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

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No. NEPRA/AB/Appeal/027/POI/2023/531 September 18, 2023

1. M/s. Deo Dar (Pvt.) Ltd,
Basti Faizabad, Satellite Town,
Jhang, Head Office, Canal Road,
Zia Town, Mobilink Office, Faisalabad
Through M. Asif Miraj,
Expert Logistic Operation Representative

2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad

3. Ch. Shahzad Ahmed Bajwa,
Advocate High Court,
12-Faisal Park, Imamia Colony,
Shahdara, Lahore

4. Muhammad Tahir Islam,
Advocate High Court,
Chamber No. 3, Lyallpur Law Chambers,
District Courts, Faisalabad

5. Sub Divisional Officer (Operation),
FESCO Ltd,
Satellite Town Sub Division,
Jhang

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. Deo Dar (Pvt.) Limited Against the Decision Dated 11.01.2023 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 14.09.2023 (05 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Ikram Shakeel)
Deputy Director (AB)

Forwarded for information please.

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

National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No.027/POI-2023

Faisalabad Electric Supply Company Limited .....Appellant

Versus

M/s. Deo Dar Pvt Ltd. Basti Faizabad Satellite Town, Jhang
Head Office Canal Road, Mobilink Office Faisalabad .....Respondent

APPEAL U/S 38(3) OF THE REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:
Mr. Shahzad Ahmed Bajwa Advocate
Mr. Sanaullah Soomro SDO

For the Respondent:
Mr. Muhammad Tahir Islam Advocate

DECISION

1. Through this decision, the appeal filed by Faisalabad Electric Supply Company Limited (hereinafter referred to as the "Appellant") against the decision dated 11.01.2023 of the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") is being disposed of.

2. Briefly speaking, M/s. Deo Dar Pvt Ltd (hereinafter referred to as the "Respondent") is a commercial consumer of the Appellant bearing Ref No.27-13318-0900102-U with sanctioned load of 13 kW and the applicable tariff category is A-2(c). The Respondent challenged the bills for the period from

October 2021 to December 2021 before the POI with the plea that excessive billing was done by the Appellant during the abovesaid months. The complaint of the Respondent was disposed of vide the POI decision dated 11.01.2023, wherein the bills for the period from October 2021 to December 2021 were cancelled and the Appellant was allowed to revise the bill of the above said disputed months @ 7,649 units per month as per average consumption of last eleven months being higher. The Appellant was further directed to overhaul the billing account of the Respondent, accordingly.

3. Through the instant appeal, the afore-referred decision dated 11.01.2023 of the POI has been impugned by the Appellant before the NEPRA. In the appeal, the Appellant opposed the impugned decision, *inter alia,* on the following grounds that the impugned meter of the Respondent became defective in October 2021, therefore the bills for the period from October 2021 and onward till the replacement of the impugned meter in December 2021 i.e. were charged as per M&T checking report; that the impugned decision is against the facts and law of the case; that the Appellant has no personal grudge or grouse against the Respondent to issue an excessive bill; that the POI did not consider the case in letter and spirit and misread and misinterpreted the material available on record and illegally passed the impugned decision; that the impugned decision is based on surmises and conjectures and the same is not sustainable in the eye of law. In the application for condonation of the delay, the Appellant submitted that the delay in filing the appeal was not intentional but due to the serious illness of the counsel. The Appellant finally prayed that the delay in filing the instant appeal be condoned in the larger interest of justice law and equity.

4. **Proceedings by the Appellate Board**

Upon filing of the instant appeal, notice dated 20.03.2023 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. The Respondent submitted reply to the Appeal on 04.04.2023, wherein he objected to the maintainability of the appeal *inter alia,* on the following grounds that the appeal filed by the Appellant before the NEPRA is barred by 24 days, hence not maintainable pursuant to the various judgments of superior courts vide 2022 SCMR 1615, 2022 SCMR 1810, 2022 PLD SC 716, 2022 PTD 1485, 2021 PLD 937, 2016 SCMR 937 and 2006 SCMR 1248; that the Appellant has to cross the barrier of limitation with plausible cause before the decision of the case on merits; that the impugned meter was functioning correctly till September 2021 and became defective in October 2021; that the Appellant debited irregular, excessive billing for the period from October 2021 to December 2021, that the Appellant failed to retrieve the data of the impugned meter, hence the revision of the bills for the above said months was rightly done by the POI with proper appreciation of facts and law; and that the appeal is liable to be dismissed with heavy cost.

5. **Hearing**

5.1 Hearing in the matter of the subject Appeal was conducted at NEPRA Regional Faisalabad on 24.06.2023 which was attended by both parties. Learned counsel for the Respondent repeated the preliminary objection of limitation and averred that the appeal filed before the NEPRA is hopelessly time barred, hence the same is liable to be dismissed. On the contrary, learned counsel for the Appellant

repudiated the version of the counsel for the Respondent and argued that the delay in filing the appeal was not intentional but due to the internal departmental process. He prayed that the delay in filing the appeal be condoned and the appeal be decided on merits instead of technical grounds.

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

6.1 **Limitation for filing Appeal**:

Before going into the merits of the case, the preliminary objection of the Respondent regarding limitation needs to be addressed. It is observed that a copy of the impugned decision was obtained by the Appellant on 18.01.2023 and the appeal was filed before the NEPRA on 07.03.2023 after the prescribed time limit of 30 days. This shows that the Appellant filed the instant appeal after a lapse of forty-eight (48) days from the date of receipt of the impugned decision. As per sub-section (3) of Section 38 of the NEPRA Act 1997, any person aggrieved by the decision of the POI may prefer an appeal to NEPRA within thirty days of receipt of the order. Further, it is supplemented with Regulation 4 of the NEPRA (Procedure for filing Appeals) Regulations, 2012 (the "Appeal Procedure Regulations") which also states that the Appeal is required to be filed within 30 days of the receipt of the impugned decision of POI by the Appellant, however, a margin of 7 days' is provided in case of submission through registered post, and 3 days in case of submission of appeal through courier is given in the Appeal Procedure Regulations. Thus, the delay of forty-eight (48) days in filing the appeal before the NEPRA from the date of receipt of the impugned decision is not condonable as no sufficient reasons have been given by the Appellant to justify the condonation of the delay.

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7. Foregoing in view, the appeal filed before NEPRA is time-barred; hence dismissed.

Abid Hussain
Member

Muhammad Irfan-ul-Haq
Member

Naweed Illahi Sheikh
Convener

Dated: 14-09-2023

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APPELLATE BOARD