



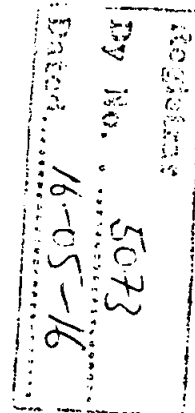
Before the Appellate Board
National Electric Power Regulatory Authority
(NEPRA)
Islamic Republic of Pakistan

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No. NEPRA/AB/Appeal-139/POI-2015/ 583-588

May 12, 2016

- | | |
|--|---|
| 1. Muhammad Jamil
S/o Muhammad Saleem,
Porp: Power Looms Factory,
Street No. 5, Qaim Sain Darbar,
Jattanwala Area, Faizabad,
Faisalabad | 2. The Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullah Pur,
Faisalabad |
| 3. Ch. Muhammad Shahid Iqbal
Advocate High Court,
Office No. 3, Thrid Floor,
Khan Arcade, Mouj Darya Road,
Lahore | 4. Ch. Muhammad Imran Bhatti
Advocate High Court,
44-District Courts, Faisalabad |
| 5. Sub Divisional Officer (Op)
FESCO Ltd,
Faizabad Sub Division,
Faisalabad | 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 Jamil Against the Decision Dated 09.11.2015 of the Electric Inspector/POI to Government of the Punjab Faisalabad Region, Faisalabad

Please find enclosed herewith the decision of the Appellate Board dated 11.05.2016, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Ikram Shakeel)

No. NEPRA/AB/Appeal-139/POI-2015/ 589

May 12, 2016

Forwarded for information please.


Assistant Director
Appellate Board

1. Registrar
2. Director (CAD)

— DD (IT) B
Cm u. 16.05.16
— D/G-I/MF

CC:

1. Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-139/POI-2015

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Muhammad Jamil, S/o Muhammad Saleem, Prop: Power Looms Factory,
Street No. 5, Qaim Shah Darbar, Jattanwala Area Faizabad, Faisalabad

.....Respondent

For the appellant:

Ch. Muhammad Shahid Iqbal Advocate
Mr. Imtiaz Ahmed SDO

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 09.11.2015 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. 24-13222-5202900 with a sanctioned load of 63 kW under tariff B-2b. TOU billing meter of the respondent was checked by Metering and Testing (M&T) FESCO on 03.01.2015 and reportedly found one phase (blue phase) dead stop. After issuing notice dated 13.02.2015, a detection bill of Rs. 439,261/- for 29,473 units for the period October 2014 to December 2014 (03 months) was added in the bill for April 2014 @ 33 % slowness of the TOU billing meter due to blue phase being dead stop. An adjustment bill of Rs. 34,670/- was also charged to the



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respondent due to mistake in calculation of above mentioned detection bill. Multiplication Factor (M.F) was raised from 20 to 29.85 for onward billing.

3. The respondent being aggrieved with the above mentioned detection bill of Rs. 439,261/- and adjustment bill of Rs. 34,670/- filed an application before POI on 29.04.2015. Checking of the disputed TOU billing meter was carried out by POI on 01.09.2015 and the meter was found 32.76 % slow. POI disposed of the matter vide its decision dated 09.11.2015 and concluded as under:

"Summing up all the above observations/discussion and keeping in view all the aspects of the case this forum declares the detection bill amounting to Rs. 439,261/- for 29473 units for the period of 10/2014 to 12/2014 charged in the billing month of 04/2014 & Rs. 34,670/- charged in the bill as adjustment in the same month as Null, Void & without any legal effect and petitioner is not liable to pay the same. The Respondents are directed to withdraw the same and charge the revised detection bill @ 32.76 % slowness for 12/2014 and also afford a credit for refund of 128-77=51 kw MDI. FESCO/Respondents is also directed to replace the defective/slow meter immediately and overhaul petitioner's account by adjusting all Credits, Debits, Deferred Amount & Payments already made by the consumer."

