



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

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No. NEPRA/AB/Appeal/100/POI/2021/ 297


March 15, 2022

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| 1. Danish Kaim Khani,
M/s. Diamond Plastic,
Plot No. 23-S, Site Area,
Hyderabad | 2. Chief Executive Officer,
HESCO Ltd.,
WAPDA Offices Complex,
Hussainabad, Hyderabad |
| 3. Muhammad Faisal Ameer,
Advocate High Court,
Office No. F-1306,
Near Chinese Canton and Hyder Chowk,
Cort Road, Gari Khata, Hyderabad | 4. Executive Engineer (Operation),
HESCO Ltd.,
Latifabad Operation Division,
Latifabad, Hyderabad |
| 5. POI/Electric Inspector
Hyderabad Region,
Government Building No. 48/B,
Civil Lines, Hyderabad | |

Subject: **Appeal Titled HESCO Vs. Danish Kaim Khani Against the Decision Dated 29.07.2020 of the Provincial Office of Inspection to Government of the Sindh Hyderabad Region, Hyderabad**

Please find enclosed herewith the decision of the Appellate Board dated 07.03.2022, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above


(Ikram Shakeel)
Deputy Director (M&E)/
Appellate Board

Forwarded for information please.

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



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. 100/2021

Hyderabad Electric Supply Company LimitedAppellant

Versus

Danish Kaim Khani, M/s. Diamond Plastic,
Plot No.23-S, Site Area, HyderabadRespondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 29.07.2020 PASSED BY PROVINCIAL
OFFICE OF INSPECTION HYDERABAD REGION, HYDERABAD**

For the Appellant:

Mr. G. Farooque Tunio XEN
Mr. Shakeel Ahmed A.D

For the Respondent:

Mr. Muhammad Faisal Advocate
Mr. Danish Kaim Khani

DECISION

1. Brief facts of the case are that the Hyderabad Electric Supply Company Limited (the HESCO) is a licensee of the National Electric Power Regulatory Authority (hereinafter referred to as the NEPRA) for the distribution of electricity in the territory specified as per terms and conditions of the license and the Respondent is its industrial consumer bearing Ref No.24-37155-0000391 U with a sanctioned load of 80 kW under the B-2(b) Tariff category. The premises of the Respondent was checked by the Metering and Testing (M&T) HESCO twice i.e. 17.01.2018



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and 20.01.2018 and on both occasions, allegedly the Respondent was found stealing electricity by the tampered (Bogus WAPDA Security Slips) meter. The electric supply of the Respondent was disconnected by the HESCO on 20.01.2018. Against the above action of the HESCO, the Respondent approached the HESCO and submitted an undertaking dated 21.01.2018 for the payment of the detection bill and the cost of demand notice for replacement of the disputed meter, which was subsequently replaced with a new billing meter by the HESCO in February 2018. Later on, two detection bills for the period April 2017 to October 2017 were charged to the Respondent by the HESCO and added in the bills for March 2018 and April 2018, detail of which is mentioned below:

- First detection bill of Rs.3,845,530/- for 228,128 units.
- Second detection bill of Rs.751,408/- for 44,579 units+168 kW MDI

2. Being aggrieved, the Respondent initially filed a CP No.D-2366-2018 before the Honorable High Court of Sindh, Hyderabad Circuit, and challenged the above detection bills. The Honorable High Court vide the general order referred the matter to the Provincial Office of Inspection, Hyderabad Region, Hyderabad (the POI) for the decision. The POI disposed of the matter vide its decision dated 29.07.2020, wherein both the detection bills amounting to Rs.3,845,530/- and Rs.751,408/- charged by the HESCO in March 2018 and April 2018 respectively along with the late payments surcharges (LPS) were cancelled.
3. Through the instant appeal, the HESCO has assailed the decision dated 29.07.2020 of the POI (hereinafter referred to as the impugned decision) before the NEPRA. In its appeal, the HESCO contended that the premises of the Respondent was checked on 20.01.2018 and the Respondent was found involved in the dishonest abstraction of electricity through tampering the LT TOU billing



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meter as the WAPDA Security Slips on ATB were found bogus. The HESCO further contended that the Respondent admitted theft of electricity by submission of the written statement and made partial payments against the detection bill during the period March 2018 to July 2018. As per the HESCO, the POI neither considered the consumption record nor carried out the joint inspection of the premises for verification of running load and rendered the unjustified impugned decision by cancellation of the detection bills for March 2018 and April 2018. According to the HESCO, the impugned decision is not transparent and the Respondent has been favored by the POI at the cost of the National Exchequer. The HESCO finally defended charging of the detection bills and prayed for setting aside the impugned decision.

