



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

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No. NEPRA/Appeal/138/POI/2019/ 1264

December 29, 2020

1. Muhammad Afzal
S/o. Muhammad Bashir,
Chak No. 169/GB,
Tehsil Samundri
2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad
3. Ch. Fiaz Ahmed Singhairah
Advocate Supreme Court,
Anab Centre, Second Floor,
1-Mozang Road, Lahore
4. Sub Divisional Officer (Opr)
FESCO Ltd,
Satiana Sub Division,
Satiana
5. Electric Inspector/POI,
Energy Department, Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad

Subject: **Appeal Titled FESCO Vs. Muhammad Afzal Against the Decision Dated 18.10.2018 of the Provincial Office of Inspection to Government of the Punjab Faisalabad Region, Faisalabad**

Please find enclosed herewith the decision of the Appellate Board dated 10.12.2020, regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**


(Ikram Shakeel)
Deputy Director (M&E)/
Appellate Board

Forwarded for information please.

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



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Before Appellate Board National Electric Power Regulatory Authority Islamabad

In the matter of

Appeal No. 138/POI-2019

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Muhammad Afzal Akbar S/o Muhammad Bashir,
Chak No.169/GB, Tehsil Samundari

.....Respondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 18.10.2018 PASSED BY PROVINCIAL
OFFICE OF INSPECTION FAISALABAD REGION FAISALABAD**

For the appellant:

Mr. Muhammad Naeem Shahzad SDO

For the respondent:

Nemo

DECISION

1. As per fact of the case, the respondent is an industrial consumer (Fish Farm) of Faisalabad Electric Supply Company Limited (hereinafter referred to as FESCO) bearing Ref No. 27-13144-6400632 with a sanctioned load of 15.42 kW and the applicable tariff is B-1(b). The respondent vide an application dated 30.11.2017 approached FESCO for replacement of the billing meter burnt due to heavy rainfall. In response to the above application, the billing meter of the respondent was checked by metering and testing (M&T) FESCO on 01.02.2017, and reportedly, it was found defective/burnt. FESCO issued a demand notice dated 09.02.2017 of Rs.10,500/- as the meter replacement cost to the respondent, which was paid by him on 11.02.2017. As per FESCO, the defective billing meter of the



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respondent was replaced with a new meter in February 2017 but the meter change order (MCO) dated 06.04.2017 was fed lately in May 2017 due to which accumulated 12,070 units/38 kW MDI were charged to the respondent in May 2017. Thereafter, an arrear bill of Rs.225,445/- was debited to the respondent by FESCO in June 2017, which contained the consumption of two months i.e. May 2017 and June 2017 against which the respondent deposited an amount of Rs.137,265/- in July 2017. However, the electric supply of the respondent was disconnected by FESCO vide equipment removal order (ERO) dated 03.06.2017 (effective on 11.07.2017) due to partial-payment of the electricity dues and P-DISC fed w.e.f August 2017 and onwards. Subsequently, the premises of the respondent was inspected by FESCO on 30.04.2018 and allegedly the respondent was found using electricity through the P-Disc connection and the final reading noted on the meter was 35,813. FESCO charged a difference bill of 14,933 units to the respondent on account of balance units and added in the bill for May 2018.

2. Being aggrieved, the respondent approached the Provincial Office of Inspection (POI) on 21.05.2018 and assailed the bill of Rs.272,851/- for April 2018, which contained the arrears of Rs.156,525/-. The respondent prayed that arrears of Rs.156,525/- may be set aside, FESCO may be directed to restore the electric supply and refund the amount recovered on account of the difference of industrial tariff (B-1) instead of actual agricultural tariff (D-1). The matter was disposed of by POI vide its decision dated 18.10.2018, the operative portion of which is reproduced below:



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“Summing up all the above observations/discussion and keeping in view all the aspects of the case, this forum declares that the detection bill of Rs.272,851/- shown in the bill of 05/2018 is also void and illegal. The respondents are directed to withdraw the same. The charging of billing on the basis of tariff B-1 is unjustified. The respondents are directed to change the applicable tariff from B-1(09) to D-1. Immediately and also afford refund of difference of tariff from B-1(09) to D-1 immediately and also afford refund of difference of tariff from the date of installation. The respondents are directed to over-haul the account of the petitioner/complainant accordingly by adjusting all Credits, Debits, Deferred Amount & Payments already made by the consumer.”

