



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

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No. NEPRA/Appeal/055/2023/ 769


December 13, 2023

- | | |
|---|---|
| 1. Samar Hussain,
S/o. Khan Muhammad,
R/o. Raza Nagar Thatha Warra,
Tehsil Bhawana, District Chiniot | 2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad |
| 3. Malik Asad Akram Awan,
Advocate High Court,
Sargodha Khushab Law Chambers,
First Floor, Turner Tower,
9-Turner Road, Lahore | 4. Sub Divisional Officer (Operation),
FESCO Ltd,
Bhawana Road Sub Division,
Bhawana |
| 5. POI/Electric Inspector,
Energy Department, Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad | |

Subject: **Appeal No.055/2023 (FESCO Vs. Samar Hussain) Against the Decision Dated 28.01.2022 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 13.12.2023 (04 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**


(Ikram Shakeel)
Deputy Director (AB)

Forwarded for information please.

1. Director (IT) –for uploading the decision on NEPRA website



National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No. 055/POI-2023

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Samar Hussain S/o. Khan Muhammad,

R/o. Raza Nagar Thatha Warra, Tehsil Bhawana, District ChiniotRespondent

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

For the Appellant:

Malik Asad Akram Advocate

Mr. Muhammad Naeem Shahzad SDO

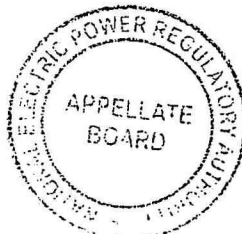
For the Respondent:

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DECISION

1. Briefly speaking, Mr. Sammar Hussain (hereinafter referred to as the "Respondent") is an agricultural consumer of Faisalabad Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.29-13164-3232703 having sanctioned load of 11.19 kW and the applicable tariff category is D-2(b). The Appellant installed new agricultural connection on the premises of the Respondent on 23.12.2020. however, the billing meter of the Respondent became defective with washed display in January 2021, hence nil consumption was charged during the months i.e. January 2021 and February 2021 by the Appellant. Later on, the impugned meter of the Respondent was replaced with a new meter by the Appellant vide meter change order ("MCO") dated 16.03.2021 and sent to M&T lab for data retrieval. As per the M&T report dated 10.08.2021, the display of the impugned meter was declared washed out, whereas, the data could not be retrieved due to communication error. Subsequently, the Appellant charged a detection bill of Rs.34,885/- for 3,006 units for two months i.e. January 2021 and February 2021 to the Respondent and added to the bill for September 2021.

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2. Being aggrieved, the Respondent approached the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") on 14.10.2021 and assailed the abovementioned detection bill. POI vide decision dated 28.01.2022 declared the detection bill of Rs.34,885/- for 3,006 units for two months i.e. January 2021 and February 2021 null and void.
3. Being dissatisfied, the Appellant has filed the instant appeal before the NEPRA against the POI decision dated 28.01.2022 (hereinafter referred to as the "impugned decision"), wherein it is contended that the old meter of the Respondent became defective with washed display, hence nil consumption charged during the months of January 2021 and February 2021. The Appellant further contended that the detection bill of Rs.34,885/- for 3,006 units for two months i.e. January 2021 and February 2021 was worked out based on the M&T report. The Appellant submitted that the above detection bill was fully proved through the submission of the M&T report and other documents but the POI did not consider the documentary evidence. As per the Appellant, the impugned decision was announced after the expiry of 90 days, which is a violation of Section 26(6) of the Electricity Act 1910. According to the Appellant, the POI has not thrashed out the consisting reasons and assed the illegal order, which is liable to be set aside.

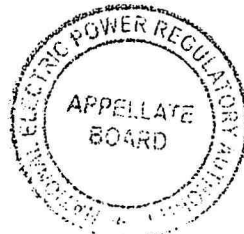
4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 18.05.2023 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. However, no reply/para-wise comments were received from the Respondent.

5. Hearing

Hearing was fixed for 24.06.2023 and accordingly, the notices dated 16.06.2023 were sent to the parties (i.e. the Appellant and the Respondent) to attend the hearing. As per schedule, the hearing of the appeal was conducted at the NEPRA Regional Office Faisalabad on 24.06.2023, which was attended by counsel along with an official for the Appellant whereas, the Respondent did not appear. Finally, hearing was conducted on 09.09.2023, which was attended by the counsel along with an official for the Appellant and the Respondent again did not tender appearance. Learned counsel for the Appellant defended the charging of the detection bill of Rs.34,885/- for 3,006 units for two months i.e. January 2021 and February 2021 and argued that the above detection bill was debited to the Respondent on the basis of the connected load. He opposed the impugned

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decision for cancellation of the above detection bill and contended that the same is liable to be recovered from the Respondent being justified as nil consumption charged during the aforementioned months. The Appellant was directed to submit the documents i.e. detection proforma, MCO, billing statement, etc for the verification of their assertion.

