



National Electric Power Regulatory Authority
ISLAMIC REPUBLIC OF PAKISTAN
NEPRA TOWER Ataturk Avenue (East),
Sector G-5/1, Islamabad.
Ph:051-2013200, Fax: 051-2600021

**Consumer Affairs
Department**

TCD.04/ ¹³⁶⁹ -2024
March 20, 2024

Chief Executive Officer
Faisalabad Electric Supply Company Limited (FESCO)
Abdullah Pur, Canal Bank Road, Faisalabad.

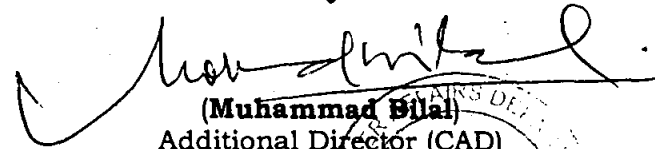
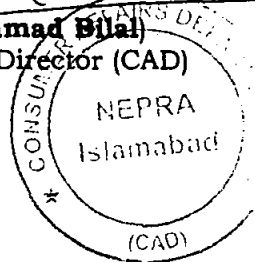
**Subject: DECISION IN THE MATTER OF COMPLAINT FILED BY MR. SHAHZAD IQBAL
DIRECTOR SITARA CHEMICAL INDUSTRIES LIMITED UNDER SECTION 39
OF THE REGULATION OF GENERATION, TRANSMISSION AND
DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST FESCO
REGARDING NON PROVISION OF CONNECTION
Complaint No. FESCO-NHQ-26805-07-23**

Please find enclosed herewith the decision of the NEPRA Consumer Complaints Tribunal dated March 20, 2024 regarding the subject matter for necessary action and compliance within thirty (30) days, positively.

Encl: As above

Copy to:

1. GM (Customer Services & Commercial)
FESCO, Abdullah Pur, Canal Bank Road Faisalabad.
2. Director (Commercial)
FESCO, Abdullah Pur, Canal Bank Road Faisalabad.
3. Mr. Shahzad Iqbal (Shareholder/Director)
Sitara Chemical Industries Ltd,
28-KM, Sheikhupura Road, Faisalabad.


(Muhammad Bilal)
Additional Director (CAD)




**BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)**

Complaint No. FESCO-NHQ-26805-07-23

Mr. Shahzad Iqbal

..... Complainant

Through Advocate Arslan Riaz etc.
C/o Sitara Chemical Industries Limited (Textile Division),
32-kM, Shiekhpura Road, Faisalabad.

VERSUS

Faisalabad Electricity Supply Company (FESCO)

..... Respondent

Abdullah Pur, Canal Bank Road, Faisalabad.

Date of Hearing: September 26, 2023
October 10, 2023
November 16, 2023

**On behalf of
Complainant:**

- 1) Mr. Arslan Riaz, Legal Counsel
- 2) Mr. Shehzad Iqbal, CFO/Director
- 3) Mr. Haseeb Ahmed, COO

Respondent:

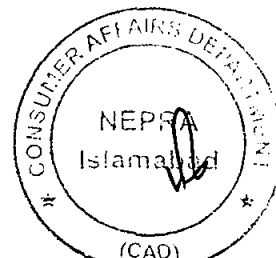
- 1) Mr. Umar Hayat Gondal, GM (C&CS), FESCO
- 2) Mr. Amir Mahboob, CE (Planning), FESCO
- 3) Mr. Mohaimin Aziz, Legal Counsel, FESCO
- 4) Barrister Asghar Khan, Legal Counsel, FESCO

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DECISION

In pursuance of order of Honorable High Court, dated June 06, 2023 in Writ Petition No. 57775/2022; this decision shall dispose of the complaint filed by Mr. Shahzad Iqbal, CFO/Director Sitara Chemical Industries Limited through Advocate Arslan Riaz etc. (hereinafter referred to as the "Complainant" or "SCIL") against Faisalabad Electric Supply Company (hereinafter referred to as the "Respondent" or "FESCO") under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act")

