



NATIONAL Electric Power Regulatory Authority
Islamic Republic of Pakistan

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**OFFICE OF THE
REGISTRAR**

No. NEPRA/D(CAD)/TCD-04/9002-04

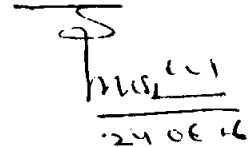
June 24, 2016

Chief Executive,
Gravity Mills Limited
Ghauspur, Mandi Shah Jewana,
Tehsil & District Jhang.

Subject: **DECISION OF THE AUTHORITY REGARDING APPEAL FILED BY GRAVITY MILLS LIMITED UNDER SECTION 12-A OF THE NEPRA ACT, 1997 AGAINST THE ORDER OF THE APPELLATE BOARD DATED JUNE 12, 2015 IN THE MATTER OF FESCO VS GRAVITY MILLS LIMITED**

Reference is made to the appeal filed by Gravity Mills Limited dated July 14, 2015 against the decision of NEPRA Appellate Board dated June 12, 2015.

2. Please find enclosed the decision of the Authority in the subject matter for information.



(Syed Safer Hussain)

Copy to:-

1. Chief Executive Officer
Faisalabad Electric Supply Company Limited (FESCO)
Abdullah Pur, Canal Bank Road, Faisalabad.
2. C.E/Customer Services Director
Faisalabad Electric Supply Company Limited (FESCO)
Abdullah Pur, Canal Bank Road, Faisalabad.



**BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)**

Gravity Mills Limited **Appellant**
Through Chief Executive,
Ghauspur, Mandi Shah Jewana,
Tehsil & District Jhang.

Versus

Faisalabad Electric Supply Company (FESCO) **Respondent**
Abdullah Pur, Canal Bank Road,
Faisalabad.

Date of Hearing: November 05, 2015

Date of Decision: March 30, 2016

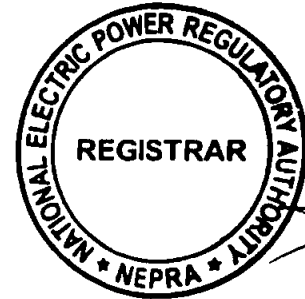
Present:

- | | | |
|----|-----------------------------|---------------------------|
| 1) | Brig. (R) Tariq Saddozai | Chairman |
| 2) | Maj. (R) Haroon Rashid | Member (Consumer Affairs) |
| 3) | Khawaja Muhammad Naeem | Member (Tariff) |
| 4) | Mr. Humayt Ullah Khan | Member (M&E) |
| 5) | Syed Masood-ul-Hassan Naqvi | Member (Licensing) |

On behalf of:

- Petitioner:**
- 1) Mr. Nadir Altaf, Legal Counsel (RIAA)
 - 2) Mr. Talib Choudhary, Manager Accounts
 - 3) Mr. Zahid

- Respondent:**
- 1) Syed Saleem Shah, NEN
 - 2) Mr. Maroof Afzal, Revenue Officer (Jhang)



Subject: DECISION OF THE AUTHORITY REGARDING APPEAL FILED BY GRAVITY MILLS LIMITED UNDER SECTION 12-A OF THE NEPRA ACT, 1997 AGAINST THE ORDER OF THE APPELLATE BOARD DATED JUNE 12, 2015 IN THE MATTER OF FESCO VS GRAVITY MILLS LIMITED

DECISION

This order shall dispose of the instant Appeal filed by Gravity Mills Limited (the "Appellant") on July 14, 2015 under Section 12-A of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "Act") against the order of the Appellate Board of National Electric Power

Regulatory Authority (hereinafter referred to as the "NEPRA") dated June 12, 2015 in the Appeal No. NEPRA/Appeal-085/POI-2014 (hereinafter referred to as the Impugned Order).

2. Brief facts giving rise to the instant Appeal are that the Appellant is an industrial consumer of Respondent (FESCO) with a sanctioned load of 2,090 kW under B-3 tariff and the Respondent is a licensee of NEPRA for distribution of electricity in the territory specified as per terms and conditions of its respective distribution licence.

3. As per schedule, the TOU billing meter and backup meter of the Appellant were checked by M&T FESCO on June 04, 2013 and were found in order. Later on both the meters were again checked by M&T FESCO on December 03, 2013 and the TOU meter was found malfunctioning whereas, the backup meter was found correct. A bill of 351,402 units being the difference of TOU & back up meters consumption was charged to the Appellant in the bill for December 2013.

4. Being aggrieved with the above difference bill, the Appellant filed a Writ Petition No.33625/2013 in Lahore High Court, Lahore which was disposed of by the Honorable Court with the direction to the Respondent to consider representation of the Appellant within seven days but according to the Appellant the bill was not revised on the basis of normal average consumption. The Appellant filed an application on December 31, 2013 before the Provincial Office of Inspection (POI), Faisalabad Region against the difference bill for 351,402 units added in the bill of December 2013. Subsequently, the Appellant filed another application on February 20, 2014 before the POI and complained that 52,230 units and 134,160 units were charged in excess in the bills for January 2014 and February 2014 respectively.

