



Registrar

# National Electric Power Regulatory Authority

## Islamic Republic of Pakistan

NEPRA Tower, Attaturk Avenue (East), G-5/1, Islamabad  
Ph: +92-51-9206500, Fax: +92-51-2600026  
Web: www.nepra.org.pk, E-mail: registrar@nepra.org.pk

No. NEPRA/DG(CAD)/TCD 01/30765-68

June 29, 2021

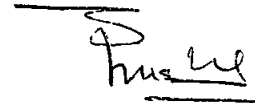
Chief Executive Officer  
Peshawar Electric Supply Company (PESCO),  
WAPDA House, Sakhi Chashma Shami Road,  
Peshawar.

Subject: **DECISION OF THE AUTHORITY REGARDING MOTION FOR LEAVE FOR REVIEW FILED BY PESCO AGAINST THE DECISION OF MEMBER (CONSUMER AFFAIRS) DATED 11<sup>TH</sup> JANUARY 2021 IN THE MATTER OF SARHAD RURAL SUPPORT PROGRAMME (SRSP) VS PESCO REGARDING PAYMENT OF ELECTRICITY DUES**  
PESCO-110/10/2020

Reference is made to Review Motion dated 24<sup>th</sup> March 2021 filed by PESCO against the Decision of Member (Consumer Affairs), NEPRA dated 11<sup>th</sup> January 2021 and hearing held on 7<sup>th</sup> June 2021 at NEPRA Head Office, Islamabad regarding the subject matter.

2. Enclosed find herewith the Decision of the Authority (06 Pages) regarding the subject matter for necessary action and compliance without further delay.

Encl: As above

  
29 06 21

( Syed Safeer Hussain )

Copy to:

- i. Chief Commercial Officer, PESCO,  
PESCO Head Quarters, WAPDA House,  
Sakhi Chashma Shami Road, Peshawar.
- ii. Incharge Complaint Cell, PESCO,  
PESCO Head Quarters, WAPDA House,  
Sakhi Chashma Shami Road, Peshawar.
- iii. Mr. Masood-ul-Mulk, Chief Executive Officer,  
Sarhad Rural Support Programme,  
Plot No. 14, Sector E-8, Phase-7,  
Hayatabad, Peshawar.  
091-5890717-19



**BEFORE THE**  
**NATIONAL ELECTRIC POWER REGULATORY AUTHORITY**  
**(NEPRA)**

**Complaint No. PESCO-110/10/2020**

**Peshawar Electric Supply Company Limited (PESCO)**  
WAPDA House, Sakhi Chasma,  
Shami Road, Peshawar.

..... **Petitioner**

**Versus**

**Sarhad Rural Support Programme (SRSP)**  
Plot No. 14, Sector E-8, Phase 7,  
Hayatabad, Peshawar.

..... **Respondent**

**Date of Hearing:** June 07, 2021

**Present:**

- |    |                          |                      |
|----|--------------------------|----------------------|
| 1) | Mr. Tauseef H. Farooqi   | Chairman             |
| 2) | Mr. Rehmatullah Baloch   | Member (CA)/(Tariff) |
| 3) | Mr. Rafique Ahmed Shaikh | Member (M&E)         |
| 4) | Engr. Maqsood Anwar Khan | Member (Licensing)   |

**On behalf of:**

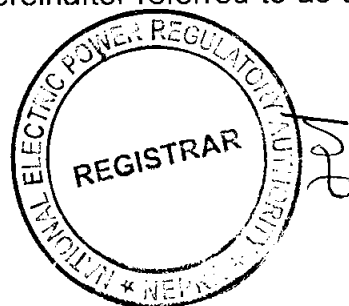
- Petitioner:**
- (via Zoom)
- 1) Mr. Sher Dad Khan, C.E. (Commercial)
  - 2) Mr. Muhammad Humayun, Manager (Tariff & PPC)
  - 3) Mr. Irfan Ali, Dy. Manager (Contract Management)
  - 4) Mr. Bilal Ahmed Durrani, Advocate

- Respondent:**
- (In person)
- 1) Mr. Ikram Khan, BoD Member
  - 2) Mr. Javed Khan, Coordinator
  - 3) Mr. M. Arif, Engineer

**Subject:** **DECISION OF THE AUTHORITY REGARDING MOTION FOR LEAVE FOR REVIEW FILED BY PESCO AGAINST THE DECISION OF MEMBER (CONSUMER AFFAIRS) DATED 11<sup>TH</sup> JANUARY 2021 IN THE MATTER OF SARHAD RURAL SUPPORT PROGRAMME (SRSP) VS PESCO REGARDING PAYMENT OF ELECTRICITY DUES**

**DECISION**

This decision shall dispose of Review Motion dated 24<sup>th</sup> March 2021 filed by Peshawar Electric Supply Company Limited (hereinafter referred to as the "Petitioner" or



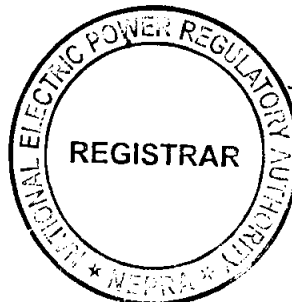
"PESCO") against the Decision of Member (Consumer Affairs), NEPRA dated 11<sup>th</sup> January 2021 in the matter of complaint of Sarhad Rural Support Programme (hereinafter referred to as the "Respondent" or "SRSP").

