



Registrar

National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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No. NEPRA/DG(CAD)/TCD 01/1109-13

January 11, 2020

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

Subject: **DECISION IN THE MATTER OF COMPLAINT FILED BY SARHAD RURAL SUPPORT PROGRAMME (SRSP) UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST PESCO REGARDING PAYMENT OF ELECTRICITY DUES PESCO-110/10/2020**

Please find enclosed herewith the Decision of Member (Consumer Affairs) dated 11.01.2021 (05 Pages) regarding the subject matter for necessary action and compliance within thirty (30) days.

Encl: As above


(Hafeez Ullah Khan)
Additional Director
Registrar Office

Copy to:

- i. Chief Executive Officer,
Central Power Purchasing Agency (Guarantee) Ltd.,
73-West, Shaheen Plaza, Fazl-e-Haq Road,
Blue Area, Islamabad.
- ii. Chief Commercial Officer, PESCO,
PESCO Head Quarters, WAPDA House,
Sakhi Chashma Shami Road, Peshawar.
- iii. Incharge Complaint Cell, PESCO,
PESCO Head Quarters, WAPDA House,
Sakhi Chashma Shami Road, Peshawar.
- iv. Mr. Masood-ul-Mulk, Chief Executive Officer,
Sarhad Rural Support Programme,
Plot No. 14, Sector E-8, Phase-7,
Hayatabad, Peshawar.
091-5890717-19



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No. PESCO-110/10/2020

Sarhad Rural Support Programme (SRSP) **Complainant**
Through its Chief Executive Officer,
Plot No. 14, Sector E-8, Phase 7,
Hayatabad, Peshawar.

Versus

Peshawar Electric Supply Company Limited (PESCO) **Respondent No. 1**
WAPDA House, Sakhi Chasma,
Shami Road, Peshawar.

Central Power Purchasing Agency (Guarantee) Ltd (CPPA-G) **Respondent No. 2**
73-West, Shaheen Plaza, Fazal-e-Haq Road,
Blue Area, Islamabad.

Date of Hearing: 17th November 2020

On behalf of:

- Complainant:**
- 1) Mr. Javed Khan, Coordinator
 - 2) Mr. Irfan Ahmed, Manager Finance
 - 3) Mr. Ikram Khan
 - 4) Mr. Arif Syed
- Respondent No. 1:**
- 1) Mr. M. Humayun, Deputy Manager (Tariff)
 - 2) Mr. Bilal Durrani, Advocate
- Respondent No. 2:**
- 1) Mr. Nazif Hasan, Dy, GM (T)
 - 2) Mr. Mirza Asad, Dy. Manager (Tech)

Subject: **DECISION IN THE MATTER OF COMPLAINT FILED BY SARHAD RURAL SUPPORT PROGRAMME (SRSP) UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST PESCO REGARDING PAYMENT OF ELECTRICITY DUES**

DECISION

Through this decision, the complaint filed by Sarhad Rural Support Programme, Peshawar (hereinafter referred to as the "Complainant" or "SRSP") against Peshawar Electric

Supply Company Limited Limited (hereinafter referred to as the "Respondent No. 1" or "PESCO"), under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act"), is being disposed of.

2. Brief facts of the case are that NEPRA received the subject complaint dated 29th September 2020. Main contents of the complaint are as under:

- i. In order to overcome acute shortage of electricity in Chitral, SRSP constructed a 2 MW hydro power plant at Golan Chitral as part of its community development programme and accordingly, electricity was supplied to Chitral town from the project from March 2017 to January 2018.
- ii. The Complainant approached PESCO for payment on account of electricity supplied by SRSP to PESCO in Chitral which was sold to the consumers by PESCO, however, no payment has yet been received by the Complainant in this regard.
- iii. SRSP approached the Secretary, Power Division in September 2019, whereby the Ministry referred the matter to Central Power Purchasing Agency (Guarantee) Limited (hereinafter referred to as the "Respondent No. 2" or "CPPA-G") for consideration and decision. The CPPA-G Board, in its meeting held on 27th December 2019, decided to constitute a committee headed by GM (Commercial), PESCO and one member from CPPA-G and other senior officers from PESCO. The committee was tasked to determine the number of units of electricity actually supplied by SRSP to PESCO which were sold by PESCO to the consumers and accordingly, SRSP would be reimbursed the cost of the same at NEPRA approved rate. As per the recommendation of the committee, a total of 2,948,472 kWh units were received by PESCO from SRSP's hydro power project, therefore, payment for the same is to be made to SRSP. In light of the recommendation of the committee, the CPPA-G Board decided to send the report of the committee to Power Division with the request to forward the same to PESCO with the direction to seek approval of PESCO Board of Directors to sign ex-facto Energy Purchase Agreement with SRSP and pay them their due payment as per the levelized tariff approved by NEPRA.
- iv. The Ministry of Energy, Power Division forwarded the decision of CPPA-G Board to PESCO on 18th January 2020 for further necessary action.
- v. The Complainant has requested that payment on account of electricity supplied by the hydro power plant of SRSP to PESCO, duly certified by CPPA-G Board, amounting to Rs. 12,035,368/- for 2,948,472 kWh units, may be reimbursed to SRSP.

