



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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Registrar

No. NEPRA/DG(CAD)/TCD-10/6450-62

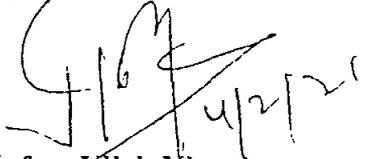
February 4, 2021

Company Secretary,
Zong Headquarters, CMPak Complex
Plot # 47, Kuri Road, National Park Road,
Chak Shahzad, Islamabad.

SUBJECT: DECISION IN THE MATTER OF COMPLAINT FILED BY CMPAK LIMITED (ZONG) UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST DISTRIBUTION COMPANIES REGARDING IMPOSITION OF SURCHARGES AND TAXES

Please find enclosed herewith the Decision of the Member (Consumer Affairs) dated February 4, 2021 (05 Pages) regarding the subject matter for information, please.

Encl: As above


(Hafeez Ullah Khan)
Additional Director
Registrar Office

Copy to:

| | | | |
|---|--|----|---|
| 1 | P.S. to Secretary Ministry of Energy, Power Division, 'A' Block, Pak Secretariat Islamabad | 2 | Chief Executive Officer K-Electric Limited (KEL) KE House, Punjab Chowrangi, 39 – B, Sunset Boulevard, Phase-II Defence Housing Authority, Karachi. |
| 3 | Chief Executive Officer, Faisalabad Electric Supply Company Ltd. Abdullahpur, Canal Bank Road Faisalabad | 4 | Chief Executive Officer, Gujranwala Electric Power Company Ltd. 565/A, Model Town G.T. Road, Gujranwala |
| 5 | Chief Executive Officer, Hyderabad Electric Supply Co. Ltd. WAPDA Offices Complex, Hussainabad, Hyderabad | 6 | Chief Executive Officer Islamabad Electric Supply Co. Ltd. Street # 40, Sector G-7/4, Islamabad. |
| 7 | Chief Executive Officer, Lahore Electric Supply Company Ltd. 22-A, Queens Road, Lahore | 8 | Chief Executive Officer Multan Electric Power Co. Ltd. MEPCO Headquarter, Khanewal Road Multan |
| 9 | Chief Executive Officer, Peshawar Electric Supply Company Ltd. WAPDA House, Shami Road, Sakhi Chashma, Peshawar | 10 | Chief Executive Officer Quetta Electric Supply Company Ltd. Zarghoon Road, Quetta |

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| 11 | Chief Executive Officer, Sukkur Electric Power Company Ltd. Administration Block, Thermal Power Station, Old Sukkur. | 12 | Chief Executive Officer Tribal Areas Electricity Supply Company Limited (TESCO) Room No. 213, 1 st Floor, WAPDA House, Shami Road, Sakhi Chashma, Peshawar |
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BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

CMPak Limited (ZONG)
Kurri Road, Chak Shahzad,
Islamabad

..... Complainant

VERSUS

- | | |
|---|-----------------|
| 1. Islamabad Electric Supply Company (IESCO), Islamabad. | Respondent # 1 |
| 2. Peshawar Electric Supply Company (PESCO), Peshawar. | Respondent # 2 |
| 3. Gujranwala Electric Power Company (GEPCO), Gujranwala. | Respondent # 3 |
| 4. Faisalabad Electric Supply Company Limited (FESCO), Faisalabad | Respondent # 4 |
| 5. Lahore Electric Supply Company Limited (LESCO), Lahore. | Respondent # 5 |
| 6. Multan Electric Power Company Limited (MEPCO), Multan. | Respondent # 6 |
| 7. Hyderabad Electric Supply Company (HESCO), Hyderabad. | Respondent # 7 |
| 8. Sukkur Electric Power Company Limited (SEPCO), Sukkur. | Respondent # 8 |
| 9. Quetta Electric Supply Company Limited (QESCO), Quetta. | Respondent # 9 |
| 10. Tribal Areas Electric Supply Company Limited (TESCO), Peshawar | Respondent # 10 |
| 11. K-Electric Limited (KEL), Karachi. | Respondent # 11 |

