



Registrar

National Electric Power Regulatory Authority

Islamic Republic of Pakistan

NEPRA Tower, Ataturk Avenue (East) G-5/1, Islamabad
Ph: +92-51-9206500, Fax: +92-51-2600021
Web: www.nepra.org.pk, E-mail: info@nepra.org.pk

No. NEPRA/TRF-236/PESCO-2013/6304-6306
June 17, 2014

Subject: Decision of the Authority in the matter of Motion for Leave for Review filed by Peshawar Electric Supply Company Ltd. (PESCO) against Tariff Determination of the Authority dated April 28, 2014 [Case # NEPRA/TRF-236/PESCO-2013]

Dear Sir,

Please find enclosed herewith the subject Decision of the Authority (05 pages) in the matter of Motion for Leave for Review filed by Peshawar Electric Supply Company Ltd. against Authority's Tariff Determination dated 28.04.2014 in the matter of petition filed by Peshawar Electric Supply Company Ltd. for determination of its consumer-end tariff pertaining to FY 2013-14 in Case No. NEPRA/TRF-236/PESCO-2013 for information.

Enclosure: As above

(Syed Safeer Hussain)

Secretary
Ministry of Water & Power
'A' Block, Pak Secretariat
Islamabad

CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.



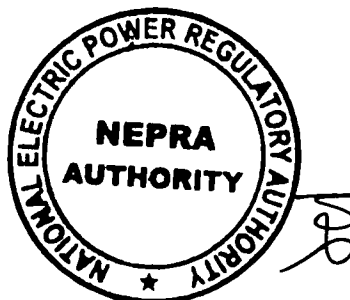
**DECISION OF THE AUTHORITY IN THE MATTER OF MOTION FOR LEAVE FOR
REVIEW FILED BY PESHAWAR ELECTRIC SUPPLY COMPANY (PESCO) AGAINST
TARIFF DETERMINATION OF THE AUTHORITY DATED APRIL 28, 2014**

1. Background

- 1.1 Peshawar Electric Supply Company Limited (PESCO), hereinafter called "the Petitioner", being a Distribution Licensee of NEPRA filed motion for leave for review vide letter no. 2386-87/FD/PESCO/CP&C on May 09, 2014 against the Authority's decision dated April 28, 2014 pertaining to the FY 2013-14. The Motion for review was based on the following issues / contentions:
- i) Revision of T&D losses target to 31% from determined target of 20% for FY 2013-14;
 - ii) Assessed sales growth of 21% should be reduced up to required increased of 4% for the FY 2013-14;
 - iii) Requested D.M of Rs 2.16/kwh may be allowed against determined Rs.1.26/kwh for FY 2013-14;
 - iv) Prior Year Adjustment may be corrected as per detail given for FY 2013-14;
 - v) Return on Rate base may be allowed as per requested for FY 2013-14;
 - vi) Adjustment on sale Mix may be revised for FY 2013-14;

2 Proceedings

- 2.1 The Review motion was admitted by the Authority on 21st May, 2014. In order to give a fair opportunity of hearing to the Petitioner, a hearing was scheduled on June 12, 2014. Accordingly, Notices of admission were sent to the interested persons and stakeholders for hearing to be conducted on 12th June, 2014 at NEPRA's head office. In response to the notice of hearing comments were received in writing from Finance Department, Government of Kyber Pakhtunkhwa and multiple commentators raised comments during the hearing. During the hearing, the Petitioner was represented by its Chief Executive Officer and Finance Director.

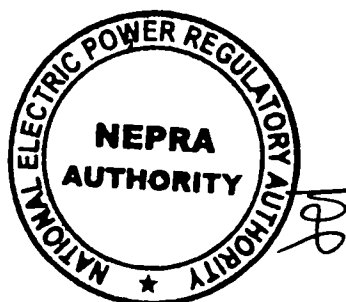




3. Concern raised by the Commentator

3.1 The Finance Department, Government of Khyber Pakhtunkhwa filed comments in respect of review motion of PESCO, received on 13th June, 2013 through their legal advisor Shumail Ahmad Butt who also attended the hearing. The comments raised were as below;

- That the Review Motion Filed by PESCO is clearly time-barred in terms of Rule 16(6) of the National Electric Power Regulator Authority (Tariff Standards and Procedure) Rules, 1998.
- That as drafted, the Motion for Review amounts to a total reopening of the matter on all possible scores, which is not mandated by the law.
- That the Petitioner has neither brought forth discovery of any new and important evidence nor has pointed out any glaring mistake or error floating on the face of record, which are the pre-requisites for invoking provisions of review, as provided by the Rule 3(2) of the National Electric Power Regulatory Authority' (Review Procedure) Regulations, 2009.
- That the Petitioner is trying that the Authority may sit in appeal over its own judgment and that too, on facts and figures that were already made available during determination proceedings and were accordingly considered and discarded with detailed reasoning by the Authority.
- That the Authority cannot upend and reverse its earlier findings, that have been given with sound rationale.
- That the Petitioner is trying to enlarge the scope of review and thus trying to give colors of appeal to these proceedings, which is not the mandate of law as provided in the Act, 1997.
- That as regards the T&D losses, Para 12.4 to Para 12.7 of the determination under review are self explanatory and in line with the mandate of Section 31 and guidelines provided for determination of tariff in Rule 17 of the National Electric Power Regulator. Authority (Tariff Standards and Procedure) Rules, 1998, whereas the grounds agitated for seeking such review are neither new nor claiming some error or mistake.
- That as regards the sale growth, it is again directly connected with target T&D losses determined by the NEPRA and the Petitioner is wrongly insisting on lesser sale growth target to indirectly get the target for T&D losses revised upwards.