3. The matter was taken-up with PESCO and CPPA-G for submission of parawise comments/ report. In response, CPPA-G, vide its letter dated 6th October 2020, reported, inter alia, that after due process, CPPA-G Board sent a request to Power Division to constitute a special committee to reconcile the volume of electricity supplied by SRSP to PESCO network. In response, the Ministry of Energy constituted a special committee. In compliance to the directives of the Ministry of Energy, the special committee visited the 2 MW hydro power plant of SRSP to reconcile the volume of electricity. The committee completed its report on 18th December 2019. The report was presented before the CPPA-G Board in its meeting held on 27th December 2019. The CPPA-G Board decided to send the report of the committee to Power Division with the request to forward the same to PESCO with the direction to seek approval of PESCO Board of Directors to sign ex-facto Energy Purchase Agreement with SRSP and pay them their due payment as per the levelized tariff approved by NEPRA.

Further, as the project was developed under the community support initiative and did not fall under any policy regime, therefore, no purview for purchase of power resided with CPPA-G. CPPA-G further reported that 2,948,472 kWh units were received and consumed at Juti Lasht grid station of PESCO prior to disconnection of 2 MW hydro power plant of SRSP from PESCO network.

4. PESCO, vide its letter dated 26th October 2020, reported, inter alia, that SRSP requested PESCO vide letter dated 17th January 2017 for issuance of power evacuation certificate and consent for purchase of power. In response, PESCO issued a conditional NOC which included generation license and tariff determination from NEPRA, vetting of grid study from NTDC/PESCO and signing of power purchase agreement by CPPAG. SRSP vide letter dated 17th August 2017 informed grid incharge of PESCO that their project is under testing phase and requested to continue the testing phase until formal arrangement are made and will not demand any payment from PESCO till process is finalized by NEPRA and mutual agreement is reached with SRSP. PESCO further submitted that according to the terms of the license, power purchaser means CPPA-G and power purchase agreement was to be signed between CPPA-G and SRSP. The SRSP has supplied electricity to PESCO from 11th March 2017 to 23rd January 2018 through generator installed at 2 MW Birmogh Golan power station without any agreement between PESCO and SRSP. The supply was provided to the feeder on the verbal consent of PESCO officials to redress the low voltage complaint of the area due to interference of Local District Administration and on the request of SRSP for test run without fulfillment of the codal formalities. During the said period, 2,948,472 kWh units were supplied to PESCO, however, at present, after the energization of Golan Gol power house, the supply was disconnected. Further, in pursuance of Ministry of Energy's letter dated 16th January 2020, PESCO vide letter dated 11th September 2020 requested SRSP for some pre-requisites along with certain clarifications, which were not fulfilled. PESCO stated that compliance of the contents of the said letter by SRSP is mandatory, and requested that the complaint, being devoid of merits, may please be dismissed.

5. An opportunity of hearing was provided to the parties (i.e. SRSP, PESCO and CPPA-G) on 17th November 2020 at NEPRA Head Office, Islamabad, wherein all the parties participated and advanced their arguments. During the hearing, PESCO representatives submitted that there is no agreement between SRSP and PESCO or CPPA-G for sale/purchase of units. The representatives of SRSP informed that a committee was constituted to determine the quantum of units supplied by SRSP to PESCO, i.e. 2,948,472 kWh units. Further, PESCO, vide its letter dated 19th January 2017, granted conditional NOC to SRSP for power evacuation. Accordingly, SRSP approached NEPRA for Generation License and Determination of Tariff. NEPRA, vide letter dated 26th January 2018, issued Generation License to SRSP, bearing number LAG-412. The Tariff Determination for 2-MW Birmogh Golan Hydro Power Project (SRSP) was issued on 21st May 2018. As such, there is no dispute on the quantum of units. Directions for payment have already been conveyed to PESCO, however, PESCO is reluctant for the same. SRSP requested that PESCO may be directed to issue payment without any further delay.

6. During the hearing, NEPRA asked PESCO to provide any documentary evidence from which it could be ascertained that the electricity supplied by SRSP to PESCO was free of cost and payment thereof was not required to be made by PESCO, however, PESCO failed to provide any such evidence.



