



# National Electric Power Regulatory Authority

## Islamic Republic of Pakistan

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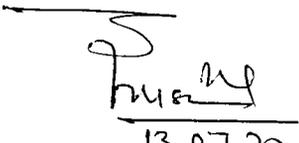
No. NEPRA/R/SA(Tariff)/TRF-133/KESC-2009/17559-17562  
July 13, 2020

Subject:- **Motion for Leave for Review against Decision of the Authority dated May 07, 2015 in the matter of Ps 15/kWh allowed to K-Electric Limited by National Electric Power Regulatory Authority through Determination Dated December 23, 2009**

Dear Sir,

Please find enclosed herewith the subject decision of the Authority (06 pages) regarding Motion for Leave for Review against Decision of the Authority dated May 07, 2015 in the matter of Ps 15 kWh allowed to K-Electric Limited by National Electric Power Regulatory Authority through Determination dated December 23, 2009 in Case No. NEPRA/TRF-133/KESC-2009 for information.

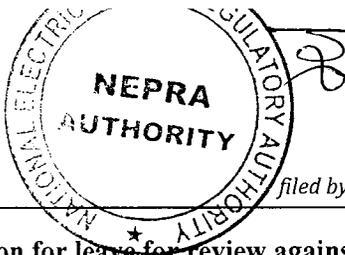
Enclosure: As above

  
13 07 20  
(Syed Safer Hussain)

Secretary,  
Ministry of Energy (Power Division),  
'A' Block, Pak Secretariat,  
Islamabad

CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.
3. Secretary, Privatization Commission, Government of Pakistan  
5-A, EDB Building, Constitution Avenue, Islamabad



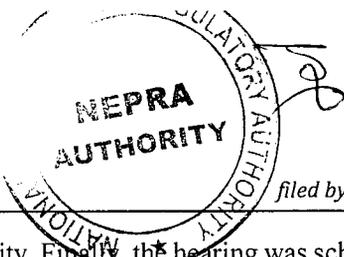
Motion For Leave For Review Against Decision of the Authority

filed by Mr. Arif Bilvani dated 07.05.2015 in the matter of Ps 15/ KWh allowed to K-Electric

**Motion for leave for review against decision of the Authority dated May 07, 2015 in the matter of Ps 15/kWh allowed to K-Electric Limited by National Electric Power Regulatory Authority through determination dated December 23, 2009.**

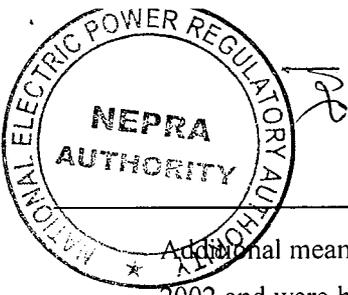
1. K-Electric Limited (hereinafter referred to as “K-Electric”) filed a tariff petition on April 22, 2009, for increase in base tariff and modification of terms & conditions of electricity supply and security deposit rates before National Electric Power Regulatory Authority (hereinafter referred to as the “Authority”). The Authority, *inter alia*, allowed Ps 15/ kWh vide Multi Year Tariff determination dated December 23, 2009 (hereinafter referred to as “MYT 2009”), in response to the request of K-Electric for allowing it Ps. 64/kWh in distribution part of the Operations and Maintenance (“O&M”) cost of its tariff. The rationale/basis for allowing increase in O&M, was on account of under recovery of actual O&M expense of K-Electric on the basis of lower rate of O&M determined by the Authority through its determination of Multi Year Tariff dated September 10, 2002 (hereinafter referred to as “MYT 2002”). It was further submitted by K-Electric that the induction of additional 7,604 employees in K-Electric, mainly in the distribution function, between the pre-privatization period from 2002 to 2005, also contributed towards increase in its actual O&M expenses.
2. Mr. Arif Bilvani (hereinafter referred to as the “complainant/ petitioner”) submitted during the hearing held on August 31, 2012, in Karachi that Ps. 15/ kWh allowed to K-Electric should be withdrawn as K-Electric has terminated the services of several thousand employees for which said expense was allowed. The complainant, subsequently, reiterated his complaint through an email dated September 04, 2012.
3. The Authority, on receiving the aforementioned complaint, initiated proceedings under Section 39 of NEPRA Act, 1997 and directed K-Electric and the complainant to provide necessary information regarding the case. After analysis of information submitted by K-Electric and the complainant, the Authority concluded that the information produced by the complainant and K-Electric, does not establish a merit to initiate proceedings for withdrawal of Ps. 15/ KWh allowed by the Authority to K-Electric. The decision of the Authority was communicated to the complainant through a letter dated May 07, 2015 as the proceedings were initiated on a complaint by a specific consumer.
4. In response, the complainant through letter dated June 04, 2015, requested the Authority to reconsider its decision on the subject matter and also referred to the notes of the annual reports of K-Electric for FY 2013 and 2014. Later, the complainant vide his letter dated June 15, 2015 requested the Authority to consider his earlier letter dated June 04, 2015 as motion for leave for review (hereinafter referred to as “review motion”) against the decision of the Authority dated May 07, 2015.
5. The Authority admitted the review motion on July 02, 2015 and decided to provide the petitioner opportunity of hearing which was scheduled on September 3, 2015 at NEPRA Tower, Islamabad. Accordingly, notices bearing the schedule of hearing were issued to both, the petitioner and K-Electric, to attend the hearing. However, hearing was adjourned on the petitioner’s request dated August 28, 2015 wherein he also requested to conduct the hearing in Karachi. Afterwards, the hearing was scheduled twice but was then postponed by the

