



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

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No. NEPRA/AB/Appeal-083/POI-2016/ 1608-1613

December 05, 2016

1. M/s Medigas (Pvt.) Ltd,
Through its Chief Executive,
Baghrian Road, Green Town,
Lahore
2. The Chief Executive Officer
LESCO Ltd,
22-A Queens Road,
Lahore
3. Malik Zahid Hussain,
Advocate High Court,
Office No. 13, Third Floor,
Saif Centre, 8-Fane Road,,
Lahore
4. A. D. Bhatti,
Advocate High Court,
Rehmat Towers, 13-Fane Road,
Lahore
5. Assistant Manager (Operations),
LESCO Ltd,
Township SubDivision,
Lahore
6. Electric Inspector
Lahore Region, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore

Subject: Appeal Titled LESCO Vs. M/s Medigas (Pvt.) Ltd Against the Decision Dated 08.03.2016 of the Electric Inspector/POI to Government of the Punjab Lahore Region, Lahore

Please find enclosed herewith the Decision of the Appellate Board dated 02.12.2016, regarding the subject matter, for information and necessary action accordingly.

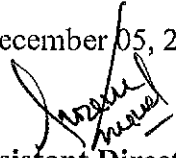
Encl: As Above

No. NEPRA/AB/Appeal-083/POI-2016/ 1614

Forwarded for information please.

(Ikram Shakeel)

December 05, 2016


Assistant Director
Appellate Board

1. Registrar
2. Director (CAD)

CC:

1. Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-083/2016

Lahore Electric Supply Company Limited

.....Appellant

Versus

M/s Medigas (Pvt.) Ltd, Through its Chief Executive,
Baghrian Road, Green Town Lahore

.....Respondent

For the appellant:

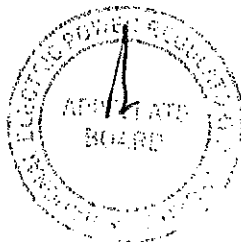
Malik Zahid Hussain Advocate
Syed Tanveer Haider AM (O)

For the respondent:

Mr. A. D. Bhatti Advocate

DECISION

1. Through this decision an appeal filed by Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) against the decision dated 08.03.2016 of Provincial Office of Inspection/Electric Inspector, Lahore Region, Lahore (hereinafter referred to as POI) is being disposed of.
2. The respondent is an industrial consumer of LESCO bearing Ref No. 24-11212-2414800-U with a sanctioned load of 105 kW under B-2a tariff. Brief facts of the case are that metering equipment of the respondent was checked by Metering and Testing (M&T) LESCO on 12.03.2010 and reportedly both TOU billing meter and LT MDI backup meter were found 33.33% slow due to one dead phase. Multiplication Factor (M.F.) was raised from 2 to 3 w.e.f. March 2010. A detection bill of Rs. 935,176/- for 74,569 units/96 kW for the period December 2008 to February 2010 was charged to the respondent due to 33.33% slowness of the



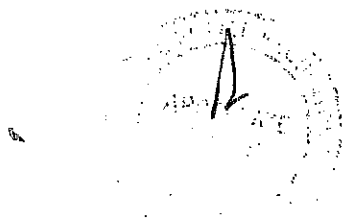


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TOU billing meter (hereinafter referred to as the first meter) in March 2011. Above detection bill was challenged by the respondent before Wafaqi Muhtasib, which was initially decided in favor of the respondent and later on decision on the review petition was given in the favor of LESCO, against which the appeal was filed before President of Pakistan and the decision in this regard is still awaited. First meter was checked by POI on 25.06.2011 and it was found 35.2 % slow. A demand note amounting to Rs. 96,720/- was paid by the respondent for cost of replacement of the first meter in February 2014. However first meter was not replaced by LESCO and billing with enhanced M.F=3 (33.33% slowness) continued from March 2010 to March 2015 without any dispute. First meter was again checked by LESCO on 13.04.2015 and reportedly the first meter was found 66.66% slow, therefore billing from April 2015 to 18.06.2015 was done on 66.66% slowness of the first meter i.e. M.F = 6. A new check meter (hereinafter referred to as the second meter) was installed on 18.06.2015 with original M.F = 40.

