



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

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No. NEPRA/AB/Appeal/127/POI/2020/528

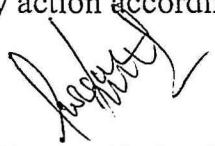
September 18, 2023

1. Noor Zaman,
S/o. Haji Shah Nawaz,
R/o. House No. 746-P, Steet No. 19,
Mohallah Tariq Abad, District Faisalabad
2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad
3. Ch. Muhammad Shahid Iqbal,
Advocate High Court,
Office No. T-3, Third Floor,
Makkah Tower, 13-Fane Road,
Lahore
4. Sub Divisional Officer,
FESCO Ltd,
Tariq Abad Sub Division,
Faisalabad
5. POI/Electric Inspector,
Energy Department, Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad

Subject: **Appeal Titled FESCO Vs. Noor Zaman Against the Decision Dated 11.08.2020 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 14.09.2023 (07 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.127/POI-2020

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Noor Zaman S/o. Haji Shah Nawaz, R/o. House No.746-P,
Street No.19, Mohallah Tariq Abad, District Faisalabad

.....Respondent

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

For the Appellant:

Ch. Muhammad Shahzad Iqbal Advocate

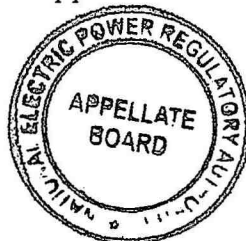
Mr. M. Naveed Akhtar SDO

For the Respondent:

Nemo

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 11.08.2020 of the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") is being disposed of.
2. Brief facts of the case are that Mr. Noor Zaman (hereinafter referred to as the "Respondent") is a domestic consumer of the Appellant having two connections i.e. first connection bearing Ref No.10-13124-0924311 U with sanctioned load of 3 kW and the applicable Tariff category is A-1 and the second connection bearing Ref No.10-13124-0924310 with applicable tariff category A-1R. Reportedly, the



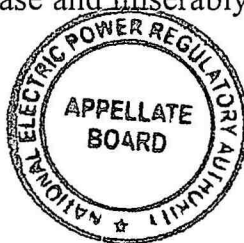
Mr. Naveed Akhtar



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premises of the Respondent was checked by the Appellant on 14.12.2018, wherein the impugned meter of the first connection was found defective with the display washed. Resultantly, a detection bill amounting to Rs.154,085/- against 6,309 units for eight months for the period from May 2018 to December 2018 was debited to the Respondent in March 2019.

3. Being aggrieved with the above actions of the Appellant, the Respondent initially approached the Civil Court Faisalabad and challenged the above detection bill. The honorable Civil Court vide order dated 11.12.2019 dismissed the civil suit due to lack of jurisdiction. Thereafter, the Respondent filed a complaint before the POI on 28.01.2020 and assailed the aforesaid detection bill. The complaint of the Respondent was disposed of by the POI vide the decision dated 11.08.2020, wherein the detection bill of Rs.154,085/- against 6,309 units for eight months for the period from May 2018 to December 2018 was cancelled. The POI directed the Appellant to revise the bill for the cost of 2,004 units for two months i.e. August 2018 and September 2018 as per Clause 4.4(e) of the Consumer Service Manual 2010 (the "CSM-2010").
4. Through the instant appeal, the afore-referred decision dated 11.08.2020 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 that the impugned decision is against the law and facts; that the impugned decision is ex-facie, coram non-judice, ab-initio, void and without jurisdiction as the POI failed to decide the matter within 90 days as envisaged in Section 26(6) of the Electricity Act, 1910; that the POI misconceived and misconstrued the facts of the case and miserably failed to analyze the consumption





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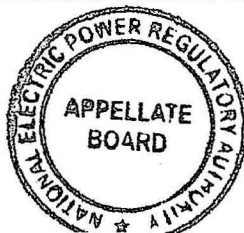
data in true perspective; that the impugned decision is illegal, unlawful, arbitrary and the same is liable to be set aside.

5. Proceedings by the Appellate Board

Upon filing of the instant appeal, a notice dated 09.12.2020 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which however were not filed.

