



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

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No. NEPRA/AB/Appcal-015/POI-2015/ 637-641


May 20, 2016

1. Momin Qamar  
Executive Director,  
M/s Flying Paper Industries Ltd,  
103-Fazil Road, Saint John Park,  
Lahore Cantt
2. The Chief Executive Officer  
LESCO Ltd,  
22-A Qucens Road,  
Lahore
3. Mian Muhammad Mudassar Bodla  
Advocate Supreme Court of Pakistan,  
Syed Law Building,  
4-Mozang Road, Lahore
4. Ch. Muhammad Sardar  
XEN City Division,  
LESCO Ltd,  
Sheikhupura
5. Electric Inspector  
Gujranwala Region,  
Munir Chowk, Near Kachehri Road,  
Gujranwala

Subject: **Appeal Titled LESCO Vs. M/s Flying Paper Industries Limited Against the Decision Dated 13.01.2015 of the Electric Inspector/POI to Government of the Punjab Gujranwala Region, Gujranwala**

Please find enclosed herewith the decision of the Appellate Board dated 13.05.2016, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

  
(Ikram Shakeel)

No. NEPRA/AB/Appeal-015/POI-2015/ 642

May 20, 2016

Forwarded for information please.

Assistant Director  
Appellate Board

1. Registrar
2. Director (CAD)

CC:

1. Member (CA)



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# National Electric Power Regulatory Authority

## Before Appellate Board

In the matter of

Appal No. 015/POI-2015

Lahore Electric Supply Company Limited

.....Appellant

Versus

M/s Flying Paper Industries, Lahore Road, Sheikhpura

.....Respondent

Date of Hearing:

28.03.2016

### For the appellant:

Mian Muhammad Mudassar Bodla Advocate  
Mr. Ijaz Ahmed XEN LESCO  
Mr. Azam Rasul Revenue Officer LESCO

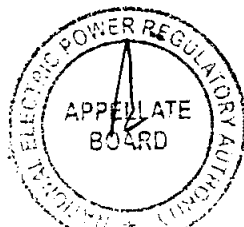
### For the respondent:

Mr. Waqar Hasan Advocate  
Mr. Momin Qamar Executive Director  
Mr. Shahid Ahmed Awan Accountant

## DECISION

1. Brief facts; leading to the disposal of this appeal are that the appellant is a Distribution Company and licensee of NEPRA; providing electric power services in its licensed territory and the respondent is one of its industrial consumers bearing Ref No24-11641-0006300 with a sanctioned load of 4,830 kW under B-3 tariff. The respondent is getting supply through an independent 11kv feeder namely "Flying Papers Feeder" from 132 kV Attabad Grid Station Sheikhpura. In December, 2013, an application was filed by the respondent before the

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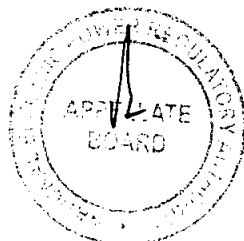


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Provincial Office of Inspection (POI) while challenging the alleged over billing made by the appellant in the electricity bill for the month of November, 2013. Subsequently, the respondent also challenged the bill of December, 2013 as well before the POI. On 21.02.2014, the bill of January, 2014 was also challenged by the respondent. For the bill of January, 2014, it was the contention of the respondent that off peak reading of TOU meter as entered in the bill was 9658.85 whereas during the joint checking on 06.02.2014, the actual of-peak meter reading was found as 8432.67 and by this way it was alleged that a total 7,357,080 units were charged in excess for January 2014 having a financial impact of Rs. 140 million in terms of billing. The respondent prayed before the POI that the over billing made by LESCO in the months of November, December, 2013 and January 2014 be declared null and void. It was the stance of the appellant that TOU billing meter of the respondent was replaced on 04.01.2012 and checked in February 2012 for taking monthly readings and it was noticed that there was erratic behavior of TOU meter due to which reading recorded on the back up meter was taken and converted for the purposes of billing. POI decided the matter on 04.03.2014 with the following operative part:-

