



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

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No. NEPRA/AB/Appeal-133/POI-2016/ 029-033

January 11, 2017

1. M/s Al-Hamd Woolen Mills (Pvt.) Ltd,
Opposite GEO CNG Station,
27-KM, G.T. Road,
Muridke
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. Ghulam Murtaza,
LESCO Ltd,
Assistant Manager (Operation),
City Sub Division, Muridke
5. Electric Inspector,
Gujranwala Region,
Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala

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Subject: **Appeal Titled LESCO Vs. M/s Al-Hamd Woolen Mills (Pvt.) Ltd Against the Decision Dated 21.06.2016 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-133/POI-2016/ 034

January 11, 2017

Forwarded for information please.


Assistant Director
Appellate Board

- ✓ 1. Registrar
2. Director (CAD)

CC:

1. Member (CA)

Scanned and E-mailed to 11-01-2017



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-133/POI-2016

Lahore Electric Supply Company Limited

.....Appellant

Versus

M/s. Al-Hamd Woolen Mills (pvt) Ltd,
Opposite GEO CNG Station, 27 KM G.T Road, Muridke, Lahore

.....Respondent

For the appellant:

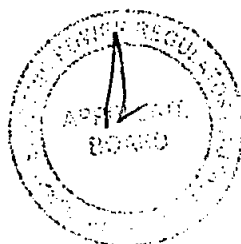
Mian Muhammad Mudassar Bodla advocate
Mr. Muhammad Ibrahim

For the respondent:

Mr. Salahuddin

DECISION

1. This decision shall dispose of an appeal filed by Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) against the decision dated 21.06.2016 of the Provincial Office of Inspection/Electric Inspector Lahore Region, Lahore (hereinafter referred to as POI) under Section 38(3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as the NEPRA Act 1997).
2. The respondent is an industrial consumer of LESCO bearing Ref No.24-11652-0173902 with a sanctioned load of 120kW under B-2 tariff. As per facts of the case, the metering equipment of the respondent was running 33.33% slow since June 2013 and the billing was being done by LESCO by raising the Multiplication Factor (MF) from 40 to 60. The display of both the TOU billing meter and electromechanical backup meter was washed out in April 2015. The respondent was charged a bill of 35,040 units/77 kW MDI for April 2015 on





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estimated basis, which was paid by the respondent without raising any objection as the same was compatible with the consumption of 35,700 units/102 kW recorded in the corresponding month of previous year i.e. April 2014. LESCO issued the bill of 58,380 units/96 kW MDI to the respondent for May 2015 on estimated basis. The metering equipment of the respondent was checked by standing committee LESCO on 03.07.2015 and allegedly both the meters were found tampered. TOU billing meter of the respondent was removed and the case was referred to SHO Muridke vide SDO letter No.1669 dated 04.07.2015 for registration of FIR. The respondent was charged 100,020 units/120 kW in June 2015 on the basis of needle reading of electromechanical backup meter as averred by LESCO. The respondent received a bill amounting to Rs.1,780,417/- in June 2015, which included arrears of Rs.394,079/-.The respondent made a payment of Rs.756,150/- being partial payment of the bill for June 2015 and also paid an amount of Rs.10,200/- as the meter replacement cost and Rs.10,000/- as reconnection fee. The supply of the respondent was restored on submission of the undertaking and affidavit dated 07.08.2015 to the effect that he would make payment of detection charge and withdraw his complaint filed before POI.

3. Being aggrieved, the respondent filed an application before POI on 03.08.2015 and contented that 97,920 units charged in excess in May 2015 and June 2015, late payment surcharges (LPS), cost of the meter replacement and reconnection fee recovered by LESCO were void, unjustified and of no legal effect and be refunded to the respondent. During the pendency of case before POI, the respondent filed a complaint on 21.10.2015 before NEPRA and challenged the aforementioned charges. Later on the respondent filed another application before NEPRA on 16.03.2016 and withdrew his complaint against LESCO on the plea that the same matter was pending before POI. A civil suit filed before Civil Judge Feroz Wala, District Sheikhupura on 21.11.2015 for restraining LESCO from removing the meter and disconnection of the electric supply was dismissed by the Civil Judge Class-III of Feroz Wala vide his order dated 07.04.2016 due to non-deposition of the processing fee.





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However the application dated 03.08.2015 was disposed of by POI vide its decision dated 21.06.2016, the operative portion of which is reproduced below:

"In the light of above facts, it is held that the impugned meter display was disappeared and no reading was visible whereas the impugned bill charged for 58,380 units for 03/2015 and 1000200 units for 06/2015 and LPS charged against the said bills are void, unjustified and of no legal effect; therefore the petitioner is not liable to pay the same. The respondents are directed to withdraw the above said bills and charge revised bills for the disputed months on the basis of 30,960 units/96 kW MDI and 29520 units/114 kW MDI as recorded during the corresponding months of the previous year i.e. 05/2014 and 06/2014 respectively. The respondents are also directed to overhaul the account of the petitioner and the excess amount recovered be refunded to the petitioner company."