4. Being dissatisfied with the POI decision dated 09.11.2015 (hereinafter referred to as the impugned decision), FESCO has filed the instant appeal. FESCO in it's appeal, inter alia, contended that the impugned decision was announced after expiry of mandatory period of 90 days as envisaged under section 26 (6) of Electricity Act, 1910 and therefore the impugned decision was ex-facie coram non-judice, ab-initio void and without jurisdiction and was therefore liable to be set aside.
5. Notice of the appeal was issued to the respondent for filing reply/parawise comments which were filed on 18.02.2016. The respondent in his reply/parawise comments denied the assertions of FESCO and contended that the proceedings in the instant case were conducted by the officer in its capacity as POI under the Act and as such mandatory period of 90 days for deciding the



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matter under section 26 (6) of Electricity Act, 1910 was not applicable. The respondent prayed for dismissal of the appeal and implementation of the impugned decision.

6. Notice was issued to both the parties and hearing of the appeal was conducted in Lahore on 19.04.2016, in which both the parties participated. Ch. Muhammad Shahid Iqbal Advocate appearing for FESCO along with Imtiaz Ahmed SDO reiterated the same arguments as given in memo of the appeal and averred that the detection bill of Rs. 439,261/- and adjustment bill of Rs. 34,670/- debited to the respondent due to 33 % slowness were quite legal, valid and the respondent was liable to pay the same. According to FESCO, the impugned decision was illegal, void and without jurisdiction and therefore liable to be set aside. Learned counsel for FESCO further pointed out that impugned decision became illegal as it was announced after expiry of 90 days as envisaged in section 26 (6) of Electricity Act, 1910 and therefore liable to be set aside. Ch. Muhammad Imran Bhatti Advocate in his rebuttal denied the assertions of FESCO and submitted that the impugned decision was rendered by POI under section 38 of the Act and as such provision of section 26 (6) Electricity Act, 1910 and the case law cited by FESCO in this regards were not relevant and applicable. According to learned counsel for the respondent, the impugned decision was based on facts and liable to be maintained. He pleaded for implementation of the impugned decision and dismissal of the appeal.
7. We have heard arguments of both the parties and examined the record placed before us. It has been observed as under:
 - i. We are in agreement with the learned counsel for the respondent that the decision was rendered by POI under section 38 of the Act and as such provisions of section 26 (6) of Electricity Act, 1910 are not applicable along with the case law cited by FESCO. Objection of FESCO in this regard is liable to be dismissed.
 - ii. The meter is admittedly 32.76 % slow as found in checking in M&T FESCO and POI during the checking on 13.02.2015 and 01.09.2015 respectively.
 - iii. From the consumption table, POI in the impugned decision, has rightly assessed that the TOU billing meter functioned correctly till November 2014 and became defective from December 2014 and onwards. We agree with the impugned decision that the detection bill @ 32.76 % slowness is chargeable from December 2014 and onwards. Impugned decision




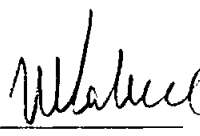
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declaring the detection bill of Rs. 439,261/- for October 2014 to December 2014 and adjustment bill of Rs. 34,670/- is correct and liable to be maintained.

- iv. The respondent is liable to be charged @ 32.76 % w.e.f. December 2014. Impugned decision to this extent is justified and liable to be upheld.
 - v. Impugned decision for providing credit of 51 kW is without rationale and same is therefore declared as null and void. Impugned decision to this extent is liable to be modified.
8. In view of the discussion in preceding paragraphs, it is concluded as under:

- i. Preliminary legal objection of FESCO regarding announcement of decision after statutory period of 90 days is not valid and therefore over ruled.
 - ii. Detection bill of Rs. 439,261/- for 29,473 units for the period October 2014 to December 2014 and adjustment bill of Rs. 34,670/- are not justified and declared null and void. Impugned decision to this extent is upheld.
 - iii. The respondent is liable to be charged @ 32.76 % slowness for December 2014. Impugned decision to this extent is maintained.
 - iv. Impugned decision for affording a credit of 51 kW to the respondent has no justification and therefore cancelled and impugned decision to this extent is modified.
9. The appeal is disposed of in above terms.


Muhammad Shafique
Member


Nadir Ali Khoso
Convener

Date: 11.05.2016