"In view of the above fact, it is held that TOU billing meter is correct and registering the electricity consumption accurately; thus reading recorded on 28.1.14 by the TOU kwh meter as 8339.29x6000 off peak and 1120.93x6000 pea are justified, correct and legal and the respondents are directed to revise the billing according to above said TOU kwh meter index since its installation on 24.1.2012 by computing the consumption on monthly basis till 28.1.2014 which is declared billing up to 1/2-014 and onward charge the billing according to the reading of TOU billing indexes. The billing charged/recovered beyond the actual TOU meter index under the presumption of conversion of backup reading into billing on TOU meter is unjustified, void, and of no legal effect; therefore, the petitioner is not liable to pay the same. The respondents are directed to overhaul the account of the petitioner accordingly and excess units charged/recovered be adjusted in future billing".

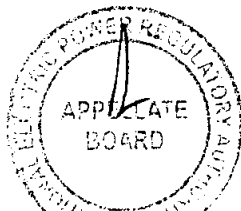
2. The above referred decision was challenged by the appellant before NEPRA through Appeal No. 62/14 and vide decision dated 06.08.2014, the appeal was dismissed while upholding the decision of the POI.





## National Electric Power Regulatory Authority

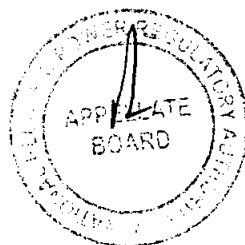
3. subsequently, in the 2nd round of litigation, through a petition dated 21.08.2014 filed before the POI, the respondent claimed that excessive billing was made by appellant (LESCO) to the extent of 8,275,080 units for a period from June 2010 to January 2012 as well. The stance of respondent was contested by the appellant. The claim of over billing was refuted by the appellant and legal objections as to the maintainability of the petition were also raised. It was contended by the appellant LESCO that no over billing was made and that the claim of the respondent regarding the alleged excessive billing is barred by time and hit by article 181 of the Limitation Act 1908. LESCO further submitted that under the law parties are required to bring whole claim at one point of time and in case of a decision no prior claim can be made as it is barred under Order 2 Rule 2 of Civil Procedure Code 1908 (hereinafter referred to as CPC). In response to the claim of LESCO, the respondent maintained before the POI that the over billing/excess reading carried out by LESCO was kept concealed for the period from June 2010 to January 2012 and therefore the objection of LESCO that the petition was barred by time was not sustainable. Regarding the objection of LESCO that the petition was barred by time it was stated by the respondent in the rejoinder that the same was irrelevant as the concealment of documents came in his knowledge through order dated 06.08.2014 passed by Appellate Board, wherein comparison of consumption data of backup meter and TOU billing meter was done. According to the respondent due to such concealment it was not possible for them to agitate the over billing for the period from June 2010 to January 2012 and therefore Order 2 Rule 2 of CPC was not applicable in the instant petition and objection of LESCO, which is based on misconception and misinterpretation was not sustainable in the eyes of law.
4. The controversy was decided by the POI on 13.01.2015 with the following operative part:-
  - i. *That TOU billing meter removed on 18.06.2010 was accurate as per 'respondents' committee (M&T) report with final reading indexes as 2781.40 x 6000 Off Peak & 506.10 x 6000 Peak (Total=3287.5 x6000) whereas the consumption charged till bill for 6/2010 upto reading indexes as 3344.43 x 6000 Off Peak & 506.70 x 6000 Peak. (Total=3851.13 x 6000) resulting excessive 33,81,780 units is void, unjustified and illegal and petitioner is not liable to pay the same.*