4. Being dissatisfied with the decision of POI dated 21.06.2016 (hereinafter referred to as the impugned decision), LESCO has filed the instant appeal before NEPRA and inter alia pleaded that the respondent furnished an affidavit and undertaking to the effect that they would make payment of the detection bills raised by LESCO and withdraw their application filed before POI. According to LESCO, POI has no jurisdiction due to the submission of said affidavit and undertaking by the respondent and only a Civil Court has the jurisdiction to entertain and adjudicate upon such matter. LESCO pointed out that Electric Inspector/POI failed to decide the application of the respondent within 90 days as envisaged under section 26(6) of Electricity Act 1910 and further pleaded that the application filed by the respondent before POI was not through an authorized person, which is barred by order 29 rule 1 CPC. LESCO prayed that the impugned decision being against the law and facts is liable to be set aside.
5. Notice of the above appeal was issued to the respondent for filing reply/parawise comments, which were filed on 30.08.2016. In his reply, the respondent raised the preliminary objection regarding the maintainability of the appeal and contended that SDO has no locus standi to file the instant appeal on behalf of LESCO. The respondent rebutted the grounds of





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LESCO and pleaded that no substantial question of law and facts was raised by LESCO in the instant appeal, therefore the impugned decision is liable to be maintained in the larger interest of justice.

6. Notice was issued for hearing scheduled at Lahore on 09.12.2016 in which both the parties participated. Mian Muhammad Muddasar Bodla advocate for the appellant LESCO contented that the metering equipment of the respondent was found tampered during M&T LESCO checking dated 03.07.2015 but FIR was not registered as the respondent gave undertaking and affidavit for payment of the detection bills raised by LESCO and not to challenge the matter before any legal forum. According to LESCO, the bill for May 2015 was charged as per consumption of May 2014 and the bill for June 2015 was charged due to the difference of needle reading of electromechanical backup meter and TOU billing meter. According to LESCO, partial payment of the above detection bills was made by the respondent, which established that the bills were justified. LESCO reiterated the stance and stated that after submission of undertaking and affidavit, the matter was beyond the jurisdiction of POI and Civil Court only could adjudicate upon such matter. On merits, the learned counsel for LESCO pleaded that the bills for May 2015, June 2015, LPS, meter replacement cost and reconnection fee charged by LESCO were legal, justified and the respondent is liable to pay the same. On the contrary, the representative for the respondent denied assertions of LESCO and reiterated the same stance as given before POI and submitted in his reply/parawise comments to the instant appeal. As regards the affidavit and undertaking, the representative for the respondent disclosed that those were furnished under coercion for restoration of electric supply and avoidance of huge financial loss. According to him, the excessive bills for May 2015 and June 2015 were charged by LESCO as they failed to fulfill their illegal demand. He defended the impugned decision and prayed for dismissal of the appeal.
7. We have heard the arguments of both parties and examined the record placed before us:
 - i. As regards the preliminary objection of LESCO regarding the maintainability of the





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impugned decision due to submission of the affidavit and undertaking, it is observed that those were furnished by the respondent under duress for restoration of supply and are invalid in the eye of law. Hence the objection of LESCO in this regard is liable to be dismissed.

- ii. Although this point was not pressed during the hearing but the objection was raised by LESCO in the appeal that the decision was rendered by Electric Inspector after 90 days, which is violative of section 26(6) of Electricity Act 1910. It is relevant to clarify that the 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 limit. Hence the objection of LESCO in this respect is not tenable and dismissed.
- iii. As regards the objection of LESCO in its appeal that the application filed by the respondent before POI was not through an authorized person, it is noticed that the objection was not pressed by LESCO during the arguments. We are of the view that the aforesaid ground was not raised by LESCO before POI as such it cannot be raised at this stage. Therefore objection of LESCO in this regard is dismissed.
- iv. As regard objection of the respondent that SDO LESCO is not authorized to file the appeal on behalf of LESCO, it is observed that SDO LESCO was representing as the respondent No.4 before POI but no objection was raised by the respondent during the course of hearing, hence raising this objection at this stage is not valid and over ruled.
- v. On merits, it is observed that the detection bills for May 2015 and June 2015 were disputed by the respondent before POI. The detection bill of 58,380 units/96 kW was charged by LESCO for May 2015 but it does not correspond to the consumption of May 2014 as contended by LESCO. As averred by LESCO, the detection bill of 100,020 units/120 kW charged to the respondent for June 2015 was on the basis of difference of the readings of electromechanical backup meter and TOU billing meter but no supporting document has been placed by LESCO to substantiate its stance. The





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version of LESCO does not seem to be correct as the display of both the meters was washed out in April 2015, as such no comparison of readings of both the meters could be made out. POI has rightly analyzed that the bills for May 2015, June 2015 and LPS charged by LESCO are void, unjustified and not payable by the respondent, therefore liable to be cancelled. The impugned decision for charging the bills for May 2015 and June 2015 on the basis of consumption recorded in the corresponding undisputed months of previous year i.e. May 2014 and June 2014 is in accordance with the Consumer Service Manual (CSM). There is no reason to interfere in the impugned decision, which is liable to be maintained.

8. Upshot of above discussion is that the impugned decision is in accordance with facts and law and therefore upheld. Consequently the appeal is dismissed.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Date: 10.01.2017

