



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

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No. NEPRA/Appeal/083/POI/2022/ 034

January 16, 2023

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| 1. Aurangzeb,
S/o. Kareem Gul,
R/o. Dobian Road, Yar Hussain,
District Swabi | 2. Chief Executive Officer
PESCO Ltd.
WAPDA House, Sakhi Chashma,
Shami Road, Peshawar |
| 3. Muhammad Hanzala,
Advocate High Court,
Office 101, Mezzanine Floor,
Dosal Arcade, Jinnah Avenue,
Blue Area, Islamabad | 4. Executive Engineer (Operation),
PESCO Ltd,
Razar Division,
Malik Plaza, Near UBL Shewa Adda,
Swabi |
| 5. Sub Divisional Officer (Operation),
PESCO Ltd,
Yar Hussain-II Sub Division,
Swabi | 6. POI/Electric Inspector,
Peshawar Region,
Benovelent Fund Building,
3 rd Floor, Near Jan's Bakers,
Peshawar Cantt |

Subject: Appeal Titled Aurangzeb Vs. PESCO Against the Decision Dated 17.03.2022 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 13.01.2023, 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



National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No. 083/POI-2022

Aurangzeb S/o Kareem Gul, R/o Dobian Road,
Yar Hussain, District Swabi

.....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 17.03.2022 PASSED BY THE PROVINCIAL
OFFICE OF INSPECTION PESHAWAR REGION, KHYBER PAKHTUNKHWA**

For the Appellant:

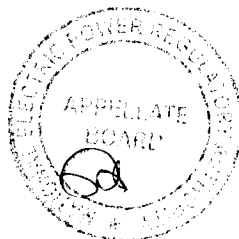
Mr. Muhammad Hanzala Advocate
Mr. Zulfiqar

For the Respondent:

Mr. Wisal Muhammad SDO
Mr. Amir Said LM-I

DECISION

1. Briefly speaking, Mr. Aurangzeb (hereinafter referred to as the “Appellant”) is an industrial consumer of Peshawar Electric Supply Company Limited (hereinafter referred to as the “Respondent”) bearing Ref No.30-26823-0000100 U having sanctioned load of 159 kW under the B-2(b) tariff category. The load of the Appellant was regularized from 32 kW to 159 kW vide office order dated 25.08.2017 of the SE(Operation) of the Respondent. Subsequently, metering equipment along with a 200 KVA distribution transformer and 400/5 Amp Current Transformers (CTs) were installed at the premises of the Appellant on 28.03.2018, and onwards bills of the Appellant were raised by the Respondent with Multiplication Factor (MF)=20.





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Later on, the inspection team of the Respondent visited the premises of the Appellant on 28.05.2020 and vide report dated 05.06.2020 pointed out the wrong application of MF i.e. 20 instead of 80 for the period March 2018 to June 2020. Resultantly, a detection bill of 403440 units + 2800 kW was prepared by the Respondent on 22.06.2020, the calculation of which is given as under:

Meter No.010404	A	B	C=B-A	D	E = C X D	F
Reading	Checking 22.06.2020	M&T checking 28.03.2018	Difference	Difference of MF=(80-20)	Units to be charged	MDI (KW)
off-peak	8767	3235.83	5531.17	60	331870.2	-
peak	1894	702.03	1191.97	60	71518.2	-
total	10661	3937.86	6723.14	60	403388.4	2800

Notice dated 18.08.2020 thereof was served to the Appellant by the Respondent regarding the above wrong application of MF i.e. 20 instead of 80. Thereafter, the Appellant received a detection bill of Rs.8,600,000/- for the cost of 403,440 units +2,800 kW MDI for the period March 2018 to June 2020 in September 2020.

2. Being aggrieved, the Appellant initially filed a complaint before the Consumer Court, Swabi on 15.09.2020 against the charging of the above detection bill. The honorable Consumer Court, Swabi vide order dated 03.05.2021 dismissed the case. Subsequently, Appellant filed a Writ Petition No.118-P/2021 before the Peshawar High Court, Peshawar against the above dismissal order of the Consumer Court. The honorable Peshawar High Court vide order dated 15.02.2022 referred the matter to the Provincial Office of Inspection, Peshawar Region, Khyber Pakhtunkhwa (hereinafter referred to as the "POI"). Accordingly, the Appellant filed a complaint before the POI on 27.02.2022 and assailed the bill of Rs. 11,545,628/- charged by the Respondent in January 2021 containing the detection bill of Rs. 8,600,000/- against 403440 units +2,800 kW MDI for the period March 2018 to June 2020. The complaint of the





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Appellant was decided by the POI vide decision dated 17.03.2022, the operative portion of which is reproduced below:

“Respondents shall recover the difference of units/MF for the period of six (06) months only from the date of pointing out the such discrepancy. Respondents shall conduct an inquiry against the delinquent officers/officials of the concerned division/sub-division. Supply of the premises of consumer/petitioner shall be restored after payment as per this decision.”

