



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

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No. NEPRA/AB/Appeal/045/2018/ *557-561*

March 20, 2019

1. Basharat Aziz
S/o. Abdul Aziz,
R/o. Chak No. 71/GB,
Jhang Road, Faisalabad
2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad
3. Mehar Shahid Mahmood,
Advocate High Court,
Office No. 25, 3rd Floor,
Ali Plaza, 3-Mozang Road,
Lahore
4. Sub Divisional Officer (Opr),
FESCO Ltd,
Jhang Road Sub Division,
Faisalabad
5. Electric Inspector, Faisalabad Region,
Energy Department, Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines, Faisalabad

Subject: **Appeal Titled FESCO Vs. Basharat Aziz Against the Decision Dated 09.01.2018 the Provincial Office of Inspection to Government of the Punjab Faisalabad Region, Faisalabad**

Please find enclosed herewith the decision of the Appellate Board dated 18.03.2019, regarding the subject matter, for information and necessary action accordingly.

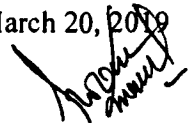
Encl: **As Above**

No. NEPRA/AB/Appeal/045/2018/ *582*

Forwarded for information please.

(Ikram Shakeel)

March 20, 2019


Assistant Director
Appellate Board

✓ 1. Registrar



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. 045/2018

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Basharat Aziz S/o Abdul Aziz, R/o Chak No.71/JB,
Jhang Road, Faisalabad

.....Respondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 09.01.2018 PASSED BY PROVINCIAL
OFFICE OF INSPECTION FAISALABAD REGION FAISALABAD**

For the appellant:

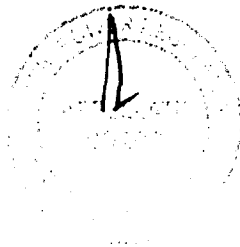
Mehar Shahid Mahmood advocate
Mr. Waseem Asghar Additional Director

For the respondent:

Nemo

DECISION

1. Brief facts of the case are that the Faisalabad Electric Supply Company Limited (hereinafter referred to as FESCO) is a licensee of National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license and the respondent is its agricultural consumer bearing Ref No.29-13216-0474415 having a sanctioned load of 15.22 kW under the applicable tariff D-1(b). After issuing notice dated 17.06.2016 to the respondent regarding alleged misuse of tariff, FESCO issued a

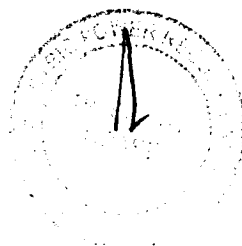




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detection bill (hereinafter referred to as “first detection bill”) of Rs.824,799/- for the period October 2015 to September 2016 (12 months) to the respondent on account of change of tariff from D-1b to B-1b and added in the bill for October 2016. The respondent initially approached FESCO for withdrawal of said bill and on the direction of review committee FESCO, he made payment of 30% of the first detection bill. Subsequently, the respondent made payment of Rs.577,359/- being 70% of the first detection bill. Afterwards, FESCO issued another detection bill (hereinafter referred to as “second detection bill”) of Rs.631,576/- for the period October 2016 to May 2017 (8 months) to the respondent on account of the conversion of tariff from D-1b to B-1b and added in the bill for May 2017.

2. The respondent being aggrieved with the billing of FESCO filed an application before POI on 15.06.2017 and challenged the both detection bills as well as late late payment surcharges (LPS) total amounting to Rs.696,231/-. The matter was decided by POI vide its decision dated 09.01.2018 in which both the detection bills and LPS total amounting to Rs.696,231/- were declared null and void.
3. The appeal in hand has been filed by FESCO against the above decision inter-alia on the grounds that the first detection bill of Rs.824,799/- for the period October 2015 to September 2016 and the second detection bill of Rs.631,576/- for the period October 2016 to May 2017 were charged to the respondent on account of change of tariff from D-1b to B-1b; that POI did not thrash out the merits; and that the matter was agitated by the respondent before POI on 15.06.2017 but the same was decided on

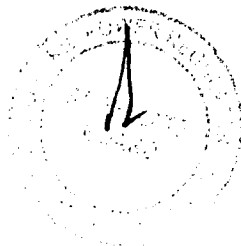




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09.01.2018 after expiry of statutory period of 90 days, hence the same is void, ab-initio, coram nonjudice in terms of Section 26(6) of Electricity Act 1910.