2. Brief facts of the case are that Sitara Chemical Industries Limited filed petitions before the honorable Lahore High Court, Lahore regarding non-provision of a new industrial connection by FESCO. Subsequently, the Complainant/Petitioner was directed by the Lahore High Court to approach NEPRA for resolution of the matter. Accordingly, the Complainant approached NEPRA and filed a complaint wherein it was submitted that SCIL approached FESCO to apply for a new industrial connection which was rejected by FESCO primarily on the basis that a defaulter company i.e. M/s Sitara Energy Limited (SEL) is



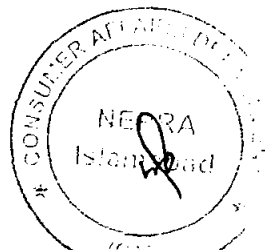
jointly owned & controlled by Sitara Chemical Industries Limited (SCIL). The Complainant in the complaint inter alia submitted as under:

- (i) Sitara Chemical Industries Limited (SCIL) is engaged in manufacturing & export of textile products while being a bulk power consumer (BPC) of another company i.e. SEL and additionally reliant upon its gas operated captive power plant (CPP). Upon revision of the Federal Government Policy in relation towards provision of gas to CPPs, SCIL approached FESCO for provision of new electricity connection for the Textile Division to meet its energy requirement during the year 2018, however, the application was rejected by FESCO, designating SCIL as a shared defaulter along with M/s Sitara Energy Limited (SEL).
- (ii) FESCO executed a Power Purchase Agreement (PPA) with SEL for the period of 2006-2015 which spiraled into litigation between FESCO & SEL due to the retrospective downward revision of power purchase price by NEPRA. In relation to the above, SCIL is also being considered as the shared defaulter by FESCO while both the companies i.e. SCIL & SEL are independent and separate legal entities as the same was endorsed by the Securitization & Exchange Commission of Pakistan (SECP). Subsequently, SEL challenged the determination of NEPRA before Islamabad High Court and the Court vide Order dated March 04, 2020 granted interim relief to SEL and refrained FESCO from making any recovery from SEL. The Complainant's company was not part of these litigations.
- (iii) FESCO has asked the Complainant to clear the dues of SEL and provide NOC of NEPRA regarding removal of SCIL name from the list of Bulk Power Consumers (BPCs) of SEL.
- (iv) FESCO has installed an electricity connection for the Chemical Division of the Complainant's company under reference No. 30-13151-5100100. The said Company of the Complainant has never been defaulted in payment of electricity bills.
- (v) FESCO is under obligation to ascertain the eligibility for new connection on the basis of vested rights created during enacting period of the Consumer Eligibility Criteria (CEC), 2003 which cannot be violated under the new Consumer Eligibility Criteria, 2022. The same will also be in line with the non-discriminatory precedent as the application for new connection was filed by SCIL with FESCO during the year 2018 and the other sister industrial units are also being accommodated by FESCO till date.
- (vi) The Complainant requested to direct FESCO to provide the required electricity connection at his premises.

3. The subject matter was taken up with FESCO. In order to analyze the matter, hearings were held at NEPRA Head Office, Islamabad which were attended by both the parties i.e. FESCO and the Complainant where the matter was discussed in detail.

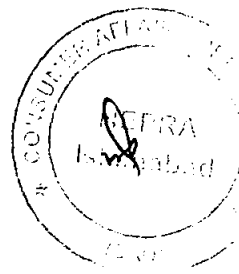
4. FESCO explained its position through written arguments towards the instant matter which are as follows:

- (i) FESCO entered into Power Purchase Agreement with SEL. The Power Acquisition Request of FESCO for purchase of power from SEL was admitted by NEPRA on December 01, 2011 which was decided on April 14, 2017 whereby NEPRA reduced the tariff of Fuel Component and ordered FESCO for recovery of Rs. 84 Million from SEL.
- (ii) SEL along with its subsidiary company i.e. Sitara Chemical Industries Limited (SCIL) are being considered defaulter of FESCO in accordance with the tariff determination of NEPRA regarding Power Acquisition Request (PAR) of FESCO, therefore, SCIL not being provided with new electricity connection. The issue regarding non-provision of connection to SCIL remained under litigation



before the Lahore High Court and finally the matter has been referred to NEPRA for decision as per law.

