



Registrar

National Electric Power Regulatory Authority

Islamic Republic of Pakistan

NEPRA Tower, Attaturk Avenue (East), G-5/1, Islamabad.
Tel: +92-51-9206500, Fax: +92-51-2600026
Web: www.nepra.org.pk, E-mail: registrar@nepra.org.pk

No: NEPRA/DG (Lic)/LAG-503/ 8467

June 07, 2024

Chief Executive Officer,
Faisalabad Electric Supply Company,
Abdullahpur, Canal Bank Road,
Faisalabad

Subject: **ORDER OF THE AUTHORITY IN THE MATTER OF REVIEW PETITION OF
FAISALABAD ELECTRIC SUPPLY COMPANY AGAINST THE GRANT OF
GENERATION LICENCE TO GRID EDGE (PRIVATE) LIMITED**

Reference: FESCO letter No. & dated nil (received on 12.05.2022)

Please find enclosed herewith the subject Order of the Authority (13 pages) in the matter of Review petition of FESCO against grant of Generation Licence to Grid Edge (Private) Limited for your information.

Encl: Order of the Authority (13 pages)

(Engr. Mazhar Iqbal Ranjha)

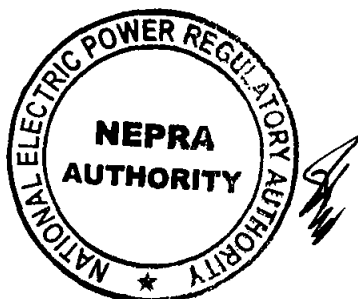
National Electric Power Regulatory Authority
(NEPRA)

Order of the Authority in the Matter of Review Petition of
Faisalabad Electric Supply Company against the Grant of
Generation Licence to Grid Edge (Private) Limited

June 07th, 2024
Case No. LAG-503

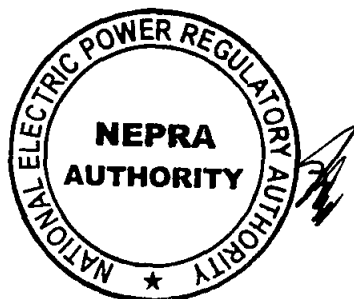
The Authority granted a Generation Licence (No. SGC/162/2022, dated April 11, 2022) to Grid Edge (Private) Limited (GEPL) for its 3.451 MW_p Photo Voltaic (PV) based generation facility to be located at Crescent Textile Mills Limited (CTML). The Authority also allowed Second Tier Supply Authorization (STSA) to the company/GEPL for supplying to CTML as its Bulk Power Consumer (BPC), along with the directions to apply for the grant of Supplier Licence under Section-23 of the NEPRA Act.

(2). Faisalabad Electric Supply Company Limited (FESCO) felt aggrieved with the above determination/decision of the Authority and filed a Review Petition on May 12, 2022 in terms of Regulation-3 of NEPRA (Review Procedure) Regulations, 2009 (the "Review Regulations"). The Authority admitted the said petition on June 02, 2022 and decided to offer an opportunity of hearing to FESCO and GEPL to present their cases. In this regard, the hearing was planned on a number of occasions but the same was deferred on the request of either FESCO or GEPL and was finally held on November 15, 2022 wherein, FESCO submitted that the Authority granted it a Distribution Licence (No. 02/DL/2002, dated March 02, 2002) under the provisions of NEPRA Act. FESCO submitted that it has developed its network which supplies electricity to around 4.60 million consumers located within its service territory comprising various districts of the province of Punjab.



(3). Further to the above, FESCO submitted that GEPL approached the Authority for the grant of Generation Licence for its 3.451 MW_p PV based generation facility to be located at the premises of CTML. In this regard, FESCO submitted that CTML is a textile mill that has obtained two connections from it [i.e. (a). Consumer No. 28-13128-53 13870 with 4.78 MW sanctioned load, and (b). Consumer No. 28-13128-53 13880 with 4.90 MW sanctioned load] under category B-3. The Authority invited comments of all the relevant stakeholders on the application of GEPL for the grant of Generation Licence and FESCO in its comments explicitly objected to the same. Despite the said, the Authority granted GEPL a Generation Licence No. SGC/162/2022, dated April 11, 2022) and authorization for supplying to CTML as a BPC.

