



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

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No. NEPRA/AB/Appeal-078/POI-2015/ 068-073

January 18, 2016

1. M/s Chanar Sugar Mills Limited,  
Chak No. 407/GB,  
P.S. Musa Road,  
Tehsil Tandlianwala,  
District Faisalabad
2. The Chief Executive Officer  
FESCO Ltd,  
Canal Road, Faisalabad
3. Shabbir Ahmed,  
Advocate High Court,  
Room No. 25, 2<sup>nd</sup> Floor,  
Sadiq Plaza, The Mall,  
Lahore
4. Muhammad Azam Khokhar  
Advocate High Court,  
38-Fatima Jinnah Chambers,  
Session Courts, Gujranwala
5. The Assistant Manager (Opt)  
FESCO Ltd,  
Tandlianwala Sub Division,  
District Faisalabad
6. The Electric Inspector  
Energy Department,  
Govt. of Punjab,  
Opposite Commissioner Office,  
D.C.G Road, Civil Lines,  
Faisalabad Region, Faisalabad

Subject: Appeal Titled FESCO Vs. M/s Chanar Sugar Mills Limited Against the Decision Dated 08.07.2015 of the Electric Inspector/POI to Government of the Punjab Faisalabad Region, Faisalabad

Please find enclosed herewith the decision of the Appellate Board dated 18.01.2016, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-078/POI-2015/ 074

January 18, 2016

Forwarded for information please.

1. Registrar
2. Director (CAD)

CC:

1. Vice Chairman/Member (CA)

  
Member Appellate Board

Registrar	631
By No.....	
Dated.....	20-01-16

— DRJ - I/MIF 20/01/16



# National Electric Power Regulatory Authority

## Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-078/POI-2015

Faisalabad Electric Company Limited

.....Appellant

Versus

M/s Chanar Sugar Mills Ltd, Chak No. 407/GB,  
P.S. Musa Road, Tehsil Tandlianwala, District Faisalabad

.....Respondent

Present:

For the appellant:

Zulfiqar Ali Additional Deputy Manager (CS)  
Engineer Khadim Hussain Additional Superintending Engineer (Op)  
Ahtsham Younis Revenue Officer

For the respondent:

Muhammad Azam Khokhar Advocate

## DECISION

1. Through this decision, an appeal filed by Faisalabad Electric Company Limited (hereinafter referred to as FESCO) against the decision dated 08.07.2015 of Provincial Office of Inspection (POI) is being disposed of.
2. The respondent is an industrial consumer of FESCO bearing Ref No.24-13233-5301600 with a sanctioned load of 504 kW under B-3 tariff.
3. As per record, the electricity connection was granted to the respondent on 08.10.1992. At the time of connection neither any separate application was submitted for the residential colony by the respondent nor was a separate meter installed by FESCO for this purpose. The billing of the respondent was made by FESCO for all the units recorded by the meter both for mill and colony on the basis of B-3 tariff and the respondent made payments of electricity bills

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accordingly. In the Audit note No. 243 dated 24.04.2008, WAPDA local audit party recommended recovery of Rs. 3,396,614/- on account of tariff conversion from B-3 to H for the electricity units consumed for the residential colony attached to the mill from November 1992 to March 2008 but no action was taken by FESCO on the recommendation of the audit. However FESCO added an amount of Rs. 1,248,051/- in the respondent's bill for November 2010 being the amount chargeable for consumption of the residential colony due to change of tariff from B-3 to H for the period July 2008 to September 2010 which was deposited by the respondent. Similarly amounts for the tariff difference from B-3 to H were recovered from the respondent as bill adjustments from October 2010 to May 2012. A difference bill of Rs. 3,396,614/- was added in the bill for November 2014 for the period November 1992 to March 2008 on the basis of above mentioned Audit Note No. 243 dated 24.04.2008.