- (iii) The Complainant has failed to make SEL a party in the instant Complaint. SEL is a proper and a necessary party to this Complaint, hence this Complaint is bad for non-joinder for proper and necessary party.
- (iv) The Section 21(2)(b) of the NEPRA Act requires a distribution license to provide distribution service to consumers who meet 'eligibility criteria' specified by NEPRA. Moreover, rule 9(8) of the Distribution rules obligates a distribution licensee to connect and supply electric power to only those consumers who satisfy the 'Consumer Service Manual (CSM)'
- (v) The Complainant Company is a bulk power consumer ("BPC") of SEL and has been meeting its energy needs through SEL rather than from FESCO. The Complainant Company is still listed as BPC of SEL. According to Section 23F (2)(b)(i) of the NEPRA Act, FESCO is not required / obligated to supply electricity to BPC who has contracted with other sources / competitive supplier to meet its energy demand.
- (vi) There are pending criminal cases registered against the Sitara Group of Companies before the Federal Investigation Agency as well as before National Accountability Bureau for loss of billions to the national exchequer and making illegal profits, on account of exorbitant rates charged from FESCO and subsequently providing cheap electricity to the Sitara Group of Companies which includes the Company of the Complainant.
- (vii) The 'Consumer Service Manual' provides an exhaustive mechanism for grant of connection by a distribution company, the mechanism includes technical and financial scrutiny. There is no 'Common Distribution System' of FESCO near the Complainant Company's premises. In order to grant a connection, the Respondent would have to lay down an infrastructure of almost 5 KM in length which is technically as well as financially not a viable option.
- (viii) The Complainant Company was an Associated Company of SEL. The Annual Report of the year 2010 and 2011 of SEL conclusively and undoubtedly proves that the Complainant Company is an associated company of SEL due to reasons that the company address of the both companies are same, Secretary of both companies are the same person, Legal Advisors are same in both the companies, Plant and Factories of both companies are located on same premises, the website of both companies refers them as group companies.
- (ix) Section 3(f) the NEPRA Consumer Eligibility Criteria 2003, clearly states an electric connection can be refused if an applicant who is either the owner or occupant of the same premises, is a defaulter of the distribution company.
- (x) The Eligibility Criteria of 2003 has been repealed and replaced with the NEPRA Eligibility Criteria for Consumers of Distribution Companies 2022 (Consumer Eligibility Criteria, 2022). Regulation 4(1)(b) of Consumer Eligibility Criteria 2022 also provides that the owner / occupier of the premises which is a defaulter of any electric power supplier would not be eligible for electric connection.
- (xi) The Complainant Company is still listed as a BPC of SEL and the Complainant Company still owes substantial amounts of sum to SEL. The Complainant Company has not relied on the Respondent to meet its energy demands for the longest time. It is also a matter of record that FESCO has required the Complainant Company to submit an NOC from NEPRA to the effect that Complainant Company has been removed from the list of BPC of SEL, however, the Complainant Company has failed to submit the requisite documents till date.
- (xii) FESCO further submitted that the Complainant's company was associated

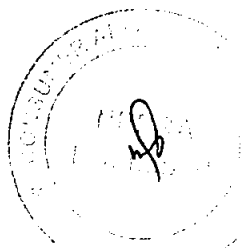


undertaking of SEL due to common Directorship during April 04, 2006 to September 03, 2010. Moreover, the general license of SEL expressly mentions complainant's company as associated undertaking of SEL.