7. Upon query during the hearing, CPPA-G representatives informed that this project did not fall under CPPA-G Policy. The quantum of units has already been determined and there is no dispute regarding the same. Further, PESCO has already been advised for payment of units after obtaining approval from its Board of Directors (BoD).

8. 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 Complainant/SRSP developed a 2-MW hydro power plant at Golan Chitral which was completed in January 2017.
- ii. SRSP approached PESCO, vide letter dated 17th January 2017, for evacuation of power. In response, PESCO informed SRSP that PESCO has no objection to evacuate power from the 2-MW hydro power project at Chitral, subject to the following:
 - a) Generation license from NEPRA.
 - b) Tariff Determination by NEPRA.
 - c) Submission of Interconnection Study report for approval/vetting of PESCO/ NTDC.
 - d) Signing of Power Purchase Agreement (PPA) by CPPA-G.
 - e) Settlement of the obligations of PESCO arising under the back-to-back agreement which shall be signed between CPPA-G and PESCO.
- iii. The said plant was connected to PESCO system on 11th March 2017. Later, SRSP, vide letter dated 17th August 2017, informed PESCO that they have approached NEPRA for Generation License and Determination of Tariff. Further, SRSP did not demand any payment from PESCO for the use of electricity until the approval process is finalized by NEPRA and a mutual agreement is reached with SRSP.
- iv. The Generation License was granted to SRSP, bearing number LAG-412, vide NEPRA's letter dated 26th January 2018. The Tariff Determination for 2-MW Birmogh Golen Hydro Power Project (SRSP) was issued on 21st May 2018. Further, Interconnection Study was also submitted by SRSP, as required.
- v. SRSP is claiming that electrical energy amounting to Rs. 12,035,368/- for 2,948,472 kWh units has been supplied to Chitral town from 2-MW hydro power plant at Golan Chitral via PESCO system for the period from March 2017 to January 2018. There is no dispute over the quantum of energy, however, PESCO is not making payment despite directions from their higher-ups.
- vi. PESCO is of the view that in the absence of any bilateral agreement on mutually agreed terms between the parties, no claim is competent against PESCO. Further, PESCO is of the view that there was no written agreement for pre-COD sale/purchase of energy between SRSP and PESCO, however, SRSP supplied electrical energy to PESCO on test basis. Therefore, SRSP is not entitled to lodge any claim for sale of energy, and accordingly, PESCO is not obligated to pay for said supply of energy. However, no documentary evidence was placed on record by PESCO, from which it could be ascertained that the electricity supplied by SRSP to PESCO was free of cost and payment thereof was not required to be made by PESCO.
- vii. SRSP approached the Ministry of Energy (Power Division), and on directions of the Ministry, CPPA-G Board constituted a Special Committee to reconcile the volume of electricity supplied by SRSP to PESCO network and sent the report of the committee to Power Division with the request to forward the same to PESCO with the direction to seek approval of PESCO Board of Directors to sign ex-facto Energy Purchase Agreement with SRSP and pay them their due



payment as per the levelized tariff approved by NEPRA. Further, it is evident from the report of the special committee that 2,948,472 kWh units were received at Juti Lasht grid station of PESCO prior to disconnection of 2 MW hydro power plant of SRSP from PESCO network, and the same were accordingly delivered/sold to the consumers. Further, on a query raised during the hearing, the representatives of PESCO submitted that there is no dispute on the quantity of units determined by the special committee.

- viii. It is a fact that PESCO received 2,948,472 kWh units from SRSP for onward supply/sale to the consumers, and there is no dispute on the quantity of units. These units have been sold by PESCO, and payment thereof has been received by PESCO from the consumers. Moreover, PESCO, at any stage, did not raise any objection either on receiving the units from SRSP or on constitution of committee by CPPA-G for determination of the quantum of units for payment.
- ix. It is pertinent to mention that CPPA-G constituted the Special Committee in order to quantify the units provided by SRSP to PESCO, meaning thereby that the quantity of units was required to be finalized for payment purpose. SRSP's viewpoint was also endorsed by the representatives of CPPA-G. PESCO was represented by GM (Tech) in the committee, however, no objection with respect to payment (for units) was raised by PESCO.
9. Foregoing in view, PESCO is directed to place the case before its Board of Directors (BoD), as already recommended by CPPA-G Board, for payment to SRSP for 2,948,472 kWh units of electrical energy supplied from 2-MW hydro power plant during the period from March 2017 to January 2018 as per the tariff approved by NEPRA.
10. Compliance report be submitted within thirty (30) days.

Islamabad, January 11, 2021


(Rehmatullah Baloch)
Member (Consumer Affairs)