



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

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No. NEPRA/AB/Appeal-010/POI-2016/ 14/16 - 14/14

November 11, 2016

1. Muhammad Musa,
Executive Engineer, Army Services,
Office of Garrison Engineer, (MES),
Sir Syed Road, Opposite CSD,
Peshawar Cantt
2. Chief Executive Officer
PESCO Ltd,
166-WAPDA House,
Shami Road, Peshawar
3. Engr. Nadeem Afridi,
XEN PESCO,
Peshawar Cantt, Mehfooz Road,
Defence Officers Colony,
Peshawar
4. Engr. Alam Zab,
SDO (Operation),
PESCO Ltd,
Peshawar Cantt, Mehfooz Road,
Defence Officers Colony,
Peshawar
5. Electric Inspector/Provincial Office of Inspection,
Peshawar Region,
Benovelent Fund Building,
3rd Floor, Near Jans Bakers,
Peshawar Cantt

Subject: **Appeal Titled PESCO Vs. Garrison Engineer (Army) Services Against the Decision Dated 12.11.2015 of the Electric Inspector/POI to Government of the KPK Peshawar Region, Peshawar**

Please find enclosed herewith the Decision of the Appellate Board dated 10.11.2016, regarding the subject matter, for information and necessary action accordingly.

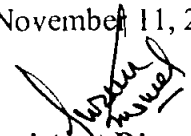
Encl: **As Above**

(Ikram Shakeel)

No. NEPRA/AB/Appeal-010/POI-2016/ 14/15

November 11, 2016

Forwarded for information please.


Assistant Director
Appellate Board

1. Registrar
2. Director (CAD)

CC:

1. Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-010/POI-2016

Peshawar Electric Supply Company LimitedAppellant

Versus

Garrison Engineer (Army) Services, Peshawar CanttRespondent

For the appellant:

Mr. Abdul Rauf Rohella advocate

Mr. Nadeem Afridi XEN

Mr. AlamZeb SDO (Operation)

For the respondent:

Mr. Shumail Ahmed Butt advocate

Mr. Muhammad Moosa XEN

DECISION

1. Brief facts giving rise to the disposal of this appeal are that the Garrison Engineer (Army) Services, Peshawar Cantt (hereinafter referred to as MES) is a consumer of appellant Company hereinafter referred as "PESCO". There were some disputes as to payment of bills of electricity so supplied to the MES and in that regard, some agreement dated 15.05.2004 was entered into between the Quarter Master General (Pakistan Army) and Chairman WAPDA and a decision in that regard was issued vide minutes of meeting dated 19.05.2004. Pursuant to the said agreement, WAPDA receivables and MES claims up-to 31.03.2003 were settled and both the parties agreed not to raise any claim prior to 31.03.2003. It was further agreed that disputes/claim in respect of billing for the period after 31.03.2003 would be settled mutually by deliberation. As per agreement, the billing of those connections, where the meter became defective, WAPDA would charge on average consumption of previous eleven months



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or equal to the consumption of corresponding month of last year, whichever is higher. As is evident from the record that electricity meters of 131 MDI connections of MES became defective but were not replaced till FY 2012-13. However billing of these 131 MDI connections was carried out in the assessed mode during the period FY 2007-08 to FY 2011-12. New meters were installed on these connections in FY 2012-13 and the billing afterwards was done as per meter reading. MES realized that the electricity bills based on the meter readings were considerably lesser than the billing done in assessed mode during the period FY 2007-08 to FY 2011-12. MES initially approached PESCO and claimed for refund of excessive billing of 131 MDI connections during the disputed period i.e. FY 2007-08 to 2011-12 but the issue was not addressed. Subsequently MES filed a complaint before NEPRA against the excessive billing on 30.09.2014 and claimed an adjustment of Rs.635.748 million for 52.979 million units charged in excess during the disputed period i.e. FY 2007-08 to FY 2011-12 (5 years). The case was referred by NEPRA to Provincial Office of Inspection (POI) vide letter No. TCD/11/439/2014 dated 14.10.2014 for further adjudication.

