



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

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No. NEPRA/AB/Appeal/005/POI/2021/4/4

April 18, 2022

- |   |  |
|---|--|
| 1. Shabbir Ahmed Sufi,<br>S/o. Muhammad Ramzan,<br>Mian Steel, Chak No. 243/RB,<br>Bhatha Stop, Roshan Wala,<br>Samundri Road, Faisalabad | 2. Chief Executive Officer<br>FESCO Ltd,<br>West Canal Road, Abdullahpur,<br>Faisalabad  |
| 3. Ch. Muhammad Imran Bhatti,<br>Advocate High Court,<br>44-District Courts, Faisalabad   | 4. Barrister Muhammad Ahmad Pansota,<br>Advocate Supreme Court,<br>Ahmad & Pansota Advocates & Legal<br>Consultants, 20-Sri Gangaram Mansions,<br>The Mall, Lahore |
| 5. Sub Divisional Officer (Operation),<br>FESCO Ltd,<br>Allama Iqbal Colony Sub Division,<br>Faisalabad                                   | 6. POI/Electric Inspector,<br>Energy Department, Govt. of Punjab,<br>Opposite Commissioner Office,<br>D.C.G Road, Civil Lines,<br>Faisalabad Region, Faisalabad    |

Subject: **Appeal Titled FESCO Vs. Shabbir Ahmed Sufi Against the Decision Dated 29.09.2020 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 13.04.2022, 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. 005/POI-2021

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Shabir Ahmed Sufi S/o Muhammad Ramzan, Mian Steel,  
Chak No.243/RB, Bhatta Stop, Roshan Wala,  
Samundari Road, Faisalabad

.....Respondent

### **APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST THE DECISION DATED 29.09.2020 PASSED BY THE PROVINCIAL OFFICE OF INSPECTION FAISALABAD REGION, FAISALABAD**

#### For the Appellant:

Mr. Jawad H. Tarar Advocate  
Mr. Wajid-ur-Rehman SDO

#### For the Respondent:

Ch. M. Imran Bhatti Advocate

### **DECISION**

1. Brief facts leading to the filing of instant appeal are that the Respondent is an industrial consumer of Faisalabad Electric Supply Company Limited (hereinafter referred to as 'the FESCO') bearing Ref No.24-13244-5402931-U having a sanctioned load of 454 kW under the B-2(b) tariff category. Metering equipment of the Respondent was checked by the Metering and Testing (M&T) FESCO on 23.10.2012 and reportedly the billing meter (hereinafter referred to as 'the first meter') was found 33% slow and the backup meter was found okay with upset date and time. The billing of the Respondent was shifted by the FESCO to the backup meter (hereinafter referred to as 'the second meter') w.e.f November 2012 and



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onwards. Later on, FESCO replaced the second meter with disturbed date and time with a new meter (hereinafter referred to as 'the third meter') in February 2014 and onward billing was done on the third meter.

2. The Respondent was dissatisfied with the billing for the period September 2012 to January 2014 (15 months) carried out on the second meter, hence approached the FESCO to refund the excessive peak units charged due to the disturbed date and time of the second meter. However, FESCO did not redress the grievance of the Respondent, therefore he filed a civil suit before the Civil Court Faisalabad on 27.06.2014 against the excessive billing of Rs.1,465,021/- for peak units for the period September 2012 to January 2014. The Honorable Court vide order dated 10.12.2019 rejected the suit of the Respondent due to lack of jurisdiction. Consequently, the Respondent filed an application before the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as 'the POI') on 10.01.2020 and challenged the bills for the period September 2012 to January 2014. The POI vide the decision dated 29.09.2020 declared the 377,444 peak units charged for the period November 2012 to January 2014 as null and void and FESCO was allowed to charge 170,498 peak units for the period November 2012 to January 2014 as recommended by SDO FESCO vide letter dated 24.04.2014 and accordingly afford a credit of Rs.1,465,021/- as calculated by Revenue Officer FESCO vide letter dated 26.06.2014.
3. FESCO has filed the instant appeal before the NEPRA against the POI decision dated 29.09.2020 (hereinafter referred to as 'the impugned decision'). In its appeal,



