



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

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No. NEPRA/Appeal/082/2021/806


October 10, 2024

1. Government College University Faisalabad,
Through its Registrar,
Allama Iqbal Road,
Faisalabad
2. Chief Executive Officer,
FESCO Ltd,
West Canal Road, Abdullah Pur,
Faisalabad
3. Malik Asad Akram Awan,
Advocate High Court,
Sargodha Khushab Law Chambers,
First Floor, Turner Tower,
9-Turner Road, Lahore
Cell No. 0342-9786786
4. Sub Divisional Officer (Operation),
FESCO Ltd,
City 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.082/2021 (FESCO Vs. Government College University Faisalabad) Against the Decision Dated 24.12.2020 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 10.10.2024 (06 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. 082/POI-2021

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Government College University Faisalabad
Through its Registrar Allama Iqbal Road, Faisalabad

.....Respondent

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

For the Appellant:

Malik Asad Akram Advocate

For the Respondent:

Nemo

DECISION

1. As per the facts of the case, the Respondent namely, Government College University Faisalabad is a general supply consumer of the Faisalabad Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.24-13121-5101105-U having sanctioned load of 143 kW and the applicable tariff category is A-3(a). Reportedly, the impugned meter of the Respondent was found 33% slow during M&T team checking dated 02.04.2015 of the Appellant, however, the billing was continued by the Appellant on the said slow meter. Later on, the Energy Reconciliation Cell, Government of Punjab installed an AMR meter in series with the impugned meter of the Respondent on 29.07.2016. Subsequently, the impugned meter of the Respondent was replaced with a new meter by the Appellant in February 2018 and onward billing was carried out by the Appellant on the basis of reading of the new meter.
2. Being aggrieved with the above actions of the Appellant, the Respondent filed a complaint before the Provincial Provincial Office of Inspection Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") and challenged the bills w.e.f October 2016 and onwards with the plea that the excessive billing was done by the Appellant as compared to the consumption recorded by the AMR meter, detailed on the impugned bills is given below:

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Appeal No.082/POI-2021



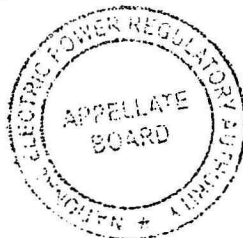
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- Bills for the period from October 2016 to January 2018 on 33% slow meter.
 - Bills for the February 2018 to May 2019 on the new healthy meter.
3. The metering equipment of the Respondent as well as the AMR meter installed on the premises was checked by the said forum on 07.02.2020 in the presence of both parties, wherein, the metering equipment of the Respondent as well as the AMR meter were found working within permissible limits, both parties signed the checking report without raising any objection. The complaint of the Respondent was disposed of by the POI vide the decision dated 24.12.2020, wherein the bills for the period from October 2016 to May 2019 were declared null and void. As per the POI decision, the Appellant was directed to revise the bills against 680,724 units for the aforesaid period on the basis of consumption recorded by the AMR meter. The Appellant was further directed to overhaul the billing of the Respondent and any excess amount recovered be adjusted in the future bills.
4. Subject appeal was filed against the afore-referred decision of the POI (hereinafter referred to as the "impugned decision") by the Appellant before the NEPRA. In the appeal, the Appellant opposed the impugned decision, *inter-alia*, on the main grounds that the impugned decision suffers from serious misreading and non-reading of record and has been passed in mechanical and slipshod manner; that the POI went beyond the pleadings of the Respondent and even granted the relief in the impugned decision, which was not even claimed by the Respondent; that the POI failed to decide the matter within 90 days as provided u/s 26(6) of the Electricity Act 1910; that the POI did not apply judicious mind while passing the impugned decision; that the impugned meter was found 33% slow, therefore detection bill was charged to the Respondent; 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 29.07.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days which were not filed.
6. **Hearing:**
- 6.1 Hearing of the subject appeal was held at NEPRA Regional Office Lahore on 02.03.2024, wherein learned counsel appeared for the Appellant, whereas a representative tendered appearance for the Respondent. Learned counsel for the Appellant repeated the same arguments as contained in memo of the appeal and contended that the bills for the disputed period October 2016 to May 2019 were charged as per actual consumption recorded by the metering equipment of the Respondent. Learned counsel for the Appellant further contended

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that the Respondent with malafide intention approached the POI, who cancelled the aforesaid bills without due consideration of facts and afforded the relief beyond the prayer of the Respondent. He submitted that the bills were debited as per actual consumption and the Respondent made payments accordingly without raising any dispute. As per learned counsel for the Appellant, the impugned decision for revision of the bills for the period October 2016 to May 2019 on the basis of consumption of AMR meter is not based on merits. He prayed that the impugned decision be set aside and the bills for the aforesaid disputed period be declared as justified and payable by the Respondent.

