2016 had communicated the Authority's Directive dated 24 June 2016 to all generation companies, including AEPL and ASPL, operating in IESCO's jurisdiction. In response to IESCO's letter dated 12 July 2016, AEPL and ASPL vide letter dated 14 July 2016 finally submitted the interconnection study for NTDC's approval. In short, AEPL and ASPL were well aware of the Authority's Directive in relation to the requirement for NTDC's approval, but, due to their casual approach, there was a delay of seven months in the submission of the interconnection study to NTDC for approval, only after IESCO pointed this out.

It took further five months until NTDC, vide letter No. 1614-17 dated 26 April 2021 addressed to IESCO, advised the 'consultant' to update the PSS/E cases by incorporating IESCO's latest grid wise development in the Chakwal vicinity as well as other adjustments and directed them to obtain IESCO's approval. Since IESCO approved the interconnection study on 28.05.2020, and further issued consent regarding construction and operation of the interconnection facility to CPPA-G on 08.12.2020, whereas, the sponsor filed the petition for cost plus tariff, the delay is on account of the sponsor.

4. That the contents of paragraph No. 9 are strongly contested and denied. The charges against IESCO in paragraph No. 9 are twofold, namely:

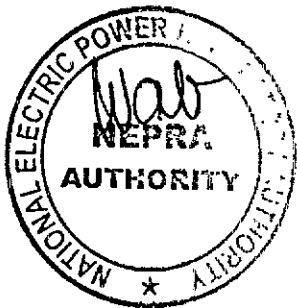
- (i) "the delay in approval of grid interconnection studies was caused due to the Licensee 's negligence"; and
- (ii) "the Authority constrained to believe that due to this delay not only consumers were deprived of cheaper power but also the overall project costs have been increased which will be passed on to the consumers in terms of a higher tariff in the future ".



It is submitted that the Authority's conclusion is completely flawed and based on conjectures. There is no rational basis but only "assumptions" that IESCO appears to have delayed the financial close. There is no tangible/concrete evidence that it is indeed IESCO that caused any delay or losses. Moreover, IESCO also strongly contests that the Authority was "constrained to believe" (a conjecture that has no room in the regulatory regime of the Authority under the NEPRA Act) that due to IESCO's delay, consumers were deprived of cheaper power and that the over-all project costs have increased, which will be passed on to the consumer in terms of higher tariff. The Authority has failed to consider or rely on a correct timeline of the events, and appropriates and reprobates on events that took place first in the years 2019 -2020 and then in the year 2021, in an attempt to show cause and penalize IESCO. To clarify for the record, it is important to note as follows:

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- a. On 06.02.2019, IESCO received the updated and revised versions of the grid interconnection studies from ASPL and AEPL,
- b. IESCO performed internal evaluations and, vide letter dated 07.08.2019, the General Manager (TSW), IESCO conveyed the following observations:
1. Since M/s TechAccess Pvt. Ltd. developed both the Solar Power Plants i.e. 10 MW Access Electric Pvt. Ltd. and 11.5 MW Access Solar Pvt. Ltd. on same site and proposed to interconnect both Solar Power Plants separately at 11 KV BusBars of Incoming # 01 & Incoming # 02 at 132KV Dandot Grid Station, so this office as per "NEPRA Regulation 2015 Regarding Interconnection For Renewable Generation Facilities" suggested that power may be evacuated through 132kV T/line instead of 11KV network as the cumulative Power of Solar Plants is almost 21.5MW";
 2. As per Schedule-I of "NEPRA Regulation 2015 Regarding Interconnection for Renewable Generation Facilities" Part 1, Power to be transported for Interconnection at 11KV is allowed from 0.5MW to 12.5MW & Part-2, Power to be transported for interconnection at 132 KV is allowed from 12.5MW to 84MW (copy enclosed for ready reference).";
 3. Moreover, WAPDA Planning and distribution guide also restricted distribution of power at 11kv feeder upto 4.7MVA (copy enclosed for ready reference)."; and
- "Keeping in view the above, it seems that M/s TechAccess Pvt. Ltd is hiding the facts to avoid interconnection at higher voltage level. It is therefore advised to ask M/s TechAccess Pvt. Ltd. to revise the interconnection study as per NEPRA Regulations."
- c. On the same date i.e., 07.08.2019, the Chief Engineer of IESCO vide his letter to ASPL and AEPL, conveyed as follows:



"In continuation of this office letter referred above. It is further intimated that since M/s tech Access Pvt. Ltd developed both plants i.e. 10 MW Access Electric Pvt. Ltd. and 11.52 MW Access Solar Pvt. Ltd. on the same site and proposed to interconnect both Solar Power Plants separately at 11kV bus bars of incoming No. 01 and Incoming No. 02 at 132kV Dandot Grid Station. So in light of "NEPRA Regulations-2015 for Interconnection of renewable generation Facilities" TSW IESCO has suggested that Power may be evacuated through 132kV T/line instead of 11kV network as the cumulative Power of both Solar plants is 21.52 MW"

"Keeping in view the above, it is therefore advised to revise the interconnection Study as per NEPRA Regulations to proceed further accordingly."

- d. On 12.09.2019, IESCO wrote to the Authority requesting the issuance of the necessary directions/guidelines to proceed in the matter. In this

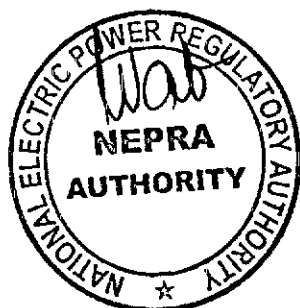
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regard, the Authority's letter dated 10.10.2019 and IESCO's letter dated 07.01.2020 were also exchanged.

- e. After seven (7) months of IESCO's request to the Authority to issue direction in the matter, on 22.04.2020, the Authority issued the following direction:

"In this regard, it is informed that the Authority has considered the submissions of Tech Access and IESCO and directed IESCO to proceed further in the matter and allow interconnection at 11kV level at IESCO's 132KV Dandot Grid Station for the implementation of 10MW Access Solar and 11.5 MW Access Electric Solar Power Plant."

