



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

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No. NEPRA/Appeal/038/2022/ *Saf*

October 10, 2024

1. Abdul Aziz,
S/o. Fazal Qadir,
Prop: Al-Aziz Hotel, Samundri Road,
Faisalabad
Phone No. 041-8721175
2. Chief Executive Officer,
FESCO Ltd,
West Canal Road, Abdullah Pur,
Faisalabad
3. Ch. Shahzad Ahmed Bajwa,
Advocate High Court,
12-Faisal Park, Imamia Colony,
Shahdara, Lahore
Cell No. 0301-4174291
4. Sub Divisional Officer (Operation),
FESCO Ltd,
Samundri 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.038/2022 (FESCO Vs. Abdul Aziz) Against the Decision Dated 13.01.2022 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 10.10.2024 (04 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.038/POI-2022

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Abdul Aziz S/o. Fazal Qadir, Prop: Al-Aziz Hotel,
Samundari Road, Faisalabad

.....Respondent

APPEAL UNDER SECTION 38(3) OF THE REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

Mr. Shahzad Ahmed Bajwa Advocate

For the Respondent:

Nemo

DECISION

1. As per the facts of the case, Abdul Aziz (hereinafter referred to as the "Respondent") is a commercial consumer of Faisalabad Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.30-13242-5204003-U having sanctioned load of 65 kW and the applicable tariff category is A-2(c). Reportedly, both the billing and backup meters of the Respondent were found 33% slow due to the blue phase being dead during the M&T checking dated 07.12.2020 of the Appellant, therefore, MF of the Respondent was enhanced from 30 to 44.7 w.e.f December 2020 and onwards by the Appellant due to 33% slowness of the meter. Later on, a detection bill of Rs.577,530/- for 19,245 units+28 kW MDI was charged to the Respondent @ 33% slowness of the meter. Subsequently, a check meter was installed in series with the impugned meter of the Respondent by the Appellant on 28.05.2021.
2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") and challenged the above detection bill and the bills with enhanced MF=44.7. During the subsequent comparison of the consumption of the check and the billing meters on 29.06.2021, the billing meter was found running 28.96% slow as compared to the check meter. The complaint of the Respondent was disposed of by the POI vide decision dated 13.01.2022, wherein the detection bill of Rs.577,530/- for 19,245 units+28 kW MDI and the bills with enhanced MF=44.7 from





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December 2020 to May 2021 were cancelled. As per the POI decision, the Appellant was directed to revise the detection bill for net 10,541 units+52 kW MDI and the bills with MF=42.25 from December 2020 to May 2021.

3. Being dissatisfied, the Appellant has filed the instant appeal before the NEPRA and assailed the decision dated 13.01.2022 of the POI (hereinafter referred to as the "impugned decision"). In its appeal, the Appellant opposed the maintainability of the impugned decision, *inter-alia*, on the following grounds that the POI did not apply his judicious mind while passing the impugned decision; that the impugned decision is against the settled principle of law; that the impugned decision is against Clause 4.3.2 of the CSM-2021 being passed without perusing the record and consumption data passed the impugned decision; that 33% slowness observed during the checking dated 07.12.2020, therefore the detection bill of 19,245 units+28 kW MDI was debited to the Respondent; that the dip in consumption from July 2020 confirms the slowness in the metering equipment; that the POI passed the impugned decision after the expiry of 90 days, which is violative of Section 26(6) of Electricity Act 1910; and that the same is liable to be set aside.

4. Notice dated 06.04.2022 of the appeal was issued to the Respondent for filing reply/para-wise comment, which however were filed on 18.04.2022. In the reply, the Respondent repudiated the version of the Appellant regarding charging the impugned bill, supported the impugned decision, and prayed for the dismissal of the appeal.