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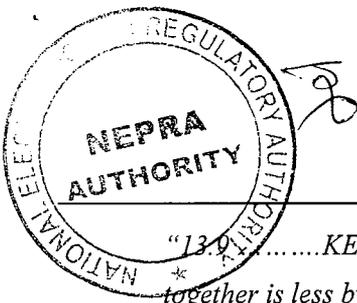
Authority. Finally, the hearing was scheduled on May 23, 2016 in Karachi; notices were issued to the petitioner and K-Electric to attend the hearing. The hearing was conducted according to schedule in Karachi wherein the petitioner and K-Electric participated to present their case/ views before the Authority.

6. During the hearing, the petitioner submitted that 7,604 employees have been retrenched, which merits for a curtailment of Ps 15/kWh being allowed to K-Electric. The petitioner, in support of his claim, submitted that,
  - i. According to the financial statements of K-Electric for the FY 2006, 18,587 employees were entitled to purchase equal number of shares @ Rs.1.65/ Share.
  - ii. At the time of MYT 2009, K-Electric requested for the compensation of cost for 7,604 employees, hired in pre privatization period of 2002-2005. K-Electric claimed that desired efficiency of operations could not be achieved because of delay of 3 years in privatization and induction of these 7,604 employees before privatization. The Authority in response to the request of K-Electric allowed Ps 15/kWh for these additional employees.
  - iii. K-Electric could be operated with around 10,000 employees and these 7,604 employees were in excess, the burden of which was being borne by the K-Electric. K-Electric was also allowed not to retrench these employees because of its agreement with the privatization commission.
  - iv. After availing the enhancement of Rs. 15/kWh in the tariff, K-Electric started retrenching /terminating /firing its employees as evident from its annual reports of K-Electric for FY 2012, FY 2013 and FY 2014.
  - v. K-Electric provided no justification that these extra 7,604 employees are necessary for operations and in case they are retrenched, replacements will be made.
  - vi. Request of K-Electric for compensation of these additional employees is not understandable as hiring new employees or outsourcing the services is own decision of K-Electric and cannot be considered a justification of allowing Ps 15/kWh.
  - vii. While requesting compensation for the additional staff, no details of employees with respect to their names, designations, salaries etc. were provided by K-Electric therefore it cannot be ascertained which employee has been retrenched and which is working.
7. During the hearing, K-Electric submitted that,
  - i. In 2002, K-Electric (at that time KESCL) was envisaged to be privatized and MYT 2002 was worked out on the basis of cost of around 10,000 employees. But KESCL could not be privatized and later, employee count increased to around 18,000 during 2002-2005. The cost of hiring during 2002-2005 prior to privatization was not considered while working out MYT 2002.
  - ii. The Authority was requested to allow cost of hiring of these employees at Ps. 64/kWh against which the Authority allowed Ps 15/ kWh, prospectively, from 2009, without taking into account the back log.
  - iii. The 7,604 employees referred to as additional by the petitioner does not mean that these employees were useless or not required by K-Electric or without which K-Electric could have been operated.