2. POI accepted the petition of MES and allowed a credit of Rs.635.748 million for 52.979 million units for the disputed period i.e. FY 2007-08 to FY 2011-12 (5 years) vide its decision dated 12.11.2015.
3. PESCO was dissatisfied with the decision of POI dated 12.11.2015(hereinafter referred to as the impugned decision) and therefore filed the instant appeal before NEPRA under section 38 (3) of the NEPRA Act 1997. In its appeal, PESCO inter alia contended that pursuant to the agreement dated 15.05.2004 reached between Quarter Master General (Pakistan Army) and Chairman WAPDA, 17000 units/month per 100 kVA transformer were charged to MES for those MDI connections, where meters were defective. Moreover according to PESCO, from time to time, billing was reconciled and last reconciliation was made up-to April 2012 and as such there is no justification for MES for making claim against the electricity bills already settled and paid. PESCO pointed out that comparison of consumption recorded by healthy meters in FY 2012-13 with the disputed period of FY 2007-08 to FY 2011-12 has no

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justification as the load of MES reduced due to energy conservation plans by installing energy savers and split A/Cs. Regarding the replacement of meters, PESCO explained that due to heavy load of MES, the meters were burnt/damaged time and again. According to PESCO, the impugned decision dated 12.11.2015 was received by POI on 23.11.2015 and the appeal filed before NEPRA on 21.12.2015 was within the time limit. PESCO pleaded that the billing was justified and MES is liable to pay the same.

4. Notice of the appeal was issued to MES for filing parawise comments/reply, which were filed on 24.02.2016. In its reply/parawise comments, MES denied the stance of PESCO and inter alia contended that the excessive billing of 131 MDI connections was done during the period FY 2007-08 to FY 2011-12 in violation of agreement dated 15.05.2004 executed between Quarter Master General (Pakistan Army) and Chairman WAPDA . It was further clarified by MES that the reconciliation in April 2012 was only with regard to two monthly bills and did not cover all the disputed bills and connections. According to version of MES, excessive billing was done and refund of Rs.635.748 million for 52.979 million units is justified and PESCO be directed to implement the impugned decision.
5. After issuing notice, hearing of the appeal was held in Islamabad on 06.09.2016, in which both the parties participated. Mr. Abdul Rauf Rohella advocate, counsel for the appellant PESCO repeated the same arguments as narrated in memo of the appeal and raised the preliminary objection regarding limitation and further contended that payments of electricity bills in respect of 131 MDI connection for the disputed period FY 2007-08 to 2011-12 (5 years) were made without any objection and as such raising any objection after span of more than two years is not justified. According to the learned counsel for PESCO, in the impugned decision, stance of MES has been accepted and billing for the disputed period was based on the consumption recorded during the period after dispute i.e. FY 2012-13, which is not in line with the agreement dated 15.05.2004. As per learned counsel for PESCO meters were installed on 131 MDI connections were burnt/damaged due to heavy load and MES restored the supply by bypassing the meters. He contended that the billing was to be based on

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average consumption of last eleven months or the corresponding month of previous year, whichever is higher but it was not done accordingly. Learned counsel for PESCO further objected the consideration of consumption for FY 2012-13 only instead of the consumption for FY 2012-13 to FY 2015-16. As per PESCO, reconciliation was reached between both the parties up-to April 2012 and as such there is no justification for MES for raising any dispute prior to April 2012. PESCO asserted that the impugned decision if implemented would affect its financial position adversely, therefore the same should be set-aside being illegal, void and unjustified. On the other hand, Mr. Shumail Ahmed Butt advocate, learned counsel for MES in his rebuttal, pleaded that as per agreement dated 15.05.2004, it was responsibility of PESCO to install healthy meters and issue bills as per actual meter reading but PESCO failed to do so. According to MES, PESCO was time and again requested for installation of healthy meters but no action was taken. Learned counsel for MES contended that the appeal filed against the impugned decision was time barred and liable to be dismissed on this ground. Learned counsel for MES further explained that complaint was filed against excessive billing, which came into their knowledge after installation of healthy meters in FY 2012-13. Learned Counsel averred that article 64 of limitation Act 1908 is not applicable in the instant case. MES defended the impugned decision and prayed that the same should be maintained.

6. Arguments heard and record perused. As far as the objection regarding limitation in filing the appeal, it is a matter of record that the impugned decision was received by PESCO on 23.11.2015 and the appeal was filed on 21.12.2015; thus it is within time. As regards the merits of the case, MES has disputed excessive billing of 131 MDI connections amounting to Rs.635.748 million for 52.979 million units charged in excess during the period FY 2007-08 to FY 2011-12 (5 years). Pursuant to the agreement dated 15.05.2004 between MES and WAPDA issued vide minutes of meeting date 19.05.2004, a settlement was made between the parties for electricity bills up-to 31.03.2003. For future, it was agreed that the dispute regarding electricity bills would be settled mutually and for the connections with defective or without meters, billing would be based on average consumption of last eleven months or consumption of corresponding month of previous year, whichever is higher. 131 MDI

