



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

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No. NEPRA/AB/Appeal/211/2019/& 246/2019/c 63

February 03, 2021

- | | |
|---|--|
| 1. Muhammad Rasheed
S/o. Ch. Shah Muhammad,
R/o. Chak No. 220/RB,
Pathan Wala, Faisalabad | 2. Chief Executive Officer
FESCO Ltd,
Canal Bank, Abdullahpur,
Faisalabad |
| 3. Mehar Shahid Mehmood
Advocate High Court,
Office No. 34, Third Floor,
Ali Plaza, 3-Mozang Road,
Lahore | 4. Mirza Muhammad Ijaz
Advocate High Court,
Chamber No. 8, Ground Floor,
Abu Anees Sufi Muhammad Barkat Law Chambers,
District Courts, Faisalabad |
| 5. Sub Divisional Officer (Operations),
FESCO Ltd,
Gulberg Sub Division,
Faisalabad | 6. POI/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 Rasheed & Muhammad Rasheed Vs. FESCO Against the Decision Dated 31.05.2019 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 25.01.2021, 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



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Before Appellate Board, National Electric Power Regulatory Authority, Islamabad

In the matter of

Appeal No.211/POI-2019

Faisalabad Electric Supply Company LimitedAppellant

Versus

Muhammad Rasheed S/o Ch. Shah Muhammad
R/o Chak No.220/RB, Pathan Wala FaisalabadRespondent

&

Appeal No. 246/POI-2019

Muhammad Rasheed S/o Ch. Shah Muhammad
R/o Chak No.220/RB, Pathan Wala FaisalabadAppellant

Versus

Faisalabad Electric Supply Company LimitedRespondent

APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST THE DECISION DATED 31.05.2019 PASSED BY PROVINCIAL OFFICE OF INSPECTION FAISALABAD REGION FAISALABAD

For FESCO:

Mehar Shahid Mehmood Advocate
Mr. Anayatullah SDO

For Consumer:

Mr. Mirza Muhammad Ijaz Advocate

DECISION

1. Faisalabad Electric Supply Company Limited (hereinafter referred to as FESCO) is a licensee of the National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in the territory specified as per terms and



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conditions of the license and Mr. Muhammad Rasheed is its consumer having industrial connection bearing Ref.No.27-13223-6305060 U with sanctioned load of 17.61 kW and the applicable tariff is B-1b (hereinafter referred to as “the Consumer”). As per facts of the case, the TOU billing meter of the Consumer was replaced with a new meter by FESCO in June 2018 and sent to the metering and testing (M&T) FESCO laboratory for checking. As per data retrieval report dated 24.09.2018 of FESCO, the terminal block of the TOU billing meter of the Consumer was found burnt and 13,244 balance units were found. Resultantly, a detection bill of Rs.243,710/- for 13,244 units was charged by FESCO to the Consumer as per data retrieved reading and added in the bill for December 2018.

2. Being aggrieved with the actions of FESCO, the Consumer filed a complaint before the Provincial Office of Inspection (POI) and challenged the above detection bill. The complaint of the Consumer was disposed of by POI vide decision dated 31.05.2019 (hereinafter referred to as the impugned decision) wherein the detection bill of Rs.243,710/- for 13,244 units 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 4,050 units to 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.