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the FESCO explained the facts of the case that the Respondent filed an application dated 17.04.2014 before the XEN FESCO for a refund of excessively charged peak units due to the disturbed date and time of the second meter. FESCO further elaborated that the SDO FESCO vide letter No.1624 asserted that the connection of the Respondent was running from an industrial feeder having load shedding from 7:00 pm to 11:00 pm and recommended that the peak hour units be revised accordingly. As per FESCO, Revenue Officer FESCO vide letter dated 26.06.2014 forwarded the matter to Superintending Engineer FESCO for redressal of the Respondent's grievance. According to FESCO, the Respondent filed a civil suit before the Civil Court against the above billing dispute which was dismissed by the honorable Civil Court vide order dated 10.12.2019 against which he filed an appeal before the Additional Session Judge Faisalabad. FESCO submitted that during the pendency of the appeal before the Additional Session Judge, the Respondent approached the POI vide a complaint, which was accepted by the said forum vide order dated 29.09.2020. FESCO raised the following observations on the impugned decision that the POI could not assume jurisdiction on the matter pending before the Additional Session Judge Faisalabad; that the POI relied its decision on presumption and assumption that the furnace industry mostly operates in the daytime; that the POI has decided the matter after the prescribed limit of ninety (90) days, which is violative of Section 26(6) of the Electricity Act 1910; that the POI wrongly based its determination on the grid data log sheet; that the FESCO will suffer irreparable loss; that the POI passed the impugned decision without perusing the actual record. FESCO prayed that the impugned decision be set aside.



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4. Notice of the appeal was sent to the Respondent for filing reply/para-wise comments, which were submitted on 08.02.2021. In his reply, the Respondent opposed the maintainability of the appeal on the grounds that the appeal is time barred being filed after the prescribed time period; that the FESCO failed to explain the delay in filing the appeal; that no one is authorized to defend the case on behalf of FESCO without any fresh special resolution passed by the Board of Directors; that an application was filed before XEN FESCO on 17.04.2014 against excessive billing during peak hours due to disturbed date and time of the second meter; that after investigation, Revenue Officer FESCO vide letter dated 26.06.2014 sent his recommendations to Superintending Engineer FESCO for refund of Rs.1,465,021/- but the FESCO failed to redress his complaint; that civil suit was filed before the Civil Court on 27.06.2014 for refund of disputed amount of Rs.1,465,021/-, which was rejected by the honorable Civil Court vide order dated 10.12.2019 due to lack of jurisdiction against which an appeal was filed before the Additional Session Judge Faisalabad, same was also dismissed by the learned Session Judge; that a complaint was filed before the POI in respect of disputed amount of Rs.1,465,021/- in pursuance of the guideline laid down in the judgment of the Honorable Supreme Court of Pakistan reported in 2013 SCMR 1099 titled “ Ms. Akram Yaseen etc. vs Asif Yaseen etc.”; that the impugned decision was passed by the lower forum in the capacity as POI not as an Electric Inspector under Section 38 of the NEPRA Act 1997 and restriction of 90 days is not applicable in the instant case, Reliance in this regard is placed on the judgements of honorable High Court reported as PLJ 2017 Lahore 399, PLD 2018 Lahore 594 and PLJ 2019 Lahore (Note) 15; that the impugned decision is based on facts and the same be upheld. The Respondent prayed for the dismissal of the appeal.

