



LAHORE ELECTRIC SUPPLY COMPANY LIMITED

LEGAL DIRECTORATE

Haleem Plaza, 10-Temple Road Lahore
Ph: 042-36280323 Fax: 042-36280324
E.mail: legaldir@lesco.gov.pk

SUB: AUTHORITY PROPOSED MODIFICATION IN THE EXISTING DISTRIBUTION LICENCE OF LESCO

- (i) Your office letter No. NEPRA/ADG(L)/LAD-05/18545 dated 23-11-2018
- (ii) Your office letter No. NEPRA/ADG(Lic) / LAD-05/2414 dated 07-02-2019

The subject matter has been examined and comments on behalf of LESCO are as under:-

1. That the Licence had been granted to the Lahore Electric Company Limited on 01.04.2002 for a period of twenty years (as per Art 5 of the Licence) having exclusive right to provide distribution service, make sale of electric power, make schemes and engage in incidental activities in the Service Territory. So the said licence will expire on 30.03.2022.
2. That the rights given in the licence had the condition of exclusivity in nature and the Lahore Electric Supply Company Limited has been paying Distribution Licence Fee on a recurring basis in respect of each financial year, hence it would not be justified and legal to modify the Art 7 of the Distribution Licence No.03/DL/2002 dated April 01, 2002 granted to the Lahore Electric Supply Company Limited at this stage when it is still valid till 30.03.2022 (as it was granted for a period of 20 years).
3. That the Licence has a term of **exclusivity** for the entire period of its validity. Moreover, it is also renewable at its expiry. So under the provision of **Art 7 of the said Licence, Rule 7 of the NEPRA Licensing (Distribution) Rules, 1999** and the Sec 21 (2)(a) of the **Generation, Transmission and Distribution of Electric Power Act, 1997** (as it was prevailing at the time of the Licence granting).

4. The Cabinet Committee on Privatization vide case No. CCOP-5/3/2014 dated 12-06-2014, has included LESCO as an entity in the "**Privatization Program for Early Implementation**" and various steps have also been intimated by Privatization Commission to LESCO for said purpose. Reference is made to Section 35 of Privatization Commission Ordinance, 2000 (the "PC Ordinance") which provides as under:-

- i) 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,

2373
8-3-19

12/55
12/3/19

724 11/3

8/3/19

For information & n/a to
 - ADG(Lic)
 - SA (Tech)
 - SAT-I
 - DG (m&E)
 - LA (Lic)
 - MF

07/03/19
 c. Chairman
 m (T)/m (m&E)
 m (CA)
 m (Lic)

REGISTRAR
 Dy. No: 2084
 Dated: 07-03-19



LAHORE ELECTRIC SUPPLY COMPANY LIMITED

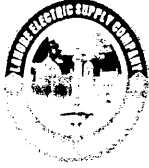
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- b) *Keep up to date business records and books of account.*
 - c) *Not perform any action that would result in the assets of company or business undertaking or property being lost or wasted.*
 - d) *Not incur any liability other than in the ordinary course of business without the prior written approval of the commission.*
 - e) *Not give any person information other than in the ordinance course of business which might confer any advantage on that person or potential buyer; and*
 - f) *Refrain from taking any action which may cause industrial unrest.*
- ii) 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.”
- iii. In view of the provision of PC Ordinance, it is pointed out that LESCO, after being included in the Privatization Program for Early Implementation cannot grant or have granted any consent, as the same would be contrary to section 35 of the PC Ordinance. In addition to the above, it is also pointed out that Cabinet Committee on Privatization, vide letter No. 24/5/2003, issued Guidelines of for Heads of Units under Privatization. The relevant directions of Cabinet Committee on Privatization are reproduced under:-

Privatization Commission should advise the management of the Public Sector entities including in the Privatization Program about the actions they should take and the decisions which they should not, without clearance from the Privatization Commission. An appropriate checklist should be prepared of the purpose which should be circulated for the guidance of the Public Sector entities as well as administrative Ministries/Divisions concerned.

As a consequence of above, a check list has also been issued by the Ministry of Privatization of the purposes of actions that should not be taken without the prior consent /clearance of the Privatization Commission, which are inclusive of the following:-



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- 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.*

In view of the above, in presence of Section 35 of the Privatization Commission Ordinance the amendment made in section 21 of the NEPRA Act could not be made which is contrary to Section 35 of the Privatization Commission Ordinance. Even otherwise, the consent of the Privatization Commission of Pakistan was necessary before initiating any amendments in the NEPRA Act.

