



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

NEPRA Office , Ataturk 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/Appeals/095/2021/ &116/2021/ 638

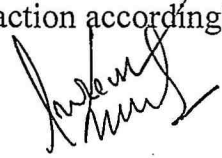
October 18, 2023

- |                                                                                                 |                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Abdul Nasir Gill,<br>S/o. Abdul Majeed,<br>R/o. Chak No. 220/RB, Judgewala,<br>Faisalabad    | 2. Chief Executive Officer<br>FESCO Ltd,<br>West Canal Road, Abdullahpur,<br>Faisalabad                                                                     |
| 3. Saeed Ahmed Bhatti,<br>Advocate High Court,<br>66-Khyber Block, Allama Iqbal Town,<br>Lahore | 4. Mirza Muhammad Ijaz,<br>Advocate High Court,<br>Chamber No. 08, Ground Floor,<br>Sufi Barkat Ali Law Building,<br>Near CPO Office, Faisalabad            |
| 5. Sub Divisional Officer (Operation),<br>FESCO Ltd,<br>Gulberg Sub Division,<br>Faisalabad     | 6. POI/Electric Inspector Faisalabad Region,<br>Energy Department, Govt. of Punjab,<br>Opposite Commissioner Office,<br>D.C.G Road, Civil Lines, Faisalabad |

Subject: **Appeal Titled FESCO Vs. Abdul Nasir Gill and Abdul Nasir Gill Vs. FESCO Against the Decision Dated 05.08.2021 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 18.10.2023 (11 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.095/POI-2021

Faisalabad Electric Supply Company Limited .....Appellant

Versus

Abdul Nasir Gill S/o. Abdul Majeed,  
R/o. Chak No.220/RB, Judgewala, Faisalabad .....Respondent

&

### Appeal No.116/POI-2021

Abdul Nasir Gill S/o. Abdul Majeed,  
R/o. Chak No.220/RB, Judgewala, Faisalabad .....Appellant

Versus

Faisalabad Electric Supply Company Limited .....Respondent

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

For FESCO:

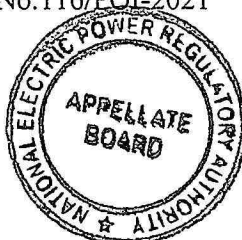
Sardar M. Rashid SDO

For the Consumer:

Mirza Muhammad Ijaz Advocate

## DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Abdul Nasir Gill 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.24-13223-5309074-U with sanctioned load of 81 kW and the applicable Tariff category is B-2(b). The metering equipment of the Consumer was checked

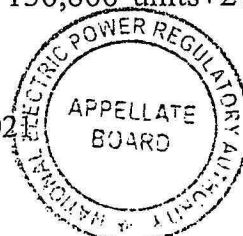




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by the Metering and Testing (M&T) team of the FESCO on 30.03.2016, wherein the billing meter was found running 33% slow and the backup meter was found working within permissible limits. Resultantly, a detection bill amounting to Rs.2,006,566/- against 136,866 units+278 kW MDI for ten months i.e. December 2015 to September 2016 was debited to the Consumer to account for 33% slowness of the impugned billing meter.

2. Being aggrieved, the Consumer filed a complaint before the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") on 18.03.2021 and disputed the above detection bill. The complaint of the Consumer was disposed of by the POI vide the decision dated 05.08.2021 in which the detection bill of Rs.2,006,566/- against 136,866 units+278 kW MDI for ten months i.e. December 2015 to September 2016 was cancelled and the FESCO was allowed to recover 127,193 units+250 kW MDI for the period from February 2016 to September 2016 @ 33% slowness of the meter.
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.095/POI-2021 and Appeal No.116/POI-2021 have been clubbed and are being disposed of through a single/consolidated decision.
4. In its appeal No.095-2021, FESCO opposed the maintainability of the impugned decision *inter alia*, on the following main grounds that the POI erred in declaring the detection bill of Rs.2,006,566/- against 136,866 units+278 kW MDI for ten



