



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

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No. NEPRA/AB/Appeal-007/POI-2017/ 878-873

June 01, 2017

1. M/s Premier Industrial Chemical Manufacturing Co. (Pvt.) Ltd,
23-Ahmad Bock, Garden Road,
Lahore
Through its authorized representative,
Rana Shafqat Hussain,
Connection at 9-K.M. Lahore Road,
Sheikhupura
2. Chief Executive Officer,
LESCO Ltd,
22-A, Queens Road,
Lahore
3. Mian Muhammad Mudassar Bodla,
Advocate Supreme Court of Pakistan,
Syed Law Building, 4-Mozang Road,
Lahore
4. A. W. Chaddha,
Advocate High Court,
Aziz Law Chambers,
1-Turner Road, Lahore
5. Ijaz Ahmed,
Deputy Manager (Operation),
LESCO Ltd,
Sheikhupura
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 Premier Industrial Chemical Manufacturing Co. (Pvt.) Ltd. Against the Decision Dated 02.12.2016 of the Electric Inspector/POI to Government of the Punjab Lahore Region, Lahore

Please find enclosed herewith the order of the Appellate Board dated 25.05.2017, regarding the subject matter, for information and necessary action accordingly.

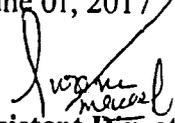
Encl: As Above

(Ikram Shakeel)

No. NEPRA/AB/Appeal-007/POI-2017/ 874

June 01, 2017

Forwarded for information please.


Assistant Director
Appellate Board

✓ 1. Registrar

CC:

1. Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-007/POI-2017

Lahore Electric Supply Company LimitedAppellant
Versus

M/s Premier Industrial Chemical Manufacturing Co. (Pvt.) Ltd,
Through its authorized representative, Rana Shafqat Hussain,
23- Ahmed Block, Garden Road, Lahore Connection at 9-KM,
Lahore Road, SheikhpuraRespondent

For the appellant:

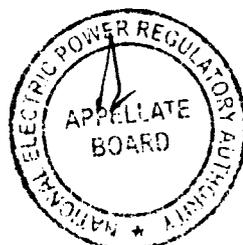
Mian Muhammad Mudassar_Bodla_Advocate
Mr. Ijaz Ahmed Executive Engineer

For the respondent:

Mr. A.W. Chaddha_Advocate
Mr. Rana_Shafqat_Hussain
Malik Asjed Sultan Assistant General Manager

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 02.12.2016 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 NEPRA Act 1997).

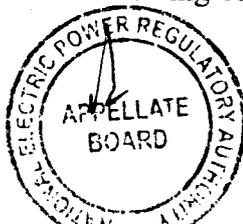




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2. As per facts of the case, the respondent is an industrial consumer of LESCO bearing Ref No. 24-11641-0000104 with a sanctioned load of 1,985 kW under B-3_tariff. Against some claimed excessive units charged by LESCO, the respondent had filed a Writ Petition. No.21352/2016 before Lahore High Court Lahore which was disposed of by the honorable High Court vide its order dated 20.06.2016 with the direction to LESCO for deciding the matter within 30 days. Subsequently the respondent was issued a bill for June 2016 with meter reading (Off peak: 6,830.1, MF: 3000) as noted on 30.06.2016. In compliance with the direction of honorable High Court, both the TOU billing and backup meters_of the respondent were checked by Metering & Testing (M&T) LESCO on 11.07.2016 and reportedly erratic behavior of TOU billing meter was noticed with the meter reading as OP= 5,696.94, whereas the backup meter was working within permissible limit.

3. The bill for June 2016 was challenged by respondent before Lahore High Court Lahore vide WP No.24117/2016 dated 19.07.2016, which was referred to POI for further adjudication by the honourable Court vide its order dated 07.10.2016. The respondent also filed an application before POI on 08.11.2016 while challenging 3,399,540 claimed excessive units charged by LESCO due to the difference between off peak readings= 6,830.1 recorded on 30.06.2016 and 5,696.94 as noted on 11.07.2016. Metering equipment of the respondent was checked by POI on 08.11.2016 and the TOU billing meter was found 39.7% slow. The matter was decided by the POI vide its decision dated 02.12.2016 with the following conclusion:





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"In the light of above facts. It is held that: i) the disputed billing meter was correct till 30.06.2016 and it became 39.7% slow in between 01.07.2016 to 17.11.2016 when it was not the bill in meter as the billing has been shifted of 07/2016 onward. ii). That the impugned reading charged by the respondents as Off Peak KWH reading index 6830.1 x 3000 showing as registered by the impugned TOU billing meter till 30.06.2016 is excessive, incorrect, unjustified and of no legal effect therefore the petitioner is not liable to pay the same; whereas Off peak KWH Reading Index recorded on 11.07.2016 as 5,696.44 x 3000 with Peak KWH Reading index on the impugned TOU meter as 662.32 x 3000 (this Peak reading also charged in bill for 06/2016 after excluding of proportionate consumption value for 11 days being included in the billing cycle of 07/2016 as the billing was shifted & being charged on electromechanical backup meter with effect from 01.07.2016. The respondents are directed to revise the billing according to Off Peak Reading index (5,696.94 x 3000) of the above said TOU KWH meter since its installation on 22.01.2007 by computing the average of consumption equally on monthly basis till 30.06.2016 and the excessive consumption charged as 33,99,540 units (6,830.12-5,696.94)x3000 be refunded/adjusted in future bills whereas consumption value for 11 days added in 5,696.94 off peak reading when disputed TOU meter was not the billing meter is additionally be refunded proportionate to the average to be computed on the monthly basis. iii) That impugned late payment surcharges Rs.12,40,243/- levied on the bills from 06/2016 to 09/2016 and the low power factor penalty Rs.1,45,008/- imposed in the bill for 01/2016 are void, unjustified and illegal

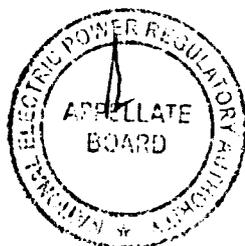




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and the petitioner is not liable to pay the same. iv). That the respondents are directed to overhaul the account of the petitioner company in the terms mentioned above and the excess units charged be refunded/adjusted in the future bills and replace the impugned TOU meter by an accurate new meter immediately.”

4. This appeal has been filed against the above referred decision; inter-alia on the grounds that in compliance with the directions of honorable Lahore High Court Lahore, the metering equipment of the respondent was checked by M&T on 11.07.2016 and erratic behavior of the TOU billing meter was reported, whereas the backup meter was found working correct; that the same TOU billing meter was also checked by POI on 17.11.2016 and was found 39.7% slow; that the impugned decision for refund/adjustment of 3,399,540 units charged in excess since installation of TOU meter is arbitrary and beyond the pleadings of the respondent; and that POI failed to consider the consumption data, billing statement and other relevant documents while passing the impugned decision.
5. Notice of the appeal was issued to the respondent for filing reply/parawise comments, which were filed on 09.02.2017. In its reply, the respondent raised the preliminary objection regarding maintainability of the appeal and contended that the appeal is not filed through an authorized person that neither the appeal nor the power of attorney bore the signatures of the appellants (Chief Executive Officer LESCO and Assistant Manager), therefore liable to be dismissed. On merits, the respondent contended that

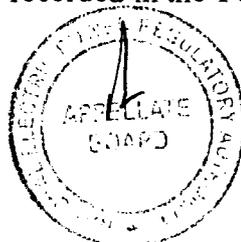




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LESCO charged excessive billing for long time, which is proved from the meter readings dated 30.06.2016. The respondent prayed that the impugned decision is based on facts and law and the same may be upheld.

6. Notice was issued and hearing of the appeal was held at Lahore on 20.04.2017, which was attended by both the parties. Learned Counsel for the respondent repeated the preliminary objection on the maintainability of the appeal and contended that the appeal was neither filed through an authorized person nor true copy of the impugned decision and attested affidavit were attached with the appeal, moreover it does not bear signature of LESCO Authority, therefore liable to be dismissed. In response, Mian Mudassar Bodla advocate learned counsel for the appellant LESCO rebutted the contentions of the learned counsel of the respondent and contended that the appeal is filed before NEPRA through Assistant Manager LESCO, who was also respondent No. 3 before POI but no such objection was raised by the respondent before that forum, hence raising this objection at this stage is not valid. As regards the BoD resolution for authorization of learned counsel for LESCO to plead the appeal, same was committed by learned counsel and later on provided. On merits, Deputy Manager LESCO admitted that TOU billing meter was defective but the billing was done by LESCO on the basis of reading of the same meter, which is incorrect and liable to be cancelled. Learned counsel for LESCO contended that since TOU billing meter remained defective during the period 22.01.2007 to 11.07.2016, therefore grant of adjustment in the impugned decision on the basis of readings noted in the bill and recorded in the TOU billing meter is irrational and liable to

