



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

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No. NEPRA/Appeal/087/POI/2022/ 1311

November 29, 2022

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| 1. Khaleeq-uz-Zaman,
S/o. Zamurad Khan,
R/o. Gosha-e-Afia, Cricket Stadium Road,
Nawansher, Abbottabad | 2. Chief Executive Officer
PESCO Ltd,
WAPDA House, Sakhi Chashma,
Shami Road, Peshawar |
| 3. Executive Engineer (Operation),
PESCO Ltd,
Rural Division, Abbottabad | 4. Sub Divisional Officer (Operation),
PESCO Ltd,
Nawasher Sub Division,
Opposite Post Graduate College for Boys,
Abbottabad |
| 5. POI/Electric Inspector,
Abbottabad Region,
Energy & Power Department,
House # CB-81, Iqbal Road, Supply,
Abbottabad | |

Subject: Appeal Titled Khaleeq Uz Zaman Vs. PESCO Against the Decision Dated 26.04.2022 of the Provincial Office of Inspection to Government of the Khyber Pakhtunkhwa, Abbottabad Region, Abbottabad

Please find enclosed herewith the decision of the Appellate Board dated 24.11.2022, 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. Additional Director (IT) –for uploading the decision on NEPRA website



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Before The Appellate Board

In the matter of

Appeal No. 087/POI-2022

Khaleeq-uz-Zaman S/o Zamrud Khan, R/o Gosha-e-Afia,
Cricket Stadium Road, Nawansher, Abbottabad

.....Appellant

Versus

Peshawar Electric Supply Company Limited

.....Respondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 26.04.2022 PASSED BY THE PROVINCIAL
OFFICE OF INSPECTION ABBOTTABAD REGION, KHYBER PAKHTUNKHWA**

For the Appellant:

Mr. Khaleeq-uz-Zaman

For the Respondent:

Mr. Ali Babar SDO

DECISION

1. Briefly speaking, Mr. Khaleeq-uz-Zaman (hereinafter referred to as the “Appellant”) is a domestic consumer of Peshawar Electric Supply Company Limited (hereinafter referred to as the “Respondent”) bearing Ref No.16-26473-0011081 having sanctioned load of 5 k W under the A-1(b) tariff category. Reportedly, the billing meter of the Appellant was found defective with disturbed peak and off-peak reading segments in July 2021, hence it was replaced with a new meter by the Respondent vide the Meter Change Order (MCO) dated 31.08.2021. Subsequently, the removed billing meter was checked by the Metering and Testing (M&T) team of the Respondent, and vide report dated 06.09.2021, declared





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the impugned meter dead stop with mismatched reading segments (TL=77969, T1=5979, T2=25677). Thereafter, the Respondent charged a detection bill of Rs.1,445,734/- for the cost of 46,313 units to the Appellant being the difference between the total and sum of off-peak and peak readings and added to the bill for December 2021.

2. Being aggrieved, the Appellant initially filed a civil suit before the Consumer Court, Abbottabad against the charging of the above detection bill. The honorable Consumer Court vide order dated 17.03.2022 disposed of the matter due to lack of jurisdiction. The Appellant approached the Provincial Office of Inspection, Abbottabad Region, Khyber Pakhtunkhwa (hereinafter referred to as the "POI") vide complaint dated 14.04.2022, wherein he prayed for withdrawal of 46,313 units debited by the Respondent in December 2021. The complaint of the Respondent was decided by the POI vide decision dated 26.04.2022, the operative portion of which is reproduced below:

"Keeping in view the above facts and figures, it is held that the 46,313 units were consumed over a considerable period of time but remained unbilled due to dead stop of the T1 and T2 Registers of the meter. Therefore, the difference of 46,313 units shall be recovered in 36 installments or more to save the consumer from all of a sudden huge billing amount in one go."

3. Being dissatisfied, the Appellant has filed the instant appeal before the NEPRA against the POI decision dated 26.04.2022 (hereinafter referred to as the "impugned decision"). In its appeal, the Appellant opposed the impugned decision *inter alia*, on the following grounds that the bills charged by the Respondent were paid regularly; that the Respondent replaced the billing meter in July 2021 without any notice and charged 46,313





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accumulated units being the difference of readings segments; that the meter is the property of the Respondent and installed outside the premises as per the administrative policy of the Respondents; that the POI is under legal obligation to provide fair and free opportunity of rebutting all mathematical observations, so-called laboratory report, replacement of new meter and inquiry from the concerned staff of the Respondent; that the impugned decision was rendered in hasty manner, as such the same is liable to be struck down.