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- Additional meant that these employees were not part of K-Electric at the time of determining of MYT 2002 and were hired afterwards. Therefore cost of these employees needed to be considered in MYT 2002 at the time of privatization which was not done and the same deficit was passed on to MYT 2009. Out of these 7,604 employees, there is a considerable number who are still working in K-Electric.
- iv. The essence of MYT 2009 was to bring efficiency in the system, the benefits of which were to be retained by K-Electric and vice versa. Therefore, in order to cut costs and induce efficiencies, K-Electric introduced Voluntary Separation Scheme (hereinafter referred to as "VSS") against the non-core staff i.e. drivers, gardeners, bill distributors and security guards and outsourced these services.
  - v. VSS had a high financial and administrative cost and a handsome amount over and above salaries was paid to the employees, however, said cost was not claimed in MYT 2009.
  - vi. VSS scheme was not for 7,604 employees against which Rs. 0.15/kWh was allowed rather it was for all non-core staff of K-Electric.
  - vii. Out of 7,604 employees, only 1,700 non-core staff members were retrenched and around 5,000 people were hired through outsourcing for security services, bill distribution etc, resulting in employee count exceeding well above 10,000 but resulting in efficacy.
  - viii. The essence of MYT was that profitability could only be achieved by bringing in efficiency, as any inefficiency could result in profit reduction of the company but consumers were to remain un-effected. K-Electric attained profitability by bringing in workforce with less cost through human resource management.
8. The Authority considered the submissions made by the petitioner and K-Electric regarding the instant case and observed the following,
- i. MYT 2009, a continuation of MYT 2002, a performance based tariff that has been designed as such that K-Electric is not guaranteed any fixed return/profit unlike cost plus tariff. The only way profit can be earned is to induce efficiencies (earn more revenue/ cut expenses) in its operations and remove or reduce in-efficiencies. In case, profit of K-Electric exceeds a certain limit, a portion of profit is transferred to the consumers through a profit claw-back mechanism which is embedded in MYT 2009. However, all of the loss, if any, due to in-efficiencies, has to be borne by K-Electric itself and consumers remain unaffected.
  - ii. It has been already mentioned in the Authority determination dated September 10, 2002 that,  
*"The present tariff allowed to KESC does not cover its entire cost of service. The tariff will be capped at a level where it still does not recover the full cost of service. For the purpose of indexation, the O&M cost portion of the tariff has been estimated on a pro-rata basis which was around 20% less. Thus the O&M cost portion of the tariff has in essence been reduced to that extent. KESC management will now be ensuring further reduction in O&M costs through more efficient and less costly operation and maintenance."*
  - iii. According to the MYT 2009 determination dated December 23, 2009,

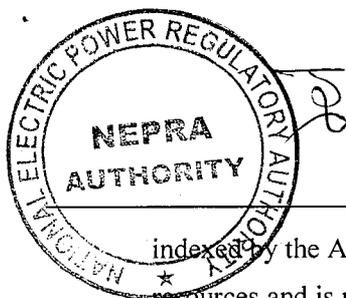


"13.9.....KESCL's approved O&M cost per unit as compared to Ex-WAPDA companies taken together is less by an average of Rs. 0.4667/kWh. While comparing KESCL's O&M cost (distribution part) with high loss making DISCOs such PESCO, HESCO and QESCO, KESCL is much lower as compared to these DISCOs in terms of per unit cost as shown in a table hereunder.

Description	PESCO	HESCO	QESCO	KESCL
O&M/kWh (paisa)	82.14	98.75	129.35	49.91

13.10 The Authority, however, feels that while there is a room for upward adjustment of KESCL's O&M cost component of tariff as compared to Ex-WAPDA companies, yet considering the fact that KESCL has been primarily allowed an overall sale rate (MYT) with apportionment into various cost components, which are not necessarily represented by KESCL's actual costs, any decision of the Authority based on comparison of individual components of overall sale rate (tariff) approved for KESCL, would not be pragmatic and fair under the multi-year tariff regime. It is, therefore, considered opinion of the Authority that KESCL's request for increase in its O&M cost component of tariff by Rs. 0.64/kWh is not justified."

- iv K-Electric had also requested for increase in its overall claim of Ps 64/kWh on account of 7,604 employees hired in the pre privatization period but the Authority allowed K-Electric only Ps 15/kWh. The Authority at that time was of the opinion that although K-Electric was to reduce O&M expense through management as per essence of MYT 2009 but the excess cost of 7,604 employees was never allowed in MYT 2009 and was beyond control of K-Electric. Further, the Authority allowed Ps 15/kWh to K-Electric, not for the 7604 individuals but for extra 7,604 employee functions created in the pre privatization period.
- v. Clause 3.11 of the Share Purchase Agreement dated November 14, 2005, allows K-Electric to retrench employees or offer VSS / golden handshake schemes after one year from the closing date. The relevant clauses of the Share Purchase agreement are reproduced below;
- "3.11 (b) the Company Employees shall not for a minimum period of one (1) year from Closing Date be terminated, laid-off, retrenched or made to resign from the services of the Company except on the basis of dismissal on account of misconduct within the meaning of the relevant service rules governing the terms and conditions of employment of the Company Employees and/or applicable laws as in force on the Closing Date; (d) nothing contained in Sections 3.11 (7.), (b) or (c) shall restrict or be construed as restricting the right of the Company to: (i) offer a scheme of voluntary retirement or golden handshake to all or any class of Company Employees; and (ii) appoint persons to such positions in the Company as it deems necessary or expedient;"
- vi. The Authority has only allowed annual CPI indexation to its approved O&M for K-Electric in terms of Rs/ kWh without any O&M actualization over the 7 year control period. Actual O&M expense per unit of K-Electric as per its financial statements is still higher than the O&M per unit allowed and



indexed by the Authority. The burden of this extra expense is being borne by K-Electric from its own resources and is not passed on to the consumers.

