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

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No. NEPRA/Appeal/087/POI/2020/ 04

January 24, 2023

1. Waqar Mushtaq,
   S/o. Muahr Mushtaq,
   R/o. Chak No. 54 West,
   Tehsil Laliyan, District Chiniot

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

3. Dr. Muhammad Irtiza Awan,
   Advocate High Court,
   Al-Majeed Centre, 1-Mozang Road,
   38-Link Farid Kot Road, Lahore

4. Sub Divisional Officer,
   FESCO Ltd,
   Rural Road Sub Division,
   Laliyan

5. 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. Waqar Mushtaq Against the Decision Dated 12.03.2020 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 19.01.2023, 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. Additional Director (IT) –for uploading the decision on NEPRA website

National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No.087/POI-2020

Faisalabad Electric Supply Company Limited .....Appellant

Versus

Waqar Mushtaq S/o Muhammad Mushtaq,
R/o. Chak No.54, west Tehsil Lalian, District Chiniot .....Respondent

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

For the Appellant:
Dr. M. Irtiza Awan Advocate
Mr. Shahzad

For the Respondent:
Nemo

DECISION

1. Through this decision, the appeal filed by the Faisalabad Electric Supply Company Limited (hereinafter referred to as the "Appellant") against the decision dated 12.03.2020 of the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") is being disposed of.

2. Briefly speaking, Mr. Waqar Mushtaq (hereinafter referred to as the "Respondent") is an agricultural consumer of the Appellant bearing Ref No.29-13172-3056000-R with sanctioned load of 7.46kW and the applicable Tariff category is D-1(b). The

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Appellant has claimed that one phase of the billing meter of the Respondent was found dead stop in August 2019 and it was replaced with a new meter by the Appellant on 17.09.2019. The removed meter was checked in the M&T laboratory, whereby 29,563 units were found uncharged being the difference between the final retrieved reading and the reading already charged. Resultantly, a detection bill (the "first detection bill") amounting to Rs.241,710/- against 29,563 units was debited to the Respondent and added to the bill for September 2019.

3. Being aggrieved with the above actions of the Appellant, the Respondent filed a complaint before the POI on 15.11.2019 and challenged the first detection bill. During the proceedings before the POI, another detection bill (the "second detection bill") of Rs.30,507/- for 4,043 units for four months for the period from April 2019 to July 2019 was debited to the Respondent after adding 33.33% slowness of the impugned meter and added to the bill for December 2019. The Respondent filed another complaint before the POI on 13.01.2020 and challenged the second detection bill. Both the complaints of the Respondent were clubbed and disposed of by the POI vide the single consolidated decision dated 12.03.2020, the operative portion of which is reproduced below:

> *"Summing up all the above observations/discussion and keeping in view all the aspects of the case this Forum declares:*
> *The charging of Rs. 241710/- for the cost of 29563 units in the billing month of 09/2019 as null and void and without any legal effect. The petitioner is not liable to pay the same and the Respondents are directed to withdraw the same. The Respondents are directed to charge a revised bill for the billing month of 09/2019*

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for the cost of 3690 units on the basis of consumption recorded in the corresponding month of the previous year as discussed above.

The charging of the detection bill for the cost of 3672 units is valid and justified. The petitioner is liable to pay the same. However, the charging of 371 units in the detection bill charged in the month of 12/2019 on the basis of data retrieval is unjustified and baseless. The petitioner is not liable to pay the same and the Respondents are directed to withdraw the same. The Respondents are also directed to overhaul the complainant's account by adjusting all Credits, Debits, Deferred Amounts & Payments already made by the consumer. Disposed of in above terms."

4. Through the instant appeal, the afore-referred decision dated 12.03.2020 of the POI has been impugned by the Appellant before the NEPRA. In its appeal, the Appellant objected to the maintainability of the impugned decision, *inter alia*, on the main grounds, (1) the billing meter of the Respondent was found running 33% slow due to one phase being defective in August 2019, therefore MF was raised from 01 to 1.49 for onward billing; (2) the slow meter was replaced with a new meter in September 2019 and sent in M&T laboratory for data retrieval; (3) first detection bill of Rs.241,710/- against 29,563 units was debited to the Respondent on the basis of data retrieval report dated 13.10.2019; (4) second detection bill of Rs.30,507/- for 4,043 units for four months for the period from April 2019 to July 2019 was debited to the Respondent @ 33.33% slowness of the meter; (5) the POI failed to apply his independent and judicious mind while passing the impugned decision; (6) the POI has not adverted the real aspects of the case; and (7) the impugned decision is liable to be set aside.

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5. **Proceedings by the Appellate Board**

5.1 Upon filing of the instant appeal, a notice dated 16.09.2020 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. The Respondent however did not submit the reply to the Appeal.

6. **Hearing**

6.1 After issuing notices dated 03.03.2022 to both parties, hearing of the subject appeal was conducted at NEPRA Regional Office Lahore on 11.03.2022 in which a counsel along with an official appeared for the Appellant and no one appeared for the Respondent. In order to provide an opportunity of hearing to both parties, the case was adjourned till the next date.

6.2 The hearing of the Appeal was rescheduled at Islamabad on 03.06.2022 for which notices dated 26.05.2022 were issued to both the Appellant and the Respondent. On the given date of the hearing, no one appeared for both parties, however, a written request was made by the counsel for the Appellant for the adjournment. In view of the above, the hearing of the case was adjourned till the next date.