- f. On 28.05.2020 i.e., within 35 days, IESCO complied with the Authority's direction and granted its approval to the grid interconnection studies. It is unconscionable and unfair on the part of the Authority to emphasize that IESCO caused any delay, when the Authority itself took seven (7) months to pass a direction that IESCO had requested in the matter.
- g. Furthermore, on 08.12.2020, IESCO also issued the Power Evacuation Certification which was well within the deadline of 30.12.2021 granted to ASPL and AEPL for achieving the financial close.
- h. The Order dated 10.05.2023, surprisingly, on the one hand alleges that IESCO has relied on allegedly distorted facts, and failed to disclose reasons behind ASPL and AEPL not achieving financial close within the deadlines and, on the other hand, seeks to penalize IESCO for the correspondences and events of 2021 (involving AEDB and CPPA-G, etc.) that happened much after IESCO had approved the grid interconnection study. This establishes that as the Authority did not proceed as per the prescribed law and failed to carry out an investigation under Section 27A of the NEPRA Act, its assessment in the Order dated 10.05.2023 is flawed and baseless, and the SCN has been issued illegally without any basis.



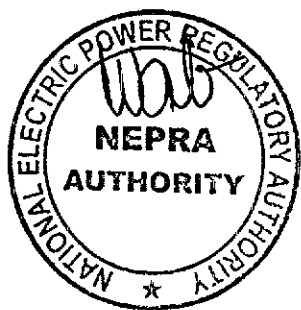
5. That the contents of paragraph No. 10 are denied. It is submitted that IESCO has not breached Regulation 4 of the NEPRA (Interconnection for Renewable Generation Facilities) Regulations, 2015 ("2015 Regulations"). Rather, the Authority has offered no basis, explanation or reasons whatsoever in the Order dated 10.5.2023 or the SCN regarding the manner in which IESCO has purportedly violated the 2015 Regulations. Bare perusal of the above shows that IESCO approved the grid interconnection studies within a few days of the direction issued by the Authority. Likewise, it is submitted that IESCO did not violate Clause CC 6.7 of the Distribution Code, 2005 given that the Authority, itself, took over seven (7) months to issue the direction to IESCO in response to IESCO's query dated 12.09.20 19. Even otherwise, the

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Authority cannot pick and choose legal provisions indiscriminately and declare that the time limit of 15 days under Regulation 4 of the Fine Regulations is directory but the time provided in CC 6.7 of the Distribution Code, 2005 is mandatory in nature – the Authority, being a regulator has to display the use of structural discretion, which is clearly missing in the present case. Moreover, the allegation that CC 7 of the Distribution Code 2005 has been violated is also fallacious as no specific reason has been provided by the Authority in the Order dated 10.5.2023 or in the SCN and merely a general statement is set out in the SCN. On such basis, the allegations of violation cannot withstand the test of reasonableness, rationality or propriety and the SCN should be withdrawn.

Hearing:

7. In order to fulfill the requirement of law, the Authority decided to provide an opportunity of hearing to the Licensee in light of Regulation 4(11) of NEPRA (Fine) Regulations, 2021, before finalizing the proceedings in the matter. Therefore, the hearing in the matter of SCN issued to the Licensee was held on August 01, 2023, wherein, CEO IESCO along with his team, made the following submissions:
- i. As far as the law is concerned, the procedure that the Authority has adopted was not correct. Because a key element that the Authority did not consider, whether ASPL and AEPL contributed towards delaying to achieve their financial close or otherwise. That aspect has been entirely missed by the Authority and the sole focus has remained on whether IESCO and what IESCO contributed.
 - ii. The Authority served Explanation to IESCO under Regulation 4(1) and 4(2) of the NEPRA (Fine) Regulations, 2021. This procedure is not envisaged in the NEPRA Act. The procedure envisaged in the NEPRA Act is under Section 27A, according to which the Authority should have appointed at least two officers to investigate the entire matter.
 - iii. The Legal Counsel of Licensee further provided the following timelines of the events:
 - a. On 07.08.2019, IESCO performed internal evaluation on grid studies and their position was that plant's power connection should be at 132kV. On the same day, IESCO issued letters to both entities (ASPL and AEPL) to revise the interconnection studies.
 - b. On 12.09.2019, IESCO approached NEPRA Authority and requested to pass a decision on matter.
 - c. On 22.04.2020, NEPRA issued its decision after seven months by directing IESCO to approve the interconnection studies at 11kV level.
 - d. On 28.05.2020, IESCO approved the grid studies and on 08.12.2020, IESCO issued Power Evacuation Certificate to the entities. It was one year before the financial close (30.12.2021) of the companies.
 - e. In this one year, the companies did not took any approval from CPPA-G or NTDC, that does not comes under IESCO's part.

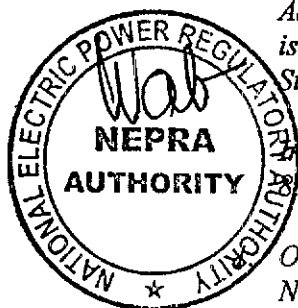


iv. Meanwhile, Assistant Director-Planning (Mr. Muhammad Waqas), Licensee submitted that, as per the decision of the Authority, all the DISCOs were directed to get approval from NTDC for those RE projects, which are below 220kV voltage level. Therefore, the approval of NTDC is mandatory.

8. During the hearing, the Authority directed Licensee to submit the additional grounds (if any) especially Licensee's efforts after the issuance of Power Evacuation Certificate dated 08.12.2020, within three (03) days of hearing. Accordingly, the Legal Counsel of Licensee vide its letter dated August 02, 2023, submitted the additional grounds. The summarized points of the same are as below:

"IESCO received the updated and revised Grid Interconnection Studies from Access Solar (Private) Limited ("ASPL") and Access Electric (Private) Limited ("AEPL") on 6.02.2019 and IESCO, after its internal evaluations, conveyed its observations to ASPL and AEPL on 7.08.2019. As ASPL and AEPL did not consider IESCO's observations, IESCO approached the Authority on 12.09.2019 for a decision, which was passed on 22.04.2020. Within 35 days of the Authority's decision, IESCO granted its approval to the Grid Interconnection Studies on 28.05.2020 (approximately 1.5 years before the deadline of financial close on 30.12.2021) and, further, also issued the Power Evacuation Certification on 8.12.2020 (approximately 1 year before the deadline of financial close on 30.12.2021).

During the hearing, the Authority directed IESCO to explain the reason for applying the requirement of endorsement/approval of Grid Interconnection Studies from the National Transmission and Dispatch Company ("NTDC"). We would explain that IESCO had applied this requirement in consonance with the Authority's direction dated 24.06.2016 which stated "the Authority had considered the issue of applicability of GOPA studies for projects proposed to be connected below 220kV level and the certificates in respect of approval of interconnection studies of RE projects issued by DISCOs independently. In this regard, the Authority has observed that the GOPA studies involved detailed modeling of only 500 & 220kV transmission system and the impact of wind and solar on the overall behavior. This in view the Authority decided in principle that interconnection studies for renewable energy projects proposed to be connected below 220kV may be carried out by the respective DISCOs. However, being a national interconnected grid system, it is required that the interconnection study shall be endorsed/approved by NTDC." Accordingly, IESCO vide its letter dated 12.07.2016 wrote inter alia to Tech Access FZ LLC (now ASPL) and AEPL that enclosed please find herewith a letter dated 24.06.2016 which is self-explanatory. In this context, you are advised to submit Grid Interconnection Studies i.r.o your projects to NTDC for approval.