3. Being dissatisfied, the Appellant filed the instant appeal before the NEPRA against the POI decision dated 17.03.2022 (hereinafter referred to as the “impugned decision”). In its appeal, the Appellant opposed the impugned decision, *inter alia*, on the following grounds that the detection bill of Rs. 8,600,000/- was challenged before the POI, who vide impugned decision revised the same for six months from the date of such discrepancy pointed out; that the Respondent admitted their negligence, so this is well-settled law that “*no one should be penalized due to inaction of public functionaries*”; that the impugned decision is against the Consumer Service Manual (the “CSM”); that it is the responsibility of the Respondents to apply correct MF, which in the instant case was not done; that on the similar grounds, the NEPRA decided a Complaint No. PESCO-NHQ-65/03/2021 titled “Shakeel Ahmed vs PESCO” in favor of the complainant and directed the Respondent PESCO to return the amount; that the Respondent may be directed to withdraw the aforesaid impugned bill and to restore the electricity of the premises.

4. **Proceedings by the Appellate Board:**

Upon filing of the instant appeal, a Notice dated 24.06.2022 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 29.06.2022





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wherein the Respondent contended that the load of the Appellant was extended from 32 kW to 159 kW vide the office order dated 25.08.2017 of SE (operation) and metering equipment along with a 200 KVA Transformer and 400/5 Amp CTs were installed by the Respondent on 28.03.2018 and energized vide test check proforma dated 29.03.2018, which indicates that the MF was to be changed from 20 to 80 for onward billing. The Respondent further contended that the S&I team during checking of the premises of the Appellant pointed out less charging of units due to the wrong application of MF for which notice dated 18.08.2020 was served to the Appellant. As per Respondent, the Appellant was charged a detection bill of 403,440 units + 2,800 kW MDI in September 2020, which was initially challenged by him before the Consumer Court, Swabi on 15.09.2020. The Respondent further contended that the honorable Consumer Court vide order dated 03.05.2021 dismissed the petition of the Appellant against which an appeal was preferred by him before the Peshawar High Court, Peshawar. According to the Respondent, pursuant to the direction of the honorable Peshawar High Court vide order dated 15.02.2022, the Appellant approached the POI and disputed the above detection bill. The Respondent submitted that the POI vide impugned decision allowed the recovery of the above detection bill for only six months without any cogent proof. The Respondent finally prayed that the impugned decision is liable to be withdrawn.

5. Hearing

- 5.1 Hearing in the matter of the subject Appeal was fixed for 19.08.2022 at Islamabad and accordingly, the notices dated 12.08.2022 were sent to the parties (i.e. the Appellant and the Respondent) to attend the hearing. As per schedule, the hearing of the appeal was conducted at the NEPRA Head Office Islamabad on 19.08.2022, which was





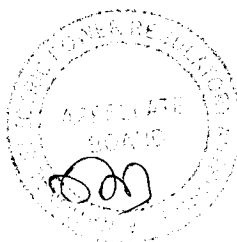
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attended by the Appellant but there was no representation from the Respondent side.

In order to provide an opportunity of hearing to both parties, the case was adjourned.

5.2 Hearing in the subject matter was again fixed at Islamabad on 02.09.2022 and notices dated 26.08.2022 thereof were served to both parties. On the given date of the hearing, both parties were in attendance. During the hearing, learned counsel for the Appellant reiterated the same arguments as given in memo of the appeal and argued that the load of the Appellant was enhanced by the Respondent from 32 KW to 159 KW in March 2018 and the bills charged as per the reading of the billing meter were paid by him regularly. Learned counsel for the Appellant contended that a notice was received after the two years of extension of load that the bills for the period March 2018 to June 2020 were charged with the wrong application of MF i.e. 20 instead of 80. As per learned counsel for the Appellant, neither discrepancy of wrong application of MF was noticed by the meter reader during the monthly readings nor was the metering equipment checked by the Respondent during the disputed period, hence there is no justification to charge any bill due to negligence on the part of the Respondent. He referred the decision of NEPRA in the complaint No.PESCO-NHQ-65/03/2021 titled "Shakeel Ahmed vs PESCO" and asserted that recovery of the wrong application of MF was declared as null and void and the PESCO was directed by the NEPRA to refund the excess amount to the complainant recovered due to application of MF. According to the learned counsel for the Appellant, the impugned decision for revision of the detection bill for six months is not based on merits and the same is liable to be withdrawn to this extent.

5.3 The learned counsel for the Respondent rebutted the version of the Appellant and informed that metering equipment along with 200 KVA transformer and 400/5 Amp





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CTs were installed at the premises of the Appellant in March 2018 due to regularization of connected load from 32 KW to 159 KW, however, the department failed to raise the bills with correct MF=80 and the bills were charged with wrong MF i.e.20 during the period March 2018 to June 2020. The representatives for the Respondent stated that the inspection team during the site visit dated 13.07.2020 pointed out less recovery of units + MDI due to the wrong application of MF i.e.20 instead of 80, therefore a detection bill of Rs.8,600,000/- against 403440 units +2,800 kW MDI for the period March 2018 to June 2020 was served by the Appellant in September 2020. The Representative defended the charging of the above detection bill and opposed the impugned decision for revision of the same for six months. The Representatives for the Respondent finally prayed to allow the entire detection bill being justified and payable by the Appellant.

