



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

NEPRA Office , Ata Turk Avenue (East), G5/1, Islamabad  
Tel. No.+92 051 2013200 Fax No. +92 051 2600030  
Website: [www.nepra.org.pk](http://www.nepra.org.pk) E-mail: [office@nepra.org.pk](mailto:office@nepra.org.pk)

No. NEPRA/AB/Appeal/140/POI/2019/152

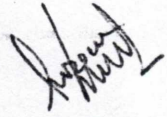
February 08, 2022

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|---|---|
| 1. Mst. Ayesha Batool,<br>W/o. Ijaz Ul Haq,<br>R/o. House No. P-592,<br>Mohallah Haji Abad, Sheikhpura Road,<br>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. Sub Divisional Officer (Operation),<br>FESCO Ltd,<br>Haji Abad Sub Division,<br>Faisalabad   |
| 5. Muhammad Nawaz Waseer,<br>Advocate Supreme Court,<br>Sargodha Khushab Law Chambers,<br>9-Turner Road, Turner Tower,<br>First Floor, Lahore | 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 Mst. Ayesha Batool Vs. FESCO Against the Decision Dated 22.02.2019 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 02.02.2022, 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. Director (IT) –for uploading the decision on NEPRA website





## National Electric Power Regulatory Authority

### **Before Appellate Board**

In the matter of

### **Appeal No. 140/POI-2019**

Mst. Ayesha Batool W/o Ijaz-ul-Haq, R/o House No.P-592,  
Mohallah Haji Abad, Sheikhupura Road, Faisalabad .....Appellant

Versus

Faisalabad Electric Supply Company Limited .....Respondent

### **APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST THE DECISION DATED 22.02.2019 PASSED BY PROVINCIAL OFFICE OF INSPECTION FAISALABAD REGION, FAISALABAD**

#### **For the Appellant:**

Ch. M. Imran Bhatti Advocate

#### **For the Respondent:**

Mr. Malik Asad Advocate

Mr. Shahzaib Ali Liaqat SDO

Mr. Mahmood Ahmed Khan MI

Mr. Abrar Hussain Clerk

### **DECISION**

1. Through this decision, an appeal filed by Mst. Ayesha Batool (hereinafter referred to as the Appellant) against the decision dated 22.02.2019 of the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the POI) is being disposed of.
2. FESCO is a licensee of the National Electric Power Regulatory Authority







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(hereinafter referred to as the NEPRA) for the distribution of electricity in the territory specified as per terms and conditions of the license and the Appellant is its industrial consumer bearing Ref No.27-13126-6696245-U with a sanctioned load of 06 kW under the B-1(b) Tariff category. As per stated facts of the case, FESCO charged the following adjustments bills for the period February 2017 to July 2017 on the plea that the Appellant had exceeded the load beyond 25 kW:

Adjustment Bill	MDI (kW)	Amount (Rs.)
February 2017	36	17,568/-
March 2017	32	15,616/-
April 2017	45	21,960/-
May 2017	31	15,128/-
July 2017	63	30,738/-

In addition to the above, FESCO charged an adjustment bill of Rs.194,902/- for the accumulated 384 kW MDI for the period January 2016 to December 2016 to the Appellant and added in the bill for July 2017.

3. Being aggrieved, the Appellant filed a civil suit before the Civil Judge Class-II, Faisalabad on 17.08.2017 and challenged the bill of Rs.334,790/- charged by the FESCO in July 2017. During the pendency of the suit, FESCO further charged the following bills to the Appellant on different causes of actions:

Billing month	Bill type	Units/MDI (kW)	Amount (Rs.)	Reasons
Apr-2017 to Jun-2017	Detection	5,194 units+28 kW MDI	96,802/-	One phase of meter was found dead on 12.06.2017
August 2017	Adjustment	51	24,888/-	Load beyond 25 kW
October 2017	Adjustment		2,693/-	Difference of income tax







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November 2017	Adjustment	26	13,416/-	Load beyond 25 kW
April 2018	Adjustment	-	2,258/-	Difference of income tax
July 2018	Adjustment	-	1,623/-	Difference of income tax

