



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

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No. NEPRA/AB/Appeal-066/POI-2015/ 106 - 111

January 26, 2016

REGISTRAR
By No.
1067
Dated 29-01-16

1. Water and Sanitation Agency Faisalabad,
Bilal Bashir,
Deputy Director (Electrical Cell),
Opposite Jhal Bridge,
Faisalabad
2. The Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullah Pur,
Faisalabad
3. Saeed Ahmed Bhatti,
Advocate High Court,
2nd Floor, Akram Mansion,
Neela Gumbad, Lahore
4. Iftikhar Ahmed Mian,
Advocate Supreme Court of Pakistan,
7-Turner Road,
Lahore
5. Azmat Ullah Goraya,
Sub Divisional Officer,
FESCO Ltd,
Chiniot-III Sub Division,
Chiniot
6. Electric Inspector
Energy Department,
Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad

Subject: Appeal Titled FESCO Vs. Water and Sanitation Agency Faisalabad Against the Decision Dated 09.06.2015 of the Electric Inspector/POI to Government of the Punjab Faisalabad Region, Faisalabad

Please find enclosed herewith the decision of the Appellate Board dated 26.01.2016, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-066/POI-2015/ 112

January 26, 2016

Forwarded for information please.

1. Registrar
2. Director (CAD)

29.01.16

Member Appellate Board

CC:

D/CS - I / M/A

1. Vice Chairman/Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-066/POI-2015

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Water and Sanitation Agency, Faisalabad

.....Respondent

For the appellant:

Mr. Saeed Ahmed Bhatti Advocate

Mr. Azmat Ullah Goraya SDO

For the respondent:

Mr. Iftikhar Ahmed Mian Advocate

Mr. Bilal Bashir Deputy Director

DECISION

1. Through this decision, an appeal filed by Faisalabad Electric Supply Company Limited (hereinafter referred to as FESCO) against the decision dated 09.06.2015 of the Provincial Office of Inspection (POI) is being disposed of.
2. As per facts of the case, the respondent is a consumer of FESCO having water supply tube well bearing Ref No. 24-13163-5604400 with a sanctioned load of 77 kW under B-2(b) tariff. TOU meter of the respondent was checked by Metering and Testing (M&T) FESCO on 09.12.2013 and declared 66% slow due to red and yellow phases being dead. Besides, the date and time of the TOU meter were also found defective in the checking. Notice dated 26.12.2013 was issued to the respondent by FESCO and a detection bill of Rs.2,496,091/- for 140,075 units/72 kW units for the period April 2013 to November 2013 was charged to the respondent in January 2014. TOU meter was again checked by M&T FESCO on 18.02.2014 and reportedly the meter was found running 66% slow with the burnt potential transformer (PT). The burnt PT was set right, cable replaced and thereafter the TOU meter was found working within B.S.S limits. However the date and time

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of the TOU meter were out of order. The respondent was charged bills on defective code basis from December 2013 to February 2014. The meter was replaced in March 2014.

3. Being aggrieved with the above mentioned detection/estimation billing for the period April 2013 to November 2013 and December 2013 to February 2014, the respondent filed an application dated 30.05.2014 before POI. Joint checking of the TOU meter was conducted on 26.06.2014 by POI and the disputed meter was found working within permissible limits. POI disposed of the matter vide its decision dated 09.06.2015 (hereinafter referred to as the impugned decision) and concluded as under:

"Summing up the aforesaid discussion, it is held that (1) Detection bill amounting to Rs.2496091 for 140075 units/Kwh for retrospective period of April 2013 to Nov 2013 and charged in the billing month of Jan 2014 is null, void and illegal and the petitioner is not liable to pay the same. (11) Monthly electricity bill charged/recoverable for the period Nov 2013 to Feb 2014 are also held as null, void and illegal and the petitioner is not liable to pay the same (11) FESCO Authority is directed to charge the petitioner @ 15341 Kwh/66 KW MDI per month w.e.f Nov 2013 to Feb 2014 (4) FESO Authority is also directed to refund/adjust excessively charged and recovered amounts in future bills and over haul the account of the petitioner/consumer accordingly "

4. Being aggrieved with the impugned decision, FESCO has filed the instant appeal under section 38 (3) of regulation of Generation, Transmission and Distribution of Electricity Power Act 1997 (hereinafter referred to as the Act). FESCO in its appeal contended that the detection bill of Rs.2,496,091/- for the cost of 140,075 units/72KW MDI on the basis of 66% slowness of TOU meter for the period April 2013 to November 2013 and onwards monthly billing from December 2013 to February 2014 effected on the basis of DEF-EST code were legal, valid, justified and the same was fully proved before POI. FESCO stated that the impugned decision was illegal, void ab-initio, without lawful authority and was liable to be set aside. Besides, FESCO raised the preliminary objection regarding the jurisdiction of POI for carrying out the proceedings after expiry of the mandatory period of 90 days of filing of the application by the respondent as envisaged under section 26 (6) of Electricity Act 1910. According to FESCO the electric inspector was duty bound to refer the matter to Provincial Government after expiry of statutory period of 90 days for decision. FESCO requested for setting aside of the impugned decision.



