



Before the Appellate Board
National Electric Power Regulatory Authority
(NEPRA)
Islamic Republic of Pakistan

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No. NEPRA/AB/Appeal-035/POI-2018/093-097

January 14, 2019

1. Saifee Flour Mills
Through Muhammad Ayaz Tahir,
Village Kotha, Topi Road,
District Swabi
2. Chief Executive Officer
PESCO Ltd,
WAPDA House, Sakhi Chashma,
Shami Road, Peshawar
3. Mehmood Khan
Advocate High Court,
Tehsil Courts, Havelian,
District Abbottabad
4. Executive Engineer (Operation)
PESCO Ltd,
Topi Division, Jehangira Road,
Swabi
5. Electric Inspector/Provincial Office of Inspection,
Peshawar Region,
Benovelent Fund Building,
3rd Floor, Near Jas Bakers,
Peshawar Cantt

Subject: Appeal Titled PESCO Vs. Saifee Flour Mills Against the Decision Dated 20.11.2015 of the Electric Inspector/POI to Government of the KPK Peshawar Region, Peshawar

Please find enclosed herewith the decision of the Appellate Board dated 09.01.2019, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

No. NEPRA/AB/Appeal-035/POI-2018/098

Forwarded for information please.

(Ikram Shakeel)

January 14, 2019

Assistant Director
Appellate Board

1. Registrar



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. 035/2018

Peshawar Electric Supply Company LimitedAppellant

Versus

Saifee Floor Mills, Through Muhammad Ayaz Tahir,
Village Kotha, Topi Road, District SwabiRespondent

**APPEAL FILED UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION AND DISTRIBUTION ACT 1997 AGAINST THE DECISION
DATED 20.11.2015 OF PROVINCIAL OFFICE OF INSPECTION TO GOVT OF
KHYBER PAKHTUNKHWA, PESHAWAR**

For the appellant:

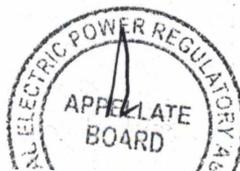
Mr. Rasheed Ahmed Qureshi XEN
Mr. Haroon Ahmed SDO

For the respondent:

Mr. Mehmood Khan Jadoon
Mr. Tariq Mehmood

DECISION

1. Through this decision, an appeal filed by Peshawar Electric Supply Company Limited (hereinafter referred to as PESCO) against the decision dated 20.11.2015 of Provincial Office of Inspection, Government of KPK, Peshawar (hereinafter referred to as POI) is being disposed of.
2. PESCO is a licensee of National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license and the respondent is its industrial consumer bearing Ref No.27-26343-0001200 with a sanctioned load of 190 kW under B-2b tariff. As per fact of the case, display of the respondent's meter





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became vanished and the respondent was billed for the period January 2015 to April 2015 by PESCO on the basis of corresponding month's consumption of the previous year. The defective meter was replaced with the new LT TOU meter by PESCO on 22.05.2015 and sent to metering and testing (M&T) PESCO for data retrieval. The respondent was charged a bill of Rs.2,937,742/- in May 2015 on account of pending 143,500 units, which PESCO claims that were detected in the data retrieval of the meter. The respondent initially approached the Consumer Protection Court and disputed the replacement of defective meter without notice and charging of the above said bill for May 2015. As advised by the honorable Court, the respondent filed a petition before POI on 28.09.2015 and assailed the bill of Rs.2,937,742/- for May 2015. POI disposed of the matter vide its decision dated 20.11.2015 and concluded as under:

"The above-noted data reveals that during the disputed period 01/2015 to 04/2015 the billing was made exactly on the average consumption of healthy meter according to policy except 05/2015. In 05/2015 abnormal consumption was billed while during the previous year 2014, the mills remained closed from 05/2014 to 09/2014 and in order to obtain an average of 5 months (disputed) and 5 months (healthy) period, the consumption of 10/2014 (healthy) period was counted. During the disputed period the average per bag consumption was 7.42 units, while during the healthy period the average per bag consumption was 5.645 units, Average per Bag which is considered reasonable, because the per bag consumption would be constant and as such to reach a fair conclusion, the

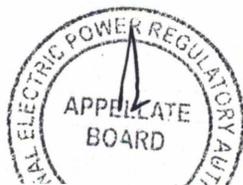




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average per bag consumption of healthy period shall be taken into consideration and it is held that all the bills from 01-2015 to 05-2015 shall be prepared for 5.645 units per bag and delivered to the petitioner for payment, this is, however, subject strictly according to the No. of Bags of wheat grind."