5. As a principle of law the amendments of the NEPRA ACT Extraordinarily Published by the Authority in the Gazette of Pakistan on May 02, 2018 should have prospective effect rather retrospective in nature. Therefore, the decision should be applicable to the licensees who have been granted licenses after the amendments' date while the licensees who had been granted licenses earlier to this, should be governed under the provisions of the NEPRA Act 1997 in its true letter and spirit. The principle has been elaborated very clearly by the Apex Court in the following of its decisions.

Therefore the amended NEPRA Act does not empower the Regulator to implement the changes on retrospective effect level. Moreover, the amended act also no empower the Regulator to make changes in distribution licenses already in effect.

- a. **2018 SCMR 991 SC**
- b. **Additional Commissioner Inland Revenue, Audit Range, Zone – I vs Eden Buildings Limited**
2018 SCMR 802 SC
- c. **Sui Northern Gas Company Limited vs Federation of Pakistan**
2018 PLC (CS) 846 SC
- d. **Sui Southern Gas Company Ltd. Vs Federation of Pakistan**
2018 PLD 97 SC



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- e. **Sardar Sher Bahadar Khan vs Election Commission of Pakistan through Secretary Election Commission, Islamabad.**
6. That a **licence** is just like a contract, so the provisions of the contract law should be applicable prevailing at the time of granting the licence.
 7. That it is very important to mention that the Lahore Electric Supply Company Limited (LESCO) have invested billions of rupees for its infrastructure and development projects. Most of these are either completed or near to completion, while contracts of many have already been awarded. It all has been planned by the LESCO by considering its exclusive right of distribution in force. So in case of the proposed modification in the Art 7 of the Licence, there are chances of huge losses to the Government exchequer as there would be other competitors, who would try to attract consumers by offering tariff packages which would cause huge losses to the LESCO. So the licensee's investment would surely be at stake. It is also added that in case of loss of customers to second tier supplier ROE (Return on Equity) and yearly depreciation on the investment will have to be borne by the left over consumers leading undue increase of tariff.
 8. That the Lahore Electric Supply Company Limited (LESCO) provide subsidized tariff to the low income consumers by cross subsidizing. Income from the industrial consumers is shifted to the consumers living below the life line standard. In this way, the Lahore Electric Supply Company Limited (LESCO) is providing / rendering relief to such consumers. So in case of the proposed modification in the licence, it would be difficult for the LESCO to render such kind of relief due to competitiveness and decrease in profit due to possibly less number of consumers or it would lead to extra subsidy by Government.
 9. That there would be difficulty for the government to maintain a unified tariff throughout the country.
 10. That the pooling of recoveries would also not be possible due to inclusion of more licensees in the market.
 11. That the Licence granting action of the Authority (NEPRA) is a closed and past transaction, so its amendments' applicability up to the extent of the licensee i.e. The



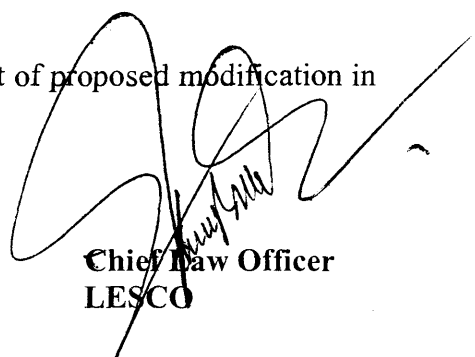
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Lahore Electric Supply Company Limited is legal as per decisions / judgments of the Honorable Supreme Court of Pakistan regarding the following cases.

- a. 2017 SCMR 1787 SC
- b. Muhammad Moizuddin Vs. Mansoor Khalil
2018 SCMR 1792
- c. Al-Noor Sugar Mills Limited Vs. Federation of Pakistan

12. The proposed amendment in the Licence cannot be legally justified and equitable in nature. It would cause not only financial losses to the licensee i.e. LESCO but it would increase the difficulties for the low income segment of the society. The LESCO will have to cut down the number employees also in case of such amendment/s. Ultimately the licensee's profit will surely be decreased and it would increase unemployment in the society also.

Under these circumstances, LESCO strongly objects to the grant of proposed modification in the existing Distribution License of LESCO.


Chief Law Officer
LESCO

To

→ Mr. Iftikhar Ali Khan
Director
Registrar Office
NEPRA Tower, Atta Turk Evenue (East), G-5/1, Islamabad.

