



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

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No. NEPRA/Appeal/127/POI/2022/062

January 27, 2023

- | | |
|--|---|
| 1. Abdul Nasar,
S/o. Nasim Khan,
R/o. Sultanwas, Tehsil Gadezi,
Pir Baba, District Buner | 2. Chief Executive Officer
PESCO Ltd,
WAPDA House, Sakhi Chashma,
Shami Road, Peshawar |
| 3. Saeed Khan Akhunzada,
Advocate High Court,
Chamber No. 19, Muslim Block,
District Courts, F-8 Markaz,
Islamabad | 4. Executive Engineer (Operation),
PESCO Ltd,
Buner Division,
Buner |
| 5. Sub Divisional Officer (Operation),
PESCO Ltd,
Daggar-I Sub Division,
Daggar | 6. Aleem Ur Rehman,
Advocate High Court,
Office District Courts,
Buner at Daggar |
| 7. POI/Electric Inspector,
Swat Region,
Energy & Power Department,
Suhrah Khan Mohallah Mingora, Swat | |

Subject: **Appeal Titled PESCO Vs. Abdul Nasar Against the Decision Dated 31.08.2022 of the Provincial Office of Inspection to Government of the Khyber Pakhtunkhwa, Swat Region, Swat**

Please find enclosed herewith the decision of the Appellate Board dated 23.01.2023, 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 Supply Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.127/POI-2022

Peshawar Electric Supply Company LimitedAppellant

Versus

Abdul Nasar S/o Nasim Khan,
R/o Sultan Was, Tehsil Gadezi, Pir Baba, District BunerRespondent

APPEAL U/S 38(3) OF THE REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC SUPPLY ACT, 1997

For the Appellant:

Mr. Rasheed Ahmed Qureshi XEN

For the Respondent:

Mr. Aleem-ur-Rehman Advocate

Mr. Abdul Nasar

DECISION

1. Brief facts leading to the filing of instant appeal are that Abdul Nasar (hereinafter referred to as the "Respondent") is an industrial consumer of Peshawar Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.30-26541-0714405 with a sanctioned load of 56 kW and the applicable Tariff category is B-2(b). As per Site Inspection Report dated 04.11.2021 of the Appellant, the Respondent was found stealing electricity directly through transformer bushes. The Appellant disconnected the electricity of the premises and registered FIR No.399 dated 12.11.2021 against the Respondent on account of the theft of

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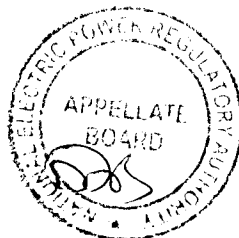




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electricity. Thereafter, a detection bill (hereinafter referred to as the “first detection bill”) of Rs.1,425,112/- against 40,880 (Off-peak=30,660+Peak10,220) units for two months for the period from 04.09.2021 to 04.11.2021 was charged to the Respondent on the basis of 50% load factor of the connected load i.e.56 kW. During another checking dated 10.03.2022, the Respondent was allegedly found stealing electricity directly; therefore, another detection bill (hereinafter referred to as the “second detection bill”) amounting to Rs.1,045,127/- against 61,320 (Off-peak=45,990 + Peak=15,330) units for three months for the period from 10.12.2021 to 10.03.2022 was charged to the Respondent.

2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Swat Region, Khyber Pakhtunkhwa (hereinafter referred to as the “POI”) and challenged the above detection bills. The complaint was decided by the POI vide the decision dated 31.08.2022 in which both the detection bills i.e. first detection bill of Rs.1,425,112/- for 40,880 (Off-peak=30,660+Peak10,220) units for two months for the period from 04.09.2021 to 04.11.2021 and second detection bill of Rs.1,045,127/- against 61,320 (Off-peak=45,990+Peak=15,330) units for three months for the period from 10.12.2021 to 10.03.2022 along with late payment surcharges (LPS) were cancelled and the Appellant was directed to debit the revised bills for net 26,840 units. The Appellant was further directed to overhaul the billing account of the Respondent.
3. Subject appeal has been filed against the afore-referred decision dated 31.08.2022



