



National Electric Power Regulatory Authority

Islamic Republic of Pakistan

Registrar

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No. NEPRA/ADG(CAD)TCD 01/2692-94

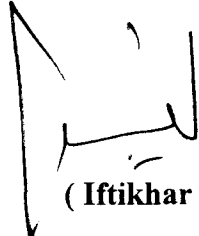
January 24, 2020

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

Subject: **ORDER IN THE MATTER OF COMPLAINT FILED BY MR. RAB NAWAZ KHAN KHATTAK AND OTHERS IN PURSUANCE OF THE ORDERS OF THE HONORABLE PESHAWAR HIGH COURT, PESHAWAR IN WRIT PETITION NO. 5673-P/2018: RAB NAWAZ KHAN KHATTAK VS NEPRA & OTHERS**
PESCO-126/07/2019

Please find enclosed herewith the Order of Member (Consumer Affairs) (04 Pages) dated January 24, 2020 regarding the subject matter for necessary action and compliance within thirty (30) days, please.

Encl: As above


24/1/20
(Iftikhar Ali Khan)
Director
Registrar Office

Copy to:

1. Chief Commercial Officer,
Peshawar Electric Supply Company Ltd.
WAPDA House, Shami Road,
Sakhi Chashma,
Peshawar
2. Mr. Rab Nawaz Khan Khattak
President,
Ajnuman-e-Imdad-e-Bahmi Malgari Zamindaran,
Akora Seeds Company, Qureshi Market,
Akora Khattak, District Nowshera



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No. PESCO-126/07/2019

Mr. Rab Nawaz Khan Khattak & Others

..... **Petitioners**

Through 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 Hearings: August 05, 2019
August 21, 2019
September 04, 2019

Date of Decision: January 24, 2020

On behalf of

Complainants:

- 1) Mr. Rab Nawaz Khan Khattak
- 2) Mr. Noor Muhammad Khan
- 3) Haji Yousaf Khan
- 4) Mr. Muhammad Yousaf
- 5) Mr. Muhammad Ali
- 6) Mr. Gul Wali

Respondents:

- 1) Mr. Noor Hussain Shah, SDO (Akora Khattak)
- 2) Mr. Abbas Ali Shah, SDO
- 3) Mr. Riaz M. Shah, Revenue Officer

Subject: ORDER IN THE MATTER OF COMPLAINT FILED BY MR. RAB NAWAZ KHAN KHATTAK AND OTHERS IN PURSUANCE OF THE ORDERS OF THE HONORABLE PESHAWAR HIGH COURT, PESHAWAR IN WRIT PETITION NO. 5673-P/2018: RAB NAWAZ KHAN KHATTAK VS NEPRA & OTHERS

ORDER

1. This order shall dispose of the complaint of Mr. Rab Nawaz Khan Khattak and Others (hereinafter referred to as the "Petitioners" or the "Complainants") filed under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act") against Peshawar Electric Supply Company Limited (hereinafter referred to as "PESCO" or the "Respondent") pursuant to the Orders of

the Honorable Peshawar High Court, Peshawar dated 7th March 2019 in Writ Petition No. 5673-P/2018.

2. Brief facts of the case are that NEPRA received a copy of the Order of the Honorable Peshawar High Court, Peshawar dated 7th March 2019 in Writ Petition No. 5673-P/2018 in the matter of Rab Nawaz Khan Khattak & Others. The Honorable High Court, vide the said Order, has directed NEPRA to entertain the complaint of the Petitioners under Section 39 of the NEPRA Act, and decide the same in accordance with law after receipt of complaint.

3. In pursuance of the directions of the Honorable High Court, the Petitioners filed a complaint with NEPRA on 17th July 2019. Main contents of the complaint are as under:

- i. That the earlier decision of NEPRA in Complaint No. PESCO-32/2015 was conveyed, vide letter dated 16th September 2015, to PESCO, however, PESCO is adamant not to give effect to the Orders of NEPRA by saying that the Complainants were not party to the proceedings.
- ii. That the Judgment on policy matter is *judgment-in-rem* and is applicable to all similar situations. More particularly where the Complainants are the residents of same area and under same situation, however, few of the persons have approached the High Court for all of the Complainants and that too through President, Anjuman-e-Imdad-e-Bahmi Malgari Zamindaran, Mera Akora, Khattak.
- iii. 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.
- iv. That PESCO suddenly charged additional amount to the Petitioners as arrears, which was in fact reason of some Audit Para; against which NEPRA directed PESCO to charge all the agriculturists having the facility of tube-wells under Tariff D-1(a) which is meant for SCARP tube-wells.
- v. That 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 audit paras in the bills of the consumers.
- vi. That PESCO has raised numerous audit paras, thereby directing its Revenue Officers to debit unjustified amounts against the agricultural tube-well connections, even where ToU meters have not been installed.
- vii. That Akora Khattak Sub-Division, where tube-well connections of the Complainants as well as other agriculturists are situated, is not the area under SCARP. As such, applying tariff D-1(a) to non-SCARP or non-ToU agricultural tube-wells is manifest discrimination on part of PESCO and in fact, tariff D-2 is applicable to such tube-wells.
- viii. That PESCO is not lawfully justified to recover its losses from the consumers which have been incurred due to their own inaction, mismanagement and incompetency. The application of correct tariff is the responsibility of PESCO and consumers cannot be penalized for failure of its proper application. The audit paras/reports are a matter of the department and the audit authority cannot authorize the department to charge the Complainants with the tariff with retrospective effect.
- ix. That mainly the agriculturists leased out their lands to lessee/ijaradaar for specific periods. PESCO has come up with penal amount even in cases where real consumers have already left.

- x. That it is prayed that PESCO may be directed to withdraw the debited amount as arrears against the agricultural tube-well connections by tariff D-2 instead of tariff D-1(a) which is meant for SCARP tube-wells and to install ToU meters.

4. In order to proceed further and investigate the case in light of the directions of the Honorable High Court, a hearing was scheduled for 5th August 2019 at NEPRA Head Office, Islamabad, wherein both the parties participated and advanced their arguments. Due to non-availability of sufficient record, it was decided that another hearing be conducted in the matter. Accordingly, another hearing was held on 21st August 2019 at NEPRA Head Office, Islamabad. During the hearing, the matter was again discussed in detail, and PESCO was directed to verify the list of accounts with respect to present ownership vs ownership at the time of charging of difference of tariff. A final hearing in the matter was held on 4th September 2019 at NEPRA Head Office, Islamabad, wherein both the parties participated. During the hearing, PESCO submitted a list of the following nineteen (19) account numbers of the Petitioners, along with relevant details:

Sr.#	Account No.	Audit Note No.	Sr.#	Account No.	Audit Note No.
1.	41-26234-0048980	140	2.	41-26234-0046682	141
3.	41-26234-0048830	140	4.	41-26234-0048784	140
5.	41-26234-0036080	148	6.	41-26234-0046734	141
7.	41-26234-0036432	148	8.	41-26234-0047231	141
9.	41-26234-0046781	141	10.	41-26234-0046786	141
11.	41-26234-0047932	140	12.	41-26234-0034733	148
13.	41-26234-0045781	142	14.	41-26233-0040902	15
15.	41-26234-0036130	148	16.	41-26234-0045130	142
17.	42-26234-0046681	142	18.	10-26231-0817001	-
19.	42-26234-0036287	-			

5. The Petitioners, during the said hearing, also submitted applications of three (03) additional likewise consumers of Akora Khattak with the request to make them part of the instant proceedings and treat them on same grounds. It is pertinent to mention that account numbers of these consumers are also included in the said Audit paras/notes. Details are as under:

Sr.#	Account No.	Audit Note No.	Sr.#	Account No.	Audit Note No.
1.	41-26234-0039784	145	2.	41-26234-0040031	145
3.	41-26234-0041530	147			

6. The case has been examined in detail in light of the record made so available by the parties, arguments advanced during the hearings 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

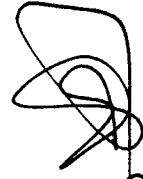
installed ToU meters at these premises nor charged D-1(a) tariff as required under notified tariff terms and conditions.

- 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.
- 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. PESCO raised Audit Paras in November 2011 against the Petitioners and other likewise consumers at Akora Khattak. It is pertinent to mention that 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.
 - b) Mian Muhammad Ayaz & Others vs PESCO in pursuance of the Order of the Honorable Peshawar High Court in Writ Petition No. 2958-P/2013.
 - c) Mr. Rab Nawaz Khan Khattak & Others vs PESCO in pursuance of the Order of the Honorable Peshawar High Court in Writ Petition No. 1102-P/2016.

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.

7. Foregoing in view, PESCO is hereby directed to withdraw the arrears, along with late payment surcharges, debited against the 22 Nos. Complainants/Petitioners, as mentioned at paras 4&5, on the observation of Audit on account of wrong application of tariff, being illegal and unjustified.

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


(Rehmatullah Baloch)
Member (Consumer Affairs)
24/1/2020

Islamabad, January 24, 2020.