



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

NEPRA Office , Atta Turk Avenue (East), G5/1, Islamabad
Tel. No. +92 051 2013200 Fax No. +92 051 2600030
Website: www.nepra.org.pk E-mail: office@nepra.org.pk

No. NEPRA/AB/Appeal-051/POI-2017/ 1588-1592

October 31, 2017

1. M/s Flying Paper Board & Paper Products,
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

Subject: Appeal Titled LESCO Vs. M/s Flying Paper & Paper Products Against the Decision Dated 21.03.2017 the Electric Inspector/POI to Government of the Punjab Gujranwala Region, Gujranwala

Please find enclosed herewith the Decision of the Appellate Board dated 30.10.2017, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above


(Ikram Shakeel)

No. NEPRA/AB/Appeal-051/POI-2017/ 1593

October 31, 2017

Forwarded for information please.

Assistant Director
Appellate Board

✓ Registrar

CC:

1. Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-051/POI-2017

Lahore Electric Supply Company

.....Appellant

Versus

M/s Flying Board & Paper Products Ltd,
Lahore Road, Sheikhpura

.....Respondent

For the Appellant:

Mian Muhammad Mudassar Bodla Advocate
Mr. Ijaz Ahmed Executive Engineer (XEN)
Mr. Zohair Akmal Revenue Officer (RO)

For the Respondent:

Mr. Ahmed Pervaiz Advocate
Mr. Momin Qamar Executive Director

DECISION

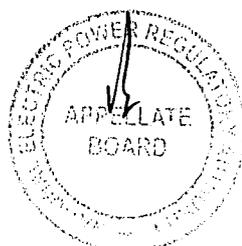
1. This decision shall dispose of appeal filed by Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) against the order dated 21.03.2017 of the Provincial Office of Inspection Gujranwala Region, Gujranwala (hereinafter referred to as POI) under Section 38(3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as the NEPRA Act 1997).





National Electric Power Regulatory Authority

2. LESCO is a licensee of National Electric Power Regulatory Authority (herein after referred to as NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license and the respondent is an industrial consumer of LESCO bearing Ref No.27-11641-0008500 with a sanctioned load of 4,828 kW under B-3 tariff.
3. Brief facts giving rise to the instant appeal are that connection of the respondent was disconnected on 30.09.2011 due to outstanding arrears of Rs. 5,5807,274/- As a result of discussion and understanding between the parties reached in the meeting held on 31.12.2012, the respondent furnished an undertaking dated 31.12.2012 to LESCO to make payment of the above outstanding amount of Rs. 55,807,274/- in 24 equal installments for which post-dated cheques, each valuing of Rs. 2,325,300/- payable on 27th of every month, were handed over by the respondent to LESCO. The cheques were being encashed by LESCO accordingly and in the process 14 cheques total amounting to Rs. 32,554,200/- were realized till 27.04.2014. The respondent filed a petition before POI on 28.04.2014 (hereinafter referred to as the first petition) and contended that due to colossal losses, his industrial unit closed down its operation on 30.09.2011 and the payment of outstanding dues of Rs. 55,807,274/- were agreed as per undertaking dated 31.12.2012 and payments were made accordingly (detail given above). The respondent submitted that it came in his knowledge that LESCO had charged excessive units to the industrial units in the vicinity and as such he suspected that his industrial connection would have been charged excessive units as well. According to the respondent, inspite of requests to LESCO to conduct joint inspection of electricity meter installed in the locked meter room and key with LESCO but his requests were not entertained which reinforced his doubt about the excessive billing. The respondent in the first petition, inter alia,



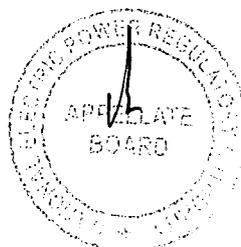


National Electric Power Regulatory Authority

prayed for checking of the meter by POI so as to ascertain exact reading existing on the meter of his disconnected connection.

