



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

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No. NEPRA/AB/Appeal-001/POI-2019/ 325-332


February 12, 2019

- | | |
|---|---|
| 1. M/s. Abdul Dayan Ice Factory
Through Wajid Khan,
S/o. Taj Khan,
Sheikhan, Kohat | 2. Chief Executive Officer
PESCO Ltd,
WAPDA House, Sakhi Chashma,
Shami Road, Peshawar |
| 3. Sub Divisional Officer
PESCO Ltd,
Kotal Town Sub Division,
Kohat | 4. Provincial Office of Inspection,
Peshawar Region,
Benovelent Fund Building,
3 rd Floor, Near Jas Bakers,
Peshawar Cantt |

Subject: **Appeal Titled PESCO Vs. M/s. Abdul Dayan Ice Factory Against the Decision Dated 06.11.2018 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 01.02.2019, regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**


(Ikram Shakeel)

No. NEPRA/AB/Appeal-001/POI-2019/ 333

February 12, 2019

Forwarded for information please.

Assistant Director
Appellate Board

1. Registrar



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**Assistant Director
Appellate Board**

1. Registrar



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. 001/2019

Peshawar Electric Supply Company Limited

.....Appellant

Versus

M/s. Abdul Dayan Ice Factory, Through Wajid Khan
S/o Taj Khan, Sheikhan, Kohat

.....Respondent

**APPEAL FILED UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION AND DISTRIBUTION ACT 1997 AGAINST THE DECISION
DATED 06.11.2018 OF PROVINCIAL OFFICE OF INSPECTION ENERGY AND
POWER DEPARTMENT TO GOVT OF KHYBER PAKHTUNKHWA,
PESHAWAR**

For the appellant:

Mr. Gohar Rehman XEN
Mr. Arifullah Deputy Manager
Mr. Altaf Hussain SDO
Mr. Zain-ul-Abidin Incharge

For the respondent:

Mr. Wajid Khan

DECISION

1. Through this decision, an appeal filed by Peshawar Electric Supply Company Limited (hereinafter referred to as PESCO) against the decision dated 06.11.2018 of Provincial Office of Inspection, Government of Khyber Pakhtunkhwa, Peshawar (hereinafter referred to as POI) is being disposed of.
2. PESCO is a licensee of National Electric Power Regulatory Authority (hereinafter referred to as the NEPRA) for distribution of electricity in the territory specified



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as per terms and conditions of the license and the respondent is its industrial consumer bearing Ref No.24-26247-0001320 with a sanctioned load of 154 kW under the B-2b tariff. The premises of the respondent was raided by PESCO team along with police on 31.07.2018 and allegedly, the respondent was found stealing electricity directly through a three phase hook connection. PESCO disconnected the electric supply of the respondent and FIR No.517 dated 31.07.2018 was registered with Police station MRS Kohat against the respondent on the charges of theft of electricity. After issuing notice dated 03.08.2018 to the respondent, a detection bill of Rs.1,033,939/- for 57,304 units (OP=47,753, P=9,551) for the period May 2018 to July 2018 (3 months) was served to the respondent by PESCO @ 40% load factor of the sanctioned load, which allegedly was paid by the respondent under protest in order to get the electric supply restored.

3. Subsequently, the respondent filed a complaint before POI and assailed the bill of Rs.1,283,935/-, which included the above detection bill. POI disposed of the matter vide its decision dated 06.11.2018 and concluded as under:

"The detection bill shall be revised for the cost of 23,578 units/89 kW MDI and as such 33726 units and 373 kW MDI should be credited/adjusted in the future billing as the consumer has already paid for the disputed detection bill of 57,304 units and 462 kWMDI. The surcharge amount so levied against the petitioner shall be withdrawn."



