



Registrar

National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/DG(CAD)/TCD-05/2195-2200

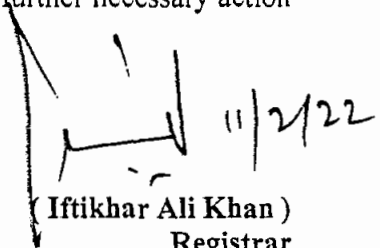
February 11, 2022

Chief Executive Officer,
Lahore Electric Supply Company (LESCO),
22-A, Queen's Road,
Lahore.

Subject: **DECISION IN THE MATTER OF WRIT PETITION NO. 4346/2021: M/S AL-KABIR TOWN (PVT.) LIMITED VS. NEPRA ETC REFERRED BY THE HONORABLE ISLAMABAD HIGH COURT, ISLAMABAD AGAINST ORDER OF MEMBER (CONSUMER AFFAIRS) DATED SEPTEMBER 09, 2021.**
LESCO-NHQ-10069-01-22

Please find enclosed herewith the Decision of the Member (Consumer Affairs) dated February 10, 2022 (04 Pages) regarding the subject matter for further necessary action and submission of compliance within thirty (30) days.

Encl: As above


(Iftikhar Ali Khan)
Registrar

Copy to:

1. Assistant Registrar, For Deputy Registrar (Judicial)
Islamabad High Court, Islamabad.
2. Chief Engineer/Customer Services Director,
LESCO, 22-A, Queen's Road, Lahore.
3. Chief Engineer (Planning),
LESCO, 22-A, Queen's Road, Lahore.
4. Manager (Commercial),
LESCO, 22-A, Queen's Road Lahore.
5. M/s Al-Kabir Town (Pvt.) Limited,
House No. 39, Usman Block, Bahria Town, Lahore.

(With reference to your
letter No. 19/Writ
dated January 01,
2022 in Writ Petition
No. 4346/2021.)



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

LESCO-NHQ-10069-01-22

M/s Al-Kabir Town (Pvt.) Limited
147-A, Commercial Sector-C,
Bahria Town, Lahore.

.....**Complainant**

VERSUS

Lahore Electric Supply Company (LESCO)
22-A, Queen's Road, Lahore.

..... **Respondent**

Date of Hearing: January 27, 2022

**On behalf of
Complainant:**

Mr. Abid Latif Lodhi, Consultant, Kabir Town

Respondent:

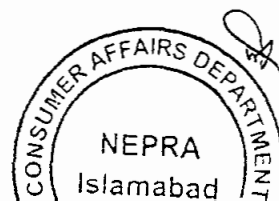
- 1) Mr. Faisal Zakaria, Manager (P&D), LESCO
- 2) Mr. Nasir Ali, DM (P&D), LESCO

Subject: DECISION IN THE MATTER OF WRIT PETITION NO. 4346/2021: M/S AL-KABIR TOWN (PVT.) LIMITED VS. NEPRA ETC REFERRED BY THE HONOURABLE ISLAMABAD HIGH COURT, ISLAMABAD AGAINST ORDER OF MEMBER (CONSUMER AFFAIRS) DATED SEPTEMBER 09, 2021

DECISION

This decision shall dispose of the complaint No. LESCO-NHQ-10069-01-22 in compliance of the order passed by Honourable Islamabad High Court in Writ Petition No. 4346/2021 of M/s Al-Kabir Town (Pvt.) Limited (the "Petitioner" or "Society" or "Complainant").

2. Brief facts of the case are that Al-Kabir Town (Pvt.) Ltd. filed a Writ Petition No. 2582/2021 before the Honourable Islamabad High Court, Islamabad which was referred to NEPRA for decision. The society in the said complaint submitted that Al-Kabir Town Housing Scheme (Phase 2) is situated at village Janjaty, Raiwand Road, Lahore. The Society & LESCO entered into Operation and Maintenance (O&M) agreement under Regulation (5) of NEPRA (Supply of Electric Power) Regulations, 2015 for receiving electricity supply at one point for further distribution to its residents. The O&M agreement was subsequently submitted to NEPRA for final approval, however, the Petitioner and LESCO were advised by NEPRA to execute O&M agreement afresh under the amended Regulations issued vide S.R.O. 832



dated September 08, 2020 and resubmit the same for approval of the Authority. The Petitioner contested the same and submitted that NEPRA is under an obligation to approve the O&M agreement on the basis of promissory estoppel and vested rights created during development of infrastructure for electrification of the Society which cannot be violated under amended Regulations. Moreover, LESCO, being aggrieved, also challenged the S.R.O 832/2020 before the Honorable Lahore High Court, Lahore.

3. The Honorable Islamabad High Court vide order dated July 16, 2021 disposed of the Writ Petition No. 2582/2021. The operative part of the decision is as under:

'2. At this stage, the petition is premature. However the Authority is expected to process the case submitted by the petitioner company expeditiously with due diligence. The Court further expects that the matter will be finalized after affording an opportunity of hearing to an authorized representative of the petitioner company.

3. The learned counsel has also stated that vires of SRO 832/2020 dated 08.09.2020 has also been assailed. This ground can also be taken before the Authority. In case such a ground is taken then this Court expects that the Authority will consider and decide the matter in accordance with law.'