2. Brief facts of the case are as under:

- i. SRSP constructed a 2 MW hydro power plant at Golan Chitral as part of its community development programme and accordingly, electricity was supplied to Chitral town from the project from March 2017 to January 2018. SRSP approached PESCO for payment on account of electricity supplied to PESCO, however, no payment was made by PESCO.
- ii. SRSP approached the Secretary, Power Division in September 2019, whereby the Ministry referred the matter to CPPA-G. The CPPA-G Board constituted a committee to determine the number of units. As per the recommendation of the committee, a total of 2,948,472 kWh units were received by PESCO from SRSP's hydro power project, therefore, payment for the same is to be made to SRSP. Later, the Ministry of Energy, Power Division forwarded the decision of CPPA-G Board to PESCO on 18<sup>th</sup> January 2020 for further necessary action. However, no action was taken. Accordingly, SRSP filed a complaint before NEPRA.
- iii. The matter was taken-up with PESCO and CPPA-G for submission of parawise comments/ report. In response, PESCO reported, inter alia, that it vide letter dated 11<sup>th</sup> September 2020 requested SRSP for some pre-requisites along with certain clarifications, which were not fulfilled. PESCO requested that the complaint, being devoid of merits, may be dismissed.
- iv. CPPA-G reported, inter alia, that the report of the committee was sent to Power Division with the request to forward the same to PESCO to seek approval of PESCO Board of Directors to sign ex-facto Energy Purchase Agreement with SRSP and pay them their due payment as per the levelized tariff approved by NEPRA. Further, as the project was developed under the community support initiative and did not fall under any policy regime, therefore, no purview for purchase of power resided with CPPA-G.
- v. An opportunity of hearing was provided to the parties (i.e. SRSP, PESCO and CPPA-G) on 17<sup>th</sup> November 2020 at NEPRA Head Office, Islamabad, wherein all the parties participated and advanced their arguments.

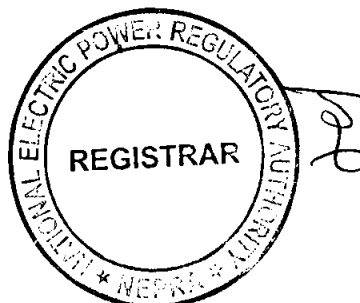
3. The case was examined in detail in light of the record made so available by the parties, arguments advanced during the hearing and applicable law. The following was concluded:

- i. SRSP developed a 2-MW hydro power plant at Golan Chitral which was completed in January 2017.
- ii. SRSP approached PESCO, vide letter dated 17<sup>th</sup> January 2017, for evacuation of power. In response, PESCO informed SRSP that PESCO has no objection to



evacuate power from the 2-MW hydro power project at Chitral, subject to the following:

- a) Generation license from NEPRA.
  - b) Tariff Determination by NEPRA.
  - c) Submission of Interconnection Study report for approval/vetting of PESCO/ NTDC.
  - d) Signing of Power Purchase Agreement (PPA) by CPPA-G.
  - e) Settlement of the obligations of PESCO arising under the back-to-back agreement which shall be signed between CPPA-G and PESCO.
- iii. The said plant was connected to PESCO system on 11<sup>th</sup> March 2017. Later, SRSP, vide letter dated 17<sup>th</sup> August 2017, informed PESCO that they have approached NEPRA for Generation License and Determination of Tariff. Further, SRSP did not demand any payment from PESCO for the use of electricity until the approval process is finalized by NEPRA and a mutual agreement is reached with SRSP.
- iv. The Generation License was granted to SRSP, bearing number LAG-412, vide NEPRA's letter dated 26<sup>th</sup> January 2018. The Tariff Determination for 2-MW Birmogh Golen Hydro Power Project (SRSP) was issued on 21<sup>st</sup> May 2018. Further, Interconnection Study was also submitted by SRSP, as required.
- v. SRSP is claiming that electrical energy amounting to Rs. 12,035,368/- for 2,948,472 kWh units has been supplied to Chitral town from 2-MW hydro power plant at Golan Chitral via PESCO system for the period from March 2017 to January 2018. PESCO is not making payment despite directions from their higher-ups.
- vi. PESCO is of the view that in the absence of any bilateral agreement on mutually agreed terms between the parties, no claim is competent against PESCO. Further, PESCO is of the view that there was no written agreement for pre-COD sale/purchase of energy between SRSP and PESCO, however, SRSP supplied electrical energy to PESCO on test basis. Therefore, SRSP is not entitled to lodge any claim for sale of energy, and accordingly, PESCO is not obligated to pay for said supply of energy. However, no documentary evidence was placed on record by PESCO, from which it could be ascertained that the electricity supplied by SRSP to PESCO was free of cost and payment thereof was not required to be made by PESCO.
- vii. The special committee assessed that 2,948,472 kWh units were received at Juti Lasht grid station of PESCO prior to disconnection of 2 MW hydro power plant of SRSP from PESCO network, and the same were accordingly delivered/sold to the consumers. Further, on a query raised during the hearing, the representatives of PESCO submitted that there is no dispute on the quantity of units determined by the special committee.
- viii. The said units have been sold by PESCO to the consumers. Moreover, PESCO, at any stage, did not raise any objection either on receiving the units from SRSP