4. Notice of the appeal was issued to the Respondent for filing reply/para-wise comments, which were filed on 21.01.2022. In his reply, the Respondent prayed for dismissal of the appeal on the plea that the HESCO in its appeal admitted for cancellation of the detection bills along with LPS charged in March 2018 and April 2018; that the HESCO did not produce any document before the POI to substantiate its stance for the dishonest abstraction of electricity committed by him; that there is no error in the impugned decision and the same is liable to be maintained; and that the appeal filed by the HESCO is hopelessly time barred by law of limitation.
5. Hearing of the appeal was fixed for 21.01.2022 at the NEPRA Regional Office Hyderabad and notice thereof was served upon both the parties. On the date of the hearing, both the parties were in attendance. At the beginning of the hearing, learned counsel for the Respondent raised the preliminary objection regarding the limitation and argued that the appeal is time barred. In response, XEN HESCO



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averred that the appeal was filed before the NEPRA on 25.08.2020 against the impugned decision dated 29.07.2020, which is within 30 days as envisaged under Section 38 of the NEPRA Act 1997. In support of his contention, he provide a copy of the HESCO letter dated 25.08.2020 addressed to Registrar NEPRA for filing the appeal. XEN HESCO reiterated the same grounds as contained in memo of the appeal and contended that the metering equipment of the Respondent was checked by the M&T HESCO on 17.01.2018 and 20.01.2018 and the LT TOU billing meter was found tampered (Bogus security slip) for committing the theft of electricity. XEN HESCO further contended that two detection bills of Rs.3,845,530/- and Rs.751,408/- for the period April 2017 to October 2017 (7 months) were charged to the Respondent in March 2018 and April 2018 respectively. He stated that an undertaking dated 21.01.2018 was submitted by the Respondent for payment of the above detection bills and he made partial payments of Rs.10 Lac and Rs.5 Lac, hence charging of the above detection bills cannot be challenged at any forum. XEN HESCO further stated that the consumption during the disputed period remained low as compared to the consumption before and after the dispute. XEN HESCO defended the charging of both the detection bills and prayed that the impugned decision be set aside. On the other hand, learned counsel for the Respondent denied the allegation of theft of electricity levelled by the HESCO and contended that the LT TOU billing meter of the Respondent was sealed in ATB and it was checked by the HESCO twice a year. As per learned counsel for the Respondent, neither prior notice was served by the HESCO nor was such discrepancy of tampered meter pointed out by the HESCO officials during the monthly readings prior to the alleged checking. According to the learned counsel for the Respondent, the findings of



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the POI are reasonable, proper, as per law, hence the same does not call interference by this forum. Learned counsel for the Respondent averred that the undertaking was given by the Respondent under coercion to avoid disconnection of electric supply. Learned counsel for the Respondent prayed for the maintainability of the impugned decision and rejection of the appeal. HESCO officials rebutted the plea of learned counsel for the Respondent with regard to the prior notice and informed that the Respondent was present in both the checkings dated 17.01.2018 and 20.01.2018, hence the notice prior checking is not required to be served to the Respondent.

6. Arguments heard and the record examined. It is observed as under:

- i. At first, the point of limitation should be addressed before going into the merits of the case. It is observed that the impugned decision was announced by the POI on 29.07.2020, a copy of the same was received by the HESCO and the instant appeal was filed before the NEPRA on 25.08.2020, which is within thirty (30) days as envisaged in Section 38(3) of the NEPRA Act 1997. We are convinced with the arguments of HESCO with regard to the limitation and the appeal is treated within time. The objection of the Respondent in this regard is not valid.
- ii. Metering equipment of the Respondent was checked by the Metering and Testing (M&T) HESCO twice i.e. 17.01.2018 and 20.01.2018 and on both occasions, the Respondent was found stealing electricity through the tampered (bogus WAPDA Security Slips) meter. The Respondent submitted an undertaking dated 21.01.2018 to the HESCO for the payment of the detection bill and the demand notice for replacement of the disputed meter, which was subsequently replaced with a new meter by the HESCO in February 2018.