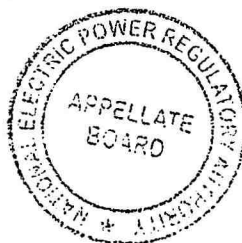
6. Arguments heard and the record examined. Following are our observations:

6.1 The Appellant has objected that the POI was bound to decide the matter within 90 days under Section 26(6) of the Electricity Act, 1910. It is observed that the Respondent filed a complaint before the POI on 14.10.2021 under Section 38 of the NEPRA Act and the POI pronounced its decision on 28.01.2022 after 90 days of receipt of the complaint. The forum of POI has been established under Section 38 of the NEPRA Act which does not put a restriction of 90 days on POI to decide complaints. Section 38 of the NEPRA Act overrides provisions of the Electricity Act, 1910. Reliance in this regard is placed on the judgments of the honorable Lahore High Court Lahore reported in *PLJ 2017 Lahore 627* and *PLJ 2017 Lahore 309*. Keeping in view the overriding effect of the NEPRA Act being later in time, and the above-referred decisions of the honorable High Court, the objection of the Appellant is rejected.

6.2 The record presented before us shows that the impugned meter of the Respondent was installed by the Appellant on 23.12.2020. Later on, it became defective with display washed in January 2021, and nil consumption was charged to the Respondent during January 2021 and February 2021. Subsequently, the Appellant debited a detection bill of Rs.34,885/- for 3,006 units for two months i.e. January 2021 and February 2021 to the Respondent in September 2021, which was disputed by him before the POI.

6.3 It is observed that the Appellant debited the above detection bill for two billing cycles, however, the Appellant failed to bring any documentary evidence i.e. checking report, detection proforma, MCO, and billing statement, etc. to substantiate their stance regarding charging of the above detection bill despite their assurance during the hearing dated 09.09.2023. It is further observed that the data of the impugned meter could not be retrieved due to communication error. Under these circumstances, the detection bill of Rs.34,885/- for 3,006 units for two months i.e. January 2021 and February 2021 is declared as unjustified and the same is liable to be cancelled.

6.4 Perusal of the contents of the Appeal and the impugned decision, it is revealed that the impugned





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meter of the new connection was installed on the premises of the Respondent on 23.12.2020, however, nil consumption was charged for months i.e. January 2021 and February 2021 by the Appellant to the Respondent due to the vanished display of the impugned meter. In such cases, Clause 4.3.1(b) of the CSM-2021 is applicable to determine the fate of the detection bill.

6.5 Since there is no previous billing history of the Respondent due to the installation of new connection on 23.12.2020, in such scenario, the foregoing clause of the CSM-2021 could not be applied in true spirit. Thus, the Appellant may revise the detection bill for two months i.e. January 2021 and February 2021 and calculation in this regard be made @ 15% load factor of the connected load as given in Annex-V of the CSM-2021 in the below table:

Period: January 2021 and February 2021 (2 months)

$$\begin{aligned}\text{Total units to be charged} &= \text{C/L (kW)} \times \text{LF} \times \text{No. of Hrs./month} \times \text{No. of months} \\ &= 11.19 \times 0.15 \times 730 \times 2 = \mathbf{2,450 \text{ units}}\end{aligned}$$

7. In view of what has been discussed above, it is concluded as under:

7.1 Detection bill of Rs.34,885/- for 3,006 units for two months i.e. January 2021 and February 2021 charged by the Appellant to the Respondent is unjustified and the same is declared null and void.

7.2 The Respondent may be charged the revised detection bill of total 2,450 units for two months i.e. January 2021 and February 2021 as calculated in para 6.5 above.

7.3 The billing account of the Respondent may be overhauled after making adjustments of payments made against the above detection bill.

8. Impugned decision is modified in the above terms.

Abid Hussain
Member

Muhammad Irfan-ul-Haq
Member

Naweed Illahi Sheikh
Convener

Dated: 13/12/2023

