

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

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No. NEPRA/AB/Appeal/210/POI/2019/ 924


November 23, 2021

- | | |
|--|---|
| 1. Muhammad Tahawer Asif
S/o. Asif Saeed,
Abid Weaving Factory,
Samundri Road, Faisalabad | 2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur, Faisalabad |
| 3. Ch. Muhammad Shahid Iqbal,
Advocate High Court,
Office No. T-3, Third Floor,
Makkah Tower, 13-Fane Road,
Lahore | 4. Ch. Muhammad Imran Bhatti,
Advocate High Court,
44-District Courts, Faisalabad |
| 5. Sub Divisional Officer (Opr),
FESCO Ltd,
Samundri Road Sub Division,
Faisalabad | 6. POI/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 Tahawer Asif Against the Decision Dated 22.01.2018 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 10.11.2021, 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



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.210/POI-2019

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Muhammad Tehawer Asif S/o Asif Saeed,
Abid Weaving Factory, Samundari Road, Faisalabad

.....Respondent

For the Appellant:

Ch. Muhammad Shahid Iqbal Advocate
Mr. Zafar Nazir MI

For the Respondent:

Ch. Muhammad Imran Bhatti Advocate

DECISION

1. Brief facts of the case are that the Respondent is an industrial consumer of FESCO bearing Ref No.24-13242-5200703 with a sanctioned load of 54 kW under the B-2b tariff. The Time of Use (TOU) billing meter of the Respondent was reportedly found 18.58% slow during the Metering and Testing (M&T) FESCO checking dated 30.12.2014, hence the electricity bills with enhanced Multiplication Factor (MF) were charged by FESCO w.e.f January 2015 and onwards. In addition to the above, a detection bill of Rs.347,294/- for 23,481 units+ 72 kW MDI for the period May 2014 to December 2014 i.e. eight (8) months was charged to the Respondent by FESCO on account of 18.58% slowness and added in the bill for January 2015. The disputed meter of the respondent was replaced with a new billing meter by FESCO in August 2016.





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2. The Respondent was aggrieved with the actions of FESCO, therefore challenged the above detection bill before the Provincial Office of Inspection, Faisalabad Region, Faisalabad (the POI). The complaint of the Respondent was disposed of vide the POI decision dated 22.01.2018, wherein the detection bill of Rs.347,294/- for 23,481 units+72 kW MDI for the period May 2014 to December 2014 was declared null & void and FESCO was allowed to charge the detection bill for 9,292 units+27.5 kW for the period October 2014 to December 2014.
3. Instant appeal has been filed by FESCO against the afore-mentioned decision (hereinafter referred to as the impugned decision) before NEPRA. In its appeal, FESCO objected the maintainability of the impugned decision inter alia on the following grounds, (1) the TOU billing meter of the Respondent was found 18.58% slow on 30.12.2014 for which notice was issued to the Respondent; (2) the detection bill of Rs.347,294/- for 23,481 units+72 kW MDI for the period May 2014 to December 2014 was debited to the Respondent @ 18.58% slowness of the meter; (3) the billing of the Respondent for the period January 2015 to July 2016 already charged @ 18.58% slowness was revised as per the difference of readings between the TOU billing and backup meters; (4) the impugned decision was rendered by the POI after the expiry of statutory period of ninety (90) days; (5) the Respondent did not served notice prior filing complaint to the POI as required under Section 26(6) of the Electricity Act 1910; (5) the POI neither recorded the evidence nor perused the relevant record in its true perspective; (6) the impugned decision is liable to be set aside being illegal, unlawful, arbitrary and based on surmises and conjectures.





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4. The Respondent was issued notice for filing reply/para-wise comments, which were filed on 30.12.2020. The Respondent raised the preliminary objection regarding limitation and contended that the appeal was not filed within the stated period of limitation as per the Section 38(3) of the NEPRA Act 1997. The Respondent further contended that FESCO obtained the attested copy of the impugned decision thrice i.e. 15.10.2018, 25.03.2019 and 28.05.2019 and FESCO was under obligation to file the appeal before NEPRA till 14.11.2018 after receipt of the first certified copy of the impugned decision on 15.10.2018, wherein the appeal was filed after (239) days. As per the Respondent, no one is authorized to plead the case on behalf of FESCO without the issuance of any fresh Board of Directors (BoD) resolution in this regard. According to the Respondent, neither any prior notice was served nor he was associated during the FESCO checking dated 30.12.2014, therefore the detection bill of Rs.347,294/- for 23,481 units+72 kW MDI for the period May 2014 to December 2014 charged by FESCO @ 18.58% slowness is unlawful, self-estimated, unilateral and is based on fake and fabricated documentation. The Respondent submitted that FESCO failed to follow the procedure as laid down in Chapter 4 of the Consumer Service Manual (CSM) in case of defective/slow meter. The Respondent further submitted that his complaint was entertained by the POI under the Section 38 of the NEPRA Act 1997 instead of Electric Inspector. The Respondent prayed for dismissal of the appeal being devoid of merits.
5. Hearing of the appeal was conducted at the NEPRA Regional Office Lahore on 16.07.2021, wherein Mr. Muhammad Shahid Iqbal advocate along with FESCO official