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

6.1 The record presented before us shows that the load of the Appellant was regularized from 32 kW to 159 kW vide an office order dated 25.08.2017 of the SE(Operation) of the Respondent. Thereafter, metering equipment along with a 200 KVA distribution transformer and 400/5 Amp CTs were installed at the premises of the Appellant on 28.03.2018. Later on, the inspection team of the Respondent visited the premises of the Appellant on 28.05.2020 and vide report dated 05.06.2020 pointed out the wrong application of MF i.e. 20 instead of 80 for the bills charged during the period March 2018 to June 2020. Accordingly, a detection bill of 403440 units +2,800 kW was issued to the Appellant and added to the bill for September 2020, which was initially challenged before the Civil Court Swabi. After litigation in different courts, the honorable Peshawar High Court vide order dated 15.02.2022 referred the matter to





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POI for the decision. The POI vide impugned decision cancelled the above detection bill and revise the same for six months only. Against the above-referred decision of POI, the Appellant filed the instant appeal before the NEPRA under Section 38(3) of the NEPRA Act.

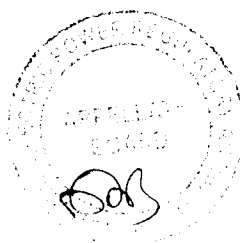
6.2 The matter, therefore, needs to be examined in light of the applicable law to decide the fate of the detection bill of the Respondent. The services provided by the DISCOs to their Consumers are administered under the Consumer Service Manual (the "CSM") approved by the NEPRA.

6.3 Facts as given above, the metering equipment along with 400/5 Amp CTs and 200 kVA distribution transformer was installed by the Respondent in March 2018 as per the extended load i.e. 159 kW and the MF was to be raised from 20 to 80 due to change of CT ratio from 100/5 to 400/5 w.e.f March 2018 and onwards. However, the Respondent failed to do so and debited the bills with the wrong MF=20 from March 2018 and onward till the alleged checking conducted on 28.05.2020. This shows extreme negligence and carelessness on the part of the concerned officials of the Respondent.

6.4 The Respondent is required to be vigilant and careful to ensure full recovery against the consumed energy by applying the correct application of the MF i.e. 80. Such negligence warrants immediate inquiries for fixing responsibility and taking strict disciplinary action against responsible officials of Respondent.

6.5 Notwithstanding the negligence of its relevant officers and their failure to charge the bills with actual MF=80, the Respondent issued a detection bill of 403,440 units +2,800 kW MDI to the Appellant.

6.6 Though MF=80 was applicable as per the 400/5 Amp CT ratio for the billing w.e.f





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March 2018 and onwards, however, the Respondent continued to send bills to the Appellant without raising the MF from 20 to 80. 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 403440 units +2,800 kW MDI issued to the Appellant and added to the bill for September 2020 is unjustified and illegal and the same is declared null and void.

6.7 The Appellant has impugned the findings of the POI with regard to the revision of bills for six months. The Appellant placed reliance upon the decision of NEPRA rendered in Complaint No.PESCO-NHQ-65/03/2021 titled "Shakeel Ahmed vs PESCO" and stated that recovery of the wrong MF was withdrawn. It is clarified that in the said case, PESCO charged the excessive bills with MF, which is not compatible with the CTs ratio installed at the premises of the Consumer, hence the NEPRA has rightly directed the PESCO to withdraw the bills charged with the wrong MF in that case. Whereas in the present case, it is an admitted fact that the load of the Appellant was regularized by the Respondent from 32 KW to 159 KW in the year 2017, and subsequently, the metering equipment along with 200 KVA transformer and 400/5 Amp CTs were installed at the premises of the Respondent in March 2018. Before that 50 KVA transformer along with 100/5, Amp CTs were installed at the site of the Appellant and the bills were being charged as per applicable MF i.e.(20 = 100/5 Amp CTs. However, the Respondents were under obligation to change the MF from 20 to





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80 after the replacement of the CTs ratio from 100/5 Amp to 400/5 Amp, which they failed to do so.

6.8 In such cases, NEPRA has given clarification vide letter No. NEPRA/DG(CAD)/TCD-10/17187-13 dated 26.03.2021 that recovery of wrong application of MF be made within one year of the discrepancy noticed and maximum for six billing cycles. As per said clarification, the Respondent is allowed to recover the bills with the correct MF=80 for six retrospective months from the date of the discrepancy noticed by them. Thus, we agree with the determination of the POI for revision of the bills with correct MF=80 for six months being consistent with the clarification rendered by the NEPRA vide the above-referred letter.

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

7. Foregoing in view, we do not find any reason to interfere with the impugned decision, the same is maintained and consequently, the appeal is dismissed.

Syed Zavar Haider
Member

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 13-01-2023