Insofar as the timeline after issuance of the Power Evacuation Certification dated 8.12.2020 is concerned, we submit as follows:

On 26.01.2021, ASPL and AEPL submitted the Grid Interconnection Studies to NTDC for endorsement and vetting.

2. *Simultaneously on 5.03.2021, IESCO received PSS/E files about Interconnection Study of ASPL and AEPL via email sent by Power Planners International ("PPI" or "Consultant of ASPL and AEPL"). PPI informed IESCO that NTDC had endorsed the Grid Interconnection Studies but no document was provided to IESCO.*

Accordingly, IESCO vide its letter dated 9.04.2021 requested NTDC to provide its comments in the matter.

3. NTDC, in response to the letters dated 26.01.2021 by ASPL and AEPL, and IESCO's letter dated 9.04.2021, issued its letter dated 26.04.2021 and directed as follows:

"The office received the revised grid interconnection studies of the subject power plants via above-referred letters (i) and (ii) for review and vetting. After detailed review of the associated system studies carried out by the Project Consultant (M/s PPI), a few corrections were required especially those in the vicinity of the subject plants i.e. Chakwal New 500 kV grid station was included in the base case scenario for year 2022 which has been delayed as per the latest scenario. Moreover, appropriate adjustments for reactive power compensation were needed for overall IESCO area. These observations were communicated to M/s PPI in a meeting held at this office on 26.02.2021. Later, M/s PPI updated the PSS/E study files by incorporating our comments. In addition to it, M/s PPI was advised to work in coordination with IESCO:

- (i) To update the PSS/E study cases by incorporating latest IESCO grid-wise developments in the vicinity of Chakwal
- (ii) To attain IESCO's approval on the studies and sport before being sending to NTDC for vetting and approval"

Resultantly, NTDC did not unconditionally endorse or vet the Grid Interconnection Studies. Rather, NTDC directed ASPL and AEPL to work in coordination with IESCO and obtain its approval after updating the PSS/E study case by incorporating latest IESCO grid-wise developments in the vicinity of Chakwal and to attain IESCO's approval on the Grid Interconnection Studies.

4. On 29.04.2021, IESCO received two letters from AEPL and ASPL through which the said entities submitted the updated Grid Interconnection Studies to comply with the comments received from NTDC. It is important to submit that between January 2021 to April 2021, IESCO had no role whatsoever and the matter was pending with the NTDC.
5. Upon receipt of the Grid Interconnection Studies on 29.04.2021 from ASPL and AEPL IESCO evaluated the same through IESCO's Technical Services Wing ("TSW") and certain errors were detected (IESCO's internal letter dated 28.05.2021 sent by IESCO's TSW) which were communicated to PPI, ASPL, and AEPL. On 12.07.2021, ASPL and AEPL, vide their letters, sent revised Grid Interconnection Studies after correcting the errors together with the files in PSS/E sent through email. This position is also noted in IESCO's internal letters dated 11.06.2021 and 16.07.2021 in which IESCO's TSW was requested to vet the revised Grid Interconnection Studies received from ASPL and AEPL.



On 26.07.2021, IESCO's TSW vide its letter sought clarifications with respect to the Grid Interconnection Studies from ASPL and AEPL. The entities responded to IESCO vide their letters dated 28.07.2021, and IESCO proceeded on the basis of the response on 2.08.2021.

7. Thereafter, IESCO issued its final approval to the Grid Interconnection Studies on 20.09.2021. Accordingly, the matter was placed before IESCO's Generation

Committee vide letter dated 6.10.2021 for its recommendations and approval, which approval was granted on 25.03.2022.

8. Simultaneously, an Item Note was prepared by the Chief Engineer on 18.11.2021 for the consideration and administrative approval of the Technical and Special Initiative Committee of IESCO's Board of Directors ("BOD") which also approved the matter.
9. Finally, after approval from IESCO's Generation Committee and IESCO BOD's Technical and Special Initiative Committee, the BOD vide its Resolution No. 213-BOD-R04 dated 11.02.2022 was pleased to approve the matter. Upon approval, IESCO vide its letter dated 4.04.2022 also informed CPPAG that the Grid Interconnection Studies has been approved; IESCO will evacuate power at 11kV and that IESCO has commenced the process of filing of power acquisition request ("PAR") to the Authority.

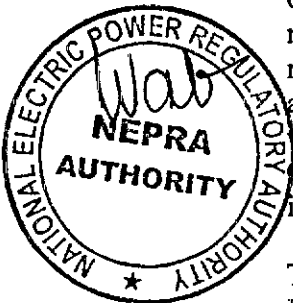
It follows from the above that there is no delay on the part of IESCO in approving the Grid Interconnection Studies. Moreover, as is established from the above, for the year 2021, NTDC took approximately 4 months to give its comments on the Grid Interconnection Studies, after which IESCO diligently evaluated the same and repeatedly gave its comments to ASPL and AEPL. ASPL and AEPL, at no material stage, contested the observations made by IESCO but, rather, they conceded to the same by re-sending the revised Grid Interconnection Studies on multiple occasions during the year 2021 (with the last being in July-August 2021) after which the approval was granted on 20.09.2021 and, subsequently, the BOD also ratified the approval in its meeting dated 11.02.2022.

It is also important to emphasize that the entities have not filed any complaint with the Authority and, to the contrary, ASPL in its letter dated 5.07.2023 duly noted (in the second paragraph) that "IESCO did the needful as directed. In light of the above, it is respectfully submitted that IESCO has not delayed the matter in any manner whatsoever."

FINDINGS/ANALYSIS:

11. The Licensee has submitted that the allegation of the Authority regarding non-compliance of the decision pertaining to not allowing ASPL and AEPL to interconnect at 11kV level issued vide NEPRA letter dated 22.04.2020 is not correct as IESCO approved interconnection of both solar power plants at 11kV vide letter No. 5391-95 dated 28.05.2020. The Licensee has further submitted that it is standard practice that during approval/vetting of studies, the report regarding constraints in the overall system, rather than specified area only, has to be generated and further instructions are provided regarding approval of protection schemes and testing procedures that need to be adopted as per IEC standards. Therefore, the study was declared as satisfactory and instructions were given regarding protection schemes and tests at commissioning stage i.e., before COD. Therefore, the approval provided on 28.05.2020 was clear. The conditions set out in the approval dated 28.05.2020 are in view of the overall system constraints.

