



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

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No. NEPRA/AB/Appeal/068/2018/ 582-587

March 20, 2019

1. Muhammad Zafar Iqbal Goraya
S/o. Ch. Muhammad Siddique Goraya,
Prop: Mr. Winggz,
Hussain Tower Kohinoor City-I,
District Faisalabad
2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad
3. Saeed Ahmed Bhatti
Advocate High Court,
Second Floor, Akram Mansion,
Neela Gumbad, Lahore
4. Ch. Muhammad Imran Bhatti
Advocate High Court,
44-District Courts, Faisalabad
5. Sub Divisional Officer (Opr),
FESCO Ltd,
Madina Town Sub Division,
Faisalabad
6. Electric Inspector, Faisalabad Region,
Energy Department, Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines, Faisalabad

Subject: **Appeal Titled FESCO Vs. Muhammad Zafar Iqbal Goraya Against the Decision Dated 24.01.2018 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.

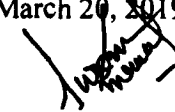
Encl: **As Above**

(Ikram Shakeel)

No. NEPRA/AB/Appeal/068/2018/ 588

March 20, 2019

Forwarded for information please.


Assistant Director
Appellate Board

✓ 1. Registrar



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. 068/2018

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Muhammad Zafar Iqbal Goraya S/o Ch. Muhammad Siddique Goraya,
Prop: Mr. Winggz, Hussain Tower Kohinoor City-I, District Faisalabad

.....Respondent

For the appellant:

Mr. Saeed Ahmed Bhati advocate

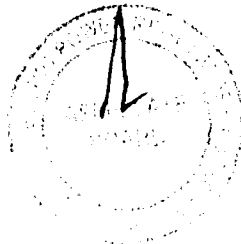
For the respondent:

Ch. Muhammad Imran Bhatti advocate

APPEAL U/S 38 OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

DECISION

1. Brief facts leading to the filing of the instant appeal are that 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. FESCO granted a temporary connection to the respondent bearing Ref No.24-13131-5102189 with a sanctioned load of 45 kW under the E-III(56) tariff. Metering and Testing (M&T)



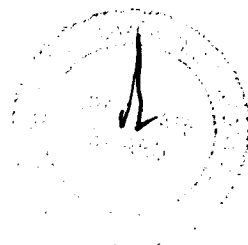


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FESCO checked the metering equipment of the respondent on 19.07.2017 and reportedly both the TOU billing and backup meters were found defective with one and two phases being dead respectively. Multiplication factor (MF) of the respondent was raised from 20 to 29.8 by FESCO w.e.f August 2017 and onwards to account for 33% slowness of the TOU billing meter. The respondent received a bill amounting to Rs.2,584,535/- in August 2017, which included the current bill with enhanced MF=29.8 amounting to Rs.1,359,427/- for 53,372 units and the detection bill of Rs.1,315,311/- for 51,640 units for the period May 2017 to July 2017 (3 months) charged by FESCO @ 33% slowness of the TOU billing meter, which was paid by him.

2. Subsequently, the respondent filed an application before the Provincial Office of Inspection (POI) on 23.08.2017 in which he prayed that (i) the impugned bill of Rs.2,584,535/- for August 2017 be declared illegal and FESCO not to disconnect his electricity due to nonpayment of the said bill, (ii) FESCO be restrained from issuance of onward bills with enhanced MF=29.8, (iii) not to remove meter under dispute till POI checking, (iv) to issue electricity bills as per A-2C tariff instead of E-III(56), (v) FESCO be directed to extend load from 45 kW to 90 kW. The respondent's metering equipment was checked by POI on 29.08.2017 in presence of both the parties, wherein 33% slowness due to one dead phase was confirmed in the TOU billing meter. The matter was decided by POI vide its decision dated 24.01.2018, the operative portion of which is reproduced below:

"The respondents are directed to withdraw the charging of detection bill in 08/2017