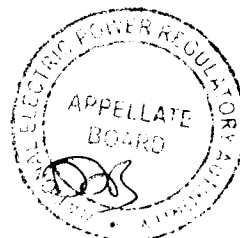


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of the POI (hereinafter referred to as the “impugned decision”) by the Appellant before the NEPRA, wherein it is contended that the premises of the Respondent was checked twice i.e. 04.11.2021 and 10.03.2022 and on both occasions, the Respondent was found stealing electricity directly, therefore FIR No.399 dated 12.11.2021 was registered against the Respondent and two detection bills i.e. first detection bill of Rs.1,425,112/- for 40,880 (Off-peak=30,660+Peak10,220) units for two months for the period from 04.09.2021 to 04.11.2021 and second detection bill of Rs.1,045,127/- against 61,320 (Off-peak=45,990+Peak=15,330) units for three months for the period from 10.12.2021 to 10.03.2022 were debited to the Respondent to recover the revenue loss sustained by the Appellant due to theft of electricity. The Appellant further contended that the POI has no jurisdiction to decide the dispute of billing in case of direct theft of electricity according to the judgment of the honorable Supreme Court of Pakistan. As per the Appellant, the Respondent is neither entitled to any kind of leniency nor any relief as he was committing offense repeatedly, therefore the impugned decision is not justified in the light of the available record. According to the Appellant, the impugned decision is the result of misreading and non-reading of evidence as the Respondent has not proved his stance through any tangible and reliable evidence. The Appellant finally prayed for setting aside the impugned decision.

4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 30.11.2022 was sent to the



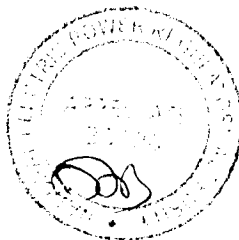


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Respondent for filing reply/para-wise comments to the appeal within ten (10) days. In response, the Respondent submitted his reply on 13.12.2022 wherein he refuted the allegation of theft of electricity and submitted that FIR was registered against him due to the personal grudge with the officials of the Appellant. The Respondent further submitted that he was penalized by imposing huge assessment with malafide intention to pressurize him. As per Respondent, the POI has exclusive jurisdiction to decide such nature of cases, and the impugned decision is based on facts. According to the Respondent, the impugned decision for revision of the detection bill for net 26,840 units be withdrawn and the revised bill for September 2021 and October 2021 be revised as per consumption of the corresponding months of the previous year. The Respondent stated that the second detection bill was charged by the Appellant without any legal justification as the marble factories in the area were on strike during the disputed period of the second detection bill against the imposition of FPA, load shedding, and district administration. The Respondent further stated that the Appellant failed to adhere to the procedure as laid down in the Consumer Service Manual (the "CSM") to prove the direct theft of electricity. The Respondent opposed the charging of the detection bills and prayed for the dismissal of the appeal.

5. Hearing

5.1. Hearing in the matter of the subject Appeal was fixed for 12.01.2023 at Peshawar and accordingly, the notices dated 05.01.2023 were sent to the parties (i.e. the

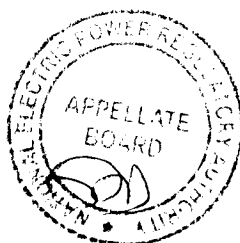




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Appellant and the Respondent) to attend the hearing. As per schedule, the appeal was heard at the NEPRA Regional Office Peshawar on 12.01.2023 in which both parties were in attendance. The representative for the Appellant reiterated the same version as contained in memo of the appeal and contended that the premises of the Respondent was checked twice i.e. 04.11.2021 and 10.03.2022 and on both occasions, the Respondent was found using electricity through bypassing the meter, therefore FIR was lodged against him and two detection bills i.e. first detection bill of Rs.1,425,112/- for 40,880 (Off-peak=30,660+Peak10,220) units for two months for the period from 04.09.2021 to 04.11.2021 and second detection bill of Rs.1,045,127/- against 61,320 (Off-peak=45,990+Peak=15,330) units for three months for the period from 10.12.2021 to 10.03.2022 were debited to the Respondent. The Appellant further contended that the Respondent is involved in the direct theft of electricity, hence the POI has no lawful authority to decide the instant case as per the judgment of the honorable Supreme Court of Pakistan. He prayed that the jurisdiction of POI be decided before going into the merits of the case.

5.2. Conversely, learned counsel appearing on behalf of the Respondent rebutted the contentions of the Appellant and averred that the premises was closed due to strike due to which actual consumption was not recorded during the disputed period. Learned counsel for the Respondent submitted that no proof of direct theft was produced by the Appellant before the POI, hence the impugned decision to the





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extent of cancellation of the above detection bills is correct and the same is liable to be maintained. He prayed to modify the impugned decision to the extent of revision of the detection bill for net 26,840 units and pleaded that the same may be revised on the basis of consumption of the corresponding months of the previous year.