or on constitution of committee by CPPA-G for determination of the quantum of units for payment.

- ix. PESCO was represented by GM (Commercial) in the Special Committee, however, no objection with respect to payment (for units) was raised by PESCO.

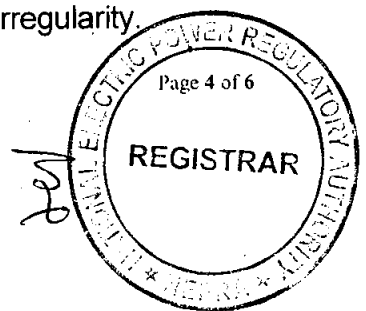
4. In light of the above, the case was decided by Member (Consumer Affairs) NEPRA vide Decision dated 11<sup>th</sup> January 2021, whereby PESCO was directed "to place the case before its Board of Directors (BoD), as already recommended by CPPA-G Board, for payment to SRSP for 2,948,472 kWh units of electrical energy supplied from 2-MW hydro power plant during the period from March 2017 to January 2018 as per the tariff approved by NEPRA".

5. Being aggrieved with the Decision, PESCO filed the instant Review Motion which was admitted by the Authority, and hearing in this regard was held on 7<sup>th</sup> June 2021 at NEPRA Head Office, Islamabad. The hearing was attended by representatives of both the parties (i.e PESCO and SRSP) who advanced their respective arguments.

6. Main contents of the Review Motion, and observations thereof, are as under:

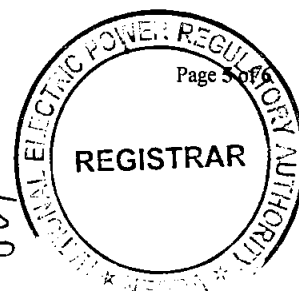
- i. That the impugned order and decision is against the law, facts, and documents. The Honorable Authority has got no jurisdiction to entertain the complaint, hence the order and decision is liable to be set aside.
- ii. That there exists no contract between the parties nor any authorization have been given in favor of SRSP by CPPA-G to provide and supply electricity from 2 MW Hydro power plant at Golan Chitral, hence in absence to the above, no enforceability of payments can be held.
- iii. That CPPA-G is not the regulator and the matter does not fall under the purview of CPPA-G to handle a request of SRSP in absence of any license. The Impugned order has not addressed the issue that NEPRA vide determination dated 26.01.2018 issued the generation license to SRSP, wherein under Article-I (Definitions)-(x) it has been clearly mentioned that the "Power Purchaser" will be CPPA-G and which will be purchasing electric power from the Licensee either on behalf of all XW-DISCOs, pursuant to EPA for procurement of electric power; thus the order suffers from irregularity and illegality.
- iv. That the tariff was determined for the project on 21.05.2018, wherein it has been clearly mentioned that the tariff is applicable from Commercial Operation Date (COD), whereas the COD as per the existing procedure in vogue is the day immediately following the date on which the complex is commissioned. But in case of SRSP, no such COD was conducted, Pre-COD tariff has not been obtained from NEPRA; however, BoD, CPPA-G, without considering these facts, had decided that the payment will be on the levelized tariff. As per Findings of the Committee Report, the record of the units based on SCADA system, being the most authentic system for units recording in any generation system, is only for two (02) months and without date or month. Similarly, as per the said report, there was no metering arrangement to calculate the units received at PESCO Grid Station, rather the calculations are made on estimation basis. This vital issue was not addressed and in absence of which, the order suffers from material irregularity.

7.  




