



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

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No. NEPRA/AB/Appeal-110/POI-2015/ 360 — 365

March 30, 2016

1. Nasir Ali
S/o Asghar Ali,
M/s Meezan Weaving Factory,
Chak No. 67/JB, Sadhar,
Faisalabad
2. The Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullah Pur,
Faisalabad
3. Mehar Shahid Mehmood,
Advocate High Court,
Office No. 25, 3rd Floor,
Ali Plaza, 3-Mozang Road,
Lahore
4. Ch. M. Imran Bhatti
Advocate High Court,
44-District Courts,
Faisalabad
5. Sub Divisional Officer/AM (Op)
FESCO Ltd,
Jhang Road Sub Division,
Faisalabad
- Electric Inspector
Energy Department,
Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad

Registrar 3250
By No. 3245
Dated 31-03-2016

Subject: Appeal Titled FESCO Vs. Nasir Ali Against the Decision Dated 19.08.2015 of the Electric Inspector/POI to Government of the Punjab Faisalabad Region, Faisalabad

Please find enclosed herewith the decision of the Appellate Board dated 30.03.2016, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Ikram Shakeel)

No. NEPRA/AB/Appeal-110/POI-2015/ 366

March 30, 2016

Forwarded for information please.

Ikram Shakeel
Assistant Director
Appellate Board

1. Registrar
2. Director (CAD)

31.03.16

CC:

1. Vice Chairman/Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-110/POI-2015

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Nasir Ali, S/o Asghar Ali, M/s Meezam Weaving Factory,
Chak No. 67/JB, Sadhar, Faisalabad

.....Respondent

For the appellant:

Mehar Shahid Mehmood Advocate

For the respondent:

Ch. Muhammad Imran Bhatti Advocate

DECISION

1. This decision shall dispose of an appeal filed by Faisalabad Electric Supply Company (hereinafter referred to as FESCO) against the decision dated 19.08.2015 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 Electricity 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 consumer A/C. No.24-13215-5501022-U with a sanctioned load of 84.60 kW and governed under tariff B-2(b). TOU billing meter and CT operated back up meter of the respondent were checked by Metering and Testing (M&T) FESCO on 29.10.2013 and reportedly found 33% slow due to yellow phase being dead stop. Notice dated 22.11.2013 was issued to the respondent and a detection bill of Rs. 1,254,874/- for 92,139 units/239 kW for the period May 2013 to October 2013 was charged to the respondent in December 2013. Due to 33% slowness of the meter,



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multiplication factor (MF) was raised from 40 to 59.6 and bills were charged to the respondent by FESCO from November 2013 and onwards with the enhanced MF of 59.6. On the application dated 13.12.2013, the TOU billing meter of the respondent was checked by POI in presence of both the parties on 30.12.2013 and the same was found defective with make and break problem. Direction dated 01.01.2014 was issued by POI for installation of a check meter but it was not installed by FESCO.

3. Being aggrieved with above mode of billing, the respondent filed a suit before Civil Judge III Faisalabad which was withdrawn on 19.11.2014. The respondent filed a petition dated 20.11.2014 before POI and challenged the detection bill of Rs. 1,254,874/- for 92,139 units/239 kW for the period May 2013 to October 2013 charged in December 2013 and billing from November 2013 and onwards with MF enhanced from 40 to 59.6. POI disposed of the matter vide its decision dated 19.08.2015 and concluded as under:

"Summing up the aforesaid discussion, it is held that (I) The disputed energy meter (meter No. 00002063) is declared as defective having make and break in yellow phase as admitted and declared by all the parties during checking by this forum on 30.12.2013. (II) The disputed energy meter (meter No. 00002063) became defective w.e.f the billing month of November 2013 to replacement with an accurate check meter. (III) The detection bill amounting to Rs. 1,254,874/- for 92,139 for retrospective period of 06 months i-e May 2013 to October 2013 and charged in the bill of December 2013 is held as null, void and of no legal consequence and petitioner is not liable to pay the same. (IV) The electricity bills charged and recovered with enhance multiplying factor 59.6 on account of 33% slowness w.e.f November 2013 to installation of accurate check meter are declared as null, void and illegal and petitioner is not liable to pay the same. (V) FESCO Authority is directed to charge the petitioner @ 31,247 Kw/83 KW MDI w.e.f the billing month of November 2013 to replacement of meter by FESCO accordingly. FESCO Authority is also directed to shift the billing on newly installed meter/check meter immediately form the date of installation of new meter/check meter. FESCO Authority is further directed to refund excessively charge amounts and over haul the account of the petitioner/consumer accordingly."