4. LESCO raised preliminary objection regarding jurisdiction of POI which after pleadings before POI, honourable Lahore High Court Lahore and the Appellate Board was finally settled by the Appellate Board vide its decision dated 13.01.2015 and POI was directed to proceed with the first petition of the respondent and decide the same after providing opportunity of hearing to both the parties.
5. During the pendency of the first petition, another petition (hereinafter referred to as the second petition) was filed by the respondent before POI on 17.10.2016. The respondent averred that by virtue of the established excessive units charged to the industrial units in the vicinity, over billing of his industrial connection in the previous years was also possible. According to the respondent inspite of repeated orders of POI, LESCO failed to furnish the consumption/billing data of both TOU billing and electromechanical backup meter for the year 2009 to year 2011 along with meter change order (MCO) and reconnection order (RCO). The respondent disclosed that he succeeded in getting the copies of test check proformas dated 21.07.2009, 18.06.2010 and 22.03.2011 whereby the TOU billing meter then existed were replaced by the respondent without any prior notice and participation by the respondent and from these test check proformas it was established that 10,197,258 units were charged in excess during the billing from the year 2009 to year 2011. The respondent prayed as under:

"In view of the above submissions, it is humbly prayed that the instant application may very kindly be accepted and declaration may be passed that the act of respondents qua the charging of overbilling, levy markup/interest, LPS, additional





National Electric Power Regulatory Authority

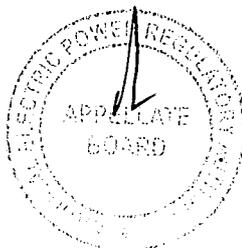
surcharge etc; and disconnection of electricity connection of the petitioner company are void, unjustified and unlawful and the impugned 1,01,97,258 units charged excessively during the period from 2009 to 2011 were overbilled and actually are the advance billing; and the respondents may be directed to adjust the above said excessive units against the consumption/units on utilization of electricity in future months and no bill may be raised till the excess units are equalized by consuming electricity. The respondents may be directed to restore the electricity connection at earliest without any further payment as the respondent had already recovered advance billing much more than their so-called impugned arrears.

Any other relief which under circumstances deems appropriate and just may also be granted to the petitioner in the interest of justice.”

6. POI decided both the first and the second petitions vide its single decision dated 21.03.2017 with the following conclusion:

“15. In view of above facts it is held:-

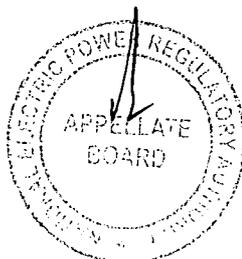
- a. that the charged against the meter Sr. No. 3506831 for the billing upto the month of 07/2009 as reading KWH indexes 9331.65 x 6000 O/Peak & 1662.36 x 6000 peak to the extent of 4,649,898 units beyond the meter reading indexes is unjustified and over/advance billing;*
- b. that the billing charged against the meter bearing Sr. No. L00302 for the billing upto the month of 06/2010 as reading KWH indexes 3834.92 x 6000 O/Peak & 671.97 x 6000 Peak to the extent of 2,390,220 units beyond the actual meter reading indexes is unjustified and over/advance billing;*





National Electric Power Regulatory Authority

- c. *that the billing charged against the meter bearing Sr. No. L00020 for the billing upto the month of 12/2010 as reading KWH indexes 2228.52 x 6000 O/Peak & 285.58 x 6000 Peak to the extent of 3,155,580 units beyond the actual meter reading indexes is unjustified and over/advance billing;*
- d. *that the billing charged against the meter bearing Sr. No. L00189 for the billing upto the month of 09/2011 as reading KWH indexes 1241.13 x 6000 O/Peak & 194.68 x 6000 Peak to the extent of 1,592,520 units beyond the actual meter reading indexes is unjustified and over/advance billing;*
- e. *that the markup/interest and LPS charged on billing during the year from 2009 to 2011 being incorrect billing is void, unjustified and of no legal effect therefore, the petitioner is not liable to pay the same.*
- f. *that the respondents are directed to restore the electricity connection of the petitioner without RCO/minimum fixed charges etc as the respondents themselves had been issuing the excessive and illegal bills.*
- g. *that the respondents are directed to overhaul the account of the petitioner and adjust the total accumulative advance billing to the tune of 11,790,540 units against the units involved in the outstanding arrears of the petitioner (excluding the markup/interest and LPS charges) and adjust the remaining units against the future consumption after restoration of the electricity connection of the petition company and not to raise bills till the equalization of the advance recovered units.*



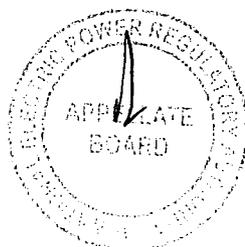


National Electric Power Regulatory Authority

h. that the respondents are further directed to refund the paid markup/interest and LPS charged during the years from 2009 to 2011.

