



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

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No. NEPRA/Appeal/054/2021/ *126*

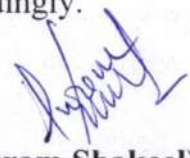
February 28, 2023

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|--|---|
| 1. Muhammad Shahbaz,<br>S/o. Ijaz-ur-Rehman,<br>R/o. House No. 955, Foji Chowk,<br>Mohallah D-Type Colony, Faisalabad                      | 2. Chief Executive Officer<br>FESCO Ltd,<br>West Canal Road, Abdullahpur,<br>Faisalabad   |
| 3. Malik Asad Akram Awan,<br>Advocate High Court,<br>Sargodha Khushab Law Chambers,<br>First Floor, Turner Tower,<br>9-Turner Road, Lahore | 4. Mirza Muhammad Ijaz,<br>Advocate High Court,<br>Chamber No. 08, Ground Floor,<br>Sufi Barkat Ali Law Building,<br>District Courts, Faisalabad                |
| 5. Sub Divisional Officer,<br>FESCO Ltd,<br>Samundri Road 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. Muhammad Shahbaz Against the Decision Dated 16.02.2021 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 23.02.2023, 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.054/POI-2021

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Muhammad Shahbaz S/o Ijaz-ur-Rehman, R/o. House No.955,  
Foji Chowk, Mohallah D-Type Colony, Faisalabad

.....Respondent

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

#### For the Appellant:

Malik Asad Akram Advocate  
Mr. Shoaib Rehman SDO

#### For the Respondent:

Mirza Muhammad Ijaz Advocate

### DECISION

1. Through this decision, the appeal filed by the Faisalabad Electric Supply Company Limited (hereinafter referred to as the "Appellant") against the decision dated 26.02.2021 of the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") is being disposed of.
2. Briefly speaking, Mr. Muhammad Shahbaz (hereinafter referred to as the "Respondent") is an industrial consumer of the Appellant bearing Ref No.27-13242-620709 with sanctioned load of 24 kW and the applicable Tariff category is B-1(b). The







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Appellant has claimed that the billing meter of the Respondent was found dead stop during the Metering & Testing ("M&T") team checking dated 04.12.2014. Hence, a detection bill (the "first detection bill") amounting to Rs.471,741/- against 26,298 units+128 kW MDI for two (02) months for the period from October 2014 and November 2014 was debited to the Respondent on the basis of 35% load factor of the connected load i.e. 64 kW and added to the bill for December 2014.

3. Being aggrieved, the Respondent initially assailed the first detection bill before the Civil Court, Faisalabad, and paid an amount of Rs.117,935/- being 1/4<sup>th</sup> of the first detection bill. During the pendency of the civil suit before the Civil Court, Faisalabad, the Appellant charged another detection bill (the "second detection bill") of Rs.633,686/- to the Respondent in February 2016 based on an Audit Note dated 21.12.2012, which pointed out illegal extension of load by the Respondent from 13 kW to 32 kW. Subsequently, the honorable Civil Court vide order dated 22.11.2019 dismissed the civil suit of the Respondent against which he filed an appeal before the Additional District Judge Faisalabad. Subsequently, the Respondent approached the POI vide a complaint on 20.01.2020 and challenged the above both detection bills. Meanwhile, the Respondent filed an application before District Judge Faisalabad for withdrawal of the appeal due to lack of jurisdiction. Consequently, the honorable District Judge Faisalabad vide order dated 25.02.2020 dismissed the appeal of the Respondent as withdrawn. The complaint of the Respondent was disposed of by the POI vide the decision dated 26.02.2021, wherein the first detection bill amounting to Rs.471,741/- against 26,298 units+128 kW MDI for two (02) months for the period from







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October 2014 and November 2014 and the second detection bill of Rs.633,686/- charged in February 2016 were cancelled. The POI directed the Appellant to debit the revised bill for 5,342 units for two months i.e. October 2014 and November 2014. The POI further directed the Appellant to overhaul the billing account of the Respondent.

4. Through the instant appeal, the afore-referred decision dated 26.02.2021 of the POI has been impugned by the Appellant before the NEPRA. In its appeal, the Appellant objected to the maintainability of the impugned decision, *inter alia*, on the main grounds, (1) the impugned decision suffers from serious misreading and non-reading of record and has been passed in mechanical and slipshod manner; (2) the complaint of the Respondent was hopelessly time barred as the same has been filed in January 2020 against the first and second detection bills charged in December 2014 and February 2016 respectively; (3) the POI failed to apply his independent and judicious mind while passing the impugned decision; (4) the impugned decision is against the facts and record and without legal reasons, hence the same is liable to be set aside.

