



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

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No. NEPRA/AB/Appeal-036/POI-2016/ 023-027

January 11, 2017

1. M/s Flying Paper Industries Ltd,
Through Momin Qamar,
S/o Qamar-uz-Zaman,
Head Office, 103-Fazil Road,
Sainat John's Park, Lahore Cantt
2. The Chief Executive Officer
LESCO Ltd,
22-A Queens Road,
Lahore
3. Mian Muhammad Mudassar Bodla,
Advocate Supreme Court,
Syed Law Building,
4-Mozang Road, Lahore
4. Ijaz Ahmed,
LESCO Ltd,
Executive Engineer City Division,
Sheikhupura
5. Electric Inspector,
Gujranwala Region,
Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala

Received	By	Date
	448	13-01-17

Subject: **Appeal Titled LESCO Vs. M/s Flying Paper Industries Ltd Against the Decision Dated 20.01.2016 of the Electric Inspector/POI to Government of the Punjab Gujranwala Region, Gujranwala**

Please find enclosed herewith the Decision of the Appellate Board dated 10.01.2017, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Ikram Shakeel)

No. NEPRA/AB/Appeal-036/POI-2016/ 028

January 11, 2017

Forwarded for information please.

Ikram Shakeel
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

Appeal No. NEPRA/Appeal-036/POI-2016

Lahore Electric Supply Company Limited

.....Appellant

Versus

M/s Flying Paper Industries Ltd, through its Executive Director,
Momin Qamar, 103/Fazil Road, Saint John Park, Lahore Cantt

.....Respondent

For the appellant:

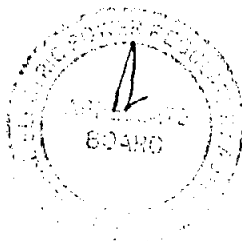
Mian Muhammad Mudassar Bodla advocate
Mr. Ijaz Ahmad XEN

For the respondent:

Mr. Momin Qamar Executive Director
Mr. Ahmed Pervaiz advocate
Mr. Waqar Hasan advocate

DECISION

1. Through this decision, an appeal filed by Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) against the decision dated 20.01.2016 of Provincial Office of Inspection/Electric Inspector, Lahore Region, Lahore (hereinafter referred to as POI) is being disposed of.
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





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No.27-11641-0006300 with a sanctioned load of 4,830 kW under B-3 tariff.

3. As per fact of the case, the respondent filed three applications in succession before POI and challenged some excessive bills debited to him as per detail tabulated below;

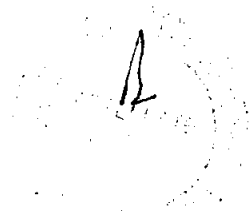
Application dated	Billing month	Units charged in excess	Amount over billed in (million)
13.12.2013	November 2013	7,395,960	140
21.01.2014	December 2013	7,377,240	N/A
21.02.2014	January 2014	7,358,080	140

The matter was disposed of by POI vide its decision dated 04.03.2014 (hereinafter referred to as the first impugned decision), operative portion of which is reproduced below:

*"In view of above facts, it is held that TOU billing meter is correct and registering consumption accurately; thus reading recorded on 28.01.2014 by the TOU KWH meter consumption as 8339.29 x 6000 Off peak and 1120.93 x 6000 peak are justified, correct and legal and the respondents are directed to revise the billing according to above said TOU KWH meter indexes since its installation on 24.01.2012 by computing the consumption on monthly basis till 28.01.2014, which is declared billing up-to 01/2014 and onwards charge the billing according to the readings of TOU billing meter indexes. The billing charged/recovered beyond the actual TOU meter index under the presumptions 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.**" (Emphasis added)*

4. LESCO being dissatisfied with the first impugned decision filed the appeal No. 062/2014 before NEPRA 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), which was decided vide a decision dated 06.08.2014 with the following conclusion:

"In view of discussion in forgoing paragraphs, it is concluded that LESCO has been charging excessive units to the Respondents by entering fictitious readings of TOU billing



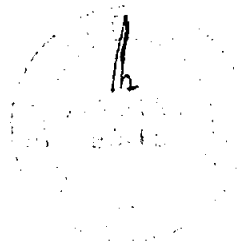


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meter, which were higher than the actual dial meter readings. We are in agreement with the decision of learned POI/EI whereby billing of the respondent from 24.01.2012 to 28.01.2014 has been declared null and void. Therefore the impugned decision dated 04.03.2014 of POI is upheld and the appeal of LESCO is dismissed. LESCO is directed to revise the bill of the respondents as per actual TOU meter reading and make adjustments accordingly."

