



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

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No. NEPRA/Appeal/023/ & 045/2022/ 034

January 25, 2023

- | | |
|---|---|
| 1. Muhammad Nawaz,
S/o. Rehman Ali,
R/o. Chak No. 224/RB,
Wazir Khan Wali, Mohallah Ghousia Abad,
Faisalabad | 2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad |
| 3. Mirza Muhammad Ijaz,
Advocate High Court,
Chamber No. 08, Ground Floor,
Sufi Barkat Ali Law Building,
Near CPO Office, Islamabad | 4. Shahzad Ahmed Bajwa,
Advocate High Court,
12-Faisal Park, Imamia Colony,
Shahdara, Lahore |
| 5. Sub Divisional Officer (Operation),
FESCO Ltd,
Samundri Road Sub Division,
Faisalabad | 6. POI/Electric Inspector,
Energy Department, Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad |

Subject: Appeal Titled Muhammad Nawaz Vs. FESCO & FESCO Vs. Muhammad Nawaz Against the Decision Dated 11.11.2021 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.023/POI-2022

Muhammad Nawaz S/o Rehman Ali, R/o Chak No.224/RB,
Wazir Khan Wali, Mohallah Ghousia Abad, FaisalabadAppellant

Versus

Faisalabad Electric Supply Company LimitedRespondent

&

Appeal No.045/POI-2022

Faisalabad Electric Supply Company LimitedAppellant

Versus

Muhammad Nawaz S/o Rehman Ali, R/o Chak No.224/RB,
Wazir Khan Wali, Mohallah Ghousia Abad, FaisalabadRespondent

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

For FESCO:

Mr. Shahzad Ahmed Bajwa Advocate

Mr. Muhammad Ilyas Court Clerk

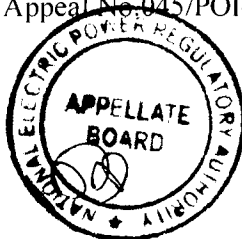
For the Consumer:

Mirza Muhammad Ijaz Advocate

Mr. Muhammad Nawaz

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Muhammad Nawaz is an industrial consumer (hereinafter referred to as the “Consumer”) of the Faisalabad Electric Supply Company Limited (hereinafter referred to as the “FESCO”) bearing Ref No.30-13242-5204614-R with a sanctioned load of 46 k W

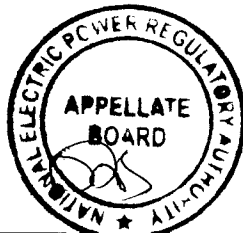




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and the applicable Tariff category is B-2(b). The metering equipment of the Consumer was checked by the Metering and Testing (M&T) team of the FESCO on 22.12.2020, wherein the billing meter was found running 16% slow and the backup meter was recording less units. Resultantly, the Multiplication Factor (MF) was raised from 20 to 23.8 for onward billing and a detection bill (the “first detection bill”) amounting to Rs.201,274/- against 8,426 units+13 kW MDI for three months i.e. September 2020 to November 2020 was debited to the Consumer to account for 16% slowness of the impugned meter. During another checking dated 18.05.2021 of the M&T team of the FESCO, both TOU billing and backup meters were found 33% slow, therefore another detection bill (the “second detection bill”) of Rs.159,959/- for the cost of 5,940 units+14 kW MDI for two months i.e. March 2021 and April 2021 was debited to the Consumer due to 33% slowness of the impugned billing meter and added to the bill for June 2021 FESCO further raised the MF from 23.8 to 29.8 due to 33% slowness of the impugned billing meter w.e.f May 2021 and onward.

