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October 25, 2016

Mr. Iftikhar Ali Khan

Director

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IN RE:

**AUTHORITY PROPOSED MODIFICATION IN THE  
DISTRIBUTION LICENSE OF LAHORE ELECTRIC SUPPLY  
COMPANY LIMITED (LESCO) RE: M/S. BISMILLAH ENERGY  
(PVT.) LIMITED**

Dear Sir,

Please refer to your letter No. NEPRA/DL/LAD-05/14084-85 dated October 10, 2016 captioned above (the "Letter") addressed to Lahore Electric Supply Company Limited (LESCO). We have been engaged by LESCO in the matter and are instructed to reply to the Letter, in the following terms, which we hereby do as follows:

1. Through the Letter, more specifically para 8 thereof, National Electric Power Regulatory Authority (NEPRA) has, pursuant to Section 26 of the Regulations of Generation, Transmission and Distribution of Electric Power Act, 1997 ("NEPRA Act") read with Regulation 10 (1) of NEPRA (Supply of Electric Power) Regulations, 2015 (the "Regulations"), proposed modifications in the Distribution License of LESCO, *inter alia*, to carve out an area from the License Territory of LESCO.
2. At the outset, it is pointed out that the Cabinet Committee on Privatization (CCoP), vide case No. CCOP-5/3/2014 dated 12-6-2014, has included LESCO as an entity in the "Privatization Programme for Early Implementation".
3. As a consequence of the above decision of CCoP, various steps have also been initiated by the Privatisation Commission as well as LESCO for the said purpose. Keeping in view the aforesaid, reference is made to Section 35 of the Privatization Commission Ordinance, 2000 (the "PC Ordinance"), a special and designated law dealing with the subject of privatisation, which provides as follows:

By No. ....

Dated 25-10-16

27-10-16

"Directions by Commission.-(1) Any Enterprise or management which is approved by the Cabinet as eligible for privatization, shall—

- (a) Carry out any directions issued by the Commission in writing,
  - (b) Keep up to date business records and books of account.
  - (c) Not perform any action that would result in the assets of the company or business undertaking or property being lost or wasted.
  - (d) Not incur any liability other than in the ordinary course of business without the prior written approval of the Commission;
  - (e) Not give any person information other than in the ordinary course of business which might confer any advantage on that person or a potential buyer; and
  - (f) Refrain from taking any action which may cause industrial unrest.
- (2) The Commission shall after approval under subsection (1) take all steps, including as to change of management necessary for initiating and completing the privatization in accordance with sound commercial principles and practices conducive to efficiency and economy".

4. In view of above provision of the PC Ordinance, it is pointed out that LESCO, after being included in the Privatisation Programme for Early Implementation, cannot grant or have granted any consent for the purposes envisaged in the Letter nor the proposed course of action be adopted, as the same would be contrary to Section 35 of the PC Ordinance.
5. In addition to the above, it is also pointed out that CCoP, vide letter No.24/5/2003 dated 27-09-2003, issued Guidelines for Heads of Units under Privatization. The relevant directions of the Cabinet Committee on Privatization are reproduced under:-
  - (i) Privatization Commission should advise the Management of the Public Sector entities included in the Privatization Programme about the actions they should take and the decisions which they should not, without clearance from the Privatization Commission. An appropriate check list should be prepared of the purpose which should be circulated for the guidance of the Public Sector entities as well as the administrative Ministries/Divisions concerned.
6. As a consequence of above, a check list has also been issued by the Ministry of Privatisation for the purposes of actions that should not be taken without the prior consent/clearance of the Privatisation Commission, which are inclusive of the following:-
  - (i) Sale or transfer of licenses, permits, etc.
  - (ii) Closing of any line of business.
  - (iii) Material change affecting the Balance Sheet, Income Statement, etc.
  - (iv) Major financial and contraction obligations/contracts outside the normal course of business.

