



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

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No. NEPRA/AB/Appeal/028/2020/& 071/2020/ 1178

November 30, 2020

- |  |   |
|--|---|
| 1. Muhammad Zia-ur-Rehman<br>S/o. Haji Muhammad Rafique,<br>R/o. Hosue No. 24/13, Block-W,<br>Mohallah Satellite Town,<br>District Jhang | 2. Chief Executive Officer<br>FESCO Ltd,<br>Canal Bank, Abdullahpur,<br>Faisalabad  |
| 3. Saeed Ahmed Bhatti<br>Advocate High Court,<br>66-Khyber Block, Allama Iqbal Town,<br>Lahore   | 4. Ch. Muhammad Iqbal Bhatti<br>Advocate High Court,<br>44-District Courts,<br>Faisalabad   |
| 5. Sub Divisional Officer (Operations),<br>FESCO Ltd,<br>Rural Sub Division,<br>Jhang  | 6. PO/Electric Inspector<br>Faisalabad Region,<br>Energy Department, Govt. of Punjab,<br>Opposite Commissioner Office,<br>D.C. Road, CH Lines, Faisalabad |

Subject: Appeal Titled Zia-ur-Rehman Vs. FESCO & FESCO Vs. Zia-ur-Rehman Against the Decision Dated 30.12.2019 of the Provincial Office of Inspection to Government of the Punjab Faisalabad Region.

Please find enclosed herewith the decision of the Appellate Board dated 25.11.2020, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Akram Shakeel)  
Deputy Director (M&E)

Forwarded for information please.

1. Director (IT) –for uploading the decision on NEPRA website



# National Electric Power Regulatory Authority

## Before Appellate Board, National Electric Power Regulatory Authority, Islamabad

In the matter of

### Appeal No. 028/POI-2020

Muhammad Zia-ur-Rehman S/o Haji Muhammad Rafique  
R/o House No.24/13, Block-W, Mohallah Satellite Town  
District Jhang

.....Appellant

Versus

Faisalabad Electric Supply Company Limited

.....Respondent

### Appeal No. 071/POI-2020

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Muhammad Zia-ur-Rehman S/o Haji Muhammad Rafique  
R/o House No.24/13, Block-W, Mohallah Satellite Town  
District Jhang

.....Respondent

## **APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST THE DECISION DATED 30.12.2019 PASSED BY PROVINCIAL OFFICE OF INSPECTION FAISALABAD REGION FAISALABAD**

### For FESCO:

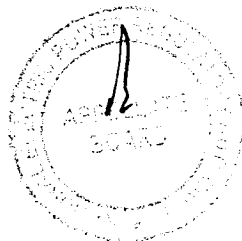
Mr. Saeed Ahmed Bhatti advocate  
Ch. M. Khalid Mehmood Director Commercial  
Mr. Shoukat Khan Meter Reader

### For Consumer:

Ch. Muhammad Imran Bhatti advocate

## **DECISION**

1. Faisalabad Electric Supply Company Limited (hereinafter referred to as FESCO) is a licensee of National Electric Power Regulatory Authority (hereinafter referred to as

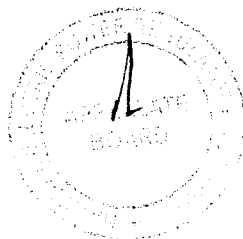




## National Electric Power Regulatory Authority

NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license and Mr. Zia-ur-Rehman is its consumer having industrial connection bearing Ref. No.24-13319-5902309 U with sanctioned load of 144 kW under the tariff B-2b (hereinafter referred to as “the Consumer”). As per facts of the case, the metering and testing (M&T) FESCO checked the metering equipment of the Consumer on 04.01.2019 and reportedly both the TOU billing and backup meters were found 33% slow due to one phase being dead. As per data retrieval report dated 25.01.2019 of FESCO, the TOU billing meter of the Consumer became 33% slow w.e.f August 2018 and onwards. The multiplication factor (MF) of the Consumer was raised from 60 to 89.4 w.e.f January 2019 and onwards till the replacement of the slow TOU billing meter by FESCO vide meter change order (MCO) dated 13.03.2019. Afterward, a detection bill of Rs.2,098,661/- for 1,19,007 units+149 kW MDI for the period August 2018 to December 2018 (5 months) was charged by FESCO to the Consumer @ 33% slowness of the TOU billing meter and added in the bill for October 2019. The above detection bill was revised for the cost of Rs.1,817,789/- by FESCO after the adjustment of PM relief and Fuel Price Adjustment (FPA).