2. Being aggrieved, the Consumer filed a complaint before the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the “POI”) on 08.07.2021 and disputed the above bills. The metering equipment of the Consumer was jointly checked by the POI on 27.07.2021, wherein 33% slowness in both the billing and backup meters was established due to the yellow phase being dead. The complaint of the Consumer was disposed of by the POI vide the decision dated 11.11.2021 with the following conclusion:





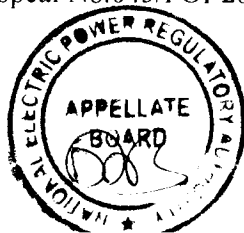
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“Summing up all the above observations/discussion and keeping in view all the of the case this Forum declares the charging of

1. 1st detection bill/adjustment of amount Rs.201,274/- for the cost of 8,426 units and 13 KW MDI for the period 09/2020 to 11/2020 as null, void, and without any legal effect and the petitioner is not liable to pay the same. The Respondents are directed to withdraw the same and charge a revised detection bill for two billing cycles 10/2020 to 11/2020 for the cost of 6583 units and 13 KW MDI as discussed above.

2 2nd detection bill/adjustment of amount Rs.159,959/- for the cost of 5,910 units and 14 KW MDI charged in the billing month of 06/2021 as legal and justified and the petitioner is liable to pay the same The Respondents are directed to overhaul the complainant's account by adjusting Credits, Debits, Deferred Amount & Payments already made by the consumer. Disposed of in above terms”

3. Being dissatisfied with the above-referred decision of POI (hereinafter referred to as the “impugned decision”), both parties filed cross-appeals before the NEPRA. As the facts and subject matter of the appeals are the same, both Appeals i.e. Appeal No.023/POI-2022 and Appeal No.045/POI-2022 have been clubbed and are being disposed of through a single/consolidated decision.
4. In its appeal No.023-2020, the Consumer contended that the FESCO neither issued notice nor carried out checking of the metering equipment and debited the first detection bill of Rs.201,274/- against 8,426 units+13 kW MDI for three months i.e. September 2020 to November 2020 and enhanced MF from 20 to 23.8 w.e.f December 2020 and onwards, which were paid under protest to avoid disconnection of electricity. The Consumer further contented that Clause 4.3.3(c) and Clause 4.3.1 of the CSM-2021 bound the FESCO to replace the slow meter within two months

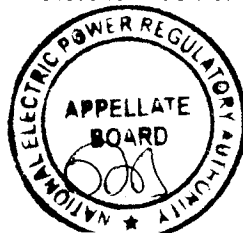




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but instead of replacement, FESCO charged the second detection bill of Rs.159,959/- for the cost of 5,940 units+14 kW MDI for two months i.e. March 2021 and April 2021 and further enhanced MF from 23.8 to 29.8 w.e.f May 2021 and onwards. As per Consumer, the POI has overlooked the provisions of the CSM-2021 and did not apply his independent and judicious mind while rendering the impugned decision. According to the Consumer, the POI had neither recorded the evidence nor perused the relevant consumption data in true perspective and decided the petition illegally on mere surmises and conjectures without any justification and legal reasons, hence the impugned decision is liable to be set aside.

5. In its appeal No.045-2020, FESCO opposed the maintainability of the impugned decision *inter alia*, on the following main grounds that the impugned decision is against the facts and law; that the FESCO has no personal grudge or grouse against the Consumer to issue any excessive bill; that the FESCO being government exchequer is suffering an irreparable loss and injury due to the impugned decision; that the POI did not consider the case of the FESCO in true perspective and illegally passed the impugned decision, which is not sustainable in the eye of the law; that the POI misinterpreted and misconstrued the provisions of the law and failed to follow the dictums of superior courts; that the impugned decision is contrary to provisions of law as well as canons and principles of natural justice; that the impugned decision is based on surmises and conjectures and that the same is liable to be set aside.





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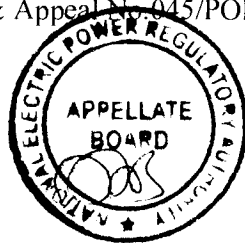
6. Proceedings by the Appellate Board:

Notices dated 09.02.2022 and 11.04.2022 were sent to the Consumer and FESCO respectively for filing reply/para-wise comments to the cross-appeals within ten (10) days. However, both parties did not submit their reply against the counter appeals.

