



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/080/2023/ & 100/2023/613

July 25, 2024

1. Javaid Khan,
S/o. Muhammad Anwar,
Prop: Power Looms Factory,
Gali No. 05, Rehmanabad,
District Faisalabad
2. Chief Executive Officer,
FESCO Ltd,
West Canal Road, Abdullah Pur,
Faisalabad
3. Saeed Ahmed Bhatti,
Advocate High Court,
66-Khyber Block, Allama Iqbal Town,
Lahore
Cell No. 0300-4350899
4. Mahar Muhammad Walait Khan Sahmal,
Advocate High Court,
Chamber No. 86, Lyallpur Law Building,
District Courts, Faisalabad
Cell No. 0346-6243424
0315-6243424
5. Sub Divisional Officer (Operation),
FESCO Ltd,
Ghulam Muhammad Abad 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 No.080/2023 & 100/2023 (FESCO Vs. Javaid Khan) & (Javaid Khan Vs. FESCO Against the Decision Dated 17.07.2023 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 25.07.2024 (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 No.080/POI-2023

Faisalabad Electric Supply Company LimitedAppellant

Versus

Javaid Khan S/o. Muhammad Anwar,
Power Looms Factory, Gali No.05, Rehmanabad,
District FaisalabadRespondent

&

Appeal No.100/POI-2023

Javaid Khan S/o. Muhammad Anwar,
Power Looms Factory, Gali No.05, Rehmanabad,
District FaisalabadAppellant

Versus

Faisalabad Electric Supply Company LimitedRespondent

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

For FESCO:

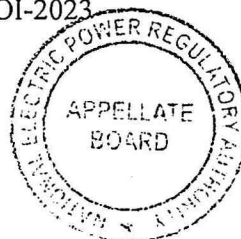
Mr. Saeed Ahmed Bhatti Advocate
Sardar M. Rashid SDO

For the Consumer:

Mr. M. Walait Khan Advocate

DECISION

1. Brief facts leading to the filing of instant appeal are that Javaid Khan is a consumer (hereinafter referred to as the "Consumer") of the Faisalabad Electric Supply Company Limited (hereinafter referred to as the "FESCO") having two industrial connections i.e. (i) connection bearing Ref No.27-13221-10090300-U with sanctioned load of 03 kW and the applicable Tariff category is B-1(b) (the "disputed connection") and (ii) connection



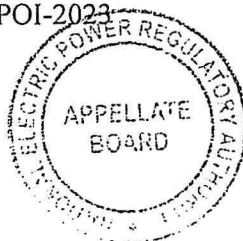
11.02



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bearing Ref No.21-13221-0090600 with sanctioned load of 04 Kw and the applicable tariff category is B-1(b). The metering equipment of the disputed connection of the Consumer was checked by the Metering and Testing (M&T) team of the FESCO on 23.08.2022, wherein the billing meter was found defective with vanished display, therefore the Appellant fed DEFEST code for the bills w.e.f August 2022 and onward till the replacement of the impugned meter in November 2022. Thereafter, a detection bill amounting to Rs.654,559/- against 12,357 units for four months i.e. August 2022 to November 2022 was debited to the Consumer @ 50% load factor of the connected load i.e. 14.428 kW, and added to the bill for April 2023.

2. Being aggrieved, the Consumer filed a complaint before the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") and disputed the above detection bill. The complaint of the Consumer was disposed of by the POI vide the decision dated 17.07.2023 wherein the detection bill of Rs.654,559/- against 12,357 units for four months i.e. August 2022 to November 2022 was cancelled and FESCO was allowed to recover net 9,293 units from the Respondent.
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.080/POI-2023 and Appeal No.100/POI-2023 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.654,559/- against 12,357 units for four months i.e. August 2022 to November 2022 as null and void and allowed the FESCO to charge the revised bill of net 9,293 units; that the POI while deciding the complaint of the Consumer ignored the consumption data and other authentic documents; 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.100/POI-2023, the Consumer contended that the impugned decision is against the facts and law of the case. The Consumer further contended that FESCO



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charged the detection bill beyond two billing cycles, which is violative of Clause 4.3.1 of the CSM-2021. As per the Consumer, the impugned decision is sketchy, and patchy, based on surmises and conjectures and the same is liable to be set aside.

6. Proceedings by the Appellate Board:

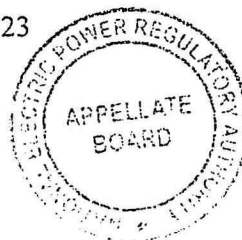
Notices dated 25.09.2023 and 18.10.2023 were sent to the FESCO and the Consumer respectively for filing reply/para-wise comments to the cross-appeals within ten (10) days. However, both parties did not submit their reply against the counter appeals.

