



BEFORE THE APPELLATE BOARD
National Electric Power Regulatory Authority
(NEPRA)
Islamic Republic of Pakistan

NEPRA Office, Atta Turk Avenue (East), G5/1, Islamabad
Tel. No. +92 051 2013200 Fax No. +92 051 2600028
Website: www.nepra.org.pk E-mail: office@nepra.org.pk

No. NEPRA/AB/Appeal-071/POI-2015/ 119-124

January 28, 2016

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. Muhammad Hafeez, WASA Faisalabad Against the Decision Dated 17.06.2015 of the Electric Inspector/POI to Government of the Punjab Faisalabad Region, Faisalabad

Please find enclosed herewith the decision of the Appellate Board dated 27.01.2016, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-071/POI-2015/ 125

January 28, 2016

Forwarded for information please.

1. Registrar
2. Director (CAD)

CC:

1. Vice Chairman/Member (CA)


Member Appellate Board

Registrar	1069
By No.	
Date	29/01/16



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-071/POI-2015

Faisalabad Electric Supply Company

.....Appellant

Versus

Muhammad Hafeez, Director WWM, WASA, through
Muhammad Usman, Assistant Director WASA, 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 Company (hereinafter referred to as FESCO) against the decision dated 17.06.2015 of Provincial Office of Inspection (POI) Faisalabad Region, Faisalabad (hereinafter referred as POI) is being disposed of.
2. As per facts of the case, the respondent has a water supply connection bearing Ref No. 24-13163-5604200 with a sanctioned load of 77kW under B-2(b) tariff. The metering equipment of the respondent was checked by FESCO on 09.12.2013 and found 33 % slow. Notice dated 26.12.2013 was issued by FESCO to the respondent for the above noted discrepancy and detection bill of Rs.733,798/- for 41,156 units/22kW, for the period September 2013 to November 2013, was issued in January 2014 on the basis of 33% slowness of the meter along with the current bill of December 2014 prepared with Multiplication Factor (MF) enhanced from 40 to 59.7.
3. Being aggrieved with the aforementioned detection bill, an application was filed by the

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respondent before POI on 30.05.2014. Metering equipment (TOU and back up meters) was jointly checked by POI on 26.06.2014 and both the meters were found accurate. Subsequently metering equipment was checked by FESCO on 28.08.2014 and found 33% slow wherefore recommendation was made for the replacement of current transformers (CT). A check meter was installed on 27.12.2014 and joint checking for comparison of the disputed TOU meter, back up meter and check meter was arranged by POI on 06.04.2015 in which the disputed TOU meter was found 4.16% fast. The complaint was decided by POI vide its decision dated 17.06.2015 (hereinafter referred to as the impugned decision) to the following effect:

"Summing up the aforesaid discussion, it is held that (1) Disputed meter was found running within BSS, when checked by joint checking team on 26.06.2014 and was found 33% slow, when checked by joint checking team through comparison of reading on 06.04.2015 (11) Detection bill amounting to Rs.733,798/- for 41156 units for retrospective period September 2013 to November 2013 charged in January 2014 is held as null, void and illegal and of no legal consequence and petitioner is not liable to pay the same. (111) Electricity bills charged and recovered by FESCO on basis of enhanced multiplication factor 59.7 instead of 40 w.e.f December 2013 are held as null, void and illegal and FESCO Authority is directed to charge the petitioner and revise the dispute bills (charged and recovered with enhanced multiplication factor of 59.7) as per true readings of energy meter (Meter No.203382 with the multiplying factor of 40 instead of increased 59.7) w.e.f December 2013 to installation of check meter in December 2014 and shift the billing of petitioner's connection/meter on newly installed check meter w.e.f December 2014 accordingly and proportionately. (4) FESCO Authority is also directed to refund/adjust already excessively charged/recovered amounts in future billing 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 the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as "the Act"). In its appeal, FESCO contended that 33% of slowness of the meter was established in the checking of meter and therefore detection bill of Rs.733,798/- 41,156 units/22 kW on the basis of 33% slowness of meter for the period of September 2013 to November 2013 charged in January 2014 and onward monthly billing with enhanced MF from 40 to 59.7 for the period December 2013 to March 2015 are correct and

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justified but the POI erroneously declared the same as null, void and illegal without applying its judicious mind, ignoring the facts of the case and documents/consumption data. FESCO further stated that the impugned decision was ex-facie coram non-judice, ab-initio void and without jurisdiction as the proceedings were carried out after the expiry of 90 days as envisaged under section 26(6) of Electricity Act 1910.

