



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

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No. NEPRA/AB/Appeal-014/POI-2016/1435-1439

November 14, 2016

1. Mubarak Ahmed,
S/o Nasir Ahmed,
R/o House No. 714,
Mohallah Dar-ul-Saddar Gharbi,
Chenab Nagar, Tehsil & District Chiniot
2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad
3. Saeed Ahmed Bhatti,
Advocate High Court,
2nd Floor, Akram Mansion,
Neela Gumbad, Lahore
Lahore
4. Ghulam Murtaza Abbasi,
Sub Divisional Officer,
FESCO Ltd,
Chenab Nagar Sub Division,
District Chiniot
5. Electric Inspector
Energy Department,
Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad

Subject: Appeal Titled FESCO Vs. Mubarak Ahmed Against the Decision Dated 31.07.2015 of the Electric Inspector/FOI to Government of the Punjab Faisalabad Region, Faisalabad

Please find enclosed herewith the Decision of the Appellate Board dated 11.11.2016, regarding the subject matter, for information and necessary action accordingly.

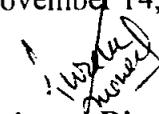
Encl: As Above

(Ikram Shakeel)

No. NEPRA/AB/Appeal-014/POI-2016/1440

November 14, 2016

Forwarded for information please.


Assistant Director
Appellate Board

1. Registrar
2. Director (CAD)

CC:

1. Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-014/POI-2016

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Mubarak Ahmed S/o Nazir Ahmed, R/o Mohallah Dar-ul-Sadar
Garbi Chenab, District Chiniot

.....Respondent

For the appellant:

Mr. Saeed Ahmed Bhatti advocate
Mr. Arsalan Ali SDO

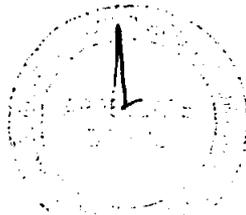
For the respondent:

Mr. Mubarak Ahmed

DECISION

1. This decision shall dispose of the appeal filed by Faisalabad Electric Company Limited (hereinafter referred to as FESCO) against the decision dated 31.07.2015 of Provincial Office of Inspection/Electric Inspector, Faisalabad Region, Faisalabad (hereinafter referred to as POI).
2. Brief facts of the case are that the respondent is an agricultural consumer of FESCO bearing Ref No. 29-13165-3022600 having sanctioned load of 11.9 kW under D-IB (50) tariff. Metering equipment of the respondent was checked by Metering and Testing (M&T) FESCO on 24.09.2013 and reportedly the meter was found defective with 33% slowness. A notice dated 31.10.2013 was issued by FESCO to the respondent regarding above discrepancy. Subsequently, FESCO raised the multiplication factor (MF) to 1.4 with effect from June 2014 and onwards till the replacement of meter i.e. August 2014. Detection bill amounting to Rs. 142,604/- for 11,565 units for the period September 2013 to May 2014 (9 months) was charged by FESCO to the respondent in August 2014 on the basis of 33%

Page 1 of 5





National Electric Power Regulatory Authority

slowness of the meter.

3. Being aggrieved, the respondent filed an application before POI on 17.09.2014 and contended that neither any notice was served to him nor any inspection of the meter was carried out by FESCO in his presence, therefore the detection bill amounting to Rs. 142,604/- for 11,565 units for the period September 2013 to May 2014 (9 months) charged by FESCO in August 2014 was not justified and he is not liable to pay the same. As per respondent, enhancement of MF to 1.4 w.e.f June 2014 till replacement of meter in August 2014 by FESCO is illegal, unlawful and unjustified. POI disposed of the matter vide its decision dated 31.07.2015 with the following conclusion:

"Summing up the aforesaid discussion, it is held that (I) The meter checking on 24.09.2013 as executed by FESCO unauthorized and lower checking team is held as null, void and illegal and same was in violation of clause 4.4(b) of chapter 4 of Consumer Service Manual 2010 (II) The monthly electricity bills charged and recovered by FESCO with enhanced multiplying factor 1.4 instead of 1 w.e.f 06/2014 to replacement of meter in 08/2014 are held as null, void and of no legal consequence. FESCO Authority is directed to refund excessively charged and recovered bills w.e.f 06/2014 to 08/2014 recovered with enhanced multiplying factor, (III) The detection bill amounting to Rs. 1,42,604/- for 11,565 units separately issued in the bill for the month of 08/2014 is null, void and illegal and the petitioner is not liable to pay the same. FESCO concerned Authority is also directed to overhaul the account of the petitioner/consumer accordingly."

4. Being dissatisfied with the POI decision dated 31.07.2015 (hereinafter referred to as the impugned decision), FESCO has filed the instant appeal under section 38 (3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as the NEPRA Act 1997). In its appeal, FESCO inter alia, contended that the metering equipment of the respondent was checked by M&T on 24.09.2013 and the meter was found 33% slow. According to FESCO, the detection bill amounting to Rs. 142,604/- for 11,565 units for the period September 2013 to May 2014 (9 months) charged by FESCO in August 2014 on the basis of 33% slowness is legal, valid and



National Electric Power Regulatory Authority

justified and payable by the respondent. Moreover, MF was enhanced to 1.4 w.e.f June 2014 and onwards till August 2014 in order to recover the revenue loss sustained by FESCO due to 33% slowness of the meter. As per FESCO, POI failed to decide the matter within stipulated period of 90 days as envisaged in section 26(6) of Electricity Act 1910, hence the impugned decision is void and liable to be set aside.

