



14th October 2011

The Principle Secretary to Prime Minister,
Prime Minister House,
Islamabad.

Sub: KESC alleged illegal Amendment Agreement and
Karkey Power Plant Karachi involving Recovery of US \$ 2.7 Billion

Dear Sir,

Since more than last two years, Transparency International Pakistan has been requesting KESC, Ministry of Privatization and Ministry of Water & Power for the copy of the share holder agreement of KESC privatization executed in 2005. But unfortunately, all these ministries denied to provide copy, as can be seen from the following events.

On 12 June 2009, vide letter No. P.C's U.O. No. 16(11) P&C/PC/2009 Dr. Asamat Nawaz, Director P&C, Ministry of Privatization, sought Advice from Justice (R) Riaz Kyani Ministry of Law & Justice, on providing Transparency International Pakistan a copy of privatization KESC Sale Agreement of 2005, under Public Procurement Rules 2004.

Justice (R) Riaz Kyani, Secretary Ministry of Law & Justice informed Dr. Asamat Nawaz, Director P&C, Ministry of Privatization vide reply dated 17 June 2009 that though it is mandatory to declare Contract Agreement under Public Procurement Rule No 47, PC can ask PPRA to approve withholding the same from public as this provision is available to PC under rules.

Dr. Asamat Nawaz, Director P&C, Ministry of Privatization vide letter P.C's U.O. No. 16(11) P&C/PC/2009 dated 20 June 2009 requested PPRA to accord approval for withholding the KESC Sale Agreement of 2005 from public.

PPRA did not agree, and no approval has been accorded.

Why such efforts were made to hide the KESC Contract Agreement of 2005 from public.

Transparency International Pakistan has received recently a complaint along with a copies of the Shareholder Agreement dated 14th November 2005 and Amended Agreement dated 13th April 2009, with following detailed complaints and serious issues pointed out.

1. Amended Agreement is illegal as it has been signed by Mr. Shahid Rafi, Secretary & Power on 13th April 2009. Whereas, according to the ECC decision dated 14th October 2008, the Amended Agreement was to be signed by the Privatization Commission. (Page 13).



2. Original Shareholders Agreement was signed by Secretary Privatization Commission on 14 Nov. 2005. (Page 33) .

3. Extra Ordinary Financial Concessions granted to KSEC , a Private Company, which runs into Billion of Rupee per annum, are illegal as ECC or Cabinet does not have authority to dole out Government Revenue (tax payers money) to a private company M/s Abraj .

Page 7/, (q) marginal cost price of electrical power supplied by NTDC to KESC.

Note: Disco Status to KESC which means buying Wapda electricity at 25 to 30 per cent of the current rates. This concession was denied to all previous managements of KESC for years, not given even by General Pervez Musharraf to army generals running KESC

Page 7, (r) 5 years guaranteed supply of 650 MW at marginal cost price of electrical power.

Note: This has allowed Abraj not to install new Power Plant, and caused shortage of electricity in Pakistan.

Page 9. (b) Application to NEPRA in relation to the unbundling of generation etc.

Page 9. (c) Guaranteed Gas allocation for supply of Gas for new 560 MW power plant.

Note: No New Power Plant erected. But KESC is being provided Gas by SSGC or Furnace Oil by PSO on Gas rates.

Page 12 Enter into Agreement with Karkay Karadeniz Elektrik Uretim A. S and Walter Power International and NTDC.

Note: To award RPP in violation of PPRA Rules is with consent of Abraj Group.

This is also established that Rental Power Plants of Karkay Karadeniz Elektrik Uretim and Walter Power International and KESC has direct correlation from 2008, when of M/s Abraj bought the shares of KESC p[aren't company.

In case of Karkey Power Plant, the Commercial Operation was to commence by 8th November 2009 (Article 4.4 b of Agreement between Karkey and Lakhra Power Generation Company Ltd dated 23 April 2009) and was supposed to start commercial operation within 6 months, i.e. 22 , October 2009. But till April 2011, it could not start commercial operation..

For the Delay of 18 months Karkay Karadeniz Elektrik Uretim A. S. has to be pay Liquidate Damages at 1.5 times the rental rate. Article 8.

Article 4.4 b The SELLER shall archive the commercial Operations date within six (6) months (one hundred and eighty days) from latest of the date of letter of award, Down payment and execution of the Guarantee (as defined hereinafter) from the Government of



Pakistan guaranteeing the payment of monthly rental services fees and Termination charges by the BUYER to the SELLER (" Target Commercial Operations date").

Article 8 Actual availability shall be calculated on an annual basis. In the event the actual availability of the equipment falls below the Guaranteed availability over the first 12 rental months period, the liquidated damages will be claimed by the BUYER and SELLER shall pay as a credit note against the following month's draw(s) from 13th monthly rental services fees invoice till the recovery of liquidated recovery amount. **The rate of liquidated damages will be 1.5 times the rental rate (cents per kWh) applicable on the positive result of difference in guaranteed electrical output in (kWh) on the basis of Guaranteed Availability and actual Availability of the plant for the period calculated in kWh.** The same process will apply to the second, third and fourth rental years.


For 18 months delay, at rental rate of US \$ 0.598 per KW, on 231 MW, the Liquidated Damage on Karkay Karadeniz Elektrik Uretim A. S is \$ 0.598X231,000 KW X24 hours X548 X1.5 days is US \$ 2.725 Billion. Besides this, the Contract award to this Company has also been challenged in Supreme Court of Pakistan.

Transparency International Pakistan request the Prime Minister to take notice of the alleged illegal Amendment Agreement of KESC for termination of the unconstitutional concessions granted to them.

The Prime Minister is also requested to examine the allegation of non recovery of US \$ 2.725 Billion from Karkay Karadeniz Elektrik Uretim A. S.

Transparency International Pakistan is striving for the Rule of Law in Pakistan

Regards,


Syed Adil Gilani
Adviser

Copies forwarded for the information with the request for action under the prevailing Rules and regulations invoke in their respective domain,

1. Chairman Public Accounts Committee, National Assembly, Islamabad ,
2. Minister of Finance, Islamabad
3. Registrar, Supreme Court of Pakistan, Islamabad
4. Auditor General Pakistan, Islamabad
5. Chairman, NAB , Islamabad.
6. Managing Director PPRA, Islamabad.