



Consumer Affairs
Department

National Electric Power Regulatory Authority
NEPRA Tower
Attaturk Avenue (East) Sector G-5/1, Islamabad.
Ph:051-2013200, Fax: 051-2600021

TCD 02/4192/2016
June 30, 2016

Mr. Ilyas Aziz Malik, Sole Proprietor M/s Fazal Steel Re-Bar & Steel Casting, Plot No. 16-17, I-9, Islamabad.	Mr. Rizwan Jamil, Marketing Director, M/s Lafarge Pakistan Cement Company Limited, Lafarge House, 18-B, Kaghan Road, F-8 Markaz, Islamabad.
Mr. Zaka Baloch, Bestway Cement Company Ltd, TatralChakwal.	Mr. M. Tahir Garibwal Cement Works, GaribWalPindDadan Khan.
Mr. SohailAltaf, (Sole Proprietor) M/s Classic Steel Re-Rolling Mills, Plot No. 102, Street No. 15, Industrial Area, Sector I-9, Islamabad.	M/s S.H. Steel Mills, (Sole Proprietor) I-9, Industrial Area, Islamabad.
M/s Pak Iron and Steel Casting, (Sole Proprietor) Plot No.24, I-9, Industrial Area, Islamabad.	M/s Potohar Steel Mills, (Sole Proprietor) I-9, Industrial Area, Islamabad.
Mrs. Hamida Rafiq, (Sole Proprietor) M/s Capital Steel, Plot No. 230, I-9, Industrial Area, Islamabad.	Javed Habib, (Sole Proprietor) M/s Kashmir Steel Mills, I-9, Industrial Area, Islamabad.
M. AkramFarid, (Sole Proprietor) M/s Pak Steel, Plot No. 25, I-9, Industrial Area, Islamabad.	Mr. Abdul Qayyum, (Sole Proprietor) Plot No. 70, I-9, Industrial Area, Islamabad.
M/s Raza Steel Mills, (Sole Proprietor) I-9, Industrial Area, Islamabad.	Muhammad Asif Paracha, Director M/s Islamabad Steel Mills, Plot No.54, I-9/2, Industrial Area, Islamabad.
Malik Musarat Hussain, Director M/s M.I.Z. Re-Rolling Steel Mills, Plot No. 248, I-9/2, Islamabad.	Mr. Faisal Saeed, Director M/s S.H. Steel Re-Rolling Mills, I-9, Industrial Area, Islamabad.
Mr. JavaidIqbal, (Sole Proprietor) M/s J-R Steel Re-Rolling Mills, Industrial Area, Islamabad.	Malik Javid Iqbal, Director M/s Karachi Steel Mills, Plot No. 191, I-10/3, Islamabad.
Mr. Khalid Javed, M/s Ittehad Steel Re-Rolling Mills, Plot No. 417, I-9, Industrial Area, Islamabad.	Hussaini Engineering Ltd, C/o M/s Karim Aziz Industry Ltd., Opp. Railway Station, Hassanabdal, District Attock.
Mr. Ilyas Aziz Malik, M/s Mat Cast (Mumtaz Steel), Plot No. 13 & 14, I-9, Industrial Area, Islamabad.	Plot No. 13 & 14, I-9, Industrial Area, Islamabad. M/s New United Steel Mills, Plot No. 48, Street No. 3, I-10/3, Islamabad.

Subject: **DECISION IN THE MATTER OF WP NO. 5084/2014: LAFARGE PAKISTAN CEMENT COMPANY ETC. WP NO. 4739/2015: KARACHI STEEL MILLS ETC. WP NO. 4743/2014: CLASSIC STEEL RE ROLLING MILLS ETC. WP NO. 5105/2014: BESTWAY CEMENT COMPANY ETC. WP NO. 44/2015: FAZAL STEEL RE BAR STEEL CASTING BEFORE ISLAMABAD HIGH COURT**
HESCO-135/2015

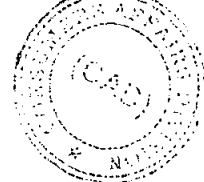
Reference is made to your complaint regarding the subject matter.

2. Please find enclosed the decision of NEPRA in the subject matter for information.

Copy to:

1. Chief Executive Officer
Islamabad Electric Supply Company (HESCO)
St. No. 40, G-7/4
Islamabad.
2. C. E./Customer Services Director
Islamabad Electric Supply Company (HESCO)
Street No 40, G-7/4,
Islamabad.