6.2 On the contrary, the representative appearing for the Respondent rebutted the version of the Appellant and argued that the charging of the impugned bills for the period from October 2016 to May 2019 is illegal as the Appellants are under obligation to charge the Respondent based on consumption of AMR meter in case of defective meter as per Clause 10 of the MOU signed between the Energy Department, Government of Punjab, and the Appellant. The representative for the Respondent finally prayed for adjournment of the case till the next date for the detailed arguments. Hence, a hearing of the subject appeal was subsequently conducted on 08.06.2024 for the arguments of the Respondent only, however, the Respondent did not attend the said hearing.

7. Arguments were heard and the record placed before us was examined. Following are our findings:

7.1 Objection of the Respondent regarding limitation:

While addressing the preliminary objection of the Respondent regarding limitation, it is observed that the Appellant obtained the copy of the impugned decision on 22.06.2021, and the appeal was filed before the NEPRA on 30.06.2021 within 30 days of receipt of the impugned decision as provided in Section 38(3) of the NEPRA Act. Hence objection of the Appellant has no force and the same is rejected.

7.2 Objection regarding the time limit for POI

It is observed that the Respondent filed his complaint before the POI under Section 38 of the NEPRA Act. POI pronounced its decision on 24.12.2020. 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, 1910. Reliance in this regard is placed on the judgments of the honorable Lahore High Court Lahore reported in

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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:

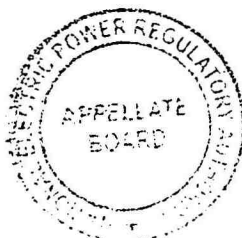
The learned counsel for the petitioner submitted that there was an outer time limit of 90 days for a decision by the Electric Inspector which has not been observed and which rendered the decision of the Electric Inspector a nullity. This submission of the learned counsel has been dealt with by the Appellate 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 Appellant is dismissed.

7.3 Disputed bills for the period from October 2016 to May 2019 charged by the Appellant:

The Respondent filed a complaint before the POI and disputed the bills for the period from October 2016 to May 2019 with the plea that the Appellant debited the excessive bills during the aforementioned period. The POI vide impugned decision revised the bills for the aforesaid period on the basis of consumption recorded by the AMR meter against which the Appellant filed the instant appeal before the NEPRA.

7.4 It is noticed that the impugned meter of the Respondent was found 33% slow during M&T team checking dated 02.04.2015 of the Appellant since then the billing was carried out with enhanced MF=89.4 out by the Appellant on the said slow meter till its replacement in February 2018. Meanwhile, the Energy Reconciliation Cell, Government of Punjab installed the AMR meter in series with the impugned meter of the Respondent on 29.07.2016.



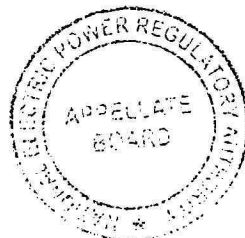


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7.5 As per Clause 4.4(c) of the CSM-2010, the consumer is liable to be charged the bills with enhanced MF in case of a slow meter. Moreover, the slow meter be replaced with a new meter within two billing cycles, under Clause 4.4(e) of the CSM-2010. However, in the instant case, the Appellant took more than thirty-three (33) months to replace the slow meter, this shows gross negligence on the part of the Appellant.