(4). In its determination, the Authority observed, discussed and concluded that the facilities to be used for delivery of the electric power to CTML/BPC are located on its private property and will be owned, operated, managed and controlled by the BPC itself therefore, the supply of power to CTML by GEPL does not constitute a distribution activity under the NEPRA Act and therefore, GEPL will not require the distribution licence. FESCO submitted that the said observations endorse its submissions that the entire object of the activity is that CTML should own, operate, manage and control a generation facility for its own use and therefore, it will not require the Generation Licence otherwise, the generation of power from one facility/GEPL and its sale & supply to the other entity/CTML essentially is an 'activity which includes the "distribution" therefore, the determination and findings of the Authority are incorrect in terms of the NEPRA Act.



(5). Further to the above, FESCO submitted that the proposal of supply to CTML from GEPL has technical, financial and legal impacts. It was highlighted that the proposed Renewable Energy (RE) generation facility will not be benefiting the national grid and will be out of the purview of the Distribution Code however, utility/DISCO will have to keep the load demand of the CTML in consideration and has to procure electric power accordingly. FESCO stated that under the proposed arrangement CTML will continuously be changing its demand on the system without prior notice and the same may lead to safety issues, system instability, etc. while affecting the overall sale of energy from the national grid resultantly, causing an increase in tariff for the consumers connected with the national grid. In view of the said, there is an element of discrimination among the classes of consumers and shifting of the cost to such consumers and these aspects *prima facie*, have lost the regulatory capture of the Authority.

(6). FESCO submitted that the Authority in its determination has observed that the relevant regulations on BPC (s) are still under formation therefore, there are no rules on the issue. It is a fundamental principle that the exercise of discretion must be structured according to the relevant law (i.e. NEPRA Act in this case) and the rules. It is also important to submit that the subordinate legislation (Regulations) may not be used to take over or replace the Rules. Otherwise, on proper interpretation of the law, it may amount to excessive subordinate legislation offending the objective parameters for powers to make the Regulations.

(7). Further to the above, FESCO stated that in its determination, the Authority has referred to Section-21 of the NEPRA Act which is to be read in line with Sections-22 & 23 of the NEPRA Act and in this case, the amendments made to the NEPRA Act in 2018 shall have no force application due to the provisions of Section-50 of the NEPRA Act. Section-22 of the NEPRA Act requires that where a BPC intends to stop the purchase of power from the Distribution Company, it shall give three years advance notice and shall pay the amount of cross subsidy for



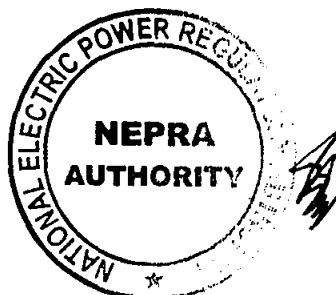
uneconomic services. Further, even in the amended NEPRA Act, a notice is required though, for a period of one year and without payment of the amount of cross subsidy. In this case, FESCO has not received any notice of stoppage from the CTML which the Authority declared as the BPC in its Determination. It is more significant where CTML/BPC has two connections/facilities of 4.70 MW and 4.90 MW sanctioned loads at one premises whereas the proposed generation facility is of 3.451 MW_P. Therefore, the BPC shall be dependent on FESCO and will not terminate the supply rather will have another independent source. In this regard, the determination has failed to consider the legal and financial impacts of this proposal of allowing a generation company supplying to BPC(s).

(8). FESCO submitted that the Authority in its determination *inter alia* discussed (i). misuse of tariff, (ii). exclusivity, and (iii). not serving notice under Section-22 of the NEPRA Act. In this regard, the Authority did not consider the comments of CPPA-G on the impact of such arrangements on the recovery of the pool purchase price. The determination, should not be based on a particular factual arena of a case but rather on law/principle and not the doctrine of necessity. The assumption of "natural growth" by the Authority favors the position of FESCO that CTML is intending to have the independent facility to circumvent the otherwise due increase/change in consumer category to B-4. The impact of this vague submission on the part of CTML (through GEPL) is that the Authority has observed in its impugned determination that CTML has confirmed that it will continue to maintain its supply from FESCO therefore, the question of notice period does not arise. Unilateral variation in load and obtaining/entering into a contract for the supply of another source is not permissible under the law, notwithstanding the omission of the proviso clause of Section-21(b) of the NEPRA Act through the post amendment(s).