The Authority has considered the submissions of the Licensee and observes that the Licensee has claimed that its approval was sufficient to achieve financial close, however, in actual it was not so. The Licensee declared that studies are satisfactory with



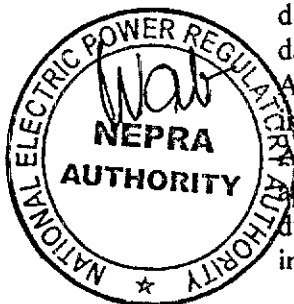
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certain conditions such as switching off of transformers, depression of voltage profile, and approval of protection scheme, etc. which was too workable for both plants to achieve financial close. Moreover, the Licensee has itself admitted that there are some conditions which are for overall system which means that those conditions had to be fulfilled by the Licensee itself, then how the plants could have achieved the financial close without clearing the system constraints. Further, it is a matter of record that both plants made the compliance with most of the observations raised by the Licensee.

12. The Licensee has claimed that it approved 1st interconnection in 2012, 2nd interconnection in 2012, and 3rd interconnection in 2020. However, every time the sponsor failed to execute the project in time and filed tariff petitions on every occasion, either against tariff determinations or on account of a change in technology. Therefore, when Licensee approved the interconnection studies on 28.05.2020, the sponsor had already filed a cost-plus tariff petition, which was approved by the Authority on 30.12.2020 and further modified on 19.07.2021. This shows that the delay was not on part of Licensee.

The Authority has examined that claims of the Licensee and observes that the Licensee's claims regarding two times approval of studies in 2012 are not relevant as it has nothing to do with the instant case. The case was started after the conditional approval of studies by the Licensee in 2020. Regarding the claim of the Licensee that sponsor failed to execute project and repeatedly filed tariff petitions, it is examined from the record that three times upfront tariffs were opted by the companies, however, the same were not notified due to one or other reason and expired due to which both plants could not achieve financial close well in time. In between because of non-execution of EPA, plants approached IHC and won the case. Further, CCOE also cleared both projects and accordingly revised their LOIs and LOSs. Later on, Access Solar and Access Electric applied for Cost Plus Tariff which was determined on 30.12.2020 and according to which both projects had to achieve financial close by 30.12.2021. This is the actual tariff which was lapsed due to Licensee's deliberate delay despite repeated correspondence by the plants, AEDB and CPPA-G by reminding the Licensee to comply with the decision of CCOE. However, the Licensee did not bother to respond to any of the agency and ultimately, the required financial close could not be achieved by the plants. As far as the Licensee's repeated claim pertaining to approval of study on 28.05.2020 is concerned, it is already commented that the Licensee's approval is not crystal clear that plants could proceed further to achieve further project timelines.

13. The Licensee has further argued that after getting approval of the interconnection study in May 2020, AEPL & ASPL were required to get the interconnection approved from NTDC as per the Authority's directive No. 4046-57 dated 24 June 2016. However, AEPL & ASPL, as per their practice, again failed to comply with the Authority's directive until the same was highlighted by the Licensee itself vide letter No. 11478-84 dated 08 December 2020. The Licensee has also submitted that it had communicated the Authority's directive vide its letter dated 12 July 2016 to all generation companies including AEPL and ASPL operating in Licensee's jurisdiction. In response, AEPL and ASPL vide letter dated 14 July, 2016 submitted the interconnection study for NTDC's approval. In short, both companies were well aware of the Authority directive, however, due to their casual approach, there was a delay of seven months in the submission of interconnection study to NTDC for approval, only after pointed out this by the Licensee.



The Authority has gone through the arguments put forward by the Licensee and observes that the Licensee is blowing hot & cool and trying to conceal the facts here. On one

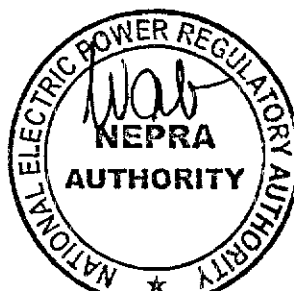
hand, the Licensee itself submitted that both plants submitted their studies on 14 July, 2016 in response to Licensee's letter dated 12 July, 2016. on the other hand, the Licensee has claimed that the companies adopted casual approach and caused delay of seven months in submission of studies only after pointing out by the Licensee. Here a question arises that why Licensee pointed out after seven months and why not the Licensee highlighted such requirement in the same letter of conditional approval of studies dated 28.05.2020. It is relevant to state that as the Licensee pointed out on 08th Dec, 2020 and immediately, the plants vide letter dated 17.12.2020 submitted GIS to NTDC for vetting and approval as required. In response, NTDC vide its letter dated 13.01.2020 wrote the company with a copy to Licensee that the GIS approved on 28.05.2020 are based on COD of 3rd & 4th quarter, 2019 and as such need to be updated. The company vide its letter dated 19.01.2020 wrote to NTDC to explain the discrepancy with a copy to Licensee requesting to advise any system changes for updating GIS as required by NTDC. Finally, the company vide its letter dated 26.01.2020 submitted an updated study to NTDC. Further, the company shared soft copies of system files of an updated GIS with the Licensee too. Hence, it can be obviously said that the companies did their job well in time as they were asked to do. Had the Licensee pointed out this requirement earlier, the plants could have done all such exercise well before as they have carried out later.

The Authority further observes that the Licensee was required to issue Power Evacuation Certificate (PEC) and consent letters required by CPPA-G, to the companies, however, the same was issued after a lapse of seven months which could have been issued in the same month of May, 2020. Further, the issued PEC was also conditional subject to the requirement of vetting of studies by the NTDC, however, the same condition could have been highlighted separately at the time of conditional approval of studies by the Licensee which it failed to do. It is a matter of record that the companies after acknowledging the receipt of conditional approval of studies, requested Licensee to issue the PEC vide letter dated 02.06.2020. Later, the reminders dated 18.06.2020, 01.07.2020, and 03.08.2020 to Licensee were also served by the companies, however, the compliance from Licensee was not acknowledged. Meanwhile, CPPA-G and AEDB vide their letters dated 12.10.2020, and 10.11.2020, also requested Licensee to issue necessary PEC and consent letters for the projects, and in the light of same, a reminder dated 30.11.2020 was again issued to Licensee by the companies. Subsequently, Licensee issued PEC to CPPA-G on 08.12.2020, however, the required consent letters were still not issued by the Licensee. Therefore, it is constrained to believe that the delay is completely on Licensee's part which caused the expiry of tariff, non-achievement of financial close, non-procurement of cheaper power, and ultimate relief to consumer in terms of cheaper electricity.