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connections were billed in assessed mode, which seems to be in violation of the agreement dated 15.05.2004. It was admitted by PESCO that meters installed on 131 MDI connections were damaged due to heavy load but could not be replaced and the billing for FY 2004-05 to FY 2011-12 was done in assessed mode. MES has claimed credit of Rs. 635.748 million for 52.979 million units in respect of 131 MDI connections for the period FY 2007-08 to FY 2011-12 (5 years) on the basis of average consumption recorded by healthy meters during the year 2012-13 only. However MES could not explain the tabulated data particularly regarding number of months and consideration of average consumption for FY 2007-08 and FY 2012-13 only. There is no force in the contention of PESCO that the settlement of electricity bills is made till April 2012 as no documentary evidence was placed to substantiate that all 131 MDI connections were included and it covers the entire period. In the impugned decision, POI has accepted the data provided by MES and accorded credit of Rs. 635.748/- million for 52.979 million units to MES accordingly. Examination of the tabulated data provided by MES revealed that the same is incorrect, unjustified and therefore the impugned decision based on the same cannot be considered to be justified. Further that PESCO had failed to install healthy meters in the disputed 131 MDI connections during FY 2007-08 to FY 2011-12 and we are not convinced with the stance of PESCO that the meters got damaged due to heavy load of MES. It was the responsibility of PESCO to install healthy meters and charge bills as per actual meter reading. In the instant case, there were no meters prior to FY 2012-13 i.e. during the period FY 2004-05 to FY 2011-12, therefore it is not possible to calculate the bills of disputed connections for the period FY 2007-08 to FY 2011-12 on the basis of average consumption of last eleven months or corresponding month of previous year. Moreover there is no justification to select only FY 2012-13 for assessment of electricity bills as the consumption data up-to FY 2015-16 is available. Therefore we are constrained to agree, in principle, with the contention of MES that the billing should be based on undisputed/metered consumption recorded during the period after the dispute and therefore consider the period FY 201-12 to FY 2015-16 when the billing was done as per meter reading. Consumption data as mutually agreed and signed by both the parties for 131 MDI connections for the period FY

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2007-08 to FY 2015-16 (9 years) was placed before us. Comparison of consumption during the disputed and undisputed periods is worked out is as under:

Comparison of consumption as per data mutually agreed by PESCO & GE (Services)									
Units billed during disputed period						Units billed during period after dispute			
Period	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
July	2856808	2510137	2610060	2480281	1995347	2111969	2153732	2098680	2599228
August	2973715	2695372	1547273	2423221	2005610	1786701	2564437	2737634	3184552
September	2122151	2605913	2690245	2287821	1930939	2199479	2671435	2483175	2929319
October	2437610	2100029	1571203	2228753	1770810	1730918	2408997	2461492	2497445
November	2060147	2510431	2601173	2173930	1647310	1586237	1237228	2279158	1620275
December	2090947	2450301	2621014	2271109	1639541	1626356	1210555	1580557	1409840
January	2501754	2264993	2117127	2323579	1404356	1687601	1897575	2269580	1887508
February	2529120	2224912	2040133	2360885	2637632	2157677	1503048	2275230	2057520
March	2607862	2414281	2222930	2266690	2279353	1653985	2103437	1808148	1625743
April	2306505	2267773	2413189	2358479	1797371	1339314	1438832	1614174	1376695
May	2353995	2381058	2293252	2357183	1863931	1310343	1804568	2186946	1518284
June	2481917	2099291	2089167	2484633	2254750	1717371	2430505	2869562	2689542
Total	29322531	28524491	26816766	28016564	23226950	20907951	23424349	26664336	25395951
Grand Total (Units)	135,907,302					96,392,587			
Avg. Units Per Month	2,265,121					2,008,178			

From the above table, it has emerged as under:

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- **Average units per month charged in excess** = Average units per month already charged during disputed period - Average units per month to be charged during the disputed period as recorded in the period after dispute = $2265121 - 2008178 = 256,943$ units
- Total units charged in excess to MES for the disputed period FY 2007-08 to FY 2011-12 = (5 years) = 256943×60 months = **15,416,580 units = 15.416 Million units.**

From the comparison of above data, it is clear that MES is entitled to be credited 15.416 million units excessively charged by PESCO during the disputed period FY 2007-08 to FY 2011-12 on the basis of consumption recorded during the undisputed period FY 2012-13 to FY 2015-16.

7. For the reasons noted hereinabove, we have reached to the conclusion that:-

The impugned decision for allowing PESCO a credit of Rs. 635.748 million for 52.979 million units charged in excess for the disputed period FY 2007-08 to FY 2011-12 (5 years) is void, unjustified and therefore set aside instead.

PESCO should provide a credit of 15.416 million units to MES for the period FY 2007-08 to FY 2011-12 (5 years). It is, however, further to observe that the credit of excess units may be provided in a span of three years so as to avoid adverse financial implications for the appellant Company and the impugned decision is modified in the above terms.

8. Interim order dated 08.03.2016 stands withdrawn.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Date: 10.11.2016