3. The respondent being aggrieved with the billing from April 2015 up-to 18.06.2015 with M.F = 6 (due to 66.66% slowness of first meter) filed first application before POI on 22.09.2015 and challenged the bills of Rs.439,998/- for April 2015, Rs.547,684/- for May 2015 and Rs.443,771/- till 18.06.2015. Second meter with M.F. = 40 was checked by LESCO on 08.09.2015 and reportedly it was also found 33.33% slow. A detection bill of Rs. 331,630/- for 15,904 units/96 kW was charged to the respondent for the period 18.06.2015 to August 2015 on the basis of 33.33% slowness of the second meter and M.F was also raised from 40 to 60 by LESCO for billing from September 2015 and onwards. The respondent filed second application before POI on 19.10.2015 and agitated the detection bill of Rs.331,630/- for 15,904 units/96 kW for the period 19.06.2015 to August 2015 on the basis of 33.33% slowness and the bill for September 2015 with enhanced M.F=60 of the second meter. The respondent filed third application on 09.11.2015 against the non-compliance of interim order of POI. The respondent filed fourth application on 10.11.2015 and pleaded that cost of the second meter amounting to Rs. 96,720/- was not recoverable and be refunded. The respondent filed fifth application before POI on 18.11.2015 and challenged the electricity bill of October 2015 with enhanced M.F = 60 (due to 33 % slowness of the second meter).

4. POI considered the grievances of the respondent as stated in the aforementioned five



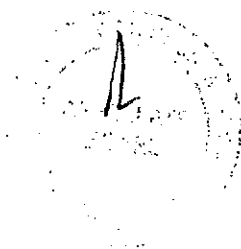


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applications and pronounced its decision on 08.03.2016, the operative portion of the decision is reproduced below:

"Summing up the aforesaid discussion, it is held that:

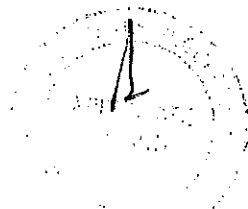
- i. Newly installed meter (Meter No. 204750KBK) became 24.88 % slow w.e.f September 2015.*
- ii. The detection bill amounting to Rs. 3,31,630/- for 15904KWH/96 KW MDI for the period of 06/2015 to 08/2015 is held as null, void and illegal and the petitioner is not liable to pay the same. The petitioner is however liable to be charged @ 24.88 % slowness w.e.f. the billing month of September/2015 to onward/ replacement of accurate meter.*
- iii. The electricity bills w.e.f. 04/2015 to 06/2015 charged with enhanced Multiplying Factor (M.F) of 66.66.66% slowness with respect to first disputed meter (Meter No. 000106) are declared as null, void and illegal and the petitioner is not liable to pay the same. The Respondents are directed to charge the bills w.e.f. 04/2015 to 18.06.2015 @ 41 % slowness accordingly and proportionately.*
- iv. The Demand Notice amounting to Rs. 96,720/- as deposited by the petitioner in February/2014 for the installation of check meter/second meter as installed by the Respondent on 18.06.2015, is held as null, void and illegal and the petitioner is not liable to pay the same in the light of Clause 4.4 (e) of CSM, 2010 approved by NEPRA Authorities.*
- v. The Respondents are also directed to charge the petitioner w.e.f. 19.06.2015 to August/2015 @ original Multiplying Factor (M.F) of 40 of the newly installed meter (Meter No. 204750) and refund excessively charged amounts (including the Demand Notice amounting to Rs. 96,720/- deposited by the petitioner in February/2014 as the cost of second meter) and overhaul the accounts of the petitioner accordingly. The Respondents are further directed to install an accurate energy meter/ billing meter immediately for accurate and true billing in future."*





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5. Being dissatisfied with the POI decision dated 08.03.2016 (hereinafter referred to as the impugned decision), LESCO has filed the instant appeal under section 38 (3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as the NEPRA Act 1997). In its appeal, LESCO inter alia, contended that Electric Inspector had no jurisdiction to make determination in the instant case of theft of electricity as envisaged in section 26 (6) read with 26-A of Electricity Act 1910. LESCO submitted that the meters were tampered and made deliberately slow by the respondent with malafide intention of stealing electricity, therefore the detection bills charged due to slowness of the meters and with enhanced M.F are justified and the respondent is liable to pay the same. According to LESCO, cost of the second meter already paid by the respondent without any protest is not refundable. Finally LESCO prayed that the impugned decision of POI be set aside in the interest of justice, equity and the detection bills charged by LESCO be declared valid, according to law and NEPRA rules.
6. A notice of the above appeal was issued to the respondent for filing reply/parawise comments, which were filed on 28.07.2016. The respondent in his reply/parawise comments denied the grounds of LESCO being incorrect and pleaded that the impugned decision rendered by POI was comprehensive, with full reasoning and liable to be maintained. The respondent prayed that the appeal may graciously be dismissed with costs.
7. Notice was issued to both the parties and hearing of the appeal was held in Lahore on 21.11.2016 in which learned counsels of both the parties entered their appearance. In the outset of hearing, learned counsel for the respondent raised preliminary objection regarding limitation and contended that the appeal against the impugned decision dated 08.03.2016 was not filed before NEPRA within specified time limit of 30 days as such the appeal is time barred under section 12(5) of Limitation Act, 1908 by five days and liable to be dismissed on this ground. Learned counsel for LESCO contradicted the assertions of learned counsel for the respondent and pleaded that copy of the impugned decision was received by LESCO on 14.03.2016, therefore the appeal dated 11.04.2016 filed was within time limit of 30 days as specified in section 38 (3) of NEPRA Act, 1997. He further contended that provisions of Limitation Act, 1908 are not applicable in the instant case. As regards merit of the appeal, the learned counsel for LESCO reiterated the arguments as given in memo of the appeal and contended that both the