Date of Hearing: August 19, 2020

Subject: DECISION IN THE MATTER OF COMPLAINT FILED BY CMPAK LIMITED (ZONG) UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST DISTRIBUTION COMPANIES REGARDING IMPOSITION OF SURCHARGES AND TAXES

DECISION

This single decision shall dispose of the complaints filed by CMPak Limited (ZONG) (hereinafter referred to as the "Complainant or Petitioner"), against IESCO (hereinafter referred to as the "Respondent # 1"), PESCO (hereinafter referred to as the "Respondent # 2"), GEPCO (hereinafter referred to as the "Respondent # 3"), FESCO (hereinafter referred to as the "Respondent # 4"), LESCO (hereinafter referred to as the "Respondent # 5"), MEPCO (hereinafter referred to as the "Respondent # 6"), HESCO (hereinafter referred to as the "Respondent # 7"), SEPCO (hereinafter referred to as the "Respondent # 8"), QESCO (hereinafter referred to as the "Respondent # 9"), TESCO (hereinafter referred to as the "Respondent # 10"), and KEL (hereinafter referred to as the "Respondent # 11"), under section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act").

2. NEPRA received complaints from the Complainant against the Respondents, wherein the Complainant submitted that under the relevant NEPRA rules, a distribution company is obliged to charge only the tariff duly determined/approved by NEPRA. Moreover, the Complainant submitted that the surcharge in itself remained a controversial and highly litigious subject matter before the superior courts of Pakistan, with various judgments giving findings that the surcharge specifically is illegal. The Complainant further submitted that in order to finance the Neelum-Jhelum project, the Federal Government imposed the surcharge of Rs. 10 paise per unit with an aim to collect an amount of Rs. 7.5 Billion per annum by invoking the then section 31(5) of the NEPRA Act

up till December 2015, which was extended for a period of one year and later on, the Economic Coordination Committee (ECC) extended it for a period of eighteen months, which make it June 2018 and has accordingly been lapsed. In addition to this, the Complainant submitted that section 31(5) has been repealed after amendment of the NEPRA Act in the year 2018 which leaves no power to impose any type of surcharge and clearly suggests that it is the tariff which will be charged from the consumers without any additional charges or surcharges, therefore neither NEPRA nor the Federal Government is empowered under the law to continue imposing the Neelum Jhelum Surcharge. The Complainant also submitted that the Respondents have been imposing the Neelum Jhelum (NJ) Surcharge, Financing Cost Surcharge (FCS), Extra Tax (ET), and Further Tax (FT) on the Complainant since April, 2018 without any legal or justified reason. The Complainant requested to declare the imposition of any type of surcharge after the promulgation of the NEPRA Amendment Act 2018 as illegal and issue directions to the Respondents to reimburse the amount paid on account of the impugned surcharges from the date of promulgation of the NEPRA Amendment Act, 2018.

3. The matter was taken up with the Respondents (1-11) for submission of parawise comments/report. In response, PESCO, FESCO, LESCO, MEPCO, HESCO, and QESCO, vide their letters dated July 21, 2020, June 17, 2020, August 12, 2020, June 15, 2020, July 10, 2020, and July 29, 2020 respectively submitted that the bills are issued to the consumers as per tariff notified by the Federal Government including all surcharges (NJ Surcharge, FC Surcharge) and taxes (GST, Extra Tax, Further Tax) levied by the Government as per law. Similarly, K-Electric, vide its letter dated June 18, 2020 submitted that NJ Surcharge and FC Surcharge are applicable to consumers of Ex-WAPDA DISCOs, only and are not being recovered from consumers of K-Electric Limited, however Extra Tax and Further Tax are being charged to the industrial and commercial consumers as per the applicable provisions of the Sales Tax Act 1990. No response was received from IESCO, GEPCO, SEPCO, and TESCO despite issuance of reminders.

