



National Electric Power Regulatory Authority

ISLAMIC REPUBLIC OF PAKISTAN
NEPRA Head Office, Ataturk Avenue (East),
Sector G-5/1, Islamabad.
Ph:051-2013200, Fax: 051-2600021

**Consumer Affairs
Department**

TCD 01/ ²⁰²² -2023
May 24, 2023

Chief Executive Officer,
WAPDA House, Sakhi Chashma Shami Road,
Peshawar.

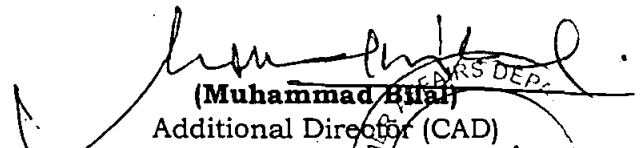
**Subject: DECISION IN THE MATTER OF COMPLAINT FILED BY M/S FRONTIER
FOUNDRY STEEL (FF STEEL) UNDER SECTION 39 OF REGULATION OF
GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER
ACT, 1997 AGAINST PESHAWAR ELCTRIC SUPPLY COMPANY REGARDING
MDI CHARGES.**
PESCO-NHQ-13639-06-22

Please find enclosed herewith the decision of the NEPRA Consumer Complaints Tribunal dated May 24, 2023 regarding the subject matter for necessary action.

Encl: As above

Copy to:

- 1) Chief Commercial Officer, PESCO,
WAPDA House, Sakhi Chashma Shami Road,
Peshawar.
- 2) Director (Commercial), PESCO
Peshawar Electric Supply Company (PESCO),
WAPDA House, Sakhi Chashma Shami Road,
Peshawar.
- 3) Incharge Complaint Cell, PESCO,
WAPDA House, Sakhi Chashma Shami Road,
Peshawar.
- 4) Mr. Imtiaz Khan, Deputy Director (NEPRA),
NEPRA Provincial Office, Tasneem Plaza,
6th Saddar Road, Peshawar Cantt.
- 5) Mr. Muhammd Kurram Shehzad, CHRO, FF Steel
M/s Frontier Foundry Steel (FF Steel),
Plot No.166, Road B-7, Hayatabad Industrial Estate,
Peshawar.


(Muhammad Bilal)
Additional Director (CAD)
NEPRA
Islamabad
(CAD)



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

Complaint No. PESCO-NHQ-13639-06-22

M/s Frontier Foundry Steel (FF Steel)
Plot No.166, Road B-7
Hayatabad Industrial Estate, Peshawar.

..... Complainant

VERSUS

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

..... Respondent

Date of Hearing: August 24, 2022

**On behalf of
Complainant:**

- 1) Mr. Muhammd Kurram Shehzad, CHRO, FF Steel
- 2) Mr. Bahram Khan, Head of Legal

Respondent:

- 1) Mr. Tufail Muhammad, Director Commercial, PESCO

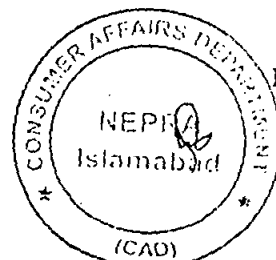
Subject: DECISION IN THE MATTER OF COMPLAINT FILED BY M/S FRONTIER FOUNDRY STEEL (FF STEEL) UNDER SECTION 39 OF REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST PESCO REGARDING MDI CHARGES/ FIXED CHARGES.

DECISION

This decision shall dispose of the complaint filed by M/s Frontier Foundry Steel (hereinafter referred to as "the Complainant" or "FF Steel") against Peshawar Electric Supply Company (hereinafter referred to as the "Respondent" or "PESCO") under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act").

2. NEPRA received a complaint from the Complainant wherein it was submitted that Frontier Foundry Steel is a B-4 Industrial Consumer of PESCO which plans its production in advance considering the availability of several factors including electricity. The Complainant further submitted that being a major contributor to the National Exchequer it suffered huge financial losses as the facility of electricity was suddenly withdrawn by PESCO through an impugned notice of load shedding dated April 30, 2022 wherein the Complainant was directed to shut-down its industry immediately. The Complainant resumed its production on May 07, 2022 upon obtaining further instruction from PESCO after delay of (7) days. The Complainant prayed for withdrawal of MDI charges for the months of April & May, 2022 amounting to Rs. 11,865,600/-, refund of MDI charges on pro-rata basis and compensation of damages amounting to Rs. 84,703,699/- from PESCO sustained by the Complainant.

