



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

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No. NEPRA/AB/Appeal/183/2018/ 1200-1204

June 10, 2019

1. Sheikh Fakhar-ud-Din & Co.  
Through its Chief Executive,  
Aftab Ahmed Sheikh,  
G. T. Road, Shahdara, Lahore
2. Chief Executive Officer  
LESCO Ltd,  
22-A, Queens Road,  
Lahore
3. Muhammad Arif Malhi  
Advocate High Court,  
01-District Courts,  
Sheikhupura
4. Sub Divisional Officer (Operation)  
LESCO Ltd,  
Faisal Park Sub Division,  
Lahore
5. Electric Inspector  
Lahore Region, Energy Department,  
Govt. of Punjab, Block No. 1,  
Irrigation Complex, Canal Bank,  
Dharampura, Lahore

Subject: **Appeal Titled LESCO Vs. Sheikh Fakhar-ud-Din & Co. Against the Decision Dated 10.04.2018 of the Provincial Office of Inspection to Government of the Punjab Lahore Region, Lahore**

Please find enclosed herewith the decision of the Appellate Board dated 30.05.2019, regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**

No. NEPRA/AB/Appeal/183/2018/ 1205

Forwarded for information please.

(Ikram Shakeel)

June 10, 2019

Assistant Director  
Appellate Board

✓ Registrar



# National Electric Power Regulatory Authority

## Before Appellate Board

In the matter of

### Appeal No. 183/2018

Lahore Electric Supply Company Limited .....Appellant

Versus

Sheikh Fakhar-ud-Din & Co. Through its Chief Executive, Aftab Ahmed Sheikh  
S/o Sheikh Fakharuddin G.T Road, Shahdara, Lahore .....Respondent

### **APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST THE DECISION DATED 05.12.2017 PASSED BY PROVINCIAL OFFICE OF INSPECTION LAHORE REGION, LAHORE**

For the appellant:

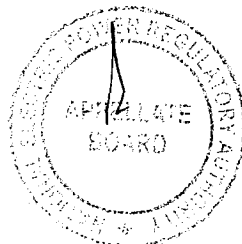
Mr. Muhammad Arif Malhi Advocate  
Mr. Imran Anwar RO

For the respondent:

Mr. Aftab Ahmed Sheikh MD

### DECISION

1. As per facts of the case, the respondent is an industrial consumer of Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) bearing Ref No.24-11123-3400100 with a sanctioned load of 70 kW under B-2(b) tariff. A detection bill of Rs.130,035/- for 15,905 units for the period September 2010 to January 2011 (5 months) was debited to the respondent and multiplication factor (MF) of the respondent was raised from 2 to 3 w.e.f February 2011 and onwards by LESCO due to 33% slowness of the meter noticed by LESCO on 26.01.2011.



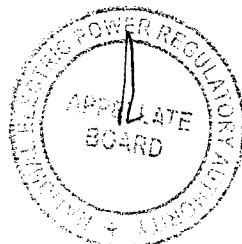


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2. The respondent agitated the above billing before POI vide application dated 20.06.2011. Meter of the respondent was found working accurately during POI joint checking in presence of both the parties. The matter was decided by POI vide its decision dated 22.11.2011 with the following conclusion:

*“The impugned billing meter is working accurately within BSS limits of accuracy. Detection bill of Rs.130,035/- for 09/2010 to 01/2011 and charging of monthly bills with MF=3 from 02/2011 and onwards are null and void. The respondent are directed to issue revised bills from 02/2011 and onwards as per actual meter reading.”*