5. The respondent filed a writ petition No.7427/2014 before Lahore High Court, Lahore for the implementation of the first impugned decision, whereby the honorable Lahore High Court, Lahore vide its order dated 27.08.2014 directed LESCO to issue revised bill to the respondent as per first impugned decision and NEPRA decision dated 06.08.2014. In pursuance of the aforementioned order of honorable High Court, LESCO allowed an adjustment of Rs.75,927,588/- for 7,358,160 units to the respondent in the bill.
6. Being dissatisfied with the aforementioned adjustment, the respondent filed an application before POI on 18.09.2014 and claimed for reimbursement of Rs.166,489,503/- on account of excessive units, late payment surcharges (LPS) and markup during the period January 2012 to January 2014 in addition to the adjustment of Rs.75,927,588/- already made by LESCO. The matter was disposed of by POI vide its decision dated 20.01.2016 (hereinafter referred to as the second impugned decision) with the following conclusion:

"In view of above discussion, it is clarified that as per decision dated 04.03.2014, it is established that charged advanced billing for 8075580 units (7917360 off peak units and 158220 peak units) are to be adjusted against future billing, which are covered during the electricity consumption of billing cycle for 06/2014 as tabulated in Issue No.2 wherefrom the respondents are directed to start charging of billing onward according to the actual reading indexes of the TOU billing meter. It is further held that the since the respondents had been charging incorrect billing from 01/2012 to 06//2014 therefore the LPS, markup and interest of Rs.27,056,664/- levied on extension in due date or installments got made during the period from 01/2012 to 06/2014 are void, unjustified and illegal therefore the petitioner is not liable to pay the same and the respondents are directed to refund the LPS,





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Markup and interest of Rs.27,056,664/- charged during the above said period as the billing was not raised correctly. The respondents are directed to over-haul the account of the petitioner company accordingly.”

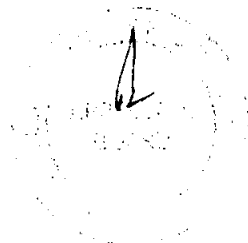
7. Through the instant appeal LESCO has assailed the second impugned decision with the contention inter-alia that POI failed to decide the matter within 90 days as provided in law; that in pursuance of the first impugned decision dated 04.03.2014 and NEPRA Appellate Board decision dated 06.08.2014, an adjustment of Rs.75,927,588/- for 7,358,160 units was allowed to the respondent, therefore, POI has no jurisdiction to adjudicate the claim of the respondent for Rs.166,489,503/- for the period January 2012 to January 2014; that the second impugned decision for reimbursement of Rs.27,056,664/- to the respondent on account of LPS, markup and interest is not sustainable in the eye of law and that the second impugned decision was regarding kWh units only and did not consider the kW MDI part. Notice of the appeal was issued to the respondent for filing reply/parawise comments, which were filed on 14.04.2016. In its reply, the respondent rebutted the assertions of LESCO and contended that restriction of 90 days for deciding the matter by Electric Inspector was not applicable in the instant case as the decision was rendered by the officer in his capacity as POI under section 38 of NEPRA Act 1997 (not as Electric Inspector under section 26(6) of Electricity Act 1910). The respondent contended that the adjustment of 8,075,580 units (7,917,360 off peak units and 158,220 peak units) for the period January 2012 to January 2014 was due in the future billing months i.e. February 2014 to June 2014, which was not done as such the credit of Rs.75,927,588/- for 7,358,160 units afforded by LESCO was insufficient and the respondent is liable for further adjustment of Rs.166,489,503/- for the same period.
8. After issuing notice to the parties, hearing of the appeal was held in NEPRA provincial office Lahore on 09.12.2016 in which both the parties entered their appearance. Mian Muhammad Mudassar Bodla advocate, learned counsel for the appellant LESCO, reiterated the same stance as taken in memo of the appeal and contended that the relief provided by POI vide its first impugned decision dated 04.03.2014 and upheld by NEPRA vide its decision dated 06.08.2014 was already granted to the respondent in terms of adjustment of Rs.75,927,588/- for 7,358,160 units charged in excess for the period January 2012 to January 2014. According to LESCO, there was neither any prayer by the respondent nor any determination by POI for



