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National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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DD/CAD
M 03/07/12

Registrar

No. NEPRA/TCD 04 / 5824-26

July 2, 2012

Chief Executive Officer,
Faisalabad Electric Supply Company Ltd. (FESCO)
Abdullahpur, Canal Bank Road
Faisalabad

M 03/07/12

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Subject: Review Petition filed by FESCO against the Decision of the Authority in the matter of Complaint of Mr. Nasrullah Khan S/O Ahmad Khan regarding Detection Bill

Please find enclosed herewith the Order of the Authority on the review request regarding the subject matter for compliance within 30 days of the receipt of this Order.

Encl: As above

Sd/-
(Syed Safer Hussain)

Copy to:

1. C.E/Customer Services Director
Faisalabad Electric Supply Company (FESCO)
Abdullah Pur, Canal Bank Road,
Faisalabad
2. Mr Nasrullah Khan S/o Ahmad Khan
R/o Chak No. 505/506 JB,
Basti Munir Abad ,Jhang

No. NEPRA/TCD 04 / 5827

July 2, 2012

Forwarded for information, please.

Senior Advisor (CAD) [w.r.t. Dy. No. 641 dated 29.06.2012]

Registrar

CC:

1. Acting Chairman / Member (CA & T)

Consent of Admin Division
449
02-07-12



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No: FESCO-70-2011

Faisalabad Electric Supply Company (FESCO) Petitioner

Versus

Mr Nasarullah Khan S/o Ahmed Khan Complainant

Date of Decision: May 09, 2012

Present:

- 1) Mr. Ghiasuddin Ahmed Acting Chairman/Member (CA)
- 2) Mr Shaukat Ali Kundi Member (Licensing)
- 3) Mr Habibullah Khilji Member (Monitoring & Enforcement)
- 4) Khawaja Muhammad Naeem Member (Tariff)

Subject: **REVIEW PETITION FILED BY FESCO AGAINST THE DECISION OF AUTHORITY IN THE MATTER OF COMPLAINT OF MR NASARULLAH KHAN S/O AHMAD KHAN REGARDING DETECTION BILL**

ORDER

1. This Order shall dispose of the review request dated April 05, 2012 filed by Faisalabad Electric Supply Company (FESCO) (herein after referred to as the petitioner) against the decision of the Authority regarding complaint of Mr Nasarullah Khan filed under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.
2. The brief facts of the case are that a complaint of Mr Nasarullah Khan was received on December 02, 2011 through Sheikh Waqqas Akram Minister of State (Ministry of Human

Resource Development). The complainant in his complaint stated that he is a consumer of WAPDA and has obtained electricity connection for his Flour Mill. Whereas, the subordinate staff of WAPDA has imposed detection bill without any justification and the same is not payable by him. The applicant has never been defaulter and this is unfair with him. He requested to waive off the same on humanitarian grounds.

3. After initial scrutiny of the complaint, the case was referred to FESCO for submission of report. In response FESCO vide its letter dated December 27, 2011 informed that the industrial connection having sanctioned load of 7.62 kW bearing A/C No 27-13362-0023629 of the complainant was sanctioned on 28-06-2009 under industrial Tariff. TOU meter was installed and billing was started under tariff B-1 wrongly instead of tariff B-2 (b). Later on after checking of the record and site, the consumer's account was overhauled under appropriate Tariff B-2 (b) with effect from the date of installation of connection upto 10/2010 and as a result of that Rs. 54,735/- were debited to the consumer's account besides starting of billing under tariff B-2 (b) from the month of 11/2010 to 03/2011 as per tariff notification determined by NEPRA on 05.09.2008 in its Official Gazette. It is further clarified that no detection bill has been charged to the complainant and now billing is being carried out from 04/2011 to date under tariff B-1(b) as the sanctioned load is 7.62 kW. Disciplinary action under E & D rules 1978 against the delinquent officers/officials on account of wrong application of tariff initiated by SE (O) Jhang.
4. The report of FESCO was sent to the complainant for rejoinder. In response, the complainant raised his observations over the report of FESCO. The observations of the complainant were received through Sheikh Waqqas Akram Minister of State (Ministry of Human Resource Development) on 10-01-2012. The complainant in its rejoinder submitted that his connection was sanctioned on 02-04-2009 under B-1 tariff. At the time of approval of connection, FESCO should have approved it under B-2 tariff. Moreover, FESCO has charged Rs.54735/- in February, Rs.2800/- in April, Rs.12139/- in July, Rs.250/- in Sep & Rs.262/- in October which FESCO has not mentioned in its report. The total amount paid by him to FESCO is Rs.70,186/-. The complainant requested to waive off the detection bill.
5. To probe further into the matter, both the parties were called for a hearing in NEPRA on January 26, 2012. The complainant attended the office of NEPRA on January 26, 2012 but FESCO officials failed to attend the meeting and requested for rescheduling of the meeting. The complainant was heard on the same day and FESCO officials were directed to attend the meeting on February 15, 2012. In the meeting the complainant reiterated the same view point as submitted by him earlier through the rejoinder. In addition, the complainant mentioned two account numbers i.e. 21-13318-1420801 & 21-23621-635500 and informed that these are similar type of cases but no arrears have been demanded from these two consumers by FESCO. The complainant requested to waive off the charges charged to him by FESCO on account of difference of tariff. FESCO officials attended meeting on 15.02.2012 and in the meeting they informed that at the time of sanctioning connection the TOU meter was installed but billing was started under tariff B-1 wrongly instead of tariff B-2 (b). The audit pointed out the discrepancy and the consumer's account was overhauled by applying appropriate tariff B-2 (b) and an amount of Rs 66874/ was charged to the consumer's account which is payable by the consumer as per tariff terms and conditions. FESCO officials further informed that the account No 21-13318-1420801 is not correct and the other account No 21-23621-635500 of Mr. Imtiaz Ali Tariq S/o Dr Ahmed Ali was sanctioned long time ago before the introduction of TOU tariff (that is before 1986) where a

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non TOU 3/ phase meter had been installed which is still functioning accurately. During the hearing, it was revealed that FESCO had also debited to the complainant an amount of Rs 12139/- as power factor penalty on account of audit note which was not mentioned by FESCO in its initial report submitted to the Authority.