3. The appeal in hand has been filed against the above decision wherein it is stated that the respondent No. 1 (the consumer) had filed a petition before respondent No. 2 (POI) u/s 38 of NEPRA Act, 1997 whereby a detection bill of Rs. 130,035/- for the period from 9/2010 to 01/2011 added in the bill for the month of 05/11 and charging of monthly bills from 02/11 onward on the enhanced Multiplication Factor of 3 instead of 2 on the basis of 33% slowness of the billing metering equipment was challenged. Said application was decided on 22.11.2011 against which appeal was filed by LESCO before Advisory Board but the appeal was not processed rather returned to NEPRA on 26.11.2013. Meanwhile, respondent No 1 filed a writ petition No. 21132/2015 in the Lahore High Court seeking implementation of earlier order of POI/Electric Inspector dated 22.11.2011. Said petition was disposed of on 04.02.2017 and the as per observation recorded therein, the petitioner does not press the petition as he wanted to file appropriate application before Electric Inspector. The Honorable



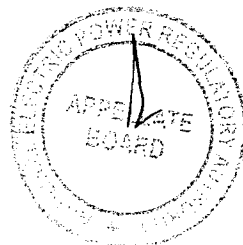


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Court observed that let the petitioner to file application and if such application is filed, the same will be decided strictly in accordance with law expeditiously. Thereafter, the respondent filed an application on 04.04.2017 before POI who decided the same on 10.04.2018 with the following conclusion:-

*“In view of the above, a fine of Ten Thousands Rupees (Rs.10,000/-) is hereby imposed upon Mr. Abdul Jabbar the respondent No.3/Revenue Officer, Ferozwala Division LESCO as per Rule 11(2) of the Punjab (Establishment of Power of Inspection) Order 2005, on account of breach/non-implementation of the decision dated 22.11.2011 of this forum, a further fine of Two Hundred Rupees (Rs.200/-) shall stand imposed upon the said officer for every day during which the violation continues. The application is disposed of in the above terms.”*

4. LESCO has filed the instant appeal against the above-referred decision (hereinafter referred to as the impugned decision) before NEPRA. In its appeal, LESCO opposed the impugned decision on the grounds that the POI passed the impugned decision after expiry of stipulated period of 90 days in violation of Section 26(6) of Electricity Act, 1910; that the determination of POI for non-implementation of its first decision is wrong as the said decision was implemented by LESCO vide letter No.13121-23 dated 13.09.2017; that the impugned decision is based on misunderstanding and was passed in personal grudge; and that the impugned decision is liable to be set aside.
5. Notice of the appeal was issued to the respondent for filing reply/para-wise comments, which were filed on 24.04.2019. In his reply, the respondent explained

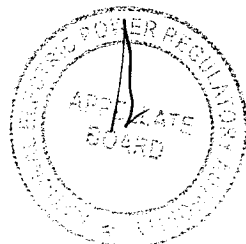




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that a complaint was lodged before NEPRA in the year 2015 against the non-implementation of the first decision of POI, in response LESCO forwarded the findings of the inquiry committee LESCO (inquiry committee) to NEPRA, wherein they admitted for charging 106,668 units on account of alleged 33% slowness of the meter. The respondent further elaborated the facts that LESCO refunded 60,079 units and remaining 46,589 units are still refundable. The respondent submitted that the fine was imposed by POI upon LESCO on account of non-implementation of the first decision and should be continued until its implementation in true spirit. The respondent prayed for dismissal of the appeal and further pleaded for issuance of directives to LESCO to refund 46,589 units in future billing as admitted by LESCO vide letter dated 13.02.2019.

6. After issuing notices to the parties, hearing of the appeal was held at Lahore on 19.04.2019, wherein learned counsel along with LESCO official represented the appellant and the representative for the respondent was also present. Learned counsel for LESCO repeated the same version as contained in the memo of the appeal and contended that the first decision of POI was implemented, hence the fine imposed by POI vide impugned decision on account of non-implementation of its first decision be waived off in the best interest of justice. On the contrary, the representative for the respondent averred that the first decision of POI was not implemented fully despite LESCO commitment. The representative for the respondent is of the plea that reimbursement of 46,589 units charged in earlier bills by LESCO on account of 33%



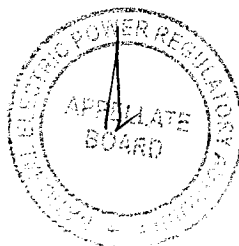


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slowness of the disputed meter is still awaited. The representative for the respondent prayed for a refund of remaining 46,589 units as per the first decision and further pleaded for dismissal of the appeal.