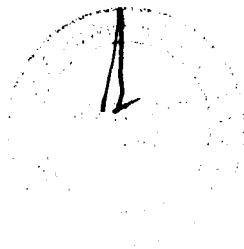




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amounting to Rs.2584535/- for 51,646 units for the period of 05/2017 to 07/2017 for (03 months). The respondents are also directed to refund the excessively charged readings to the consumer which charged in the bill for 08/2017 from 13262 KWH to 13762 KWH to the consumer. Net refundable units = $13722 - 13262 = 460 \times 20 = 9200$ units. The reliance/provisions are provided in CLC 598 Lahore in the writ petition No.6931/2002, 2009 YLR 688 Peshawar in the Civil Revision No.41 of 2007, 2003 CLC 1574 in civil revision No.797 of 2003 and in 2013 MLD 1862 in the writ petition No.2625 of 2013. The respondents are directed to overhaul the account of the petitioner/complainant on the above findings and also directed to afford debit/credit facility and refund all the excessively charged amounts to the consumer. The respondents are also directed to replace the defective energy meter of the petitioner with an accurate one immediately without the cost and shift the billing on the new meter for the purpose of accurate billing in future and to avoid further litigation in future. An early action in this regards will be highly appreciated."

3. The subject appeal has been filed by FESCO against the above decision (impugned decision) before NEPRA. In its appeal, FESCO contended that the blue phase of the TOU billing meter of the respondent was found dead during M&T checking dated 19.07.2017 for which notice dated 26.07.2017 was served to the respondent. FESCO further contended that the detection bill of Rs.2,584,535/- for 451,646 units for the period May 2017 to July 2017 (3 months) was charged in August 2017 due to 33% slowness of the TOU billing meter, which is quite legal, valid and payable by the

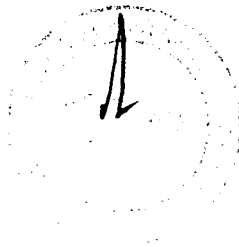




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respondent. FESCO opposed the impugned decision inter-alia on the grounds that POI misconstrued the facts of the case and erred in holding that the detection bill of 451,646 units for the period May 2017 to July 2017 (3 months) is void and allowed FESCO to charge slowness for July 2017 only; that the matter was agitated by the respondent before POI on 23.08.2017, which was decided on 24.01.2018 after the statutory period of 90 days as laid down in Section 26(6) of Electricity Act 1910.

4. Notice of the appeal was served upon the respondent for filing reply/para-wise comments, which were filed on 07.01.2019. The respondent objected the sustainability of the appeal and contended that no one is authorized to plead the case on behalf of FESCO without the issuance of any fresh BoD resolution in this regard. The respondent contradicted the stance of FESCO and averred that the meters were working within British Standard Specifications (BSS) limits and no discrepancy was noticed during the monthly readings taken by the meter reader. As per respondent, the alleged checking dated 19.07.2017 and entire proceedings were illegal, without notice, unilateral and were in sheer violation of Chapter No.4, 6 and 14 of the Consumer Service Manual (CSM). According to the respondent, although the detection bill of Rs.2,584,535/- for August 2017 charged by FESCO is illegal and unjustified and the payment of the above bill was made under duress to avoid disconnection of electricity. The respondent rebutted the version of FESCO regarding the jurisdiction of POI for announcement of the impugned decision after 90 days and contended that the proceedings were carried out by the officer in the capacity as POI under Section 38 of NEPRA Act 1997 and not

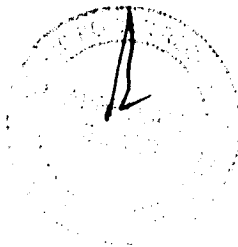




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an Electric Inspector under Electricity Act, 1910. The respondent finally prayed for dismissal of the appeal and for the refund of the amount paid against the above-disputed bill.