The Honorable Civil Judge Class-II, Faisalabad, vide order dated 29.06.2018 dismissed the civil suit of the Appellant due to the lack of jurisdiction. Later on, the Appellant filed two applications dated 14.09.2018 and 02.01.2019 before the POI and challenged the bills for the months, February 2017 to August 2017, October 2017, November 2017, April 2018, and July 2018. Both the applications of the Appellant were clubbed and disposed of by the POI vide single consolidated decision dated 22.02.2019 (the "impugned decision"), the operative part of which is reproduced below:

*"Summing up all the above observation/discussion and keeping in view all the aspects of the case, this forum declares that*

- 1. The Respondents have not charged any detection bill amounting to Rs.334,790/- and the allegation of the petitioner in this regard is baseless.*
- 2. The amount of Rs.194,902/- was rightly charged by the Respondents due to excessive use of MDI above 25 kW and the petitioner is liable to pay the same.*
- 3. The charging of bill adjustments of Rs.17568/- in the bill of 03/2017, Rs.15,616/- in bill of 04/2017, Rs.21,960/- in bill of 05/2017, Rs.15,128/- in bill of 06/2017, Rs.194,902/- in bill of 07/2017, Rs.21,569/- +(Rs.9169/- as arrears) in bill 08/2017, Rs.24,888/- in bill 09/2017, Rs.2,493/- in bill 10/2017, Rs.13,416/- in bill 11/2017, Rs.2,258/- in bill 04/2018, Rs.1,623 in bill 07/2018 is justified and the consumer is liable to pay the same.*
- 4. The detection bill amounting to Rs.96,802/- charged in the bill of 03/2018 and recovered in three installments in the billing months from 03/2018 to 05/2018 as null, void & without any legal effect and the petitioner is not liable to pay the same. The Respondents are hereby directed to withdraw the same and charge a revised detection bill for the cost of 2520 off-peak, 281 peak units, and 28 kW MDI.*







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*The Respondents are also directed to overhaul the petitioner's/ complainant's account by adjusting all credits, debits, deferred amount, any payments already made by the consumer after waving of LPS if imposed due to this detection bill.*

*The Petition was filed on 14.09.2018 before this forum and was contested by FESCO by filing a written reply on 14.11.2018. The petitioner also filed an amended petition on 02.01.2019 which was also contested by the respondents by filing a written reply on 09.01.2019. The case was adjourned due to one reason to the other as mentioned in the interim order sheet. So this is the reason that the case is decided after the period of 120 days."*

5. Aggrieved with the impugned decision of the POI, the Appellant filed the instant appeal before the NEPRA. In its appeal, the Appellant prayed to strike down the impugned decision, inter alia, on the following grounds; (1) no one is authorized to plead the case on behalf of the FESCO without any fresh special resolution passed by the BoD FESCO; (2) the FESCO charged an adjustment bill of Rs.194,902/- for the accumulated 384 kW MDI for the period January 2016 to December 2016 in the bill for July 2017, which was challenged before the Civil Judge Class-II, Faisalabad on 17.08.2017; (3) FESCO charged the excessive bills for the months i.e. February 2017 to August 2017, October 2017, November 2017, April 2018 and July 2018, which were paid under protest; (4) a detection bill of Rs.96,802/- for 4,692 units for the period April 2017 to June 2017 was charged due to one dead phase of the meter as observed during the alleged FESCO checking dated 12.06.2017, which was paid in three installments under duress in order to avoid disconnection of the electric supply; (5) the alleged claim of the FESCO with regard to the abovementioned billing is based on malafide, grudge, without notice,





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unwarranted, unlawful and the utter violation of Chapter 6, 7 and 14 of the Consumer Service Manual (CSM); (6) the meters of the Appellant were working correctly under the BSS limits but no checking was carried out by the POI despite a request made vide the application dated 14.12.2018; (7) the impugned decision is against the facts and law, since the POI failed to exercise the jurisdiction vested and erroneously passed the impugned decision instead of setting aside the impugned bills; (8) the above said bills be set aside and recovery made by the FESCO be refunded with 18% markup since the date of recovery of the disputed bills.

