



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

Registrar

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No. NEPRA/R/TRF-40/FESCO-2005/9286-9289
September 18, 2009

Subject: Order of the Authority in the matter of Suo Moto Action Taken by the Authority under Rule (3) of NEPRA (Tariff Standards and Procedure) Rules, 1998 for Faisalabad Electric Supply Company Ltd. [Case No. NEPRA/TRF-40/FESCO-2005]

The Authority's determination in respect of FESCO for the year 2008-2009 dated 23.08.2008 was challenged by different petitioners in the Lahore High Court. The Lahore High Court while deciding the case ordered NEPRA to re-hear the case afresh and issue revised tariff determination. In compliance of the Honourable Lahore High Court, NEPRA has now held the hearing under the NEPRA (Tariff Standards and Procedure) Rules, 1998. In compliance of the orders of the Lahore High Court, the tariff of Faisalabad Electric Supply Co. Ltd. for the year 2008-2009 in Case No. NEPRA/TRF-40/FESCO-2005 has been considered afresh by the Authority and order of the Authority is enclosed herewith.

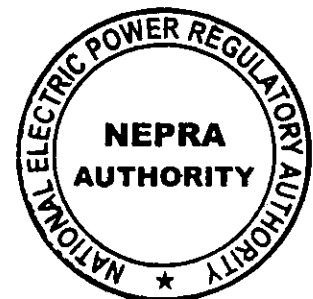
2. It is intimated that no variation in current tariff rates has been determined as order of the Authority sent vide No. NEPRA/TRF-40/FESCO-2005/9847-50 dated 23.08.2008 shall remain intact.

Enclosure: As above.

The Secretary
Cabinet Division
Government of Pakistan
Cabinet Secretariat
Islamabad

- CC: 1. Secretary, Ministry of Water & Power, Islamabad.
2. Secretary, Ministry of Finance, Islamabad
3. Secretary, Privatization Commission, Islamabad.


(Arshad Mehmood)





NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

ORDER OF THE AUTHORITY
IN THE MATTER OF SUO MOTO ACTION TAKEN BY
THE AUTHORITY
UNDER RULE (3) OF THE TARIFF STANDARDS AND
PROCEDURE RULES - 1998.

FOR

FAISALABAD ELECTRIC SUPPLY COMPANY LIMITED
(FESCO)

CASE NO. NEPRA/TRF/40/FESCO-2005

Islamabad
September 14, 2009

Write-up:	<u>Syed Insaf Ahmad</u> <u>Muhammad Shafique</u>	<u>Case Officer</u> <u>Legal Advisor-II</u>
Technical Analysis:	<u>Hussnain Zaigham</u>	<u>D.G. Technical</u>
Financial Analysis:	<u>Muhammad Yousuf</u>	<u>Asst. Director</u>
Assisted by:	<u>Muhammad Safdar</u>	<u>Asst. Director</u>
Seen by:	<u>Zafar Ali Khan</u>	<u>Member Tariff</u>



**NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
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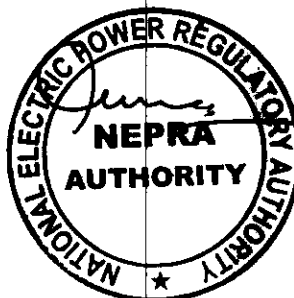
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**Islamabad
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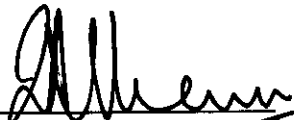
Petitioner

Faislabad Electric Supply Company (FESCO)


Representation:

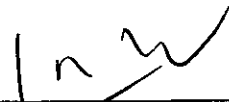
1. Chief Executive Officer, FESCO
2. Mr. Izhar-ul-Haq, Finance Director FESCO
3. Mr. Tariq Nazir, Electric Inspector Islamabad Region on behalf of Chief Engineer (Power) Irrigation and Power Department, Govt. of the Punjab
4. Mr. Salman Iqbal, Legal Director for PEPCO