- v. That the Sale/Purchase of electricity is a regulated business, hence, the Rules & Regulations conforming to the purchase of electricity in general and specifically the NEPRA Interim Power Procurement (Procedures and Standards) Regulations, 2005 are mandatory, therefore, compliance of the above cited prerequisites shall be ensured before proceeding further in the matter. The Special Committee report is an incomplete and illogical report because it has totally ignored the NEPRA regulations/procedures and codal formalities which are mandatory in such like businesses. Due to this very reason, the matter was again raised with SRSP vide letter dated 11.9.2020 & dated 26.10.2020 with copy to Ministry of Energy (Power Division).
- vi. That NEPRA has totally ignored that SRSP vide letter dated 17.08.2017 informed Grid Incharge of PESCO that their project is under testing phase and requested to continue the testing phase until formal arrangements are made, and will not demand any payment from PESCO till process is finalized by NEPRA and mutual agreement is reached with SRSP. Hence the decision of non-production of documentary proof is incorrect and overlooked by NEPRA in its impugned decision which needs to be revised and set aside. That most crucial point in the impugned decision of NEPRA is that by absolving CPPA-G that the project does not fall under CPPA-G policy is incorrect. NEPRA vide determination dated 26.1.2018 issued generation license to SRSP, wherein under Article-I Definition – x, it has been clearly mentioned that "Power Purchaser" means CPPA-G which will be purchasing electric power from the Licensee either on behalf of all XW-DISCOs or any single XW-DISCO pursuant to the EPA for procurement of electric power.
- vii. That the generation license and tariff were determined after disconnection of supply from the plant. The interconnection study was approved by PESCO, however, the same was required to be vetted by NTDC as per PESCO's NOC dated 19.1.2017 and NEPRA's directions dated 26.1.2018, which was not done at the relevant time, hence the order and decision is liable to be set aside.

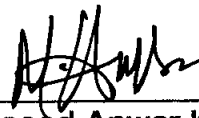
7. The Review Motion filed by PESCO has been reviewed in detail. Please note that any person can file a complaint with the Authority against a licensee under Section 39 of the NEPRA Act for contravention of any provision of NEPRA Act or any rule/regulation made or issued thereunder. Moreover, PESCO should not have purchased the units from SRSP without any proper agreement, duly approved by NEPRA, however, PESCO violated the law and started purchasing units from SRSP without any agreement. SRSP also approached CPPA-G, in response of which CPPA-G clarified that 2 MW Birmogh Golan HPP does not fall under any Government power policy or any framework for power generation by NGOs/NPOs, and an option could be sale of power through local arrangement with PESCO under regime of SPPs. Later, PESCO advised SRSP to obtain generation license and tariff from NEPRA, Interconnection Study report, and signing of Power Purchase Agreement (PPA) with CPPA-G. Accordingly, SRSP complied with the requirements of PESCO. If the units were free, then advice of PESCO to SRSP to fulfill the above requirements was irrational. PESCO failed to produce any document from which it can be construed that units delivered by SRSP were free. Further, PESCO sold out all of these units to its consumers. Later, Ministry of Energy constituted a Committee under the supervision of CPPA-G, which was also represented by PESCO's senior officials, wherein it was amicably decided that 2,948,472 kWh units have been delivered by SRSP to PESCO. Accordingly, PESCO was directed to place the case before its BoD for payment. It is clear that PESCO has purchased 2,948,472 kWh units without any agreement, and now, PESCO is obligated to pay its dues.



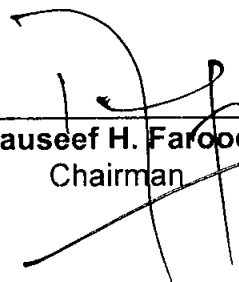
8. Foregoing in view, the Authority is of the view that all material facts and representations made in the impugned Decision were examined in detail and there is neither any occasion to amend the impugned decision nor any error inviting indulgence as admissible in law has been pleaded out. Further, no new and important matter of evidence has been identified/highlighted by PESCO in the Review Motion. Therefore, the Authority is convinced that there is no need to withdraw or modify the impugned Decision. Hence, the Review Motion filed by PESCO is declined/rejected and the Decision of Member (Consumer Affairs) NEPRA dated 11<sup>th</sup> January 2021 is upheld.

9. Further, PESCO is directed to refrain from engaging in sale/purchase of electricity, in future in such like cases, without prior approval of the Authority, failing which proceedings will be initiated against PESCO under NEPRA (Fines) Rules, 2002 and other enabling provisions of law.

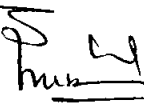
  
(Rehmatullah Baloch)  
Member

  
(Maqsood Anwar Khan)  
Member

  
(Rafique Ahmed Sheikh)  
Member

  
(Tauseef H. Farooqi)  
Chairman



  
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