



Registrar

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

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No. NEPRA/CAD/TCD 01/ 2/21-24

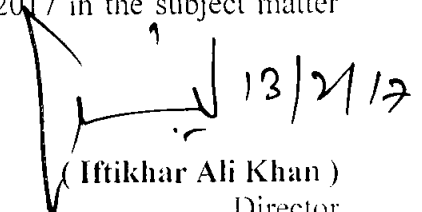
February 13, 2017

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

Subject: Order in the matter of Complaint filed by Mr. Rab Nawaz Khan Khattak and Others under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 against PESCO regarding Arrears in the Bills
Complaint # PESCO-30/2016

Please find enclosed herewith the Order of NEPRA dated 10.02.2017 in the subject matter for compliance within 30 days of the receipt of the Order.

Encl: As above


(Iftikhar Ali Khan)
Director
Registrar Office

Copy:-

1. General Manager/Customer Services Director
Peshawar Electric Supply Company (PESCO)
WAPDA House
Sakhi Chashma Shami Road, Peshawar
2. Manager (Commercial)
Peshawar Electric Supply Company (PESCO)
WAPDA House
Sakhi Chashma Shami Road
Peshawar
3. Mr. Rab Nawaz Khan Khattak,
President, Anjaman-e-Imdad-e-Bahmi Malgari Zamidaran,
Akora Seeds Company, Qureshi Market,
Akora Khattak-District,
Nowshera



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No. PESCO-30/2016

Mr. Rab Nawaz Khan Khattak & Others **Complainants**
President, Anjaman-e-Imdad-e-Bahmi Malgari Zamindaran
Akora Seeds Company Qureshi Market,
Akora Khatak-District Nowshera.

Versus

Peshawar Electric Supply Company Limited (PESCO) **Respondent**
WAPDA House, Sakhi Chasma, Shami Road,
Peshawar

Date of Hearing: June 09, 2016
June 28, 2016

Date of Decision: February 10, 2017

On behalf of

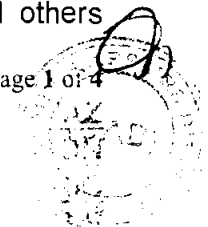
Complainants: 1) Mr. Rab Nawaz Khan Kattak
2) Mian Muhammad Ayaz
3) Mr. Shahid Khan
4) Mr. Noor Muhammad
5) Mr. Muhammad Yousaf

Respondents: 1) Mr. Sajjad Ahmed Sethi (SE)
2) Mr. Javed Iqbal Khan (XEN)
3) Said Ghulam Khan (RO)
4) Mr. Noor Hussain Khan (SDO)

Subject: **ORDER IN THE MATTER OF COMPLAINT FILED BY MR. RAB NAWAZ KHAN KHATTAK AND OTHERS UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST PESCO REGARDING ARREARS IN THE BILLS**

ORDER

Pursuant to the Orders of the Honorable Peshawar High Court dated April 20, 2016 in Writ Petition No. 1102-P/2016 titled "Rab Nawaz Khan Khattak and others Vs. NEPRA and others", this order shall dispose of the complaint of Mr. Rab Nawaz Khattak 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 (hereinafter referred to as the "Act") against Peshawar Electric Supply Company Limited (hereinafter referred to as "PESCO" or the "Respondent").

2. Brief facts of the case are that 104 Petitioners approached NEPRA through Mr. Rab Nawaz Khan Khattak, President, Anjaman-e-Imdad-e-Bahmi Malgari Zamindaran, Akora Khattak in light of an earlier decision of NEPRA in the matter of complaint of Mr. Ayaz Khan against PESCO in pursuance to the order of Honorable Peshawar High Court in Writ Petition No. 2958-P/2013. The Petitioners requested that their cases be dealt with likewise and their grievances be redressed accordingly. In this regard, the Petitioners were advised to approach PESCO in the first instance for redressal of their grievances. Meanwhile, the Petitioners approached the Honorable Peshawar High Court, Peshawar and filed Writ Petition bearing No.1102-P/2016. The Honorable High Court vide its Order dated April 20, 2016 disposed of the petition with directions to NEPRA to entertain the petitioners' complaints under Section 39 of the Act. Accordingly, the Petitioners filed a complaint with NEPRA on June 01, 2016. Main contents of the complaint are as under:

- i. That the Petitioners are agriculturists and irrigate their land through agricultural tube-wells under Tariff D-2. They and their tenants had been paying their electricity bills regularly.
- ii. PESCO charged additional amount to the Petitioners as arrears, which was in fact reason of some audit para; whereas NEPRA directed PESCO to charge all the agriculturists having the facility of tube-wells under Tariff D-1(a). Further, tariff D-1(a) is meant for SCARP tube-wells, whereas their area does not come under SCARP; as such, applying tariff D-1(a) to non-SCARP or non-Time of Use (ToU) agricultural tube-wells is discrimination on part of the Respondent and in fact, tariff D-2 is applicable in this case.
- iii. Not only the Petitioners but each and every agriculturist of the area has been made to face the problem of illegal and unjustified over billing, as PESCO has debited unjustified, baseless and belated bills against the consumers.
- iv. PESCO is not lawfully justified to recover its losses from consumers which have been incurred due to their own inactions, mismanagement and incompetency. The application of tariff is independently the responsibility of PESCO and consumers cannot be penalized for failure of its proper application. The audit paras are a matter of the department and the audit authority cannot authorize the department to charge the Petitioners with retrospective effect.
- v. The agriculturists leased out their lands to lessee/ijaradaar for a specific period. PESCO has come up with penal amount lately where real consumers have already left.