7. Hearing

7.1 Hearing in the matter of the subject Appeals was initially fixed for 17.06.2022 at Lahore and accordingly, the notices dated 08.06.2022 were sent to the parties (i.e. the FESCO and the Consumer) to attend the hearing. As per schedule, the hearing of the appeal was conducted at the NEPRA Regional Office Lahore on 17.06.2022 in which learned counsels for both FESCO and the Consumer were present. Counsel for the FESCO requested the adjournment of the case, which was allowed and it was fixed for 30.09.2022.

7.2 Learned counsel for FESCO repeated the same contentions as given in memo of the Appeal No.023-2022 and argued that the impugned billing and backup meters of the Consumer were initially checked by the FESCO on 22.12.2020, wherein both the billing and backup meters were found running 16% slow, therefore MF was enhanced to 23.8 w.e.f December 2020 and onwards and first detection bill of Rs.201,274/- against 8,426 units+13 kW MDI for three months i.e. September 2020 to November 2020 was debited to the Consumer. Learned counsel for the FESCO averred that the impugned billing and backup meters of the Consumer were again

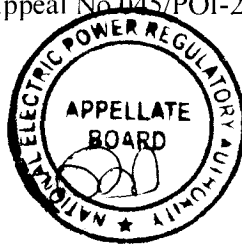




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checked on 18.05.2021 and the yellow phase of both the meters was found dead stop, therefore MF was further raised from 23.8 to 29.8, and the second detection bill of Rs.159,959/- for the cost of 5,940 units+14 kW MDI for two months i.e. March 2021 and April 2021 due to 33% slowness of the impugned meter. As per learned counsel for FESCO, both impugned billing and backup meters of the Consumer were found 33% slow during the POI joint checking dated 27.07.2021, thus the charging of the above detection bills and the monthly bills with enhanced MF is justified and payable by the Consumer.

7.3 Learned counsel for the Consumer rebutted the version of FESCO and averred that the impugned billing and backup meters were found working correctly till November 2020 and the Consumer paid the bill for November 2020 accordingly. Learned counsel for the Consumer submitted that neither any checking was carried out in presence of the Consumer nor any report of alleged checking was produced before the POI for verification of the slowness of the meter. As per learned counsel for the Consumer, the provisions of CSM-2021 restrain FESCO to replace the slow/defective meters within two months, however, FESCO failed to follow the procedure as laid down in CSM-2021 and charged the illegal, excessive bills. Learned counsel for the Consumer opposed the impugned decision and stated that the FESCO failed to replace the impugned billing meter within two months, hence the Consumer cannot be held responsible for payment of any detection bill due to negligence of FESCO, such the impugned decision for allowing the second detection bill of Rs.159,959/- for the cost of 5,940 units+14 kW MDI for two





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months i.e. March 2021 is illegal, unjustified and the same is liable to be set aside to this extent in the best interest of justice.

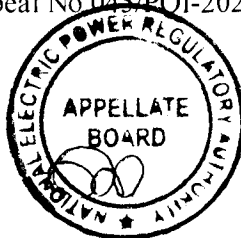
8. Arguments heard and the record perused. Following are our observations:

8.1 The following bills were disputed by the Consumer before the POI, which will be addressed separately:

- First detection bill of Rs.201,274/- for 8,426 units+13 kW MDI for three months i.e. September 2020 to November 2020 @ 16% slowness of the meter.
- Monthly bills with enhanced MF=23.8 w.e.f December 2020 and onwards due to 16% slowness of the meter.
- Second detection bill of Rs.159,959/- for 5,940 units+14 kW MDI for two months i.e. March 2021 and April 2021 @ 33% slowness of the meter.
- Monthly bills with enhanced MF=29.8 due to 33% slowness of the meter for May 2021 and June 2021.

