



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 E-mail: office@nepra.org.pk

No. NEPRA/Appeal/002/2024/ 642

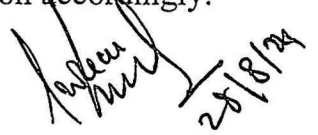
August 28, 2024

1. Ghulam Muhammad,
S/o. Malik Sher,
R/o. Chak No. 154/JB,
Bhawana, District Chiniot
Cell No. 0346-1923019
2. Chief Executive Officer,
FESCO Ltd,
West Canal Road, Abdullah Pur,
Faisalabad
3. Mian Muhammad Iqbal,
Advocate High Court,
Mian & Company Law Associates,
4-Link Farid Kot Road, Lahore
Cell No. 0324-9409540
4. Sub Divisional Officer (Operation),
FESCO Ltd,
Narwala Road 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 No.002/2024 (FESCO Vs. Ghulam Muhammad) Against the Decision Dated 28.08.2023 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 28.08.2024 (05 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: As Above


(Ikram Shakeel)
Deputy Director
Appellate Board

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 Nos.002/POI-2024

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Ghulam Muhammad S/o. Malik Sher, R/o. Chak No.154/JB,
Bhawana, District Chiniot

.....Respondent

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

For the Appellant:

Mian Muhammad Iqbal Advocate
Rana Delair Tariq SDO

For the Respondent:

Nemo

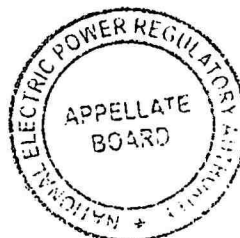
DECISION

1. Through this decision, the appeal filed by Faisalabad Electric Supply Company Limited (hereinafter referred to as the "Appellant") against the decision dated 28.08.2023 of the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") is being disposed of.
2. Briefly speaking, Ghulam Muhammad (hereinafter referred to as the "Respondent") is an agricultural consumer of the Appellant bearing Ref No.29-13225-7502030 with a sanctioned load of 11 kW, and the applicable Tariff category is D-2(b). Reportedly, the display of the billing meter of the Respondent became defective, hence it was replaced with a new meter by the Appellant in July 2022. Subsequently, the removed meter of the Respondent was checked by the Metering & Testing ("M&T") team of the Appellant on 26.10.2022, wherein, 3,513 units were found uncharged. Resultantly, a detection bill of Rs.72,961/- against 3,513 units was debited to the Respondent due to the difference of readings between the units already charged and the final reading of the impugned meter and

Appeal No.002/POI-2024

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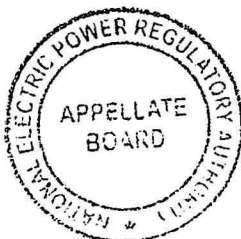


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added to the bill for May 2023.

3. Being aggrieved, the Respondent filed a complaint before the POI on 12.05.2023 and challenged the above detection bill. Despite repeated notices, the Appellant neither submitted reply to the complaint nor appeared before the POI, hence the complaint of the Respondent was disposed of by the POI vide the Ex-parte decision dated 28.08.2023, wherein the detection bill of Rs.72,961/- against 3,513 units was cancelled.
4. The Appellant filed instant appeal before the NEPRA against the afore-referred decision of the POI, which was registered as Appeal No.002/POI-2024. 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 facts and law of the case; that the POI did not apply his independent and judicious mind while passing the impugned decision, which is not sustainable in the eyes of law as per judgment of Apex Court reported in PLD 2012 SC 371; that the POI has not thrashed out the consisting reasons in the matter and assed the illegal order; that the POI decided the matter after expiry of 90 days, which is violative of Section 26(6) of the Electricity Act 1910; and that the impugned decision is liable to be set aside.
5. **Proceedings by the Appellate Board**
Upon the filing of the instant appeal, a notice dated 17.01.2024 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were filed on 02.02.2024. In the reply, the Respondent raised the preliminary objection regarding limitation and prayed for the dismissal of the appeal being barred by time. On merits, the Respondent rebutted the version of the Appellant and averred that the Appellant was aware regarding the proceeding before the POI but they with malafide intention did not join the said proceedings despite the notices were sent to their address as well as communicated via WhatsApp. The Respondent finally prayed for upholding the impugned decision.
6. **Hearing**
Hearing of the subject appeal was conducted at NEPRA Regional Office Lahore on 08.06.2024, which was attended by a counsel along with SDO for the Appellant, whereas no one tendered appearance for the Respondent. Learned counsel for the Appellant contended that the display of the impugned billing meter of the Respondent was found defective, therefore it was replaced with a new meter in July 2022 and sent for data retrieval.