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5. Notice of the appeal was issued to the respondent for reply/parawise comments which were filed on 05.10.2015. The respondent, in its reply/parawise comments, denied the assertions of FESCO and, inter-alia, stated that the detection bills issued by FESCO on the pre-text of 66% of slowness of the TOU meter were completely illegal, invalid, unjustified and it was not liable to pay the same. The respondent defended the impugned decision of POI which according to it was legal, lawful and justified. The respondent prayed for the dismissal of the appeal.
6. After service of notice to both the parties, the hearing of the appeal was held in Lahore on 11.01.2015 in which both the parties participated. Mr. Saeed Ahmed Bhatti Advocate and Mr. Azmat Ullah SDO appeared for the appellant FESCO and Mr. Iftikhar Ahmed Mian Advocate and Mr. Bilal Bashir Deputy Director represented the respondent WASA. In the outset of the hearing, Mr. Iftikhar Ahmed Mian Advocate, the learned counsel for the respondent raised preliminary objection regarding filing of the appeal by SDO Chiniot and contended that the officer was not authorized to file the same on behalf of FESCO. In response, Mr. Saeed Ahmed Bhatti Advocate, the learned counsel for FESCO pleaded that the such authority was delegated to the concerned SDO/Assistant Manager through the resolution of FESCO Board of Directors (BOD) and a copy of the same was provided by FESCO. In view of such clarification, the objection raised by the respondent was dismissed. Mr Saeed Ahmed Bhatti Advocate learned counsel for FESCO, submitted that the arguments have been given in memo of appeal. According to the learned counsel for FESCO, detection bill of Rs.2496,091/- for 140,075 units/72 kW for the period April 2013 to November 2013 charged due to 66% slowness of the meter, was justified and respondent was liable to pay the same. Regarding the billing for the period December 2013 to February 2014 done on defective code basis the learned counsel for FESCO averred that the same was done by the Wapda Computer Centre on the DEF-EST code basis which was in accordance with the Consumer Service Manual (hereinafter referred to as CSM) as the TOU meter was defective and not recording actual consumption. According to him, notices were issued to the respondent regarding the discrepancy of the above meter and the bills as raised by FESCO were paid by the respondent willingly and without any protest acknowledging the same as correct and justified. The learned counsel for the respondent contradicted the version of FESCO and submitted that FESCO failed to follow the procedure as envisaged in the CSM. The learned counsel drew the attention to class 4.4 (e) of the CSM and pleaded that charging of the detection bill on the basis of defective code was limited to two billing cycles only whereas in disregard of such provision, FESCO raised

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detection bills due alleged 66% slowness of the meter for the period of April 2013 to November 2013 (8 months) which was illegal and unjustified. He pointed out that FESCO failed to install check meter in series with the impugned TOU billing meter to determine the difference between the disputed meter and check meter as required under the CSM. The learned counsel for the respondent defended the impugned decision and prayed that the same should be maintained and directions be issued to FESCO for its implementation.

7. We have heard the arguments of both the parties and considered the record placed before us. Following are our observations:

- i. TOU meter of the respondent was checked by M&T FESCO in December 2013 and found 66% slow. FESCO failed to install a check meter in series with the impugned meter and replace the defective meter immediately with correct meter as required under clause 4.4(c) of the CSM.
- ii. Detection bill of Rs. 2,496,091/- for 140,075 units/72 kW units for the period April 2013 to November 2013 was charged to the respondent in January 2014. As per clause 4.4 (e), the respondent was liable to be charged detection bill due to 66 % slowness of the meter noticed in December 2013 for two billing cycles only i.e. October 2013 and November 2013. It is correctly determined by POI that the meter recorded correct consumption of electricity till October 2013, therefore the respondent is liable to be charged detection bill due to 66 % slowness of the meter for November 2013.
- iii. The defective meter was replaced in March 2014 and the billing on the basis of newly installed meter was done from March 2014 and onwards. The respondent is therefore liable to be charged detection bill due to 66 % slowness of the meter for the period December 2013 to February 2014. 66 % slowness of the meter was confirmed by FESCO in its checking on 09.12.2013 and 18.02.2014. DEF-EST code was allotted to the respondent and billing for the period December 2013 to February 2014 was done accordingly.
- ii. According to the procedure as prescribed 4.4 (c), in case a meter is found slow, the consumer is liable to be billed on M.F basis till its replacement with a correct meter. In the instant case, 66 % slowness of the meter was established during the checking on 09.12.2013 and 18.02.2014. The respondent was liable to be billed @ 66 % slowness for the period



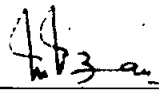
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December 2013 to February 2014 with enhanced M.F from 40 to 117.64. Charging of the respondent on DEF-EST basis during this period is not justified and liable to be cancelled. Since the consumption data for the period December 2013 to February 2014 is not available therefore the billing on M.F basis cannot be worked out. The determination of POI to charge 15,341 units/66 kW MDI for the period December 2013 to February 2014 is judicious and liable to be upheld.


8. In view of forgoing discussion following is concluded that:

The detection bill amounting to Rs.2,496,091/- for 140,075 units 72/kW for the period of April 2013 to November 2013 charged in January 2014 is null, void and illegal and the respondent is not liable to pay the same. The impugned decision is endorsed to this extent.


- i. FESCO is allowed to charge detection bill @ 66 % slowness of the meter for November 2013. (Refer para 7 (ii)). FESCO is allowed to charge the bills for the period December 2013 to February 2014 @ 15,341 units/66 kW MDI per month for the period December 2013 to February 2014.
- ii. The appeal is partially allowed and the impugned decision of POI is modified in the above terms.



Muhammad Qamar-uz-Zaman
Member



Nadir Ali Khoso
Convener



Muhammad Shafique
Member

Date: 26.01.2016