3. Notice of the appeal was served upon the respondent for filing reply/para-wise comments, which were filed on 21.02.2019. In his reply, the respondent defended the impugned decision and submitted that the grounds of appeal are misconceived. The respondent further submitted that both the first and second detection bills of Rs.824,799/- and Rs.696,231/- added in October 2016 and May 2017 respectively are unjustified as the dairy farms fall within the generally accepted definition of agriculture. The respondent supplied the copy of NEPRA decision dated 04.03.2002 in the case No.NEPRA/TRF-13/NAGORI-2001 to substantiate his stance regarding the application of tariff-D for dairy farms.
4. Hearing of the appeal was conducted in NEPRA regional office on 11.02.2019 in which Mehar Shahid Mehmood appeared as counsel for FESCO but no one represented the respondent. Learned counsel for FESCO reiterated the same contentions as contained in memo of the appeal and averred that the respondent was found misusing tariff by supplying electricity to its dairy farm meant for agricultural purpose, hence the first detection bill of Rs.824,799/- for the period October 2015 to September 2016 and the second detection bill of Rs.631,576/- for the period October 2016 to May 2017 charged to him on account of difference of tariff from D-1b to B-1b are justified and the impugned decision in this regard is incorrect. To support his version regarding the application of tariff-B to dairy farms, learned counsel for FESCO submitted a copy of

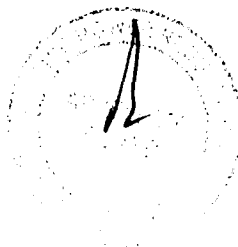




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NEPRA notification No.NEPRA/SA(CA)/TDC-10/17390-400 dated 09.11.2018.

5. Arguments heard and record perused. Following are our observations:
- i. FESCO raised the objection regarding the jurisdiction of POI for deciding the matter after the prescribed time limit of 90 days as envisaged under Section 26(6) of Electricity Act 1910. It is clarified that the impugned decision was announced by POI (not as Electric Inspector) under Section 38 of NEPRA Act 1997 whereof no time limit is specified. Moreover, the objection was not pressed by FESCO during the hearing, hence the objection of FESCO is overruled.
 - ii. From the documents referred in the impugned decision i.e. Ministry of Water and Power Gov't of Pakistan dated 10.06.2015 and NEPRA decision dated 04.03.2002 in the case No. NEPRA/TRF-13/NAGORI-2001, it is evident that the tariff D is applicable to tube wells installed at dairy farms for cultivating crops as fodder and for the upkeep of cattle. Moreover, in the NEPRA notification No.NEPRA/SA(CA)/TDC-10/17390-400 dated 09.11.2018 regarding the application of tariff for Dairy Farms provided by FESCO, it is explained that the dairy farms shall forthwith be charged under the tariff-B. Hence the said notification is not applicable for the period under dispute i.e. October 2015 to May 2017. It may be safely concluded that the tariff-D is applicable in the instant case and the first detection bill of Rs.824,799/- for the period October 2015 to September 2016 and the second detection bill of Rs.631,576/- for the period October 2016 to May 2017 charged on account of the difference of tariff from D-1b to B-1b are unjustified and





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the respondent is not responsible to pay the same as already decided by POI.

6. Forgoing in view, impugned decision is maintained and consequently the appeal is dismissed.

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener



Muhammad Shafique
Member

Dated: 18.03.2019