2. Being aggrieved with the actions of FESCO, the Consumer filed a complaint before the Provincial Office of Inspection (POI) on 28.10.2019 and challenged the above detection bill and the bills with enhanced MF=89.4 from January 2019 and onwards. The complaint of the Consumer was disposed of by POI vide decision dated 30.12.2019 (hereinafter

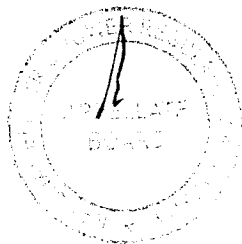




## National Electric Power Regulatory Authority

referred to as the impugned decision) wherein the detection bill of Rs.1,817,789/- for 1,19,007 units+149 kW MDI for the period August 2018 to December 2018 along with late payment surcharges (LPS) was declared as illegal, unjustified and not payable by the Consumer. As per the impugned decision, FESCO was directed to issue a revised detection bill for the cost of 92,203 units+149 kW MDI and the recovery of revised bill may be made in three equal installments from the Consumer.

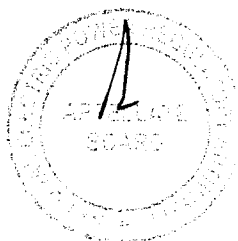
4. Being dissatisfied with the impugned decision, both parties filed cross-appeals. As the facts and subject matter of the appeals are same, both have been clubbed and being disposed of through a single/consolidated decision.
5. In its appeal, the Consumer raised the preliminary objection regarding authorization and stated that no one is authorized to plead the case on behalf of FESCO without a fresh special resolution passed by the Board of Directors after filing the complaint on 28.10.2019 before POI. The Consumer explained the facts of the case that the metering equipment was initially checked by M&T FESCO on 01.11.2018 and both the TOU billing and backup meters were found within permissible limits; that FESCO unilaterally charged the bills with enhanced MF=89.4 w.e.f January 2019 and onward till MCO dated 13.03.2019; that the above bills were neither payable nor recoverable from the Consumer; that FESCO charged a detection bill of Rs.1,817,789/- for 1,19,007 units+149 kW MDI for the period August 2018 to December 2018 @ 33% slowness of the TOU billing meter; that the consumer made payment of Rs.908,895/- being 50% of the above detection bill; that SDO FESCO initially assessed the detection bill for 26,183 units for one month,





## National Electric Power Regulatory Authority

which was enhanced to 39,927 units by S.E. FESCO for one month and 16 days but Director Commercial FESCO directed to charge the detection bill for 1,19,007 units+149 kW MDI for five months; that the POI did not apply his judicious mind and unlawfully allowed FESCO to recover the detection bill of 92,203 units+149 kW MDI; that the alleged checking dated 04.01.2019 and the entire proceedings were illegal, without notice, unilateral and were violative of Chapter No.4 of the Consumer Service Manual (CSM); that the POI did not decide the fate of bills charged with enhanced MF=89.4 w.e.f January 2019 and onwards, which were assailed in the complaint and that the instant appeal may be accepted in toto with the cost. On the contrary, FESCO contended that the TOU billing meter of the Consumer became 33% slow in August 2018 as per data retrieval report of M&T FESCO dated 25.01.2019, and the detection bill of Rs.1,817,789/- for 1,19,007 units+149 kW MDI for the period August 2018 to December 2018 (5 months) charged to the Consumer @ 33% slowness of the TOU billing meter is quite legal, valid and justified. FESCO further contended that the POI misconstrued the real facts of the case, declared the detection bill of Rs.1,817,789/- for 1,19,007 units+149 kW MDI for the period August 2018 to December 2018 as null and void and revised the same for the cost of 92,203 units+149 kW MDI for the period September 2018 to December 2018 (4 months). As per FESCO, POI did not consider the data retrieval report and analysis done by S.E. (Technical Services) FESCO and decided the case on his apprehension based on billing reading data. According to FESCO, the consumption behavior of Consumer after replacement of the slow meter is on the increasing side, which

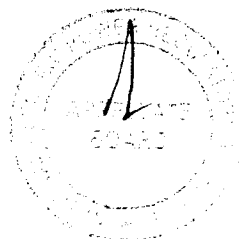




## National Electric Power Regulatory Authority

justifies the charging of above detection bill. FESCO prayed for setting aside the impugned decision.