14. The Licensee has further submitted that it took five months until NTDC vide letter No. dated 26.04.2021 addressed to Licensee, advised the 'consultant' to update the PSS/E cases by incorporating Licensee's latest grid-wise development in the Chakwal vicinity as well as other adjustments and directed them to obtain Licensee's approval. Since Licensee approved the interconnection study on 28.05.2020, and further issued consent regarding the construction and operation of the interconnection facility to CPPA-G on 08.12.2020, whereas, the sponsor filed the petition for cost plus tariff, therefore the delay is on account of the sponsor.

The Authority has considered the submissions of the Licensee and observes that the Licensee is also trying to put some delay on NTDC by claiming that it took 05 months to respond to Licensee with advice to consultant to closely work with the Licensee.

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However, in actual it was not so as the companies and NTDC made a lot of correspondence with copy to Licensee during this period and cleared all the impediments. Further, the updated GIS and soft copies of system files were also mailed by the companies to Licensee on 07.03.2021, however, the Licensee vide its letter dated 09.04.2021 after a lapse of one month asked NTDC to provide its comments on the updated GIS which could have been asked earlier. In response, NTDC vide its letter dated 26.04.2021 clarified Licensee the objective of updated GIS. Hence, the claim of Licensee is unjustified as NTDC took only 17 days to respond to the Licensee's letter. The Licensee should have been asked NTDC for such comments much earlier as the Licensee was in loop while companies were revising and updating their GIS, which it failed to do so. It is on record that NTDC vide its letter dated 26.04.2021 mentioned that all the observations made by NTDC were considered and rectified by the consultant of companies. Whereas, NTDC also raised few corrections related to overall Licensee system which need to be addressed, however, the progress on Licensee's part remained silent. Moreover, the Licensee's statement regarding the issuance of consent with respect to construction and operation of the interconnection facility to CPPA-G is not based on facts. As CPPA-G vide its letters dated 04.02.2021, and 30.03.2021, issued reminders to Licensee to issue the required consents to proceed further with the EPA. However, the compliance from Licensee was not made, which shows the non-seriousness of the Licensee and caused the delay in achieving financial close by the project companies.

15. The Licensee has submitted that the Authority's conclusion is completely flawed and based on conjectures. There is no rational basis but only "assumptions" that Licensee appears to have delayed the financial close. There is no tangible/concrete evidence that it is indeed the Licensee that caused any delay or losses. The Licensee has also submitted that it contests that due to Licensee's delay, consumers were deprived of cheaper power and that the overall project costs have increased which will be passed on to the consumer in terms of higher tariff.

The Authority has gone through the submission of the Licensee and observes that the submission of the Licensee is invalid and baseless. All the grounds and arguments put forward by the Licensee were carefully examined, analyzed and point-wise rebutted in the preceding paragraphs. It is important to mention here that the same were also considered at the Explanation stage and a detailed order/determination dated 12.05.2023 was communicated to the Licensee in this regard. Therefore, the submissions of Licensee that there is no tangible/concrete evidence is away from ground realities. Hence, it can be said that Licensee is just trying to divert the attention from the actual issue. Moreover, it is also a matter of fact that due to Licensee's deliberate delay, the project companies could not achieve financial close which caused the expiry of costplus tariff. Had the PEC and relevant consent letters been issued by the Licensee well in time, there would have a chance that companies could achieve financial close and could have opted the lower tariff as compared to the current determined tariff which is slightly higher. According to latest tariff determinations dated 07.09.2022, the overall project cost for ASPL has been increased from 7.478M USD to 8.771M USD and the project cost for AEPL has been increased from 6.412M USD to 7.543M USD. Hence, it can be said that consumers were deprived from cheaper tariff as the overall project cost has been increased which will be passed on to the consumers.

16. The Licensee has further pleaded that the Authority has failed to consider or rely on a correct timeline of the events, and appropriates and reprobates on events that took place first in the years 2019 -2020 and then in the year 2021, in an attempt to show cause and

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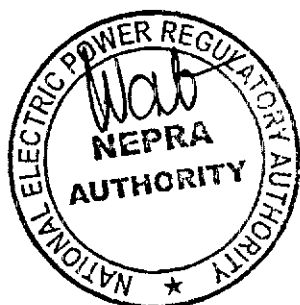


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penalize the Licensee. The Licensee has also submitted a series of events that occurred from February 2019 and onwards. Moreover, in response to the directions given by the Authority during hearing dated 01.08.2023, the Licensee has submitted timeline of events, particularly after the issuance of the Power Evacuation Certificate dated 08.12.2020.

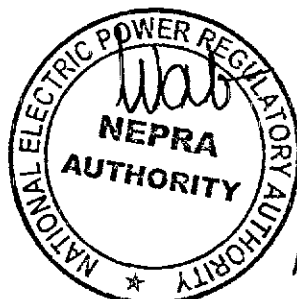
The Authority has considered the plea taken by the Licensee and observes that the submissions of Licensee are not based on ground facts as the Licensee has submitted the timeline of events from its own point of view and it mostly includes the correspondence which shows some actions on Licensee's part, however, the actual circumstances were in contradiction with the submissions of other stakeholders. Keeping in view the submissions of both parties, a comprehensive list of events has been prepared and the same is as under:

Sr. No.	Date	Events
1	5/30/2012	Tech Access submitted Interconnection studies to IESCO. AEPL
2	1/19/2013	Application for grant of Generation Licence ASPL
3	8/22/2013	Issuance of Generation Licence ASPL
4	2014	Tech Access submitted Interconnection studies to IESCO. ASPL
5	2/20/2014	Application for grant of Generation Licence AEPL
6	3/28/2014	Issuance of 1st Upfront Tariff Determination ASPL/AEPL
7	6/26/2014	Issuance of Generation Licence AEPL
8	1/22/2015	Issuance of 2 nd Upfront Tariff for Solar Power Projects
9	2/1/2015	Review filed by six companies
10	3/3/2015	Notification of 2 nd Upfront Tariff for Solar Power Projects in Official Gazette.
11	3/17/2015	Interconnection Studies Vetted/Approved by IESCO with certain conditions. ASPL
12	5/25/2015	Review Determination on 2 nd Upfront Tariff issued of Solar Power Projects
13	7/1/2015	Review Determination on 2 nd Upfront Tariff Notified
14	12/16/2015	Issuance of 3 rd Upfront Tariff for Solar Power Projects
15	12/17/2015	Notification of 3 rd Upfront Tariff for Solar Power Projects in Official Gazette.
16	12/18/2015	Application to opt 2nd Upfront Tariff SPL/AEPL
17	12/30/2015	Determination for 2nd Upfront Tariff ASPL/AEPL
18	12/31/2015	Companies filed a writ petition in IHC against the non-execution of EPA by CPPA-G.
19	5/19/2017	IHC decided the case, revalidated their tariff (2 nd Upfront), and directed to sign EPA with these plants.
20	6/21/2017	MoE filed reconsideration request against decision dated 30.12.2015.
21	1/30/2018	Issuance of Determination in the matter of reconsideration request filed by MoE ASPL/AEPL
22	2/13/2018	Review filed by the Companies against decision dated 30.01.2018. ASPL/AEPL



23	10/11/2018	Issuance of Review Petition Determination ASPL/AEPL
24	2019	CCoE cleared both projects to proceed for implementation
25	2019	Tech Access submitted revised Interconnection Studies to IESCO ASPL/AEPL
26	5/17/2019	IESCO intimated the sponsor about observations
27	9/12/2019	IESCO approached NEPRA to issue necessary guidelines since there is clear difference between the stance of both parties.
28	2/6/2020	The Company acknowledged receipt of approval and requested IESCO to issue Power Evacuation Certificate and Consent letters required by CPPA-G.
Sr. No.	Date	Events
29	3/24/2020	Application for grant of Cost-Plus Tariff (4th Tariff) ASPL/AEPL
30	4/22/2020	NEPRA decided the case by directing IESCO to proceed further in the matter and allow interconnection at 11 kV level
31	5/28/2020	IESCO declared the interconnection studies satisfactory with the fulfillment of certain conditions.
32	6/18/2020	The Company again reminded CE (P&E) IESCO for issuance of PEC and Consents.
33	7/1/2020	The Company wrote to CE (T&G) IESCO for issuance of required documents.
34	8/3/2020	The Company sent a reminder to CE (T&G) IESCO to do the needful.
35	10/12/2020	CPPA-G wrote to IESCO for issuance of Power Evacuation Certificate (PEC) and other Consents for the Project.
36	11/10/2020	AEDB asked IESCO for issuance of PEC.
37	11/30/2020	The Company wrote to CEO-IESCO regarding delays in issuance of PEC in spite reminders from CPPA-G and AEDB.
38	12/8/2020	IESCO issued Power Evacuation Certificate subject to vetting of GIS by NTDC.
39	12/17/2020	The Company submitted the GIS to NTDC for vetting and approval as required under the provision of PEC.
40	12/30/2020	Issuance of Cost Plus Tariff Determination (4th Tariff) ASPL/AEPL
41	1/13/2021	NTDC wrote to the Company with a copy to IESCO that the GIS approved on May 28, 2020 are based on COD of 3 rd or 4 th quarter of 2019 and as such need to be updated.
42	1/19/2021	The Company wrote to NTDC to explain the discrepancy with a copy to IESCO requesting to advise any system changes for updating GIS as required by NTDC.
43	1/26/2021	The Company submitted an up-dated study to NTDC based on COD in 3 rd quarter of 2022-based timelines provided in the latest Tariff Ruling by NEPRA. The

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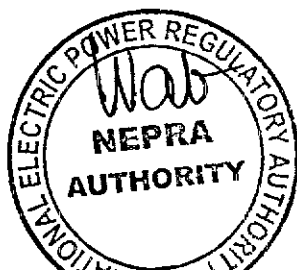


		Company shared soft copies of System Files of up-dated GIS with IESCO.
44	2/4/2021	CPPA reminded IESCO for issuance of required Consents to proceed with EPA.
45	3/7/2021	The Company mailed the soft copies of System Files to IESCO with up-dated GIS submitted to NTDC.
46	3/30/2021	CPPA-G again wrote to IESCO for Consents and timeline for construction of Interconnection Facilities.
47	4/9/2021	IESCO wrote a letter to NTDC for vetting/ approval of the Grid Interconnection Study
48	4/26/2021	NTDC write a letter to IESCO regarding corrections in 500 kV Chakwal Grid Station
49	8/4/2021	IESCO again approached NEPRA to seek clarification on Energy and EPC Cost Calculations of the projects.
50	9/2/2021	NEPRA replied to IESCO.
51	12/29/2021	Financial Closing Date for 4th Tariff ASPL/AEPL
52	1/11/2022	Application for grant of another Cost-Plus Tariff (5th Tariff) ASPL/AEPL
Sr. No.	Date	Events
53	4/4/2022	IESCO issued PEC to CPPA-G, in continuation of previous letter.
54	9/7/2022	Cost Plus Tariff Determination issuance (5th Tariff) ASPL/AEPL
55	9/7/2022	Financial Close Achievement (5th Tariff) ASPL/AEPL
56	10/31/2022	Cost Plus Tariff Determination Notified (5th Tariff) ASPL/AEPL

17. The Authority has also looked into the legal grounds raised by the Licensee's legal counsel and accordingly following are the point wise counterarguments:

- A. The Licensee has submitted that the exercise of power by the Registrar under Regulation 4(1) of the NEPRA (Fines) Regulations, 2021 ("Fine Regulations") to seek an "Explanation" is ultra vires in view of the procedure of "Enforcement" set out in Chapter IIIA of the NEPRA Act, notwithstanding that the explanation itself was sought after the expiry of fifteen (15) days period prescribed in the Fine Regulations. Therefore, the SCN is based on a provision of the Fine Regulations which is inconsistent with the provisions of the NEPRA Act and is liable to be withdrawn.

In this regard, it is clarified that upon becoming aware of the violation, the Authority promptly sought an explanation within the prescribed time frame. While every effort should be in the direction of implementing the law & acting promptly it is specially highlighted that 15 days period mentioned in Regulation 4(1) is not mandatory period but is directory in nature, solely for the reason the explanation was not issued within 15 days period where the circumstances overwhelmingly demonstrate clear breach of IESCO. NEPRA believes that proceeding under Fine Regulations must be initiated with the spirit to discourage the breach of NEPRA laws. As far as the contention of the IESCO to the extent that explanation is ultra vires in view of procedure set out in Chapter III of the NEPRA Act is concerned, it



is again clarified that it is the prerogative of the Authority as per Regulation 4 of the Fine Regulations, 2021 that it may either order an investigation into matter in terms of 27A of Act OR shall within 15 days of coming to know of violation issue an explanation, hence the objection raised by IESCO does not warrant any merit.