- (xiii) FESCO will not give electric connection to the Complainant Company until the case against them is decided and unless the group of companies clear the dues of PKR 84 million of FESCO as directed by NEPRA.
- (xiv) FESCO is not obligated to provide electricity connection to the Complainant while the same in line with the NEPRA Act and Consumer Eligibility Criteria, 2022 as per which FESCO may deny the Complainant's request due to the existing power supply agreement of SCIL with another supplier i.e. SEL. Moreover, during the pendency of criminal cases against Sitara Group & technical constraints i.e. the presence of dual supply for SCIL further prohibit the processing of the Complainant's application.

5. The arguments submitted by FESCO were forwarded to the complainant for information/ rejoinder. In response, SCIL submitted a detailed rejoinder. Following are some of the highlights of the rejoinder:

- (i) The entire crux of submissions by FESCO revolve around an alleged dispute that Sitara Chemical Industries Limited (SCIL) is associated with a company namely "Sitara Energy Limited" ("SEL"). The issue raised by the FESCO is that SEL is to pay some amount to the FESCO and until that amount is paid, the complainant will not be provided with an electricity connection. The Complainant's Company and SEL are two entirely different legal entities which are entirely independent of each other and cannot, repeat cannot ever be made liable for actions of each other.
- (ii) SECP vide its letter dated 26.08.2021 has clarified the fact that the Complainant's Company and SEL are different legal entities which are totally independent of each other. Furthermore, NEPRA, through its letter dated 25.05.2016 has also categorically stated that the Complainant's Company and SEL are two independent companies. The Complainant's company and SEL are two separate and independent companies (both are listed on Pakistan Stock Exchange), their assets are totally separate and are held in the name of respective company.
- (iii) The alleged stance of FESCO that the Complainant and SEL have the same address or the same Company Secretary do not have any force. In this regard, in the first instance it is stated that these assertions are being made by FESCO without furnishing any proof to the effect. And even if these assertions are taken to be true on their face value, there is no provision in the Companies Act, 2017 or any law for the time being in force which states that if two companies have their registered offices in the same multi-story tower, they will be considered to be associated companies.
- (iv) The liabilities of FESCO as and when are to be recovered from SEL and not from SCIL.
- (v) If the applicant meets Consumer Eligibility Criteria and Consumer Service Manual, it is legally entitled for provision of electricity connection.
- (vi) The location of SCIL is different from SEL.
- (vii) SCIL is not defaulter of FESCO or/and SEL. However, in order to clarify the matter, a company cannot be presumed to be a defaulter only for the reason that there is some receivable outstanding against the said company. In order for a company to be defaulter, there has to be a decree against it to the effect. There is no declaration by any court or forum that complainant's company is a defaulter of SEL.
- (viii) The objection of FESCO that the Complainant is included in BPC list of SEL and thus is not eligible for electricity connection from FESCO has no force as

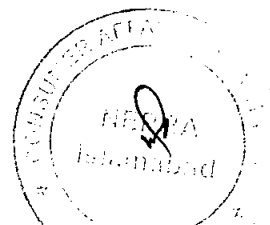


Section 21(2)(b)(i) [which is now Section 23-F(2)(b)(i)] is directory in nature and does not prohibit a consumer from having dual source. Further, 22 other industrial consumers have already been provided connections both from FESCO as well as SEL. However, SCIL has already provided undertaking to FESCO to the effect that upon provision of electricity supply from FESCO, the Complainant will remove infrastructure of SEL and will also approach NEPRA for removal of its name from BPC list of SEL.

- (ix) Section 2(4) of the Companies Act, 2017 is very clear when it states that companies will be deemed to be associated companies of each other only if they have common directors. Furthermore, the concept of associated company is relevant only when one associated company is dealing with the other associated company (in a "related party transaction") and not regarding one company's dealing with a third party. Hence, although the assertions of FESCO are without any substance, however, even if these are deemed to be true, the same carry no legal consequence whatsoever.