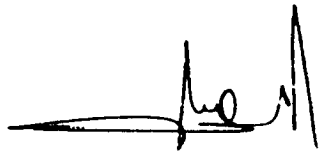
6. FESCO being a licensee of NEPRA is authorized and bound to apply the correct tariff to the consumer. Any deviation or application of incorrect tariff by its officials which results in the less recovery from the consumer cannot be claimed as arrears from the consumer at a belated stage. The consumer has been making payments of the bills which were served to him by FESCO under the legitimate expectancy that the same were correct and according to the electricity consumed by him. Hence charging of past arrears from the complainant on account of wrong application of tariff by FESCO officials is not justified. It is the mistake of the FESCO officials who charged wrong tariff to the consumer. The consumer cannot be penalized for mistake of the FESCO officials who imposed wrong tariff at initial stage and raised bills accordingly. (Now the Authority has revised the tariff terms and conditions and B1 category has been enhanced upto 25 kW).
7. The complaint was decided by the Authority on March 08, 2012 and FESCO was directed to withdraw the amount of Rs 54,735/- charged to the complainant on account of difference of tariff and Rs 12139/- on account of power factor penalty. Compliance report shall be submitted within 30 days of the receipt of this letter".
8. Against the aforementioned decision FESCO has filed the instant review petition on April 05, 2012 after 28 days of the decision which is time barred under the NEPRA (Review Procedure) Regulations, 2009. FESCO in its review petition has submitted that in case of implementation of this decision, it will sustain financial loss as many other consumers will also take plea of this precedent for blockage of its legitimate revenue as pointed out by Audit from time to time. FESCO requested that the decision be reviewed on the following grounds:
 - i) Legitimate dues of Rs 54,735/- and Rs 12,139/- on account of less charging due to incorrect application of tariff are chargeable from the consumer.
 - ii) The complainant took the benefit of difference of tariff from B-2(b) to B1 due to omission by the officials of Sub Division.
 - iii) The decision is against the spirit of Audit. The audit points out less recovery in order to recover the legitimate dues from the consumers at belated stage, but implementation of this decision will provide precedent to the consumers for challenging the legitimate dues pointed out by audit.
9. The review petition of FESCO has been considered by the Authority. The Member (Tariff) expressed his reservations against the earlier decision of Authority with the observation that the dues of FESCO against the complainant are legitimate and if they were not allowed to recover the same, it would be tantamount to writing off the consumer's liability at the expense of utility. He was of the opinion that burden would be shifted to other consumers if FESCO was prevented from recovering the same. The Member (Tariff) recommended that the delay in filing the review petition by FESCO may be condoned considering the prevailing circumstances and the plea of the FESCO may be considered sympathetically

it cannot be deprived of its revenue owing to the omission on the part of its officials. It is opined that FESCO may proceed against its officials for their negligence under the relevant service rules.

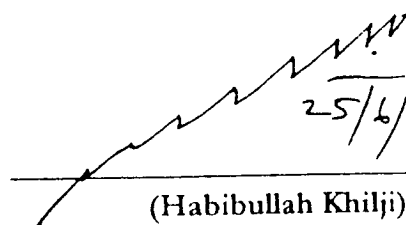
The Authority has carefully gone through the contents of review petition as well as the decision sought to be reviewed. FESCO being a distribution licensee of NEPRA is obligated to charge such tariff from the consumers as is approved by the Authority. Admittedly it is a fault on the part of FESCO itself that it has been charging the consumers under some wrong head. Thus claiming any amount as difference as to the applied tariff qua the tariff ought to be applied on the part of FESCO seems to be without any logic or rationale.

Under NEPRA (Review Procedure) Regulations, 2009, a petition seeking review of any order of the Authority is competent only upon discovery of new and important matter of evidence or on account of some mistake or error apparent on the face of record. The perusal of the decision sought to be reviewed clearly indicates that all material facts and representation made were examined in detail and there is no occasion to amend the same. No error inviting indulgence as admissible in law has been pleaded out in the review petition. Therefore, the Authority is convinced that the review would not result in the withdrawal or modification of its earlier decision. Moreover, the review petition is also time bared under NEPRA (Review Procedure) Regulations, 2009.

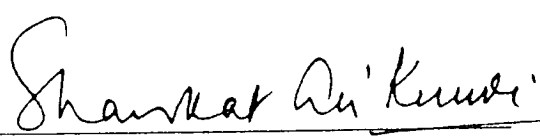
- 12. From what has been discussed above, the Authority is of the considered view that the grounds agitated in the motion for leave for review are not sufficient enough justifying the modification of the impugned decision and the same is also time bared, hence the review petition is declined.

 25.06.12

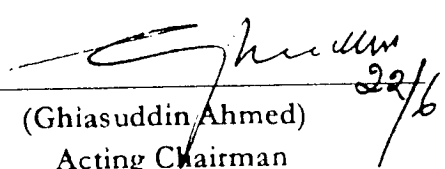
(Khawaja Muhammad Naeem)
Member

 25/6/2012

(Habibullah Khilji)
Member



(Shaukat Ali Kundi) 29.06.2012
Member

 22/6

(Ghiasuddin Ahmed)
Acting Chairman

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