### 5. Proceedings by the Appellate Board

- 5.1 Upon filing of the instant appeal, a notice dated 19.05.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. The Respondent submitted the reply to the Appeal on 27.05.2021, wherein the Respondent contended that the first detection bill of Rs.471,741/- was debited in violation of Clause 4.3.1(b) of the CSM-2021. The Respondent further contended that the second detection bill of Rs.633,686/- was debited in February 2016 based on an Audit Note, which is not binding







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upon the Respondent. As per Respondent, the Appellants are estopped to file the titled appeal against the Respondent due to their acts, etc. According to the Respondent, the POI has decided the petition legally and lawfully after perusal of written replies, adducing the arguments of the SDO, RO, and the Appellant's counsel, and after perusal of consumption data. The Respondent submitted that the POI has considered this matter and after perusal of civil court complaints withdrawn by the Respondent and rendered a wisdom-based legal and lawful decision. The Respondent finally prayed for the dismissal of the appeal with legal cost of Rs.25,000/-.

### 6. Hearing

- 6.1 Notices dated 08.10.2022 were served to the parties and hearing of the appeal was conducted at NEPRA Regional Office Lahore on 14.10.2022, which was attended by both parties. Learned counsel for the Appellant raised the preliminary objection regarding the time-barred complaint and contended that the complaint of the Respondent was filed before the POI on 20.01.2020 against the first and second detection bills charged in December 2014 and February 2016 respectively. Learned counsel for the Appellant further contended that the Respondent has neither disclosed the dismissal of the civil suit nor filed an application for the condonation before the POI. He prayed that the claim of the Respondent is barred by the time being filed after three years as per Article 181 of the Limitation Act 1908 and it is liable to be dismissed.
- 6.2 Learned counsel for the Respondent rebutted the stance of the Appellant and argued that







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the both above detection bills were initially challenged before the Civil Court Faisalabad and subsequently, the civil suit was withdrawn from there on 25.01.2020 and the Respondent approached the POI being a competent forum. Learned counsel for the Respondent contended that the time consumed at the wrong forum be excluded and the matter be decided on merits instead of technical grounds.

- 6.3 In support of his contention, learned counsel for the Respondent filed written argument on 24.10.2022, wherein he submitted that the above detection bills were challenged before the Civil Court, and during the proceedings, the objection was raised about the jurisdiction of the Civil Court; therefore the Respondent promptly withdrew suits and filed a complaint before the POI mentioning about withdrawal of suits from the civil court. He further submitted that the proceedings were in good faith before the civil court that had lack of jurisdiction, hence the complaint was subsequently filed before the POI having jurisdiction. Learned counsel for the Respondent prayed that the limitation objection raised by the Appellant be overruled in the light of Section 14 of the Limitation Act, 1908 and the case be decided on merits. In this regard, he placed the judgment of the High Court Peshawar reported in 2016 CLC 377.

7. Arguments were heard and the record was examined. Following are our observations:

**7.1 Objection of the Appellant regarding the time-barred complaint before the POI:**

The Respondent initially filed a civil suit before the Civil Court, Faisalabad against the first detection bill of Rs.471,741/- against 26,298 units+128 kW MDI for two (02)







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months for the period from October 2014 and November 2014 charged by the Appellant in December 2014. After litigation at different courts, the Respondent withdrew suits on the objection of the Appellant regarding the jurisdiction of the Civil Court and filed a complaint before the POI on 20.01.2020 and challenged the first detection bill of Rs.471,741/- and second detection bill of Rs.633,686/-. Thus, the time consumed at the Civil Court lacking jurisdiction is excluded as the Respondent availed the remedy by filing the complaint before the POI within three years from the withdrawal of the civil suit as envisaged in Article 181 of the Limitation Act 1908. Further, Article 14 of the Limitation Act, 1908 also supports the version of the Respondent that the matter was prosecuted at Civil Court in good faith, hence the time consumed at that wrong forum i.e. Civil Court will be excluded. Reliance in this regard is placed on the judgment reported as 2016 CLC 377, the operative portion of which is reproduced below:

*“13. For the foregoing reasons, we are of the view that Section 14 of the Limitation Act is applicable to the proceedings under the Representation of the People Act in respect of an appeal provided under Section 67(3) and the time spent in the apex Court will have to be excluded for the reasons stated above about the due diligence. If we exclude the time, there can be no doubt that the appeals are within the period of 30 days prescribed by the Act. The objection raised by the respondents is thus overruled and the office is directed to fix these appeals separately for regular hearing on a convenient date.”*







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Even otherwise, the POI is a competent forum to adjudicate the instant dispute of billing raised due to the defective meter. Reliance in this regard is placed on the judgment of the Honorable Supreme Court of Pakistan reported in PLD 2012 SC 371. Therefore the objection of the Appellant in this regard bears no force and is overruled.