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- ii. *That the TOU billing meter installed on 18.06.2010 became and remained defective during the period from 18.06.2010 to 24.01.2012 and the billing charged (for total 3,06,30,940 units) on the basis of estimation against the said impugned defective TOU billing meter during the above said period and LPS/Markup etc recovered are void, unjustified and of no legal effect therefore, the petitioner is not liable to pay the same. Since the electromechanical backup meter is accurate throughout therefore the respondents are directed to revise the billing for the period from 18.06.2010 to 24.01.2012 on the basis of consumption recorded as 2,42,70,240 units [885342x10x12 to (round completed) + 087594x10x12] by splitting the same on monthly basis for proportionate percentage for Off Peak Hours and Peak Hours as per schedule against the disputed period from 18.06.2010 to 24.01.2012 excluding months from 02/2011 to 04/2011 as there was no consumption in these three months due to closure of factory.*
  - iii. *That the respondents are further directed to over-hail the account of the petitioner and cost of excess 33,81,780 units etc against meter removed on 18.06.2010 and cost of excess 63,60,700 units etc against the meter remained billing (from 18.06.2010 to 24.01.2012) recovered illegally be refunded along with LPS/Markup or interest charged, in future bill(s) accordingly."*
5. Being aggrieved with the impugned decision dated 13.01.2015 of POI, LESCO filed an appeal before NEPRA under section 38 (3) of the Act which was decided on 23.02.2015 while holding inter-alia that the claim of over billing for the period June 2010 to January 2012 is hit by doctrine of constructive resjudicata and resultantly the appeal of LESCO was accepted and the impugned decision of POI was set aside. The decision of NEPRA Appellate Board dated 23.02.2015 was challenged by the respondent before Honorable Lahore High Court through Writ Petition No. 5691/15 and vide judgment dated 09.12.2015, it was held that the principle of res-judicata cannot be applied with full force in the proceedings before the Electric Inspector and consequently the petition was allowed and the matter was remanded back to NEPRA for a decision afresh on merits strictly in accordance with law. Against the judgment dated 9.12.2015 of Honorable Lahore High Court, the appellant filed a Civil Petition No. 12 of 2016 before Honorable Supreme Court of Pakistan and vide order dated 22.1.2016, the matter was decided and the concluding paras are reproduced as under:-



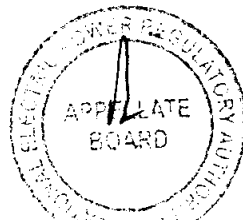


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*“The dispute which with we are concerned is with regard to a previous period of billing, which period was admittedly not included i the dispute that was earlier decided by the Electric Inspector, thus, the Electric Inspector neither did nor could have decided the said dispute. Therefore, the respondent No. 2 had clearly erred in holding that the dispute was covered by the doctrine of constructive res judicata. Since neither the principle of res judicata or constructive res judicata was applicable, therefore, the claim of the respondent No. 1 before the Appellate Board could not be dislodged on this score. That since the respondent No. 2 had exercised a jurisdiction not vested in it, i.e. disallowing a claim on the basis of constructive res judicata and failed to exercise jurisdiction vested in it i.e., its appellate jurisdiction the High Court was right in correcting he said legal error committed by the respondent No. 2 and in remanding the matter to the respondent No. 2 for "decision afresh on merits strictly in accordance with law: . Consequently this petition is dismissed and leave to appeal is declined.”*

*At this juncture, the learned counsel for the petitioners referred to certain observation made by respondent No. 2 in paragraph 16 of its order dated 23rd February 2015 which according to him may come in the way of LESCO when the respondent No. 2 hears and decides the appeal. The learned Counsel for the respondent No. 1 frankly concealed that once the matter has been remanded by the High court to be decided afresh by the respondent No. 2 in accordance with law, the anxiety of the petitioners is misplaced. Be that as it may, it is clarified that once the matter has been remanded by the Hon'ble High Court for decision afresh on merits, the respondent No. 2 shall disregard any finding given or observation contained in its order dated 23rd February, 2015.*