5. After affording opportunity of hearing to both the parties and perusal of the record, POI announced his decision on May 08, 2014. The operative part of the decision is reproduced below:

"In the light of above facts, it is held that the impugned 5,37,787 units accumulatively raised & demanded from bills from 12/2013 to 02/2014 (respectively) on account of alleged difference in the Electric Mechanical Backup Meter of accuracy class-2 and TOU billing meter accuracy class-1 are void, unjustified and of no legal effect; therefore the petitioner is not liable to pay the same. It is further held that the impugned TOU billing meter was correct till billing cycle for 01/2014 and it became 3.91% slow during the billing cycle for the month of 02/2014 whereas onward the billing was shifted on new TOU check meter in the billing cycle for 03/2014; therefore the respondents are directed to charge 3.91% slowness on the consumption of 1,051,736 units recorded by the TOU impugned meter during the billing month of 02/2014 and the petitioner is liable to pay the same. The new TOU check meter is declared as billing meter with effect from 03/2014. The respondents are directed to over-haul the account of the petitioner accordingly, and any excess amount recovered be refunded/credited to the petitioner company in the future bill(s)."

6. Being aggrieved with the above decision of the POI, the Respondent preferred an appeal before the Authority under section 38 (3) of the Act and prayed that the decision dated May 08, 2014 passed by Electric Inspector, Energy Department, Faisalabad Region, Faisalabad on complaint titled Gravity Mills Limited versus FESCO and others may please be set aside. The Appellate Board disposed of the appeal and directed the Respondent to bill the Appellant as per table below:-

| Billing Month | Units billed as per TOU billing Meter | Units to be billed after accounting for 4.07% slowness |
|---------------|---------------------------------------|--|
| December 2013 | 1,166,388 | 1,213,964 |
| January 2014 | 1,283,029 | 1,335,218 |
| February 2014 | 1,051,736 | 1,094,511 |
| Total | 3,501,253 | 3,643,753 |

7. Being aggrieved with the decision of the Appellate Board, the Appellant preferred an appeal under section 12-A of the Act before the Authority. The Authority admitted the instant appeal on October 06, 2015 and fixed it for hearing on November 05, 2015 at Islamabad.

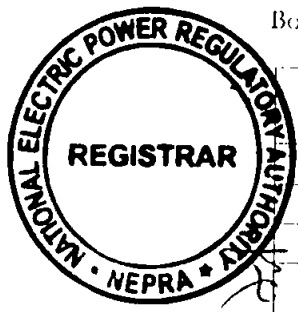
8. The Appellant reiterated its earlier stance, however the Respondent argued that both TOU billing meter and electro mechanical backup meter were found correct during checking by M&T FESCO on June 04, 2013. The discrepancy was noticed in the readings of both meters since August 2013 and the matter was discussed with



Superintending Engineer (M&T) in September 2013 for keeping the meters under observation and Superintending Engineer (M&T) carried out checking of meters in the presence of representative of the Appellant and found the TOU meter malfunctioning. The Respondent pleaded that the bills added for December 2013, January 2014 and February 2014 were difference bills but not the detection bills and POI was not authorized to declare correctness/defectiveness of TOU meter by comparing it with the check meter as only manufacturer could declare the performance of the meter. The Appellant further contented that the WAPDA circular dated March 13, 2001 was applicable in the instant case which fact has not been appreciated by the Appellate Board. The representative of Respondent argued that the said circular is only applicable when both the meters are healthy but in the instant case the malfunctioning of TOU meter was established as such its reading was not reliable and cannot be made basis for the billing. Further during the course of hearing, the question was raised whether the present appeal is maintainable or not under section 12-A of the Act, since the impugned order was passed in appellate jurisdiction by the Appellate Board constituted by the Authority; to which powers were delegated under section 12 of the NEPRA Act.

9. We have heard arguments and examined the record placed before us. If for sake of arguments it is admitted that present appeal is maintainable, following are the conclusions:

- a. It is established from the record that meters of the Appellant were checked by M&T FESCO on June 04, 2013 and both TOU billing meter and electro mechanical backup meter were found to be in order. However, the meter of the Appellant was again checked by M&T FESCO on December 03, 2013 and TOU billing meter was found malfunctioning whereas backup meter was found correct.
- b. Difference bill for 351,402 units, was added in the bill for December 2013. This bill was challenged by the Appellant before POI on December 31, 2013.
- c. The Appellant also challenged the billing for 52,231 units charged in excess in January 2014 and 134,160 units charged in excess in February 2014.
- d. New TOU meter was installed by Respondent on January 30, 2014 on the directions of POI. The perusal of the consumption data of disputed TOU billing meter and new TOU check meter establishes that TOU billing meter on average was 4.07% slow during the period from January 30, 2014 to March 25, 2014. Since the TOU billing meter was found defective in the checking on December 03, 2013 therefore, the consumption of the disputed TOU billing meter was liable to be increased by 4.07% in order to account for the slowness for the months from December 2013 to February 2014. However, the billing from March 2014 onward was based on new TOU check meter. Accordingly, the Appellate Board decided that the Appellant is liable to be billed as per table given below:



