



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

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No. NEPRA/AB/Appeal/077/POI/2020/ 4/12

April 18, 2022

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| 1. Muhammd Sikandar Hayat,
S/o. Muhammad Hayat,
R/o. thatta Kanjwan,
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. Raja Faiz Ahmed,
Advocate High Court,
Rana Tahir Block, Chamber No. 26,
District Courts, Chiniot |
| 5. Sub Divisional Officer,
FESCO Ltd,
Chiniot-III Sub Division,
Chiniot | 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. Muhammad Sikandar Hayat Against the Decision Dated 26.11.2019 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 06.04.2022, 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 Appellate Board

In the matter of

Appeal No.077/POI-2020

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Muhammad Sikandar Hayat S/o Muhammad Hayat,
R/o Thatta Kanjwan, District Chiniot

.....Respondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 26.11.2019 PASSED BY THE PROVINCIAL
OFFICE OF INSPECTION FAISALABAD REGION, FAISALABAD**

For the Appellant:

Dr. Muhammad Irtiza Awan Advocate

For the Respondent:

Mr. Muhammad Sikandar Hayat

DECISION

1. Brief facts of the case are that the Respondent is an agricultural consumer of FESCO bearing Ref No.29-13163-305000 with a sanctioned load of 8 kW under the D-1b tariff category. The connection of the Respondent was checked by FESCO on 30.05.2019 and 16.08.2019 and on both occasions, allegedly, the Respondent was found using the agricultural connection for commercial activity i.e. for filling water in the swimming pool. After issuing notice to the Respondent regarding the misuse of tariff, FESCO charged the following two detection bills to the Respondent on account of the difference of tariff i.e. from Agricultural to Commercial:



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- First detection bill for 2,829 units for the period April 2019 and May 2019.
 - Second detection bill of 6,630 units for the period June 2019 and July 2019.
2. The Respondent was aggrieved with the above actions of FESCO, therefore challenged the above detection bills before the Provincial Office of Inspection, Faisalabad Region, Faisalabad (the POI). The complaint of the Respondent was disposed of vide the POI decision dated 26.11.2019, wherein the first detection bill for 2,829 units for the period April 2019 and May 2019 and the second detection bill of 6,630 units for the period June 2019 and July 2019 charged due to difference of tariff were cancelled and FESCO was allowed to charge the revised detection bill for the cost of 3,144 units.
3. FESCO has filed the instant appeal against the afore-mentioned decision (hereinafter referred to as 'the impugned decision') before NEPRA along with the application for condonation of the delay. In its appeal, FESCO objected the maintainability of the impugned decision *inter alia* on the following grounds, (1) the agricultural connection of the Respondent was checked twice i.e. 03.05.2019 and 16.08.2019 and on both the occasions, the electricity of the said connection was being used for commercial activity i.e. for the swimming pool; (2) notice dated 31.05.2019 thereof was served to the Respondent and two detection bills i.e. first detection bill for 2,829 units for the period April 2019 and May 2019 and second detection bill of 6,630 units for the period June 2019 and July 2019 were issued to the Respondent due to the difference of tariff; (3) the POI did not apply his independent and judicious mind while passing the impugned decision; (4) the POI had not thrashed out the consisting reasons of the case



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and passed the illegal decision; (5) the POI had not adverted the real aspects of the case and (6) the above detection bills are justified and payable by the Respondent. FESCO prayed that the impugned decision be set aside. In its application for condonation of the delay, FESCO explained that the delay in filing the appeal was caused due to the departmental hierarchy and lockdown in the country in the corona pandemic. FESCO pleaded that the delay in filing the appeal was not intentional and deliberate, as such the same be condoned under the Limitation Act 1908.

4. The Respondent was issued notice for filing reply/para-wise comments, which were filed on 18.08.2020. The Respondent raised the preliminary objection regarding limitation and contended that the appeal was not filed within the stated period of limitation as per Section 38(3) of the NEPRA Act 1997. The Respondent further contended that FESCO obtained the attested copy of the impugned decision on 23.01.2020 and was under obligation to file the appeal before NEPRA within stipulated time after receipt of the certified copy of the impugned decision dated 26.11.2019, whereas the appeal was filed after the lapse of seven months and nineteen days, Reliance in the regard was placed on the judgments of various Courts i.e. 1989 CLC 14051, 1989 MLD-3875, 1982 SCMR-1199, 1999 MLD 1652, etc. As per the Respondent, the electricity is being used for filling the swimming pool from another connection bearing Ref No.08-13163-0335802-R, and the stored water of the swimming pool is used for Agriculture purpose during the load-shedding hours. According to the Respondent, FESCO debited two detection bills on account of the difference in tariff, which were challenged before the POI, who adjudged the matter minutely and rightly decided the same. The Respondent finally prayed for dismissal



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of the Appeal being time-barred.

5. Hearing of the appeal was held at the NEPRA Regional Office Lahore on 11.03.2022, wherein both the parties were in attendance. Learned counsel for the FESCO repeated the same arguments as contained in memo of the appeal and averred that the Respondent was found involved in the misuse of tariff i.e. agricultural connection used for commercial purposes during the FESCO checkings dated 03.05.2019 and 16.08.2019, as such two detection bills i.e. first detection bill for 2,829 units for the period April 2019 and May 2019 and second detection bill of 6,630 units for the period June 2019 and July 2019 were issued to the Respondent due to the tariff differential. He defended the charging of the above detection bills and prayed to allow the same. On the contrary, the Respondent appearing in person repudiated the allegation of FESCO regarding misuse of tariff and argued that the swimming pool was being used for storage of water for the agricultural land during the load shedding hours. The Respondent supported the impugned decision and prayed for its maintainability.
6. Arguments were heard and the record placed before us was examined. It is observed as under:
 - i. While addressing the preliminary objection of limitation raised by the Respondent, the record was scrutinized which reveals that the FESCO obtained an attested copy of the impugned decision on 23.01.2020 and filed an appeal before the NEPRA on 07.04.2020. Pursuant to Section 38(3) of the NEPRA Act 1997, any aggrieved person may file the appeal before the NEPRA within thirty (30) days of receipt of the impugned decision. We are convinced with the



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contention of the Respondent that the instant appeal was filed by the Appellant FESCO before the NEPRA after a lapse of seventy five (75) days from the date of receipt of the copy of the impugned decision i.e. 23.01.2020. As regards the contention of FESCO regarding the delay in filing the appeal due to the lockdown of COVID-19, it is observed that the country was put under a nationwide lockdown w.e.f 1 April 2020, and it was extended twice until 9 May 2020. Hence there is no force in the argument of FESCO that the delay in filing the appeal before NEPRA was caused due to the lockdown of COVI-19. In view of the above, the appeal is liable to be dismissed being time-barred.

- ii. Even otherwise the determination of POI for cancellation of the first detection bill for 2,829 units for the period April 2019 and May 2019 and the second detection bill of 6,630 units for the period June 2019 and July 2019 charged due to the difference between tariff and for revision of the detection bill for the cost of 3,144 units is based on merits and the same is maintained.

9. Forgoing in view, the appeal is dismissed.

Abid Hussain
Member/Advisor (CAD)

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Dated: 06.04.2022