6. Notice was issued to FESCO for submission of reply/para-wise comments to the appeal, which were not filed.
7. The hearing in the matter was held at the NEPRA Regional Office Lahore on 31.12.2021 which was attended by both the parties. Learned counsel for the Appellant repeated the same contention as given in memo of the appeal and contended that the connection of the Appellant is B-1 and no MDI (kW) is chargeable to the Appellant but the FESCO charged the various adjustment bills for the period January 2016 to November 2017 on account of MDI (kW) charges. Learned counsel for the Appellant further contended that the detection bill of Rs.96,802/- for the cost of 4,692 units for the period April 2017 to June 2017 was charged due to one dead phase of the meter as observed during the alleged FESCO checking dated 12.06.2017 in violation of Clause 4.4 of the CSM. As per learned counsel for the Appellant, the above detection bill was paid in three installments







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under protest in order to avoid disconnection of supply. Learned counsel opposed the impugned decision and argued that the findings of the POI concerning the adjustment bills charged by the FESCO in different months are not based on merits and the same may be set aside in the best interest of justice. Learned counsel for the Appellant averred that the FESCO charged the above detection bill on the basis of Audit Recommendation, which is not valid. Learned counsel for the Appellant finally prayed that the impugned decision is liable to be struck down. On the contrary, SDO FESCO repudiated the version of the learned counsel for the Appellant and submitted that the Appellant was using the load beyond the sanctioned load, which falls in the B-2 category for which prior notices were served to the Appellant but the connected load was not curtailed by him, therefore, the adjustment bills for the period January 2016 to December 2016, February 2017 to May 2017, July 2017 and November 2017 were debited to the Appellant to account for the MDI (kW) charges. As regards the detection bill of Rs.96,802/-, SDO FESCO stated that the said detection bill was charged due to 33% slowness of the meter for the period April 2017 to June 2017 to the Appellant, which was accordingly paid by him. FESCO representatives defended the impugned decision and pleaded that the same may be upheld.

8. Argument heard and the record examined. Following are our observations:

- i. FESCO has placed BoD resolution dated 08.05.2006, wherein Director (HR & Admin) has been authorized to sign the memorandum of the appeal and vakalatnama. It is observed that DG (HR & Admin) has signed the







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vakalatnama of the learned counsel for FESCO in the instant case. Hence, the preliminary objection of the Appellant regarding the filing of the appeal by an authorized person is not justified and overruled.

- ii. The Appellant challenged the following bills before the POI vide two applications dated 14.09.2018 and 02.01.2019:

Billing months	Bill type	Units+ MDI (kW)	Amount (Rs.)	Reasons
Jan-2016 to Dec-2016	Adjustment	384 kW MDI	194,902/-	Load beyond 25 kW
Feb-2017	Adjustment	36 kW MDI	17,568/-	Load beyond 25 kW
Mar-2017	Adjustment	32 kW MDI	15,616/-	Load beyond 25 kW
Apr-2017	Adjustment	45 kW MDI	21,960/-	Load beyond 25 kW
Apr-2017 to Jun-2017	Detection	5,194 units+ 28 kW MDI	96,802/-	One phase of meter was found dead on 12.06.2017
May-2017	Adjustment	31 kW MDI	15,128/-	Load beyond 25 kW
Jul-2017	Adjustment	63 kW MDI	30,738/-	Load beyond 25 kW
Oct-2017	Adjustment	-	2,693/-	Difference of income tax
Nov-2017	Adjustment	26 kW MDI	13,416/-	Load beyond 25 kW
Apr-2018	Adjustment	-	2,258/-	Difference of income tax
Jul-2018	Adjustment	-	1,623/-	Difference of income tax

- iii. For the sake of convenience, the above-disputed bills are segregated into three disputes:

**Dispute-I:** Adjustment bills charged for the months i.e. January 2016 to December 2016, February 2017 to May 2017, July 2017, and November 2017 due to the illegal extension of load beyond 25 kW.

**Dispute-II:** Detection bill of Rs.96,802/- for the cost of 4,692 units for the period April 2017 to June 2017 was charged due to one dead phase of the meter as observed during the alleged FESCO checking dated 12.06.2017.





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**Dispute-III:** Difference of taxes included in the bills for the months i.e. October 2017, April 2018, and July 2018.