(Ingr. Imtiaz Hussain Baloch)
Director / Consumer





BEFORE TRIBUNAL

In the matter of

Complaint No. IESCO-135/2015

1. Karachi Steel Mills
2. Karachi Steel Mills
3. Ittehad Steel Re-Rolling Mills
4. Hussaini Engineering Ltd.
5. Mat Cast (Mumtaz Steel)
6. New United Steel Mills
7. Classic Steel Re-Rolling Mills
8. S.H. Steel Mills
9. Pak Iron and Steel Casting
10. Potohar Steel Mills
11. Capital Steel
12. Kashmir Steel Mills
13. Pak Steel
14. Mr. Abdul Qayyum
15. Raza Steel Mills
16. Islamabad steel Mills
17. M.I.Z. Re-Rolling Steel Mills
18. S.H. Steel Re-Rolling Mills
19. J-R Steel Re-Rolling Mills
20. Bestway Cement Company Limited
21. Garibwal Cement Works
22. Lafarge Pakistan Cement Company Limited
23. Fazal Steel Re-Bar & Steel Casting

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Petitioners

Versus

Islamabad Electric Supply Company Limited (IESCO),
Street No. 40, G-7/4, Islamabad.

.....

Respondent

Date of Hearing: -

April 01, 2016
February 10, 2016
January 20, 2016

Date of Decision: -

June 29, 2016

On behalf of
Petitioners:-

1. Malik Qamar Afzal, Advocate
2. Syed Sumera Naqvi, Advocate
3. Mr. Zakaullah Baloch
4. Mr. Hannan Choudhry, Advocate
5. Mr. Ghazanfar Ali
6. Mr. Mohsin Mahmood

Respondent:-

1. Mr. Wajid Ali Kazmi, CSD
2. Mr. Waheed Akram, Manager (Commercial)
3. Mr. Qazi Arif Latif, Manager Legal
4. Mr. Lal Zada, Executive Engineer

ORDER

1. In pursuance of the Orders of the Honorable Islamabad High Court dated November 06, 2015 in Writ Petitions No. 4739 of 2014: Karachi Steel Mills etc. v/s FoP, No. 4743 of 2014: Classic Steel Re-Rolling Mills etc. v/s FoP, No. 5105 of 2014: Bestway Cement & another v/s FoP, No. 5084 of 2014, Lafarge Pakistan Cement Company Ltd. v/s FoP and No. 44 of 2015: Fazal Steel Re-Bar & Steel Casting v/s FoP, this decision shall dispose of the petition/complaints filed by Karachi Steel Mills etc., Classic Steel Re-Rolling Mills etc., Bestway Cement and another, Lafarge Pakistan Cement Company Ltd. and Fazal Steel Re-Bar & Steel Casting (hereinafter referred to as the "Complainants" or "Petitioners") under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as "NEPRA Act") against Islamabad Electric Supply Company Limited (hereinafter referred to as "IESCO" or "Respondent").

2. The Honorable Islamabad High Court disposed of the above captioned Writ Petitions vide its Order dated November 06, 2015 which is reproduced as under:

"Vide my order of even date, passed in W.P. No. 4350/2014, re: Asad Umar, etc. Versus Federation of Pakistan, etc. the instant petition is also disposed of in terms of the said order."

For ease of reference the operative part of the Order dated November 06, 2015 passed in Writ Petition No. 4350 of 2014: Asad Umar etc. v/s Federation of Pakistan is reproduced as under:

"In the light of the above, each petition is converted into a complaint under Section 38 of the NEPRA Act, 1997 deemed to be pending before NEPRA. It was brought to the attention of this Court by the learned counsel for the Petitioner in W.P. No. 4350/2014 that NEPRA has already decided 34 complaints and the same have been dismissed. It is observed that NEPRA, while proceeding in the instant matters under Section 38 and 39 of the NEPRA Act, 1997, shall not be influenced by its earlier orders passed in the said 34 complaints, which were earlier dismissed. The Petitioners shall be at liberty to raise additional grounds or produce documents which may not have been raised in or annexed with the instant petitions."

In order to comply with the aforementioned Orders of the Honorable High Court, the Authority constituted a tribunal under Section 11 of the NEPRA Act and delegated powers to the tribunal to hear and decide the case.