(9). Further to the above, FESCO submitted that the determination of the Authority with regard to Section-22 of the NEPRA Act is without taking into account the complete submissions of FESCO. In this regard, FESCO has made a detailed presentation, followed by the written submissions, on its renewal of licence application and believes that the impact of the judgment of the Islamabad High Court (IHC) is not till the validity of the licence period alone. The attention of the Authority is drawn to the provisions of the NEPRA Act, the post Amendment(s) in it, the judgment of IHC and the ground realities and facts that still surround the otherwise volatile power market with the least regulatory control. Further, the attention is invited to the fact that even the post Amendment(s) in NEPRA Act, does not make it mandatory to take away the exclusivity but it is in discretion of the Authority to make decisions in appropriate cases under the structured exercise of discretion, for which the Federal Govt. is still to be notify the rules.

(10). FESCO contented that this facility will be on the grid system. In contrast, it provides for an isolated distribution facility through underground cables from the generation resource to the consumer point of supply. The details regarding interconnection arrangement are vague as it simply says that power generated will be supplied to different units of CTML which is inconsistent with the application for supply to Unit-I and Unit-II. The STSA has been allowed for CTML whereas the case involved two connection holders/consumers of FESCO and both fall under the definition of the BPC(s) i.e., CTML Unit-I (4.78 MW) and CTML Unit-II (4.90 MW). The application and licence portray CTML as a single consumer having a load requirement of around 9.65 MW whereas such a consumer should have the connection of Category B-4 and a single connection at the site. There is no appropriation of generation to Unit-I and Unit-II as both are fed through independent feeders of FESCO. Unlike the assumption of the Authority of the natural growth in the load demand, there is no such contention/claim on record. Even the single line diagram failed to establish the point of installation, its nature (solar farm, rooftop, etc.), feeder lines, panel room, feeders and the location of the generation facility based on the units or composite CTML as single premises

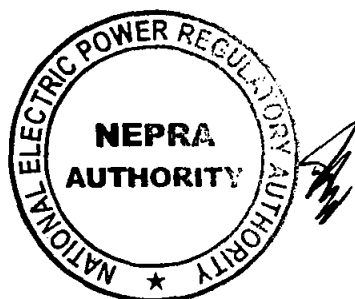


therefore, without conceding the legal submissions the Authority is requested to reconsider its decision/determination. Further to the above, the determination of the Authority has not taken into consideration the impact of the cross subsidization that is to be considered in all such cases. FESCO submitted that there is an essential financial impact on the utility because it has to pay the Power Purchase Price inclusive of the "Fixed Charges" to the power plants established under different power policies to ensure the provision of electric power. FESCO prayed that its Motion for Leave to Review be accepted and accordingly the Generation Licence and the STSA granted be revoked and the application of GEPL be rejected.

(11). The Authority also allowed an opportunity to CTML to give its perspective in the matter to justify the arrangement that it had entered into with GEPL for supplying to it. In this regard, CTML submitted that it is one of the companies of Crescent Group which has built an outstanding reputation in the business community of the country with over sixty (60) years of experience in diversified business in the textile, sugar, banking, insurance, food, agriculture and steel sectors. Further to the said, CTML submitted that it started its business as a private Limited company in 1950 and subsequently converted into a publicly listed company. It is a state-of-the-art vertically integrated textile manufacturing company known for its world-class textile development and exports. CTML engaged in the manufacturing of supreme quality yarn, greige, processed fabrics, home textiles, and institutional garments. CTML has a passion for innovation and quality standardization which keeps us ready for today and tomorrow. The infrastructure and services are backed by innovative products and solutions that deliver enhanced results to our customers. Further, the HR philosophy is to provide a conducive environment with a special focus on career development and enabling the employees to deal with the challenges of today and tomorrow. The company sells its products to local as well as international markets in Europe, USA, Australia and the Asian Pacific regions. The result has helped CTML to attain a unique blend of highly motivated individuals well equipped with a global perspective, thus