6. Pursuant to the above judgments of the Honorable Lahore High Court and Supreme Court of Pakistan, fresh proceedings of appeal filed by LESCO were initiated and the hearing of the appeal was again conducted at Lahore on 28.03.2016 wherein both the parties were represented by their counsels.
7. In the appeal it is contended by the appellant that the impugned decision dated 13.01.2015 was based on photo copies of M&T reports which required to be investigated by the court of competent jurisdiction. LESCO averred that according to law the photo copies are not admissible piece of evidence and as such decision rendered on the basis of said documents without proving the same as provided under Article 76 of Qanoon-e-Shahadat Order, 1984 is a nullity. LESCO contented that section 18 of Limitation Act 1908 as mentioned in the impugned decision of the learned POI was not applicable in the case of the respondent.

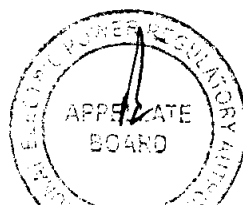




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LESCO asserted that said section has no concern in the instant matter as no concealment has been made by LESCO since the consumer/respondent had been served with a monthly electricity bills. It was contended by LESCO that they took objection regarding Order 2 Rule 2 of CPC before learned POI however the learned POI failed to decide the same appropriately in the impugned decision. It is averred by LESCO that the respondent was served electricity bills which he paid regularly and did not point out any extra billing and therefore after lapse of almost four years the claim for refund for the same by the respondent was not maintainable and POI had no jurisdiction to order for refund the amount already paid by the respondent. LESCO has also challenged the fact that learned POI allowed the respondent to file rejoinder and also did not provide any opportunity to LESCO for filing reply of the rejoinder. According to LESCO the decision was against the law and facts.

8. It was also stated by the appellant that the respondent failed to point out any discrepancy of billing from June 2010 to January 2012 in its earlier petition dated 13.12.2013 before the POI regarding the excessive billing by the appellant. It was also pleaded that NEPRA had already decided the matter for the period from January 2012 to January 2014 which attained finality and therefore the petition before the POI was barred by Order 2 Rule 2 of CPC. It was also pleaded that POI has no jurisdiction to overhaul the account of the respondent and bills already paid by the respondent. According to the appellant the impugned decision was passed by POI without application of his judicious mind, in haphazard & cursory manner and was thus liable to be set aside.
9. It is a stance of the respondent in its reply/parawise comments that LESCO had charged it excess units/reading more than the TOU billing meter indexes during the period from June 2010 to January 2012. According to the respondent, the appellant intentionally kept the excessive reading concealed to it or its authorized representative with ulterior motives. It was also contended on the part of respondent that instead of charging actual TOU meter readings the estimated reading/units were charged by LESCO. It was further submitted that the fact of charging of excess billing by LESCO came into their knowledge vide NEPRA Appellate Board order dated 06.08.2014 and upon acquiring such knowledge they



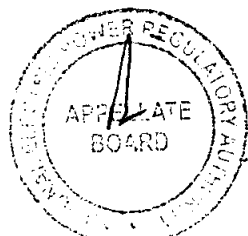




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immediately filed the petition dated 21.08.2014 before the POI under section 38 of the Act read with section 24 (2) and 26 (6) of the Electricity Act, 1910 which was within time as prescribed in the law. Regarding the objection raised by LESCO for the photo copies of the documents including the M&T reports, it is the contention of the respondent that those documents were previously placed before POI and their authenticity was not challenged there by the appellant.