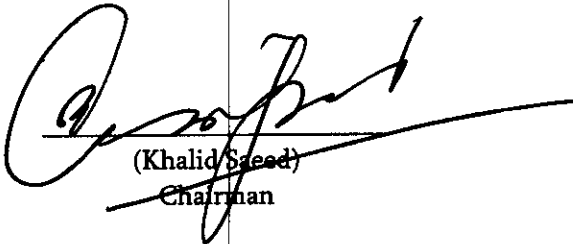
AUTHORITY

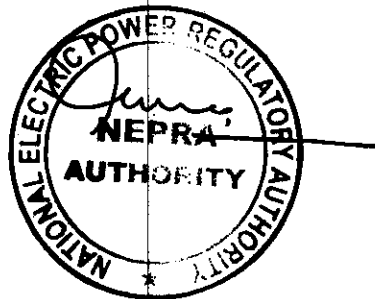

(Zafar Ali Khan) 4/9/09
Member


(Ghaisuddin Ahmed) 4/9
Member


(Shaukat Ali Kundi) 09.09.09
Member


(Maqbool Ahmed Khawaja)
Member/Vice Chairman


(Khalid Saeed)
Chairman





1. **BACKGROUND**

1.1 Faisalabad Electric Supply Company Limited ("FESCO"), is an ex-WAPDA Distribution Company (DISCO) owned by the Government of Pakistan (GOP) and incorporated as a public limited company under the Companies Ordinance, 1984. FESCO filed a tariff petition on 30.5.2005 for determination of its tariff in accordance with the Tariff Standards and Procedure Rules 1998 ("Tariff Rules"). All the stakeholders were notified through the notice of admission published in the major national news papers. Notices were also sent through individual letters to the key stakeholders inviting their meaningful participation in the tariff setting proceedings. The hearing in the matter was held on 6.7.2005. Based upon the pleadings of the Petitioner, the interveners and comments of the commentators the Authority gave its Determination on 23.2.2007, which was notified vide S.R.O No. 155(I)/2007 dated February 24, 2007. The Authority in its determination prescribed a biannual adjustment in Power Purchase Price (PPP) due to variation in fuel price and generation mix. The mechanism being part of the Order of the Authority was also notified through the aforementioned S.R.O.

1.2 Subsequently, Section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (No. XL of 1997) was amended through a Finance Bill, 2008 by adding the following proviso:

"Provided further that the Authority shall, on a monthly basis, review and revise the approved tariff on account of any variations in the fuel charges and policy guidelines as the Federal Government may issue in this behalf and recommend the tariff so revised to the Federal Government for notification in the official Gazette"

1.3 Consequent to the above amendment in the NEPRA Act, the Authority was bound to make monthly adjustment on account of PPP variation. Accordingly the Authority in order to make its earlier PPP adjustment mechanism consistent with the amendment in the NEPRA Act, while taking suo-moto action in accordance with Tariff Rules modified the biannual PPP adjustment mechanism vide order dated 23.8.2008. Accordingly the bi-annual adjustment mechanism notified vide S.R.O No. 155(I)/2007 dated 23.2.2007, was replaced with that of Monthly PPP Adjustment Mechanism.

2. **Lahore High Court Orders**

2.1 The above order of the Authority dated 23.8.2008 was assailed before the Honorable Lahore High Court. Beside the above said suo-moto order with respect to modification in the mechanism of bi-annual adjustments for FESCO, the tariff determinations of the Authority pertaining to GEPCO, LESCO and MEPCO for the financial year 2008-09 were also challenged before the Lahore High Court. Vide order dated 17.4.2009 98. Identical Writ Petitions were disposed of by the Honorable Lahore High Court through a single order passed in Writ Petition No. 13878/08. The operative part of the order is reproduced below:-

"The upshot of the above discussion is that in the case of GEPCO the short order



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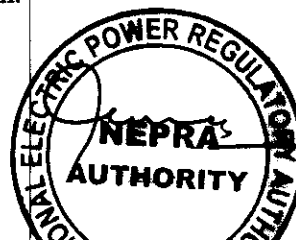
dated 29.9.08 and the detailed determination dated 7.11.2008, and in the case of GEPCO the short order dated 23.8.08 and the detailed determination dated 9.9.2008 and in the case of MEPCO short order dated 23.8.2008 and the detailed determination dated 26.9.2008 are hereby set aside, with the result that the tariff petitions shall be deemed to be pending before NEPRA, which shall decide those petitions afresh in accordance with law. Similarly, suo moto determination of bi annual adjustment dated 23.8.2008 in the case of FESCO is also set aside with the consequence that suo moto proceedings shall be deemed pending before NEPRA to be decided afresh in accordance with law by it after publication of due notice in the press and permitting the Interveners and Commentators, if any, to participate therein. However, all the notifications issued by the Government of Pakistan being impugned by means of captioned writ petitions are held to be valid and legal."