| Billing Month | Units billed as per TOU billing Meter | Units to be billed after accounting for 4.07% slowness |
|---------------|---------------------------------------|--|
| December 2013 | 1,166,188 | 1,213,964 |
| January 2014 | 1,283,029 | 1,335,248 |
| February 2014 | 1,051,736 | 1,094,511 |
| Total | 3,501,253 | 3,643,753 |

10. In view of above, we find no reason to interfere with the impugned order, the Appellant is to be charged at 4.07% slowness on the basis of consumption recorded by TOU billing meter for the billing months of December 2013, January 2014 and February 2014.

11. Now coming to the question of maintainability of the Appeal, the issue which is before the Authority is that whether an order of the Appellate Board of the Authority (exercising the delegated power of the Authority to adjudicate appeals under section 38 of the Act) is appealable under Section 12-A of the Act or otherwise. Section 12-A ibid provides as under:

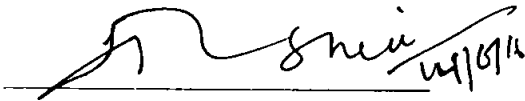
"Any person aggrieved by any decision or order of the Single Member of the Authority or, as the case may be, Tribunal established under Section 11, may within thirty days of the decision or order, prefer an appeal to the

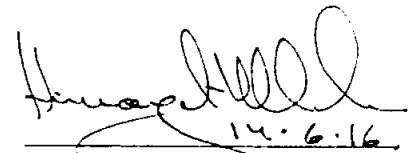
Authority in the prescribed manner and the Authority shall decide such appeal within sixty days”, [emphasis added].

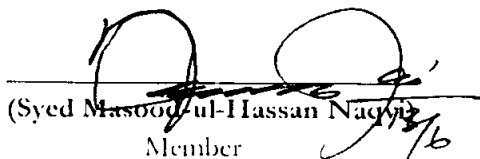
12. The reading of the above section transpires that the appealable order/decision are only those of a single member of the Authority or a Tribunal constituted under Section 11 of the Act (which provides for establishment of tribunal for resolving contractual disputes between licensees or such other matters as the Authority may assign). The *sententia legis* evident from plain reading of this section is that the orders appealable under section 12-A of the Act are original orders passed by Tribunals and single member of the Authority. In the present case the decision of POI was challenged before the Authority under section 38(3) of the Act. The Authority in view of exigency of the matters and demands on its time has constituted an Appellate Board to hear and decide appeal, which exercises a delegated power of the Authority. The discussion boils down to the question whether the Appellate Board can be deemed to be a Tribunal within a meaning of Section 11 of the Act or otherwise.


13. The perusal of the record/notification for establishment of the Appellate Board clarifies that, the Authority made an informal decision and instead of establishing a Tribunal under section 11 of NEPRA Act, constituted an Appellate Board which was delegated the power of the Authority under section 12 of the Act to hear appeals arising under section 38 *ibid*. Therefore, by no stretch of imagination it can be argued that the Appellate Board is a Tribunal within the meaning of Section 11 of the Act. Hence the order of the Appellate Board under section 38 of the Act is not an appealable order under Section 12-A *ibid*. Further it is *prima facie* contrary to spirit of the law that a single authority be vested with power to hear two appeals on single issue/matter as it would result in delay in dispensation of justice.

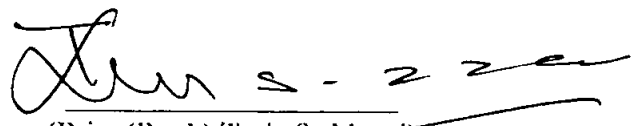
14. In view thereof, the instant appeal is not maintainable for reasons discussed above and even on merits the impugned order requires no interference. The instant appeal is disposed of accordingly.

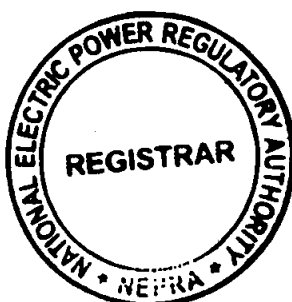

(Maj. (Retd.) Haroon Rashid)
Member

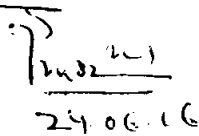

(Himayat Ullah Khan)
Member


(Syed Masood-ul-Hassan Naqvi)
Member


(Khawaja Muhammad Naeem)
Member


(Brig. (Retd.) Tariq Saddozai)
Chairman




24.06.16