



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-155/POI-2016/1753-1758

November 29, 2017

1. M/s Javed Steel Furnace,
Through Ch. Javed,
S/o Ch. Muhammad Nazir,
37-Bhani Road, Shadi Pura,
Lahore
2. Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore
3. Syed Ali Raza Rizvi,
Advocate High Court,
Haji Chambers, 4-Mozang Road,
Lahore
4. Qaisar Mahmood Ch,
Advocate High Court,
Lawmen Associates,
4-A, Mozang Road, Lahore
5. Sub Divisional Officer,
LESCO Ltd,
Shalamar Sub Division,
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 Javed Steel Furnace Against the Decision Dated 12.09.2011 of the Electric Inspector/POI to Government of the Punjab Lahore Region, Lahore

Please find enclosed herewith the Decision of the Appellate Board dated 24.11.2017, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above


(Ikram Shakeel)

No. NEPRA/AB/Appeal-155/POI-2016/1759

November 29, 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-155/POI-2016

Lahore Electric Supply Company LimitedAppellant

Versus

M/s. Javed Steel Furnace, Through Ch. Javed
S/o Ch. Muhamad Nazir, 37-Bhani Road, Shadi Pura, LahoreRespondent

For the appellant:

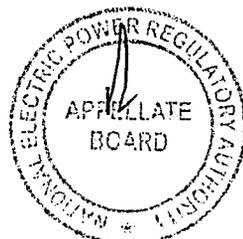
Syed Ali Raza Rizwi Advocate

For the respondent:

Ch. Qaiser Mahmood Advocate

DECISION

1. Brief facts leading to the instant appeal are that the respondent is an industrial consumer of Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) bearing Ref No.24-11314-9005600 U with a sanctioned load of 3,480 kW under B-3 tariff. Metering equipment of the respondent was checked by LESCO on 07.05.2010 and reportedly both the TOU billing and backup meters were found correct. Both were again checked by LESCO on 22.12.2010 and reportedly the TOU billing meter was found 1.64% slow, whereas the backup meter was working within the prescribed limits. The respondent was dissatisfied with the LESCO checking dated 22.12.2010, therefore filed an application before Provincial Office of Inspection, Lahore Region, Lahore





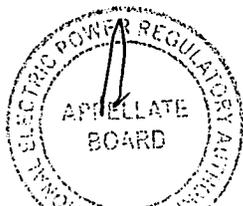
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(hereinafter referred to as POI) on 08.01.2011 and requested for joint checking. Thus metering equipment of the respondent was checked by POI on 20.01.2011 in presence of both the parties, wherein the TOU billing meter was found 2.563% slow, which according to POI was within permissible limits as per Rule 32 of Electricity Rules 1937. The backup meter of the respondent was declared as billing meter by LESCO w.e.f June 2011 and onwards and subsequently a bill of Rs.2,129,581/- for 110,280 units for the period 07.05.2010 to 22.12.2010 was charged to the respondent by LESCO on account of difference of backup and TOU billing meters units/consumption and added in the bill for June 2011.

2. The respondent filed another application before POI on 20.07.2011 and challenged the aforesaid difference bill along with the current bill of Rs.10,488,393/- for 777,680 units for June 2011. In his application, the respondent averred that LESCO may be restrained for further billing on the basis of backup meter reading. The matter was decided by POI vide its decision dated 12.09.2011 with the following conclusion:

“Summing the aforesaid discussion, it is held that the impugned detection bill amounting to Rs.2,129,581/- as cost of excessive 110,280 units charged in the bill for 06/2011 as difference of reading between the billing and backup meters is void, unjustified 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 any excess amount recovered be adjusted in future bills.”

