



Registrar

National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/ADG(CAD)/TCD-09/19829

August 5, 2020


M/s Mushtaq & Company Pvt. Limited
Mushtaq & Company (Pvt.) Limited,
574/1, Admajee Dawood Road,
Karachi

Subject: DECISION OF THE AUTHORITY IN THE MATTER OF MOTION FOR
LEAVE FOR REVIEW UNDER RULE 16(6) OF NEPRA RULES, 1998
REGARDING COMPLAINT FILED BY M/S MUSHTAQ & COMPANY
(PVT) LTD THROUGH MR. ARIF BILVANI UNDER SECTION 39 OF THE
NEPRA ACT 1997 AGAINST K-ELECTRIC LIMITED REGARDING
CHARGING OF TWO-PART TARIFF ON ALL INDUSTRIAL
CONSUMERS W.E.F 1ST JULY 2011

Reference is made to the Review Motion filed by M/s Mushtaq & Company Limited, Karachi, vide Letter dated February 15, 2020 against the decision of the Authority dated February 06, 2020.

2. Please find enclosed herewith the Decision of Authority (06 Pages) for compliance and necessary action.

Encl: As above


5/8/20
(Iftikhar Ali Khan)



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No. KE 119/03/2018

M/s Mushtaq & Company (Pvt.) Limited
111, International Trade Centre, Plot No.10/2
SR-2, Darai Quarters, Hasrat Mohani Road
Karachi

Petitioner

VERSUS

K-Electric Limited
KE House No. 39-B, Sunset Boulevard,
Phase-II, Defense Housing Authority,
Karachi.

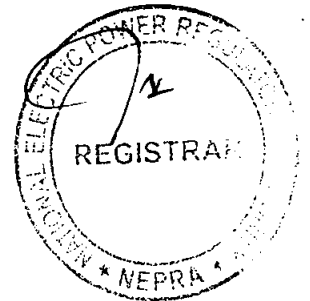
Respondent

Date of Hearing: June 23, 2020

On behalf of

Complainant: Mr. Arif Bilvani

Respondent: Mr. Asif Shajar, DGM (Regulations)



Subject: **DECISION IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW FILED BY MUSHTAQ & COMPANY AGAINST THE DECISION OF THE AUTHORITY IN THE MATTER OF COMPLAINT FILED BY M/S MUSHTAQ & COMPANY (PVT) LTD UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST K-ELECTRIC LIMITED REGARDING CHARGING OF TWO-PART TARIFF ON ALL INDUSTRIAL CONSUMERS W.E.F 1ST JULY 2011**

DECISION

This decision shall dispose of the Review Motion filed by M/s Mushtaq & Company (Pvt.) Limited Karachi (hereinafter referred to as the "Complainant" or "Petitioner") against the decision of the Authority in the matter of complaint filed by M/s Mushtaq & Company (Pvt) Limited under section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act") against K-Electric Limited (hereinafter referred to as the "K-Electric" or "KE") regarding charging of two-part tariff on all industrial consumers w.e.f. July 01, 2011.

2. Brief facts of the case are that NEPRA received a complaint from M/s Mushtaq & Company (Pvt.) Limited through Mr. Arif Bilvani, on November 02, 2017, wherein the Complainant submitted that K-Electric's Multi Year Tariff (hereinafter referred to as "MYT 2009") was determined by the Authority on December 23, 2009, whereby, inter alia all existing consumers having sanctioned load of 5 kW and above were required to be provided with Time of Use (TOU) metering arrangement. However, KE started TOU metering of the Complainant (an industrial consumer) w.e.f. April 2017. The Complainant prayed that ToU billing for his premises be implemented w.e.f. July 1, 2011, in the light of the directions of the Authority contained in KE-MYT 2009 and any adjustment(s) in the billing be made accordingly. The matter was taken-up-with K-Electric. In response, K-Electric, reported, inter alia, that metering equipment at the Complainant's premises (B2 tariff) was replaced with TOU meter and subsequently TOU billing was initiated. However, there is no mechanism to record/analyze previous TOU consumption, hence, retrospective claim of TOU billing is not possible.

3. The case was examined in light of written/verbal arguments of the parties and record made so available. Accordingly, it was decided that; TOU meter was installed at the Complainant's premises in April 2017 and accordingly, TOU tariff was implemented. Before installation of ToU meter, the Complainant was charged bills as per the tariff terms and conditions approved by the Authority. Moreover, there is no mechanism to record/retrieve the data of the previous consumption regarding peak and off-peak units. K-Electric has charged the bills to the Complainant as per tariff determined by the Authority, therefore, claim of the Complainant for adjustment of billing on retrospective basis is not possible. The said decision was conveyed to the parties vide letter dated February 06, 2020.

