



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

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No. NEPRA/AB/Appeal/146/POI/2021/ 28/

March 10, 2022

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| 1. Rahiq ur Rehman,
Manager (Switching Operations),
PTCL, Telephone Exchange,
Dir, Swat | 2. Chief Executive Officer
PESCO Ltd,
WAPDA House, Sakhi Chashma,
Shami Road, Peshawar |
| 3. Sub Divisional Officer (Operation),
PESCO Ltd,
Dir Sub Division, Dir | 4. POI/Electric Inspector
Peshawar Region,
Benovelent Fund Building,
3 rd Floor, Near Jan's Bakers,
Peshawar Cantt |

Subject: **Appeal Titled PTCL Vs. PESCO Against the Decision Dated 09.12.2020 of the Provincial Office of Inspection to Government of the Khyber Pakhtunkhwa, Peshawar Region, Peshawar**

Please find enclosed herewith the decision of the Appellate Board dated 03.03.2022, 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 The Appellate Board

In the matter of

Appeal No. 146/POI-2021

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 09.12.2020 PASSED BY PROVINCIAL
OFFICE OF INSPECTION PESHAWAR REGION, PESHAWAR**

Rahiq ur Rehman, Manager (Switching Operation),
PTCL, Telephone Exchange, Dir Swat

.....Appellant

Versus

Peshawar Electric Supply Company Limited

.....Respondent

For the Appellant:

Mr. Rahiq ur Rehman Manager

For the Respondent:

Mr. Kamran SDO

DECISION

1. Peshawar Electric Supply Company Limited (the "PESCO") is a licensee of the National Electric Power Regulatory Authority (hereinafter referred to as the "NEPRA") for the distribution of the electricity in the territory specified as per the terms and conditions of the license and the Appellant is its commercial consumer bearing Ref No.19-26551-0112951 having a sanctioned load of 23 kW under the tariff category A-2C.
2. Brief facts of the case are that the connection of the Appellant was sanctioned with



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01 kW load under the tariff category A-2a by the PESCO in February 2013 and the billing meter was installed on the premises of the Appellant. However, the billing meter of the Appellant was replaced with a TOU meter by PESCO in November 2013. Later on, the PESCO reportedly observed the illegal extension of load from 1 kW to 70 kW by the Appellant, therefore a demand notice dated 26.06.2018 amounting to Rs.124,500/- was issued to the Appellant for regularization of the extended load, which however was not deposited by him. Subsequently, the Audit Party visited the premises of the Appellant on 03.09.2020 and noticed the connected load as 23 kW against the sanctioned load of 1 kW and the accumulative 2,298 (kw) MDI reading on the billing meter of the Appellant. Audit Party vide Audit Para No.32 dated 04.09.2020 recommended to charge the detection bill of Rs.919,200/- for the cost of 2,298 (kw) MDI to the Appellant. Resultantly, PESCO issued a bill of Rs.1,000,027/- to the Appellant in October 2020, which contained the current bill of Rs.77,834/- for 3,910 units and the detection bill of Rs.919,200/- for 2,298 (kw) MDI.

3. Being aggrieved with the above actions of the PESCO, the Appellant filed a complaint before the Provincial Office of Inspection, Peshawar Region, Peshawar (hereinafter referred to as the "POI") on 30.11.2020 and challenged the detection bill of Rs.919,200/- for 2,298 (kw) MDI. The matter was disposed of by the POI vide decision dated 09.12.2020 wherein, the PESCO was directed for recovery of the detection bill of Rs.919,200/- for 2,298 (kw) MDI from the Appellant on account of



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accumulated MDI charges.