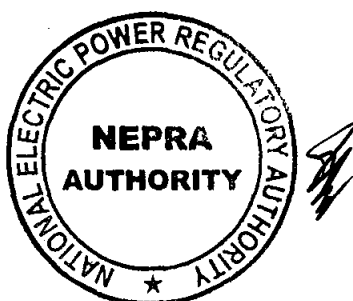
enabling it to suitably serve the needs of the customer worldwide. The company has pioneered the local textile industry and has established strong corporate values while ensuring an environmental friendly manufacturing process. With all the continuous efforts, CTML has now become one of the largest textile manufacturing units in Asia, exporting its products worldwide. In this regard, CTML through the use of high-tech equipment and modern techniques, is able to cope with the latest trends without compromising on quality and make the company the preferred choice of top textile brands of the world. CTML has set up its generation facility as Captive Power Plant (CPP) that gives us the flexibility and reliability to control and maintain an uninterrupted power supply for the production facilities. CTML is the first textile company in the country to implement Six Sigma business philosophy and get its employees trained as black belts in various functional areas. CTML submitted it is located in the heart of the city of Faisalabad and is primarily getting supply from the concerned utility which is FESCO. In view of the location of the facility, the transmission and distribution network of the DISCO/FESCO is not very reliable and CTML faces outages resulting not only in disruption in power supply for the process but also in wastage of the material, resulting in heavy losses and quality control issues. In order to cope with the said situation, CTML has set up CPP consisting of various fossil fuels including Furnace Oil, Natural Gas and Diesel Oil. In the last decades, the prices of all the said fuels have gone exponentially high increasing the cost of production which is causing serious issues about competitiveness in the international market. Further to the said, CTML submitted that during the last decades, there has been greater emphasis on climate change worldwide. In consideration of the said, there is been enormous pressure from all the stakeholders to reduce the carbon footprints by cutting the consumption of fossil fuels for power generation and instead utilize Renewable Energy (RE) resources for power generation. CTML submitted that now its clients which are all top fashion brands, have a policy to reduce the emissions of greenhouse gases in their complete supply chain to the tune of 40% by 2025 whereas it has so far arranged only 28% therefore the utilities must realize these



facts which the export-oriented industries are facing and should facilitate to bring the precious foreign exchange for the country instead of creating bottleneck for one reason or the other. CTML submitted that the supply of electric power from GEPL will mainly reduce the supply from CPP which is operated on fossil fuel to meet the requirement of its clients which are under obligation to have input/material from carbon neutral sources. In view of the above, the Authority should consider a broader aspect of the issue and should reject the Review Motion of FESCO and maintain its earlier decision whereby it had allowed the grant of Generation Licence to GEPL and allowed supplying to it from its two distinct solar based generation facilities.

(12). The Authority considered the above submissions and observed that FESCO has raised various observations contesting that (a). the premise that GEPL does not require a distribution licence is wrong otherwise it would not require the Generation Licence; (b). the grant of Generation Licence to GEPL will cause shifting of cost to other consumers of DISCO(s); (c). the relevant regulations for the supply of electricity are still not formed; (d). no advance notice has been served to FESCO for stoppage of supply to CTML; (e). the decision shall be based on law and principle and not on the basis of the factual arena; (f). CTML intends to have an independent facility to circumvent due increase/change in consumer category to B-4; (g). unilateral variation in load and entering into a supply contract from another source is not permissible under the law; (h). detail with regard to interconnection arrangement is vague; (i). determination has not taken into account the impact on consumer subsidization; and (j). there is an essential financial impact on remaining consumers.