5. The notice of the appeal was issued to the respondent for filing reply/parawise comments which were not submitted.
6. Hearing of the appeal was fixed at Lahore on 11.01.2016 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. Mr. Saeed Ahmed Bhatti Advocate, learned counsel for FESCO, repeated the same arguments as contained in memo of the appeal. It is further contended that the meter was confirmed to be 33% slow during checking, therefore the detection bill of Rs. 733,798/- 41,156 units/22 kW for the period September 2013 to November 2013 and the onward billing from December 2013 to March 2015 with the enhanced MF from 40 to 59.7 were valid, justified and the respondent was liable to pay the same. According to learned counsel for FESCO, the bills were willingly paid by the respondent which proved that those were correct. The learned counsel further submitted that the application filed before POI on 30.05.2014 was decided by POI on 17.06.2015 after the expiry of statutory period of 90 days as envisaged under section 26(6) of Electricity Act, 1910 and therefore the impugned decision was void, without jurisdiction and was liable to be set aside. In this regard reliance was placed on 2006 YLR 2612 and PLJ 2015 Lahore 470.
7. Mr. Iftikhar Ahmed Mian Advocate appearing for the respondent contended that the comparison of consumption for the disputed period of September 2013 to November 2013 revealed that it was compatible with the previous corresponding period of September 2012 to November 2012 which established that the meter was accurate during the period September 2013 to November 2013. The learned counsel further submitted that the meter testing was conducted by FESCO unilaterally without participation of the respondent and POI and as such it was not reliable. According to learned counsel for the respondent, on 26.04.2014 and 06.04.2015 the metering equipment was found correct in the joint checking arranged by POI

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and therefore the detection bill for the period September 2013 to November 2013 charged in January 2014 and monthly bill issued with MF raised from 40 to 59.7 were not justified and liable to be cancelled. He defended the impugned decision which according to him was based on facts and law and liable to be maintained.

8. We have heard arguments of both the parties and considered the record placed before us.

Following has been observed:

- i. Metering equipment (billing meter and back up meter) of the respondent was found 33% slow during the checking conducted by FESCO on 09.12.2013 and 08.08.2014 but in the checking there was no participation of the respondent and POI.
- ii. Metering equipment was jointly checked by POI on 26.06.2014 and found accurate and working within the BSS limits.
- iii. Check meter was installed on 27.12.2014 and joint checking was arranged by POI on 06.04.2015 wherein it was confirmed that the disputed billing meter was 4.16% fast.
- iv. As the billing meter was found working within BSS limits in the joint checking arranged by POI, there is no justification for charging of the detection bill for the period September 2013 to November 2013 @ 33% slowness of the meter and monthly billing from December 2013 to March 2015 with enhanced MF from 40 to 59.7. The determination of POI, declaring the detection and monthly bills for period September 2013 to November 2013 and December 2013 to March 2015 respectively based on the above mentioned meter checking as well as analysis of the consumption data of the respondent is justified and liable to be maintained.
- v. Preliminary objection of FESCO regarding the jurisdiction of Electric Inspector for carrying out proceedings and announcement of the impugned decision after expiry of 90 days period as specified under section 26(6) Electricity Act, 1910 is not valid as the impugned decision was rendered by the officer in its capacity as POI under section 38 of the Act which does not prescribe any timeframe for disposal of the matter.

9. From the discussion in foregoing paragraphs it is concluded that the detection bills of

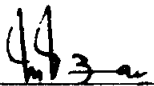
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Rs.733,798/- for 41,156 units/22kW for the period of September 2013 to November 2013 @ 33% slowness of the meter and electricity bills charged on the basis of enhanced MF of 59.7 instead of 40 are null, void and of no legal consequences and the respondent is not liable to pay the same as already determined in the impugned decision.

10. We do not find any reason to interfere in the impugned decision which is upheld and consequently the appeal is dismissed.



Muhammad Qamar-uz-Zaman
Member



Nadir Ali Khoso
Convener



Muhammad Shafique
Member

Date: 27.01.2015