The instant petitions are disposed of in the above terms."

7. Being aggrieved with the POI decision dated 21.03.2017 (hereinafter referred to as the impugned decision), LESCO has filed instant appeal. It is contended therein that the connection of the respondent was disconnected due to non-payment of electricity bills total amounting to Rs. 55,807,274/- on 30.09.2011. According to LESCO, the case for recovery of the said amount was referred to NAB in the end of year 2012 but in the meanwhile an undertaking dated 31.12.2012 was submitted by the respondent, wherein, inter alia, the respondent agreed to make payment of outstanding amount of Rs. 55,807,274/- and accordingly 24 post dated cheques, each valuing Rs. 2,325,300/- were issued in favour of LESCO. LESCO averred that 14 cheques total amounting to Rs. 32,554,200/- were deposited till 27.04.2014 and 10 cheques total amounting to Rs. 23,253,000/- are still outstanding against the respondent. LESCO submitted that instead of making payment of remaining arrears, the respondent filed the first petition before POI on 28.04.2014 praying therein that recovery of balance amount may be suspended till time joint inspection of the meter reading is not carried out. As per LESCO during the pendency of the first petition, the respondent filed the second petition before POI on 17.10.2016. LESCO averred that the matter of first petition was pending before POI but POI vide it's decision dated 21.03.2017 disposed of both the petitions and accepted the second petition with the direction to adjust 11,790,540 units in future bills, restore electricity of respondent's connection and further directed to refund markup/interest and LPS charges during the years from 2009 to 2011. On legal ground LESCO contended that





National Electric Power Regulatory Authority

POI has no jurisdiction to entertain the second petition in the presence of the first petition which is barred by Order 2 Rule 2 of CPC, that bills for each month were issued as per meter reading and no fraud committed, that only civil courts have jurisdiction to decide the question of fraud, that the first petition was not decided by POI, that POI considered photo copies of test check proformas which are not admissible under Qanoon-e-Shahadat Order, 1984, hence the impugned decision is liable to be set aside. It is further stated in the appeal that test check report dated 24.07.2014 is not valid as it was not signed by standing committee LESCO, that the meter was defective as declared by manufacturer PEL and it's reading as such are not reliable and the respondent was charged on load basis, that the second petition was time barred under Article 181 of Limitation Act, 1908, that the respondent has not specified any period of excessive billing and POI granted relief beyond the prayer, that POI has no jurisdiction to refund LPS from the year 2009 to the year 2011, that the second petition is hit by section 11 of CPC and principle of estoppels as an appeal regarding LPS is pending before the ADJ Sheikhpura. LESCO prayed that the impugned decision may be set aside.

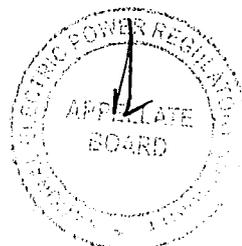
8. Notice for filing reply/parawise comments was sent to the respondent on 17.04.2017 and the respondent filed reply on 15.08.2017. In his reply, the respondent raised the preliminary objection regarding signing of the appeal by Mr. Ijaz Ahmad Additional Manager (Operations) Sheikhpura Division without authorization by Board of Directors (BoD) LESCO, as such the appeal was incompetently and invalidly instituted. The respondent submitted that LESCO cannot raise new grounds in the appeal which were not raised before POI and also violated CSM and NEPRA Performance Standards Distribution Rules 2005. The respondent averred that monthly readings were neither recorded in their presence nor they were associated in the meter replacement process. According to the respondent, LESCO deliberately