**7.2 First detection bill of Rs.471,741/- against 26,298 units+128 kW MDI for two (02) months for the period from October 2014 and November 2014 charged by the Appellant in December 2014**

The Appellant claimed to have found the billing meter of the Respondent dead stop during checking dated 04.12.2014, therefore first detection bill of Rs.471,741/- against 26,298 units+128 kW MDI for two months for the period from October 2014 and November 2014 was issued to the Respondent in December 2014 based on 35% load factor of the connected load i.e.64 kW.

7.3 As such the billing dispute arose in the year 2014, therefore, the matter will be dealt under the provisions of the then-applicable CSM-2010. Clause 4.4 of the CSM-2010 enumerates the procedure to confirm the defect 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:

***"4.4 Meter Replacement***

***(b) Should the FESCO at any time, doubt the accuracy of any metering equipment, the FESCO may after information 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***







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*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 information (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 removed 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.*

7.4 Under sub-clause 'b' above, upon doubt about the accuracy of the metering equipment of the Respondent, the Appellant was required to install a check metering equipment, after informing the Respondent, to determine the difference in consumption or maximum demand recorded by the check meter and the impugned meter during a fixed period. In case of confirmation of slowness/defectiveness in the impugned meter, the same was required to be removed with the written consent of the Consumer.







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7.5 Alternatively, the Appellant 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.

7.6 As per the record presented before us, there is no evidence that the Appellant followed the procedure either under sub-clause (b) or sub-clause (c) of the CSM-2010. However, the Appellant on the pretext of a defective meter issued the first detection bill of Rs.471,741/- against 26,298 units+128 kW MDI for two months i.e. October 2014 and November 2014. The said detection bill was challenged by the Respondent before the POI. As per the impugned decision, the POI confirmed that the impugned meter was found defective. As such the impugned decision of POI has not been assailed by the Respondent, the Appellant's claim about the defect in the meter may be considered as admitted for which the Appellant is entitled to charge the bill to the Respondent as per applicable provisions of the CSM-2010.

7.7 Therefore, only the fate of the first detection bill needs to be determined, it is observed that the Appellant debited the first detection bill of Rs.471,741/- to the Respondent based on 35% load factor of the connected load. Whereas, Clause 4.4(e) of the CSM-2010 restrains the Appellant to debit the bills maximum for two months in case of a defective meter and the basis of charging the said bills be made as per 100% consumption of







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corresponding months of the previous year or average consumption of last eleven months, whichever is higher.

7.8 Under these circumstances, we are of the firm view that the first detection bill of Rs.471,741/- against 26,298 units+128 kW MDI for two months for the period from October 2014 and November 2014 charged to the Respondent is illegal, unjustified being violative of Clause 4.4(e) of the CSM-2010 and it should be withdrawn.

7.9 Moreover, the determination of the POI for revisions of the bills against net 5,342 units for two months i.e. October 2014 and November 2014 on the basis of the average consumption of the last eleven months i.e. November 2013 to September 2014 being higher is consistent with Clause 4.4(e) of the CSM-2010 and maintained to this extent.

7.10 **The second detection bill of Rs.633,686/- was debited to the Appellant on the basis of the Audit Note and added to the bill for February 2016**

It is observed that the Audit Department of the Appellant vide Audit Note dated 21.12.2012 pointed out the illegal extension of load from 13 kW to 32 kW by the Respondent and recommended to charge the difference of tariff i.e. B-2 instead of B-1. Based on the said audit note, the Appellant charged the second detection bill of Rs.633,686/- and added it to the bill of the Respondent for February 2016. At the outset, the Appellant failed to provide any document i.e. audit note dated 21.12.2012, detection proforma, notice for illegal extension of load, checking report, etc. to justify their contention for charging the second detection bill. Even otherwise, the Audit observation is an internal matter between the DISCO and the Audit Department and the Consumer







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cannot be held responsible for the payment of any detection bill based on the Audit Para. Reliance in this regard is placed on the cases reported in 2014 MLD 1253 titled M/s. Mehmood Textile Mills v/s MEPCO and 2008 YLR 308 titled WAPDA v/s Fazal Karim.

7.11 In view of the foregoing discussion, we hold that the second detection bill of Rs.633,686/- charged to the Respondent by the Appellant based on the Audit Note dated 21.12.2012 is illegal, unjustified, and the same is cancelled.

7.12 The billing account of the Respondent may be overhauled after adjusting payments made against the above-disputed bills.

8. Foregoing in view, the appeal is dismissed.

Syed Zavar Haider  
Member

Abid Hussain  
Convener

Muhammad Irfan-ul-Haq  
Member

Dated: 23/02/2023.