- B. The Licensee has further submitted that since the "Enforcement" under Chapter IIIA of the NEPRA Act entails penal provision and other consequences, the intention of the legislature under Sections 27A (1) and 27A (2) of the NEPRA Act is clear that the Authority shall first conduct an investigation with respect to any alleged or perceived violation of the NEPRA Act (or the rules, regulations, codes made thereunder or the conditions of a license or registration granted under the NEPRA Act). Further, the investigation can only be initiated by the "Authority" as defined in Section 2(i) read with Section 3 of the NEPRA Act (and not the "Registrar"), by appointing, through a notice, two officers. Accordingly, no enforcement action, including the issuance of the SCN, with respect to any alleged or perceived violation of the NEPRA Act or the rules thereunder can be initiated without two officers of the Authority conducting the investigation. Section 27A (2) of the NEPRA Act also provides that "a copy of the notice of investigation shall be provided to the persons under investigation". It is a matter of record that the Authority has not complied with this requirement.

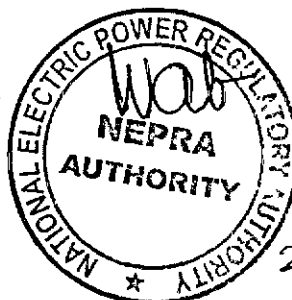
In this regard, it is clarified that Section 27A stipulates that "The Authority may appoint not less than two officers to conduct investigations in respect of any matter that is a violation of this Act, the rules, regulations, and codes made thereunder or the conditions of a license issued to registration granted under this Act, as the case may be." From a thorough examination of the aforementioned Section, it is evident that the term "may" has been employed, indicating that the provision is discretionary rather than obligatory. Consequently, the Authority have the discretion to determine whether an investigation is to be initiated or an explanation is to be sought in accordance with the Fine Regulations, 2021. The petitioner's submission containing the word "shall" is factually incorrect, lacks merit, and tantamount to misleading the Authority while presenting their case.

- C. The Licensee has submitted that under Section 27B of the NEPRA Act (and any regulatory intention to impose any fines) a show cause notice can only be issued after the precondition of an investigation required to be conducted under Section 27A of the NEPRA Act has been met. The investigation has to first determine that the Licensee (in this case, IESCO) has violated the NEPRA Act (or the 'applicable documents' issued thereunder) and then the Authority may proceed on the basis of the investigation report. As no investigation took place in the matter, the issuance of the SCN is illegal and without any statutory basis.

In this regard, it is observed that a prima facie case has been established, indicating that the Licensee has delayed the approval of grid interconnection studies, contravening Regulation 4 of the NEPRA (Interconnection for Renewable Generation Facilities) Regulations 2015, Clauses 6.7 and 7 of the Connection Code of NEPRA Distribution Code, 2005. In light of this, the Authority decided to seek an explanation under the Fine Regulations, and due to unsatisfactory response, issued a Show Cause notice as provided in the Fine Regulations.

- D. The Licensee has submitted that there is no provision in the NEPRA Act that allows the Registrar to call for an 'Explanation' of any alleged violation of the NEPRA Act (or the 'applicable documents' issued thereunder) and for the Authority to then

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proceed, pass an order, show cause or penalize on the basis of the Explanation provided by the Licensee.

In this regard, it is clarified that the Registrar shall be responsible for all correspondences.

- E. The Licensee has submitted that the Authority cannot circumvent the procedure set out in the special law i.e., the 'NEPRA Act', by not fulfilling the requirement to first carry out an investigation under Section 27A of the NEPRA Act, and illegally proceed on the basis of the Regulations 4(1), 4(5) and 4(7) of the Fine Regulations by asking for an Explanations.

In this regard, it is noted that Section 27A stipulates that "the Authority may appoint not less than two officers to conduct investigations in respect of any matter that is a violation of this Act, the rules, regulations, and codes made thereunder or the conditions of a license issued to registration granted under this Act, as the case may be." From a thorough examination of the aforementioned section, it is evident that the term "may" has been employed, indicating that the provision is discretionary rather than obligatory. Consequently, the Authority has the discretion to determine whether an investigation is to be initiated or an explanation is to be sought in accordance with the Fine Regulations, 2021. The petitioner's submission containing the word "shall" is factually incorrect, lacks merit, and tantamount to misleading the Authority while presenting their case.

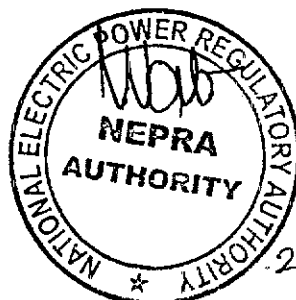
- F. The Licensee has submitted that the Regulations 4(1), 4(5), and 4(7) of the Fine Regulations regarding calling an "Explanation" have been made by the Authority in excess of the powers granted to it by the legislature. In this regard, Section 47(1) of the NEPRA Act clearly provides the following restriction on the Authority: "The Authority may, for performance of its functions under this Act and by not notification in the official Gazette, make regulations not inconsistent with the provisions of this Act and the rules."

In this regard, it is clarified that the Fine Regulations do not contradict the Act; rather, they empower the Authority to issue explanations and, if satisfied, conclude the case, or if unsatisfied, proceed with a show cause process. The Authority retains the discretion to determine whether to order an investigation or seek an explanation, adhering to the provisions of the Fine Regulations.

- G. The Licensee has submitted that the power granted to the Authority under Section 47(2)(f) of the NEPRA Act to make regulations for "manner and procedure of show cause notices" is subject to the restrictions set out in Section 47(1) of the NEPRA Act in that the procedure for enforcement in the NEPRA Act (or the 'applicable documents' issued thereunder) cannot be inconsistent with the NEPRA Act.

In this regard, it is clarified that after thorough examination of Section 47, it is quite clear that the term 'may' has been employed, indicating that the provision is discretionary rather than obligatory, therefore, to make regulations for 'manner and procedure' of show cause notices rests with the discretion of the Authority. Moreover, section 47(1) of NEPRA Act states that, "the Authority may, for performance of its functions under this Act and by notification in the official Gazette, make regulations....". It is further added that since the word may have been used here, making of regulation thereunder is not mandatory. As such absence of

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rules & regulations in this case would not invalidate any act performed in terms of the statute. Further, as per pronouncements of the superior courts of Pakistan, absence of rules & regulations or inaction of the government functionaries to frame rules & regulations cannot be held prejudicial to the rights of the parties. Reliance is placed on 2017 SCMR 206 and PLD 2018 LHR 858. Moreover it is imperative that procedure and manner of how show cause notices are issued is laid down in NEPRA Fine Regulations, 2021 & Section 27(A) of the NEPRA Act. Hence the objection does not warrant any consideration.