3. LESCO being dissatisfied with the POI decision dated 12.09.2011 (the impugned decision) initially filed an appeal before the Advisory Board Government of Punjab,

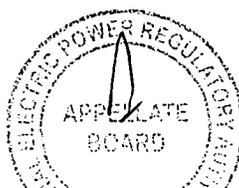




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Lahore (Advisory Board) on 07.10.2011, whereby the Advisory Board vide its decision dated 14.07.2016 returned the said appeal with the direction to approach NEPRA being the competent forum. LESCO has filed the instant appeal before NEPRA under Section 38 (3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as NEPRA Act 1997). In its appeal LESCO raised the preliminary objection regarding the jurisdiction of Electric Inspector for announcement of the impugned decision after 90 days from the receipt of the application as prescribed under Section 26(6) of Electricity Act, 1910. On merits, LESCO averred that the electric power is being supplied through the independent 11 kV feeder from the grid station and a separate meter is dedicated for recording the electricity being supplied to the respondent's premises. LESCO averred that a backup meter is also installed in series with the TOU billing meter of the respondent. As per LESCO, the consumption recorded during the period January 2010 to August 2011 by the meter installed at grid station and the backup meter present at site is much higher than the consumption of the disputed TOU billing meter, which established that the TOU billing meter remained slow during the said period. As per LESCO, in its impugned decision POI failed to consider the facts and relevant record provided by LESCO and relied upon the information supplied by the respondent. LESCO prayed for setting aside the impugned decision.

4. Notice of the appeal was issued to the respondent for filing reply/parawise comments, which were filed on 03.10.2017. In his reply, the respondent rebutted the stance of LESCO regarding the ground of limitation and contended that an appeal against the





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impugned decision was filed before the Advisory Board on 07.10.2011, though the same was to be filed before the NEPRA under Section 38(3) of NEPRA Act, 1997. According to the respondent, the appeal was returned by the Advisory Board with the direction to approach the appropriate forum. The respondent contended that the appeal filed before NEPRA is barred by time. The respondent submitted that the TOU billing meter was checked by POI on 07.05.2010 and 20.01.2011 and on both the occasions, it was found working within the permissible limit of 3%, as such LESCO is not entitled to claim any detection bill. The respondent supported the impugned decision and pleaded that the same should be maintained.

5. The appeal was heard at NEPRA regional office, Lahore on 03.10.2017, which was attended by learned counsels of both the parties. At the outset of hearing, learned counsel for the respondent raised the point of limitation and argued that the appeal was time barred. On the other hand, learned counsel for LESCO rebutted the argument of learned counsel for the respondent and submitted that the copy of the impugned decision was delivered on 15.09.2011 and the appeal against the impugned decision was filed before the Advisory Board on 07.10.2011. As per learned counsel for LESCO, the Advisory Board pronounced its decision on 14.07.2016, which was received on 18.08.2016, wherein the Advisory Board directed for filing the appeal before NEPRA being competent forum. According to the learned counsel for LESCO, the appeal was filed before NEPRA within the time limits and delay, if any, may be condoned. Learned counsel for LESCO pointed that the impugned decision announced by the Electric





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Inspector after a period of 90 days of filing of the complaint was not valid under Section 26(6) of Electricity Act, 1910. Learned counsel for LESCO stated that the slowness of the impugned TOU billing meter was observed by LESCO, which was also confirmed by POI during its checking dated 20.01.2011, as such the difference bill amounting to Rs.2,129,581/- for 110,280 units for the period 07.05.2010 to 22.12.2010 charged on account of difference of backup and TOU billing meters readings is justified and payable by the respondent. Learned counsel for LESCO assured that the manual of the disputed meter would be supplied within a week so as to specify the accuracy class/missible limits. On the contrary, learned counsel for the respondent averred that the meter was accurate in terms of Rule 32 of Electricity Rules 1937 as already determined by POI.

6. Arguments heard, the record examined and it is observed as under:

- i. Since the point of limitation was raised at the outset of the hearing, therefore we would deliberate and decide this issue at the first instance. The impugned decision dated 12.09.2011 was received by LESCO on 15.09.2011 and the appeal against the same was filed before the Advisory Board on 07.10.2011 within the 30 days as laid down in the clause 10 of Punjab (Establishment and Powers of Office of Inspection) Order, 2005. However the Advisory Board vide its decision dated 14.07.2016, which was received on 18.08.2016, directed LESCO to file the same before NEPRA being competent forum. Accordingly the appeal was filed by LESCO before NEPRA on 05.09.2016, within 30 days of its receipt under Section 38(3) of NEPRA

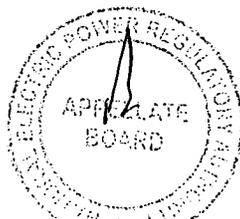




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Act 1997. We are convinced with the reasons of LESCO and condone the delay in filing the appeal before the NEPRA.