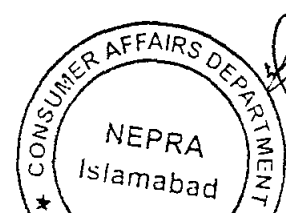
4. In order to comply with the directions of the Islamabad High Court, a hearing was held on August 24, 2021 at NEPRA Head Office, Islamabad which was attended by both the parties. The Complainant submitted that S.R.O. 832/2020 is not applicable in their case considering the fact that the executed O&M Agreement was submitted to the Authority prior to the amendments in NEPRA (Supply of Electric Power) Regulations, 2015 and subsequent coming into effect of the amended O&M Agreement template. LESCO representatives submitted that LESCO has already challenged the S.R.O 832/2020 regarding amendments in NEPRA (Supply of Electric Power) Regulations, 2015 before the Honorable Lahore High Court, Lahore vide Writ Petition No. 6022/2021; which is pending adjudication.

5. Accordingly, the matter was disposed off by Member (Consumer Affairs), NEPRA vide decision dated September 09, 2021 wherein it was held that NEPRA is not able to give its decision as the issue was challenged by LESCO vide Writ Petition No. 6022/2021 before the Honorable Lahore High Court, Lahore.

6. Subsequently, Al-Kabir Town (Pvt). Ltd. again approached Islamabad High Court, Islamabad vide Writ Petition No. 4346/2021 wherein the decision of Member (Consumer Affairs) dated September 09, 2021 was challenged. The Honorable Islamabad High Court vide Order dated December 30, 2021 disposed of the Writ Petition No. 4346/2021. The operative part of the decision is under:

'The petition is therefore disposed of by directing the Authority to fix the application filed by the petitioner company and decide the same expeditiously and with due diligence preferable within (30) days of receipts of certified copy of the order. The Authority is further expected that it will take into consideration the grounds raised by the petitioner in its application.'

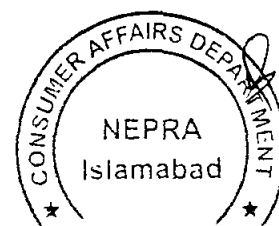
7. A certified copy of the order was received at NEPRA on January 06, 2022. The petitioner in the grounds of its petition as inter alia raised that S.R.O-832/2020 is not applicable in their case as they finalized the O&M agreement prior to the issuance of said S.R.O. In compliance of directions of the Islamabad High Court, a hearing was held on January 27, 2022 at NEPRA Head Office, Islamabad wherein



the LESCO representatives participated and advanced their arguments whereas the representative of the society appeared on the next day and his arguments were heard and recorded.

8. The case has been examined in detail in light of written/ verbal arguments of both the parties. The following has been concluded:

- i. Distribution/ resale of electricity is a licensed activity under Section 20 of the NEPRA Act.
- ii. For the purpose of distribution and sale of electricity, the Authority granted Distribution Licenses to the Distribution Companies (DISCOs) and defined their service territories for their operations. Furthermore, under Article 7 of the Distribution Licenses, the DISCOs have been granted exclusivity till the expiry of their distribution licenses in their service territories to engage in the distribution services, sale of power and services incidental thereto.
- iii. The Authority framed National Electric Power Regulatory Authority (Supply of Electric Power) Regulations, 2015 to regulate entities who are involved in sale of power without distribution license. According to the said Regulations; any housing colony, housing society, an industrial estate or a complex engaged in procuring electricity from the Distribution Licensee at a duly approved Rate and supplying the same to the residents/consumers prior to the commencement of the Act, may have the options either to:
 - a) Surrender their distribution network to the concerned Distribution Company.
 - b) Obtain a distribution license from the Authority.
 - c) Enter into an O&M Agreement with the concerned Distribution Company as per regulation 5 and submit the same for the approval of the Authority.
 - d) Any other arrangement as approved by the Authority.
- iv. In light of the amendments in the NEPRA Act; the ibid regulations were amended vide S.R.O 832/2020 dated September 08, 2020. Accordingly, O&M agreement was amended and new template of O&M agreement was shared with all stakeholders. Consequently, the LESCO, being aggrieved, challenged the amended O&M agreement template before the Honorable Lahore High Court.
- v. The petitioner is of the view that they finalized earlier O&M agreement with LESCO under NEPRA (Supply of Electric Power) Regulations, 2015 prior to issuance of SRO No. 832/2020, therefore, the O&M agreement be approved on previous template. There is no force in arguments of the petitioner because the said O&M agreement was modified in pursuant to the amendments in NEPRA Act. The petitioner is requesting for approval of the O&M agreement under the provisions of previous NEPRA (Supply of Electric Power) Regulations- 2015 which are no more in field.
- vi. Moreover, LESCO has also challenged the S.R.O. 832/2020 regarding amendments in NEPRA (Supply of Electric Power) Regulations before the Honorable Lahore High Court, Lahore vide Writ Petition No.



6022/2021. However, no restraining/injunctive order has been passed by the Honorable Lahore High Court, Lahore in the instant matter. Other DISCOs have also raised their concerns over the revised O&M templates.

vii. In consideration of the above discussed circumstances and available record, the following two options are available until the revised O&M agreement is finalized:

a) The society to handover the distribution system to LESCO for maintenance, operations and billing purpose etc. However, the cost if any to bring the distribution network as per the specifications of LESCO will be borne by the Society.

OR

b) LESCO to provide electricity connection to the Society at one point supply under C-2 tariff on interim basis.

9. The representatives of LESCO agreed with both of the above options whereas the representatives of the society gave their consent to avail option given at para-8(vii)(b) above for provision of electricity supply on interim basis till the O&M agreement or any other arrangement is finalized keeping in view the amendments in NEPRA act.

10. Foregoing in view, LESCO is directed to provide electricity supply to Al-Kabir Town at one point under C-2 tariff on interim basis only in the approved area. However, before proceeding further; LESCO is required to obtain an undertaking from the society to the effect that the supply will be given only in the approved area and that society will comply with any direction/determination/order of the Authority & other applicable documents issued from time to time in this regard.

11. Compliance report be submitted within thirty (30) days.

Islamabad, February 10, 2022

