



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

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No. NEPRA/AB/Appeal-103/POI-2015/ 571-575

May 12, 2016

1. Abdul Waheed Khan Niazi
Through Muhammad Ali,
Prop: Stone Crusher Market,
Chak No. 120.S.B,
Sargodha
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. Sub Divisional Officer (Op)
FESCO Ltd,
Nishtar Abad Sub Division,
Sargodha
5. Electric Inspector
Energy Department,
Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad

Registrar
By No. 5075
Dated 16-05-16

Subject: Appeal Titled FESCO Vs. Abdul Waheed Khan Niazi Against the Decision Dated 16.07.2015 of the Electric Inspector/POI to Government of the Punjab Faisalabad Region, Faisalabad

Please find enclosed herewith the decision of the Appellate Board dated 10.05.2016, regarding the subject matter, for information and necessary action accordingly.

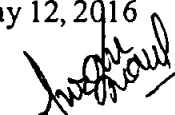
Encl: As Above

(Ikram Shakeel)

No. NEPRA/AB/Appeal-103/POI-2015/ 576

May 12, 2016

Forwarded for information please.


Assistant Director
Appellate Board


1. Registrar
2. Director (CAD)

— DD(LT)

CC:

— D/R-II/mf

1. Member (CA)


16.05.16



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-103/POI-2015

Faisalabad Electric Supply Company LimitedAppellant

Versus

Abdul Waheed Khan Niazi, Through Muhammad Ali,
Prop Stone Market, Chak No. 120/S.B, District SargodhaRespondent

For the appellant:

Mr. Saeed Ahmed Bhatti Advocate
Mr. Babar Riaz SDO
Syed Nayyar Ali LS-I

For the respondent:

Nemo

DECISION

1. This decision shall dispose of an appeal filed by Faisalabad Electric Supply Company Limited (hereinafter referred to as FESCO) against the order dated 16.07.2015 of the 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).
2. As per facts of the case, the respondent is an industrial consumer of FESCO bearing Ref No.24-13414-5404603 with a sanctioned load of 178 kW under B-2b tariff. TOU billing meter and backup meter of the respondent were checked by FESCO on 24.04.2014 and reportedly found 33% slow due to yellow phase being dead with one number current transformer (CT) damaged. Notice regarding above discrepancy was issued by

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FESCO to the respondent on 02.05.2014 and a detection bill of Rs. 315,316/- for 16,588 units/43 kW for the period March 2014 to April 2014 (2 months) was charged to the respondent along with current bill in November 2014. Multiplication Factor (M.F) was enhanced from 80 to 120.1 for onward billing. The damaged CT was replaced by FESCO on 04.07.2014.

3. Being aggrieved with the aforementioned detection bill, the respondent filed an application dated 27.11.2014 before POI. The inspection of TOU billing and backup meters of the respondent was conducted by POI on 10.02.2015 in presence of both the parties and both the meters were found accurate and working within BSS limits. The matter was disposed of by POI vide its decision dated 16.07.2015 with the following conclusion:

"Summing up the aforesaid discussion, it is held that (I) The TOU billing energy meter of the petitioner became 33% slow in the billing cycle of 04/2014. (II) The detection bill amounting to Rs.315,316/- for 16,588 units separately issued in the bill of 11/2014 (for the period of 03/2014 & 04/2014) is null, void & illegal and the petitioner is not liable to pay the same. (III) FESCO Authority is directed to charge the petitioner 33% slowness w.e.f the billing cycle of 4/2014 to replacement of CTs in 07/2014 and overhaul the account of petitioner /consumer proportionally and accordingly."

4. Being dissatisfied with the decision of POI dated 16.07.2015 (hereinafter referred to as the impugned decision), FESCO has filed the instant appeal and in its appeal, the appellant inter alia, stated that the metering equipment of the respondent was found 33% slow during M&T checking on 24.04.2014. As per FESCO, the detection bill of Rs. 315,316/- for 16,588 units/43 kW for the period March 2014 to April 2014 (2 months) was charged to the respondent in November 2014 in order to recover the revenue loss sustained by FESCO. According to FESCO, the detection bill amounting to Rs. 315,316/- for 16,588 units/43 kW for the period March 2014 to April 2014 (2 months) charged to the respondent in November 2014 was legal, justified and the respondent is liable to pay the same. FESCO pleaded that the impugned decision was ab-initio void and without jurisdiction. It was



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further contended that the impugned decision was rendered after 90 days and therefore is ex-facie, corum non-judice, ab-initio void and liable to be set aside pursuant to section 26(6) of Electricity Act 1910.

5. In response to the instant appeal, a notice was issued to the respondent for filing reply/parawise comments, which were however not filed.
6. Notice was issued to both the parties for the hearing scheduled at Lahore on 12.04.2016. Mr. Saeed Ahmed Bhatti Advocate the learned counsel for the appellant, Mr. Babar Riaz SDO and Syed Nayyar Ali LS-1 appeared for the appellant FESCO and no one represented the respondent. Learned counsel for the appellant repeated the same arguments as mentioned in memo of the appeal and contended that the detection bill of Rs. 315,316/- for 16,588 units/43 kW for the period March 2014 to April 2014 added in November 2014 due to 33% slowness of the meter was justified and the respondent was liable to pay the same. The learned counsel further submitted that the application filed before POI on 27.11.2014 was decided by POI on 16.07.2015 after the expiry of statutory period of 90 days as envisaged under section 26(6) of Electricity Act 1910 and as such the impugned decision was illegal, void, without jurisdiction and liable to be set aside.
7. We have heard the arguments of learned counsel of FESCO and examined the record placed before us. It is observed as under:
 - i. Despite repeated notices, the respondent failed to appear for hearing on 07.03.2016, 28.03.2016 and 11.04.2016.
 - ii. There is no force in the arguments of FESCO that the impugned decision announced after expiry of 90 days was null and void pursuant to section 26(6) of Electricity Act 1910, as the impugned decision was rendered by the officer in it's capacity as POI under section 38(3) of the Act, which does not impose any time limit in this regard.



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- iii. 33% slowness of the meter was observed by FESCO during checking dated 24.04.2014 in which the respondent was not associated. Since the CT was replaced on 04.07.2014, both the meters were found accurate and working within BSS limits during the inspection carried out by POI on 10.02.2015.
- iv. It has been rightly analyzed in the impugned decision that from the consumption data, both TOU billing meter and backup meter became 33 % slow in April 2014 and as such it is not justified to charge the detection bill for March 2014. Therefore the detection bill of Rs. 315,316/- for 16,588 units/43 kW for the period March 2014 to April 2014 added in November 2014 due to 33% slowness of the meter was not justified and the respondent is not liable to pay the same. Charging the respondent @ 33 % slowness of the meter from April 2014 to July 2014 till replacement of the CT as determined in the impugned decision is justified and liable to be maintained.
8. From the discussion in preceding paragraph, we have come to conclusion that the impugned decision was rendered in accordance with the facts and law and we do not find any reason to interfere with the same. Therefore the impugned decision is upheld and the appeal stands dismissed accordingly.

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener

Muhammad Shafique
Member

Date: 10.05.2016