



**National Electric Power Regulatory Authority**  
Islamic Republic of Pakistan

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OFFICE OF THE  
REGISTRAR

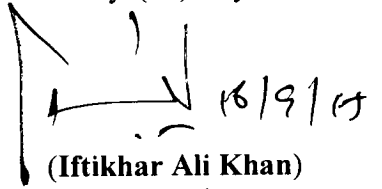
No. NEPRA/R/CAD/TCD-01/13796-99

September 16, 2015

Chief Executive Officer  
Peshawar Electric Supply Company (PESCO)  
WAPDA House, Sakhi Chashma, Shami Road,  
Peshawar

Subject: **DECISION IN PURSUANCE TO THE ORDER OF THE HONORABLE  
PESHAWAR HIGH COURT DATED 25<sup>TH</sup> MARCH 2015 IN WRIT  
PETITION NO. 2958-P OF 2013: MIAN MUHAMMAD AYAZ AND  
OTHERS AGAINST PESHAWAR ELECTRIC SUPPLY COMPANY  
(PESCO) AND OTHERS  
PESCO-32/2015**

Please find enclosed herewith the decision of NEPRA dated September 15, 2015 regarding the subject matter for necessary action and compliance within thirty (30) days of receipt of this decision.

  
(Iftikhar Ali Khan)  
Deputy Registrar

Copy to:

Additional Registrar (Judicial)  
Peshawar High Court, Peshawar

{ w.r.t. orders dated 25.03.2015  
in W.P. No. 2958/2013. }

C.E./Customer Service Director  
Peshawar Electric Supply Company (PESCO)  
WAPDA House, Sakhi Chashma, Shami Road,  
Peshawar

Mr. Shahid Nasim Khan Chamkani, Advocate  
On behalf of Mina Muhammad Ayaz & Others,  
TF-49-50, Deans Trade Centre, Peshawar Cantt.



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

**Complaint No. PESCO-32/2015**

Mian Muhammad Ayaz S/o Mehrab Gul and others ..... **Petitioners**  
Tehsil and District Nowshera.

**Versus**

Peshawar Electric Supply Company (PESCO), ..... **Respondent**  
WAPDA House, Sakhi Chashma,  
Shami Road, Peshawar.

**Date of Hearing:** 5<sup>th</sup> May 2015

**Date of Decision:** September 15, 2015

**On behalf of:**

**Petitioners:** 1) Mr. Shahid Khan  
2) Mr. Shiraz

**Respondent:** 1) Mr. Bakht Zada, Superintending Engineer, Khyber Circle  
2) Mr. Riaz Kakar, XEN, Nowshera Cantt.  
3) Mr. Mishal Khan, D.C.M, Khyber Circle  
4) Mr. Ikramullah, SDO (Opr.), Akora Khattak Sub-Division  
5) Mr. Inam Akbar, Revenue Officer, Nowshera Cantt.

**Subject:** **DECISION IN PURSUANCE TO THE ORDER OF THE HONORABLE PESHAWAR HIGH COURT DATED 25<sup>TH</sup> MARCH 2015 IN WRIT PETITION NO. 2958-P OF 2013: MIAN MUHAMMAD AYAZ AND OTHERS AGAINST PESHAWAR ELECTRIC SUPPLY COMPANY (PESCO) AND OTHERS**

**Decision**

1. Pursuant to the Orders of the Honorable Peshawar High Court dated 25<sup>th</sup> March 2015 in Writ Petition No. 2958-P/2013 i.e. Mian Muhammad Ayaz S/o Mehrab Gul and Others vs PESCO and Others, this decision shall dispose of complaint of Mian Muhammad Ayaz and Others (hereinafter referred to as "the Petitioners" or the "Complainants") under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 against Peshawar Electric Supply Company (hereinafter referred to as the "Respondent" or "PESCO").

2. Brief facts of the case are that the Petitioners filed a Writ Petition No. 2958-P/2013 dated 11<sup>th</sup> October 2013 before the Honorable Peshawar High Court wherein they stated (inter alia) as under:

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- i) They are agriculturists and irrigate their land through agriculture tube wells which are being governed by tariff D-2. They and their tenants have been paying their electricity bills regularly.
- ii) All of sudden, PESCO charged them additional amount of Rs. 2,81,400/- as arrears which was a result of some audit para where NEPRA directed PESCO to charge all the agriculture consumers under tariff D-1(a) (which is meant for SCARP tube wells). The respondents have debited belated audit para in the bills of the consumers which is unjustified and baseless.
- iii) Akhora Khattak Sub Division, where tube well connections of the Petitioners are installed is not the area under SCARP, as such applying tariff D-1(a) to non SCARP or non TOU agriculture tube well is discrimination to the Petitioners and in fact tariff D-2 is applicable to such tube wells. The respondents cannot demand excessive amount on the basis of wrong and belated audit paras.
- iv) PESCO is not legally justified to recover the losses from the consumers sustained to it due to their own inaction, mismanagement and incompetency. The application of tariff is responsibility of PESCO and consumers cannot be penalized for the failure of proper application of the tariff.
- v) The agriculturist leased out their lands to lessees for specific time and the respondents have come up with penal amount when even the real consumers have already left.

3. The Honorable Court vide its judgment dated 25<sup>th</sup> March 2015 converted the petition into complaint and forwarded the same to NEPRA for decision. The Orders of the Honorable Court were received to NEPRA on 16<sup>th</sup> April 2015. To investigate the matter, a hearing was held on 05<sup>th</sup> May, 2015 at NEPRA Head Office, Islamabad which was attended by representatives of both the parties who argued their respective case and also submitted their written comments.