10. It is also contended on the part of respondent that law does not permit LESCO to charge beyond the meter readings and therefore POI has rightly made determination regarding over billing and metering disputes etc. Regarding the limitation, it is the stance of the respondent that as per section 18 of the Limitation Act 1908, the limitation starts from the date when the affected person gets knowledge of the fact. It was stated that in the instant matter the appellant replaced the meter on 24.01.2012 and charged estimated billing from 24.01.2012 keeping the respondent unaware of defect without issuing any notice. Further contended that the matter came into the knowledge of the respondent through NEPRA Appellate Board order dated 06.08.2014 which is to be treated as actual date when right to make the petition before POI accrued to the respondent which holds onwards for a period of 03 years ending by 05.08.2017. Regarding the application of Order 2 Rule 2 of CPC the respondent averred that the objection of LESCO in this regard was not valid because he made the claim when the same came into his knowledge. He disclosed that through NEPRA Appellate Board order dated 06.08.2014 he came to know that LESCO had charged him excessively 1,851,660 units for the period June 2011 to December 2011, as the comparison of accurate electromechanical backup meter installed in series with defective TOU meter established the same. The respondent submitted that after the analysis of M&T report dated 18.06.2010, it became evident that LESCO had charged him excessively from June 2010 to 24.01.2012. The respondent in his written reply, inter alia, denied all grounds of LESCO and declared those as incorrect.
11. Arguments heard and record perused. Learned counsel for the appellant reiterated the stance taken in the appeal that the respondent had the knowledge of his meter readings for the



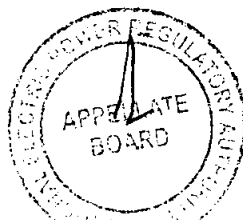


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period from June 2010 to January 2012 as he was served monthly electricity bills regularly which contained the meter readings etc. Counsel for LESCO, the respondent made the payments of electricity bills without raising any objection regarding meter readings and consumption of his connection and therefore version of the respondent that he had no knowledge of excessive billing was incorrect. Counsel for LESCO averred that when the respondent made first petition to learned POI/EI initially on 13.12.2013, he did not challenge billing prior to June 2010 and from June 2010 to January 2012. He stressed that Order 2 Rule 2 of CPC was applicable as the respondent failed to make the whole claim in his first petition dated 13.12.2013 before POI/EI. According to the counsel for LESCO the respondent was heard by NEPRA Appellate Board and the Appeal was decided on 06.08.2014 but the instant matter was also not raised by the respondent before the Appellate Board. It was contended that no over charging was made by LESCO and no proof whatsoever was provided by the consumer and there were no basis whatsoever for the POI to accept a claim of the consumer which was hopelessly barred by time. It was further contended that had there been any such stance of any over billing, then the consumer should have raised such stance in the course of earlier litigation. As per learned counsel for the appellant, the sole stance taken by the consumer is based upon a decision of this forum only and no independent evidence of any over billing has been produced by the consumer. Learned counsel for the appellant also invited our attention to the findings of the honorable Supreme Court of Pakistan to the following effect:

“Be that as it may, it is clarified that once the matter has been remanded by the Hon'ble High Court for decision afresh on merits, the respondent No. 2 shall disregard any finding given or observation contained in its order dated 23rd February, 2015.”

12. Learned counsel for the respondent argued that the meter of the respondent was installed in a room outside his premises and kept under lock and key by LESCO. The meter reading was taken by LESCO at their own and there was no participation on behalf of the respondent during the meter reading process. He submitted that the respondent had no knowledge regarding the excessive billing for the period from June 2010 to January 2012 and the matter