(13). In consideration of the above the Authority would like to clarify that in its original determination of April 11, 2022 it had deliberated and addressed the issues that different stakeholders and reiterates the same. Further to the said, the Authority to avoid any doubt hereby gives its determination on the observations of FESCO. In this regard, FESCO had contested that (a). the premise that GEPL



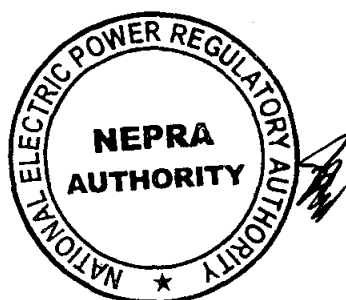
does not require a distribution licence is wrong otherwise it would not require the Generation Licence. In consideration of the said, the Authority would like to clarify the arrangement involved in the current case and the relevant regulatory regime in the matter. As explained in the preceding paragraphs GEPL had submitted an application for the grant of Generation Licence for its 3.451 MW_p PV based generation facility to be set up at CTML for supplying the same to it as BPC. In view of the above, it is a case of sale and purchase between two different legal entities therefore, GEPL lawfully applied for the grant of Generation Licence in terms of Section-2 (xi) and Section-14(B) of the NEPRA Act. Further to the said, GEPL is supplying electric power through the feeders(s)/cables which the consumer/CTML owns, maintains and operates. In this regard, reference is made to Section-2(v) of the NEPRA Act which stipulates that facilities located on private property and used solely to move or deliver electric power to the person owing, operating, managing and controlling those facilities or to tenants thereof do not fall under the ambit of distribution. Further to the said, reference is made to Section-2(iia) of the NEPRA Act, according to which a CPP is a facility/setup used to generate electricity primarily for its own use which is not the position in the current case wherein GEPL has the plan to set up a dedicated facility for supplying electricity to CTML. In view of the said explanation, the very understanding of FESCO that GEPL requires distribution licence otherwise it would not requires the Generation Licence is not correct and is against the NEPRA Act.

(14). About the observations of FESCO that the grant of Generation Licence to GEPL will cause shifting of cost to other consumers of DISCO, the Authority provided at least two (02) to three (03) different opportunities to FESCO to make a case in this regard. Despite the said, FESCO failed to justify and provide any concrete evidence about any reduction in the units supplied to CTML from its network/system and continues to insist that the proposal is detrimental to it. In view of the said, the Authority directed GEPL to provide the details of units supplied to CTML from the PV based generation facility. Also, the Authority directed CTML to provide details of the units received from the National Grid through FESCO and



the required detail on the impact of the PV solar based generation on the units being received from the utility. In this regard, CTML submitted that it is one of the leading textile manufacturing entities involved in the complete supply chain producing premium yarn, fabrics, home textile goods, and industrial garments for the last seven (07) decades, serving customers on a global scale with a notable presence in European, UK, and American markets, serving esteemed international brands. In order to meet its requirements for electricity it has got two (02) connections with FESCO and to supplement the same, has also set up a CPP of more than 20.00 MW of different fuels including Natural Gas, Furnace Oil and Diesel Oil. The electric supply from FESCO has its issues of stability and reliability, resultantly the above-mentioned CPP has also been operated on a continuous basis. Lately, there have serious developments in various sectors whereby the foreign clients have made it mandatory to switch to RE energy for their processes. Further, there has been a drastic reduction in the supply of Natural Gas to the CPP and a sharp rise in the prices of Furnace Oil and Diesel oil. All the said factors have forced CTML to look into other sources of energy/electricity especially to RE not only to cut the cost of production but also to meet with requirements of the clients. In consideration of the said, CTML decided to approach the installation of PV based generation facility. In this regard, CTML elaborated that after the installation of the PV based generation facility, no reduction in the consumption of electric supply has been observed, in fact, the same has increased as the operation of CPP has been curtailed therefore, the assertion of FESCO that installation of the PV based generation facility is detrimental is not based on facts. The Authority has considered the submissions of CTML which FESCO did not refute despite providing the opportunities therefore, it is concluded that the installation of the facility has not caused any detrimental impact on the utility.

