



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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Registrar

No. TCD 01/ 8389-91

October 16, 2012

Chief Executive Officer
Peshawar Electric Supply Company Ltd. (PESCO)
WAPDA House
Sakhi Chashma Shami Road
Peshawar

DD (CAD)
17/10

17/10/12

AD (100)

Subject: Decision of the Authority in the matter of Complaint filed by Mr. S. Karamat Ali Rizvi Project Director, Energy Monitoring Cell, Finance Department, Government of Khyber Pakhtunkhwa under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 against PESCO regarding Application of Tariff D-2 Complaint # PESCO-24/2011

Enclosed please find herewith decision of Member (Consumers Affairs) in the subject matter for necessary action and compliance within 60 days of the receipt of this decision.

Encl: As above

— Sd —
(Syed Safeer Hussain)

Copy:-

1. C.E./Customer Services Director
Peshawar Electric Supply Company (PESCO)
WAPDA House
Sakhi Chashma Shami Road
Peshawar
2. Mr. S. Karamat Ali Rizvi, Project Director
Energy Monitoring Cell (EMC)
Finance Department, Government of Khyber Pakhtunkhwa
2nd Floor, Benevolent Fund Building,
Saddar Road, Peshawar Cantt. Peshawar

October 16, 2012

Registrar

Consumers Affairs Division
Dy No. 7248
Date: 17/10/12



195

BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No: PESCO-24-2011

S. Karamat Ali Rizvi, **Complainant**
Project Director (Energy Monitoring Cell),
Finance department,
Government of Khyber Pakhtunkhwa.

Versus

Peshawar Electric Supply Company. **Respondent**

Date of Decision: October 12, 2012

Date of Hearing: June 08, 2012

On behalf of:

Complainant:

- 1) S. Karamat Ali Rizvi, Project Director,
- 2) Mr. Nanak Chand, Deputy Project Manager
- 3) Mr. Gohar Ali, Deputy Project Manager
- 4) Mr. Shumail Ahmed, Legal Advisor

Respondent:

- 1) S. Musawar Shah, Manager Commercial
- 2) Mr. Arif Ullah, Revenue Officer

Subject: DECISION IN THE MATTER OF COMPLAINT FILED BY S. KARAMAT ALI RIZVI, PROJECT DIRECTOR ENERGY MONITORING CELL, FINANCE DEPARTMENT, GOVERNEMENT OF KHYBER PAKHTUNKHWA UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST PESCO REGARDING APPLICATION OF TARIFF D-2

1. This decision shall dispose of the complaint dated 02-12-2011 of Syed Karamat Ali Rizvi, Project Director, Energy Monitoring Cell, Finance Department, Government of Khyber Pakhtunkhwa (hereinafter referred to as 'the Complainant') against Peshawar Electric Supply Company (hereinafter referred to as Respondent/PESCO) filed with NEPRA.
2. The complainant in his complaint stated that the tariff was notified on 24-02-2007 but PESCO continued billing Agriculture and SCARP tube wells on the old tariff in vogue prior to 24-02-2007 till it was pointed out by Audit in 12/2009. Similarly single tariff-G was introduced for streetlights in lieu of tariffs-G(i) and G-(ii). Tariff G(i) was applicable to Provincial Government streetlights till 23-2-2007 and tariff G subsequently w.e.f 24-02-2007. PESCO continued on billing to Provincial

Government street lights on tariff G(i) instead of G. Non implementation of tariff determined by NEPRA w.e.f 24-02-2007 was lapse on the part of PESCO and its demand of under charges debited to the provincial government after years/months with retrospective is illegal and unjustified for the reason that the lapse/omission solely rested upon PESCO for which the consumer (Provincial Government) cannot be penalized. The complainant requested to stop PESCO from recovery of the so called under charges worked out by it after belated stage and lapse of months and years.