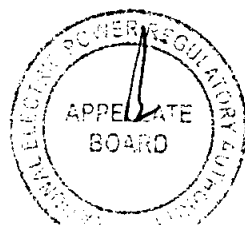




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came into his notice after order dated 06.08.2014 passed by the NEPRA Appellate Board. As per learned Counsel for the respondent, section 18 of the Limitation Act 1908 supports his version and according to said section the limitation would apply from the date when the matter comes into the knowledge of the person. He further elaborated that article 181 of the Limitation Act is a residual clause and it would apply for a period of 03 years when the right actually accrued to the respondent on 06.08.2014 when the order dated 06.08.2014 was passed by the Appellate Board. It has been contended that over billing had also been made from June 2010 to January 2012 and it was observed that the consumption recorded by electro mechanical backup meter which was accurate, was much lesser than the consumption shown by LESCO in his electricity bills. He maintained that the objection raised by LESCO regarding photocopies of M&T reports was not valid as LESCO could not produce any document to contradict the same. In the additional evidence produced by the respondent, much reliance has been placed on the order of NEPRA through which the respondent allegedly came to know about the over billing. Attention of the learned Counsel for the respondent was invited to the findings of the honorable Supreme Court of Pakistan that the matter is to be heard on merits and no earlier observation could be quoted or relied upon, however, learned counsel for the respondent has solely relied upon the earlier findings of this Appellate Board which to our understanding are totally irrelevant at this stage keeping in view the findings of honorable Supreme Court of Pakistan.

13. We have heard both the parties at length and examined the record placed before us. Since counsel of LESCO has raised legal objections as stated above therefore we intend to dilate upon such objections at the first instance. As regard to stance of LESCO that claim of the respondent is hit by Order 2 Rule 2 of CPC, a bare perusal of the above provisions has indicated that if a claimant is entitled to several reliefs against the respondent in respect of the same cause of action. he cannot split up the claim so as to omit one part of the claim and sue for the other. It is a principle that if the cause of action is the same, the plaintiff has to place all his claims before the court in one suit as Order 2 Rule 2 is based on the cardinal principle that the respondent should not be vexed twice for the same cause. In view of the

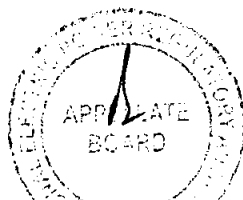




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above, what is to be seen in the instant case is whether the cause of action on the basis of which the previous application was filed by the respondent, is identical to the cause of action on which the subsequent application was filed giving rise to the present appeal. If the identity of causes of action is established, the rule would immediately become applicable. We have observed from the record that in his application dated 13.12.2013 the respondent had deliberately chosen to claim recovery of excessive billing commencing from January 2012 which was subsequently allowed by the learned POI and upheld by the Appellate Board through order dated 06.08.2014. We are not impressed by the argument of the learned counsel for respondent that they had attained knowledge of excessive billing after receiving order dated 06.08.2014 of the Appellate Board for the reason that the respondent had been making payments of the monthly electricity bills prior to June 2010 and from June 2010 to Jan 2012 without raising any objection. It is also to be pointed out that "electricity" has been defined as "a good" within the meaning of Sale of Goods Act 1930 and as such principle of "buyer beware" applies to the consumer of electricity as regard to price and consumption of a consumer. We may clarify that at least in the instant case "buyer beware" should be applicable as the respondent is seeking claim for recovery of excess units which were consumed back in the period from June 2010 to January 2012.

14. In view of the above, it is clear that at the time of filing application for seeking recovery due to excessive billing the respondent could have chosen a larger period or at least prayed for an unknown period. We may also observe that it was the responsibility of the respondent to take notice of the wrong billing from June 2010 to January 2012 and agitate the matter before LESCO or some other competent forum but the respondent failed to do so and accepted the billing of LESCO. We are not convinced with the arguments of the counsel for the respondent that the matter came into his knowledge through the order dated 06.08.2014 of the NEPRA Appellate Board. On the contrary we are in agreement of the counsel for LESCO that the respondent had the initial knowledge about the excessive billing when he filed first petition before learned POI/EI on 13.12.2013 and his billing for the period from 24.01.2012 to 28.01.2014 was determined and was also finalized in the Appeal No.



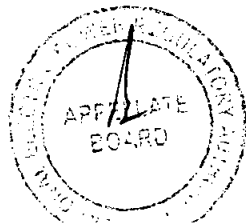


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062/2014 vide NEPRA Appellate Board order dated 06.08.2014. We may also point out that claim of the respondent for excessive billing from June 2010 to January 2012 is also time barred in terms of Article 181 of the Limitation Act 1908.