- vii. K-Electric, as per the record submitted, has retrenched about 28% employees out of 7,604 by offering VSS or through retrenchment. Cost of VSS offered to the retrenched employees has not been allowed to K-Electric in the tariff.
  - viii. The functions performed by the retrenched employees are still in place either through outsourcing or by fresh hiring for which no adjustment/ compensation has been allowed to K-Electric. The overall scope of services has not changed, rather the method/ way of performing these services, has been changed through management by K-Electric.
9. The Authority after the aforementioned deliberations could not find a merit to curtail Ps 15/kWh from the tariff of K-Electric. However, during the pendency of review motion, the constitution of the Authority was changed which necessitated reconsideration and re-hearing by the current Authority. Accordingly, the Authority deliberated on the case yet again and it was decided that a re-hearing may be conducted as the Authority members who initially conducted the hearing on the review motion had retired.
  10. The re-hearing was scheduled on January 23, 2019 at NEPRA Tower, Islamabad; notices were issued to the petitioner and K-Electric. The petitioner requested to conduct the hearing at Karachi through his request dated January 09, 2019, however re-hearing venue was maintained. On the day of the re-hearing, the petitioner did not appear and the Authority adjourned the re-hearing.
  11. The re-hearing was again scheduled on February 20, 2019 at NEPRA Tower, Islamabad; notices bearing the schedule were issued to the petitioner and K-Electric with the direction that in case of failure to attend the hearing by any party, the matter shall be decided on the basis of available record. The petitioner through his letter dated February 14, 2019 reiterated his stance that the subject hearing may be conducted at Karachi however the venue was maintained. On the given date, the petitioner did not appear before the Authority.
  12. In spite of repeated non appearances of the petitioner, the Authority, in order to meet the ends of natural justice, accepted the request by the petitioner and rescheduled the hearing on August 21, 2019 at Karachi. Individual notices were sent to the petitioner and K-Electric. However, the petitioner vide his email dated August 19, 2019 requested to postpone the hearing due to his participation in the hearing on the matter of Fuel Price Adjustment and Quarterly Adjustment of Tariff of K-Electric on same day. The Authority accepted the request of the petitioner and the hearing was postponed.
  13. The hearing was again scheduled by the Authority on March 04, 2020 at NEPRA Tower, Islamabad; notices issued to both the petitioner and K-Electric, however, the petitioner did not attend the hearing.
  14. The Authority has analyzed the facts and merits of the case and is of the opinion that the submissions of the petitioner mentioned above are same which have already been considered by the Authority in original decision dated May 07, 2015. The Authority feels that the petitioner has been provided with multiple opportunities of hearing, some of which have been in Karachi. But the petitioner either has been lacking conclusive evidence



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when participating in hearing or has decided not to participate in hearing process, at all.

15. The Authority is also of the view that the petitioner, instead of requesting for the adjournment of hearings scheduled in Islamabad, should have shown his participation in the hearing process by way of his written submissions, which he has also failed to do so.
16. Due to failure of the petitioner to attend the hearings on multiple dates and non-submission of any new evidence/ documents which warrants the review of the decision dated May 07, 2015, the Authority has decided to dismiss the instant review motion

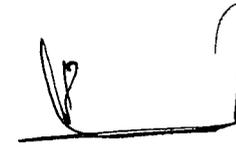
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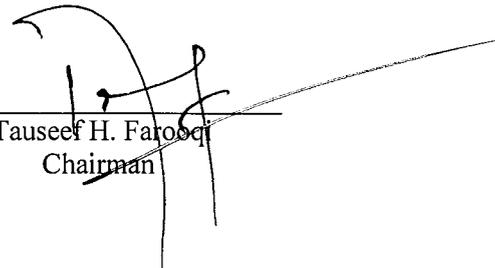
  
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(Saif Ullah Chattha)

Member 24.6.2020

  
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(Rafique Ahmed Shaikh)  
Member

  
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(Rehmatullah Baloch)  
Member 21.6.2020

  
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Engr. Bahadur Shah  
Member/Vice Chairman

  
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Tauseef H. Farooq  
Chairman