4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 06.07.2022 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. The Respondent submitted reply to the appeal before the NEPRA on 02.09.2022 in which the Respondent contended that the detection bill of 46,313 accumulated units was charged to the Appellant, which was initially challenged by him before the Consumer Court, Abbottabad. The Respondent further contended that the honorable Consumer Court vide order dated 17.03.2022 disposed of the matter being lack of jurisdiction. As per Respondent, the above bill was disputed before the POI, who vide impugned decision allowed the recovery of 46,313 units in thirty-six (36) equal installments. According to the Respondent, the Appellant failed to prove his claim before the Consumer Court as well as the POI, hence the Appellant be directed to pay the outstanding arrears.





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5. Hearing

5.1 Hearing in the matter of the subject Appeal was fixed for 02.09.2022 at Islamabad and accordingly, the notices dated 26.08.2022 were sent to the parties (i.e. the Appellant and the Respondent) to attend the hearing. As per schedule, hearing of the appeal was conducted at the NEPRA Head Office, Islamabad on 02.09.2022 in which both parties were in attendance. During the hearing, the Appellant reiterated the same arguments as given in memo of the appeal and argued that the Respondent replaced the impugned meter unilaterally in July 2021 but no notice in this regard was served by the Respondent. The Appellant stated that a detection bill amounting to Rs.1,445,734/- for 46,313 units was debited by the Respondent in December 2021 without any justification. As per the Appellant, the meter under dispute was installed outside the premises and no discrepancy was pointed out by the Respondent during monthly readings. According to the Appellant, the bills charged by the Respondent were paid regularly, hence the above detection bill charged is illegal, unjustified and the same is liable to be cancelled.

5.2 The representative for the Respondent rebutted the version of the Appellant and stated that the impugned meter of the Appellant remained defective since July 2020 due to which nil consumption was charged to the Respondent. As per the representative for the Respondent, the removed billing meter was checked by the M&T team and found dead stop with mismatched reading segments (TL=77969, T1=5979, T2=25677), hence, a detection bill of Rs.1,445,734/- for the cost of 46,313 units was charged to the Appellant being the difference between the total and sum of off-peak and peak readings and added





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to the bill for December 2021. The Representative defended the impugned decision and prayed that the same be maintained.

6. Arguments heard and the record examined. Following are our observations:

- 6.1 The record presented before us shows that the Respondent had installed the impugned meter at the premises of the Appellant in May 2018, since then the billing charged by the Respondent was paid by the Appellant till June 2021. Subsequently, the impugned meter of the Appellant was found defective with disturbed peak and off-peak reading segments in July 2021, hence it was replaced with a new meter by the Respondent vide MCO dated 31.08.2021. Subsequently, M&T team of the Respondent vide report dated 06.09.2021 declared the impugned meter dead stop with mismatched reading segments (TL=77969, T1=5979, T2=25677). Accordingly, the Respondent charged a detection bill of Rs.1,445,734/- for the cost of 46,313 units to the Appellant on the basis of the data retrieval report dated 06.09.2021 and added to the bill for December 2021.
- 6.2 The matter, therefore, needs to be examined in light of the applicable law to decide the fate of the detection bill of the Respondent. The services provided by the DISCOs to their Consumers are administered under the Consumer Service Manual (the "CSM").
- 6.3 Facts given as above, the Respondent took readings of the Appellant since the installation of the impugned meter in May 2018 but no such discrepancy of mismatched reading segments of the impugned meter was pointed out by the meter reader of the Respondent before the alleged checking conducted in July 2021. This shows negligence and





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carelessness on the part of the concerned officials of the Respondent. The Respondent is required to be vigilant and careful to ensure full recovery against the consumed energy. If the Respondent's claim regarding the defect in the impugned meter since July 2020 is correct, then the negligence of its relevant officials to replace the impugned meter in time has caused revenue loss to the company for not making timely recoveries. Such negligence warrants immediate inquiries for fixing responsibility and taking strict disciplinary action against responsible officers/staff of Respondent.

6.4 Notwithstanding the negligence of its relevant officers and their failure to replace the impugned meter being defective, the Respondent issued a detection bill of Rs.1,445,734/- for the cost of 46,313 units to the Appellant. Here, it needs to be realized that supply of electricity by the PESCO to its consumers is not a unilateral affair, rather it is administered under a standard contract mutually agreed between PESCO and the Consumer which refers to CSM for the duties and rights of both parties under the contract. Under the CSM, PESCO is responsible to take meter readings, following the prescribed manner for different consumer categories, issue the bill prepared in accordance with the applicable tariff, and deliver the same to the Consumer in timely manner. Whereas, the Consumer is responsible to pay the bill within the given time. In case of a defect in the meter, Clause 4.3.1 of CSM-2021 also requires the PESCO to replace the defective metering installation immediately within two billing cycles and in case, the meters are not available, PESCO is allowed to charge for maximum of two months. The intent of the above provision of CSM-2021 is quite clear that the Distribution Company has to be





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vigilant and replace the defective meter within two months. In case of delay beyond two months in replacing the defective meters, where the defect is not attributable to any act of the Consumer, the onus is on DISCO and the consumer is not liable to be charged for any loss incurred due to such delay beyond two months.