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Thereafter, two detection bills for the period April 2017 to October 2017 were charged to the Respondent by the HESCO in March 2018 and April 2018 as per the details given below, which were disputed before the POI:

- First detection bill of Rs.3,845,530/- for 228,128 units.
- Second detection bill of Rs.751,408/- for 44,579 units+168 kW MDI

iii. It is an admitted fact that the Respondent submitted an undertaking dated 21.08.2020 to HESCO wherein he accepted theft of electricity through the tampered meter and agreed to pay the detection bill. To further verify the allegation of the HESCO for theft of electricity, consumption data of the Respondent was reproduced below for analysis:

Disputed period		Undisputed period	
Month	Units	Month	Units
Apr-17	4280	Apr-18	58600
May-17	4400	May-18	55960
Jun-17	4640	Jun-18	54080
Jul-17	5080	Jul-18	34160
Aug-17	4800	Aug-18	38680
Sep-17	5520	Sep-18	27800
Oct-17	4200	Oct-18	42000
Total	32920	Total	311280

It is evident from the above table that the total consumption recorded during the disputed period April 2017 to October 2017 is much lesser than the total consumption of the corresponding period of the succeeding year i.e. April 2018 to October 2018. This indicates that the actual consumption could not be recorded by the meter under dispute during the disputed period April 2017 to October 2017. The only question remains to be decided whether both the above detection bills charged to the Respondent are in line with Chapter 9 of the CSM. In this regard, the detection proforma as provided by the HESCO was



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examined, which transpires that the above both the detection bills were charged for a period of seven (7) months to the Respondent in the instant case, which is a violation of Clause 9.1c(3) of the Consumer Service Manual (CSM). Said Clause of the CSM allows the HESCO to charge the detection bill maximum for six (6) months to the Respondent being Industrial Consumer. It is further noted that the above detection bills were charged based on the difference of readings noted on the disputed meter of the Respondent instead of the sanctioned load i.e.80 kW. In consideration of the above-narrated facts, we hold that both the detection bills (first detection bill of Rs.3,845,530/- for 228,128 units and second detection bill of Rs.751,408/- for 44,579 units+168 kW MDI) for the period April 2017 to October 2017 charged to the Respondent by the HESCO are unjustified, illegal and the same along with LPS are liable to be cancelled, which is also the determination of the POI.

iv. Since the Respondent was found stealing electricity through tampering the meter during M&T HESCO checking dated 20.01.2020, the Respondent is liable to be charged the detection bill for six months i.e. May 2017 to October 2017 as per Clause 9.1c(3) of the CSM and calculation of the detection bill be made as per the formula given in Annex VIII of the CSM.

$$\begin{aligned}\text{Units/month to be charged} &= \text{Sanctioned load (kW)} \times \text{No. of Hours} \times \text{Load factor} \\ &= 80 \times 730 \times 0.5 = \mathbf{29,200 \text{ units/month}}\end{aligned}$$

Period: August 2017 to January 2018 Six (6) months

(A) Total Units assessed	=Units/ month x No. of Months = 29,200 x 6 = 175,200 units
(B) Total units already charged	= 4400+4640+5080+4800+5520+4200 = 28,640 units
(C) Net chargeable units	= (A) - (B) = 175,200 – 28,640 = 146,560 units



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7. Summing up the foregoing discussion, it is held that both the detection bills (first detection bill of Rs.3,845,530/- for 228,128 units and second detection bill of Rs.751,408/- for 44,579 units+168 kW MDI) for the period April 2017 to October 2017 charged to the Respondent by the HESCO are unjustified and the same along with the LPS should be withdrawn. The HESCO may charge the revised detection bill for net 146,560 units for the period i.e. May 2017 to October 2017 to the Respondent. However, the payments already made by the Respondent against the above-disputed detection bills shall be adjusted in the revised bill.
8. Forgoing into consideration, the appeal is partially accepted.

Abid Hussain
Member/Advisor (CAD)

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Date: 07.03.2022