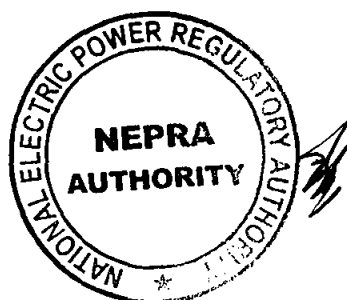
(15). Regarding the comments of FESCO that the relevant regulations in terms of Section-2(ii) read with Section-2(xxva) and Section-47 of the NEPRA Act, have not been framed thus undermining fundamentals of law, the Authority has reviewed, considered and deliberated the matter again and has observed that



the legislature did not obligate it for specifying the regulations under Section-2(ii) of the NEPRA Act as it used the word "may". In this regard, the Authority hereby clarifies that in the legislative construction, the use of the word "may" is optional in nature and not a mandatory requirement under the law and the legislature provided discretionary powers to the Authority to exercise the same considering the circumstances. In view of the said, the Authority considers that the objections of FESCO that it has not framed/issued relevant regulations, thus undermining fundamentals of law does not merit any consideration.

(16). In its review motion, FESCO submitted that CTML did not give any advance notice to it for the stoppage of supply. In this regard, the Authority deliberated the matter in the hearing held wherein CTML categorially confirmed that it will continue to purchase electric power from the DISCO/utility/FESCO therefore, the matter of giving notice to the utility is not applicable. The Authority has considered the submissions of CTML as explained and consider the same pragmatic and in-line with the utility practices and regulatory framework.

(17). About the observation of FESCO that CTML intends to have an independent facility to circumvent due increase/change in consumer category to B-4, the Authority directed CTML to clarify its position in the matter. On the said, CTML submitted that it has two connections and the same have been operational for the past many decades and there is no other change except the shifting of the load of the CPP to the PV based solar generation which GEPL has set up for dedicated supply to it. Further to the said, CTML submitted that in the past it took up the matter with FESCO for enhancement of load but the same was declined due to certain constraints. In view of the said, the observations of FESCO do not merit any further deliberation.



(18). In its review motion, FESCO has made the observation that with the installation of PV based generation facility, there will be unilateral variation in load and entering into supply contract from another source is not permissible under the law. In this regard, the Authority directed FESCO to elaborate its point of view considering the fact that it is not the first system that has been installed in its network and a large number of solar systems in net metering mode are operating and the only difference is that in the current case a third party has installed the system whereas in other cases the consumer itself install such facilities however, the general pattern of both is the same considering the availability of sun. In this regard, FESCO did not submit any convincing argument instead GEPL confirmed that any information that the utility will require be provided. The Authority has considered the said submissions and is of the view that observations of FESCO about the variation of load are not pragmatic at all therefore, the same are not worth considering. Similarly, the other observations of FESCO about the other source for CTML are also not in-line with the practical situation as most of the industry and even the general consumer maintain some alternate source for the reliability, stability and continuity of supply and there is no regulatory impediment in this regard and the Authority had allowed similar arrangement in the past.

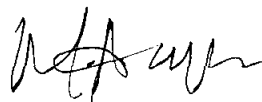
(19). Regarding the observations of FESCO that details with regard to interconnection arrangement are vague, the Authority considers that all the relevant details have already been provided in the granted Generation Licence and further the details of feeders, etc. have also been elaborated while addressing the observations of FESCO on distribution licence. About the observations that the determination has not taken into account the impact on consumer subsidization, the Authority has concluded that there is no reduction in the supply of electricity from FESCO therefore, the issues of subsidization and the financial impact on remaining consumers do not arise. In consideration of the above, the Authority stresses that its determination in the matter of the grant of Generation Licence to GEPL for supplying to CTML is in-line with the regulatory framework and principles



of law. In view of the above explanation, the Authority considers that the Review Petition of FESCO does not merit any consideration and therefore the same is rejected.

Authority

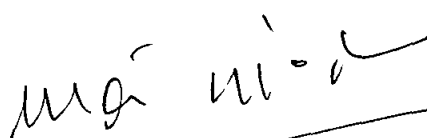
Maqsood Anwar Khan
(Member)



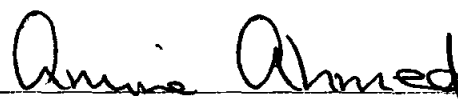
Rafique Ahmed Shaikh
(Member)



Mathar Niaz Rana (nsc)
(Member)



Amina Ahmed
(Member)



Waseem Mukhtar
(Chairman)