6. Hearing

6.1 Hearing of the appeal was initially conducted at Lahore on 14.10.2022, which however was adjourned till the next date on the request of counsel for the Appellant. Hearing of the appeal was again conducted at NEPRA Regional Office Lahore on 25.11.2022, which was attended by counsel for the Appellant and the Respondent appeared in person. Counsel for the Appellant requested for the adjournment of the case with the plea that the officials of the Appellant are not present to assist him during the arguments. On the other hand, the Respondent appearing in person stated that the detection bill of Rs.154,085/- against 6,309 units for eight months for the period from May 2018 to December 2018 was illegally charged by the Appellant, which was rightly set aside by the POI. He prayed for upholding the impugned decision. Lastly, the case was adjourned with the direction to the Appellant to ensure the presence of the relevant officer in the next hearing, otherwise, the matter will be decided based on available record. Finally, hearing of the Appeal was conducted at NEPRA Regional Office Lahore on 03.06.2023, which was attended by the counsel along with SDO for the Appellant and no one appeared for the Respondent. Learned counsel for the Appellant reiterated the same





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version as contained in the memo of the appeal and contended that the billing meter of the Respondent was found defective with display washed during checking dated 14.12.2018, therefore, a detection bill of Rs.154,085/- against 6,309 units for eight months for the period from May 2018 to December 2018 was debited to the Respondent due to dip in consumption during the said period. He opposed the impugned decision and argued that the POI did not consider the consumption pattern and even failed to decide the matter within 90 days, thus the impugned decision became vague and liable to be struck down.

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

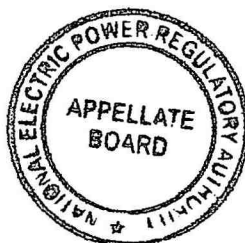
7.1 Objection regarding the time limit for POI for deciding the complaint

As per the record, the Respondent filed his complaint before the POI on 28.01.2020 under Section 38 of the NEPRA Act. POI pronounced its decision on 11.08.2020 i.e. after 196 days of receipt of the complaint. 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. 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 Appellant is dismissed.

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Appeal No.127/POI-2020

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7.2 Detection bill of Rs.154,085/- against 6,309 units for eight months for the period from May 2018 to December 2018

The impugned meter of the Respondent was found defective with washed display during checking dated 14.12.2018. Subsequently, the Appellant debited a detection bill of Rs.154,085/- against 6,309 units for eight months for the period from May 2018 to December 2018 with the plea that actual consumption was not recorded by the impugned meter due to vanished display. In its appeal, the Appellant prayed to set aside the impugned decision and allow the above detection bill.

7.3 In order to reach a just conclusion, consumption data of the first connection of the Respondent is reproduced below:

Month	Units	Remarks
Jan-18	166	-
Feb-18	165	-
Mar-18	185	-
Apr-18	328	-
May-18	140	-
Jun-18	62	-
Jul-18	76	-
Aug-18	0	-
Sep-18	0	-
Oct-18	702	DEF-EST
Nov-18	305	DEF-EST
Dec-18	237	DEF-EST

7.4 It is obvious that the discrepancy of the vanished display can be noticed by the meter reader during the monthly readings, which however was never pointed out by the officials of the Appellant before October 2018 as depicted in the billing statement, wherein the Appellant fed DEF-EST code for onward billing. If presumed the impugned meter was defective, why the Appellant included the



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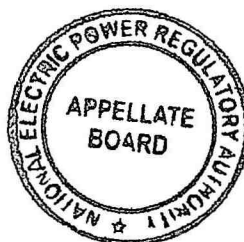
months

i.e.

October 2018 to December 2018 in the detection bill for which recovery has already been made from the Respondent on the DEF-EST code. The Appellant was required to adopt the methodology for charging the detection bill as per provisions of the CSM-2010. However, the Appellant debited the detection bill of Rs.154,085/- against 6,309 units for eight months for the period from May 2018 to December 2018 after considering the combined consumption of both the first and second connection, which is not appreciable being inconsistent with Clause 4.4(e) of the CSM-2010. Said clause of the CSM-2010 being relevant 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 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 LESCO 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 LESCO 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."*

7.5 Above-referred clause of the CSM-2010 allows the Appellant to charge the detection bill for maximum two months in case of a defective meter. In view of the above, the detection bill of Rs.154,085/- against 6,309 units for eight months for the period from May 2018 to December 2018 charged to the Respondent is illegal, unjustified and the same is set aside.





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7.6 As per the billing statement, the Appellant already debited the bills from October 2018 to December 2018 to the Respondent on DEF-EST code, hence, the detection bill for two previous months i.e. August 2018 and September 2018 is recoverable from the Respondent as nil consumption charged by the Appellant during the said months. The impugned decision of the POI for allowing the detection bill of net 2004 units for August 2018 and September 2018 as per consumption of corresponding months of the previous year being higher is correct and the same is maintained to this extent.

7.7 The billing account of the Respondent be overhauled after adjusting payments made against the above detection bills.

8. Foregoing in view, the appeal is dismissed.

Abid Hussain
Member

Muhammad Irfan-ul-Haq
Member

Naweed Illahi Sheikh
Convener

Dated: 14-09-2023