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appeared for the appellant and Ch. Imran Bhatti advocate made an appearance for the Respondent. At the beginning of the hearing, learned counsel appearing for the Respondent reiterated its objection regarding time-barred appeal and argued that FESCO obtained the first copy of the impugned decision on 15.10.2018, the second copy of the same on 25.03.2019, and its third copy on 28.05.2019, hence the appeal filed before NEPRA is barred by time from the date of receipt of the first copy of the impugned decision. Learned counsel for the Respondent pleaded that the appeal be dismissed on this ground alone. On the contrary, learned counsel for FESCO rebutted the version of learned counsel for the Respondent for limitation and argued that FESCO has obtained an attested copy of the impugned decision on 28.05.2019 only and the appeal was filed within the time from the date of receipt of the impugned decision.

6. Arguments heard and perused the record placed before us. It is observed as under:
 - i. As regards the preliminary objection of FESCO regarding the failure of the POI in deciding the matter within ninety (90) days as provided under Section 26(6) of the Electricity Act, 1910, it is clarified that the period of ninety (90) days provided in the Electricity Act, 1910 is not relevant for the POI established under the Section 38 of NEPRA Act, 1997. NEPRA is the appellate authority against the decisions of the POI and not that of Electric Inspectors. Same has already been held by the Honorable Lahore High Court in the following cited judgments, PLJ 2017-Lahore-627 and PLJ-2017-Lahore-309 that the impugned order was passed by the POI under Section 38 of the NEPRA Act, 1997 and not by the Electric Inspector under Electricity Act,





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1910. Therefore, the stated time limit of ninety (90) days is inapplicable. The objection of FESCO in this regard is devoid of force, therefore rejected.

- ii. As regards another objection of FESCO for not issuing notice under Section 24(2) of the Electricity Act, 1910 by the Respondent before filing a complaint to the POI, it is clarified that the matter was adjudicated by the POI under the NEPRA Act, 1997 and as per procedure laid down in Punjab (Establishment and Powers of Office of Inspection) Order, 2005, which does not require for service of any notice before approaching the POI. The above objection of FESCO is not valid, therefore dismissed.
- iii. FESCO has placed BoD resolution dated 08.05.2006, wherein Director (HR & Admin) has been authorized to sign the memorandum of the appeal and vakalatnama. It is observed that DG (HR& Admin) has signed the vakalatnama of the learned counsel for FESCO in the instant case. Hence, the preliminary objection of the Respondent regarding the filing of the appeal by an authorized person is not justified and overruled.
- iv. While addressing the preliminary objection of limitation raised by the Respondent, the record was scrutinized which reveals that FESCO obtained three (3) copies of the impugned decision i.e. first copy on 15.10.2018, the second copy on 25.03.2019, and the third copy on 28.05.2019. Hence, the time for filing the appeal will start from the date of receipt of the first copy of the impugned decision i.e.15.10.2018.

We are convinced with the arguments of learned counsel for the Respondent that the





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instant appeal was filed by the appellant FESCO before the NEPRA on 12.06.2019 after a lapse of (239) days from the date of receipt of the first copy of the impugned decision i.e. 15.10.2018. Pursuant to Section 38(3) of the NEPRA Act 1997, any aggrieved party may file the appeal before NEPRA within thirty (30) days of receipt of the POI decision. FESCO neither filed an application for condonation of delay nor justify in filing the appeal before NEPRA. Therefore, the appeal is liable to be dismissed being time-barred.

9. Forgoing in view, the appeal is dismissed.

Abid Hussain
Member/Advisor (CAD)

Maria Rafique
Member/ Legal Advisor

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Dated: 10.11.2021