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billing meters were tampered by the respondent to make those slow, which was also confirmed through the subsequent checking carried out by POI. According to learned counsel for LESCO, the detection bills charged due to slowness of the meters and with enhanced M.F are justified and liable to be paid by the respondent. Regarding the cost recovered for replacement of the first meter, learned counsel averred that it was paid by the respondent without any protest and his claim for refund at a later stage is not valid. Conversely, learned counsel for the respondent in his rebuttal defended the impugned decision, which according to him was rendered on merits after consideration of facts and law. He averred that the same should be upheld and the appeal be dismissed with costs.

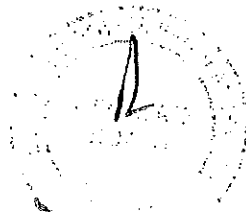
8. We have heard the arguments of both the parties, perused the record placed before us. Following are our observations:

i. Preliminary objection has been raised by LESCO regarding the jurisdiction of POI. It is alleged by LESCO that the electricity was consumed illegally by the respondent through deliberate slowing the electricity meters. However it is noticed that no proceedings were initiated by LESCO against the respondent for theft of electricity, besides formalities laid down in chapter 9 of consumer service manual (CSM) were also not observed. In this regard decision of honorable Supreme Court of Pakistan reported in PLD 2012 Supreme Court 371 is reproduced below:

"(a) Electricity Act (IX OF 1910---

*---Ss. 26(6) & 26-A---Detection Bill, issuance of---Theft of energy by consumer, charge of
---Jurisdiction of Electric Inspector and Advisory Board---Scope---Electric Inspector for
processing special expertise in examining the working of metering equipment and other
related apparatus had jurisdiction to certain reference under S.26(6) of Electricity Act, 1910
only in case of dishonest consumption of energy by consumer through deliberate
manipulation of or tampering with metering equipment or other similar apparatus---
Electric Inspector would have no jurisdiction in matter of theft by means other than
tampering or manipulation of metering equipment etc. falling exclusively under S.26-A of
Electricity Act, 1910---Principles."*

Since illegal abstraction is alleged through tampering of the meter, POI has jurisdiction to adjudicate the instant matter. Obviously objection of LESCO in this regard has no force.





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- ii. As regards objection of the respondent for limitation, it is observed that the impugned decision pronounced on 08.03.2016 was received by LESCO on 14.03.2016. The appeal against the impugned decision was filed before NEPRA on 14.04.2016, which is within 30 days of its receipt as prescribed under section 38(3) of NEPRA Act 1997. Objection of the respondent in this regard has no basis.
- iii. First meter of the respondent was found 33.33% slow by M&T LESCO during checking on 12.03.2010 but it was not replaced with a healthy meter and billing was allowed to be continued with the first meter by raising MF from 2 to 3.
- iv. A detection bill of Rs. 935,176/- for 74,569 units/96 kW for the period December 2008 to February 2010 (15 months) charged due to 33.33% slowness of the first meter was assailed before Wafaqi Muhtasib and the same is still pending in an appeal filed before President of Pakistan. First meter was found 35.27% slow by POI during checking on 25.06.2011, which was done on the reference of Wafaqi Muhtasib.
- v. Regular monthly bills with enhanced MF = 3 (due to 33.33% slowness of the first meter) were charged to the respondent for the period March 2010 to March 2015, which were paid by the respondent and not disputed before any forum.
- vi. The first meter was found 66.66% slow by LESCO on 13.04.2015 and the electricity bills were charged to the respondent with enhanced MF from 3 to 6 (due to 66.66% slowness) for the period April 2015 to 18.06.2015. The respondent filed first application on 22.09.2015 before POI and challenged the electricity bills with enhanced MF=6 (due to 66.66% slowness of the first meter) as per detail given below.

