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National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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Registrar

No. NEPRA/TCD/07 /1244-52

February 22, 2011

Chief Executive Officer,
Hyderabad Electric Supply Co. Ltd.
WAPDA Offices Complex,
Hussainabad,
Hyderabad

Major (R) M. Saeed (Manager Admin)
Quetta Textile Mills Ltd.
B/4 S.I.T.E Kotri District Jamshoro
Sindh

Subject: Complaint of Major (R) M Saeed (Manager Admin) M/s. Quetta Textile Mills Ltd. under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 against HESCO regarding Non-provision of New Connection and Demand for Payment of Fixed Charges
Complaint # HESCO-342-2010

Please find enclosed herewith the decision of Vice Chairman / Member (Consumer Affairs) on the subject matter for compliance within 60 days of the receipt of this letter by HESCO.

Encl: As above

Sd/-
(Hammad Shamimi)

Copy for information to:

1. Chief Executive Officer, FESCO.
2. Chief Executive Officer, GEPCO.
3. Chief Executive Officer, IESCO.
4. Chief Executive Officer, LESCO.
5. Chief Executive Officer, MEPCO.
6. Chief Executive Officer, PESCO.
7. Chief Executive Officer, QESCO.

No. NEPRA/TCD/07 /1253

February 22, 2011

Forwarded for information, please.

Sr. Advisor (CAD)


Registrar

CC:

1. Chairman
2. Vice Chairman / Member (CA)



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BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
NEPRA

Complaint No. HESCO: 342-2010

Major (R) M Saeed Complainant

Vs

Hyderabad Electric Supply Company Respondent

Date of Hearing: November.03, 2010

Present: Mr Shaukat Ali Kundi
Vice Chairman/Member (Consumer Affairs)

ON BEHALF OF:

Complainant: Major (R) M Saeed
Manager (Admin) Quetta Textile Mills Ltd

Respondent: 1) Mr Shankar Lal, Chief Engineer/CSD HESCO
2) Mr. Mohammad Saleem, Manager (Operation) Circle-II HESCO

IN THE MATTER OF COMPLAINT OF MAJOR (R) M SAEED (MANAGER ADMIN) M/S QUETTA TEXTILE MILLS LTD (QTML) UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST HESCO REGARDING NON PROVISION OF NEW CONNECTION AND DEMNAD FOR PAYMENT OF FIXED CHARGES Rs. 1,06,77,336/-

ORDER

1. This decision shall dispose of the complaint of Major (R) M Saeed, Manager (Admin) M/s Quetta Textile Mills Ltd. Kotri (QTML) (hereinafter referred to as " complainant") against Hyderabad Electric Supply Company (hereinafter referred to as "HESCO").

2. Precisely, the complainant in his complaint dated 07 July, 2010 has stated that QTML in past had been meeting its electricity requirements for running its Mill from Wapda

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but after unbundling of Wapda and formation of DISCOs, it decided to setup its own power generation unit in its own premises and the electricity provided by Wapda was disconnected in October 2001 and in this regard no request for disconnection was made by it. The complainant further stated that till filing of the complaint, it is meeting its requirement from its own generation unit. Further that it has applied for 2000 kW electricity connection but the HESCO is reluctant to provide electric connection and has instead raised an amount of Rs.1,06,77,336/- as fixed charges/cross subsidy for the period 12/2001 to 4/2004 under section 22 of the NEPRA Act. The complainant further stated that since the electricity connection to its unit was disconnected by HESCO itself without the request of the complainant as such QTML is not liable to be charged fixed charges/cross subsidy. The complainant further stated that a meeting regarding clarification of charging of fixed charges on self generation was held with Director (Legal) NEPRA on November 10, 2006 which was attended by High Officials of LESCO and HESCO. In the meeting it was made clear that fixed charges on those connections who have gone for self generation within their premises are not liable to be charged fixed charges. The complainant further informed in his complaint that in an identical case NEPRA has declared charging of fixed charges as unjustified and directed HESCO for provision of new connection to M/s Bhanero Textile Mills Kotri.