- H. The Licensee has submitted that the process of seeking an Explanation under Regulation 4(1) and (2) of the Fine Regulations, without any statutory basis has deprived IESCO of the right to join the investigation and satisfy the Authority that it has not violated or breached any provision of the NEPRA Act (or the 'applicable documents' issued thereunder). In effect, IESCO's fundamental right to be dealt in accordance with the law and due process & fair-trial under Articles 4 and 10-A of the Constitution of Pakistan, 1973 ("Constitution") has been breached in the present circumstances and IESCO reserves the right to raise the constitutional grounds of challenge at the appropriate stage before the competent court of constitutional jurisdiction.

In this regard, it is observed that the submission by IESCO alleging the violation of its right to a fair trial is devoid of merit. IESCO was granted fair opportunity to be heard during the explanation stage is currently being provided with a hearing as well.

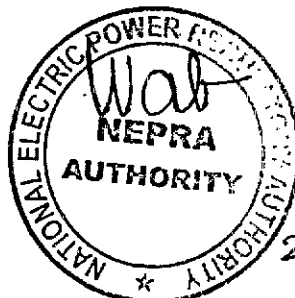
- I. The Licensee has submitted that since the process of calling the Explanation under Rule 4(1) and (2) of the Fine Regulation was illegal, the supra-structure built thereon, including the Authority's Order dated 10.05.2023 and the SCN are without jurisdiction and illegal.

In this regard, it is noted that the breach is a continuing event. There is no mandatory requirement of investigation that must precede the issuance of proceedings under Fine Regulations. The objections are frivolous, preposterous and loaded with surmises and conjectures. There is no basis why a public sector entity like NEPRA to act malafide. The claim is unsubstantiated and sweeping. In fact, taking punitive action against the breach is a discharge of statutory mandate of NEPRA and if the regulator is not taking cognizant it would be deemed to acting contrary to consumer and public interest. The decision has been issued after satisfying the due process and fulfilling the process associated with justice, fairness and reasonability.

- J. The Licensee has submitted that the SCN is liable to be withdrawn as it is based on the Order dated 10.05.2023, which Order has not been passed upon conclusion of any investigation by the Authority under Section 27A (1) of the NEPRA Act. Rather, the Order is based on assumptions and conjectures – which is why, in paragraph No. 9 of the SCN, the Authority has used the phrase "constrained to believe" as opposed to the Authority stating that it has established a breach by IESCO of the NEPRA Act (or the 'applicable documents' issued thereunder).

In this regard, the breach is a continuing event. There is no mandatory requirement of investigation that must precede the issuance of proceedings under Fine Regulations. The objections are frivolous, preposterous and loaded with surmises and conjectures. There is no basis why a public sector entity like NEPRA to act

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- K. The Licensee has submitted that the SCN and the Order dated 10.05.2023 have been issued in violation of Section 24A of the General Clauses Act, 1897.

In this regard, it is clarified that the contents of the corresponding paragraphs are based on conjectures and surmises and without identifying any omission on part of the Authority which could attract violation of section 24A of the General Clauses Act, 1897. Moreover, the SCN and Authority's order thereof satisfy all the legal requirements. Hence, all the objections of IESCO are vehemently denied.

Decision

18. After due deliberations and taking into account the submissions/arguments made by the Licensee and in light of the NEPRA Act, NEPRA (Fine) Regulations, 2021, and other applicable documents, the Authority is of the considered opinion that the Licensee has failed to provide any satisfactory reply to the Show Cause Notice served to it, therefore, the Authority hereby decides to impose a fine amounting to PKR 50,000,000/- (Fifty Million) on the Licensee on account of delay in approval of Grid Interconnection Studies submitted by Access Solar (Pvt.) Ltd and Access Electric (Pvt) Ltd and subsequent issuance of Power Evacuation Certificate to both the entities which caused colossal loss to national exchequer.
19. The Licensee is directed to pay the fine amount of PKR 50,000,000/- (Fifty Million) in designated bank of the Authority within a period of 15 days from the date of issuance of this order and forward a copy of the paid instrument to the Registrar Office for information, failing which the Authority may recover the amount due under section 41 of the NEPRA Act as arrears of the land revenue or through any other appropriate legal means in addition to taking any other appropriate legal action against the Licensee for non-compliance.

AUTHORITY

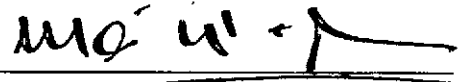
Rafique Ahmed Shaikh
Member (Technical)



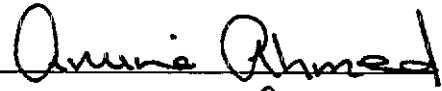
Engr. Maqsood Anwar Khan
Member (Licensing)



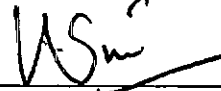
Mathar Niaz Rana (nsc)
Member (Tariff & Finance)



Amina Ahmed
Member (Law)

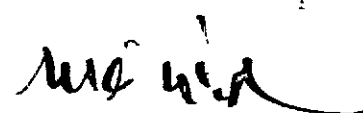


Waseem Mukhtar
Chairman



Dated November 04, 2024

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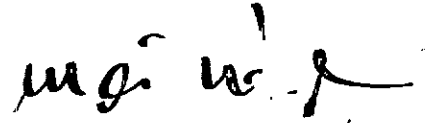
& My decision is attached 
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Decision of Member (Tariff)

ORDER IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO IESCO FOR DELAY IN GRID INTERCONNECTION WITH ACCESS SOLAR (PVT) LTD & ACCESS ELECTRIC (PVT) LTD AND SUBSEQUENT LOSS TO NATIONAL EXCHEQUER

The records and contentions presented by IESCO in their defense have been reviewed. I am of considered view that IESCO, being the network operator and having mandate; had technically advised before start of the subject projects that the projects need to be connected at 132kV to manage losses and bring more system stability. However, NEPRA overruled the point of view of IESCO. I agree with the explanation of IESCO and don't find any reason to: -

- a) impose fine of PKR 50/- Million (Rupees Fifty Million only) on IESCO and
- b) recommend to Board for initiating an inquiry against the top/senior management of IESCO.



Mathar Niaz Rana (nsc)
Member (Tariff)