6.5 If presumed, the impugned meter was defective since July 2020 as claimed by the Respondent, the defective meter should have been replaced within two months of the discovery of the defect. However, the Respondent continued to send bills to the Appellant without replacing the impugned metering equipment. On his part, the Appellant kept on fulfilling his responsibility under the contract to pay the bill, issued by the Respondent on monthly basis. As such the Appellant never defaulted to fulfill his duty under the supply contract, therefore, he cannot be made liable to pay the so-called detection bill for recovery of loss, if any, which incurred merely due to negligence of the Respondent and its failure to fulfill its duty under the contract. In view of all the above facts and the applicable provisions of CSM, the detection bill of Rs.1,445,734/- for the cost of 46,313 units issued by the Respondent is unjustified and illegal.

6.6 The Respondent has issued the detection bill on the basis of data retrieval from the impugned meter claimed to have been retrieved on 06.09.2021. The data retrieval of defective meters is provided under Clause 4.3 of the CSM-2021. In this regard, the following points are important:

- i. Clause 4.3 of CSM 2021 dealing with the replacement of defective meters prescribes



two distinct procedures for the replacement of defective meters and charging the bills. Clause 4.3.1 of the CSM 2021 prescribes the procedure for defective/burnt meters while Clause 4.3.2 of CSM-2021 deals with the replacement of meters due to the display being washed. The data retrieval is provided only under Clause 4.3.2(c) of the CSM-2021, where the meter is defective due to the display washed. However, for defective meters for the reason other than display wash, there is no provision for data retrieval under Clause 4.3.1 of the CSM-2021. The impugned meter where data has been got retrieved by the Appellant had allegedly upset readings segments. Since its display was not washed, therefore, strictly under Clause 4.3.2 (c) of CSM-2021 data retrieval of the said meter is not legally justified.

- ii. Above-referred clause of the CSM-2021 empowers the Respondent to send the meter to the manufacturing company for data retrieval in case of washed display and the data retrieval should be done within six months. However, in the instant case, the Respondent waited so long i.e. July 2020 to July 2021 almost one year to remove the impugned meter and downloading the consumption data of the impugned meter.
- iii. The objection of the Appellant regarding data retrieval by the Respondent unilaterally without his knowledge as well as the failure of data retrieval in the presence of POI also float in the face of the credibility of data retrieval by the Respondent. Nevertheless, either in the case of data retrieval or otherwise, the CSM-2021 allows recovery from the consumer for maximum of two months period. As such, the detection bill of Rs.1,445,734/- for the cost of 46,313 units charged by the Respondent to the Appellant is unjustified and the same is declared null and void.

- 6.7 In so far the impugned decision of POI, it is a settled principle of law that all adjudicating authorities are bound to decide the case, falling within their domain, and jurisdiction in accordance with the law, rules/regulations. None of such adjudicating authorities have any discretion to bypass the law. Reliance in this regard is placed on the judgment of the honorable Supreme Court of Pakistan reported in *PLD 2022 Supreme Court 92*. As such the impugned decision of POI is not based on the legal provisions of applicable law; therefore, the same is liable to be set aside.
- 6.8 The Respondent issued the disputed detection bill based on the checking in July 2021. Therefore, as per Clause 4.3.3(c)(ii) of the CSM-2021, the Appellant is liable to be debited the bills for the previous two months i.e. May 2021 and June 2021. It is clarified that the Appellant was previously billed almost nil consumption which could not be made the basis for the revision of the bills for May 2021 and June 2021. Therefore, it would be fair and appropriate to charge the said bills on the basis of the average consumption of the new healthy meter recorded during the period from September 2021 to April 2022. Calculation in this regard is done in the below table:
- Period to be charged: May 2021 and June 2021 (2 months)
- Units/month to be charged = average consumption for September 2021 to April 2022
- $$= 387 + 542 + 502 + 463 + 674 + 942 + 420 + 534 = \mathbf{558 \text{ units/month}}$$
7. Summing up the foregoing discussion, it is concluded as under:
- 7.1 The detection bill of Rs.1,445,734/- for the cost of 46,313 units charged by the Respondent to the Appellant in December 2021 is declared null and void.
- 7.2 The Appellant may be charged the bills @ 558 units/month for two months May 2021 and June 2021.



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7.3 The billing account of the Appellant may be overhauled after the adjustment of payments made against the above detection bill.

8. The impugned decision is modified in the above terms.

Syed Zavar Haider
Member

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 24/11/2022