5. **Hearing**

Hearings of the appeal was conducted at NEPRA Regional Office Lahore on 08.06.2024, wherein learned counsel tendered appearance for the Appellant, and no one was present from the Respondent. Learned counsel for the Appellant repeated the same arguments as contained in memo of the appeal and argued that the detection bill of 19,245 units+28 kW MDI and the bills with enhanced MF=44.7 charged to the Respondent due to 33% slowness of the meter are justified and payable by him. Learned counsel for the Appellant opposed the impugned decision for cancellation of the above bills and prayed for the decision on merits.

6. Having heard the arguments and record perused. Following are our observations:

6.1 **Objection regarding the time limit for POI to decide the complaint:**

As per the record, the Respondent filed his complaint before the POI under Section 38 of the NEPRA Act. POI pronounced its decision on 13.01.2022 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





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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*. The relevant excerpt of the above judgments is reproduced below:

"PLJ 2017-Lahore-627:

Regulation of Generation Transmission and Distribution of Electric Power Act, 1997--

--838(3)--Electricity Act, 1910, S. 26(6)--Constitution of Pakistan, 1973. Art. 199--Constitutional petition--Consumer of LESCO.. The sanctioned load was differed with the connected load--Determine the difference of charges of the previous period of misuse to be recovered from the consumer--Validity--No disconnection or penal action was taken against petitioner rather only difference of charges between sanctioned load and load actually used by petitioner was charged, hence Clause 7.5 of Consumer Service Manual has not been violated-Issuance of detection bill itself amounts to notice and petitioner had also availed remedy before POI against determination--Order passed by POI was beyond 90 days--Order was not passed by the respondent under Section 26(6) of the Act as Electric Inspector rather the order was passed by him in the capacity of POI under Section 38(3) of Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (NEPRA Act), therefore, argument has no substance.

PLJ-2017-Lahore-309:

The learned counsel for the petitioner submitted that there was an outer time limit of 90 days for a decision by the Electric Inspector which has not been observed and which rendered the decision of the Electric Inspector a nullity. This submission of the learned counsel has been dealt with by the Appellate Board and in any case, is fallacious- The short and simple answer rendered by the Appellate Board was that the decision was made under Section 38 of the Act, 1997 and not in terms of Section 26 of the Electricity Act, 1910. Therefore, the outer time limit of 90 days was inapplicable."

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 Respondent is dismissed.

6.2 Detection bill of Rs.577,530/- for 19,245 units+28 kW MDI and the bills with enhanced MF=44.7 w.e.f December 2020 and onwards

As per the available record, the billing meter of the Respondent was found 33% slow during checking dated 07.12.2020, therefore, MF was raised from 30 to 44.7 w.e.f December 2020 and onwards, and a detection bill of Rs.577,530/- for 19,245 units+28 kW MDI was debited to the Respondent @ 33% slowness of the meter, which were challenged by him before the POI.

6.3 During the subsequent comparison of the consumption of the impugned billing and check




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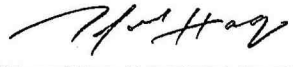
meters on 29.06.2021, the impugned meter was found 28.96% slow as compared to the check meter. Hence the charging of the detection bill of Rs.577,530/- for 19,245 units+28 kW MDI and the bills w.e.f December 2020 and onwards due to 33% slowness of the impugned meter is contrary to the quantum of slowness observed in the subsequent checking dated 29.06.2021 and the POI has rightly cancelled the abovesaid detection bill as well as the impugned bills charged with enhanced MF=42.25 due to 28.96% slowness of the meter from December 2020 to May 2021.

6.4 Since the impugned meter was found slow on 07.12.2020, hence the determination of the POI for revision of the detection bill for net 10,541 units+52 kW MDI for two months @ 28.96% slowness of the meter and the bills with enhanced MF=42.25 due to 28.96% slowness from December 2020 to May 2021 is consistent with Clause 4.3.3(c) of the CSM-2020 and the same is maintained to this extent.

7. Foregoing in view, the appeal is dismissed.

On leave
Abid Hussain
Member/Advisor (CAD)


Naweed Illahi Sheikh
Convener/DG (CAD)


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

Dated: 10-10-2024