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Learned counsel for the Appellant further contended that 3,513 units were found uncharged in the impugned meter, therefore a detection bill amounting to Rs.72,961/- against 3,513 units was debited to the Respondent due to the difference of units already charged and the final retrieved reading of the impugned meter to recover the revenue loss sustained by the Appellant. As per learned counsel for the Appellant, the above detection bill was cancelled by the POI without perusing the documentary evidence. Learned counsel for the Appellant finally prayed that the impugned decision is liable to be set aside.

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

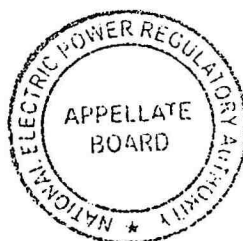
7.1 Preliminary objection of the Respondent regarding limitation:

While considering the preliminary objection of limitation raised by the Respondent, it is noted that the Appellant applied for the copy of the impugned decision dated 28.08.2023 on 14.11.2023, which was delivered by the POI on the same date i.e. 14.11.2023. The Appellant filed the appeal before the NEPRA on 08.12.2023 which is within thirty (30) days of the receipt of the impugned decision as per Section 38 of the NEPRA Act, 1997. There is no force in the contention of the Respondent that the time of limitation starts from the date of announcement. Reliance in this regard is placed on the judgment of the honorable Lahore High Court Lahore cited as 2016 YLR 1916, wherein it was held that the POI is required to send a copy of the impugned decision to the parties and the period of limitation for filing the appeal will start from the date of receipt of the impugned decision. Hence the objection of the Respondent is rejected being devoid of force.

7.2 Objection regarding the time limit for POI to decide the complaint:

As per the record, the Respondent filed his complaint before the POI on 12.05.2023 under Section 38 of the NEPRA Act. POI pronounced its decision on 28.08.2023 i.e. after 90 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 NEPRA 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 *PLJ 2017-Lahore-627* and *PLJ-2017-Lahore-309*. 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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7.3 Detection bill of Rs.72,961/- for 3,513 units:

In the instant case, the Appellant claimed that the impugned meter was replaced with a new meter in July 2022, and during subsequent M&T checking dated 26.10.2022, the display of the impugned meter of the Respondent was found defective and 3,513 units were found pending due to the difference of already charged units and the final reading retrieved. Thereafter, the Appellant debited a detection bill of Rs.72,961/- against 3,513 units to the Respondent, which was challenged by him before the POI.

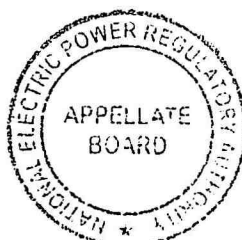
7.4 It is observed that the Appellant charged the above detection bill based on the data retrieval report but the said checking was neither carried out in the presence of the Respondent nor said impugned meter was checked by the POI being competent forum. It is further observed that the data was downloaded after the lapse of four months and the impugned detection bill was charged after the lapse of more than nine months.

7.5 To further verify the contention of the Appellant regarding the above detection bill, the consumption data is reproduced below:

Last Eleven Months		Disputed Months		Corresponding months	
Month	Units	Month	Units	Month	Units
Jul-21	2037	Jun-22	2021	Jun-21	2016
Aug-21	3026	Jul-22	1089	Jul-21	2037
Sep-21	2806				
Oct-21	2267				
Nov-21	1262				
Dec-21	1947				
Jan-22	118				
Feb-22	1857				
Mar-22	2480				
Apr-22	2055				
May-22	2517				
Average	2034	Average	1555	Average	2026
Detection bill = 3,513 units					

From the above table, it is revealed that the impugned meter recorded considerably less units as compared to the consumption recorded during the last eleven months as well as the consumption of corresponding undisputed months of the preceding year. However, there is no justification to debit a detection bill of 3,513 units on account of alleged defectiveness and pending units. Therefore, we are inclined to agree with the determination of the POI for

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the cancellation of the above detection bill.

7.6 As evident from the above table, actual consumption could not be charged during the disputed period due to the vanished display of the impugned meter, hence it would be fair and appropriate to debit the revised bills for the period from June 2022 and July 2022 as per average consumption of last eleven months being higher, according to Clause 4.3.1(b) of the CSM-2021. The impugned decision is liable to be modified to this extent.

8. In view of what has been stated above, it is concluded that:

8.1 the detection bill of Rs.72,961/- against 3,513 units charged to the Respondent is unjustified and the same is cancelled.


8.2 the Respondent may be charged the revised bills from June 2022 and July 2022 as per average consumption of the last eleven months being higher, according to Clause 4.3.1(b) of the CSM-2021.


8.3 The billing account of the Respondent be overhauled, accordingly.

9. The impugned decision is modified in the above terms.

On leave
Abid Hussain
Member/Advisor (CAD)

Dated: 28-08-2024


Naweed Illahi Sheikh
Convener/DG (CAD)


Muhammad Irfan-ul-Haq
Member/ALA (Lic.)