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4. Being dissatisfied with the decision dated 19.08.2015 of POI (hereinafter referred to as the impugned decision), FESCO has filed the instant appeal. FESCO contended that the impugned decision was rendered by Electric Inspector under section 26(6) of the Electricity Act 1910 after expiry of 90 days and as such it was not maintainable, void, ab-initio and coram non-judice. FESCO pleaded that the impugned decision was unlawful and the same was liable to be set aside.
5. Notice of the appeal was issued to the respondent for filing reply/parawise comments which were filed on 19.11.2015. The respondent contended that the matter was decided by the officer as POI under the Act and not as Electric Inspector under Electricity Act 1910 and as such there was no restriction for POI for deciding the petition within 90 days from the date of its receipt. The respondent finally prayed that the appeal be dismissed and FESCO be directed to implement the impugned decision in letter and spread.
6. After issuing notice to both the parties, hearing of the appeal was conducted at Lahore on 07.03.2016 in which Mehar Shahid Mehmood advocate appeared as counsel for FESCO and Ch. Muhammad Imran Bhatti advocate represented the respondent. Learned counsel for the appellant FESCO repeated the same facts as earlier stated in the appeal and contended that metering equipment of the respondent was declared 33% slow during M&T checking on 29.10.2013 and therefore the detection bill of Rs. 1,254,874/- for 92,139 units/239 kW for the period May 2013 to October 2013 and further billing from November 2013 and onwards till the replacement of the disputed meter, with MF enhanced from 40 to 59.6 was justified and the respondent is liable to pay the same. According to learned counsel for FESCO, the complaint of the respondent was against the detection bill for the period of May 2013 to October 2013 but the impugned decision also covered the billing from November 2013 and onwards which was beyond the prayer of the respondent and liable to be set aside. Learned counsel for FESCO averred that the defective meter could not be replaced till July 2015 due to non availability of TOU meters. In his rebuttal learned counsel for the respondent contended that the metering equipment was regularly checked by concerned SDO FESCO for recording reading on 5th to 10th of each month but no discrepancy what so ever was noticed or reported. According to the

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learned counsel for the respondent, the TOU meter was correct till October 2013 and as such there was no justification of charging detection bill for the period May 2013 to October 2013 which was also violative of clause 4.4(e) of the Consumer Service Manual (CSM). Learned counsel for the respondent pleaded that the impugned decision was justified and liable to be maintained. He prayed for dismissal of the appeal.

7. We have heard the arguments of both the parties and examined the record placed before us and it has been observed as under:
 - i. We are in agreement with the contention of the respondent that the decision was rendered by the officer in capacity as POI under section 38(3) of the Act and therefore restriction of 90 days for deciding the matter was not applicable in the instant case. The objection of FESCO is liable to be dismissed.
 - ii. Preliminary objection of FESCO that billing with enhanced MF from 40 to 59.6 w.e.f November 2013 and onwards was not challenged before POI, is contrary to the facts as the respondent had challenged the same before POI in his petition dated 20.11.2014. Objection of FESCO is not valid and therefore liable to be dismissed.
 - iii. Admittedly the TOU billing meter of the respondent was defective and was not recording actual consumption of energy. Defect of the meter was confirmed during checking by POI on 30.12.2013 and accordingly we agree with the determination of POI that it had make and break problem and was not 33% slow constantly and billing by FESCO on such basis was not justified.
 - iv. Consumption record of the respondent prior to November 2013 indicates that the consumption recorded in preceding months was on lower side and therefore we do not agree with the finding of POI that the meter worked correctly till October 2013 and became defective from November 2013 and onwards. According to clause 4.4(e) of CSM, bill for a defective meter cannot be charged beyond two billing cycles. Therefore the detection bill of Rs. 1,254,874/- for 92,139 units/239 kW for the period May 2013 to October 2013 (four months) is not justified and liable to be set aside as determined in the impugned decision. However the respondent is liable to pay the detection bill for the previous two months i-e September 2013 and October 2013 on the basis of consumption recorded in September 2012 and October 2012 as envisaged in CSM.



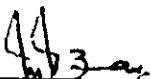
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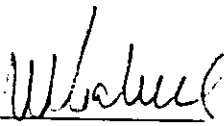
- v. The defective meter was replaced in July 2015 and therefore the respondent is liable to be charged assessed bill from November 2011 till the replacement of the meter in July 2015. We are in agreement with determination of POI for charging average 31,247 units/83 kW per month from November 2013 till replacement of the meter. This determination is also justified by the load factor which is worked out to be 50% as per calculation given below:

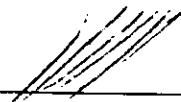
$$\text{Load Factor} = \frac{\text{kWh units}}{\text{Load} \times 730} = \frac{31,247}{84.6 \times 730} = 0.50 \text{ or } 50\%$$

8. In view of above discussions it is concluded that:

- i. Detection bill of Rs. 1,254,874/- for 92,139 units/239 kW for the period May 2013 to October 2013 charged in December 2013 is not justified and the respondent is not liable to pay the same as determined in the impugned decision.
 - ii. The respondent is liable to be charged detection bill for the months of September 2013 and October 2013 as per consumption recorded in September 2012 and October 2012. Impugned decision to this extent is modified.
 - iii. The respondent is liable to be charged assessed bill for the period of November 2013 till replacement of the meter in July 2015 @ 31,247 units/83 kW per month. Impugned decision to this extent is upheld.
9. Impugned decision is modified to the above extent.


Muhammad Qamar-uz-Zaman
Member


Nadir Ali Khoso
Convener


Muhammad Shafique
Member

Date: 30.03.2016