4. Through the instant appeal, the Appellant has assailed the decision dated 09.12.2020 of the POI (hereinafter referred to as the “impugned decision”) before the NEPRA. In its appeal, the Appellant opposed the charging of the detection bill of Rs.919,200/- for 2,298 (kw) MDI on the plea that neither prior notice was served nor the audit observation is binding upon him. The Appellant contended that the TOU meter was installed in November 2013 for correct charging of tariff but the wrong Meter Change Order (MCO) was fed by the PESCO subdivision and the partial readings were recorded by the PESCO meter readers since the date of installation of TOU meter. The Appellant further contended that the PESCO only debited the fixed charges due to accumulative MDI on the identification of the Audit Party but did not account for the off-peak and peak readings recorded by the TOU meter. As per Appellant, NEPRA vide decision dated 13.02.2017 declared the arrears debited on the recommendation of the Audit Party due to wrong of application of tariff as illegal and unjustified in another case. According to the Appellant, PESCO violated Chapter 7 of the Consumer Service Manual (CSM), hence disciplinary action be initiated against the PESCO officials at fault. The Appellant finally prayed for setting aside the impugned decision and for withdrawal of the detection bill of Rs.919,200/-.
5. Notice of the appeal was issued to Respondent PESCO for filing reply/para-wise comments, which however were not filed.



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6. Hearing of the appeal was fixed for 24.02.2022 at the NEPRA Regional Office Peshawar and notice thereof was served upon both the parties. On the date of the hearing, both the parties were in attendance. The Appellant reiterated the same grounds as contained in memo of the appeal and contended that the PESCO debited the detection bill of Rs.919,200/- for 2,298 (kw) MDI on the recommendation of the Audit Party vide Audit Para No.32 dated 04.09.2020 against which he approached the PESCO but no relief was granted. The Appellant further contended that PESCO is responsible for charging the bills with the correct application of tariff since the year 2013 and he cannot be held responsible for the payment of such a huge detection bill due to the negligence on the part of PESCO. As per Appellant, if tariff category A-2C was applicable then only (kw) MDI was charged by the PESCO but the benefit of off-peak and peak tariff rates was not given by them which is unfair. The Appellant prayed that the impugned decision be struck down and the above-mentioned detection bill be waived off. On the contrary, the SDO PESCO repudiated the version of the Appellant and averred that the premises of the Appellant was inspected in the year 2018 and the connected load was observed as 70 kW for which demand notice of Rs.124,500/- was issued to the Appellant which was not deposited by him. The SDO PESCO argued that 23 kW MDI was noticed during the joint inspection of the Appellant's premises in the year 2020 and demand notice dated 19.04.2021 of Rs.52,490/- was issued for the regularization of the connected load of 29 kW and same was paid by the Appellant on



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03.06.2021, thereafter the two-part tariff was applied. As per SDO PESCO, the Appellant extended his load, hence the detection bill of Rs.919,200/- for 2,298 (kw) MDI is recoverable from the Appellant. The SDO PESCO defended the impugned decision and prayed that the same should be upheld.

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

- i. PESCO charged the detection bill of Rs.9,19,200/- for the cost of 2,298 (kw) MDI to the Appellant on account of accumulative MDI as observed by the Audit Party vide Audit Para No.32 dated 04.09.2020, which was disputed by him before the POI.
- ii. As per record provided by the PESCO, the disputed meter was installed on the premises of the Respondent in November 2013 and the billing continued on the same meter since then. However the PESCO meter reading staff never pointed out the discrepancy of extended load in a long span of time i.e. from the date of installation of the TOU meter i.e. November 2013 till the PESCO Audit Party checking dated 03.09.2020 i.e. six years and nine months, which is gross negligence on the part of PESCO staff. If presumed the PESCO noticed the illegal extension of load by the Appellant in the year 2018 and issued demand notice accordingly, as to why the PESCO did not disconnect the electric supply of the premises due to failure in payment of demand notice by the Appellant as per Clause 7.5(a) of the CSM. Even otherwise, the Audit observation is an internal matter



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between the PESCO and Audit Party and the Appellant cannot be held responsible for the payment of any detection bill based on Audit Para. Reliance in this regard is placed on the cases reported in 2014 MLD 1253 titled M/s. Mehmood Textile Mills v/s MEPCO and 2008 YLR 308 titled WAPDA v/s Fazal Karim. Moreover, the claim of the PESCO for 2,298 (kw) MDI on a meter installed for the six years and nine months i.e. November 2013 to September 2020 is inconsistent with Article 181 of the Limitation Act, 1908, which restricts the period of claim to three (3) years only. In this regard, reliance is placed on the Honorable Lahore High Court, judgment dated 30.11.2015 passed in the Writ Petition No.17314-2015 titled "Muhammad Hanif v/s NEPRA and others", wherein it is held as under:

"The petitioner at the most can invoke Article 181 of The Limitation Act, 1908 which is the residuary provision and caters the issue of limitation where no period of limitation is provided elsewhere in the Schedule of The Limitation Act, 1908 or under Section 48 of The Code of Civil Procedure (V of 1908). Article 181 of The Limitation Act, 1908 prescribes the period of three years for filing an application that applies when the right to apply accrues as prescribed in Article 181 of Limitation Act, 1908."

