



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

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No. NEPRA/Appeal/128/POI/2020/ 029

January 11, 2023

- | | |
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| 1. Tayyab Haque,
S/o. Ch. Abdul Haque,
R/o. Chak No. 67/JB Sadhar,
Jhang Road, Faisalabad | 2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad |
| 3. Ch. Muhammad Imran Bhatti,
Advocate High Court,
44-District Courts, Faisalabad | 4. Muhammad Nawaz Waseer,
Advocate Supreme Court,
Sargodha Khushab Law Chambers,
First Floor, Turner Tower,
9-Turner Road, Lahore |
| 5. Sub Divisional Officer,
FESCO Ltd,
Jhang 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 Tayyab Haque Vs. FESCO Against the Decision Dated 26.08.2020 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 05.01.2023, 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. 128/POI-2020

Tayyab Haque S/o Ch. Abdul Haque, R/o Chak No.67/JB,
Sadhar, Jhang Riad, Faisalabad

.....Appellant

Versus

Faisalabad Electric Supply Company Limited

.....Respondent

**APPEAL UNDER SECTION 38(3) OF THE REGULATION OF GENERATION,
TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 26.08.2020 PASSED BY THE PROVINCIAL
OFFICE OF INSPECTION FAISALABAD REGION, FAISALABAD**

Hearing dated: 17.06.2022

Appellant
Ch. M. Imran Bhatti Advocate

Respondent
Mr. Azhar Hussain Clerk

Hearing dated 25.11.2022:

Appellant
Nemo

Respondent
Malik Asad Akram Awan Advocate
Mr. Javed Iqbal MS-II

DECISION

1. Through this decision, an appeal filed by Mr. Tayyab Haque (hereinafter referred to as the “Appellant”) against the decision dated 26.08.2020 of the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the “POI”) is being disposed of.
2. As per the stated facts of the case, Faisalabad Electric Supply Company Limited (hereinafter referred to as the “Respondent”) is a licensee of the National Electric





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Power Regulatory Authority (hereinafter referred to as the “NEPRA”) for the distribution of electricity in the territory and as per terms and conditions specified in the license. The Appellant is its industrial consumer bearing Ref No.24-13215-5501065-R with a sanctioned load of 143.98 kW under the B-2(b) Tariff category, who received a bill of Rs.1,450,603/- in May 2020 containing the current bill of Rs.1,71,004/- for 5,040 units + 116 MDI (kW) and arrears of Rs.1,280,139/- for the period October 2019 to May 2020 debited based on the difference of readings between the billing and backup meters.

3. Being aggrieved, the Appellant initially agitated the above bill before the Respondent. However, the Respondent refused to withdraw the above bill claiming that the metering equipment of the Appellant was checked by the Metering & Testing (the “M&T”) team on 11.10.2019 and the that the billing meter was found 33% slow due to the one dead phase while the backup meter was found working within BSS limits.
4. Being dissatisfied with the actions of the Respondent, the Appellant filed a complaint before the POI on 04.06.2020 and disputed the arrears of Rs.1,280,139/- added to the bill for May 2020. The POI vide order dated 04.06.2020 directed the Appellant to pay the 50% amount of the arrears of Rs.1,280,139/-. In compliance with the direction of the POI, the Appellant made a payment of Rs.810,534/- under protest to avoid disconnection of the electric supply of the premises. The complaint of the Appellant was disposed of vide the POI decision dated 26.08.2020, wherein the arrears of Rs.1,280,139/- included in the bill for May 2020 were declared as





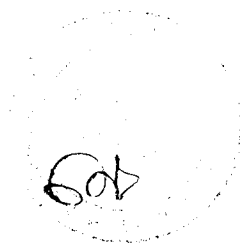
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justified and the Appellant was directed to pay the same in three (03) equal installments.

5. Subject appeal has been filed by the Appellant against the afore-mentioned decision (hereinafter referred to as the “impugned decision”) before the NEPRA. In its appeal, the Appellant objected to the maintainability of the impugned decision, *inter alia*, on the following grounds, (1) the disputed meter was inspected by the POI on 17.09.2020 but it remains silent about these facts, hence the impugned decision is nonspeaking, self-contradictory and the matter be remanded back to the lower forum for fresh decision; (2) the arrears of Rs.1,280,139/- were debited on the basis of the difference of readings between the billing and backup meters in violation of Clause 4.4(e) of the Consumer Service Manual-2010 (the “ CSM-2010”), which restricts the Respondent to charge the detection bill maximum for two billing cycles; (3) all actions and proceedings of the Respondents were in derogation of law, Regulations, Clause 14.1 of the CSM-2010; (4) the impugned decision for not granting relief to the Appellant as claimed and prayed in the complaint is illegal, unlawful as the same was passed without any cogent reasons and is the result of non-application of technical, legal as well as judicial mind over the matter in dispute. The Appellant finally prayed that the impugned decision be set aside.

6. Proceedings by the Appellate Board

Upon filing of the instant appeal, a notice dated 05.01.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days.