15. As far as the merits of case are concerned, the respondent challenged the excessive billing of 8,275,080 units for the period from June 2010 to January 2012 before POI vide its application dated 21.08.2014. It is contended by the respondent that as per M&T report dated 18.06.2010, off peak reading:3501, peak reading 480, charged to the respondent are higher than off peak reading:2781.40, peak reading: 506.10 recorded in the bill for May 2010, which according to the respondent, establishes the excessive billing. The appellant LESCO has contradicted the photocopy of M&T report dated 18.06.2010 and termed it to be fake. Further the respondent in its application dated 21.08.2014 assailed the billing from June 2010 to January 2012 and no controversy was raised regarding the billing prior to June 2010. Therefore the impugned decision regarding cancellation of 3,381,780 units regarding billing prior to June 2010 is void and liable to be cancelled.
16. According to respondent, the bill for 32,545,320 units on average basis was charged to the respondent for the period from June 2010 to January 2012 instead of 24,270,240 units as recorded by the electromechanical backup meter. The consumption data of the respondent from June 2010 to January 2012 as per TOU meter is tabulated below;

Month	Off peak reading	Peak reading	Total
Jun-10	2570580	324480	2895060
Jul-10	2801940	429960	3231900
Aug-10	2989740	286560	3276300
Sep-10	1411560	175920	1587480
Oct-10	878340	173940	1052280
Nov-10	252360	52260	304620
Dec-10	442800	88560	531360
Jan-11	2244840	447180	2692020
Feb-11	0	0	0
Mar-11	0	0	0

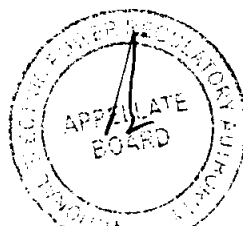




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Apr-11	60	180	240
May-11	877200	175320	1052520
Jun-11	932400	180240	1112640
Jul-11	1118040	166020	1284060
Aug-11	1318620	157800	1476420
Sep-11	808560	161700	970260
Oct-11	1685160	208260	1893420
Nov-11	2169720	423300	2593020
Dec-11	2998440	482520	3480960
Jan-12	2847780	262980	3110760
<b>Total Units Charged from June 2010 to January 2012</b>			<b>32,545,320</b>

From the above table, it may be observed that 32,545,320 units were consumed by the respondent during the period from June 2010 to January 2012 as per TOU billing meter. This fact denies the assertion of the respondent that billing charged to the respondent during said period was on average basis. There is no force in the arguments of the respondent that the TOU meter installed on 18.06.2010 was removed being defective on 24.01.2012. It has emerged from the M&T report dated 24.01.2012 that the impugned meter was replaced by LESCO as per policy of manufacturing company PEL, who had requested for replacement of all meters series from L-00001 to L-00250 as there was some software problem. Nothing has been attributed to the replaced impugned meter regarding its accuracy vide M&T report dated 24.01.2012. The respondent in fact claimed refund of 8,275,080 excessive units due to the difference of consumption recorded between TOU billing meter and electromechanical backup meter during said period on the plea that consumption of electricity meter be considered instead of TOU billing meter. It may be pointed out that pursuant to the WAPDA circular No. 518-36 dated 28.02.2001, the TOU meter consumption will be considered final in case there is difference between a TOU meter and electromechanical backup meter. Therefore claim of the respondent for adjustment of 8,275,080 excessive units is not justified and the impugned decision regarding cancellation of the bills charged for 8,275,080 units is not sustainable and liable to be withdrawn.





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17. From the above discussion we have come to the conclusion that the impugned decision is illegal, void and therefore set aside. The appeal is accepted.

Muhammad Qamar-uz-Zaman  
Member

Muhammad Shafique  
Member

Nadir Ali Khoso  
Convener

Date: 13.05.2016

