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

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No. NEPRA/Appeal/112/2022/703 December 05, 2023

1. Abdullah,
S/o. Bacha,
R/o. Bara Samai,
Kabal Swat

2. Chief Executive Officer
PESCO Ltd,
WAPDA House, Sakhi Chashma,
Shami Road, Peshawar

3. Sub Divisional Officer (Operation),
PESCO Ltd,
Dewlai Sub Division,
Dewlai

4. Saeed Khan Akhunzada,
Advocate High Court,
Chamber No. 19, Muslim Block,
District Courts, F-8 Markaz,
Islamabad

5. POI/Electric Inspector,
Swat Regional Office
Shahi Mohallah, Saidu Sharif,
Near Saidu Sharif Science College

Subject: **Appeal No.112/2022 (PESCO Vs. Abdullah) Against the Decision Dated 08.06.2022 of the Provincial Office of Inspection to Government of the Khyber Pakhtunkhwa, Swat Region, Swat**

Please find enclosed herewith the decision of the Appellate Board dated 05.12.2023 (05 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Ikram Shakeel)
Deputy Director (AB)

Forwarded for information please.

1. Director (IT) –for uploading the decision on NEPRA website

National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No.112/POI-2022

Peshawar Electric Supply Company Limited .....Appellant

Versus

Abdullah S/o. Bacha, R/o. Bara Samai, Kabal Swat .....Respondent

APPEAL U/S 38(3) OF THE REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:
Mr. Saeed Khan Akhunzada Advocate

For the Respondent:
Mr. Attaullah

DECISION

1. Through this decision, the appeal filed by Peshawar Electric Supply Company Limited (hereinafter referred to as the "Appellant") against the decision dated 08.06.2022 of the Provincial Office of Inspection, Swat Region, Khyber Pakhtunkhwa (hereinafter referred to as the "POI") is being disposed of.

2. Brief facts of the case are that Mr. Abdullah (hereinafter referred to as the Respondent) is a domestic consumer of the Appellant bearing Ref No.17-26529-0123580-R with sanctioned load of 1 kW and the applicable tariff category is A-1. The Respondent approached the POI vide application dated 03.12.2021 and challenged the bill of

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Rs.398,648/- against 15,844 units debited by the Appellant in May 2020. The complaint of the Respondent was disposed of by the POI vide decision dated 08.06.2022, the operative portion of which is reproduced below:

> *"Hence, forgoing in view the above respondents are directed to withdraw the impugned amount billed against the consumer/ petitioner being billed without any record/clarification/justification. Respondents are further directed to restore supply of power to the premises of the consumer/petitioner immediately after the receipt of this order without further delay and late payment surcharge (LPS) leveled against the consumer shall also be waived off. The amount already paid in advance i.e. Rs.5000 in the month of February 2021 and 53540 in the month of May 2021 shall be adjusted against the arrear amount as per consumption in the freshly replaced meter of the consumer. Disposed of in the above terms."*

3. Through the instant appeal, the afore-referred decision dated 08.06.2022 of the POI has been impugned by the Appellant before the NEPRA. In the appeal, the Appellant opposed the impugned decision, *inter alia,* on the following grounds that the impugned meter of the Respondent was replaced with a new meter on 17.03.2020 and subsequently checked in M&T lab on 18.11.2020, wherein it was found dead stop, therefore the assessment bill was charged to the Respondent; that the said bill was initially assailed before the Civil Court, which was dismissed vide the order dated 27.07.2021; that the Respondent approached the Wafaqi Mohtasib against the assessment bill, which was closed by the honorable Wafaqi Mohtasib vide order dated 30.09.2021; that the Respondent filed a complaint before the POI, which rendered the ex-parte order and cancelled the assessment along-with LPS without any justification; that the impugned decision is against the law and fact of the case; that the impugned

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decision is suffering from material irregularity and gross irregularity as the POI has not applied his anxious mind; that the Respondent was caught red handed to get illegal supply of the electricity along with slowness of the meter and that the impugned decision is liable to be set aside.

4. **Proceedings by the Appellate Board**

Upon the filing of the instant appeal, notice dated 18.10.2022 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were submitted on 10.11.2022. In the reply, the Respondent rebutted the version of the Appellant and submitted that the Appellant neither associated him during the alleged checking nor could replace the meter with his consent; that the meter of the Respondent was replaced in August 2020; that the Appellant failed to follow the procedure as laid down in Chapter 4 of the CSM-2021; that 15,844 units were debited by the Appellant in May 2020 six months prior the M&T checking, which shows their malafide intention; that the POI afforded several opportunities of hearing but the Appellant neither appeared nor submitted the reply/para-wise comments to the complaint; that the Appellant has no valid proof to substantiate the allegation regarding illegal abstraction of electricity; and that the appeal is badly time-barred and the same is liable to be dismissed with cost.

5. **Hearing**

5.1 Hearing was held at NEPRA Head Office Islamabad on 26.09.2023, wherein both parties were in attendance. In response to the question of limitation raised by this forum,

the counsel for the Appellant stated that the delay in filing the appeal was not intentional but due to the internal departmental process. He prayed that the delay in filing the appeal be condoned and the appeal be decided on merits instead of technical grounds. He assured us to provide the judgments relevant to the limitation.

5.2 On the other hand, the representative for the Respondent supported the impugned decision and prayed for the dismissal of the appeal being barred by time.

6. Arguments were heard and the record was perused. Following are our observations:

6.1 **Limitation for filing Appeal**:

While addressing the point of limitation, it is observed that a copy of the impugned decision was obtained by the Appellant on 08.06.2022 and the appeal was filed before the NEPRA on 20.09.2022 after the prescribed time limit of 30 days. This shows that the Appellant filed the instant appeal before NEPRA after a lapse of one hundred and five (105) days from the date of receipt of the impugned decision. As per sub-section (3) of Section 38 of the NEPRA Act 1997, any person aggrieved by the decision of the POI may prefer an appeal to NEPRA within thirty days of receipt of the order. Further, it is supplemented with Regulation 4 of the NEPRA (Procedure for filing Appeals) Regulations, 2012 (the "Appeal Procedure Regulations") which also states that the Appeal is required to be filed within 30 days of the receipt of the impugned decision of POI by the Appellant, however, a margin of 7 days' is provided in case of submission through registered post, and 3 days in case of submission of appeal through courier is given in the Appeal Procedure Regulations. Thus, the delay of one hundred and five (105) in filing the appeal before the NEPRA from the date of receipt of the impugned

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decision is not condonable as no sufficient reasons have been given by the Appellant to justify the condonation of the delay.

7. Foregoing in view, the appeal filed before NEPRA is time-barred and; hence dismissed.

Abid Hussain
Member

Muhammad Irfan-ul-Haq
Member

Naweed Illahi Sheikh
Convener

Dated: 05-12-2023

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