- ii. It should be noticed that the office of Electric Inspector and POI are two different forums. Function of Electric Inspector is governed under Electricity Act, 1910, whereas POI performs its duty under NEPRA Act, 1997. The restriction for the decision within the period of 90 days of the complaint is meant for an Electric Inspector. NEPRA Act, 1997 does not impose any time limit for finalizing the matter by a POI. In view of above, the objection of LESCO in this regard is not valid, therefore rejected.
- iii. The respondent challenged the bill amounting to Rs.2,129,581/- for 110,280 units for the period 07.05.2010 to 22.12.2010 charged due to the difference of consumption recorded by TOU billing and backup meters before POI on 08.01.2011.
- iv. Metering equipment of the respondent was checked by LESCO on 07.05.2010 and both the TOU billing and backup meters were found working within permissible limits. Both the TOU billing and backup meters were again checked by LESCO on 22.12.2010 and the TOU billing meter was found 1.64% slow. Subsequently 2.56% slowness was also observed in TOU billing meter during joint inspection of POI on 20.01.2011.
- v. Since the slowness of the TOU billing meter was established, therefore the reading



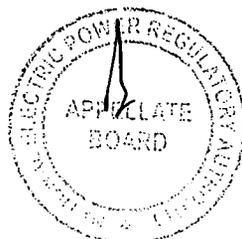


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of the TOU billing meter should be considered final for the determination of the units lost. Pursuant to clause 4.4 (e) of Consumer Service Manual (CSM), the maximum period for charging the detection bill due to a defective/slow meter is two billing cycles, whereas in the instant case LESCO charged the difference bill for a period 07.05.2010 to 22.12.2010 (seven months) beyond two billing cycles, which is inconsistent with chapter 4 of CSM. It is relevant to mention that LESCO staff failed to point out any discrepancy in the disputed TOU billing meter during the monthly readings prior to M&T LESCO checking dated 22.12.2010, which is violation of chapter 6 of CSM. Besides the, learned counsel for LESCO assured to supply the manual of the disputed meter to confirm the accuracy class but failed to do so. Under these circumstances, there is no justification for charging the difference bill amounting to Rs.2,129,581/- for 110,280 units for the period 07.05.2010 to 22.12.2010 due to the difference of consumption recorded by TOU billing and backup meters, therefore the same is declared null and void and not payable by the respondent as already determined in the impugned decision.

vi. In this regard, reliance is placed on the WAPDA Circular No.518-36 dated 28.02.2001, which provides as under;

“establishment, where Electro-mechanical & Solid State TOU MDI meters are installed, the reading recorded on Solid State TOU MDI Meters will be considered final, in case there is difference between the two.”





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The respondent is liable to be charged the difference bill for November 2010 and December 2010 @ 1.64% slowness of the TOU meter as observed by IESCO on 22.12.2010 in pursuance of clause 4.4(e) of CSM.

7. Forgoing in view, it is concluded as under:

- i. Difference bill amounting to Rs.2,129,581/- for 110,280 units for the period 07.05.2010 to 22.12.2010 charged to the respondent by IESCO due to the difference of consumption recorded by TOU billing and backup meters in June 2011 is declared null and void as already determined in the impugned decision.
- ii. The respondent should be charged the difference bill for two months only i.e. November 2010 and December 2010 @ 1.64% slowness of the disputed TOU billing meter.
- iii. The consumer's account of the respondent should be overhauled after making the adjustment of the payments already made against the aforesaid difference bill.

8. Impugned decision is modified of in above terms.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Dated: 24.11.2017