5. Hearing of the appeal was held at the NEPRA Regional Office Lahore on



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11.03.2022, which was attended by both parties. Learned counsel for the FESCO raised the preliminary objection regarding the jurisdiction of the POI and contended that the POI was bound to decide the dispute of billing within 120 days from the date of receipt of the complaint as per Article 9 of the Punjab (Establishment and Powers of Office of Inspection) Order, 2005, whereas in the instant case, the POI pronounced the impugned decision on 29.09.2020 beyond 120 days from the date of receipt of the complaint i.e. 10.01.2020 and no reason was given for the delay in the decision, hence the impugned decision became illegal according to Article 9 of the Punjab (Establishment and Powers of Office of Inspection) Order, 2005, which is mandatory instead of directory nature. Learned counsel for the FESCO further contended that the legal objection can be taken at any stage even before the Supreme Court of Pakistan. As per learned counsel for FESCO, any deficiency in law is to be cured by the Courts or Parliament. On merits, learned counsel for the FESCO submitted that the POI rendered the impugned decision based on the recommendation of AM (CS) FESCO and failed to appreciate the real aspects of the case. He further submitted that the FESCO is not bound to adhere to the recommendation of AM (CS) FESCO. Learned counsel for the FESCO stated that the impugned decision was based on the grid log sheet showing the load shedding hours, which is incorrect and liable to be struck down. Learned counsel for FESCO assured that the load shedding schedule of the disputed period from November 2012 to January 2014 will be provided within one week for confirmation of the version of FESCO. Learned counsel for FESCO pleaded that the impugned decision be set aside being contrary to the law and facts. On the contrary, learned counsel for the



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Respondent repudiated the version of FESCO and averred that the excessive billing was carried out by the FESCO for the period November 2012 to January 2014 due to the upset date and time of the second meter for which a complaint was made with FESCO. Learned counsel for the Respondent informed that Revenue Officer FESCO vide letter dated 26.06.2014 recommended Superintending Engineer FESCO to refund an amount of Rs.1,465,021/- and the POI had rightly directed FESCO to credit the said amount to the billing account of the Respondent. As per learned counsel for the Respondent, it is an admitted fact that the excessive billing was done by FESCO to the Respondent in peak hours in which the scheduled load shedding was carried out and the furnace industry remained closed. According to him, the Respondent cannot be held responsible for payment of any bill, which has not been consumed due to load shedding of FESCO. Learned counsel for the Respondent opposed the observation of FESCO and submitted that the POI has given the reason for the delay in the decision after 120 days. Learned counsel for the Respondent further submitted that the case was delayed due to the country-wide lockdown of COVID-19 and delay in the provision of the data log sheets. Learned counsel for the Respondent argued that 120 days provision in the Punjab (Establishment and Office of Inspection) Order 2005 is of directory nature and no penal consequences are given in case of delay in the decision beyond 120 days. Reliance in this regard was placed on the judgment of the Supreme Court of Pakistan reported in 2011 SCMR 408. Learned counsel for the Respondent defended the impugned decision and prayed for dismissal of the appeal.



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

- i. At first, the point of limitation raised by the Respondent should be addressed before going into the merits of the case. It is observed that the impugned decision was announced by the POI on 29.09.2020, copy of the same was received by FESCO on 19.10.2020 against which FESCO filed the instant appeal before the NEPRA on 20.11.2020 i.e. after thirty-two (32) days. The appeal is therefore considered to have been filed within thirty (30) days after excluding seven (7) days allowed for dispatch under Regulation 4 (2)(b) of NEPRA (Procedure for Filing Appeal) Regulations, 2012. The relevant excerpt from the Regulation is reproduced below for the sake of convenience:

*"Limitation for filing the appeal.—(1) Every appeal shall be filed within a period of thirty days from the date on which a copy of the order against which the appeal is preferred is received by the appellant: Provided that the Authority may, upon an application filed on this behalf, entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the period. (2) Subject to anything contrary on the record the copy of the order against which an appeal is filed shall be presumed to have been received by the appellant if: (a) sent by courier, three days following the day it is dispatched by the Receipt and Issue department of the Authority; (b) sent by registered post, seven days following the date it is mailed by the Receipt and Issue department of the Authority; and (c) sent by hand delivery; on the production of the receipt showing the date it is served on the appellant."*

In view of the above, the objection of the Respondent is not valid and the same is dismissed.