**Dispute-I:** Adjustment bills charged for the months i.e. January 2016 to December 2016, February 2017 to May 2017, July 2017 and November 2017 due to the illegal extension of load beyond 25 kW

FESCO issued notice No.8374 dated 29.04.2016 to the Appellant regarding illegal extension of the load noticed as per the MDI record in the billing months of January 2016, February 2016, and March 2016 and directed the Appellant for the reduction of the connected load within ten (10) days. FESCO further issued two notices dated 30.11.2016 and 27.01.2017 to the Appellant for the use of load beyond 25 kW. However, the Appellant failed to curtail the connected load as per the sanctioned load i.e. 6 kW. Consequently, FESCO debited the adjustments bills for the months January 2016 to December 2016, February 2017 to May 2017, July 2017, and November 2017 to account for the MDI (kW) recorded by the meter of the Appellant due to the extension of the load beyond 25 kW. The entire billing carried out by the FESCO during the above said months is on pick and choose method as the bills for the months i.e. January 2016 to December 2016, February 2017 to May 2017, July 2017, and November 2017 were initially debited to the Appellant as per the applicable charges of the tariff B-1(b) and subsequently, fixed charges were billed to account for the MDI (kW) based on the B-2(b) tariff. In the instant case, FESCO violated the procedure as laid down in Chapter 7 of the Consumer





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Service Manual (CSM) as neither the electric supply of the Appellant was disconnected nor the tariff was changed from B-1 to B-2. Under these circumstances, we hold that the bills for the months January 2016 to December 2016, February 2017 to May 2017, July 2017, and November 2017 and subsequent adjustments bills for the same months charged by the FESCO to the Appellant are unjustified and the same are liable to be withdrawn.

According to Clause 7.5 of the CSM, FESCO is liable to charge the revised bills for the months January 2016 to December 2016, February 2017 to May 2017, July 2017, and November 2017 as per the tariff category B-2(b) and adjust the payments already deposited by the Appellant against the bills of said months. The impugned decision is liable to be modified to this extent.

**Dispute-II: Detection bill of Rs.96,802/- for the cost of 4,692 units for the period April 2017 to June 2017 was charged due to one dead phase of the meter as observed during the alleged FESCO checking dated 12.06.2017.**

According to Clause 4.4 of the CSM, a consumer is liable to be charged the detection bill maximum for two months in case of the slow meter. FESCO has violated the foregoing clause of the CSM by charging the detection bill beyond two billing cycles to the Appellant. Hence the impugned decision for cancellation of the detection bill of Rs.96,802/- for the cost of 4,692 units for the period April 2017 to June 2017 and revision of the same for a







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total 2,801 (off peak=2,520+peak=281) units+28 kW MDI for May 2017 and June 2017 is correct being in line with Clause 4.4 of the CSM and the same is liable to be maintained to this extent.

**Dispute-III: Difference of taxes included in the bills for the months i.e. October 2017, April 2018, and July 2018.**

As regards the charging of tax difference in the bills for the months October 2017, April 2018, and July 2018 by the FESCO is concerned, it is clarified that the amount of taxes are collected in the bills as per the applicable procedure of the Federal Board of Revenue, Government of Pakistan. Neither the POI nor the NEPRA has lawful authority to intervene in the matter with regard to the taxes included in the bills. Hence the grievance of the Appellant in this regard is not valid and liable to be rejected.

9. In view of what has been stated above, we reached the conclusion that:

**Dispute-I:** the bills for the months i.e. January 2016 to December 2016, February 2017 to May 2017, July 2017, and November 2017 and subsequent adjustments bills for the said months charged by the FESCO to the Appellant are unjustified and the same are declared as null and void.

FESCO may charge the revised bills for the months January 2016 to December 2016, February 2017 to May 2017, July 2017 and November 2017 as per the tariff category B-2(b) and adjust the payments already deposited by the Appellant against the bills of said





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months.

**Dispute-II:** The detection bill of Rs.96,802/- for the cost of 4,692 units for the period April 2017 to June 2017 charged to the Appellant by the FESCO is illegal, unjustified and the same is cancelled. FESCO may debit the revised detection bill of 2,801 (off peak=2,520 + peak=281) units + 28 kW MDI for two months i.e. May 2017 and June 2017 due to 33% slowness of the meter as per Clause 4.4 of the CSM.

**Dispute-III:** The inclusion of the tax difference in the bills for the months October 2017, April 2018, and July 2018 by the FESCO is in accordance with the guidelines of the FBR, Government of Pakistan and the Appellant should pay the same.

The billing account of the Appellant may be overhauled in accordance with the above paras.

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

Abid Hussain  
Member/Advisor (CAD)

Nadir Ali Khoso  
Convener/Senior Advisor (CAD)

Dated: 02.02.2022