National Electric Power Regulatory Authority

concealed actual meter readings and charged/excessive units as established vide test check proformas dated 21.07.2009, 18.06.2010 and 22.03.2011 and 24.07.2014. LESCO pleaded that 11,790,540 units were excessively charged by LESCO during the years 2009 to 2011. On merits the respondent stated that the undertaking dated 31.12.2012 specifically mentioned that settlement for payment was not final and subject to reconciliation. According to the respondent, the first petition before POI was filed for suspected over billing as over/excessive billing was established in other industrial units in the vicinity and request was made for joint checking of the meter. On legal grounds, the respondent contended that both the petitions were decided by POI on merits, that there was no bar on the respondent to filing the second petition and the provision of Order 2 Rule 2 of CPC are not attracted as both suits have different cause of action. As regards limitation, the respondent pleaded that the metering equipment were installed in a locked room and possession of key is with LESCO and the monthly reading were recorded by LESCO without their participation. As per respondent, the overbilling came to their knowledge when they succeeded through their own resources in getting the copies of test check proformas dated 21.07.2009, 18.06.2010 and 22.03.2011 in September 2016, therefore the second petition dated 17.10.2016 was filed before POI in time and not barred by limitation. According to LESCO, the overbilling was concealed by LESCO intentionally and fraudulently, therefore benefit of section 18 of Limitation Act, 1908 was available to the respondent. The respondent further averred that LESCO in the appeal admitted that the first petition became infructuous, that the contents of test check proformas were neither challenged before POI nor before this forum which is tantamount to acceptance by LESCO and despite repeated letters by POI, LESCO failed to provide original check proformas, hence an adverse presumption is to be





National Electric Power Regulatory Authority

drawn against LESCO under Qanoon-e-Shahadat Order 1984 though the same is not applicable strictosensu before this forum.

9. After issuing notice to the parties, the appeal was heard in NEPRA head office Islamabad on 27.10.2017, in which both parties were in attendance. Mian Muhammad Mudassar Bodla the learned counsel for LESCO reiterated the same arguments as contained in memo of the appeal. He contended that the amount of Rs. 55,807,274/- was admitted by the respondent as arrears and as per his undertaking dated 31.12.2012 he issued 24 advance cheques of which 14 cheques amounting to Rs. 32,554,200/- already realized and remaining amount of Rs. 23,578,374/- is payable by the respondent. He raised preliminary objection that the second petition dated 17.10.2016 of the respondent for claiming excessive bill did not specify the period and was time barred under Limitation Act 1908. According to the counsel for LESCO, photo copies of test check proformas are not admissible under Qanoon-e-Shahadat Order 1984 and fraud alleged by the respondent in the meter reading could only be proved before a court of law and is beyond the jurisdiction of POI. The learned counsel pointed out that the second petition was inadmissible under Order 2 Rule 2 of CPC. In support of filing the appeal by Mr. Ijaz Ahmad Additional Manager (Operations) Sheikhupura Division, Mian Muhammad Mudassar Bodla learned counsel for LESCO pleaded a copy of the BoD resolution dated 16.05.2011 which was accepted therefore, the leaned counsel for the respondent did not press his objection in this regard. On the contrary, Mr. Ahmed Pervaiz learned counsel for the respondent rebutted arguments of LESCO and repeated his stance given in his reply/parawise comments. He averred that the second petition for excessive billing filed before POI in October 2016 was within time as the excessive billing came into the knowledge of the respondent after obtaining copies of test check proformas dated 21.07.2009, 18.06.2010 and 22.03.2011 in September



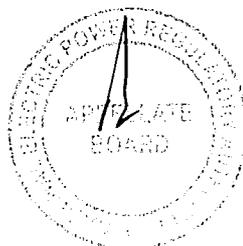


National Electric Power Regulatory Authority

2016. As per learned counsel for the respondent, Limitation Act 1908, CPC and Qanoon-e-Shahadat are not applicable strictosensu to POI and NEPRA. He defended impugned decision and prayed for dismissal of the appeal.

