



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

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No. NEPRA/AB/Appeal-039/POI-2015/ 860-864

September 08, 2015

1. Siddique Ali,
S/o Zahid Ali,
Prop: Power Looms Factory,
Through Athar Latif,
S/o Syed Muhammad Afzal Shah Bukhari,
R/o Chak No. 5/JB, Sohal Jhang Road,
District Faisalabad
2. The Chief Executive Officer,
FESCO Ltd,
Canal Road, Faisalabad
3. Shahzad Ahmed Bajwa,
Advocate High Court,
Office No. 429, 4th Executive Floor,
Sadiq Plaza, The Mall, Lahore
4. Ch. Muhammad Imran Bhatti,
Advocate High Court,
44-District Courts,
Faisalabad
5. Sub Divisional Officer (Op),
Thekriwala Road Sub Division,
FESCO Ltd,
Faisalabad

Subject: Appeal Titled FESCO Vs. Siddique Ali Against the Decision Dated 14.04.2015 of the Electric Inspector/POI to Government of the Punjab Faisalabad Region, Faisalabad

Please find enclosed herewith the decision of the Appellate Board dated 08.09.2015, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

September 08, 2015

No. NEPRA/AB/Appeal-039/POI-2015/ 865

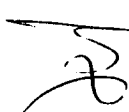
Forwarded for information please.


Member Appellate Board

1. Registrar
2. Director (CAD)
3. Electric Inspector/POI, Faisalabad Region
4. Master File

CC:

1. Chairman
2. Vice Chairman/Member (CA)
3. Member (Tariff)
4. Member (M&E)
5. Member (Licensing)


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Registrar	9653
DY NO.....	11-09-15
Dated.....	



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-039/POI-2015

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Siddique Ali S/O Zahid Ali Prop: Power Looms Factory, Chak No.75/JB Sohal Jhang Road,
Faisalabad.

.....Respondent

For the appellant:

Shahzad Ahmed Bajwa Advocate
Umair Ahmed SDO
Zahid Jamil ALM

For the respondent:

Ch.M. Imran Bhatti Advocate

DECISION

1. Brief facts giving rise to the instant appeal are that Faisalabad Electric Supply Company Limited (hereinafter referred to as FESCO) is a licensee of National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license. The respondent is industrial consumer of FESCO bearing Ref No.24-13216-5602500 with a sanctioned load of 299 kW under B-2b tariff.



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2. As per facts of the case, a checking of the TOU energy meter of the respondent was made by M&T FESCO on 27.07.2013 and it was found dead stop and the backup meter was also found defective since the year 2011. DEF-EST code was allotted against the connection of the respondent by FESCO with effect from July 2013. A bill amounting to Rs.1,826,791/- for 158,560 units/339 kW was issued in July 2013 on the basis of DEF-EST code which was deposited by the respondent. Another Bill of Rs.2,509,768/- on DEF-EST code basis was issued in September 2013. Billing of the respondent on DEF-EST code basis continued till replacement of the both TOU and backup meters on 29.11.2013. The respondent being aggrieved with the detection bills for July 2013 to September 2013 filed a petition dated 26.09.2013 before Provincial Office of Inspection/Electric Inspector Faisalabad Region, Faisalabad (hereinafter referred to as POI) under section 38 (3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as "the Act"). The TOU meter was jointly checked on 24.10.2013 and found dead stop. POI decided the petition vide its decision on 14.04.2015 and concluded as under: - - -

"Summing up the aforesaid discussion, it is held that the bills charged on DEF-EST code basis w.e.f. 07/2013 to replacement of meter in 12/2013 is null, void and illegal and the petitioner is not liable to pay the same. FESCO Authority is directed to charge the petitioner @ 15835Kwh/318Kw MDI per month w.e.f 07/2013 to 12/2013 and billing of 12/2013 be charged @ 155385 Kwh/318 Kwh proportionately and accordingly (As the disputed meter replaced on 29-11-2013 which is also within billing cycle of 12/2013). FESCO Authority is directed to overhaul the account of the petitioner/consumer accordingly."

3. Being aggrieved with the above decision date 14.04.2015 of POI, FESCO has filed the instant appeal on the grounds that energy meter was checked by M&T FESCO on 27.07.2013 and was found dead stop and the same defect of the TOU meter was confirmed during the joint checking arranged by POI on 24.10.2013. Further that the billing of the respondent from July 2013 till December 2013 on DEF-EST code basis was carried out as per Consumer Service Manual (hereinafter referred to as CSM). FESCO submitted that impugned decision dated 14.04.2015 was against law and facts of the case. According to FESCO, the bill amounting to



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Rs.2,509,768/- issued for the defective period was correct and justified but POI declared the same as null and void in its impugned decision. FESCO further contended that POI did not exercise appropriate jurisdiction vested in it and committed illegality and irregularity while passing the impugned decision. FESCO added that the impugned decision was passed without application of judicious mind, without any plausible reason and was therefore liable to be set aside.