4. In the meanwhile, the Complainant filed a Writ Petition No. 1784/2020 in the Islamabad High Court, Islamabad. However, the Honorable Court vide its Order dated July 14, 2020 disposed of the Writ Petition filed by the Complainant. In pursuance to the orders of the Court, an online hearing was held on August 19, 2020 which was attended by all the parties i.e. the Complainant and the Respondents. During the hearing, the parties reiterated their earlier stances. The Respondents argued that they have been working as collecting agents for the Federal Government for collection of the surcharges and taxes and remitting the same to the respective accounts. The Complainant informed that they will send rejoinder/written arguments to the Respondents with a copy to NEPRA. Accordingly, the rejoinder was received from the Complainant on September 21, 2020 wherein the Complainant has reiterated his earlier version.

5. Similarly, the Respondents were advised during the hearing to submit their written arguments along with supporting documents. However, none of them (except PESCO and IESCO) submitted their response despite issuance of reminders. PESCO submitted that it is a policy matter and the main stakeholder is Ministry of Energy (Power Division). Moreover, PESCO submitted that Zong Offices are mostly in the rented buildings bearing the name of owners, therefore taxes are being charged. IESCO submitted a detailed response which has been summarized as under:

- i. In order to ensure implementation of the policy of the Council of Common Interest (CCI), the Federal Government imposed NJ Surcharge and FC Surcharge in exercise of its powers under section 31(5) of the NEPRA Act. However, this section became defunct upon subsequent amendments made in the NEPRA Act on May 02, 2018 and a new section 23-E under heading "Electric Power Supply License" was introduced. In terms of sub-section (2-d) of this section, the Respondent is under obligation to collect the taxes and surcharges imposed by the Federal Government. Moreover, while

amending the NEPRA Act, "Savings and Validation" clauses under sections 50 and 51 respectively were also introduced, by virtue of which the acts done or orders and notifications issued prior to the amendments are validated and deemed to be done under the amended Act.

- ii. The Federal Government, by way of notifications vide SROs Nos. 07(I)/2008 to 14(I)/2008 dated January 04, 2008 made amendments in notifications vide SROs Nos. 150(I)/2007 to 157(I)/2007 dated February 23, 2007, in order to impose NJ Surcharge @ Rs. 0.10/kWh on all electricity consumers of XWDISCOs except the life line domestic consumers of the category "Residential - A1". It is pertinent to refer that a summary dated May 30, 2018 on revocation of NJ Surcharge was forwarded by the Power Division to the Economic Coordination Committee (ECC) of the Cabinet for consideration/ approval. Accordingly, IESCO, vide its letter dated June 25, 2019 and repeated thereafter at intervals till letter dated June 24, 2020, solicited the achievement of COD of whole project from the NJ Company in order to stop charging NJ Surcharge, however, the NJ Company, vide its letter dated July 01, 2020, replied that the case regarding rescindment of NJ Surcharge is under process with Ministry of Water Resources.
- iii. The Federal Government imposed the FC Surcharge by way of notification vide S.R.O. No. 569(I)/2015 dated June 10, 2015.
- iv. The Federal Government imposed the Extra Tax and Further Tax by virtue of notifications vide S.R.O. Nos. 509(I)/2013 and 510(I)/2013 dated June 12, 2013 pursuant to the provisions of the Sales Tax Act, 1990 and the rules made thereunder.
- v. Accordingly, the Respondent collected the notified taxes and surcharges imposed by the Federal Government and remitted the same to the respective accounts maintained by the government in this regard.
- vi. By way of writ petition No. 24076/2013 before the Honorable Lahore High Court, Lahore, the additional charges levied by the Federal Government on electricity bills were challenged, however the same was dismissed by the Honorable Court vide its order dated November 05, 2014. Thereafter, ICA No. 1068/2014 was filed against above-mentioned order before the Lahore High Court, which was allowed vide order dated May 29, 2015. However, the same was suspended by the Honorable Supreme Court of Pakistan vide order dated June 09, 2015 in CPLA No. 1078/2015.

6. The case has been examined in detail in light of written/verbal arguments of the parties and applicable law. The following has been concluded:

- i. Section 31(5) of the NEPRA Act, which has been repealed vide the amendment of the NEPRA Act is reproduced as under:

"Each distribution company shall pay to the Federal Government such surcharge as may be notified by the Federal Government, from time to time, in respect of each unit of electric power sold to the consumers and any amount paid under this sub-section shall be considered as a cost incurred by the distribution company to be included in the tariff determined by the Authority."

