

**SENATE OF PAKISTAN
HOUSE OF THE FEDERATION**

REPORT NO.10 OF 2017



House of the Federation

**SPECIAL REPORT OF THE STANDING COMMITTEE ON FINANCE,
REVENUE, ECONOMIC AFFAIRS, STATISTICS AND PRIVATIZATION
(UNDER RULE 193 OF THE SENATE RULES)**

ON

**" PAYMENTS MADE TO CLEAR THE CIRCULAR DEBT OF POWER
SECTOR AMOUNTING TO RS.480 BILLION DURING THE YEAR 2013"**

PRESENTED BY

SENATOR SALEEM MANDVIWALLA

SENATE SECRETARIAT

SPECIAL REPORT OF THE STANDING COMMITTEE ON FINANCE, REVENUE, ECONOMIC AFFAIRS, STATISTICS AND PRIVATIZATION ON PAYMENTS MADE TO CLEAR THE CIRCULAR DEBT OF POWER SECTOR AMOUNTING TO RS.480 BILLION DURING THE YEAR 2013

I, Senator Saleem Mandviwalla, Chairman of the Standing Committee on Finance, Revenue, Economic Affairs, Statistics and Privatization, have the honor to present, on behalf of the Committee, Special Report, under rule 193 of the Rules of Procedure and Conduct of Business in the Senate, 2012, on payments made to clear the circular debt of power sector amounting to Rs.480 billion during the year 2013.

2. The composition of the Committee is given as under:-

1.	Senator Saleem Mandviwalla	Chairman
2.	Senator Ilyas Ahmad Bilour	Member
3.	Senator Muhammad Mohsin Khan Leghari	Member
4.	Senator Ms. Ayesha Raza Farooq	Member
5.	Senator Muhammad Talha Mehmood	Member
6.	Senator Nasreen Jalil	Member
7.	Senator Kamil Ali Agha	Member
8.	Senator Mushahid Ullah Khan	Member
9.	Senator Saud Majeed	Member
10.	Senator Sardar Fateh Muhammad Muhammad Hassani	Member
11.	Senator Osman Saifullah Khan	Member
12.	Senator Mohsin Aziz	Member
13.	Minister for Finance, Revenue, Economic Affairs, Statistics and Privatization	Ex-Officio member

3. The Standing Committee in its meeting held on 8th March, 2017, at Parliament House, Islamabad, constituted a three members sub-committee, comprising of the following members, for in-depth consideration of the payments made to clear the circular debt of power sector amounting to Rs.480 billion during the year 2013: -

(1)	Senator Mohsin Aziz	Convener
(2)	Senator Kamil Ali Agha	Member
(3)	Senator Saud Majeed	Member


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4. The Sub-Committee presented its report to the main Committee in its meeting held on 9th May, 2017, which was attended by the following, namely:-

- | | | |
|----|--|----------|
| 1. | Senator Saleem Mandviwalla | Chairman |
| 2. | Senator Muhammad Mohsin Khan Leghari | Member |
| 3. | Senator Kamil Ali Agha | Member |
| 4. | Senator Mushahid Ullah Khan | Member |
| 5. | Senator Sardar Fateh Muhammad Muhammad Hassani | Member |
| 6. | Senator Mohsin Aziz | Member |

5. The Committee, recommended that the sub-committee's report may be presented to the House, as a special report of the Committee.

6. The report of the sub-committee adopted by the main Committee is Annexed.


(Muhammad Tahir Khan)
Secretary (Committee)


(SENATOR SALEEM MANDVIWALLA)
Chairman (Committee)

Islamabad, the
9th May, 2017.

SENATE SECRETARIAT**REPORT OF THE SUB-COMMITTEE OF THE STANDING COMMITTEE OF THE
STANDING COMMITTEE ON FINANCE, REVENUE, ECONOMIC AFFAIRS,
STATISTICS AND PRIVATIZATION ON PAYMENTS MADE TO CLEAR THE
CIRCULAR DEBT OF POWER SECTOR AMOUNTING TO RS.480 BILLION
DURING THE YEAR 2013**

I, Senator Mohsin Aziz, Convener of the Sub-Committee of the Standing Committee on Finance, Revenue, Economic Affairs, Statistics and Privatization have the honor to submit, on behalf of the Sub-Committee, this report on payments made to clear the circular debt of power sector amounting to Rs.480 billion during the year 2013.