Info:

1. CEO, LESCO
2. CSD, LESCO
3. Master File

No. D (Legal)/L-6948/2014

555-57

Dated

04-03-2019



Registrar

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

NEPRA Tower, Attaturk Avenue (East), G-5/1, Islamabad.
Ph: +92-51-9206500, Fax: +92-51-2600026
Web: www.nepa.org.pk, E-mail: registrar@nepa.org.pk

No. NEPRA/ADG(L)/LAD - 05 | 18545

November 23, 2018

Chief Executive Officer
Lahore Electric Supply Company Limited (LESCO)
22-Queens Road
Lahore

Subject: - **AUTHORITY PROPOSED MODIFICATION IN THE EXISTING DISTRIBUTION LICENCE OF LESCO**

WHEREAS, in exercise of the powers conferred upon the National Electric Power Regulatory Authority (the "Authority") under Section-20 and 21 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the NEPRA Act), the Authority granted Distribution Licence (No. 03/DL/2002, Dated April 01, 2002) to LESCO;

2. AND WHEREAS, in terms of Section-21 of the NEPRA Act, the abovementioned distribution company under Article-7 read with Schedule-I of its license was allowed exclusivity to provide distribution services, make sale of electric power, make schemes and engage in incidental activities in its service territory;

3. AND WHEREAS, with the amendment in Section-21 of the NEPRA Act through NEPRA Amendment Act, 2018, the exclusivity of distribution companies to provide distribution services in their service territory has been omitted with the object to encourage participation by more market players to enhance efficiency to ensure better price, quality of service and choice for consumers. Relevant parts of the amended Section-21 are reproduced as under:

21. Duties and responsibilities of distribution licensees. — (1) The Authority may, after such enquiry as it may deem appropriate and subject to the conditions specified, grant a licence for the distribution of electric power.

(2) The licensee shall—

(a) possess the right to provide, for such period as may be specified in the licence, distribution service in the service territory specified in the licence and to frame schemes in respect of that service territory.....

4. AND WHEREAS, Section-26 of the NEPRA Act empowers the Authority to amend, or vary the conditions of any license issued under the NEPRA Act and states that:-

26. Modification. ---- If the Authority is of the opinion that it is in the public interest, it may, with the consent of the Licensee, amend or vary the conditions of any Licence issued under this Act and in the absence of Licensee's consent, the Authority shall conduct a public

hearing on whether the proposed amendment or variance is in the public interest and shall make a determination consistent with the outcome to this hearing.

5. AND WHEREAS, keeping in view the new market structure/reforms under the amended NEPRA Act, it is in the public interest as specified in the Section-26 of the NEPRA Act read with Regulation-10 of the National Electric Power Regulatory Authority Licensing (Application and Modification Procedure) Regulations, 1999 (the "Regulations"), to modify the terms of existing distribution licenses;

6. NOW THEREFORE, the Authority pursuant to sub-regulation-1(a) of Regulation-10 of the Regulations hereby communicates the text of the Authority Proposed Modification of the following relevant Article of the license:-

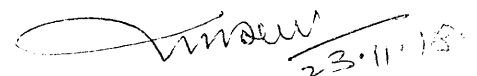
Article-7

Duties and Responsibilities of the Licensee

The Licensee shall during the term of the License, provide distribution service in the service territory and frame schemes in respect of that service territory as per provision of Article 3.2(i). The Licensee shall also make sales of electric power, make schemes and engage in incidental activities in the territory as a deemed supplier in terms of Section-23E of the Amended NEPRA Act.

7. Pursuant to sub-regulation-1(b) of Regulation-10 of the Regulations, the statements of the reasons in support of Authority Proposed Modification are that Section-21 of the NEPRA Act has been amended to foster competition in the power sector by removing the exclusive right to provide distribution services in a given service territory. It is imperative to note that the said statutory provision is effective from the date of amendment i.e. May 2, 2018 without any conditionality and deferment and therefore, existing distribution licenses are required to be modified immediately to bring consistency with the statutory provisions of the amended NEPRA Act and implement the market reforms introduced there under in letter and spirit.

8. You are therefore required to send your response on the Authority Proposed Modification either affirming or denying the modification within fourteen (14) days of the receipt of this communication. In the event of your failure to convey your response within the stipulated period, it shall be construed that you have no objection to the Authority Proposed Modification and the Authority will proceed accordingly.


(Muhammad Ramzan)
Director