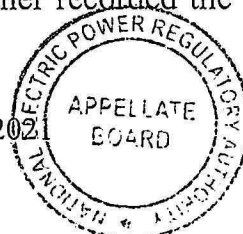
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months i.e. December 2015 to September 2016 as null and void and allowed the FESCO to charge the revised bill of net 127,193 units+250 kW MDI for the period from February 2016 to September 2016 @ 33% slowness of the meter; that Clause 4.3.3(c)(ii) of the Consumer Service Manual 2020 (the "CSM-2020") could not be made applicable in the instant case; that the POI while deciding the complaint of the Consumer ignored the consumption data and other authentic documents, which confirms 33% slowness of the meter during the disputed period; that the impugned decision is ex-facie, coram non-judice, ab-initio, void and without jurisdiction as the POI has no jurisdiction to carry out the proceedings after expiry of 90 days as envisaged under Section 26(6) of the Electricity Act 1910; that the impugned decision is illegal, unlawful, arbitrary and the same is liable to be set aside.

5. In its appeal No.116-2021, the Consumer contended that the POI misconceived the real facts of the case and the CSM-2021. The Consumer further contended that the FESCO violated Clause 4.3.2(a) of the CSM-2021 about the replacement of the impugned meter. As per the Consumer, the FESCO was required to shift the billing on the backup meter instead of that the FESCO debited the detection bill amounting to Rs.2,006,566/- against 136,866 units+278 kW MDI for ten months i.e. December 2015 to September 2016 in violation of Chapter 4 of the CSM-2021. According to the Consumer, FESCO neither issued notice nor got checked the metering equipment by the POI. The Consumer stated that the POI did not apply his independent and judicious mind while rendering the impugned decision. The Consumer submitted that the POI had neither recorded the evidence nor perused



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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.

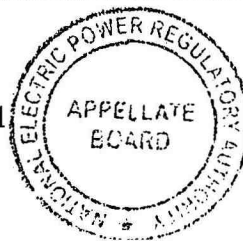
### 6. Proceedings by the Appellate Board:

Notices dated 27.09.2021 and 11.11.2021 were sent to the FESCO and the Consumer 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 Hearings in the matter of the subject Appeals were initially fixed for 14.10.2022 and 25.11.2022, which however were adjourned on the request of either the FESCO or the Consumer. Finally, hearing of the appeal was conducted at Lahore on 03.06.2023 and accordingly, the notices dated 24.05.2023 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 03.06.2023 in which both parties were present.

7.2 FESCO repeated the same contentions as given in memo of the Appeal No.095/2021 and argued that the impugned billing and backup meters of the Consumer were checked by the FESCO on 30.03.2016, wherein the billing meter was found running 33% slow, therefore detection bill of Rs.2,006,566/- against 136,866 units+278 kW MDI for ten months i.e. December 2015 to September 2016 was debited to the Consumer. FESCO averred that the POI vide impugned decision

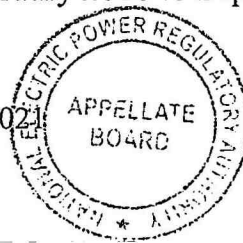




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allowed the recovery of the detection bill for the previous two months and the onward bills with enhanced MF due to the 33% slowness of the meter. The representative for the FESCO opposed the impugned decision and submitted that the POI did not consider the consumption data and rendered the vague decision, hence the impugned decision is liable to be struck down and FESCO be allowed to recover the entire above detection bill.

7.3 Learned counsel for the Consumer rebutted the version of FESCO and averred that the impugned billing meter was 33% slow and the backup meter was found working correctly during checking dated 30.03.2016, however instead of shifting the billing on the backup meter, FESCO debited illegally, unjustified detection bill for ten months, which is violative of provisions of the CSM-2021. Learned counsel for the Consumer submitted that neither any checking was carried out in the presence of the Consumer nor impugned meter 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 bill. 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 revised detection bill of 127,193 units+250 kW MDI for the period from February 2016 to September 2016 @ 33%



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slowness of the meter is illegal, unjustified and the same is liable to be set aside to this extent in the best interest of justice.

