



National Electric Power Regulatory Authority
(NEPRA)

Islamic Republic of Pakistan

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No. NEPRA/AB/Appeal-032/POI-2015/ 838-842

September 08, 2015

1. Muhammad Asim,
S/o Muhammad Yousaf,
M/s Asim Wire Nut Bolt Industry,
Sultan Mahmood Road,
Shalimar Town, Lahore
2. The Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore
3. Saeed Ahmed Bhatti,
Advocate High Court,
2nd Floor, Akram Mansion,
Neela Gumbad, Lahore
4. Faiza Riaz,
Advocate,
Suite No. 302, 3rd Floor,
Eden Centre, Jail Road,
Lahore
5. Sub Divisional Officer (E),
LESCO Ltd,
Sharqpur Sub Division,
Lahore

Subject: Appeal Titled LESCO Vs. Muhammad Hanif Against the Decision Dated 31.03.2015 of the Electric Inspector/POI to Government of the Punjab Lahore Region, Lahore

Please find enclosed herewith the decision of the Appellate Board dated 08.09.2015, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-032/POI-2015/ 843

September 08, 2015

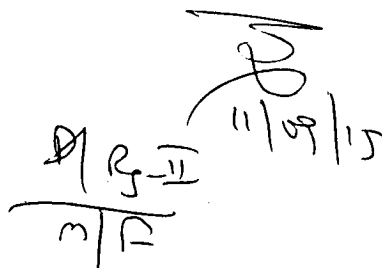
Forwarded for information please.


Member Appellate Board

- ✓ 1. Registrar
2. Director (CAD)
3. Electric Inspector/POI, Lahore Region
4. Master File

CC:

1. Chairman
2. Vice Chairman/Member (CA)
3. Member (Tariff)
4. Member (M&E)
5. Member (Licensing)


11/09/15

Registrar	9649
DY No.....	11-29-15
Dated.....	



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Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-032/POI-2015

Lahore Electric Supply Company Limited

.....Appellant

Versus

Muhammad Asim S/O Muhammad Yousaf, M/s Wire Nut Bolt Industry, Sultan Mehmood Road,
Shalimar Town, Lahore.

.....Respondent

For the appellant:

Saeed Ahmed Bhatti Advocate
M. Ali Anwar T.A (Legal)

For the respondent:

Abdul Sami Qureshi Advocate

DECISION

1. This decision shall dispose of appeal filed by Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) against the decision dated 31.03.2015 of the Provincial Office of Inspection/Electric Inspector Lahore Region, Lahore (hereinafter referred to as POI) under Section 38(3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as "the Act").

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2. LESCO is a licensee of National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license and the respondent is its industrial consumer bearing Ref No.24-11355-9901600 with a sanctioned load of 158 kW under B-2a tariff.
3. As per facts of the case a meter was installed on the premises of the respondent on 17.02.2000 which had the arrangement of digital display readings and built in needle reading. The display of digital meter was found washed in mid of the November 2012. A bill for 46,136 units, calculated on the basis of 40 % load, factor was issued to the respondent in November 2012 which on the complaint of respondent was reduced to 26,789 units on the basis of needle readings and was paid accordingly. The respondent made request for replacement of the meter which was changed on 27.05.2014. The respondent was served a bill of Rs.941,287/- for 50,446 units for the month of December 2013 which was disagreed by the respondent. Being aggrieved with the said bill, the respondent filed an application dated 11.02.2014 to POI and challenged the same bill.
4. In response to above application, LESCO contested the case before POI and pleaded that the bill of Rs.941,287/- for 50,446 units raised against the respondent for the month of December 2013 was quite legal, valid and justified according to meter needle reading and the respondent was liable to pay the same.
5. The POI announced its decision in respect of the above mentioned complaint of the respondent on 31.03.2015 and the operative portion of the decision is reproduced below:

"Summing up the foregoing discussion, it is held that the impugned monthly bill amounting to Rs.941,287/- for 50446 units is void, unjustified and of no legal effect: therefore, the petitioner is not liable to pay the same. However, the respondents are allowed to charge a revised monthly bill to the petitioner for the said month for a total of 13846 units on the basis of the consumption recorded during the period from 01/2013 to 11/2013 being undisputed between the parties, after excluding the already charged units during the said period. The respondents



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are directed to over-haul the account of the petitioner accordingly and any excess amount recovered be adjusted in future bills."

6. Being aggrieved with above decision dated 31.03.2015 of POI, LESCO has filed the instant appeal through Mr. Saeed Ahmed Bhatti Advocate. It is stated by LESCO that it was fully proved on the record by the appellant through authentic documents that the bill for the month of December 2013 for the cost of 50446 units was issued according to the meter needle reading and no excessive billing was done. According to LESCO the bill was quite legal, valid and justified and the respondent was obliged under the law to pay the same. LESCO contended that the impugned decision was illegal, unlawful, arbitrary, vague, misconceived, without lawful authority, without jurisdiction, void ab-initio, biased and based on surmises and conjectures. LESCO further submitted that the impugned decision was ex-facie coram non iudice, ab-initio void and without jurisdiction in so far as electric inspector had no power and jurisdiction to carry out proceedings after expiry of the mandatory period of 90 days as envisaged under section 26(6) of the Electricity Act 1910. According to LESCO the Electric Inspector was bound to refer the matter to Provincial Government after expiry of the aforesaid statutory period and as such the impugned decision was illegal, unlawful and without jurisdiction and was liable to be set aside. It was pointed out by LESCO that POI failed to appreciate that the complaint could not be entertained as no notice under section 26(6) of Electricity Act 1910 was ever served upon the appellant before filing the same. Finally LESCO prayed that the impugned decision may be set aside and application moved by the respondent be dismissed with costs throughout.