2. The Standing Committee on Finance, Revenue, Economic Affairs, Statistics and Privatization in its meeting held on 8th March, 2017, at Parliament House, Islamabad, constituted a three (3) members' Sub-Committee, in pursuance of sub-rule (1) of Rule 183 of the Rules of Procedure and Conduct of Business in the Senate, 2012. The Composition of the Sub-Committee and its ToRs are given as under:-

COMPOSITION

1.	Senator Mohsin Aziz	Convener
2.	Senator Kamil Ali Agha	Member
3.	Senator Saud Majeed	Member

TERMS OF REFERENCE

"In-depth consideration of the payments made to clear the circular debt of power sector amounting to Rs.480 billion during the year 2013."


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3. The Committee held several meetings and had extensive deliberations on the issue was attended by the following members:-

1.	Senator Mohsin Aziz	Convener
2.	Senator Saud Majeed	Member
3.	Senator Kamil Ali Agha	Member

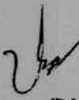
4. The Committee discussed the issue of payments made to clear the circular debt of power sector amounting to Rs.480 billion during the year 2013, at length and read out the Special Audit Report on the subject and observed as under:-

(i). **Audit Para 4.2.1 payment of Rs.32.451 billion**

Regarding unjustified payment for idle capacity of power plants amounting to Rs.32.451 billion, it was observed that the act of the said unjustified payment was criminal. The AGP informed the Committee that the NTDC had provided them only Merit Order Policy while they had not provided the Economic Despatch Order and said it was not possible for them since a daily book was prepared in the National Power Control Centre. He further said they had wrote a letter to NPCC recently for providing information on continuous basis for evaluation but the NPCC and the CPPA were reluctant to provide the same. On a query raised by the Committee, the representative of the CPPA responded that in an initial response the details of audit para were not provided to them regarding the hours against which the information was sought.

(ii). **Audit Para 4.2.1 payment of Rs.32.451 billion & Audit Para 4.2.4 payment of Rs.2.711 billion**

The Sub-Committee expressed its serious reservations that the M/o Water and Power had been changing stance on payment of idle capacity to the IPPs as in the last meeting it was stated that the IPPs had the capacity of producing more electricity than demand which could not be lifted due to weak installed system, however, now it had a different version that the IPPs had the capacity of producing electricity but could not do so due to non-payment of power dues by the government. The Sub-Committee was of the considered opinion that during June, 2011 to June, 2013, the country was facing acute shortage of energy, therefore, the


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payment in respect of forced outages and idle capacity to IPPs were totally inadmissible, illegal and unlawful and there was no justification for such payments.

(iii). **Audit Para 4.1.4 Non-adjustment of Liquidated Damages against the claims of Rs. 22.914 billion**

The Convener Committee apprised that the payment amounting to Rs.22.914 Billion against Non-adjustment of Liquidated Damages against the claims of IPPs was kept aside and not paid along with the payment of circular debt of Rs.480 billion. The representative of CPPA informed that the cases of Liquidated damages (LD) were not adjusted and set aside as those had been disputed by IPPs and all the decisions had been decided against WPPO/CPPA by expert. He further said at present all those cases were under arbitration in the London Court of International Arbitration. The Committee was of the considered opinion that non-adjustment of liquidated damages against the claims of IPPs amounting to Rs.22.914 billion was an unlawful act by M/o Water and Power and that instead of setting aside this payment should had been adjusted and settled once and for all.


(iv). **Audit Para 4.2.3 payment of Rs. 18.494 billion**

Regarding unjustified payment on account of General Sales Tax amounting to Rs.18.494 Billion, the Member (Operations), FBR informed that as per data provided by CPPA, Islamabad, the amount paid to IPPs including sales tax was amounting to Rs.20,183,704,675/-. He said that the Security of sales tax returns of these IPPs had been carried out for the relevant period. Out of which an amount of Rs.17,461,638,117/- matches with the amount of output tax declared by the IPPs, for an amount of Rs.2,721,865,383/- , the amount of Rs.4,627,766,774/- was declared as output tax by the IPPs which was even higher than the amount shown and the amount of Rs.201,175/- to be declared as output tax by 2 of the IPPs, failed to declare the same and the matter was also being examined/investigated. The Sub-Committee showed its satisfaction on the reply given by the FBR.