3. Post Remand Proceedings

- 3.1 In compliance of the orders of the Honorable Lahore High Court, Lahore and in order to provide an opportunity to the consumers of being heard, fresh proceedings in the matter were initiated. Accordingly the notice of re-hearing was published in the national newspapers on 15.5.2009. Separate notices through individual letters to all the petitioners before the Honorable High Court and other stakeholders were also sent inviting thereby the objections/comments, if any, to be filed on or before 1.06.2009.
- 3.2 In response to the abovementioned notices no objection whatsoever including intervention request or comments was filed by any party. The Authority in order to provide another opportunity of participation in the proceedings to the stakeholders held hearings in the matter on 1.6.2009, 16.7.2009, 23.7.209 and 2.7.2009. Only the FESCO participated in the proceedings. The Petitioner submitted that it was given multi-year tariff and its term was to be expired on 2012. The Petitioner further submitted that certain components of its Distribution Margin (DM) were subject to periodic adjustments in accordance with the mechanism prescribed by the Authority and notified by the Federal Government in the official Gazette.

4. Findings of the Authority

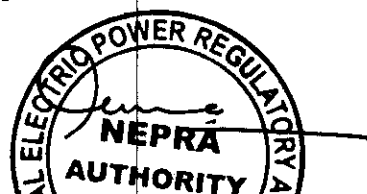
- 4.1 The tariff of FESCO was determined by the Authority on 23.2.2007 after giving opportunity of participation in the proceedings to the stakeholders. The tariff was determined for a period of 5 years with certain adjustments in the Operation & Maintenance (O&M) costs, Return on Rate Base (RORB) and variation in Power Purchase Price (PPP) due to fuel price and generation mix; according to the prescribed mechanism duly notified in the official Gazette vide S.R.O No. 155(I)/2007 dated February 23, 2007. The PPP was to be adjusted bi-annually. Since FESCO's tariff is formula based and for a period of five years therefore the revision in tariff resulting from the adjustment as per the notified formula/mechanism does not require rehearing of the parties because the adjustment is not a determination afresh.



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- 4.2 During the period from January 2008 to October 2008 there was an unprecedented hike in the oil prices in the international oil market. Since the tariff on account of fuel price variation was subject to adjustment biannually, therefore, DISCOs could not pass on the impact to the consumers immediately. Such a situation lead DISCOs in a cash starved situation due to which they could not pay their dues to power purchaser and emerged circular debt situation in the power sector. In view of this situation, an amendment was made in the NEPRA Act through the Finance Bill, 2008 by adding a proviso to section 31(4) requiring NEPRA to adjust DISCOs' tariff on account of variation in PPP on monthly basis instead of adjusting it biannually.
- 4.3 NEPRA Act, as amended through Finance Bill, 2008 was binding on the Authority, hence in exercise of its suo moto powers, it was decided to modify the biannual PPP adjustment mechanism accordingly. This modification in the PPP adjustment mechanism was made to adhere to the requirement of law so amended. The Authority considered that for the adjustments in the tariff in accordance with the mechanism/formula already prescribed and notified, the fresh hearing for each adjustment would be impractical keeping in view the frequency of adjustments. Additionally the basic parameters on the basis of which the base tariff was determined was not to be changed. The Authority further considered that while determining the base tariff, all the procedural requirements as per the Tariff Standards and Procedure Rules 1998 with respect to issuance of notices to the stakeholders and publication of salient features of the Petition in the newspapers, were fulfilled.
- 4.4 There is yet another amendment in section 31 of the NEPRA Act through an Ordinance dated 31.7.2009 whereby it is made obligatory for NEPRA to notify the monthly adjustment in PPP due to fuel price variations.
- 4.5 In its order dated 17.4.2009, the Honorable Lahore High Court observed that there can be no escape from the fact that tariff determination had taken place earlier and had attained finality. It would have been appropriate for NEPRA to have permitted the consumers to resort to intervention or otherwise participate in the proceedings and, of course, scope of the hearing would be limited to examine and test the veracity and accuracy of the change in the components of the formula already determined without permitting the interveners.
- 4.6 In compliance with the above directions of Honorable High Court, every possible effort was made seeking participation and objections of the interested parties by sending notices and publications in the newspapers. No affected person or party filed any objection, comments or participated during the course of proceedings. In terms of rule 7(2) of the Tariff Standards & Procedure Rules, 1998, in the event no reply is filed by any party, then the Authority is obliged to decide the petition on the basis of, inter-alia, the documents and evidence submitted by the petitioner.
- 4.7 In the instant case, had there been any objection to the formula of monthly adjustment, the same could have been considered but in so far as the question of monthly adjustment is concerned, the same is a requirement of a statute which is binding upon NEPRA.



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4.8 In view of the aforementioned, the Authority finds no reason to amend, vary or alter its earlier order of suo moto bi-annual adjustments passed on 23.8.2008 with the result that the already notified order of Authority vide No. NEPRA/TRF-40/FESCO-2005/9847-50 August 23, 2008 shall remain intact.

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