- (v) *Material reduction/increase in inventories, etc.*
- (vi) *Major change in processes, technologies, etc.*


7. Hence, without prejudice to and in light of the above, it is submitted that the modification proposed through the Letter cannot be made without clearance/consent from the Privatisation Commission of Pakistan, which is not in field at present.
8. In addition and absolutely without prejudice to the above, it is submitted that the applicant before NEPRA, M/s. Bismillah Energy (Pvt.) Limited (the "**Applicant**"), does not fulfill the requirements, criteria and threshold for grant of Distribution License envisaged in and provided for by the Regulations.
9. In this regard, it is pointed out that the Applicant does not fall within the category of entities provided for in Regulation 4 (1) of the Regulations, which are entitled to grant of Distribution License under the Regulations. From the documents available with LESCO, it is apparent that the Applicant is not a housing colony, housing society, Industrial estate or complex i.e., the eligible entities under the Regulations for grant of the Distribution License. Rather, the Applicant has only entered into an Agreement dated 06-05-2011 (the "**Agreement**") for the Sale/Supply and Distribution of Electric Power to Al-Rehman Garden (Pvt.) Limited (the "**Housing Society**"), which is a separate and distinct entity. It is specifically averred that the eligibility criteria provided for in Regulation 4 (4) of the Regulations and referred to in the Letter cannot be applied to the Applicant for the reason stated above. Rather, the same would have been available to the Housing Society if it had its own generation and distribution network and it did not intended to purchase power from LESCO. Hence, the Applicant is not entitled to grant of Distribution License under the Regulations.
10. Furthermore and in addition to the above, it is pointed out that Regulation 4 of the Regulations, *inter alia*, provides minimum criteria for grant of distribution license to an eligible entity. In particular, reference is made to Regulation 4 (3), (4) and (5). It is specifically averred that neither the Applicant nor the Housing Society fulfills such eligibility criteria, *inter alia*, for the following reasons:
  - *External electrification of Al-Rehman Garden (Phase-II) Housing Scheme Sharqpur Road, District Sheikhpura for ultimate load demand 3258 KW (Individual Metering) was approved by LESCO through 11 KV independent feeder from 132 KV Rustam Grid Station. Presently more than 400 Meters have been installed in the said scheme.*
  - *The Applicant has entered into the Agreement with the Housing Society for sale/supply of electricity to the Housing Society.*
  - *The Applicant intends to obtain one point bulk supply for 05 MW from LESCO for use.*
  - *Neither the Applicant nor the Housing Society have their own 132 KV Grid Station.*

11. In addition and absolutely without prejudice to the above, it is submitted that the grant of Distribution License to the Applicant by modifying the Distribution License of LESCO do not fall within the definition of the term "*public interest*", as used in Section 26 of the NEPRA Act, the same purely being aimed at commercial business venture. In this regard, it is submitted that determination of public interest, in terms of Section 26 of the NEPRA Act, is an objectively determinable issue and the application of the Applicant does not fulfill such objective criteria.
12. Furthermore, any such modification is in violation of the exclusive rights of LESCO to engage in the business of distribution of electric power services etc in its Service Territory, which rights have been guaranteed and protected by NEPRA Act, rules made thereunder and the conditions of the Distribution License of LESCO.
13. In addition to above, there are other impediments inclusive of operational, commercial and legal/regulatory implications with respect to the request mentioned in the Letter. However, the same may only be considered once the aspects mentioned above are dealt with as per constitutional/legal and regulatory framework. Accordingly, LESCO shall thereafter consider the request and provide its detailed comments with respect to operational, commercial and legal/regulatory implications of any such application.

In view of the above, it is respectfully submitted that no occasion arises, in facts or law, for the purposes of modification of the Distribution License of LESCO nor the Applicant fulfills the criteria provided by law.

In case any further assistance is required in the matter, an opportunity of personal hearing be granted wherein we reserve our right to add and agitate additional grounds in the matter, if required.

Yours Faithfully,  
for Cornelius, Lane & Mufti

  
Munawar us Salam  
Barrister at Law

CC: Legal Director  
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LESCO Head Office  
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