6. The case has been examined in detail in light of written/ verbal arguments of both the parties, documents placed on record and applicable law. The following has been concluded:

- (i) Sitara Chemical Industries Limited (SCIL) approached FESCO for a new industrial connection for its textile division with tentative load of 4700 kW. In response, the application was rejected by FESCO on the pretext of several reasons while the same matter also remained a cause of litigation between FESCO and the Complainant before the Honorable Lahore High Court. Eventually, in pursuance of the decision of the High Court in writ petition number 57775/22, the subject matter was disputed before NEPRA by the Complainant.
- (ii) FESCO has rejected the application of the Complainant on the basis that SCIL is defaulter of SEL, SCIL is associated undertaking of SEL, both companies have same office address, same Legal Advisor and Company Secretary, non-existence of common distribution system of FESCO etc. There has been a criminal case under process before FIA and NAB against SEL. FESCO has declared that SCIL is not entitled for grant of connection from FESCO being defaulter of another supplier i.e. SEL in terms of National Electric Power Regulatory Authority Consumer Eligibility Criteria (Distribution Licensees) Regulations, 2022. FESCO has elaborated that according to Section 23F-2b(i) of the NEPRA Act, the Complainant is not entitled for connection whereby the said Section provides that *"the licensee may not be required to make sale of electric power to a bulk power consumer who has contracted for electric power supply from another supplier."* The same section categorically refers to competitive electric supplier, whereas SEL is not a supplier as per the provisions of NEPRA Act, therefore, the provisions of National Electric Power Regulatory Authority Consumer Eligibility Criteria (Distribution Licensees) Regulations, 2022 and Section 23F-2b(i) of the NEPRA Act are not applicable in the instant case.
- (iii) FESCO has further raised the issue of presence of name of SCIL in the BPC list of SEL. The objections raised by FESCO have no legal standings. There is no bar in provision of dual supply as per the NEPRA Act. Moreover, the objection of FESCO regarding common address, common Company Secretary, common Legal Advisor is immaterial.
- (iv) According to FESCO, connection cannot be provided to SCIL due to criminal case(s) pending before FIA and NAB. If this be the case, then the Honorable Lahore High Court would have referred the case to FIA/NAB whereas the Court has directed the Complainant to avail alternate remedy under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997. Further, one connection of SCIL is already running against

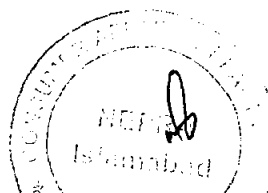


reference No. 30-13151-5100100. FESCO did not raise any demand for payment of dues of SEL against the said reference number.

- (v) According to the Complainant, SCIL is entitled for provision of connection under Consumer Eligibility Criteria 2003 whereas FESCO is of the view that the Consumer is not entitled for provision of connection under Consumer Eligibility Criteria 2003 rather the case has to be dealt in accordance with provisions of National Electric Power Regulatory Authority Consumer Eligibility Criteria (Distribution Licensee) Regulations, 2021. Here the question does not arise as to which Eligibility Criteria i.e. 2003 or 2021 is applicable; the issue is whether SCIL is entitled for new connection or not. According to provisions of NEPRA Act and NEPRA Consumer Eligibility Criteria 2003 & NEPRA Consumer Eligibility Criteria (Distribution Licensee) Regulations, 2021, all the applicants are to be dealt on non-discriminatory basis. Moreover, FESCO has allowed connections to other BPCs of SEL. FESCO has already provided connection to Complainant's chemical Division under reference number 30-13151-5100100, therefore, refusal of connection to the Complainant for its Textile Division is unjustified. Furthermore, SCIL is not a defaulter of FESCO. SCIL and SEL are located at different locations.
- (vi) Moreover, Complainant's chemical Division is not a defaulter of FESCO and is paying bills regularly. FESCO has never issued any default notice to the Complainant's chemical Division under reference number 30-13151-5100100 w.r.t. outstanding dues/default of SEL.
- (vii) In furtherance to the established facts above, perusal of the letter of clarification issued by SECP dated August 26, 2021 further reveals that SCIL & SEL are separate corporate entities.
- (viii) If there is no common distribution system of FESCO to provide electricity supply to SCIL then FESCO may issue demand notice to the Complainant for dedicated Distribution system from the interconnection point to the complainant's premises.
- (ix) Furthermore, provision of electricity is a Fundamental Right for all citizens under Article 9 and 14 of Constitution of Islamic Republic of Pakistan. Non supply of electricity to a citizen, tantamount to deprivation of this Fundamental Right as well as violation of Article 8 of the Constitution which says that any law, custom or usage having the force of law that is inconsistent or abridges a Fundamental Right is void and inoperable. The provision of electricity has been interpreted as Fundamental Right by the Supreme Court of Pakistan.