4. The respondent being aggrieved with the above mentioned difference bills charged for the residential colony owing to change of tariff from B-3 to H, filed an application dated 24.11.2014 before POI and challenged the difference bills. The respondent in his application, inter alia, prayed that the impugned detection bill of Rs. 3,396,614/- added in the bill for November 2014, impugned detection bill for Rs. 1,248,051/- recovered in the bill for November 2010 and additional amounts recovered in the bills for December 2010 to July 2012 on account of difference of tariff from B-3 to H be declared null and void.
5. Both the parties contested the case before POI and the matter was disposed of by POI vide its decision dated 08.07.2015 (hereinafter referred to as the impugned decision) with the following conclusion:

*"Summing up the foregoing discussion it is held:-*

- i. *That the impugned disputed detection bill for Rs. 33,96,614/- added in the bill for 11/2014, detection bill for Rs. 12,48,051.58 added/recovered in the bill for 11/2010 and amount recovered in the bills from 10/2010 to 07/2012 as bill adjustment on the basis of alleged 20 % units of the consumption of industrial connection tariff B-III charged as difference of tariff 'B-3' to 'H' are void, unjustified, and of no legal effect; therefore, the petitioner is not liable to pay the same.*
- ii. *That the detection bill for the difference of tariff 'B-3' to 'H' is chargeable to the*

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*petitioner for the period from 07/2008 to 07/2012 on the basis of 4331 units per month on the then rates of tariff-H by giving allowance of 6.37 KW MDI charges in the monthly bills of tariff B-III as no MDI is chargeable under tariff H.*

- iii. *That the respondents are directed to overhaul the account of the petitioner company and the excess amount recovered be refunded to the petitioner company accordingly."*
6. Being dissatisfied with the impugned decision dated 08.07.2015 of POI, 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"). FESCO in its appeal submitted that the respondent utilized electricity of the mill for the residential colony of the mill in violation of tariff rules and therefore a difference bill of Rs. 3,396,614/- was charged to the respondent after issuing notice dated 11.11.2014, but the respondent instead of making payment challenged the same before POI. FESCO averred that the matter was defended on factual and legal grounds but the impugned decision was passed by POI without considering version of the appellant. FESCO prayed for setting aside of impugned decision dated 08.07.2015 of POI and acceptance of its appeal.
7. In response to above appeal, notice was issued to the respondent for filing reply/parawise comments which were received on 08.10.2015. In it's reply/parawise comments, the respondent denied assertions of the appellant and, inter alia, stated that the residential colony for workers was constructed in the year 2006 and since then it was getting electricity from the industrial connection of the mill but no objection was ever raised by the Deputy Manager/Executive Engineer concerned, during the course of monthly readings of metering equipment and billing till September 2010. He pleaded that the all the difference bills charged on account of difference of tariff from B-3 to H on the basis of 20 % consumption shown by the meter are illegal and as such difference bills be declared null and void and amounts already recovered unlawfully in this regard be refunded. He defended the impugned decision of POI and stressed for implementation of the same by FESCO. Further in it's reply the respondent contended that pursuant to decision of superiors courts the audit is an internal mater of WAPDA and as such the audit report cannot make them liable to pay any amount pointed out by the audit. The respondent prayed that the impugned decision may be upheld and appeal of



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FESCO be dismissed accordingly.