- ii. NJ Surcharge was imposed by the Federal Government @ Rs. 0.10/kWh on all electricity consumers of XWDISCOs except the life line domestic consumers of the category "Residential - A-1" w.e.f. January 01, 2008 to December 31, 2015 vide notification dated January 04, 2008 in exercise of

the powers conferred by section 31 of the NEPRA Act. Later on, the same was extended up to June 30, 2018. However, there is no record w.r.t. charging of NJ Surcharge after June 30, 2018. DISCOs are of the view that the matter be taken up Ministry of Energy (Power Division).

- iii. FC Surcharge was imposed by the Federal Government vide notification No. S.R.O. 569(I)/2015 dated June 10, 2015 in exercise of the powers conferred under Section 31(5) of the NEPRA Act which dealt with the matter of surcharges. The Complainant is of the view that since the Section 31(5) of the NEPRA Act has been repealed after amendment of the NEPRA Act in April 2018, therefore FC Surcharge is against the law and null and void.
- iv. There is no force in the argument of the Complainant that after amendment in the NEPRA Act, no surcharge can be applied. However, sections 50 & 51 of the NEPRA Act provide savings and validation by virtue of which the acts done or orders and notifications issued prior to the amendments are validated and deemed to be done under the amended Act. The relevant sections of the NEPRA Act are reproduced as under:

Section 23E (1):

"No person shall, unless licensed by the Authority under this Act, engage in the supply of electric power to a consumer:

Provided that the holder of a distribution license on the date of coming into effect of the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2018 shall be deemed to hold a license for supply of electric power under this section for a period of five years from such date."

Section 23E (2d):

Public service obligations of the licensee including quality of service, transparency of transactions, timely collection and dissemination of payments, effective collection and dissemination of any and all taxes and surcharges as may be imposed by the Federal Government, etc."

Section 50 (2):

"Subject to sub-section (1), any order, rule, notification, regulation, appointment, conveyance, deed, document or direction made, fee directed, determination given, proceedings taken, instrument executed or issued, or thing done under or in pursuance of any provision of the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2018 shall, if in force before the commencement of the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2018, continue to be in force and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act....."

Section 51:

"Anything done, actions taken, orders passed, instruments made, notifications issued, agreements made, proceedings initiated, processes or communications issued, powers conferred, assumed or exercised by the Federal Government in terms of sub-section (5) of section 31 on or after the first day of July, 2008 till the coming into force of the Regulation

of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2018 shall be deemed to have been validly done, made, issued, taken, initiated, conferred, assumed and exercised and shall be deemed to have effect accordingly."

- v. Foregoing in view, it is concluded that the notifications issued by the Federal Government regarding surcharges in exercise of the powers conferred under Section 31 of the NEPRA Act continue to be in force and shall have effect as if issued under the amended Act. Further, the Respondents shall be deemed to hold a license for supply of electric power for a period of five years w.e.f. amendment of the NEPRA Act and are under obligations to collect the taxes and surcharges imposed by the Federal Government. Since NJ & FC Surcharges are imposed by the Federal Government; hence Federal Government may be asked for the explanation of the same.
- vi. The Complainant has claimed for reimbursement of Extra Tax and Further Tax. The said issue also does not fall under the purview of NEPRA. Extra Tax and Further Tax have been imposed by the Federal Government, therefore the Petitioner may approach Federal Board of Revenue (FBR) for seeking clarification regarding application of Extra Tax and Further Tax.
7. In view of foregoing;
- i. The Complainant/Petitioner is advised to approach FBR for seeking clarification regarding application of Extra Tax and Further Tax.
- ii. The Complainant/Petitioner is advised to approach Ministry of Energy, Power Division with regards to the imposition of NJ Surcharge and FC surcharge.


Rehmatullah Baloch
Member (Consumer Affairs)

Islamabad: February 04, 2021