3. The matter was taken-up with PESCO for submission of para-wise comments/report. However, PESCO failed to provide response within the stipulated time period. In order to arrive at an informed decision, a hearing was conducted on August 24, 2022 at NEPRA Head Office, Islamabad. Both the parties i.e. PESCO and the Complainant participated in the hearing and advanced their arguments. During the hearing, the issues of MDI charges/Fixed Charges and claim of the Complainant regarding losses incurred due to disconnection of electricity supply



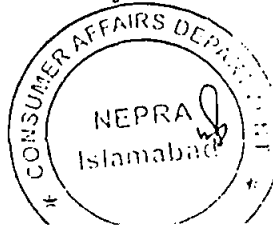
were deliberated at length. The Complainant reiterated his arguments and quoted decision of the Honorable Supreme Court of Pakistan and Lahore High Court in support of his assertion. The Complainant submitted that when it is not possible for distribution companies to reserve/provide required power to any consumer during a certain period than fixed charges need to be adjusted or reduced to the benefit of the consumer. The Complainant further submitted that in the case of Water and Power Development Authority (WAPDA) vs M.N. Steel Rolling Mills etc. (1999 SCMR 494), Supreme Court of Pakistan opined as under:

- (16) *In this background to strike the balance (and allow proportionate adjustment to consumers as regards "fixed charges") we feel that because WAPDA during the period of loadshedding continues to ensure maintenance of service line for smooth transmission of energy, whereas placed in such situation it becomes impracticable to "preserve power" for catering "Maximum Demand" and is compelled to distribute the available quantity of energy to different consumers, therefore, to strike the balance the consumers who are paying "fixed charges" be allowed proportionate adjustment. Accordingly, we are inclined to observe that on calculating proportionate amount in regard to "loadshedding" period, half from it (50%) be left to WAPDA towards line service charges and remaining half (50%) of such amount be reduced from minimum "fixed charges and adjusted to the benefit of consumers.*
- (17) *Thus, for the foregoing discussions we hold that proportionate reduction to the extent of 50% of amount calculated for the period during which loadshedding remains operative be allowed to industrial consumed purely on account of WAPDA's inability to "preserve power" for meeting with "maximum demand".*
- (18) *For convenience and clarity it may be mentioned that "fixed charges" cater for 24(hours) x 30 days = 720 hours per month. Therefore, in the event of "loadshedding" for one hour per day, the consumer shall become entitled to proportionate reduction on the above calculation which when worked out would be "minimum fixed charges" divided by 30 (one hour per day in the month) and further divided by 2 (being fifty percent. Concerning in failure to preserve power). Thus if "fixed charges" in a "billing month" are shown to be Rs. 72000/- (seventy two thousand) the consumer against loadshedding for one hour shall become entitled to adjustment/reduction of Rs. 1200/- (Rupees Twelve Hundred) during said month and similar proportionate benefit would be allowed be mathematical calculation concerning increase or decrease of loadshedding period.*
- (19) *It may be further clarified that above benefit would be allowable prospectively computing from current financial year on the grounds inter alia mentioned in the impugned judgment. Besides, there are conflicting judgments of the Lahore High Court which in its respective sphere have allowed or rejected the claims filed by the consumers of Industrial Units. Apparently, still other Industrial Consumers are paying 'fixed energy charges' without specific protest. It would, therefore, be fair that when certain provisions are interpreted by this Court benefit should be extended without causing discrimination amongst consumers liable for charges under common category of Tariff.*
- (20) *For the foregoing reasons appeals are partially allowed, whereby benefit granted to respondents is proportionately reduced to 50% of the amount allowed by the Lahore High Court and impugned judgment, dated 20th September, 1993 is modified in the above terms.*

4. PESCO vide a detailed report dated September 19, 2022 submitted that due to acute power crises in the country during April 2022; directions were received from Govt. of Pakistan through MD - PPMC to switch-off all the steel furnaces immediately till the end of eid holidays in order to give consistent supply to domestic consumers during Eid-ul-Fitr. Therefore, on April, 29, 2022, the instructions of shut-down were conveyed to all steel industries including the Complainant on non-discriminatory basis. However, another notice of shut-down dated April 30, 2022 was exclusively issued to the Complainant being non-compliant to the earlier directions. PESCO further submitted that the facility of supply of electricity can be discontinued due to force majeure events and the same does not provide eligibility to the Complainant to claim damages or concession in MDI charges. Moreover, the stance of the Complainant is contrary to the clause 11 of the Abridge Conditions of Supply signed at the time of obtaining connection; according to which the PESCO may at any time, on account of emergency, shortage of power or accidental break down of electric supply lines work; impose restrictions on use of energy by the consumer.