7. FESCO has rejected the application of the Complainant on the basis that SCIL is defaulter of SEL, SCIL is associated undertaking of SEL, both companies have same office address, same Legal Advisor and Company Secretary, non-existence of common distribution system of FESCO etc., litigation before FIA and NAB etc, therefore, SCIL is not entitled for provision of connection from FESCO. The objections raised by FESCO have been responded by the Complainant vide para 5 above. The Complainant's Chemical Division has already been provided connection by FESCO. Moreover, FESCO has already provided connections to other BPCs of SEL. FESCO has never issued any default notice to the Complainant's chemical Division under reference number 30-13151-5100100 w.r.t. outstanding dues/default of SEL. Foregoing in view, FESCO is directed to provide the desired electricity connection to the Complainant after completion of all the codal formalities and duly obtaining an undertaking from the Complainant to the effect that:

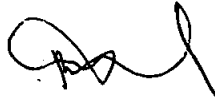
- (i) Sitara Chemical Industries Limited shall be liable for payment of dues of FESCO whatsoever if Sitara Chemical Industries Limited is declared responsible in conjunction with SEL by any Court of Law.
- (ii) Sitara Chemical Industries Limited (Textile Division) shall approach NEPRA through SEL for removal of its name from the list of BPCs of Sitara Energy



Limited immediately after approval of electricity connection by FESCO by modification of license thereto. Also, Sitara Chemical Industries Limited shall dismantle the Distribution Line from SEL immediately after approval of electricity connection by FESCO.

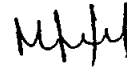
- (iii) Sitara Chemical Industries Limited shall pay all the costs associated with dedicated distribution system as per provisions of Consumer Service Manual.
- (iv) Sitara Chemical Industries Limited shall provide certificate from the concerned Civic Agency that the premises where connection is required has no link with premises of SEL.
- (v) Moreover, FESCO claims that there are dues of SEL against SCIL, however, SCIL claims that it has cleared all the dues. Therefore, FESCO may independently verify the same on its end. Furthermore, FESCO shall verify SECP letter No. CLD/CCD/602(27)2017/1006 dated August 26, 2021 whereby it has been clarified by SECP that the SCIL and SEL are different legal entities and are totally independent of each other.

8. Compliance report be submitted within thirty (30) days.



(Lashkar Khan Qambrani)

Member, Consumer Complaints Tribunal/
Director (CAD)



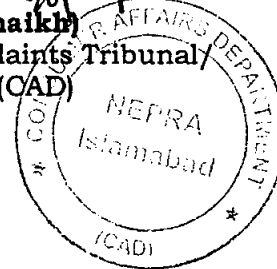
(Moqeem-ul-Hassan)

Member, Consumer Complaints Tribunal/
Assistant Legal Advisor (CAD)



(Naweed Illahi Shaikh)

Convener, Consumer Complaints Tribunal/
Director General (CAD)



Islamabad, March 20, 2024