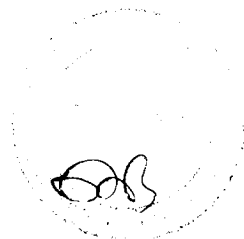


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However, no reply was received from the Respondent.

7. Hearing

- 7.1 Hearing in the matter of the subject Appeal was fixed for 22.10.2021 at Lahore and accordingly, the notices dated 14.10.2021 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, Lahore on 22.10.2021, which was attended by the representative for the Respondent, however, learned counsel for the Appellant could not appear due to the stated reason of roadblock. Hence the hearing is adjourned till the next date.
- 7.2 After issuing notices to both the parties, hearings of the subject appeal were fixed twice at the NEPRA Regional Office Lahore on 31.12.2021 and 11.03.2022, which however were adjourned due to the non-appearance of the counsel for the Respondent.
- 7.3 Lastly notices dated 08.06.2022 were sent to both parties for hearing. On the hearing dated 17.06.2022, a counsel appeared for the Appellant whereas a court clerk representing the Respondents informed that the counsel engaged in the instant case could not appear before the Appellate Board due to severe illness. Learned counsel for the Appellant reiterated the same arguments as contained in memo of the Appeal and argued that a bill of Rs.1,450,603/- debited in May 2020, which contained the arrears of Rs.1,280,139/- for the period October 2019 to May 2020 debited based on the difference of readings between the billing and backup meters are illegal and unjustified. Learned counsel for the Appellant



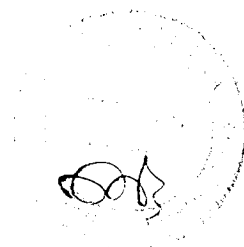


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contended that the above bill was challenged before the POI, who conducted the joint checking of the metering equipment on 17.09.2020 but its decision is silent about the said joint checking. Learned counsel for the Appellant opposed the charging of arrears on account of the difference of readings between the billing and backup meters and pleaded that if presumed that 33% slowness in the billing meter was observed by the M&T team as to why the Respondent failed to adhere the procedure as laid down in Chapter 4 of the CSM-2010. Learned counsel for the Appellant prayed for setting aside the impugned decision. To verify the contention of the Appellant, the representative for the Respondent was directed to provide the PITC data within one (01) week. However, no document was supplied by the Respondent to justify the charging of disputed arrears of Rs.1,268,139/-.

7.4 Despite the continuous absence of the Respondent, they were given yet another opportunity vide NEPRA letter No. NEPRA/Appeal-128/POI-2020/787 dated 29.07.2022 to submit the following information within 3 days to arrive at a just and informed decision

- i. The meter checking report of the M&T team of FESCO.
- ii. The time period within which the faulty meter is required to be changed after MCO.
- iii. The officers who were responsible to take the meter reading of the Appellant during the disputed period i.e. October 2019 to April 2020.
- iv. The declaration along with evidence of compliance with clauses 6.1 (a), (b), (c) & (d) of CSM-2010 during the disputed period.
- v. The evidence (copy of bills, snaps, etc.) in support of FESCO's claim about taking readings from faulty meters during the disputed period.
- vi. The detailed statement, along with verifiable proof, showing difference in the consumption recorded by the billing meter and the backup meter during the disputed period.





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- vii. Date of replacement of faulty meter.
- viii. Whether the Appellant approached FESCO for correction of the bill for May 2020 and what procedure was followed to address his complaint?

7.5 As the Appellant adduced his arguments during the hearing dated 17.06.2022, however, the Respondent neither appeared nor submitted the relevant information after a lapse of considerable time. Realizing the sanctity of the case, the Respondent was afforded another chance of hearing for which notices dated 16.11.2022 were issued to the Respondent only and hearing of the Appeal was conducted at NEPRA Regional Office Lahore on 25.11.2022. On the given date of hearing, a counsel along with an official appeared for the Respondent. Learned counsel for the Respondent submitted that the meter under dispute of the Appellant became defective in October 2019, however, billing was carried out on the impugned billing meter instead of the backup meter. As per learned counsel for the Respondent, subsequently, the billing was shifted on the backup meter and a difference bill of Rs.1,280,139/- for the period October 2019 to May 2020 was debited to the Appellant based on the difference of readings between the billing and backup meters and added to the bill for May 2020. Learned counsel for the Appellant defended the impugned decision and prayed for upholding the same. To reach a just conclusion, copy of the NEPRA letter No. NEPRA/Appeal-128/POI-2020/787 dated 29.07.2022 was provided to both the counsel as well as the representative for the Respondent with the direction to submit the requisite information within seven (07) days.