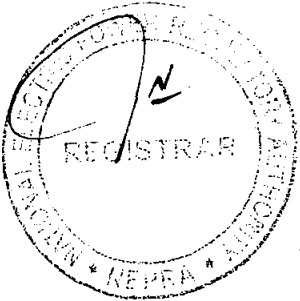
4. Being aggrieved with the decision, M/s Mushtaq & Company vide letter dated February 15, 2020 filed a Review Motion. The Complainant in his Review Motion has submitted as under:

- (i) The determination of the Authority in KESC Tariff Determination TRF-133 (MYT of 2009) states that: "All existing consumers having load 5 kW up-to 500kW under B-2 shall be provided ToU metering arrangement and converted to B-2(b) tariff by the company no later than 30th June 2011. K-Electric in its review on MYT 2009 requested the Authority to extend the date for installation of ToU meters up to December 31, 2014 however, the Authority in its Decision No. NEPRA/R/TRF-



133/KESC-2009/3097-3100 dated October 15, 2010 directed KE to install ToU meters not later than December 31, 2012 thus KE was supposed to install ToU meters by December 31, 2012. The final date for implementation was not challenged by K-Electric (the then KESC).

- (ii) Accordingly, K-Electric was supposed to gradually install ToU meters (and start charging them under tariff B-2(b) by the end of December 31, 2012 and until such time the other consumers who have not been provided the ToU meters by the specified date shall continue to be charged tariff B-2(a). However, this does not mean that K-Electric can continue to charge the consumers under B-2(a) tariff until the time of installation of the meter, even if the date of meter installation exceeds the deadline for provision of ToU metering i.e. December 31, 2012 (in the instant case the meter was installed in 2017)
- (iii) In the absence of any mechanism for recording previous consumption, the same can be worked on the basis of per hour daily consumption i.e. 20 hours and 4 hours basis. For its own past/previous claim from consumers KE prepares bills on various modes i.e. Detection bill. Assessed bill, Average bill etc. All these bills are prepared on some assumption or presumption without any actual meter reading. If the licensee can prepare its own claim on some assumed mechanism why can't it prepare consumers claim on some assumed basis where the actual reading is also available.
- (iv) The Authority should have monitored implementation of its determination by KE and should have ensured that the ToU meters were installed by December 31, 2012.

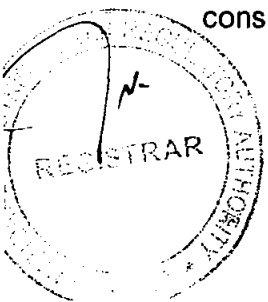


5. The Review Motion was admitted for hearing which was held on June 23, 2020 through video link. The hearing was attended by the Complainant and representative(s) of K-Electric. The Complainant reiterated his earlier version and further added that there were only few thousand industrial consumers (which have revenue contribution of 40 % in KE billing) against which ToU meters were required to be installed but KE failed to install the same. The Complainant added that he has sustained financial loss of Rs. 3.3 Million due to non provision

of ToU meter by KE within stipulated time period. The representatives of KE during the hearing submitted that they requested the Authority that if ToU meters are installed in light of MYT 2009 they would face revenue short fall. The Authority considered their point of view and addressed the issue in the Multi Year Tariff Determination for the period July 01, 2016 to June 30, 2023 (hereinafter referred to as MYT, 2016). The Complainant averred that the issue of revenue loss was why not raised by the KE earlier or determination of the Authority on the review motion of KE on the MYT 2009 was why not challenged by KE, thus the same attained finality and was binding upon KE. The KE representative responded that in this regard they had submitted their concerns before the Authority along with analysis on the revenue short fall.

