



Registrar

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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No. NEPRA/SA(CAD)/TCD- 01/14870-72

August 29, 2017

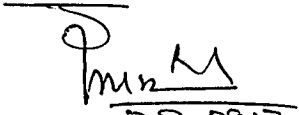
Chief Executive Officer
Tribal Areas Electricity Supply Company Limited (TESCO)
Room No. 213, 1st Floor, WAPDA House, Shami Road,
Sakhi Chashma,
Peshawar

Subject: Appeal titled "TESCO Vs. Habib Ullah Khan"

Reference is made to the Judgment dated 06.04.2017 of the Honourable High Court Peshawar passed in the Writ Petition No. 2088/2014.

2. Find enclosed herewith the Order dated 29.08.2017 of the Authority (08 pages) in the titled case for information and necessary action please.

Encl: As above


29 08 17
(Syed Safer Hussain)

Copy of the Order forwarded to:

1. The Electric Inspector, Benevolent Fund, 3rd Floor, Peshawar Cantt.
2. Habib Ullah Khan, Prop: Ittehad Steel Mills, TF-243, 3rd Floor, Denze Trade Centre, Saddar, Peshawar.



Before the Authority

In the matter of

Appeal No. NEPRA/Appeal- /2017

Tribal Electric Supply Company Limited

.....Appellant

Versus

Habib Ullah Khan, Ittehad Steel Ghalani Muhmand Agency

.....Respondent

Date of Hearing:

30.05.2017

For the Appellant

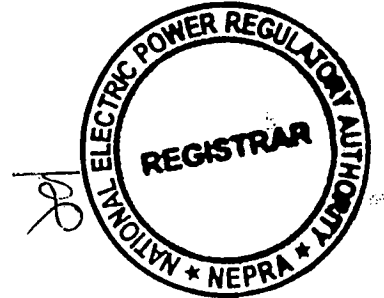
Syed Shahid Shah Advocate

Tajammul Hussain Director Commercial

For the Respondent

Mr. Habib Ullah Khan

Mr. Usman Afridi



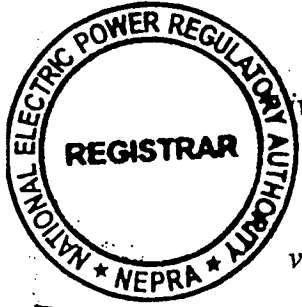
ORDER

1. Brief facts giving rise to the instant Appeal are that Mr. Habibullah Khan (hereinafter referred to as the respondent) obtained an industrial connection (steel mill) bearing Reference No. 24-59112-0027903 with a sanctioned load of 210 kW under tariff B-2 and steel mill became operational on 03.07.2008. No meter was installed and the billing was done by Tribal Electric Supply Company Limited (hereinafter referred to as TESCO) on estimated basis.
2. Being aggrieved, the respondent filed first complaint before NEPRA on 15.06.2011 and challenged the billing of Rs.14,410,273/- for the period October 2008 to October 2010 made on estimated basis instead of agreed fixed charges and Late Payment Surcharges (LPS) of Rs.1,000,000/- due to non-



payment of electricity bills. The respondent filed second complaint before NEPRA on 09.05.2012 and assailed the charging of 5.5 million units under B-2 tariff instead of B-3 tariff and recovery of Rs.9,944,629/- on account of less MDI charges on the recommendation of FIA. Subsequently NEPRA referred the matter to Provincial office of Inspection, Government of Khyber Pakhtunkhwa, Peshawar (hereinafter referred to as POI) on 12.09.2012 for further adjudication under Section 38 of NEPRA Act, 1997. The matter was decided by POI vide its decision dated 07.03.2013 with the following conclusion:

- i. Entire billing from August 2008 to May 2011 cancelled being unjustified.*
- ii. The electricity bills should be revised on different loads (as per ton capacity declared by the Consumer) for various periods from August 2008 and May 2011 @ 35% load factor as 6-8 hours electric supply was available.*
- iii. Billing from June 2011 and onwards charged under B-2 tariff be revised on B-3 tariff and excess amount recovered be refunded to the Consumer.*
- iv. Recovery of Rs.9,944,629/- from the Consumer due to less application of MDI on the recommendation of FIA be reconsidered.*
- v. Meter should be installed and the future billing be carried out as per actual meter reading."*



3. Being dissatisfied with the POI decision dated 07.03.2013 (hereinafter referred to as the impugned decision), the respondent initially preferred an Appeal before Secretary Energy and Power, Government of KPK on 16.04.2013, which was however transferred to NEPRA by Government of KPK vide letter No. CPO/E&P/Appeal/EI/2013/9/4791-92 dated 03.10.2013 for decision being





competent forum. The same appeal was also filed by the respondent before the NEPRA Appellate Board on 10.12.2013. Appellate Board vide its decision dated 11.04.2014 disposed of the appeal with the following conclusion:

“i. POI decision dated 07.03.2013 was set aside.

ii. Billing from August 2008 to October 2011 cancelled.

iii. Billing of the Consumer for the period August 2008 to October 2011 be revised as under:

- *MDI kW be charged as recorded by TESCO in the disputed bills from August 2008 to October 2011.*

- *No of supply hours = 6.5 hours, which corresponds to load factor = 27%.*

- *B-2 tariff be made applicable for the load recorded up-to 500 kW and B-3 tariff be applied exceeding 500 kW on monthly basis as the case may be.*

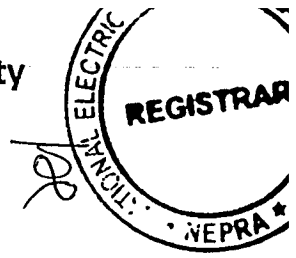
- *LPS and other detection bills (if any) are cancelled.*

iv. TOU meter should be installed and future billing be carried out accordingly.

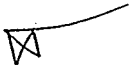
v. Load of the Consumer should be regularized as per connected load.”

4. Being dissatisfied, TESCO filed the WP No.2088/2014 before Peshawar High Court Peshawar and challenged the POI decision dated 07.03.2013 and the decision dated 11.04.2014 of NEPRA Appellate Board (hereinafter referred to as the impugned decision). Honorable High Court vide its judgement dated 06.04.2017 directed NEPRA to treat the WP No.2088/2014 of TESCO as an appeal and decide the matter on merit.

5. Pursuant to the direction of honorable High Court, a notice was issued by NEPRA to both the parties and hearing of the appeal was conducted in NEPRA Head



Office, Islamabad on 30.05.2017. Syed Shahid Shah advocate along with TESCO officials entered appearance for the appellants TESCO and Mr. Habibullah Khan the respondent appeared in person along with his representative Mr. Usman Afridi. At the outset of hearing, TESCO raised the preliminary objection regarding the jurisdiction of POI and contended that Electric Inspector has no jurisdiction to decide the instant case being a theft of energy case pursuant to case law as reported in PLD 2012 SC 371. TESCO representative submitted that the respondent has extended the load up-to 4,600 kW illegally without soliciting the approval from TESCO whereas the sanctioned load of the respondent is 210 kW under B-2 tariff, therefore the impugned decision of charging the electricity bill under B-3 tariff due to the extended load beyond 500 kW is not correct and liable to be withdrawn. TESCO alleged that the steel mill of the respondent was supplied legally through one feeder but premises of the respondent remained connected from three different feeders illegally for an average duration of 7-13 hours, hence the determination of the Appellate Board regarding the average hours of availability of supply =6.5 hours is not based on facts and liable to be cancelled. TESCO averred that the impugned decision for cancellation of recovery of Rs.9,944,625/- on the recommendation of FIA is not justified as the respondent paid some installments without any protest, as such entire amount is payable. TESCO assured to produce relevant document in support of its contention regarding the recovery of Rs.9,944,625/- on recommendation of FIA. On the contrary, the respondent reiterated the same arguments as contained in his reply/parawise comments and admitted that the load was extended up-to 2,000 kW but denied the claim of