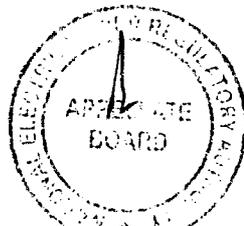




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be declared null and void. Deputy Manager LESCO admitted that from the consumption data of both the meters during the disputed period, it is established that 1,575,720 units were charged in excess, which are liable to be credited to the respondent. On the contrary, learned counsel for the respondent submitted that the excessive billing of 3,399,540 units was proved due to the difference of readings recorded in the bill for June 2016 and noted during the LESCO checking dated 11.07.2016. According to learned counsel for the respondent, it is proved beyond any doubt that 3,399,540 units were charged in excess by LESCO and POI rightly decided the credit of 3,399,540 units in his favor.

7. We have heard the arguments of both the parties and examined the record placed before us. It is observed as under:
 - i. As regards the objection of the respondent that Assistant Manager LESCO is not authorized to file the appeal on behalf of LESCO, it is observed that the same officer appeared as respondent No.3 before POI but no such objection was raised by the respondent during the course of hearing, hence raising this objection at this stage is not valid and over ruled.
 - ii. There is no force in the objection of the respondent regarding the non-provision of certified copy of the impugned decision and attested affidavit, as both the documents are available with the original appeal.
 - iii. The respondent challenged 3,399,540 excessive units charged due to a difference of





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OP reading = 6,830.1 dated 30.06.2016 of the bill and OP reading =5696.94 as noted on 11.07.2016 during M&T checking before POI vide application dated 08.11.2016.

iv. Metering equipment of the respondent was checked jointly by POI on 17.11.2016 and the TOU billing meter of the respondent was found 39.7% slow. Since the TOU billing meter was slow/defective therefore the billing based on the same is incorrect. It is also admitted by LESCO that the billing carried out as per TOU billing meter during the disputed period June 2013 to December 2014 is incorrect and liable to be cancelled. We are inclined to agree with the stance of LESCO that the respondent may be charged as per consumption recorded by the healthy backup meter during the period 22.01.2007 to 11.07.2016.

v. As per record provided and conceded by LESCO, the respondent is liable to be provided a credit of 1,575,720 units during the period 22.01.2007 to 11.07.2016 as per breakup given below:

- **Peak = $\frac{\text{Peak Hours}}{\text{Total hours per day}} \times \text{Total Units credited} = \frac{4}{24} \times 1,575,720 = 262,620 \text{ units}$**
- **Off Peak = $\frac{\text{Off Peak Hours}}{\text{Total hours per day}} \times \text{Total Units credited} = \frac{20}{24} \times 1,575,720 = 1,313,100 \text{ units}$**

Impugned decision is liable to be modified to above extent.

vi. Impugned decision for cancellation of late payment surcharges (LPS) of Rs.1,240,243/- levied on the bills from June 2016 to September 2016 and low power





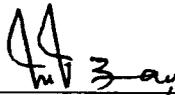
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factor penalty of Rs.145,008/- imposed in the bill for January 2016 is irrelevant and beyond the prayer of the respondent, therefore liable to be declared null and void to this extent.

8. In view forgoing discussion, we have reached to the conclusion that:

- i. Impugned decision for refund of 3,399,540 excess units for the period 22.01.2007 to 30.06.2016, cancellation of LPS of Rs.1,240,243/- for June 2016 to September 2016 and low power factor penalty of Rs.145,008/-for January 2016 is not justified, therefore set aside to that extent.
- ii. The respondent should be afforded a credit of 1,575,720 units (OP= 1,313,100 units and P= 262,620 units) for the period 22.01.2007 to 30.06.2016 as calculated in para 7. (v) above.

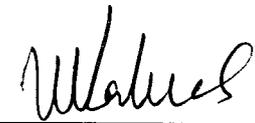
9. The impugned decision is modified in above terms.



Muhammad Qamar-uz-Zaman
Member



Muhammad Shafique
Member



Nadir Ali Khoso
Convener

Dated: 25.05.2017