7. A notice was issued to the respondent for filing reply/parawise comments which were submitted on 09.06.2015. In his reply/parawise comments, the respondent submitted that he approached POI as an excessive bill was issued to him in December 2013. The respondent denied the contentions of the appellant and stated that the impugned decision of POI was in accordance with law and facts of the case. Finally the respondent prayed that the appeal may be dismissed and the impugned decision passed by POI may be upheld.

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8. After issuing notice to both the parties the appeal was heard in Lahore on 17.08.2015. Mr. Saeed Ahmed Bhatti Advocate and Mr. Ali Anwar T.A Legal appeared on behalf of the appellant and Mr. Abdul Sami Qureshi Advocate represented the respondent. Mr. Saeed Ahmed Bhatti Advocate, learned counsel for the appellant repeated the same arguments which have earlier been given in memo of the appeal. He contended that the impugned decision was illegal, void and liable to be dismissed. According to learned counsel for LESCO the bill of Rs. 941,287/- for 50446 units for December 2013 was legal, valid and justified and the respondent was liable to pay the same. He prayed for acceptance of the appeal. Mr. Abdul Sami Qureshi Advocate, learned counsel for the respondent, denied the contentions of the learned counsel for the appellant and pleaded that impugned decision was given by POI after due consideration of facts and law and was therefore liable to be maintained. The respondent prayed for dismissal of the appeal.
9. We have heard arguments of both the parties and perused the record placed before us. Following are our observations:
- i. There is no force in the arguments of learned counsel for LESCO that the impugned decision was not announced by POI within the mandatory period of 90 days and envisaged under section 26 (6) of Electricity Act, 1910 and therefore became invalid. Reliance has been made by the learned counsel for LESCO upon the decision of honourable Lahore High Court Lahore reported in PLJ 2015 Lahore 470. The case law quoted is not applicable to the instant case as after insertion of sub section 3 in section 38 of the Act, an appeal against decision is competent before POI and now there is no role of Provincial Government with regard to determination of POI for disputes of metering, billing and collection of tariff. The appeal was heard by the officer in his capacity as POI as per powers delegated to him under section 38 of the Act and the said Act does not specify any time frame for announcement of decision by POI. The objection of learned counsel for LESCO in this regard is therefore dismissed.
 - ii. As regards objection of the learned counsel for LESCO regarding failure of the respondent to issue notice to the appellant under section 26 (6) of Electricity Act, 1910



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prior to making any application to Electric Inspector it is observed that the POI after entertainment of the application of the respondent provided sufficient opportunity to LESCO for hearing, production of record and submission of the arguments. The right of LESCO is not prejudiced due to this reason. Without prejudice to the above determination it is relevant to point out there is no requirement of prior notice under section 38 of the Act, for filing a complaint before POI.

- iii. The respondent was charged 46,136 units in the month of November 2012 which were admittedly calculated on the basis of load factor as display of the billing meter was washed. The respondent claimed that on his protest the bill for November 2012 was reduced from 46,136 units to 26,798 units on the basis of meter needle reading.

The consumption table of the respondent for the year 2012 and year 2013 is reproduced below:

Year 2012			Year 2013		
MONTH	Units kWh	MDI kW	MONTH	Units kWh	MDI kW
January	12144	100	January	6762	100
February	10422	100	February	11096	100
March	5982	81	March	8522	81
April	13492	87	April	13492	87
May	13556	82	May	13958	82
June	13626	52	June	12626	82
July	10554	85	July	17354	85
August	11954	85	August	15160	85
September	17760	84	September	17560	85
October	15700	80	October	14340	85
November	46136	62	November	21440	62
December	2054	88	December	50440	158


From the above table it is evident that 50,446 units were billed in December 2013 with MDI = 150 kW. This quantum of kWh units and MDI (kW) was never recorded before.




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The statement of the appellant that the consumption was recorded as per needle reading of the meter is not reliable. It is understood that the consumption for December 2013 was worked out in the same way (on load factor basis) as it was done in November 2012 and was revised as per needle meter reading on the protest of the respondent.

- iv. In the absence of unbiased verification of meter readings by POI it has been rightly determined by POI in its impugned decision that the consumption for the month of December 2013 could be calculated on the basis of average consumption during the undisputed period from January 2013 to November 2013 which is worked out as 13,846 units per month and the same is also in line with provision of para 4(e) of Consumer Service Manual. The respondent is liable to pay the bill of 13,846 units for December 2013.
 - v. We are in agreement with the impugned decision of POI that the bill of Rs.941,287/- for 50,446 units for the month of December 2013 is void, unjustified and of no legal effect and the respondent is not liable to pay the same.
- 10 In view of the foregoing observations, no illegality or irregularity has been found in the impugned decision dated 31.03.2015 of the POI and accordingly the same is upheld and the appeal is dismissed.



Muhammad Qamar-uz-Zaman
Member



Nadir Ali Khoso
Convener



Muhammad Shafique
Member

Date: 08.09.2015