Version of the Petitioners:

The representatives of the Petitioners stated that they had been regularly paying their bills but all of sudden PESCO added arrears in the bills of the Petitioners on account of some audit observation which is unjustified. Mostly the land lords including the Petitioners have leased out lands to tenants and the tenants after expiry of lease period and payment of dues had gone and now due to charging of arrears, the Petitioners have to suffer. They requested that the amount debited on account of audit paras be withdrawn by PESCO.

Version of the Respondent:

PESCO representatives stated that NEPRA started determination of tariff in February, 2007 and as per licensing terms and conditions, DISCOs are bound to charge only such tariff, which is determined by NEPRA. Before determination of tariff by NEPRA, Agriculture tube wells excluding SCARP were billed under Tariff D-2 irrespective of the load. As per SRO No. 153(I)-2007 dated 24<sup>th</sup> February, 2007; conditions regarding Agriculture supply are reproduced as under:

D-1(a):

- i. This tariff is applicable to all Reclamation and Drainage Operation pumping under SCARP related installation having sanctioned load of less than 20 kW.
- ii. Consumers having sanctioned load upto 20 kW shall be billed on single part kWh rate i.e. D-1(a) tariff given in the Schedule of Tariff.

D-1(b):

- i. This tariff is applicable to all Reclamation and Drainage Operation pumping under SCARP related installation and other consumers falling under Agriculture Supply having sanctioned load more than 20 kW.
  - ii. All new consumers having sanctioned load exceeding 20 kW shall be billed on the basis of Time-of-Use (T.O.U) tariff D-1(b) given in the Schedule of Tariff.
- That sanctioned load limits were reduced and categorized as (up to 5 kW) and (above 5 kW) instead of upto 20 kW and above 20 kW vide SRO NO.966 (1)/2008 dated 5<sup>th</sup> September 2008. Time frame for installation of TOU meters was extended up to 30<sup>th</sup> June, 2010. Similarly the load limits were further reduced as (less than 5 kW) and (5 kW & above) instead of the previous load limits vide SRO No.1132 (1)/2009 dated 21<sup>st</sup> December, 2009.
  - The time frame for installation of TOU meters also changed from time to time whereas other conditions remained intact till the time SRO No.491 (1)/2012 dated 9<sup>th</sup> May 2012 was issued wherein changes in condition regarding application of tariff D-1(a), till installation of TOU meters to agricultural tube wells consumers (irrigation) were brought.
  - NEPRA has twice clarified application of tariff to agricultural tube wells vide Senior Advisor CAD letter dated 8<sup>th</sup> July 2010 and Registrar NEPRA letter dated 3<sup>rd</sup> December 2010 by clearly mentioning that Audit has correctly pointed out the uncharged amount.
  - The tariff is actually applicable from February 2007, however due to lack of provision in the software; the same could not be implemented in time and later on overhauled by the Audit.
  - According to Abridged Conditions of Supply, duly signed by the consumers at the time of obtaining new connections, the method of charging for the supply given to the consumers by the Authority shall be those prescribed in the Authority's Schedule of Electricity Tariff in force from time to time.

5. The case has been examined in detail in light of the record so made available by the parties, arguments advanced during the hearing and applicable law. The following has been observed:


- i. The Petitioners are agriculture consumers of PESCO having sanctioned load within the limit of 6 kW to 15 kW. As per determinations of NEPRA, Time of Use (TOU) meters were required to be installed at the Petitioners' premises and D-1(b) tariff was to be applied accordingly but PESCO did not install TOU meters within the stipulated time. Further, as per the determinations of NEPRA, D-1(a) tariff was required to be charged till installation of TOU meters. In the instant cases, PESCO neither installed TOU meters at these premises nor charged D-1(a) tariff as required under notified tariff terms and conditions. The consumers were charged D-2 tariff instead of tariff D-1(a).
- ii. The reference of Abridged Conditions of Supply given by PESCO has no relevance in the instant cases. PESCO itself failed to apply correct tariff as determined by NEPRA. Further, in NEPRA's clarification dated 8<sup>th</sup> July 2010 and 3<sup>rd</sup> December 2010 quoted by PESCO, there was no such direction that the amount(s) be debited to the consumers retrospectively.
- iii. PESCO applied wrong tariff i.e. D-2 to the Petitioners instead of D-1(a) as determined by NEPRA. The internal audit of PESCO pointed out the discrepancy i.e. wrong application of tariff and advised the management to debit arrears against these consumers for the period from November 2009 to August 2011. The consumers had legitimate expectancy that what was being billed to them was actually the cost of electricity consumed. PESCO cannot be allowed to recover the loss of revenue from any consumer which it sustained due to the mismanagement

within the Company i.e. non-availability of software or whatsoever for carrying out correct billing. This shows inability, incompetence and negligence on part of PESCO.

- iv. The Audit para is an internal matter between PESCO and its Audit department. The consumers cannot be made liable for payment of any amount/arrears which is pointed out by the Audit. Further, the consumers cannot be penalized due to negligence of PESCO; therefore arrears charged against the Petitioners are illegal, unjustified and unwarranted.
- v. Earlier a similar nature of complaint was received at NEPRA from Project Director, Energy Monitoring Cell, Government of Khyber Pakhtunkhwa against PESCO. The said complaint was decided by NEPRA wherein arrears raised on observations of Audit against the tube well connections on account of wrong application of tariff by PESCO were declared illegal. The said decision was implemented by PESCO.

6. Foregoing in view, PESCO is directed to withdraw the arrears charged against the Petitioners on the observation of audit, being illegal and unjustified.

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

  
( Maj (R) Haroon Rashid ) 15/9/15  
Member (Consumer Affairs)

Islamabad, September 15, 2015