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5. In its appeal, FESCO contended that the removed TOU billing meter of the Consumer was found burnt and 13,244 units were found uncharged as per data retrieval report of M&T FESCO dated 24.09.2018 and the detection bill of 13,244 units charged to the Consumer is justified. FESCO further contended that the POI has not thrashed out the consisting reasons and assessed the illegal order. As per FESCO, POI has not decided the dispute within a period of 90 days in pursuance of Section 26(6) of Electricity Act 1910, hence the impugned decision becomes functus officio, void and coram nonjudice. FESCO prayed for setting aside the impugned decision. On the contrary, the Consumer opposed the impugned decision inter alia on the grounds that the excessive bills for the period September 2018 to December 2018 along with the detection bill of Rs.243,710/- for 13,244 units charged by FESCO was assailed before POI; that the POI did not decide the bills for September 2018 to December 2018; that the findings of POI for revision of the bill are unjustified as the factory of the Consumer remained opened only for 9 days; that the POI did not apply his judicious mind while passing the impugned decision; that the POI has neither recorded the evidence nor perused the consumption data and decided the impugned decision on surmises and conjectures and that the same is liable to be set aside.
6. Notice of the appeals was sent to both parties for reply/para-wise comments. The Consumer submitted the reply/para-wise comments to the appeal No.211/POI-2019 on 18.09.2019. In the reply, the Consumer prayed for dismissal of the appeal on the plea that no one was authorized by the Board of Directors by passing a special resolution to file the appeal defend the case; that the detection bill of Rs.243,710/- for 13,244 units was



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charged by FESCO without adhering the provisions of the Consumer Service Manual (CSM); and that the POI has exclusive jurisdiction to decide the matter in pursuance of NEPRA Act 1997.

7. Hearing of both the appeals was conducted in NEPRA regional office Lahore on 30.12.2020, which was attended by both the parties. Learned counsel for the Consumer reiterated the same contentions as given in memo of the Appeal No.246/2019 and contended that the POI has wrongly allowed the detection bill for whole month instead of 10 days as the factory remained closed due to the defective meter. Learned counsel for the consumer prayed for modification of the impugned decision to the extent of revision of the bill for 4,050 units for June 2018. Conversely, SDO FESCO rebutted the version of learned counsel for the Consumer and argued that the detection bill of Rs.243,710/- for 13,244 units was debited to the Consumer as per data retrieval of the removed defective meter, which is in line with the provisions of CSM. SDO FESCO opposed the determination of POI for cancellation of the above detection bill and revision of the same for 4,050 units and prayed for setting aside the impugned decision.
8. Arguments of both the parties heard and the record examined. Following has been observed:
 - 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,



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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 far as the objection of the Consumer for authorization of FESCO is concerned, 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.
- iii. The Consumer in his complaint before POI challenged the bill of December 2018, which included the detection bill of Rs.243,710/- for 13,244 units debited by FESCO as per the data retrieval report dated 24.09.2018 of the removed billing meter. Detail of the above detection bill is given below:

Reading	As per bill of May 2018 till 04.06.2018	Reading as per data retrieval till MCO dated 14.06.2018	Difference
Off-peak	33,749	46,520	12,771
Peak	7,786	8,252	466
Total			13,237



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As evident from the above table, FESCO charged such high consumption for the period i.e. 04.06.2018 to 14.06.2018 (10 days). FESCO should have produced the disputed billing meter before POI for checking as per procedure laid down in CSM, which was not done in the instant case. Besides such high consumption is neither compatible with the previous undisputed consumption of the Consumer nor in line with units assessed as per CSM as tabulated below:

Detection bill	Normal average units already charged from July 2017 to May 2018	Units assessed as per CSM
13,244	4,403	= Load (kW) x LF x No. of Hours = 17.61 x 0.4 x 730 = 5,142

Moreover, the Consumer was not associated during the data retrieval of the disputed billing meter, hence the data retrieval report cannot be relied upon and made the basis for the determination of the detection bill. Under these circumstances, POI has rightly cancelled the detection bill of Rs.243,710/- for 13,244 units debited by FESCO in December 2018.

- iv. The Consumer claimed that his factory remains closed during the period 07.06.2018 to 30.06.2018 in which the billing meter remained defective however no evidence in this regard was placed before us by the Consumer in support of his version. Hence the determination of POI for charging the revised bill for June 2018 for 4,050 units on the basis of the average consumption of the last eleven undisputed months is correct being in line with the provisions of CSM. The billing account of the Consumer may be



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overhauled in accordance with the above findings and the payment made (if any) against the disputed bill be adjusted, accordingly.

9. Foregoing in view, both the appeals are dismissed.

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

Muhammad Shafique
Member/SA (Legal)

Nadir Ali Khoso
Convener/DG (M&E)

Dated: 25.01.2021