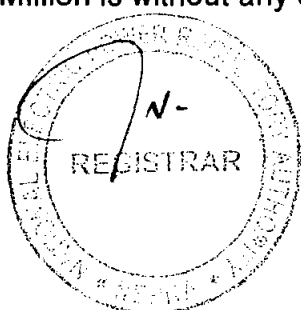
6. The case has been examined in detail and in the light of the written/verbal arguments of the parties; the following has been concluded:

- (i) The Authority vide its Multi-year Tariff (MYT) Determination 2009 approved the terms and conditions of K-Electric (the then KESCL) whereby it was inter-alia directed that all existing consumers having sanctioned load of 5 kW and above shall be provided with TOU metering arrangement not later than June 30, 2011.
- (ii) Subsequently, the Authority in its decision dated October 15, 2010 with respect to Motion for Leave for Review filed by KE (the then KESCL) extended the applicable date for installation of TOU metering up to December 31, 2012. The Authority vide MYT 2009 also inter-alia directed that the existing industrial consumers under tariff B2 shall be billed under tariff B2 (a) till the provision of TOU metering arrangement.
- (iii) The instant consumer falls under the B2 tariff category. TOU meter was installed at the premises of the Complainant in April 2017 and KE started billing on tariff B2 (b). Prior to the installation of the TOU meter, the said consumer was billed under tariff B2 (a) as per the determination of the Authority.
- (iv) The Multi Year Tariff Determination of KE for the period July 01, 2016 to June 30, 2023 (hereinafter referred to as MYT, 2016) was notified vide SRO No. 576(1)/2019 on May 22, 2019 wherein it was mentioned that K-Electric shall ensure that all existing consumers having sanctioned load of 5 kW and above shall be provided ToU metering




arrangement within three months from the date of notification of the decision and shall be billed on ToU rates; from this it is evident that the dead line for installation of ToU metering was further extended and was not limited to December 31, 2012.


- (v) The Complainant has averred that KE not only failed to implement the determination of the Authority for provision of ToU metering arrangements but also it did not raise its concerns if it had faced any revenue short fall. The record reveals that KE had approached NEPRA in this regard. The Authority vide MYT 2016 held that it understands that due to concerns of the petitioner (KE) regarding revenue loss and KE MYT being fixed for the 7 years tariff control period, the facility of availing ToU metering could not be extended to the consumers. Therefore to address the concerns of the interveners and the issue of loss of revenue as raised by the Petitioner (KE), the Authority in the instant determination has designed the Petitioner's (KE's) tariff for each consumer category on the basis of the consumer mix and for peak and off peak consumption as provided by the Petitioner (KE) thus the concerns of the Petitioner (KE) for any loss of revenue arising due to ToU meters has been catered for.
- (vi) The Authority had also extended the due date for installation of ToU meters from time to time in respect of other DISCOs.
- (vii) The Complainant's previous analog meter was replaced by KE in April 2017 and accordingly, ToU billing was implemented. The Complainant has requested for implementation of ToU tariff w.e.f July 01, 2011. The said request of the Complainant cannot be acceded to as there is no mechanism to record/retrieve the data of the previous consumption regarding peak and off peak units.
- (viii) The Complainant claimed that it had faced financial loss of about Rs. 3.3 Million due to non-installation of ToU metering arrangement w.e.f. July 01, 2011. However, it is clarified that the consumer was being billed as per the tariff determined by the Authority and upon installation of ToU meter, the Complainant was charged as per ToU tariff determined by the Authority, therefore, claim of the Petitioner for financial loss to the tune of Rs. 3.3 Million is without any cogent grounds.

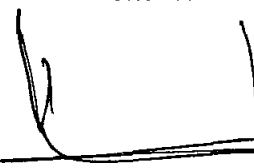


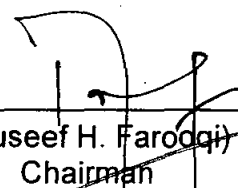
7. In view of the foregoing, we have perused the case, written/verbal arguments of the parties and the applicable law. A motion seeking review of any order of the Authority is competent only upon the discovery of new and important matter of evidence or on account of some mistake or error apparent on the face of record. The perusal of the decision sought to be reviewed clearly indicates that all material facts and representations made were examined in detail and there is neither any occasion to amend the impugned decision nor any error inviting indulgence, as admissible in law, has been pointed out. Therefore, we are convinced that the review would not result in withdrawal or modification of the impugned decision. Hence, the motion for review is declined.

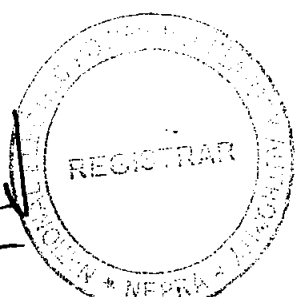

(Rehmatullah Baloch)
Member 2/15/07/2020


(Rafique Ahmad Shaikh)
Member


(Saif Ullah Chattha)
Member 17.7.2020


(Engr. Bahadur Shah)
Member


(Tauseef H. Farooqi)
Chairman


5-8-20