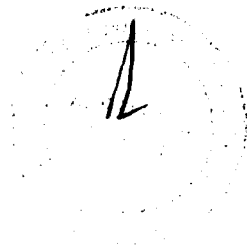
5. The hearing of the appeal was conducted in NEPRA regional office Lahore on 25.01.2019 wherein counsels of both the parties appeared. Learned counsel for FESCO reiterated the same arguments as contained in memo of the appeal and contended that during M&T checking by FESCO on 19.07.2017, the TOU billing meter was found 33% slow, which was proved during POI joint checking dated 29.08.2017, hence the disputed bill of Rs.2,584,535/- for 451,646 units charged to the respondent in August 2017 is legal, valid, justified and payable by the respondent. Learned counsel for FESCO pleaded that the impugned decision is illegal, unjustified and liable to be withdrawn. On the contrary, the learned counsel for the respondent argued against the objection of learned counsel for LESCO for announcement of decision after 90 days and pleaded that the outer limit of 90 days is applicable for an Electric Inspector whereas the instant case was rendered by POI. Reliance was placed on the Lahore High Court Judgment dated 10.12.2018 in the W.P.No.8019/2017 titled "LESCO Vs M/s. Medigas (Pvt.) Ltd". Further learned counsel for the respondent stated that the business was started by the respondent in April 2017 and his TOU billing meter became defective and was not replaced by FESCO inspite of POI interim order dated 10.01.2018. Learned counsel for the respondent supported the impugned decision and prayed for its maintainability.





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6. Arguments heard and record perused. It is observed as under:
- i. As regards the preliminary objection of FESCO regarding failure of POI in deciding the matter within 90 days as envisaged in Section 26(6) of Electricity Act, 1910, it may be explained that the period of 90 days is provided in the Electricity Act, 1910 which is not relevant for the POI established under Section 38 of the NEPRA Act, 1997. NEPRA is the appellate authority against the decisions of POI and not that of Electric Inspectors. Honorable Lahore High Court in the recent judgment dated 10.12.2018 in the W.P.No.8019/2017 held that impugned order is passed by POI under Section 38 of NEPRA Act, 1997 and not by Electric Inspector under Electricity Act, 1910 therefore, the outer time limit of 90 days is inapplicable. The objection of FESCO in this regard is devoid of force, therefore rejected.
 - ii. FESCO has placed BoD resolution dated 08.05.2006, wherein DG (HR & Admin) has been authorized to sign the memorandum of the appeal and vakalatnama. Hence preliminary objection of the respondent regarding the non-filing of the appeal by an authorized person is not justified and overruled.
 - iii. The respondent in his complaint before POI challenged the bill total amounting to Rs.2,584,535/- charged by FESCO in August 2017 which included (i) the current bill with enhanced MF=29.8 amounting to Rs.1,359,427/- for 53,372 units, (ii) the detection bill of Rs.1,315,311/- for 51,640 units for the period May 2017 to July 2017 (3 months) charged @ 33% slowness of the TOU billing meter. In his





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complaint dated 23.08.2017, the respondent prayed as under:

- a. To declare the impugned bill of Rs.2,584,535/- for August 2017 containing
(i) the current bill with enhanced MF=29.8 amounting to Rs.1,359,427/- for 53,372 units and (ii) the detection bill of Rs.1,315,311/- for 51,640 units for the period May 2017 to July 2017 as null and void and not to disconnect electric supply due to nonpayment of the said bill.
- b. To declare the onward bills with enhanced MF=29.8 as unjustified.
- c. To direct FESCO to charge A-2C tariff (Commercial) instead of E-III (56) (temporary).
- d. To enhance the connected load from 45 kW to 90 kW.
- e. Not to remove the disputed meter prior to POI checking.

While deciding the matter, POI has given his determination with regard to the bill of bill total amounting to Rs.2,584,535/- charged by FESCO in August 2017 but no decision has been given with regard to the other contents of the prayer. The impugned decision is therefore vague, insufficient, nonspeaking and liable to be set aside.

7. In view consideration of above, the impugned decision is set aside and the matter is






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remanded back to POI for deciding afresh after hearing and pass a reasonable decision covering all the disputes raised by the respondent in his complaint dated 23.08.2017.

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener



Muhammad Shafique
Member

Dated: 18.03.2019