- ii. As regards another objection of the Respondent for authorization of FESCO, it is





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observed that FESCO has placed a 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 Respondent regarding the filing of the appeal by an authorized person is not justified and overruled.

iii. With regard to the preliminary objection of the FESCO for 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 Section 38 of the NEPRA Act, 1997. NEPRA is the appellate authority against the decision of the POI and not that of Electric Inspectors. The 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. Therefore, the stated time limit of ninety (90) days is inapplicable. The objection of the FESCO in this regard is devoid of force and therefore rejected.

iv. FESCO pointed out that the impugned decision was pronounced by the POI after 120 days from the date of receipt of the complaint i.e. 10.01.2020 and no reason for the delay was given by the said forum. FESCO termed the impugned decision as invalid, illegal being violative of Article 9 of the Punjab (Establishment and Powers of Office of Inspection) Order, 2005. It is observed that the POI has given a reason for the delay in the pronouncement of the impugned decision, which is reproduced below for the sake of convenience:



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*“The complaint was filed on 10.01.2020 before this forum and it was contested by FESCO by filing a written reply on 11.03.2020. The main reason for the delay of decision is the closure of offices by the Government of Punjab due to prevailing condition of the COVID-19 pandemic. So this is the reason that the case is decided after the period of 120 days.*

Even otherwise, the objection of the FESCO regarding the pendency of the case beyond 120 days before the POI is not valid as Article 9 of the Punjab (Establishment and Powers of Office of Inspection) Order, 2005 is of directory nature and not of mandatory nature, which provides the restriction of 120 days to decide the matter but no consequences in case of failure in decision within prescribed limits are mentioned.

- v. It is observed that the metering equipment of the Respondent was checked by the M&T FESCO on 23.10.2012 and reportedly the first meter was found 33% slow and the second meter was found okay with upset date and time. The billing of the Respondent was shifted by the FESCO to the second meter w.e.f November 2012 and onwards. Later on, FESCO replaced the second meter with the third meter in February 2014 and onward billing was carried out based on the reading of the third meter.
- vi. Subsequently, the Respondent assailed the billing for the period September 2012 to January 2014 before the FESCO and prayed to refund the excessive peak units charged due to the disturbed date and time of the second meter. FESCO did not redress the grievance of the Respondent, therefore he filed a civil suit before the





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Civil Court Faisalabad on 27.06.2014 against the excessive billing of Rs.1,465,021/- for peak hours for the period September 2012 to January 2014. The Honorable Court vide order dated 10.12.2019 rejected the suit due to lack of jurisdiction against which an appeal was filed before the Additional Session Judge Faisalabad, same was also dismissed by the learned Session Judge. Later on, the Respondent filed a complaint before the POI on 10.01.2020 and challenged the bills for the period September 2012 to January 2014, detail of which is tabulated below:

Month	Units		
	Off-peak	Peak	Total
Nov-12	203680	38560	242240
Dec-12	173920	41120	215040
Jan-13	171680	27360	199040
Feb-13	148480	18880	167360
Mar-13	132000	16480	148480
Apr-13	180230	24555	204785
May-13	188336	23124	211460
Jun-13	164374	21218	185592
Jul-13	138749	20741	159490
Aug-13	174048	46099	220147
Sep-13	77339	13845	91184
Oct-13	155702	20227	175929
Nov-13	150998	30576	181574
Dec-13	220147	16934	237081
Jan-14	184502	17725	202227
<b>Total</b>	<b>2,464,185</b>	<b>377,444</b>	<b>2,841,629</b>

vii. To verify the version of the Respondent regarding excessive billing in peak hours during the period November 2012 to January 2014, the load shedding schedule as