7.6 It is an admitted fact that the metering equipment of the Respondent as well as the AMR meter installed on the premises were found working within specified limits during the joint checking dated 07.02.2020 of POI, the said checking report was signed by both parties without raising any objection. Hence, the allegation of the Respondent with regard to the excessive billing needs to be verified to reach just conclusion, for which the billing statement of the Respondent as presented by the Appellant is reproduced below:

Period before dispute		Disputed period			Period after dispute	
Month	Units	Month	Units	Units (AMR meter)	Month	Units
Feb-14	11940	Oct-16	33078	19826	Jun-19	45120
Mar-14	11880	Nov-16	17344	16012	Jul-19	40020
Apr-14	9540	Dec-16	15198	10413	Aug-19	51720
May-14	12480	Jan-17	15734	9624	Sep-19	53880
Jun-14	21240	Feb-17	14036	13087	Oct-19	47280
Jul-14	17280	Mar-17	10192	9262	Nov-19	27660
Aug-14	12600	Apr-17	24138	10540	Dec-19	25020
Sep-14	24600	May-17	33614	19233	Jan-20	15360
Oct-14	15420	Jun-17	38442	27572	Feb-20	44400
Nov-14	8460	Jul-17	37190	22353	Mar-20	2640
Dec-14	12060	Aug-17	52210	28850	Apr-20	1200
Jan-15	12600	Sep-17	33525	31713	May-20	61800
Feb-15	15480	Oct-17	39604	26182	Jun-20	30180
Mar-15	12480	Nov-17	17165	21229	Jul-20	46860
Apr-15	11175	Dec-17	11086	11778	Aug-20	52920
May-15	20651	Jan-18	21367	12696	Sep-20	73080
Jun-15	18595	Feb-18	14020	15094	Oct-20	45000
Jul-15	13499	Mar-18	18540	11166	Nov-20	11220
Aug-15	31826	Apr-18	16920	15220	Dec-20	0
Sep-15	36118	May-18	22980	23714	Jan-21	13620
Oct-15	19489	Jun-18	26640	31309	Feb-21	26820
Nov-15	19489	Jul-18	47220	27526	Mar-21	21480
Dec-15	5632	Aug-18	52200	34381	Apr-21	21120
Jan-16	16092	Sep-18	12000	32134	May-21	31260
Feb-16	22886	Oct-18	38460	30241	Jun-21	58440
Mar-16	11443	Nov-18	10440	26641	Jul-21	41880
Apr-16	16628	Dec-18	21960	16937	Aug-21	32040
May-16	29413	Jan-19	24480	23439	Sep-21	47160





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Jun-16	31737	Feb-19	22320	25088	Oct-21	25800
Jul-16	16539	Mar-19	19560	20929	Nov-21	17280
Aug-16	41124	Apr-19	26820	22239	Dec-21	16560
Sep-16	29419	May-19	41040	34322	Jan-22	16680
Total	589815	Total	829523	680750	Total	1045500

The above comparison of consumption data shows that the total consumption charged during the disputed period i.e. October 2016 to May 2019 by the Appellant is much higher than the total consumption of the period before the dispute as well as the total consumption recorded by the AMR meter during the disputed period. This indicates that the actual consumption was not charged by the Appellant during the disputed period from October 2016 to May 2019. In view of the foregoing discussion, we are of the considered view that the bills for the period from October 2016 to May 2019 debited to the Respondent are unjustified being excessively charged and the same are declared null and void. The impugned decision is liable to be maintained to this extent.

7.7 Admittedly, the AMR meter was installed in series with the metering equipment of the Respondent by the Energy Department, Government of Punjab under the MOU signed with the Appellant on 29.07.2016 and para 10 of the said MOU necessitate the Appellant to shift the billing on AMR meter in case of defective billing meter, said para is reproduced below for the sake of convenience:


“For locations where the DISCO billing meter has become defective, till such time the defective meter is not replaced with healthy one by DISCO, the estimation of energy will be carried out on the basis of consumption appearing on the AMI meter/system.


7.8 In view of the above, we are inclined to agree with the finding of the POI that the bills for the period from October 2016 to May 2019 be revised as per consumption recorded by the AMR meter during the said period and the Respondent be afforded credit of units, accordingly.

8. Foregoing in view, the appeal is dismissed.

On leave
Abid Hussain
Member/Advisor (CAD)

Dated: 10-10-2024


Naweed Illahi Sheikh
Convener/DG (CAD)


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