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

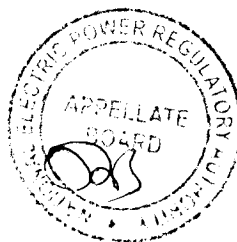
6.1 Preliminary objection of the Appellant for the jurisdiction of the POI being direct theft of electricity case

The Appellant has claimed that the Respondent was involved in the direct theft of electricity and the POI is not authorized to adjudicate the matter. Since the dispute of billing pertains to the year 2021-22, hence the case will be dealt under the CSM-2021. Clause 9.1 of the CSM-2021 specifies the instances of Direct Theft of electricity by registered/un-registered consumers as well as the procedure to be adopted by the concerned Distribution Company to deal with such cases; the same is reproduced below for the sake of convenience:

“9.1.1 DIRECT THEFT OF ELECTRICITY BY REGISTERED/UNREGISTERED CONSUMERS OF PESCO.”

If a premises/person is found to be hooked directly with PESCO's supply line by bypassing the metering installation or the metering installation is missing at site (where the safe custody of the meter is the responsibility of the consumer), or supply is restored illegally on disconnected premises, or if the consumer is using electricity direct from PESCO supply line and/or the person living in the premises is not a consumer of PESCO, or meter is installed at the site but no record exists then PESCO shall inter-alia process the case as theft of electricity. Information of such offense is provided to the police in writing by the concerned officer (not below Grade 17) of PESCO or by an officer of an equivalent grade.

9.1.2 All theft cases as mentioned above would be dealt by PESCO strictly in accordance with relevant sections of Pakistan Penal Code, 1860 (Act XLV of 1860) and the Code of Criminal Procedure, 1898 (Act V of 1898). The disconnection of electricity shall be carried out





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immediately under the supervision of concerned Officer of PESCO by removing the such facility. The removed material shall be preserved as proof of theft i.e. the case property and the same shall be produced before the court during the trial. After the conclusion of the legal proceedings, the material so removed shall be retained by PESCO.

9.1.3 PESCO shall be authorized to recover its loss by raising a detection bill as follows provided that the maximum period of charging in such cases shall be restricted to twelve months for unregistered consumers and up to six months for registered consumers:

a. Detection Bill for Unregistered Consumers -----

b. Detection Bill for Registered Consumers

The detection bill shall be issued as per the following methods in the order of priority:

Previous consumption/Billing History

On the basis of future undisputed consumption if no previous credible consumption is available.

•No of detection units = Load x Load Factor x 730 x Months

Where:

•Load means the connected load or sanctioned load in kW whichever is higher

•Months = Period for charging detection bill

•Load Factor as per Annexure-V

•730 = Average number of hours in a month

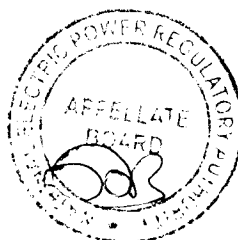
Provided that the units already charged in routine billing during the detection bill period will be adjusted.

9.1.4 For evidence of theft, photos and/or videos shall be recorded for exhibition before the competent forum."

6.2 In the instant case, having found the alleged direct theft of electricity by the Respondent, the Appellant took the following actions in accordance with Clause 9.1 of CSM-2021:

- i. Registered FIR against the Respondent on account of direct theft.
- ii. Disconnected electricity of the Respondent.
- iii. Raised the detection bills to recover the loss.

6.3 Moreover, the criminal proceedings are under trial before the honorable Session Judge, Buner, hence, until and unless the Respondent is not acquitted of the offense of direct theft of electricity, the POI cannot adjudicate the matter being the direct





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theft of electricity case. Reliance in this regard is placed on the judgment of the honorable Supreme Court of Pakistan reported in PLD 2012 SC 372, the relevant excerpt from the mentioned paragraph is reproduced as follows:

"P L D 2012 Supreme Court 371

"In case, the theft alleged is by means other than the tampering or manipulation of the metering equipment, etc., the matter would fall exclusively under Section 26-A of the Act, the Electricity Act, outside the scope of powers of the Electric Inspector. Since the Electric Inspector possesses special expertise in examining the working of the metering equipment and other related apparatus, it makes sense that any issue regarding their working, functioning, or correctness, whether or not deliberately caused, be examined by him. It may be added that Section 26-A is an enabling provision empowering the licensee to charge the consumer for dishonest extraction or consumption of electricity. It does not provide any procedure for resolving any dispute between the consumer and the licensee on a charge of theft. It should be, therefore be read in conjunction with the other relevant provisions including section 26(6) of the Act."

From the foregoing discussion, it is concluded that the POI is not the competent forum to adjudicate and render the decision in the instant matter.

7. In view of the above, the appeal is accepted and consequently, the impugned decision is set aside.

Syed Zavar Haider
Member

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 23/01/2023