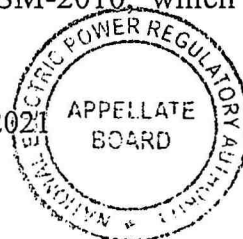
8. Arguments heard and the record perused. Following are our observations:

8.1 Objection regarding the time limit for POI for deciding the complaint

As per the record, the Consumer filed his complaint before the POI on 18.03.2021 under Section 38 of the NEPRA Act. POI pronounced its decision on 05.08.2021 i.e. after 141 days of receipt of the complaint. The FESCO has objected that the POI was bound to decide the matter within 90 days under Section 26(6) of the Electricity Act, 1910. In this regard, it is observed that 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, of 1910. Reliance in this regard is placed on the judgments of the honorable Lahore High Court Lahore reported in 2017 PLJ 627 Lahore and 2017 PLJ 309 Lahore. Keeping in view the overriding effect of the NEPRA Act on the Electricity Act, 1910, and the above-referred decisions of the honorable High Court, the objection of the FESCO is dismissed.

8.2 Detection bill of Rs.2,006,566/- against 136,866 units+278 kW MDI for ten months i.e. December 2015 to September 2016

The billing meter of the Consumer was allegedly discovered as running 33% slow by the FESCO on 30.03.2016 and the detection bill of Rs.2,006,566/- against 136,866 units+278 kW MDI for ten months i.e. December 2015 to September 2016 was charged to the Consumer in November 2016. Therefore, the matter will be dealt with under the provisions of the CSM-2010, which was in the field till



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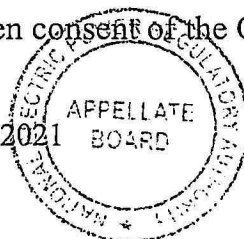
December 2020. Clause 4.4 of the CSM-2010 enumerates the procedure to confirm the defect/slowness in the metering equipment and charge the Consumer on the basis of thereof. Sub-clauses (b), (c), and (e) of Clause 4.4 of the CSM-2010 being relevant in the instant are reproduced below:

### **"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 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.*

Under sub-clause (b), 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 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.



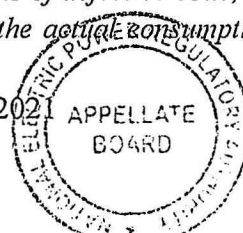




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- 8.3 Alternatively, the FESCO was required to follow the procedure given in sub-clause (c) of Clause 4.4 of the CSM-2010, which stipulates the checking of the meter after informing (in writing) the consumer, by means of a Rotary Sub-standard or digital 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, POI allowed the recovery of 33% slowness of the impugned billing meter against which neither the Consumer nor FESCO raised any objection. However, FESCO claimed that the entire detection bill of Rs.2,006,566/- against 136,866 units+278 kW MDI for ten months i.e. December 2015 to September 2016 be allowed being justified and payable by the Consumer. On the other hand, the Consumer is of the view that the FESCO violated the provisions of the CSM while charging the impugned detection bill and may only be allowed the recovery of the detection bill as per Chapter 4 of the CSM-2010.
- 8.6 It is observed that the FESCO charged the detection bill for ten months to the Consumer on account of 33% slowness of the impugned meter, which is contrary to Clause 4.4(e) of the CSM-2010. The said clause of the CSM-2010 being relevant in the instant case is reproduced below:

*(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*



*Handwritten signature/initials.*

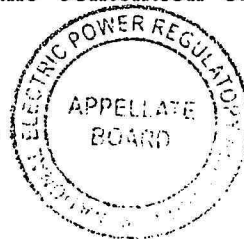


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*than two billing cycles. The basis of charging will be 100% of the consumption recorded in the same month of the previous year or the average consumption of the last 11 months whichever is higher. Only the Authorized employee of FESCO will have the 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."*