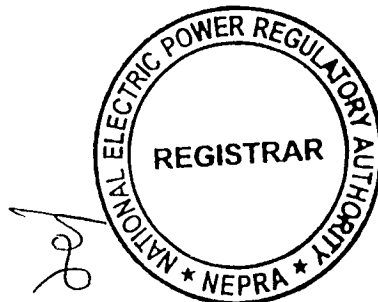




TESCO regarding extension of load up-to 4,600 kW. The respondent reiterated his earlier stance and contended that the average hours of supply per day to the steel mill were 6 hrs. only. As regards the recovery of Rs.9,944,625/- on the basis of FIA recommendation, the respondent pleaded that five to six installments were paid under coercion to avoid the disconnection of supply and the consequential financial loss. The respondent pleaded that the entire billing of TESCO is incorrect, unjustified and liable to be cancelled and further prayed for upholding the impugned decision dated 11.04.2014 of the Appellate Board.

6. Arguments of both the parties heard, examined the record placed before us.
 - i. As regards the objection of TESCO regarding the jurisdiction of POI, it is clarified that the respondent obtained connection from TESCO but no meter was installed at the respondent's premises and the respondent was using electricity directly with the consent of TESCO. The billing was done by TESCO on estimated basis and no notice whatsoever was issued by TESCO regarding the theft of electricity. The instant case is a billing dispute and not a theft case. Pursuant to Section 38 of NEPRA Act 1997, POI is empowered to make the determination in respect of the disputes over metering, billing and collection of tariff. Moreover it is noticed that such objection was neither raised before POI nor before the NEPRA Appellate Board. The objection of TESCO is invalid, therefore rejected.

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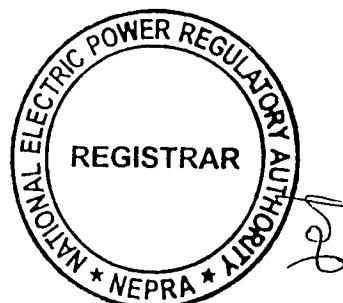


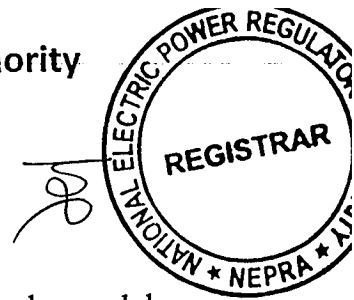
National Electric Power Regulatory Authority

ii. TESCO has raised the objection regarding limitation in its petition before Peshawar High Court Peshawar and stated that the appeal against the decision dated 07.03.2013 of POI filed before NEPRA Appellate Board was barred by time. The fact remains that the appeal against the decision dated 07.03.2013 of POI was filed before Secretary Energy and Power, Government of KPK on 09.04.2013, which was subsequently forwarded to NEPRA by Government of KPK vide letter No. CPO/E&P/ Appeal/EI/2013/4791-92 dated 03.10.2013 for further adjudication. The appeal was decided by the Appellate Board vide decision dated 11.04.2014. It is relevant to state that such objection was neither raised before the Appellate Board nor pressed before the Authority during the arguments. Hence the objection of TESCO is not valid and dismissed.

iii. The impugned decision dated 07.03.2013 of POI was challenged by the respondent but there was no appeal filed against it by TESCO. On the other hand, the impugned decision dated 11.04.2014 of the Appellate Board was agitated by TESCO only. The appellant challenged both the above mentioned impugned decisions before Peshawar High Court through WP No.2088/2014, which was converted into the instant appeal as per direction of the Honorable High Court.