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- (4)
- (v). **Audit Para 4.2.5 payment of Rs. 2.424 billion**
With regard to the overpayment to NPGCL amounting to Rs.2.424 billion, it was observed that the directions of the DAC given in its meeting held on 19-11-2015, to follow the new system of invoicing as per PPA and reconciliation of invoices between GENCOs and CPPA including its verification from the audit, which had not been done till today i.e. after the lapse of two years.
- (vi). **Audit Para 4.2.8 payment of Rs. 10.911 million**
While considering the recoverable amount due to application of wrong exchange rate amounting to Rs.10.911 million, it was observed that the directions of the DAC given in its meeting held on 19-11-2015, regarding recovery and production of record for remaining amount of Rs.4.103 million within two days had not been done till today i.e. after the lapse of two years.
- (vii). **Audit Para 4.2.9 payment of Rs. 3.342 million**
On account of the extra payment due to application of higher Inflation and exchange rate factor amounting to Rs.3.342 million it was observed that the directions of the DAC given in its meeting held on 19-11-2015, regarding provision of record for verification by audit within two days, which had not been implemented till date.
- (viii). The Sub-Committee rejected the answer given by the M/o Water and Power in the meetings of the previous Sub-Committee that the Public Accounts Committee (PAC) had cleared all the paras mentioned in the special audit report, and read out the actionable points arising out from discussion of PAC meeting held on 04-02-2016, to examine the special audit report on clearance of circular debt of power sector pertaining to M/o Water and Power especially para 5 of the actionable points which reads as under:-

"There was unanimity in the views of the Members, that as to whether the authenticity of demands of payments to IPPs were ascertained or otherwise. They questioned the supply of fuel/furnace oil to the IPPs and its subsequent usage. The Secretary Water and Power replied that a decision was made to conduct heat test of all the IPPs to ascertain the consumption of oil per MW production, however, the same


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has been challenged in the court of Law and got stay orders. The non-conducting of heat test by the IPPs to ascertain the consumption of oil in per MW production of electricity was termed a serious concern and the Committee directed the PAO to vacate the stay order from the court of law and conduct heat test of all the IPPs to determine if at all extra payments have been made to them and a comprehensive report thereof be sent to the Committee”.

As on one side unjustified payments were being released and on the other the Ministry failed to apply its writ to check the actual efficiency against the declared efficiency of the plant.


- (ix). The representative of the M/o Water and Power replied that the decision regarding conducting of heat test of all the IPPs to ascertain the consumption of oil per MW production was challenged in the court of law and the court had granted stay order in the matter. In response to a query raised by the Sub-Committee, the representative of the M/o Water and Power responded that almost all paras mentioned in the Special Audit Report relate to the heat test.

(x). **Audit Para 4.2.7 payment of Rs. 147.921 million**

In connection with the unauthentic payment on account of forced/partial forced outage Rs.147.921 million the Sub-Committee observed that directions of the DAC given in its meeting held on 19-11-2015, regarding provision of record for verification within two days had not been given. At that juncture, the representative of the PEPCO said that the issue was subsequently discussed in the DAC meeting and the relevant record and replies were given accordingly which however is still missing and had not reached the relevant quarters.

(xi). **Audit Para 4.1.3 Non cash settlement of Rs. 25.104 billion**

On account of the unjustified non-cash settlement of circular debt amounting to Rs.25.104 Billion, the Sub-Committee inquired the Audit authorities whether the relevant invoices and supporting documents of NTDC and GENCO against which said amount was adjusted by the Finance Division were provided to them. The Audit authorities responded that no such record was provided till yet. While the Treasury Adviser, CPPA replied that the same was


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(6)


provided to the Audit before the DAC meeting offhandedly. The Sub-Committee expressed its grave concern on the statement given by the Treasury Advisor, CPPA over the issue of provision of relevant record to the DAC offhandedly and was of the considered opinion that such practice was not acceptable in any case as such record should had been given after getting an official receipt/stamp.