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refund of LPS and payment of Markup in the first impugned decision, therefore the respondent is not liable to lodge any claim in this regard. As per LESCO, the second impugned decision provided relief for the period January 2012 to June 2014, whereas as per first impugned decision the period was up-to January 2014, which is not in line with the first impugned decision. Learned counsel for the respondent contended that in the first impugned decision it was explicitly provided that the excessive units were to be adjusted in the future bills as such the adjustment of excessive units in previous months by LESCO was in contravention of the first impugned decision and liable to be revised. According to the respondent, he was not liable to pay LPS levied due to non-payment of excessive bills of LESCO charged during the period January 2012 to January 2014. According to learned counsel, the respondent is entitled for markup against the amounts charged in excess by LESCO. Learned counsel for the respondent pointed out that in the absence of BoD resolution, the affidavit submitted by XEN LESCO is not sufficient and the appeal is liable to be rejected on the ground. Learned counsel for the respondent pleaded that the electricity is a commodity and liable to be delivered in future for the mistaken payment made in the past. Moreover as per respondent, the first impugned decision had attained finality and was not challengeable. Learned counsel for the respondent further averred that the first impugned decision was interpreted by POI through its second impugned decision and NEPRA was not authorized to interfere with its interpretation. Regarding objection of LESCO for announcement of the decision after a lapse of 90 days, the counsel for the respondent clarified that section 38 of NEPRA Act 1997 does not impose such restriction.

9. After hearing the arguments and going through the record, it is observed as under:-
 - i. As regards the preliminary objection made by LESCO for announcement of the second impugned decision by Electric Inspector after 90 days, it may be noted that the impugned decision was rendered by the officer in his capacity as POI under section 38 of the NEPRA Act 1997, which does not impose any restriction of time. Hence the objection of LESCO in this respect is not valid. The objection of the respondent regarding submission of affidavit by XEN LESCO without authorization is without any basis for the reason that the power of attorney was signed by Manager (Legal) and the appeal was filed by LESCO through Mian

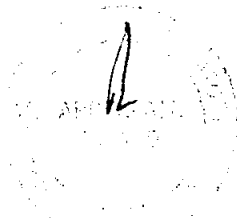




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Muhammad Mudassar Bodla advocate.

- ii. LESCO has considered the quantum of excessive units = 7,358,160 charged during the period January 2012 to January 2014 while allowing credit of Rs.75,927,588/-, which is incorrect as the number of excessive units =8,075,580 (off peak =7,917,360 units, peak =158,220 units) were already determined in the first impugned decision.
 - iii. Main controversy between the parties is regarding the provision of credit for the excessive units charged during the period January 2012 to January 2014 in the same months or in the subsequent months. LESCO has misunderstood and misinterpreted the first impugned decision and afforded insufficient credit to the respondent. It is rightly interpreted in the second impugned decision that credit for 8,075,580 excessive units (7,917,360 off peak units and 158,220 peak units) for the period January 2012 to January 2014 should be afforded in the bills of February 2014 to June 2014.
 - iv. Objection raised by LESCO that the period for providing credit of excessive units was extended up-to June 2014 in the second impugned decision in violation of first impugned decision is incorrect.
 - v. As regards the second impugned decision for payment of Rs.27,056,664/- on account of refund of LPS and markup/interest payable to the respondent, it is observed that such claims were never raised by the respondent in his past applications filed before POI and there is no determination in this regard in the first impugned decision. We are in agreement with the stance of LESCO that such claims could not be raised before POI at belated stage and the determination of POI regarding the same in the second impugned decision is not sustainable in the eye of law. Second impugned decision to this extent is therefore liable to be declared void, ab-initio and of no legal effect.
10. For the foregoing reasons, it is concluded that the impugned decision for providing a credit for 8,075,580 units (off peak =7,917,360 units, peak =158,220 units) charged in excess in the period January 2012 to January 2014 in the subsequent bills i.e. February 2014 to June 2014 is correct and is based upon the first impugned decision which has already attained finality. However, the findings recorded in the 2nd impugned decision for refund of payment for LPS





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and payment of markup/interest amounting to Rs. 27,056,664/- during the period January 2012 to January 2014 is without any basis and the same is set aside. The appeal is partly allowed accordingly.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Date: 10.01.2017