8.2 First detection bill of Rs.201,274/- against 8,426 units+13 kW MDI for three months i.e. September 2020 to November 2020

The billing meter of the Consumer was allegedly discovered as running 16% slow by the FESCO on 22.12.2020 and the first detection bill of Rs.201,274/- was issued in December 2020. Therefore, the matter will be dealt with under the provisions of the CSM-2010, which was in the field till December 2020. Clause 4.4 of the CSM-2010 enumerates the procedure to confirm the defect/slowness in the metering equipment and charge the Consumer on the basis of thereof. Sub-clauses (b), (c), and (e) of Clause 4.4 of the CSM-2010 being relevant in the instant are reproduced below:





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"4.4 Meter Replacement

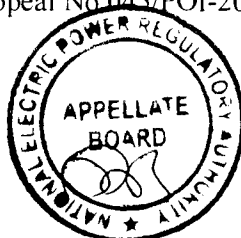
(b) Should the FESCO at any time, doubt the accuracy of any metering equipment, the FESCO may after informing the consumer, install another duly calibrated and tested metering equipment in series with the impugned metering equipment to determine the difference in consumption or maximum demand recorded by the check metering equipment and that recorded by the impugned metering equipment during a fixed period. If one such comparative test being made the impugned metering equipment should prove to be incorrect, the impugned metering equipment shall be removed from the premises with the written consent of the consumer, and the FESCO in the absence of any interference or alteration in the mechanism of the impugned metering equipment being detected by the FESCO shall install "correct meter" without any further delay.

(c) Where it is not possible for the FESCO to install check metering equipment of appropriate capacity in series with the impugned metering equipment, to check the accuracy of the impugned metering equipment as described above, the FESCO shall, after informing (in writing) the consumer, test the accuracy of the impugned metering equipment at site by means of Rotary Sub-Standard or digital power analyzer. If incorrect, the impugned metering equipment shall be removed and immediately replaced upon settlement/payment of assessed amount. In case if a correct meter is not available then the multiplying factor shall be charged accordingly till the replacement with correct meter.

(d)

(e) The charging of consumers on the basis of defective code, where the meter has become defective and is not recording the actual consumption will not be more than two billing cycles. The basis of charging will be % of the consumption recorded in the same month of the previous year or the average consumption of the last 11 months whichever is higher. Only the Authorized employee of FESCO will have the power to declare a meter defective. However, the consumer has a right to challenge the defective status of the energy meter and the FESCO will get the meter checked at the site with a check meter or a rotary sub-standard or digital power analyzer accompanied by an engineer of the metering and testing laboratory free of cost.

Under sub-clause 'b' above, upon doubt about the accuracy of the metering equipment of the Consumer, the FESCO was required to install a check metering equipment, after informing the Consumer, to determine the difference in consumption or maximum demand recorded by the check meter and the impugned





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meter during a fixed period. In case of confirmation of slowness in the impugned meter, the same was required to be removed with the written consent of the Consumer.

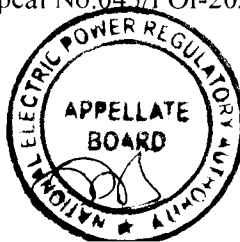
8.3 Alternatively, the FESCO was required to follow the procedure given in sub-clause (c) of Clause 4.4 of the CSM-2010, which stipulates the checking of the meter after informing (in writing) the consumer, by means of a Rotary Sub-standard or digital power analyzer.

8.4 As per the record presented before us, there is no evidence that the FESCO followed the procedure either under sub-clause (b) or sub-clause (c) of the CSM-2010. The essence of Clause 4.4 of the CSM-2010 is to ensure transparency by taking the consumer on board. The claim of the FESCO about the meter slowness without following the laid down procedure suffers from credibility insufficiency.

8.5 Notwithstanding the above observations, in order to verify the contention of the FESCO regarding the 16% slowness of the impugned meter, the consumption data is analyzed below:

Undisputed		Disputed		% increase/decrease
Month	Units	Month	Units	
Sep-19	13380	Sep-20	9680	-28%
Oct-19	18540	Oct-20	15600	-16%
Nov-19	16060	Nov-20	18960	18%
Total	47980	Total	44240	-8%

The above consumption data shows that the impugned meter recorded less consumption during the disputed months i.e. September 2020 and October 2020 vis-a-vis consumption of corresponding months of the previous year. Whereas, it





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recorded higher consumption in November 2020 as compared to the undisputed consumption of November 2019. Even otherwise, the total consumption recorded during the disputed period from September 2020 to November 2020 is compatible with the total consumption of the corresponding months of the year 2019. Thus, the claim of the FESCO regarding charging the first detection bill of Rs.201,274/- for 8,426 units+13 kW MDI for three months i.e. September 2020 to November 2020 to the Consumer due to the 16% slowness of the meter is not justified and the Consumer is not responsible to pay the first detection bill, which is also the determination of the POI.