3. HESCO vide letter dated July 28, 2010 while responding to a query raised by Consumer Affairs Division, NEPRA reported that the electricity supply of M/s Quetta Textile Mills was disconnected on consumer's request in 10/2001, and that the new connection was not given to the complainant due to non payment of outstanding amount of Rs. 1,06,77,336/- which the auditor determined as fixed charges while carrying out audit, which is liable to be paid by the complainant under section 22 (2) of NEPRA Act which requires that where a bulk power consumer intends to stop purchase of electric power from a distribution company, it shall convey its intention by notice in writing 03 years before such stoppage. HESCO has further informed that the connection of M/s Bhanero Textile Mills Kotri was given on the directives of NEPRA and the outstanding amount is set aside and the decision regarding recovery is awaited. Letter sent by Director (CAD&C) dated March 01, 2007 reads as under:

"Charges of Rs.2,07,88,796 demanded by HESCO on account of fixed charges /subsidy charges are unjustified. HESCO may provide connection to M/S Bhanero Textile Mills as per their new connection policy without charging fixed charges/subsidy"

4. There was obvious contradiction on the issue of request of the complainant for disconnection/stoppage of electricity. As such, HESCO was asked to provide documentary evidence for the same to which HESCO responded that the record was not traceable, however, the connection was permanently disconnected in 10/2001 on consumer's request as per remarks given on the Equipment Removal Order (ERO).

5. The complainant in his rejoinder to the HESCO's report informed that Quetta Textile Mills never applied for disconnection of supply. They however, approached Sindh High Court Hyderabad Bench for restoration of supply. The complainant also attached the court order directing HESCO to restore the supply forthwith.

6. After examining the case in detail, both the parties were called for hearing on November 3, 2010. Both the parties attended the hearing and gave their point of view besides answering questions on the subject cited case. They were directed to submit their written arguments within 10 days.

7. The complainant in his written arguments stated that Quetta Textile Mills consists of two units i.e. Unit-I and Unit-II. The electric supply to Unit-I was disconnected in January 1997 on request of Quetta Textile Mills before NEPRA Act, whereas supply to Unit-II was disconnected by WAPDA/HESCO itself in October 2001 and no request was made by Quetta Textile Mills. They have a generation license from NEPRA and self generating plant of 8.1 MW capacity is installed at Unit-II which is also supplying power to Unit-I situated across the road, under a distribution license issued by NEPRA. They are self generating for use only in their own units (I&II) and not supplying power to other industrial consumers. The complainant further argued that HESCO was required to restore the supply after court order but it did not. The complainant did not pursue the case of restoration at that time as self generation was enough. Now he wants to increase production and wants electric connection of 2000 kW, for which HESCO is demanding clearance of cross subsidy amounting to Rs 1,06,77,336/=..

8. Respondent (HESCO) in its written arguments submitted that:

- a) HESCO cannot allow new connection to Quetta Textile Mills-II on account of resale to Quetta Textile Mills-I. HESCO also quoted Rule 7 (3) of NEPRA licensing (Distribution) Rules 1999 in support of its refusal, as under:-

“The Authority may stipulate in the distribution license not to grant a second-tier supply authorization to any other licensee in respect of the Service Territory for such period of time or to grant one or more second-tier supply authorization for such time period and on such terms and conditions as may be specified in the distribution license of the licensee, provided that until such time the second tier supply authorization is granted to another licensee, the licensee shall have the right to supply electric power to bulk power consumers located within its service territory without requiring to obtain any second tier supply authorization in respect thereof”.

- b) HESCO stated that under Section 22 (2) of NEPRA Act, if bulk supply consumers intend to stop purchase of electricity then they are required to pay fixed charges for three years as cross subsidy.
- c) Regarding the connection of M/s Bhenero Textile Mills, HESCO informed that the connection was sanctioned on the directives of NEPRA.

9. To further inquire the matter, Consumer Affairs Division of NEPRA asked the complainant to respond to the following queries:

- a) Total generation capacity of Quetta Textile Mills is 8.1 MW which can easily meet the requirement of its two units i.e. Unit-I (4.8 MW) and Unit-II (2.1 MW). It may be clarified that why additional 2000 kW are required from HESCO and where it would be utilized?
- b) Whether or not HESCO has filed a review against the decision of Honorable Sindh High Court, Hyderabad Circuit dated 30/10/2001 and to fax a copy of the decision of Honorable High Court in case the review petition is disposed of by the said court.