3. PESCO being aggrieved with the decision of POI dated 20.11.2015 (hereinafter referred to as the impugned decision) has filed the instant appeal before NEPRA. In its appeal, PESCO contended that the display of the respondent's meter was washed out and he was billed during the period January 2015 to April 2015 on the basis of corresponding month's consumption of previous year. PESCO further submitted that the defective meter was replaced with a new meter on 22.05.2015 and sent to M&T laboratory to download data. As per PESCO, the respondent was charged 143,500 pending units in May 2015 on the basis of data retrieval report. According to PESCO, the meter of the respondent was working correctly and the accumulated units were charged as per meter reading, hence the determination of POI on the basis of the number of bags is incorrect and the impugned decision is liable to be set aside.
4. In reply, the respondent raised the preliminary objection regarding the limitation and contended that the impugned decision dated 20.11.2015 was obtained by PESCO on 15.01.2016 against which the appeal was initially filed before NEPRA on 08.03.2016 and resubmitted after a lapse of 21 months. The respondent prayed for dismissal of the appeal being barred by time. On merits, the respondent rebutted the version of PESCO on the grounds that the defective meter was





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replaced after four months instead of two months without prior notice; that in case of defective meter, the bills should be charged on DEF-EST code as per clause 4.4 of Consumer Service Manual (CSM); that the impugned decision was logically suitable, legal; and that the impugned bill for May 2015 is incorrect, illegal and unjustified.

5. Notice was issued to both the parties and hearing of the appeal was fixed for 12.12.2018 in Peshawar in which both the parties were in attendance. Mr. Rasheed Ahmed Qureshi XEN PESCO reiterated the same arguments as contained in memo of the appeal and contended that the defective meter was removed on 22.05.2015 and sent to M&T laboratory, wherein 143,500 units were found pending, hence the respondent was charged the bill of Rs.2,937,742/- in May 2015 on account of 143,500 pending units. On the contrary, Mr. Tariq Mehmood learned counsel for the respondent raised the preliminary objection regarding limitation and contended that the appeal was initially filed before NEPRA with a delay of 6 days and later on the same was resubmitted by PESCO on 04.01.2018 after a long period. Learned counsel for the respondent prayed that the appeal be dismissed being time-barred. On merits, learned counsel for the respondent explained that the bills for the period January 2015 to April 2015 were charged by PESCO on DEF-EST code due to the defective meter and the bill of Rs.2,937,742/- was charged in May 2015 on the basis of data retrieval report against which the payment of Rs. 8 Lac was made by the respondent under coercion.





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6. We have heard the arguments of both the parties and examined the record placed before us. It is observed that the impugned decision was announced on 20.11.2015, admittedly copy of the same was received by PESCO on 10.02.2016 and the appeal was filed before NEPRA on 16.03.2016 after a lapse of 5 days. Registrar Office vide letter dated 12.04.2016 returned the said appeal with the direction to resubmit the appeal within 3 days after rectification of deficiencies. PESCO vide its letter dated 04.01.2018 resubmitted the appeal before NEPRA on 09.01.2018 after the lapse of 637 days. Pursuant to Section 38 (3) of NEPRA Act 1997, an appeal against the impugned decision of POI should be filed within 30 days of its receipt but the appeal in hand was filed after an abnormal delay. No sufficient reasons have been given by PESCO for the delay in filing the appeal before NEPRA, hence the appeal is dismissed being time-barred.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Dated: 09.01.2019