3. Through the instant appeal, FESCO has assailed the POI decision dated 18.10.2018 (hereinafter referred to as the impugned decision) before NEPRA. In its appeal, FESCO raised the preliminary objection regarding the jurisdiction of POI on the ground that the application of the respondent was not decided by POI within the statutory period of 90 days as laid down, which is a clear violation of Section 26(6) of Electricity Act, 1910. FESCO raised another objection regarding authorization and contended that the respondent is neither a registered consumer of FESCO nor submitted power of attorney issued by the registered consumer, therefore he has no locus standi to file the application before the POI. FESCO explained that the billing meter of the respondent was replaced with a new meter in February 2017 but MCO dated 06.04.2017 was fed in May 2017 due to which accumulated 12,070 units/38 kW MDI were charged to the respondent in May 2017. FESCO further elaborated that the arrear bill of Rs.225,445/- was debited to the respondent in June 2017 based on the consumption of two months i.e. May 2017 and June 2017, thereafter 8,184 units were charged to the respondent in July 2017. As per



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FESCO, the electric supply of the respondent was disconnected vide ERO dated 03.06.2017 (effective on 11.07.2017) due to non-payment of the electricity dues. According to FESCO, POI treated the bill of April 2018 as a detection bill and rendered the whimsical, fanciful, arbitrary decision against the norms of justice. FESCO submitted that the bills were charged to the respondent as per consumption of the billing meter but POI has illegally strived to include the case in clause 4.4 of CSM. FESCO finally prayed for setting aside the impugned decision.

4. Notice for filing reply/para-wise comments to the appeal was served to the respondent, which however were not filed.
5. After issuing notice, the appeal was fixed for hearing in the NEPRA regional office Lahore on 27.11.2020 which was attended by SDO FESCO and no one represented the respondent. FESCO reiterated the same contentions as given in memo of the appeal and argued that the electric supply of the respondent was disconnected in July 2017 due to non-payment of bills and P-Disc was fed w.e.f August 2017 and onwards. As per FESCO, the said P-DISC connection was subsequently checked on 30.04.2018 and the respondent was found using electricity illegally and the total meter reading advanced from 20,880 to 35,813, hence the respondent was charged a difference bill of 14,933 units in May 2018 on account of pending units. According to FESCO, the respondent challenged the arrears of Rs.156,525/- before POI on 21.05.2018, whereas the POI declared the entire bill of Rs.272,851/- for April 2018 as void, which is beyond the prayer of the respondent. SDO



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FESCO prayed that the impugned decision is incorrect and be remanded back to POI due to lack of merits.

6. Arguments heard and the record perused. Following are our observations:

- i. As regards the preliminary objection of FESCO regarding the 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 Electricity Act, 1910 which is not relevant for the offices of POI established under Section 38 of NEPRA Act, 1997. NEPRA is the appellate authority against the decisions of POI and not that of Electric Inspectors. It has already been held by Honorable Faisalabad High Court in judgments cited as PLJ 2017-Faisalabad-627 and PLJ-2017-Faisalabad-309 that impugned order was 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. As regards the other objection of FESCO in respect of locus standi, it is observed that the registered consumer of FESCO is Mr. Muhammad Siddique but the application was filed before POI by Mr. Muhammad Afzal, the respondent. POI in the impugned decision did not address the issue of locus standi. We are of the opinion that an application filed by an unauthorized person was not liable to be entertained by POI and he also failed to discuss the same in the impugned decision.





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iii. It is further observed that the respondent in his application before POI prayed for setting aside the arrears of Rs.156,525/-, for the restoration of the electric supply and a refund of the amount recovered on account of the difference of tariff i.e. B-1 instead of D-1. However, POI in the impugned decision has declared the arrears of Rs.272,851/- till April 2018 as null and void. Therefore the impugned decision is liable to be struck down and remanded back to POI for redetermination.

7. In view of the facts narrated above, the impugned decision being nonspeaking, inconclusive and deficient is set aside and the matter is remanded back to POI for deciding afresh in accordance with law after providing the opportunity of hearing to both the parties.

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

Muhammad Shafique
Member/SA (Legal)

Nadir Ali Khoso
Convener/DG (M&E)

Dated: 10.12.2020