In response, the complainant reported to the queries of CAD NEPRA, that:

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a) Its installed gross capacity is 8.1 MW which includes in-house (AUX) consumption and standby unit. The additional electric load of 2 MW is required at their unit No.II (B-4 SITE Kotri) as they stand increasing their spinning production for which they applied for.

b) Filing of review by HESCO against the decision of Honorable Sindh High Court, Hyderabad Circuit dated 30/10/2001 is not in their knowledge.

10. After considering the facts of the case and written arguments of both the parties, and analysis in the light of NEPRA Laws, following is concluded:-

i) Section 22 (2) provides for the following:

“Where a bulk power consumer intends to stop purchase of electric power from a distribution company, it shall convey its intention by notice in writing three years before such stoppage:

Provided that such consumer shall continue to make payments to the distribution company equal to the amount of cross subsidy for uneconomic service for which it would otherwise have provided through purchase of electric power by the bulk power consumer”.

A cursory glance at the above section of the law reveals that it is the “cross subsidy” that the consumer shall continue to make payments to the distribution company and not the “fixed charges”, as being demanded by HESCO. The cross subsidy amount is yet to be determined through a detailed cost of service study for various tariff categories to be conducted by HESCO and other DISCOs as well. Question arises here as to how HESCO can charge on demand an amount of fixed charges which rate is yet to be determined and approved by the Authority? Moreover, no licensee or for that matter HESCO is permitted to charge any tariff to consumers without the approval of the Authority. (Rule-6 of Licensing (Distribution) Rules 1999).

ii) HESCO’s stance that it granted connection to Bhanero Textile Mills on instructions from NEPRA neither make logic nor give any support to the stance taken by HESCO rather it runs in favor of the complainant to the extent that the Authority in its Authority Regulatory Meeting 07-047 held on February 19, 2007 while considering the request of M/S Bhanero Textile Mills decided that charges of Rs.2,07,88,796/ as demanded by HESCO are unjustified.

iii) HESCO failed to produce documentary evidence in support of its contention that disconnection was made on the request of the complainant, thus could not prove the case against the complainant. Not only this, but HESCO also contravened the orders of the Sindh High Court for restoration of supply to the complainant wherein the Hon’ able High Court of Sindh on C.P No.D-667 of 2001 dated 30.10.2001 directed HESCO to restore the supply forthwith. Petitioner (M/S Quetta Textile Mills) was also directed to make the payment of current bills regularly. It was further directed that in case of any trouble, HESCO to take the matter through the regulating Authority (NEPRA) and not to take action by itself.

iv) The complainant also did not agitate the issue w.r.t the non-implementation of the decision of Honorable Sindh High Court, Hyderabad Circuit dated 30/10/2001 and matter was pursued with NEPRA after the lapse of 09 years from which it is very clear that the complainant was not requiring power from HESCO as it was meeting its requirement through self generation.

v) In its written arguments, HESCO has quoted Rule 7(3) of Licensing (Distribution) Rules-1999 in support of its refusal for electric connection to the complainant. The said rule does not have any relevance with the subject case in hand as it has been established that own generation facility is being utilized only for the units of Quetta Textile Mills.

11. In light of the foregoing it is decided, that:-

- a) Respondent (HESCO) shall withdraw the fixed charges amounting to Rs.1,06,77,336/ raised against the Complainant, being unjustified & illegal.
- b) Respondent (HESCO) shall allow electric connection to the complainant as per "New Connections" policy laid down in Consumer Service Manual for utilization by Unit No. II only. The complainant (QTML) shall ensure that the new connection is utilized for its unit No. II. Before the provision of the new connection, HESCO shall obtain a report from Electric Inspector, Hyderabad that the electric network laid down by the complainant is restricted to the use of electricity for unit No.II only.
- c) Compliance report shall be submitted within 60 days


Shaukat Ali Kundi

V.C./Member (Consumer Affairs)

Dated: February 21, 2011