3. The brief facts of the case are that prior to the instant complaint, the complainant vide his an earlier letter dated 09-02-2011 stated that the PESCO has started raising several audit notes and thus many of its Revenue Officers have debited amount against the Provincial Government Agriculture Tube well connections where TOU meters have not been provided. The Agriculture tube wells are governed by Tariff D-2 and thus could not be billed under any different or unrelated tariff category such as D-1 (a) because tariff category D-1(a) is meant for SCARP tube wells only and it cannot be applied to non-SCARP tube wells. The complainant further submitted that their Agriculture tube wells cannot be legally billed for higher sums especially in view of willful inaction and inefficiency on the part of DISCO in not providing TOU meters in stipulated time. The complainant prayed that NEPRA may restrain PESCO from applying tariff D-1(a) to non-SCARP or non-TOU Agriculture tube wells of Government of Khyber Pakhtunkhwa and to correctly apply tariff D-2 and also to direct PESCO not to debit wrongful and belated audit paras. After seeking comments from PESCO, the Authority considered the matter as an issue in the tariff determination of PESCO for the 2nd, 3rd and 4th Quarter of the financial year 2010-11. The Authority vide case No. NEPRA/TRF-160/PESCO-2010 while determining the tariff of PESCO held that tariff terms and conditions are very clear on the matter regarding applicability of relevant tariff. The PESCO auditor interpretation for application of Agriculture tube well tariff is in accordance with the notified terms and conditions. Although the complainant's concern regarding application of higher tariff as a result of non provision of TOU meters is valid but the terms and conditions cannot be modified and applied with retrospective effect. The Authority has however decided to modify the relevant Terms and Conditions of supply of electricity in the next petition for the financial year 2011-12. The complainant through his letter dated 22-10-2011 commented that non implementation of tariff determined by NEPRA w.e.f 24-02-2007 was a lapse on the part of PESCO and its demand of lesser charges debited to the Provincial Government after years with retrospective effect is illegal and unjustified. On request of the complainant, a meeting was held at NEPRA with the complainant on 30-11-2011. Subsequently, Syed Karamat Ali Rizvi, Project Director, Energy Monitoring Cell, Finance Department, Government of Khyber Pakhtunkhwa vide his letter dated 02-12-2011 filed the instant complaint.
4. The complaint dated 02-12-2011 was forwarded to PESCO vide letter No. TCD 01/1882-2012 dated May 16, 2012. To probe further into the matter, hearing was held on 08-06-2012. During the hearing, the parties contested their case on their earlier versions. It was disclosed by PESCO representatives that no amount has been debited against the connections of Government of Khyber Pakhtunkhwa for the period from 06-09-2008 to 15-10-2010 during which stay was granted by the Peshawar High Court on the petition of Government of Khyber Pakhtunkhwa against tariff determination of NEPRA for PESCO. Pursuant to the hearing, PESCO was directed vide letter dated 15-06-2012 to submit details of amount which were not debited against the tube well connections of Government of Khyber Pakhtunkhwa for the period from 06-09-2008 to 15-10-2010 on directions of Peshawar High Court and detail of amount which were actually debited against the tube well connections of Government of Khyber Pakhtunkhwa. The information was provided by PESCO vide its letter No. 1176-77/EMC Gen dated 06-08-2012. The order of the Peshawar High Court dated 15-09-2010 was also obtained from the complainant. The order of the Honorable Court reveals that Government of Khyber Pakhtunkhwa filed a writ petition against the tariff determination

of NEPRA. Accordingly to Peshawar High Court order dated 15-09-2010, the petition was dismissed as withdrawn. From the data provided by PESCO, it is observed that arrears were debited to the tube well connections of Government of Khyber Pakhtunkhwa due to tariff differential as pointed out by audit. In response to an application of the complainant, PESCO was restrained from disconnection of such tube well connections where amounts were debited on audit observation provided that the current bills are paid regularly. (193)

5. The case has been examined in detail in light of documents provided by both the parties and arguments advanced during the hearing. As per terms and conditions of tariff, the agriculture tube well connections where TOU meters were not installed required to be billed under D1(a) instead of D-2 till installation of TOU meters. PESCO being licensee of NEPRA is bound to apply the tariff which is determined/approved by the Authority. In the instant case the tariff applicable to tube well connections of the complainant was D-1(a) as determined / approved by the Authority on 24.02.2007 as there were no TOU meters installed. But PESCO did not apply the new tariff D-1(a) and continued the application of the old tariff D-2 for such tube well connections of Government of Khyber Pakhtunkhwa. Billing under tariff D-2 continued till Dec-2009 until this discrepancy was pointed out by the PESCO's audit in the same month. Application of the correct tariff is the responsibility of PESCO and as such consumer cannot be penalized for the failure of PESCO in application of correct tariff. The consumer had legitimate expectancy that what was being billed to him was actually the cost of electricity consumed. PESCO cannot be allowed to recover the loss of revenue from a consumer which it sustained due to the mismanagement within the Company. The Audit report is an internal matter between PESCO & the Audit department and cannot make the consumer liable for payment of any amount/arrears which is pointed out by the audit. It is relevant to mention that in the subsequent tariff petition of PESCO, the Authority determined that the tariff applicable to Agriculture tube wells would be D-2 till installation of TOU meters. No doubt the tariff applicable to these connections would be D-1(b) whenever and wherever TOU meters are installed.
6. As far as the grievance of the complainant regarding improper tariff application of street light is concerned neither the complainant sought any remedy in the original complaint nor it was pressed in the subsequent correspondence and hearing.
7. For the forgoing reasons, PESCO is hereby directed to withdraw the whole amount debited as arrears against the agriculture tube well connections of Government of Khyber Pakhtunkhwa on account of tariff differential which has been pointed out by PESCO's audit in December 2009. However, the consumers/complainant is liable to pay the bills of its tube well connections according to applicable tariff D-1(a) with effect from January 2010 till installation of TOU meters.

Note

Tariff D-2 is applicable with effect from 09-05-2012 on such tube well connections instead of D-1(a) where TOU meters are yet to be installed in pursuance of Authority's tariff determination of PESCO for FY 2011-2012


(Ghiasuddin Ahmed)
Member (Consumer Affairs)

Islamabad, October 12th, 2012