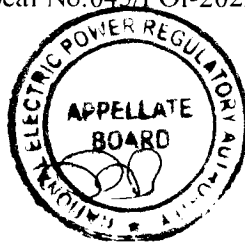
8.6 As evident from the above consumption analysis, 16% slowness in the impugned meter was not established, as such the determination of POI for revision of the bill for net 6,583 units+13 kW MDI for two months i.e. October 2020 and November 2020 after adding 16% slowness of the meter is without any legal and technical basis and the same is liable to be withdrawn.

8.7 Bills with enhance MF=23.8 w.e.f December 2020 and onwards @ 16% slowness of the meter

According to Clause 4.4(c) of the CSM-2010 as well Clause 4.3.3c(i) of the CSM-2021, the Consumer may be charged the bills with enhanced MF to account for the slowness of the meter. Therefore, the bills with enhanced MF=23.8 debited by the FESCO due to the 16% slowness of the meter for the period December 2020 to April 2021 are declared as justified and payable by the Consumer.

8.8 Second detection bill of Rs.159,959/- for 5,940 units+14 kW MDI for two months i.e. March 2021 and April 2021 @ 33% slowness of the meter

33% slowness in the impugned billing and backup meters of the Consumer was





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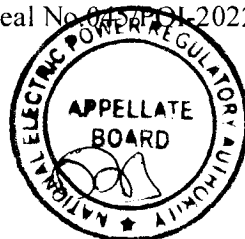
observed during another checking of the M&T team of FESCO dated 18.05.2021, which was confirmed by the POI during joint checking dated 27.07.2021. Thus only the fate of the second detection bill needs to be determined. In this regard, consumption data is examined in the below table:

Undisputed		Disputed		% increase/decrease
Month	Units	Month	Units	
Mar-20	20040	Mar-21	13613	-32%
Apr-20	8260	Apr-21	16089	95%
Total	28300	Total	29702	5%

The above table shows that the total consumption recorded during the disputed period March 2021 and April 2021 is higher than the total consumption of the corresponding months of the previous year, which does not justify the contention of the FESCO regarding the 33% slowness of the meter during the disputed period March 2021 and April 2021. Therefore, the charging of the second detection bill of Rs.159,959/- for 5,940 units+14 kW MDI for two months i.e. March 2021 and April 2021 by FESCO to the Consumer is unjustified and the same is liable to be withdrawn to this extent.

8.9 Monthly bills with enhanced MF=29.8 due to 33% slowness of the meter for May 2021 and June 2021.

Since 33% slowness was observed by FESCO in May 2021 and it was verified by the POI during joint checking dated 27.07.2021. Therefore, the Consumer is liable to be charged the bills with enhanced MF=29.8 for two months i.e. May 2021 and June 2021 on account of 33% slowness of the meter as per Clause 4.3.3c(i) of the CSM-2021





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

- 9.1 The first detection bill of Rs.201,274/- for the cost of 8,426 units+13 KW MDI for the period September 2020 to November 2020 and the second detection bill amounting to Rs.159,959/- for the cost of 5,910 units+14 KW MDI for the period March 2021 and April 2021 charged to the Consumer are unjustified and declared null, void and without any legal effect.
- 9.2 FESCO may recover the monthly bills with enhanced MF=23.8 due to 16% slowness of the meter for the period from December 2020 to April 2021 and the bills with enhanced MF=29.8 due to 33% slowness of the meter for May 2021 and June 2021 as per Clause 4.3.3c(i) of the CSM-2021.
- 9.3 The billing account of the Consumer may be overhauled after adjustment of the payments made against the above bills.
10. Both appeals are disposed of in the above terms.

Syed Zavar Haider
Member

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 19/01/2023