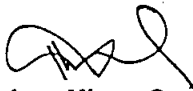
5. The case has been examined in detail in light of the record made so available by the parties, arguments advanced during the hearing and as per applicable law. The following has been concluded:

- i. M/s Frontier Foundry Steel (FF Steel) is located at Hayatabad Industrial Estate,

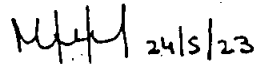


Peshawar under B4 tariff having its own 132KV Grid with a sanctioned load of 18 MW. The supply was shut down on the instruction given by PESCO for the period i.e. April 30, 2022 to May 06, 2022 on the eve of Eid-ul-Fitr. The Complainant is of the view that the shut-down activity caused huge financial losses as the same was conveyed by PESCO on immediate basis under very stringent timeline which sabotaged the advance production planning done by the Complainant to meet its financial and business commitments. On the very basis, the Complainant claimed waiver of MDI charges for the months of April-May, 2022 amounting to Rs. 11,865,600/-, refund of MDI charges on pro-rata basis and compensation of damages amounting to Rs. 84,703,699/- from PESCO.

- ii. As per the existing notified Terms & Conditions of tariff; "Fixed Charge" means the part of sale rate in a two-part tariff to be recovered on the basis of "Billing Demand" in kilowatt on monthly basis. Billing Demand- means the 50% of the sanction load or actual maximum demand recorded in a month, whichever is higher, except in the case of agriculture tariff D2 where "Billing Demand" shall mean the sanctioned load. In light of the notified tariff terms & conditions; fixed charges are to be charged based on 50% of sanctioned load or actual MDI in the month, thus, there is no provision regarding proportional charging of fixed charges based on number of days which negates the version of the Complainant regarding refund of MDI charges on pro-rata basis.
 - iii. In case of non-utilization of the sanctioned load by the consumer, DISCOs still have to maintain the distribution network and preserve the power for any emergent or planed demand of the consumers.
 - iv. Further regarding the decision of the Honorable Supreme Court as quoted above, it is important to clarify that consumer-end tariff design is volumetric whereby around 95% of total cost is recovered on consumption basis i.e. per kWh and only 5% is recovered on MDI basis. Thus, consumers are already being allowed the benefit at a much higher rate vis a vis the orders of the Honorable Supreme Court of Pakistan.
 - v. According to Clause-14.6 of Consumer Service Manual (CSM) DISCO is not liable for any claims for loss, damage or compensation whatsoever arising out of failure of supply when such failure is due to force Majeure. In the instant case; the supply was got disconnected due to shortage of power which is a force majeure event.
 - vi. The claim for compensation by the Complainant in lieu of financial losses incurred pertaining to fixed expenses and profit loss due to forced shut-down of their industry does not fall under the purview of NEPRA.
7. Foregoing in view, the complaint pertaining to withdrawal of MDI charges for the month of April-May, 2022 and refund of MDI charges on pro-rata basis is not justified in light of notified terms and conditions of tariff. Moreover, the issue of compensation for the financial damages may be taken up by the Complainant at any other legal forum/court of law.



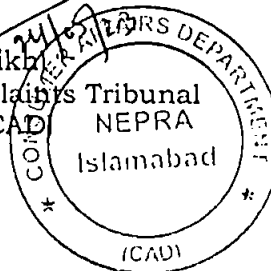
(Lashkar Khan Qambrani)
Member Consumer Complaints Tribunal
Director (CAD)



(Moqeen ul Hassan)
Member Consumer Complaints Tribunal
Assistant Legal Advisor (CAD)



(Naveed Nadeem Shaikh)
Convener Consumer Complaints Tribunal
Director General (CAD)



Islamabad May 24, 2023