5. Notice of the appeal was issued to the respondent for filing reply/parawise comments, which were filed on 07.10.2016. In his reply, the respondent contended that the detection bill amounting to Rs. 142,604/- for 11,565 units for the period September 2013 to May 2014 (9 months) charged by FESCO in August 2014 is illegal, void, ab-initio and not payable by him. As per respondent, the impugned decision rendered was legal, justified and therefore liable to be upheld. As per respondent, FESCO failed to file the appeal against the impugned decision dated 31.07.2015 before NEPRA within 30 days as prescribed under section 38 (3) of NEPRA Act 1997, moreover no application of condonation of delay was submitted by FESCO, therefore the appeal is liable to be dismissed being time barred.
6. Notice was issued and the appeal was heard in Lahore on 07.10.2016 in which both the parties participated. Mr. Saeed Ahmed Bhatti advocate, learned counsel for FESCO contended that the impugned decision was received on 30.12.2015 and therefore the appeal filed on 21.01.2016 was within the time limit as prescribed in the law. According to FESCO, the impugned decision pronounced after expiry of 90 days became invalid pursuant to section 26 (6) of Electricity Act 1910. As per learned counsel for FESCO, metering equipment of the respondent was checked by M&T on 24.09.2013 and the meter was found 33% slow. According to learned counsel for FESCO, M.F. was raised to 1.4 w.e.f June 2014 and onwards till the replacement of meter in August 2014 and a detection bill of Rs. 142,604/- for 11,565 units for the period September 2013 to May 2014 (9 months) was charged to the respondent in August 2014 as the actual energy consumed was not recorded by the meter due to its 33% slowness. Learned counsel for FESCO prayed for cancellation of the impugned decision. On the other hand, Mr. Mubarak Ahmed the respondent, reiterated the same arguments as given in the respondent's parawise comments/reply to the appeal and contended that no prior notice was served upon him by FESCO nor any inspection was





National Electric Power Regulatory Authority

conducted by FESCO in his presence, therefore the detection bill of Rs. 142,604/- for 11,565 units charged in August 2014 for September 2013 to May 2014 and bills with enhanced M.F of 1.4 for June 2014 to August 2014 are not justified and therefore liable to be cancelled. The respondent defended the impugned decision and pleaded that the appeal against the impugned decision was time barred and therefore liable to be dismissed on this ground.

7. We have heard arguments of both the parties and perused the record placed before us. Following are our observations:

- i. Impugned decision was received on 30.12.2015 and the appeal filed on 21.01.2016 was within time limit of 30 days as envisaged in section 38 (3) of NEPRA Act 1997. Therefore objection of the respondent in this regard has no basis and therefore liable to be dismissed.
- ii. As regards, the objection of FESCO regarding disposal of the complaint by POI after statutory period of 90 days, it is relevant to clarify that the matter was adjudicated by POI under section 38 of the NEPRA Act 1997 (not as Electric Inspector under section 26(6) of Electricity Act 1910) which does not impose any restriction of time upon POI for deciding the matter. The objection of FESCO is not valid and therefore liable to be dismissed.
- iii. 33% slowness of the meter was observed by M&T FESCO on 24.09.2013 and a detection bill of Rs.142,604/- for 11,565 units for the period September 2013 to May 2014 (9 months) was debited to the respondent in August 2014 due to 33% slowness and MF was raised to 1.4 from June 2014 to August 2014. The respondent challenged the aforesaid detection bill and enhanced MF bills before POI vide his application dated 17.09.2014.
- iv. FESCO checked the meter unilaterally without associating the respondent, moreover 33% slowness of the defective meter was also not confirmed by POI due to its non-availability. Moreover despite claim by FESCO of noticing 33% slowness during M&T checking in September 2013, the MF was not raised till June 2014, which creates doubt about the credibility of such checking and slowness. Under these circumstances, there is no justification for charging the detection bill for 9 months by FESCO, which too is violative of the provisions of CSM. We are inclined to agree with the analysis of POI, that there is no significant difference in the consumption recorded during the disputed period as compared to the corresponding preceding undisputed period, which established that the



National Electric Power Regulatory Authority

meter was correct. Therefore charging of the detection bill amounting to Rs. 142,604/- for 11,565 units for the period September 2013 to June 2014 (9 months) to the respondent in August 2014 and enhancement of MF to 1.4 from June 2014 to August 2014 have no justification and liable to be declared null and void as determined in the impugned decision.

8. In view of discussion in preceding paragraphs, we do not find any reason to intervene in the impugned decision, which is upheld and consequently the appeal is dismissed.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Date: 11.11.2016