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4. PESCO being aggrieved with the decision of POI dated 06.11.2018(hereinafter referred to as the impugned decision) has filed the instant appeal with the contentions that the respondent was caught stealing electricity through the hook connected to the transformer bushes in presence of police, hence FIR No.507 dated 01.08.2018 was registered with the Police Station MRS Kohat and the detection bill of Rs.1,033,939/- for 57,304 units was served to the respondent; that the detection bill was deposited by the respondent; that POI accepted the plea of the respondent and wrongly reduced the load factor from 40% to 30%; and that the POI is only possible in planned raids and the stealing of electricity can only be detected during such like surprise visits.
5. In his reply, the respondent contradicted the version of PESCO and contended that the cable supplying electricity to his factory was burst, so he approached XEN PESCO for the replacement of the defective cable but PESCO did not replace the same. The respondent further contended that he tried to replace the defective cable and in the meantime, SDO PESCO wrongly got registered FIR against unconcerned persons on account of theft of electricity. As per respondent, the detection bill of Rs.1,033,939/- for 57,304 units was paid by him for restoration of electricity and to avoid further financial loss. According to the respondent, POI has rightly revised the detection bill @ 30% load factor applicable to the industrial consumer. The respondent prayed for dismissal of the appeal.
6. Notice was issued to both the parties and hearing of the appeal was fixed for 18.01.2019 in Peshawar in which both the parties were in attendance.



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XEN PESCO reiterated the same arguments as contained in memo of the appeal and contended that the detection bill of Rs.1,033,939/- for 57,304 units was charged on account of theft of electricity committed by the respondent. XEN PESCO opposed the determination of POI for revision of the detection bill @ 30% load factor and prayed to declare the same as null and void. On the contrary, the respondent appearing in person denied the allegation of theft of electricity and stated that the above detection bill was assessed by PESCO on the basis of 730 hours for a month without consideration of load shedding of 10 hours/day. The respondent supported the impugned decision and prayed for its maintainability.

7. We have heard the arguments of both the parties and examined the record placed before us. PESCO raided the site of the respondent with police on 31.07.2018 and found dishonest abstraction of electricity through the three-phase hook connection. Electric supply of the respondent was immediately disconnected by PESCO and FIR No.507 dated 31.07.2018 was registered with the Police against accused. PESCO after issuing notice dated 03.08.2018 to the respondent charged a detection bill of Rs.1,033,939/- for 57,304 units for the period May 2018 to July 2018 (3 months) on account of theft of electricity. The respondent initially paid the above detection bill but subsequently challenged the same before POI.

The respondent was of the plea that he initially approached XEN PESCO for replacement of the defective cable supplying power to the factory but PESCO did not replace the same. However, no evidence was placed by the respondent before us to substantiate his stance. In addition, the respondent in his reply admitted for



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replacement of defective cable at his own, which supports the version of PESCO that electricity was used through the three-phase hook connection. POI has no jurisdiction to adjudicate the instant matter being direct theft of electricity in pursuance of the judgment of Honorable Supreme Court of Pakistan reported as PLD 2012 SC 371, the operative portion of which is reproduced below:

“---Ss. 26(6) & 26-A---Detection bill, issuance of---Theft of energy by consumer, charge of---Jurisdiction of Electric Inspector and Advisory Board---Scope---Electric Inspector for possessing special expertise in examining the working of metering equipment and other related apparatus had jurisdiction to entertain reference under S.26(6) of Electricity Act, 1910 only in case of dishonest consumption of energy by consumer through deliberate manipulation of or tampering with metering equipment or other similar apparatus---Electric Inspector would have no jurisdiction in matter of theft by means other than tampering or manipulation of metering equipment etc.”

Moreover, in cases of theft of electricity, chapter 9 of Consumer Service Manual allows DISCOs to charge the detection bill maximum for six months to the industrial consumers on the basis of sanctioned load or connected load, whichever is higher. However, POI has not given any justification for reduction of load factor from 40% to 30%, therefore we are inclined to agree with the contention of PESCO that the impugned decision is based on assumption and presumption and has no legal basis or technical justification. Hence the detection bill of Rs.1,033,939/- for 57,304 units (OP=47,753, P=9,551) for the period May 2018 to

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July 2018 (3 months) charged to the respondent by PESCO @ 40% load factor of the sanctioned load is justified and liable to be paid.

8. Forgoing in view, the appeal is accepted and consequently the impugned decision is set aside.

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener

Muhammad Shafique
Member

Dated: 01.02.2019