4. The notice of appeal was issued to the respondent for filing reply/parawise comments which were filed on 06.08.2015. In his reply, the respondent denied the assertions of appellant and, inter-alia, contended that the appeal was filed with mala-fide intentions just to prolong the dispute and not to honor and implement the impugned decision of POI and with the view to harass the respondent. The respondent averred that the impugned decision was correct as per law and actual facts of the case. According to the respondent, the M&T FESCO checking dated 27.07.2013 was unilateral, without notice, without any lawful authority and malicious and the estimated bills issued were violation of CSM, abridged condition of supply and Electricity Act 1910. The respondent refuted the allegations of FESCO and stated that the meter was working under B.S.S limits. The respondent also requested for a direction for the appellant to implement the impugned decision and refund of all the excess amounts charged with markup.
5. Hearing of the appeal was fixed for 18.08.2015 at Lahore for which notices to both the parties were issued. During the hearing, Mr. Shahzad Ahmed Bajwa Advocate and Mr. Umair Ahmed SDO FESCO appeared for the appellant and Ch. M. Imran Bhatti Advocate represented the respondent. Learned Counsel for the appellant reiterated the same arguments as given in memo of the appeal. It was also argued by him that the billing from July 2013 to December 2013 on the basis of DEF-EST code was done due to dead stop meter after allotment of DEF-EST code on the basis of average consumption of previous eleven months or the corresponding months of the last year which ever was higher in accordance with the provisions of CSM. Learned counsel for FESCO clarified that the abnormal consumption recorded in February 2012 and April 2012 was due to human error in recording the consumption which was set right in the consumption recorded in later months. Learned counsel for FESCO argued that after replacement of the meter

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in December 2012, there was increase in the consumption of the respondent which corresponds to the consumption to the figures recorded on estimated basis for the months July 2013 to December 2013. Ch. M. Imran Bhatti Advocate, learned counsel for the respondent defended the impugned decision of POI and submitted that it was announced after consideration of all aspects of the case. Learned counsel for respondent averred that as per billing program, the reading of the meter of the respondent was recorded by FESCO on 10th of each month which proved that there was no problem with the meter when its reading was recorded on 10.07.2013 as no discrepancy was pointed out. According to learned counsel for the respondent, the bill issued for July 2013 was to be based on the actual reading recorded on the same date and there was no justification to raise the detection bill for July 2013 on the basis of DEF-EST code, which was allotted after the M&T FESCO checking date 27.07.2013. Further, learned counsel for the respondent pleaded that M&T checking dated 27.07.2013 was carried out unilaterally, without any notice and without associating the respondent which was violation of CSM. Learned counsel for the respondent pointed out that in violating provisions of CSM, the billing meter was not replaced within maximum period of two billing cycles and the billing on defective code basis continued till replacement of the meter in December 2013. Learned counsel contended that no illegality was pointed out by the appellant in the impugned decision which was according to facts of the case and law and therefore liable to be upheld. He argued that the appeal was not maintainable and therefore need to be rejected. In rebuttal, learned counsel for the appellant pleaded that the information regarding M&T checking dated 27.7.13 was duly intimated to the representative of the respondent.

6. Arguments heard and record perused. The TOU meter of the respondent was found dead stop by M&T FESCO when checked on 27.07.2013 and the same defect was confirmed during the joint meter checking arranged by POI on 24.10.2013, however, FESCO failed to replace both defective meter i.e. TOU meter and backup meter promptly and the same were replaced in December 2013 which is violation of the CSM. The billing from July 2013 to December 2013 was carried out DEF-EST code basis. Since the meter was found dead stop on 27.07.2013 and no discrepancy was noticed by FESCO during its scheduled meter reading program on 10.07.2013 therefore, there is force in the arguments of learned counsel for the respondent that

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the billing must be done as per actual meter reading recorded instead of DEF-EST code basis. Similar observation has also been made by POI in the impugned decision therefore the respondent is liable to be billed on actual meter reading basis for the month of July 2013.

The consumption table of the respondent is given as under:-

Months	Year 2012 kWh/MDI	Year 2013 kWh/MDI	Year 2014 kWh/MDI
August	199520/248	199695/339	115840/315
September	128320/246	161150/330	165600/306
October	147040/303	165351/339	129280/304
November	171040/309	171039/339	157440/349
December	192800/330	203221/341	221760/344
Total	838720/1436	900456/1688	789920/1618

From the above data of the respondent it is noticed that the consumption for the period:-

August 2012 - December 2012 = 838,720 kWh/1,436 kW

August 2013 - December 2013 = 900,456 kWh/1,688 kW

August 2014 - December 2014 = 789,920 kWh/1,618 kW

From the above it is evident that the billing on DEF-EST code basis during the disputed period of the year 2013 is higher than the same period of the year 2012 and year 2014. POI in his analysis has rightly determined that the consumption of the respondent was erroneously recorded during the year 2012 and therefore it cannot be relied upon for charging on DEF-EST code basis. The element of human error has also been admitted by learned counsel for FESCO. The POI in its impugned decision has directed FESCO to charge the respondent at the rate of 158,385 kWh/318 kW for the disputed period July 2013 to December 2013 but there is no explanation or rationale given for these figures.

7. From the foregoing discussion it is concluded that

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- i. The billing of the respondent on DEF-EST code basis from July 2013 to December 2013 is null and void and illegal and respondent is not liable to pay the same as already determined by POI in the impugned decision
- ii. Respondent shall be charged for the months of August 2013 to December 2013 for the same consumption as recorded in August 2014 to December 2014 which is 789,920 kWh units 1,618 kW.
- iii. The decision of POI is modified to the above extent and the appeal is disposed of.

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener

Muhammad Shafique
Member

Date: 08.09.2015