3. In order to proceed further and investigate the case in light of the directions of the Honorable High Court, a hearing was scheduled for June 09, 2016 at NEPRA Head Office Islamabad which was adjourned on request of PESCO and was finally held on June 28, 2016. During the hearing, representatives of the Petitioners stated that they had been regularly paying their bills, however without any prior notice, PESCO added arrears in their bills on account of some audit observation which is unjustified. Mostly, the agriculturists, including the Petitioners, have leased out their land to lessees (Ijaradaars) for a specific time and the tenants/Ijaradaars

after expiring of lease period and payment of outstanding dues and liabilities 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 along with late payment surcharges. Representative of PESCO requested for extension of 20 days for submission of comments. Subsequently, they submitted their comments vide letter dated July 14, 2016. Main contents of the comments of PESCO are as under:

- i. The agricultural tube-wells are to be billed as per NEPRA tariff notification issued from time to time according to mentioned terms and conditions. The agriculture consumers having load of 20 kW and above and later on 5 kW and above were to be charged under SCARP tariff D-1 (a) till installation of ToU Meters, but these were not billed accordingly, hence undercharges were worked out by audit party.
- ii. Post audit of previous period is usually carried out in almost all departments of PESCO, as per which the wrong application of tariff and under charges were pointed out by audit party and were debited against the consumers' account numbers. The audit point is correct as the tariff rates have been determined by NEPRA and same were to be implemented by DISCOs.
- iii. The department has no concern with Ijaradar but has to deal with connection premises and the real owners of the connection. The consumers have not been penalized, rather they have been charged justifiably for under charges of the previous period.
- iv. There is no inefficiency, mismanagement and incompetence on part of PESCO. The department has audit wing to point out any discrepancy, irregularity and issue reports accordingly which are to be rectified by the department.
- v. PESCO vide letter No. AO/AP-12/15020-24 dated July 19, 2016 submitted that connections with tariff code 52 (D-2), private consumers having load exceeding 5 kW were to be shifted to tariff code 42 (D-1 a) in light of DG PPECO, Lahore's letter NO. IS/J-04/7533-52 dated November 17, 2009; however, same was not done by field formation, i.e. XEN/RO, Nowshera Cantt Division which was detected by Audit.

4. The case has been examined in detail in light of the record made so 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. As per tariff determinations of NEPRA, ToU meters were required to be installed at the Petitioners' premises and D-1(b) tariff was to be applied accordingly, however 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 case, PESCO neither installed ToU meters at these premises nor charged D-1(a) tariff as required under notified tariff terms and conditions.
- ii. 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. The Petitioners claimed that arrears on account of wrong application of tariff were debited against 104 Nos. agriculture consumers, whereas

PESCO provided record that a total amount of Rs. 8.699 Million was debited against 95 Nos. agriculture consumers.

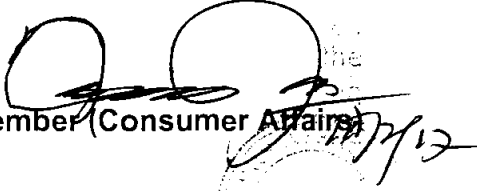
- iii. The consumers have legitimate expectancy that what was being billed to them was actually the cost of electricity consumed. PESCO cannot be allowed to recover the loss of revenue from any consumer which is sustained due to its own mismanagement. Non-installation of ToU meters and application of wrong tariff 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. Furthermore, the consumers cannot be penalized due to negligence of PESCO officials, therefore, arrears charged against the Petitioners are illegal, unjustified and unwarranted. Moreover, reliance is also placed on ruling of the Lahore High Court in the case of WAPDA VS UMAID KHAN (1988 CLC 501), as per which the Honorable High Court ruled that audit report could not make consumer liable for payment of any amount.
- v. Earlier, following likewise complaints were filed before NEPRA:
 - a) Project Director, Energy Monitoring Cell, Government of Khyber Pakhtunkhwa vs PESCO, and
 - b) Mian Muhammad Ayaz & Others vs PESCO in pursuance to the order of Honorable Peshawar High Court in Writ Petition No. 2958-P/2013.

The above complaints were decided by NEPRA wherein arrears raised on observations of Audit party against the tube-well connections on account of wrong application of tariff by PESCO were declared as void and illegal. The said decisions were implemented by PESCO.

5. Foregoing in view, PESCO is hereby directed to:

- i. Withdraw the arrears along with late payment surcharges debited against the Complainants / Petitioners on the observation of Audit on account of wrong application of tariff, being illegal and unjustified.
- ii. Initiate disciplinary proceedings against the officers /officials at fault.
- iii. Ensure that no such negligence/mismanagement takes place in future.
- iv. Submit compliance report within thirty (30) days.

Islamabad February 10, 2017


Member (Consumer Affairs)