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provided by FESCO is analyzed in the below table:

Load shedding Schedule as per Grid Load Sheet				
Month	Peak Hrs.	Off-peak Hrs.	Total Hrs,	% Peak Hrs. = $\frac{\text{Peak Hrs.} \times 100}{\text{Total Hrs.}}$
Jan-13	44	109	153	28.76
Feb-13	52	77	129	40.31
Mar-13	60	86	146	41.1
Apr-13	67	143	210	31.91
May-13	55	209	264	20.83
Jun-13	42	105	147	28.57
Jul-13	58	116	174	33.34
Aug-13	47	102	149	31.54
Sep-13	53	209	262	20.23
Oct-13	47	98	145	32.41
Jan-14	76	121	197	38.58
Total	601	1375	1976	30.42

The above table indicates that the FESCO has done 30.41% average load-shedding during the peak hours out of the total load shedding hours during the above-mentioned disputed months i.e. November 2012 to January 2014. Hence the billing done by the FESCO during the period November 2012 to January 2014 in peak hours is much higher. It is an admitted fact that the excessive billing was done by the FESCO and Revenue Officer FESCO vide letter dated 26.06.2014 recommended Superintending Engineer FESCO to refund an amount of Rs.1,465,021/- due to excessive charging of peak units during the disputed period. Under these circumstances, we are of the view that the billing in terms of peak units for the disputed November 2012 to January 2014 (15 months) be revised after excluding load shedding in peak hours. Working in this regard is done below:



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Load shedding Schedule in peak hours as per Grid Load Sheet			
Month	Total Peak Hrs.	Load shedding during Peak Hrs.	Remaining Peak Hrs.
Jan-13	124	44	80
Feb-13	112	52	60
Mar-13	124	60	64
Apr-13	120	67	53
May-13	124	55	69
Jun-13	120	42	78
Jul-13	124	58	66
Aug-13	124	47	77
Sep-13	120	53	67
Oct-13	124	47	77
Jan-14	124	76	48
Total	1340	601	739
Average load shedding/month	<b>122</b>	<b>55</b>	<b>67</b>

It is evident from the above table that the average load shedding per month was carried out @ 55 Hrs./month against 122 Hrs./month by the FESCO. Hence the entire billing for peak units for fifteen months i.e. November 2012 to January 2014 be revised as per the available peak hours:

A. Total peak Hrs. = average peak Hrs. per month x No. of Months  
= 122 x 15 = **1,830 peak Hrs.**

B. Total peak Hrs. = average peak Hrs. per month x No. of months  
available = 67 x 15 = **1,005 peak Hrs.**

C. Peak Units to be charged =  $\frac{\text{Total peak units already charged} \times \text{Total peak Hrs. allowed}}{\text{Total peak Hrs. of disputed months}}$   
=  $\frac{377,444 \times 1,005}{1,830}$  = **207,285 peak units**





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D. Peak units already charged = 377,444 units

E. Peak units to be charged = 207,285 units

F. Net peak units to be credited = D – E

$$= 377,444 - 207,285 = \mathbf{170,159 \text{ peak units}}$$

From the above analysis, it is established that the FESCO charged 170,159 peak units excessively for the period November 2012 to January 2014 to the Respondent due to disturbed date and time. Hence the Respondent is liable to be afforded a credit of difference of 170,159 units from peak hour tariff to off-peak hour tariff. The impugned decision is liable to be modified to this extent.

7. In view of what has been stated above, it is concluded that:

i. FESCO should revised the billing as described in the below table:

Period: November 2012 to January 2014 (15 months)		
Units	To be credited	To be debited
Peak	170,159	-
Off peak	-	170,159

ii. The billing account of the Respondent be overhauled accordingly.

8. The impugned decision is modified in the above terms.

Abid Hussain  
Member/Advisor (CAD)

Nadir Ali Khoso  
Convener/Senior Advisor (CAD)

Dated: 13.04.2022