In consideration of the above-narrated facts, the detection bill of Rs.919,200/- for the cost of 2,298 (kw) MDI charged by PESCO to the Appellant in October 2020 along with late payment surcharges (the LPS) is unjustified and not payable by the Appellant.

It is an admitted fact that the Appellant had extended the connected load beyond the sanctioned load and the PESCO regularized the connected load of 23 kW in August 2021 after completion of the departmental formalities and the billing is



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being carried out as per Tariff A-2C accordingly. Hence the Respondent is liable to be charged the revised bills for the last three (3) years i.e. October 2017 to September 2020 as per the Applicable tariff A-2C, pursuant to Article 181 of the Limitation Act, 1908. Calculation for (kw) MDI and units to be charged as off-peak & peak tariff is given below i.e.A-2C:

Period: February 2014 to January 2017 (36 months)			
<ul style="list-style-type: none"> • Total (kw) MDI to be charged = $\frac{\text{Accumulative (kw) MDI} \times \text{No. of allowed months}}{\text{No. of disputed months}}$ • Total (kw) MDI to be charged = $\frac{2,298}{81} \times 36 = 1,021 \text{ (kw) MDI}$ • (kw) MDI/month to be charged = $\frac{1,021}{36} = 28 \text{ (kw) MDI/month}$ 			
Month	Units already charged by PESCO	Units to be charged as per tariff A-2C	
		Off-peak = $\frac{\text{Units charged} \times 20 \text{ Hrs.}}{24 \text{ Hrs.}}$	Peak= $\frac{\text{Units charged} \times 4 \text{ Hrs.}}{24 \text{ Hrs.}}$
Oct-17	5,670	4725	945
Nov-17	7544	6287	1,257
Dec-17	6200	5167	1,033
Jan-18	5226	4355	871
Feb-18	3281	2734	547
Mar-18	4843	4035	808
Apr-18	3968	3307	661
May-18	3469	2891	578
Jun-18	3600	3000	600
Jul-18	200	167	33
Aug-18	2568	2140	428
Sep-18	11	9	2
Oct-18	300	250	50
Nov-18	5749	4791	958
Dec-18	4106	3422	684
Jan-19	3677	3064	613
Feb-19	5459	4549	910
Mar-19	4262	3552	710

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Apr-19	4411	3676	735
May-19	3340	2783	557
Jun-19	4064	3387	677
Jul-19	2948	2457	491
Aug-19	3130	2608	522
Sep-19	4088	3407	681
Oct-19	4486	3738	748
Nov-19	4691	3909	782
Dec-19	4372	3643	729
Jan-20	4288	3573	715
Feb-20	4480	3733	747
Mar-20	4236	3530	706
Apr-20	4411	3675	736
May-20	4319	3599	720
Jun-20	4425	3687	738
Jul-20	3521	2934	587
Aug-20	4724	3937	787
Sep-20	3235	2696	539

Hence, the bills for the period October 2017 to September 2020 i.e. thirty-six (36) months be revised as per the calculation in the above table in accordance with the applicable tariff of that month. The impugned decision is liable to be modified to this extent.

8. In view of what has been stated above, it is concluded that the current bills for the period October 2017 to September 2020 and the detection bill of Rs.919,200/- for 2,298 (kw) MDI charged by PESCO to the Appellant are unjustified and should be withdrawn. The Appellant may be charged the revised bills for the months October 2017 to September 2020 thirty-six (36) months as per the calculation given in the above table and the calculation of bill for a month will be as per tariff A-2C applicable in that particular



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month. The PESCO should adjust the payments already made by the Appellant against the current bills for the period October 2017 to September 2020 and the disputed detection bill of Rs.919,200/- for 2,298 (kw) MDI and issue revised bill accordingly.

9. Forgoing into consideration, the appeal is partially accepted.

Abid Hussain
Member/Advisor (CAD)

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Dated: 03.03.2022