8. After issuing notice to both the parties, the appeal was heard in NEPRA Regional Office Lahore on 25.11.2015 in which Mr. Shabbir Ahmed Advocate and Mr. Zulfiqar Ali Additional Deputy Manager appeared for the appellant FESCO and Mr. Muhammad Azam Khokhar Advocate appeared for the respondent. Mr. Zulfiqar Ali Additional Deputy Manager contended that the discrepancy of non application of H-tariff instead of B-3 was initially pointed out by Government audit party which was also noted by the WAPDA internal audit team in the year 2008. According to him the recovery of difference bills was made on the recommendation of audit report. The learned counsel for the appellant submitted that the respondent made no application for a separate meter of the residential colony and illegally extended/used the electricity from it's industrial connection. According to the representative of FESCO, the difference bills for change of tariff from B-3 to H tariff from November 1992 to March 2008 and afterwards charged to the respondent were legal, justified and the respondent was liable to pay the same. According to the learned counsel for the appellant, the respondent initially did not apply for a separate meter and unauthorizedly extended electricity from it's industrial connection to the colony and was provided a separate meter on 19.07.2012 when the respondent applied for the same. The learned counsel for FESCO averred that the residential colony existed along with the mill since 1992 and opposed determination of POI in the impugned decision that it was constructed in the year 2006. Regarding the average consumption per month for the residential colony, the representative of FESCO explained that it was charged on the basis of audit note dated 24.04.2008 as per connected load of 120 kW @ 20 % load factor. He opposed the calculation of POI in its impugned decision @ 4,331 units per month on the consumption recorded by new meter during the period August 2012 to November 2014. Regarding the MDI (kW) allowance due to conversion of tariff from B-3 to H, he clarified that 24 kW allowance was already given as recommended in the audit note and as such no further allowance was justified and determination of POI in this regard in the impugned decision was incorrect. The learned counsel for FESCO defended the audit note and pleaded that it was correct and justified and the difference bills raised and amounts recovered pursuant to the audit note were justified and the respondent was liable to pay the same. He clarified that Consume Service Manual (hereinafter referred to as CSM) was approved by

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NEPRA in April 2010 and therefore it was not applicable in the instant case as the dues pertained to the period prior to April 2010. As regards Deputy Manager FESCO letter dated 08.10.2010, where application of H tariff only for the years 2008-09 & 2009-10 under tariff H was advised, the representative of FESCO maintained that besides financial years 2008-09 and 2009-10, the tariff differential was applicable to the period from November 1992 to June 2008 as pointed out by the audit. The learned counsel for FESCO pleaded that the decision of superior courts regarding audit note was not applicable in the instant case and the difference bill of Rs. 3,396,614/- was charged to the respondent after issuance of notice dated 11.11.2014. Learned counsel for FESCO pointed out that Rs. 1,248,051/- paid in November 2010 and the amounts recovered as bill adjustment from October 2010 to July 2012 were deposited by the respondent without any dispute and same could not be challenged through the application dated 24.11.2014. He pleaded that all difference bills charged were legal and payable by the respondent. Regarding limitation, the learned counsel for FESCO explained that the dues were be recoverable under section 54 A of Electricity Act, 1910 and no limitation runs against WAPDA dues. The learned counsel for FESCO prayed for setting aside impugned decision. Mr. Muhammad Azam Khokhar Advocate, learned counsel for the respondent rebutted the arguments of representatives of FESCO and submitted that no labour colony existed in the year 1992 and initially the workers were accommodated in temporary containers where electricity was supplied by the respondent through it's own generator. According to learned counsel for the respondent, the residential colony was constructed in the year 2006 and therefore charging of electricity bills prior to the year 2006 was not justified for the residential colony. He asserted that pursuant to decision of the superior courts no recovery could be effected from the respondent on account of audit observation which is an internal matter between FESCO and the audit department and does not make the respondent responsible for any payment. Reliance was made on NLR 1988 Civil and 2013 YLR 1543. The learned counsel for the respondent further argued that claim of arrears by FESCO was also time barred. He defended the impugned decision which in his opinion was taken in accordance with law and requested for dismissal of the appeal.

9. We have heard arguments of arguments of both the parties. It has been observed as under:-

i. Industrial connection having load 504 kW was sanctioned in favour of the respondent on