3. The main contentions of the Petitioners are summarized as under:

- i. That they are consumers of IESCO and have been deprived of subsidy as provided to other consumers which are situated in the service territory of other distribution companies (DISCOs). The determined tariff of IESCO is Rs. 11.20 (peak) and is lowest amongst other DISCOs. Under the garb of Fuel Price Adjustment mechanism, other DISCOs whose rates are more than the rates of IESCO, have been given subsidy / concession while IESCO has not been given the same with objective to bring uniformity in electricity rates across the country. The Petitioners by using modern furnace plants and have strict control over the line losses, have been efficient and resultantly the determination of NEPRA through a quasi judicial procedure has determined the cost of electricity at Rs. 11.20 per kWh. In the similar circumstances, the steel industry situated within the distribution network of other distribution companies who use old furnace plants and are not as efficient as the Petitioners industries and remain vulnerable to theft and other electricity losses. The consumers of IESCO are being treated discriminately.
- ii. In order to create uniformity in electricity rates across the country, the Federal Government while issuing SRO 985(1)/2014 dated November 01, 2014 levied Uniform Obligation Fund Surcharge at the rate of Rs. 1.0 on to B-III category consumers and additional charges at the rate of Rs. 0.1 on consumption of each category except life line domestic consumers. The Federal Government has arbitrarily and discriminately granted subsidy with a sole purpose to bring uniformity in the rates of electricity tantamount to deprive of the Petitioners of their rights.
- iii. In the prayer clause, the Petitioner prayed that addition of Section 31(5) of the NEPRA Act through Finance Act, 2008 be declared as ultra virus to the Constitution and may be set aside, the imposition and collection of surcharge on the consumption of electricity bills of Petitioners issued by IESCO through notification SRO 985(1)2014 dated November 1, 2014 may be declared as illegal, unlawful act without lawful authority and the Petitioners are entitled for subsidy / relief as accorded to the other distribution companies and exclusion of IESCO consumers from subsidy merits to be judicially reviewed.

4. Accordingly, a notice dated January 12, 2016 was issued to the Petitioners and IESCO with directions to appear before NEPRA on January 20, 2016 for a hearing at NEPRA Head Office, Islamabad along with written arguments, although the parties put appearance on the said date, however, the hearing was adjourned on request of the Petitioners and was rescheduled for February 10, 2016; which was attended by IESCO officials and representatives of some of the Petitioners. The hearing was again adjourned on request of the Petitioners. Subsequent to the hearing, IESCO vide letter dated February 12, 2016 submitted its written arguments wherein it was stated that the Honorable Supreme Court of Pakistan, in an interim order dated July 09, 2015 in Civil Petition No. 1078/2015, decided to recover the pending surcharge in 12 equal installments and in compliance with the said decision, recovery of the pending surcharges i.e. U.O Surcharge, D.S Surcharge and N.J Surcharge was started from consumers with effect from August 2015. Furthermore, the case of surcharges is still pending before the Honorable Supreme Court of Pakistan and the Honorable Supreme Court vide its decision dated December 09, 2015 has decided that "all the cases in which any matter pertaining to surcharge has been challenged are stayed till the final decision of these appeals by the court".

5. So as to finalize the case, hearing in the matter was held on April 01, 2016 at NEPRA Head Office, Islamabad. The hearing was attended by representatives of IESCO and some of counsels for the Petitioners. During the hearing, the parties advanced arguments on the basis of their earlier submissions. The counsels for the Petitioners stated that the case pending before the Honorable Supreme Court is of different nature and does not pertain to the instant issue.

6. The case has been analysed in detail in light of available record, arguments advanced during the hearing and applicable law. Following has been concluded:-

- i. It is a matter of record that IESCO is a distribution licensee of NEPRA and is regulated under the NEPRA Act and Rules & Regulations made there-under. The tariff of a distribution licensee is determined in accordance with the procedure provided in the NEPRA Tariff (Standards & Procedure) Rules, 1998. All distribution licensees of NEPRA file their tariff petitions before NEPRA seeking determination of consumer-end tariff. Upon admission of such petitions, the salient features of the petitions are published in the national newspapers inviting comments, replies, and intervention requests from interested persons. Subsequently, a hearing is also held for which notices are also published in the national newspapers. After considering the submissions of the petitioners, commentators (if any) interveners (if any), evidence produced, arguments given by respective parties, the tariff determinations are issued by NEPRA which are then intimated to the Federal Government for notification in the official Gazette under Section 31(4) of the NEPRA Act which reads as under:

"31(4) Notification of the Authority's approved tariff, rates, charges, and other terms and conditions for the supply of electric power services by generation, transmission and distribution companies shall be made, in the official Gazette, by the Federal Government upon intimation by the Authority:

Provided that the Federal Government may, as soon as may be, but not later than fifteen days of receipt of the Authority's intimation, require the Authority to reconsider its determination of such tariff, rates, charges and other terms and conditions. Whereupon the Authority shall, within fifteen days, determine these anew after reconsideration and intimate the same to the Federal Government;"


- ii. The tariff determination of IESCO for Financial Year 2013-14 was given by NEPRA after fulfilling all legal formalities and the same was intimated to the Federal Government for notification in the official Gazette. However, the Federal Government under proviso to Section 31(4) of NEPRA Act filed a re-consideration request on July 01, 2014 whereby it was intimated that Federal Government is desirous to pass on per-unit subsidy to the categories of consumers of all distribution companies. In the reconsideration request, neither any modification or revision in the NEPRA's already rates and tariff was proposed nor any component thereof was sought to be modified or changed. The said request was made by the Government to the extent of making the procedure for notification of the NEPRA determined/approved rates in line with the provision of NEPRA Act and Rules made there under, therefore, the Authority considered to accept the request in order to incorporate the relief being proposed by the Federal Government to the different consumer categories. Accordingly, the amount of subsidy was incorporated in the schedule of tariff and was intimated to the Federal Government on October 31, 2014 for notification; which was notified on November 01, 2014.
- iii. It is pertinent to mention that through the impugned determination of NEPRA dated October 31, 2014, NEPRA has not modified the tariff determination earlier intimated to the Federal Government for notification in the official Gazette. The only addition made through the impugned decision is that the subsidy was incorporated for various categories of consumers in the already determined Authority's Schedule of Tariff.


- iv. Further, as per Section 31(5) of the NEPRA Act, the power to levy surcharges vests only with the Federal Government and NEPRA has not been given any role in levying or determining the surcharges. The Federal Government in exercise of its powers under the aforesaid section had imposed certain "surcharges" to the consumers of IESCO vide SRO 985(1)/2014 dated November 01, 2014. Section 31(5) of NEPRA Act:

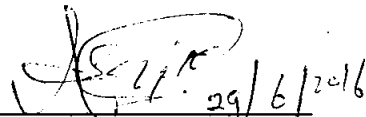
"31(5) Each distribution company shall pay to the Federal Government such surcharge as the Federal Government, from time to time, notify in respect of each unit of electric power sold to the consumers and any amount paid under this sub-section shall be considered as a cost incurred by the distribution company to be included in the tariff determined by the Authority."


- v. It will not be out of place to mention that the Honorable Lahore High Court, Lahore vide Judgment dated May 29, 2015 passed in ICA No.1068/2014 titled as Flying Cement Company Vs Federation of Pakistan and Others declared that imposition of surcharges under Section 31(5) of NEPRA Act is illegal. However, the said Order was challenged by the Federal Government before the Honorable Supreme Court of Pakistan through CP No.1078/2015. The Honorable Supreme Court vide Order dated June 9, 2015 has granted leave to appeal (now CPLA is numbered as CA No.551/2015) and suspended the impugned judgment of honorable Lahore High Court Lahore, therefore at present the "Surcharges" levied in the tariff determinations are being recovered from the electricity consumers.
- vi. Since the matter of imposing surcharge is pending for adjudication before the Honorable Supreme Court and the operation of order of the Lahore High Court *ibid* is suspended therefore its will be in fitness of things that the matter may not interpreted at this forum.

7. Keeping in view the fact that NEPRA has not imposed the impugned surcharge; rather the same has been levied by the Federal Government under Section 31(5) of NEPRA Act and also the fact that the matter pertaining to levy of "surcharges" by the Government of Pakistan is already *sub-judice* before the Honorable Supreme Court of Pakistan, the requests of the Petitioners are not maintainable at this point in time. Thus, the complaints are disposed of accordingly.


(Lashkar Khan Qambrani)
Deputy Director/Member of Tribunal


(Mian Ahmed Ibrahim)
Legal Advisor/Member of Tribunal


(Sajid Akram)
Director/Member of Tribunal


(Engr. Imtiaz Hussain Baloch)
Director/ Convener of Tribunal