iv. Entire billing of the respondent for the period August 2008 to October 2011 made on estimated basis in the absence of meter is unjustified and of no legal effect and liable to be declared null and void as already determined by the Appellate Board.





v. As regards charging of MDI (kW) per month, the MDI already observed by TESCO in its disputed billing was allowed by the Appellate Board and as such the same is valid for the billing purpose. As per NEPRA approved tariff, B-2 is applicable for the load up-to 500 kW and B-3 is chargeable for loads above 500 kW. Determination of the Appellate Board for application of the tariff as per monthly MDI recorded by TESCO in the impugned billing i.e. August 2008 to October 2011 is justified and liable to be maintained.

vi. As for as the hours of supply per day are concerned, we are inclined to agree with the impugned decision dated 11.04.2014 of the Appellate Board for charging the electricity bills @ 6.5 hours per day, as both the parties i.e. TESCO and the respondent could not substantiate their claim for above 7 hours supply and 6 hours supply respectively.

vii. In spite of their assurance, TESCO could not produce any document to establish the recovery of Rs.9,944,625/- due to less MDI charges on the recommendation of FIA as they had failed to provide the same before POI and the Appellate Board. Even otherwise MDI (kW) for the entire period i.e. August 2008 to October 2011 will be revised as such question of recovery of any charges on account of less MDI does not arise.

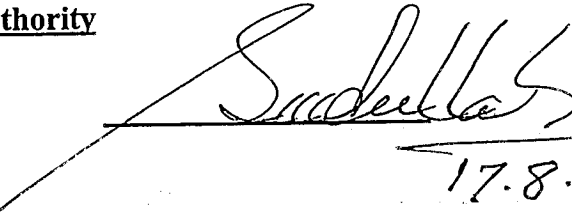
viii. Since the entire billing for the period August 2008 to October 2011 has been declared null and void as such LPS, penalties etc. are not recoverable from the respondent during that period as decided by the Appellate Board.



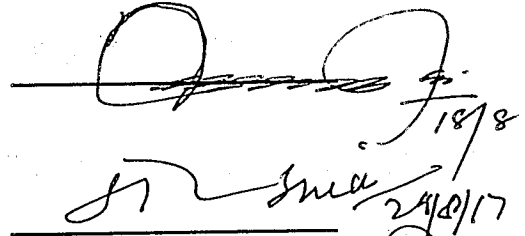
- ix. Billing of the respondent for the period August 2008 to October 2011 should be revised as per para (v.) and (vi.) mentioned above. Moreover chargeable units should be split into off peak units and peak units with the ratio of 20:04 respectively.
- x. Consumer account of the respondent should be overhauled after the adjustment of payments already made during the disputed period i.e. August 2008 to October 2011.
7. Forgoing in view, we do not find any reason to interfere with the impugned decision, the same is upheld and consequently the appeal is dismissed.

Authority

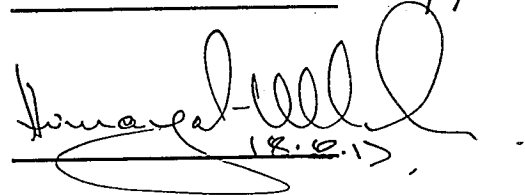
Saif Ullah Chatta
Vice Chairman/Member (M&E)


17.8.2017

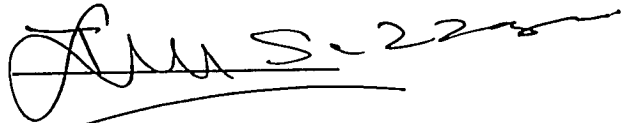
Syed Masood-ul-Hassan Naqvi
Member (CA)


18/8
24/8/17

Major (R) Haroon Rashid
Member (Licensing)


18.8.17


Himayat Ullah Khan
Member (Tariff)


18.8.17

Brig (R) Tariq Sadozai
Chairman

Announced on 29 August, 2017 at Islamabad




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