- (xii). It was also felt that the heat test requirement was prescribed by the M/o Water and Power only to revoke the matter in order to avoid the settlement of the audit paras.
- (xiii). The payment of Rs.341.958 billion was an unprecedented mode of payment of such volume in a single day and bypassing the mandatory formalities including the pre-audit as prescribed by the AGP as prescribed by law and mandatory for all such payments.
- (xiv). The Sub-Committee was not convinced with regard to emergency as claimed by the M/o Water and Power, due to which all the rules were disregarded especially with the fact that there was no perceptible improvement in the power shortages and load shedding months following the payments. There was no emergency as this payment and dispute of late/ delayed payment was under question for a considerable long time, a few more days for its audit/authentication could not had disrupted the whole system especially when public money was involved. Also that even later on the agreement between the government & IPPs was not adhered to by the power producers.

5. After due deliberation, the Sub-Committee made the following recommendations/directions:-

Recommendations

- (1) The non-adjustment of liquidated damages against the claims of IPPs amounting to Rs.22.914 billion was an unlawful act by M/o Water and Power and recommended that the such payment should had been adjusted instead of setting aside prior to clearing the circular debt.

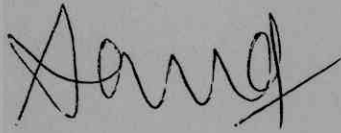

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- (7)
- (2) The payments made for idle capacity of power plants and forced/partial outages amounting to Rs.32.451 billion and Rs.147.921 million respectively was totally inadmissible, unjustified and unlawful, therefore, it is strongly recommended that appropriate action must be taken against the responsible persons the amount paid as such be recovered from the recipients.
 - (3) The non-cash settlement of circular debt amounting to Rs.25.104 billion was illegal, therefore, it is recommended that the appropriate action should be taken against the CFO, PEPCO for non provision of all the relevant invoices to audit as well as to the Sub-Committee.
 - (4) The Sub-Committee observed that the maintenance of an inventory and backup fuel was the responsibility of the IPPs, and declared payment amounting to Rs.2.711 billion to IPPs on account of capacity payment as illegal and recommended a full fledged probe so that the responsible persons could be held accountable including the recovery be made from the receivers.
 - (5) The reimbursement of withholding tax amounting to Rs.264.655 million to IPPs i.e. Attock Gen. Ltd., Atlas Power Ltd., Nishat Power Ltd. and Nishat Chunian Power Ltd. by the CPPA was irregular and directed the Federal Board of Revenue (FBR) to recover said amount from the IPPs.
 - (6) With regard to payment on account of Open Cycle Cost (OCC) amounting to Rs.263.963 million, the Sub-Committee observed that the said amount was not covered under the Power Purchase Agreement (PPA), and that there was no ownership to the extent of its authorizing therefore that was grossly unjustified and it is intense recommendation is made that the action should be taken against the authority which authorized the said payment.
 - (7) The NTDC made the payment of Rs.84.950 million contrary to the decision of the ECC dated 29-05-1999, with regard to indexation of


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tariff and recommended that the necessary action should be taken against the persons involved in the calculation of the said payment.

- (8) The committee vigorously recommended that since there existed a serious negligence and that inadmissible payments were made without any validation, which are of totally illegal nature must be probed in detail by FIA/NAB and responsibility be fixed for these payments on the individual/ Ministry & its officials.
- (9) The committee also strongly recommended the recovery be made from all recipients i.e. IPPs, who have received these over and unjustified payments.
6. This report is submitted to the main Committee with the recommendation that it may be adopted and laid before the House as a special report of the Committee, under Rule 193 of the Senate rules.



(Senator Saud Majeed)
Member

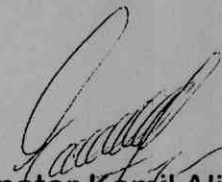

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(Senator Mohsin Aziz)
Convener

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(Muhammad Tahir Khan)
Secretary (Committee)



(Senator Kamil Ali Agha)
Member

Islamabad, the
20th April, 2017.