6.3 Notices dated 22.09.2022 were served to the parties and hearing of the appeal was conducted at Lahore on 30.09.2022, which was attended by counsel along with an official for the Appellant and no one appeared for the Respondent. Learned counsel for the Appellant reiterated the same version as contained in the memo of the appeal and contended that one phase of the billing meter of the Respondent was found dead stop in

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August 2019, as such the MF was raised from 1 to 1.49 for onward billing and first detection bill of Rs.241,710/- against 29,563 units was debited to the Respondent on the basis of data retrieval report dated 13.10.2019. Learned counsel for the Appellant further contended that the second detection bill of Rs.30,507/- for 4,043 units for four months for the period from April 2019 to July 2019 was debited to the Respondent @ 33% slowness of the meter. The representative for the Appellant averred that the impugned meter remained 33% slow during the disputed period from April 2019 to July 2019, as such the impugned decision for cancellation of the first and second detection bills is unjustified and the same is liable to be struck down.

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

7.1 The record presented before us shows that till July 2019, no discrepancy was pointed out by the Appellant in the impugned meter of the Respondent and the bills were raised regularly which were paid by the Respondent. In August 2019, one phase of the impugned meter of the Respondent was found defective, whereupon it was replaced with a new meter by the Appellant in September 2019. Subsequently, the M&T team of the Appellant vide report dated 13.10.2019 declared the impugned meter 33% slow, and based upon the said report, the Appellant charged the first detection bill of Rs.241,710/- against 29,563 units to the Respondent due to the difference between claimed final reading retrieved and the units already charged and added to the bill for September 2019. Subsequently, the Appellant charged second detection bill of Rs.30,507/- for 4,043 units for four months for the period from April 2019 to July 2019 was debited to the

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Respondent @ 33.33% slowness of the meter and added to the bill for December 2019. Both detection bills were assailed by the Respondent before the POI.

7.2 First detection bill of Rs.241,710/- against 29,563 units debited in September 2019

Under Clause 4.4 of the CSM-2010, upon doubt about the accuracy of a meter, the same need to be checked at the site under intimation to the consumer through the procedure laid down in Clause 4.4(a) and 4.4(b) of the CSM-2010. However, no such on-site checking of the meter was carried out by the Appellant.

7.3 The Appellant has raised the first detection bill based on the alleged data retrieval report and some M&T lab checking. It is well settled principle that such checking and data retrieval to be carried out in the presence of the consumer or a neutral competent forum of POI. However, the Appellant neither associated the Respondent nor did they produce the impugned meter before the POI to confirm the authenticity of their claim. In view of the foregoing discussion, the first detection bill of Rs.241,710/- against 29,563 units charged by the Appellant to the Respondent is unjustified and the same is declared null and void.

7.4 The second detection bill of Rs.30,507/- for 4,043 units for four months for the period from April 2019 to July 2019 debited to the Respondent @ 33% slowness of meter

According to Clause 4.4(e) of the CSM-2010, the Respondent may be charged the bills maximum for two months in case of a slow meter but in the present case, the Appellant charged the Respondent beyond two billing cycles, which is inconsistent with the foregoing clause of the CSM-2010. To further verify the contention of the Appellant regarding the 33% slowness of the meter, consumption data is analyzed below:

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Undisputed		Disputed		% increase/ decrease units
Month	Units	Month	Units	
Apr-18	1790	Apr-19	872	-51%
May-18	1535	May-19	1027	-33%
Jun-18	1883	Jun-19	1578	-16%
Jul-18	5439	Jul-19	3980	-27%
Total	10647	Total	7457	-30%

The above consumption data shows drop in consumption of the Respondent during the disputed period on vis-a- vis consumption of corresponding months of the previous year. Moreover, the Respondent did not raise objection on the enhancement of MF, therefore the slowness seems to have been accepted. In this situation, the Respondent is liable to be charged by the Appellant under Clause 4.4(e) of the CSM-2010, which allows the Appellant to recover the bills maximum of two months in case of a slow meter. As such, the second detection bill of Rs.30,507/- for 4,043 units for four months for the period from April 2019 to July 2019 to the Respondent is unjustified being in violation of Clause 4.4(e) of the CSM-2010 and therefore, the same is liable to be declared as null and void.

7.5 Similarly, the determination of the POI for revision of the bill for the cost of 3,672 units for four months i.e. April 2019 to July 2019 is not in line with Clause 4.4(e) of the CSM-2010 and the same is liable to be withdrawn to this extent.

7.6 Since the impugned meter of the Respondent was found defective in August 2019, the Respondent is liable to be charged the revised bills for two months only after adding 33% slowness of the meter as per Clause 4.4(e) of the CSM-200. The impugned decision is liable to be modified to this extent

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8. Summing up the foregoing discussion, it is concluded as under:

8.1 The first detection bill of Rs.241,710/- against 29,563 units and the second detection bill of Rs.30,507/- for 4,043 units for four months for the period from April 2019 to July 2019 charged by the Appellant to the Respondent are unjustified and cancelled.

8.2 The Respondent may be charged the revised bills for two months only after adding 33% slowness of the meter as per Clause 4.4(e) of the CSM-2010.

8.3 The billing account of the Respondent may be overhauled after the adjustment of payments made against the above detection bill.

9. The appeal is disposed of in the above terms.

Syed Zawar Haider
Member

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 19/01/2023

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