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8. Arguments were heard and the record was perused. Following are our observations:
- 8.1 At the outset, it is stated that throughout the proceedings of the instant appeal, the Respondent did submit its response against the contention of the Appellant in writing despite repeated letters dated 05.01.2021 and dated 29.07.2022. As such the reliance is made on the information submitted by the Appellant as well as the contents of the impugned decision.
- 8.2 The Appellant received a bill of Rs.1,450,603/- in May 2020, which included the current bill of Rs.1,71,004/- and the arrears of Rs.1,280,139/- for the period October 2019 to May 2020.
- 8.3 The Appellant is an industrial consumer of the Respondent having a sanctioned load of 143.98 kW under the B-2(b) Tariff category. The billing meter bearing No. 102163 and a backup meter bearing No.102162 are installed at the premises of the Appellant. As per the Appellant, he made payment of regular bills issued by the Respondent till April 2020, however in May 2020, the Respondent included arrears of Rs.1,280,139/- for the period October 2019 to May 2020 without giving any reason. Therefore, the Appellant initially approached the Respondent for withdrawal of the above bill, which however was not acceded to by the Respondent. Later on, the Appellant assailed the above arrears before the POI.
- 8.4 The POI in the impugned decision has recorded that the metering equipment was checked by the M&T team of the Respondent on 11.10.2019 and found the TOU billing meter 33% slow and TOU backup meter working accurately. Based upon the above observations, the Respondent shifted the billing to the TOU backup meter by



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feeding MCO and showing RP in the billing month of October 2019 with the change of meter No.102163 to 102162. The impugned decision goes on to state that the Respondents completed paperwork for the change of meter but did not shift readings on the backup meter and continued billing on the slow meter without changing MF. The Respondent realized the mistake and charged the actual readings of meter No.102162. The difference in readings was also charged as a bill adjustment in the bill for May 2020.

8.5 It is observed that the POI has made the impugned decision while accepting the Respondent's claim that (i.) the meter of the Appellant was found 33% slow on 11.10.2019 and ii) that despite changing the meter No.102162 in the bills, the readings were not actually shifted to the correct backup meter till April 2020. The impugned decision is however silent about the evidence confirming the veracity of the above facts.

8.6 In the first instance, it needs to be confirmed that the impugned meter was found 33% slow in October 2019. Clause 4.4 of the CSM-2010 gives an elaborate procedure to confirm the slowness of the impugned metering equipment:

"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 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



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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 the 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.

8.7 There is nothing on record from the Respondent as well as in the impugned decision that the above procedure was followed to confirm the slowness of the impugned meter. The Appellant who being the consumer was required to be associated during the checking of the impugned meter has shown his unawareness of any such checking by the Respondent. In the absence of any proof of meter slowness required to be established through a laid down procedure, there is no force in the claim of the Respondent and its action to shift the billing to the backup meter.

8.8 In the impugned decision, the POI has recorded that the meter number was changed in the bills from October 2019 and onwards, however, the reading was not shifted to the backup meter. Again the verifiable proof is needed to confirm that such a discrepancy actually occurred. However, the impugned decision is silent about the reason which leads to believe the stated event. As already stated, the Respondent was allowed to submit its response to the contention of the Appellant. However, the Respondent did not submit written comments. They were given yet another



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opportunity vide letter No. NEPRA/Appeal-128/POI-2020/787 dated 29.07.2022 to submit the following information to arrive at a just and informed decision.

- i. The meter checking report of the M&T team of FESCO.
- ii. The time period within which the faulty meter is required to be changed after MCO.
- iii. The officers who were responsible to take the meter reading of the Appellant during the disputed period i.e. October 2019 to April 2020.
- iv. The declaration along with evidence of compliance with clauses 6.1 (a), (b), (c) & (d) of CSM-2010 during the disputed period.
- v. The evidence (copy of bills, snaps, etc.) in support of FESCO's claim about taking readings from faulty meters during the disputed period.
- vi. The detailed statement, along with verifiable proof, showing difference in the consumption recorded by the billing meter and the backup meter during the disputed period.
- vii. Date of replacement of faulty meter.
- viii. Whether the Appellant approached FESCO for correction of the bill for May 2020 and what procedure was followed to address his complaint.

8.9 The Respondent was directed to submit the required information within 3 days and it was clarified in NEPRA's letter that in case, the required information is not received within the given time period, the matter will be decided based on available record and responsibility for any loss to the company due to non-cooperation in the appeal proceedings shall lie on the concerned officers/staff of the Respondent.

8.10 In addition, an opportunity for hearing was provided to the Respondent on 25.11.2022, wherein they were directed to submit the response against the NEPRA's above-referred letter dated 29.07.2022. However, the Respondent miserably failed to respond to the NEPRA's letter which not only shows its lack of interest to defend its position in this case but also indicates that the Respondent does not have any



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legal grounds or verifiable proof in support of its action to charge the Appellant with arrears of Rs.1,280,139/- in the monthly bill of May 2020.

8.11 Keeping in view all the above facts, this forum is of the firm view that the impugned decision is nonspeaking and devoid of evidence-based analysis. Moreover, the Respondent failed to submit the legal grounds as well as the verifiable documentary evidence to prove the premise that formed the basis of the impugned decision in its favor. Therefore based on the available record, this forum finds no justification to charge the Appellant with arrears of Rs.1,280,139/- by the Respondent in the monthly bill of May 2020. Accordingly, the impugned decision for allowing the said arrears is illegal, unjustified, and liable to be set aside.

8.12 Consumer's account of the Appellant be overhauled and the adjustment be made for the payments already made in the future bills.

9. In view of the above, the appeal is accepted and consequently, the impugned decision is set aside.

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 05/01/2023