10. Arguments of both parties heard and the record produced examined:

- i. First petition was filed before POI regarding suspicion of excessive billing by LESCO and joint inspection of the meter reading in presence of both the parties. Since this demand of the respondent was accepted by LESCO and a joint inspection was carried out on 24.07.2014, therefore we agree with the contention of the respondent that the objective of filing of such petition was achieved and objection of LESCO that it remained undecided by POI carries no weight, therefore dismissed.
- ii. Discrepancy between the meter reading index and the reading as per electricity bill was detected initially during the joint checking by POI on 24.07.2014 and later on charging of excessive units as per test check proformas of LESCO dated 21.07.2009, 18.06.2010 and 22.03.2011 was also established. It is noticed that in the joint checkings dated 24.07.2014 the metering equipment was found accurate. Similarly the metering equipment was found within permissible limits on 21.07.2009 but even then it was replaced by LESCO. Again the both TOU and backup meters were found correct on 18.06.2010 but date and time were disturbed. As a result of ERO both TOU and backup meters were removed on 25.02.2011 and no defect in the metering equipment was pointed out. From above it's evident that total consumption of metering equipment was correct and any bill charged not corresponding to the meter readings as registered on the proformas is incorrect





National Electric Power Regulatory Authority

and excessive and the respondent is liable to be given credit accordingly as per table given below:

PERIOD	Billing Meter No.	electromechanic Backup Meter No.	Units Billed	Consumption on Billing Meter	Consumption on Backup Meter	Excess Units (w.r.t billing meter)
Prior upto 07/2009	3506831	40370068	65,964,060	61,314,780	N.A.	4,649,280
From 07/2009 to 06/2010	L 100302		27,041,340	24,651,120	24,798,220	2,390,220
From 07/2010 to 02/2011	L 00020		15,084,600	N.A.	11,926,080	3,158,520
From 03/2011 to 09/2011	L 00189		8,611,980	7,019,460	7,064,880	1,592,520
Total Excess Units up to 09/2011						11,790,540

- iii. We are not convinced with the contentions of LESCO that the photo copies of check proformas are not reliable as nothing to the contrary was placed before POI despite repeated letters and this forum and moreover the contents of the test check proformas were not denied by LESCO.
- iv. Preliminary objection of LESCO regarding the second petition being time barred claim has been dilated upon detail in para 11 of the impugned decision. We are in agreement with the findings of POI that right to file the second petition accrued to the respondent in September 2016 when he obtained the test check proromas dated 21.07.2009, 18.06.2010 and 22.03.2011. The second petition dated 17.10.2016 is within the time and the objection of limitation by is LESCO carries no weight hence overruled.





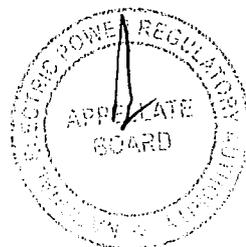
National Electric Power Regulatory Authority

- v. First petition was filed before POI for checking of metering equipment. The contents of second petition filed for the excessive billing between the years 2009 to 2011 are distinct, hence we are inclined to agree with the respondent that Order 2 Rule 2 of CPC is not attracted. Even otherwise CPC is not applicable to POI and NEPRA strictly being a quasi judicial foras.
- vi. It is established beyond any doubt that excessive units/bill were charged to the respondent and adjustment for the same is to be given as under:

Period	Units charged in excess	Method for calculation for amount to be credited (Rs)
Prior to July 2009	4,649,280	(i) Tariff of June 2009 be applied Off Peak: Peak = 20 : 4
July 2009 to June 2010	2,390,220	(ii) Tariff of June 2010 be applied Off Peak: Peak = 20 : 4
July 2009 to February 2011	3,158,520	(iii) Tariff of February 2011 be applied Off Peak: Peak = 20 : 4
March 2011 to September 2011	1,592,520	(iv) Tariff of September 2011 be applied Off Peak: Peak = 20 : 4

The total amount to be credited calculated as per method given above shall be adjusted in the future bills of the respondent for next 12 months. Impugned decision stands modified to above extent.

- vii. It is admitted by the respondent that due to colossal loss and financial constraints he could not make payment of his electricity bills regularly, therefore LPS levied due to default of payment are recoverable from the respondent. Impugned decision for cancellation/refund of LPS is not justified, therefore declared void to this extent.





National Electric Power Regulatory Authority

11. The appeal is disposed of in above terms.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Date: 30.10.2017