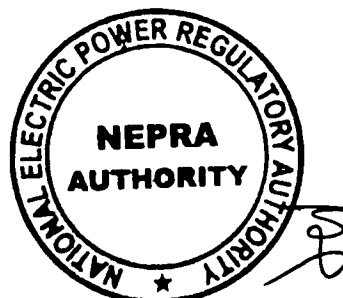




- That as regards the Distribution Margin, PESCO is already charging one of the highest DMs across the system and over and above that, their insistence of further escalation of DM would amount to crucifying the consumers.
- That as regards salaries and wages, the Authority has dilated the subject at length in Para 16.2 while taking into account the anomalies and non-compliance on part of DISCO so far as the directions of this Authority are concerned. The Petitioner did not produce certificate of the Auditor certifying only "replacement hiring" and rather gone on to induct a myriad of non-productive and non-technical staff with high cost impact. The Petitioner is also not appreciating the fact that the Authority has shown serious reservation of matter of separate registered pension fund. The Petitioner, while seeking review, has also ignored the observation of the Authority in Para 16.2.7 in the matter of ex-WAPDA employees' pension.
- That if the issue on wages and salary is reviewed, this would tantamount to review of determination for FY2012-13, wherein only "replacement hiring" was allowed.
- That on the matters of Repairs and Maintenance (R&M), Traveling Expense, Vehicle Running Expense and other expenses, the Petitioner has not place before Authority, any new grounds and rather have repeated the old story which was already considered and opined about, correctly by the Authority.
- That as regards the depreciation and Return on Rate Base the Authority has deliberated in detail and the reasoning advanced by the Authority has not been negated by the Petitioner on the score of new discovers or error.
- That as regards the "Provisions for Bad Debts", this Authority has been consistently refusing it since FY2011-12. Any review would amount to disturbing such earlier determinations as well.
- That so far the Sales Mix and Average Sales Rate are concerned, the Honorable Authority has given thorough consideration to these issues at the time of determination whereas the Petitioner again is merely presenting the old figures without any rhyme or reason to justify an uncalled for review.
- That the Authority has earlier dismissed a number of Review Motions by PESCO for earlier determinations on the same grounds, agitated hereinbefore.
- It is therefore very humbly prayed that in light of these Written Comments, the Review Motion may very graciously be dismissed with heavy costs.

3.2 The Authority's response on the comments is as below;

- The tariff determination of PESCO for the FY 2013-14 was served by the Authority on 28th April, 2014 and received by the Petitioner on 30th April, 2014. As per Rule 16(6) of tariff standard and Procedure Rules, 1998 (Rules), the Petitioner is allowed to file a motion for leave for review in respect of the decision within ten





days of the service of decision. Consequently, Petitioner filed a review motion on 9th May, 2014 which was received on the same date and hence was well within time allowed by the above stated rule and admitted by the Authority.

- The Authority has gone through the observations made by the commentators and also considered the submissions of the Petitioner upon Authority's decision. The Authority hereby brings on record that in terms of regulation 3(2) of the NEPRA (Review Procedure) Regulations, 2009, a motion seeking review of any order of the Authority is competent only upon discovery of new and important matter of evidence or on account of some mistake or error apparent on the face of record.

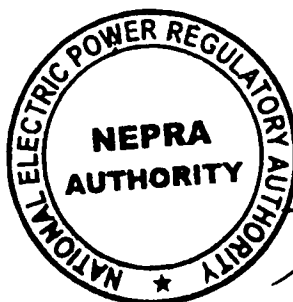
3.3 Certain other commentators also attended the hearing including representatives of Dewan cement, Volta Batteries, Lyallpur Textile, Nova Synpac (Pvt) Limited, English Biscuit manufacturers, Energy Monitoring cell, Government of Khyber Pakhtunkhwa, Bestway cement and Suntronics. The Authority has noticed that concerns raised by the commentators have been given due consideration by the Authority in determining the tariff of PESCO for the FY 2013-14, and none of the comment pertains to the instant decision of Motion for leave for review and hence merits no discussion at this stage.

4. Decision

4.1 Having heard the Petitioner as well as the stakeholders, the Authority observes that the Petitioner has failed to provide any additional or new evidence in support of its reconsideration request.

4.2 Keeping in view the above stated facts, the Authority is of the view that in terms of regulation 3(2) of the NEPRA (Review Procedure) Regulations, 2009, a motion seeking review of any order of the Authority is competent only upon 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 a determination sought to be review clearly indicates that all material facts and representation made were examined in detail and there is no occasion to amend the impugned determination.

4.3 The Prior Period Adjustment mentioned at para 14.2 of the decision dated 28th April, 2014, was worked out on the expectation that the aforementioned decision would be notified in line with other XWDISCOs decision pertaining to the FY 2012-13. However, GOP notified the said decision of the Authority pertaining to the FY 12-13 on 25th April 2014, with immediate effect. In view of the aforementioned notification, the Authority would have to rework the already assessed PYA along with the assessment of FPAs, if any. But in order to do so, the Authority would have to follow the legal procedures by involving the relevant stakeholders. Thus, the Authority has decided to take up this matter separately and intend to initiate a Suo





motion proceeding under Rule 3 (1) of NEPRA Tariff Standard & Procedure Rules ,
1998 on the subject of FPA and Prior Period Adjustments.

- 4.4 From what has been discussed above, the Authority is of the considered view that the
grounds agitated in the motion for leave for review are not sufficient enough justifying
the modification of the impugned determination, hence the motion for leave for
review is declined.

AUTHORITY

(Major (R) Haroon Rashid)
Member

(Khawaja Muhammed Nacem)
Member

16/6/2014
(Habibullah Khilji)
Vice Chairman
17.06.14