Period/Month	Units	Amount (Rs.)
April 2015	24,084	439,998/-
May 2015	35,220	547,684/-
Till 18.06.2015	22,856	443,771/-

- vii. Second meter was found 33.33% slow during checking by LESCO on 08.09.2015 and MF was raised from 40 to 60 for the billing month of September 2015 and onwards. After issuing notice dated 14.09.2015 to the respondent regarding above discrepancy, a detection bill of Rs.331,630/- for 15,904 units/96 kW for the period 19.06.2015 to August 2015 was charged to



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- the respondent due to 33.33% slowness of the second meter. The respondent disputed the detection bill of Rs.331,630/- up-to August 2015 and the bill for September 2015 with enhanced MF=60 before POI vide his second application dated 19.10.2015.
- viii. The respondent filed third application on 09.11.2015 against non-compliance of interim order of POI and fourth application on 10.11.2015 and agitated the recovery cost of the second meter amounting to Rs.96,720/- by LESCO.
- ix. Meters of the respondent were checked by POI on 10.11.2015 in presence of both the parties in which the first meter was found 41% slow and the second meter was declared 24.88% slow.
- x. The respondent filed fifth application before POI on 18.11.2015 and assailed the electricity bill of October 2015 with enhanced MF= 60 of the second meter.
- xi. We are convinced with the arguments of the respondent that cost of the new meter is not recoverable from him as per CSM and amount of Rs. 96,720/- paid by the respondent is refundable.
- xii. Electricity bills for the period April 2015 to 18.06.2015 with enhanced MF=6 of the first meter are not justified and liable to be withdrawn as 66.66% slowness of the first meter was not proved. However 41% slowness of the first meter was established by POI during checking dated 10.11.2015. The respondent is liable to be charged the electricity bills @ 41% slowness of the first meter for the period April 2015 to 18.06.2015. The impugned decision to this extent is liable to be maintained.
- xiii. Since 33 % slowness of the second meter was not established, the detection bill amounting to Rs. 331,630/- for 15,904 units/96 kW for the period 19.06.2015 to August 2015 is null, void and not payable by the respondent as determined in the impugned decision. Determination of POI for charging the bill as per actual consumption of the second meter during the disputed period i.e. 19.06.2015 to August 2015 is not justified. However to assess the judicious consumption during the same period, following analysis is made;





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Year 2014		Year 2015	
Period/Month	kWh/MDI (undisputed)	Period/Month	kWhs/MDI (As per actual meter reading)
19.06.2014 to 30.06.2014	= $\frac{(12,417) \times 12}{30}$ = 4,967 kWh/63 kW	19.06.2015 to 30.06.2015	= $\frac{(22,856) \times 12}{30}$ = 9,142 kWh/76 kW
July 2014	12,699 kWh/60 kW	July 2015	8,720 kWh/40 kW
August 2014	22,365 kWh/66 kW	August 2015	15,680 kWh/60 kW
Total	40,031 kWh/189 kW	Total	22,365 kWh/176 kW

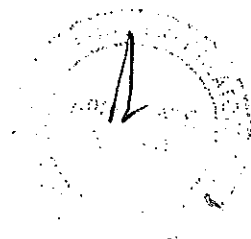
As per above table it is evident that:

- chargeable consumption in the disputed period i.e. 19.06.2015 to August 2015 would be as per corresponding consumption of undisputed period i.e. 19.06.2014 to August 2014 = 40,031 kWh/189 kW
- kWh/kW already charged during the disputed period 19.06.2015 to August 2015 = 22,365 kWh/176 kW
- Net kWh/kW to be charged to the respondent during the disputed period i.e. 19.06.2015 to August 2015 = 17,666 kWh/13 kW

xiv. The respondent may not be charged @ 33.33 % slowness of the second meter w.e.f. September 2015 and onwards till the replacement of the second meter, however the respondent should be charged @ 24.88 % slowness of the second meter for the same period as determined in the impugned decision.

9. From the discussion in preceding paragraphs, it is concluded as under:

- i. The objection of LESCO regarding jurisdiction of POI has no force and therefore dismissed.
- ii. The appeal against the impugned decision was filed within the prescribed period as envisaged under section 38 of NEPRA Act 1997, therefore objection of the respondent in this regard is over ruled.
- iii. The cost of second meter amounting to Rs.96,720/- is not payable by the respondent and should be refunded to the respondent as determined in the impugned decision.





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- iv. Detection bills amounting to Rs.439,998/- for April 2015, Rs.547,684/- for May 2015 and Rs.443,771/- till 18.06.2015 @ 66.66% slowness of the first meter are declared as null and void and LESCO is allowed to charge the bills for the same period @ 41% slowness of the first meter. Impugned decision to this extent is upheld.
 - v. The detection bills charged @ 33.33% slowness of second meter from 19.06.2015 to August 2015 and with enhanced MF=60 from September 2015 and onwards till the replacement of the second meter are void and should be withdrawn as determined by POI. LESCO is allowed to charge net 17,666 kWh/13 kW for the period 19.06.2015 to August 2015 to the respondent. Impugned decision to this extent is modified.
 - vi. The respondent is obligated to pay the detection bill @24.88% slowness of the second meter from September 2015 and onwards till the replacement of second meter. Impugned decision to this extent is maintained.
10. The appeal is disposed of in above terms.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Date: 02.12.2016