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- 08.10.1992 under tariff B-3. The bills were charged to the respondent by FESCO under B-3 tariff and the payments were made by the respondent accordingly. No separate connection or meter was sanctioned for the residential colony attached to the mill.
- ii. WAPDA local audit party vide the audit note No. 243 dated 24.04.2008 pointed out that a residential colony with connected load of 120 kW existed at site which should be billed separately under tariff H. It further recommended an amount of Rs. 3,396,614/- to be charged against the respondent due to the difference of tariff from B-3 to H in respect of the residential colony for the period from November 1992 to March 2008. However no prompt action was taken by FESCO in response to the audit note. However after long time a bill amounting to Rs. 3,396,614/- for the period 1992 to March 2008 was added in the bill for November 2014 in view of the above audit note. It is prime responsibility of the utility (FESCO) to apply correct tariff while preparing electricity bills of consumers. The respondent was making payments as per electricity bills issued by FESCO under the legitimate expectancy that he was being charged correctly. The audit note is the internal matter between the audit and FESCO and as decided by the superior courts and the respondent cannot be charged extra amount on the basis of audit note. Moreover the claim of FESCO is hit by article 181 of the Limitation Act, 1908 which provides moving of an application within a period of 03 years when the right to apply accrued. In the instant case the matter was pointed out by the audit in April 2008 but the claim amounting to Rs. 3,396,614/- was made by FESCO against the respondent in November 2014 after lapse of 6.5 years which obviously is hopelessly time barred.
- iii. An amount of Rs. 1,248,051/- was added in the bill of the respondent in November 2010 for conversion of tariff from B-3 to H for the units assessed for the residential colony on the basis of connected load of 120 kW with 20 % load factor for the period July 2008 to September 2010 which was paid by the respondent. Similarly amounts were recovered in the bills from October 2010 to July 2012 as bill adjustments for the electricity consumed/assessed for the residential colony by revising tariff from B-3 to H. It is an admitted position that the residential colony was constructed in the year 2006 and the respondent is liable to be billed as per H tariff for the electricity consumed in the residential colony from year 2006 and onwards. It may be noted that the audit had proposed the

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following method for calculation of units consumed by the residential colony.

- Units consumed per month = connected demand (kW) x load factor x No. of hours in a month.

$$= 120 \times 20/100 \times 730 = 17,280 \text{ units per month.}$$

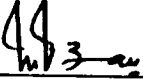
- iv. An allowance of 24 kW per month has been given by FESCO for providing credit to the respondent as MDI (kW) charges already charged under B-3 tariff are not applicable in H tariff. It may be noted that the audit note No. 243 dated 24.04.2008 pertains to the period November 1992 to March 2008. FESCO charged difference bills from July 2008 to July 2012 for conversion of tariff from B-3 to H for the residential colony. It is obvious that the difference bills for July 2008 to July 2012 were also charged in accordance with the aforementioned method proposed in the audit note.
  - v. The respondent is liable to be charged difference bill for change of tariff from B-3 to H in respect of residential colony for 17,280 units per month (as proposed by audit) for the period July 2008 to July 2012 and the difference bill is to be debited to the respondent accordingly. Moreover the allowance of 24 kW (as suggested in the audit note) against a connected load of 120 kW is insufficient and needs to be rationalized. It would be appropriate and fair to give the MDI allowance of 60 kW per month to the respondent against the connected load of 120 kW for the period July 2008 to July 2012 in respect of the residential colony. The bills for the period July 2008 to July 2012 need to be revised accordingly.
10. In view of foregoing discussion it is concluded as under:-
- i. The detection bill of Rs. 3,396,614/- for the period November 1992 to March 2008 added in the bill for November 2014 is declared as null and void and of no legal effect and the respondent is not liable to pay the same.
  - ii. Similarly the difference bill of Rs. 1,248,051/- for the period July 2008 to September 2010 and all the difference bills levied during the period October 2010 to July 2012 are unjustified and shall be withdrawn.
  - iii. The respondent is liable to pay difference bills for change of tariff from B-3 to H from July 2008 to July 2012 in the following manner:






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- a. Amount to be debited to the respondent for 17,280 units per month due to tariff differential.
  - b. Amount to be credited to the respondent for 60 kW MDI per month due to tariff differential.
  - iv. FESCO shall overhaul consumer account of the respondent in view of the revised billing as explained above.
11. The impugned decision of POI is modified to the above extent.

  
\_\_\_\_\_  
Muhammad Qamar-uz-Zaman  
Member

  
\_\_\_\_\_  
Nadir Ali Khoso  
Convener

  
\_\_\_\_\_  
Muhammad Shafique  
Member

Date: 18.01.2016