6. Notice of the appeals was sent to both parties for reply/para-wise comments. No reply was filed by any party.
7. Hearing of both the appeals was conducted in NEPRA regional office Lahore on 09.11.2020, which was attended by both the parties. Learned counsel for the Consumer reiterated the same contentions as given in memo of the Appeal No.028/2020 and contended that the metering equipment of the Consumer was functioning correctly as per M&T FESCO checking dated 01.11.2018 but FESCO charged the detection bill of Rs.1,817,789/- for 1,19,007 units+149 kW MDI for the period August 2018 to December 2018 and onwards bills with enhanced MF=89.4 due to 33% slowness of the TOU billing meter as observed during M&T FESCO checking dated 04.01.2019. As per learned counsel for the Consumer, the above bills are unjustified, violative of clause 4.4 of CSM as neither any discrepancy whatsoever was pointed out till M&T FESCO first checking dated 01.11.2018 nor was the M&T FESCO second checking dated 04.01.2019 carried during the Consumer's presence. According to the learned counsel for the Consumer, the impugned decision for allowing the detection bill of 92,203 units+149 kW MDI for the period September 2018 to December 2018 and the onwards bills with enhanced MF=89.4 is illegal and liable to be set aside. Learned counsel for the Consumer objected to the maintainability of the Appeal No.071/2020 on the ground of limitation and argued that the Appeal No.071/2020 of FESCO is time-barred. Reliance in this regard was placed by





## National Electric Power Regulatory Authority

the learned counsel for the Consumer on the various judgments of Courts reported as PLD 1980 SC 198, 1987 SCMR 676, PLJ 2011 SC 297, 2013UC (SC) 210, PLJ 2017 Lahore 309, PLJ 2017 Lahore 824, PLJ 2017 Lahore 835. On the contrary, learned counsel for FESCO rebutted the version of learned counsel for the Consumer and argued that 33% slowness observed in the TOU billing meter of the Consumer during M&T checking dated 04.01.2019 was confirmed through the data retrieval report dated 25.01.2019 of S.E. (Technical Services) FESCO, hence the detection bill of Rs.1,817,789/- for 1,19,007 units+149 kW MDI for the period August 2018 to December 2018 and the onwards bills with enhanced MF=89.4 due to 33% slowness are correct and payable by the Consumer. Learned counsel for FESCO repudiated the version of learned counsel for the Consumer regarding limitation and averred that the Appeal No.071/2020 was filed before NEPRA within the specified time limit as envisaged in Section 38 of the NEPRA Act 1997. As per learned counsel for FESCO, an increase in consumption after the replacement of the slow TOU billing meter supports the version of FESCO for charging the above detection bill and the bills with enhanced MF=89.4 to the Consumer. Learned counsel for FESCO opposed the impugned decision about the revision of the above detection bill for 92,203 units+149 kW MDI for the period September 2018 to December 2018 and pleaded that the entire period of the above detection bill be allowed as already charged by FESCO @ 33% slowness of the TOU billing meter.



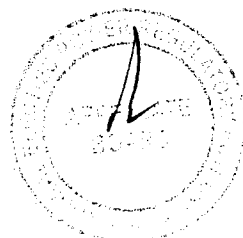


## National Electric Power Regulatory Authority

8. Arguments of both the parties heard and the record examined. Following has been observed:

- i. As regards the preliminary objection of the Consumer for authorization of FESCO, it is observed that FESCO has placed BoD resolution dated 27.12.1999, wherein Director (HR & Admin) has been authorized to sign the memorandum of the appeal and vakalatnama. Hence preliminary objection of the Consumer regarding the filing of the appeal by an authorized person is not justified and overruled.
- ii. Regarding another objection of the Consumer for limitation, it is observed that the copy of the impugned decision dated 30.12.2019 was received by FESCO on 21.01.2020 and the appeal No.071/2020 dated 18.02.2020 was initially filed before NEPRA on 24.02.2020 within 7 days of its dispatch in accordance with Regulation 4 (2)(b) of NEPRA (Procedure for Filing Appeal) Regulations, 2012. The relevant portion is reproduced below for the sake of convenience:

*“Limitation for filing appeal.—(1) Every appeal shall be filed within a period of thirty days from the date on which a copy of the order against which the appeal is preferred is received by the appellant: Provided that the Authority may, upon an application filed in this behalf, entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the period. (2) Subject to anything contrary on the record the copy of the order against which an appeal is filed shall be presumed to have been received by the appellant if: (a) sent by courier, three days following the day it is dispatched by the Receipt and Issue department of the Authority; (b) sent by registered post, seven days following the date it is mailed by the Receipt and*







## National Electric Power Regulatory Authority

*Issue department of the Authority; and (c) sent by hand delivery; on the production of the receipt showing the date it is served on the appellant."*

Obviously, the appeal No.071/2020 of FESCO filed before NEPRA is within the prescribed limit and the objection of the Consumer in this regard carries no weight, hence overruled.

iii. The Consumer in his complaint before POI challenged (i) the bills with enhanced MF=89.4 from January 2019 and onwards till MCO dated 13.03.2019, (ii) the detection bill of Rs.1,817,789/- for 1,19,007 units+149 kW MDI for the period, August 2018 to December 2018 charged @ 33% slowness of the TOU billing meter.

**Issue-I:** 33% slowness in the TOU billing meter of the Consumer was observed during M&T FESCO checking dated 04.01.2019 and it was sent to M&T FESCO laboratory, which reported that it became 33% slow w.e.f August 2018 and onwards. To verify the stance of FESCO, the analysis of the consumption data is done below:

Undisputed period			Disputed period		
Month	Units	MDI	Month	Units	MDI
Aug-17	56934	149	Aug-18	54420	144
Sep-17	62903	149	Sep-18	45600	146
Oct-17	68987	146	Oct-18	36120	104
Nov-17	64597	146	Nov-18	52320	99
Dec-17	75476	146	Dec-18	53160	100

Examination of the above consumption data transpires that units/MDI recorded in August 2018 are equivalent to the unit/MDI of the corresponding undisputed month of the previous year i.e. 2017. A considerable drop of units noticed in the succeeding





## National Electric Power Regulatory Authority

disputed months i.e. September 2018 to December 2018 as compared to the units recorded in the corresponding period of the preceding year i.e. 2017 whereas healthy MDI was recorded during the disputed months. This proves that the TOU billing meter of the Consumer recorded less units during the disputed months i.e. September 2018 to December 2018 whereas LESCO charged the detection bill for August 2018 to December 2018 to the Consumer. As such, there is no justification to charge the detection bill of Rs.1,817,789/- to the Consumer and the same is liable to be withdrawn as already determined in the impugned decision.

It would be appropriate to charge the detection bill for the period September 2018 to December 2018 to the Consumer @ 33% slowness of the TOU billing meter, the calculation in this regard is done below:

### **Period: September 2018 to December 2018**

- Total units to be charged =  $\frac{\text{total units already charged}}{(100\% - 33\% \text{ slowness})} = \frac{187,200}{(1-0.33)} = 279,403$  units
- Total units already charged = (-) 187,200 units
- Net units chargeable = **92,203 units**

In view of above calculation, the Consumer is liable to be charged the detection bill for net 92,203 units for the period September 2018 to December 2018. The impugned decision is liable to be modified to this extent.

**Issue-II:** Since 33% slowness is established in the TOU billing meter of the Consumer, so the bills w.e.f January 2019 and onwards till its replacement in





## National Electric Power Regulatory Authority

March 2019 are chargeable with enhanced MF=89.4 due to 33% slowness of the TOU billing meter.

9. Upshot of the above discussion, the impugned decision to the extent of cancellation of the detection bill of Rs.1,817,789/- for the cost of 1,19,007 units+149 kW MDI for the period August 2018 to December 2018 (5 months) charged to the Consumer @ 33% slowness of the TOU billing meter along with LPS is correct and maintained. FESCO may debit the detection bill for 92,203 units for the period September 2018 to December 2018 and the onwards bills with enhanced MF=89.4 from January 2019 and onwards till MCO dated 13.03.2019 and the arrears may be recovered in three equal installments from the Consumer. The billing account of the Consumer may be overhauled in accordance with the above findings and the payment made (if any) against the disputed bills be adjusted, accordingly.
10. The impugned decision is modified in the above terms.

Muhammad Qamar-uz-Zaman  
Member/SA (Finance)

Muhammad Shafique  
Member/SA (Legal)

Nadir Ali Khoso  
Convener/DG (M&E)

Dated: 25.11.2020