7. Hearing

7.1 Hearing in the matter of the subject Appeals was conducted at the NEPRA Regional Office Lahore on 02.03.2024 wherein learned counsels of both parties were present. Learned counsel for FESCO repeated the same contentions as given in memo of Appeal No.080/POI-2023 and argued that the impugned billing of the disputed connection of the Consumer was checked by FESCO on 23.08.2022, wherein the billing meter was found defective with vanished display, therefore detection bill of Rs.654,559/- against 12,357 units for four months i.e. August 2022 to November 2022 was debited to the Consumer. Learned counsel for FESCO averred that the POI vide impugned decision allowed the recovery of the detection bill for net 9,293 units without due consideration of material evidence. Learned counsel 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.

7.2 Learned counsel for the Consumer rebutted the version of FESCO and averred that the impugned billing meter of the disputed connection was found defective with vanished display during checking dated 23.08.2022, however instead of replacement of the impugned meter within two billing cycles, FESCO initially debited estimated bills for the period from August 2022 to November 2022 and subsequently further burdened the Consumer by debiting illegal, unjustified detection bill for four 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 checking. As per learned counsel for the Consumer, the provisions of CSM-2021 restrain FESCO to replace the defective meters within two months, however, FESCO failed to follow the procedure as laid down in CSM-2021 and

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charged the impugned 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, as such the impugned decision for allowing the revised detection bill of net 9,293 units 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 to decide the complaint

As per the record, the Consumer filed his complaint before the POI under Section 38 of the NEPRA Act. POI pronounced its decision on 17.07.2023 i.e. after 90 days from the date 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.

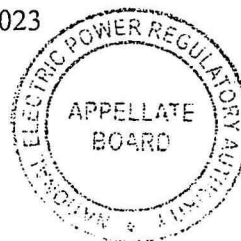
8.2 Detection bill of Rs.654,559/- against 12,357 units for four months i.e. August 2022 to November 2022

The display of the billing meter of the disputed connection of the Consumer became defective in August 2022 and it was replaced with a new meter by FESCO in November 2022. The Consumer was debited the bills for the period from August 2022 to November 2022 on the DEF-EST code. Subsequently, a detection bill of Rs.654,559/- against 12,357 units for four months i.e. August 2022 to November 2022 was charged to the Consumer based on 50% load factor of the connected load i.e.14.428 kW, which is under dispute before this forum.

8.3 Since the data of the impugned billing meter of the Consumer could not be retrieved by FESCO due to EPROM error, hence the impugned detection bill will be verified through the analysis of consumption data of both connections of the Consumer in the below table:

* C1 represent undisputed connection and C2 represents disputed connection

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Period before dispute				Disputed period				Period after dispute			
Month	Units of C1	Units of C2	Total Units	Month	Units of C1	Units of C2	Total Units	Month	Units of C1	Units of C2	Total Units
Aug-21	4519	0	4519	Aug-22	686	1935	2621	Aug-23	4473	1618	6091
Sep-21	3992	0	3992	Sep-22	0	1935	1935	Sep-23	4656	3875	8531
Oct-21	3950	1	3951	Oct-22	0	2419	2419	Oct-23	5023	1916	6939
Nov-21	2707	0	2707	Nov-22	0	2418	2418	Nov-23	6534	2600	9134
Total	15168	1	15169	Total	686	8707	9393	Total	20686	10009	30695

8.4 As evident from the above table, the combined consumption of both connections of the Consumer during the disputed period is much less than the combined consumption of both connections during the corresponding periods before and after the dispute. This indicates that the impugned meter of the disputed connection of the Consumer recorded less consumption due to defectiveness. However, this does not tantamount FESCO to charge the detection bill to the Consumer based on 50% load factor of the connected load in case of a defective meter being violative of provisions of the CSM-2021. Under these circumstances, the contention of FESCO for recovery of the detection bill of Rs.654,559/- against 12,357 units for four months i.e. August 2022 to November 2022 is not justified being contrary to the facts and violative of the provisions of the CSM-2021 and the above detection bill is set aside, which is also the determination of the POI.

8.5 Similarly, the determination of POI for revision of the detection bill for net 9,293 units on the basis of average consumption of the last eleven months is correct and maintained to this extent.

9. Foregoing in view, both appeals are dismissed.

Abid Hussain
Member

Naweed Illahi Sheikh
Convener

Muhammad Irfan-ul-Haq
Member

Dated: 25-07-2024