Type of fault Defect	Cost of replacement of meter	Mode of determination of consumption	Competent Authority	Appellate Authority	Period of Loss	Remarks
Defective/ Damaged/ burnt meter not due to consumer fault	Cost to be borne by FESCO	As given above at 4.4(e)	The Competent Authority to determine the type of fault/defect shall be the respective load sanctioning authority	On meter being declared as defective- Next higher office, Review Committee, POI, NEPRA in the order of appearance	Defective charging to a maximum of two billing cycles for regular bills. No previous charging on defective code	Nil
Slowness owing to age/other reasons not related to illegal abstraction/ stealing	Cost to be borne by FESCO	Through previous consumption data, Check meter, Slowness through check/Rotary Substandard, Grid meter/ power analyzer	Do	Do	Do	Test check Proforma to be got signed by the consumer/ his authorized representative or POI at the time of inspection
Meter defective/ burnt due to Consumer's fault including overloading, internal wiring defect	Consumer to pay	Verification of load, Check meter, Rotary Substandard, another meter in series, Or at Grid meter/power analyzer	Do	Do	Do	Do

The above-referred table of Clause 4.4(e) of the CSM-2010 restricts FESCO to charge the detection bill maximum for two months to the Respondent in case of slow meter. Under these circumstances, the contention of FESCO for

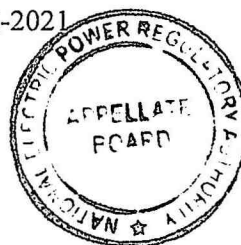




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recovery of the detection bill of Rs.2,006,566/- against 136,866 units+278 kW MDI for ten months i.e. December 2015 to September 2016 @ 33% slowness of the meter is not correct being contrary to the facts and violative of the foregoing clause of the CSM-2010 and the above detection bill is set aside. The impugned decision is liable to be maintained to this extent.


- 8.7 Since the meter under dispute was found 33% slow during the checking dated 30.03.2016, the Consumer is liable to be debited 33% slowness of the meter for two retrospective billing cycles prior checking dated 30.03.2016.
- 8.8 It is an admitted fact that FESCO neither shifted the billing on the backup meter nor raised the MF timely i.e. w.e.f April 2016 and onwards. Subsequently, FESCO charged the bill with enhanced MF=59.4 from October 2016 and onward, this shows gross negligence on the part of FESCO, which delayed the enhancement of MF and burdened the Consumer by including the months in the impugned detection bill in which MF was not raised. Under these circumstances, we are of the view that FESCO may revise the bills with enhanced MF=59.4 from April 2016 to September 2016 to account for 33% slowness of the meter as per Clause 4.4(c) of the CSM-2010. However, the segregation of the accumulated (units+kW MDI) for the period April 2016 to September 2016 be done equally in six months as per Clause 6.2(b) of the CSM-2010 and the recovery of said bill be made in six equal installments to facilitate the Consumer. The impugned decision is liable to be modified to this extent.

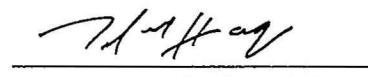





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9. Summing up the foregoing discussion, it is concluded as under:
- 9.1 The detection bill of Rs.2,006,566/- against 136,866 units+278 kW MDI for ten (10) months i.e. December 2015 to September 2016 is unjustified and the same is cancelled.
- 9.2 The Consumer may be charged 33% slowness for the previous two billing cycles prior checking dated 30.03.2016 as per Clause 4.4(e) of the CSM-2010.
- 9.3 FESCO may revise the bills with enhanced MF=59.4 w.e.f April 2016 to September 2016 to account for 33% slowness of the meter as per Clause 4.4(c) of the CSM-2010, however, recovery of said bills be made in six equally monthly installments along with current bills.
- 9.4 The billing account of the Consumer be overhauled, accordingly.
10. The impugned decision is modified in the above terms.

  
Abid Hussain  
Member

  
Muhammad Irfan-ul-Haq  
Member

  
Naweed Illahi Sheikh  
Convener

Dated: 18-10-2023