7. Having heard the arguments and perusal of record, it is observed as under:-

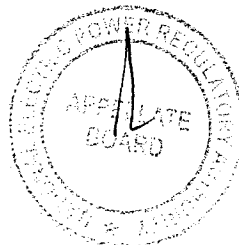
- i. As regards the preliminary objection of LESCO regarding the failure of POI in deciding the matter within 90 days u/s 26(6) of Electricity Act, 1910, it may be noted that the said restriction of the time limit is inapplicable for the POI established under Section 38 of NEPRA Act, 1997. Reliance in this regard is placed on the Lahore High Court judgments cited as PLJ 2017-Lahore-627 and PLJ-2017-Lahore-309. As such the objection of LESCO in this regard carries no weight and is rejected.
- ii. 33% slowness was observed in the meter of the respondent by LESCO on 26.01.2011, hence the detection bill of Rs.130,035/- for 15,905 units for the period September 2010 to January 2011 (5 months) and further bills with enhanced MF=3 w.e.f February 2011 and onwards were debited to the respondent @ 33% slowness of the said meter. The respondent agitated the said billing before POI. The meter under dispute was found working within permissible limits during the joint checking conducted by POI against which no objection was raised by LESCO. POI vide its earlier decision dated 22.11.2011 declared the detection bill of Rs.130,035/- for 15,905 units for the period September 2010 to January 2011 and further bills with enhanced MF=3 w.e.f February 2011 and onwards debited @





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33% slowness of the meter as null and void. Subsequently, the respondent filed a WP No.21132/2015 before the Lahore High Court, Lahore for implementation of the first decision of POI, which was disposed of by the honorable High Court vide order dated 14.02.2017 with the direction to POI for decision in accordance with the law. The respondent filed an application before POI on 04.04.2017 against non-implementation of the first decision. Despite repeated notices, LESCO neither appeared before POI to defend its stance nor submitted the status of implementation of the first decision dated 22.11.2011. POI vide impugned decision imposed a fine of Rs.10,000/- upon Mr. Abdul Jabbar Revenue Officer, Ferozwala Division LESCO on account of non-implementation of the first decision dated 22.11.2011. POI further held that a fine of Rs.200/- shall stand imposed upon the said officer for every day during which the violation continues. In the instant appeal, LESCO took the plea that the first decision was implemented, hence fine imposed by POI vide impugned decision is unjustified and liable to be withdrawn. From the examination of the record, it reveals that LESCO charged total 106,668 units to the respondent on account of 33% slowness of the meter during the period September 2010 to February 2013. However, LESCO afforded a rebate of 60,079 units for the period October 2011 to February 2013 on the recommendation of the inquiry committee, whereas remaining 46,589 units for the period September 2010 to September 2011 were declared justified and payable by the respondent. Since LESCO remained under impression that the





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first decision was implemented whereas it was partially implemented on the recommendation of the Inquiry Committee, which is not binding upon the respondent and cannot overrule the first decision. It is further observed that POI is the competent forum to determine the accuracy of the metering equipment u/s 38 of NEPRA Act, 1997, who found the meter of the respondent functioning within BSS limits. Hence, LESCO is under legal obligation to reimburse the detection bill of Rs.130,035/- for 15,905 units for the period September 2010 to January 2011 (5 months) and further bills with enhanced MF=3 w.e.f February 2011 and onwards till the replacement of the disputed meter in February 2013 charged due to 33% slowness.

8. The upshot of the above discussion is that the appeal is dismissed being without merits.

Muhammad Qamar-uz-Zaman  
Member

Nadir Ali Khoso  
Convener

Dated: 30.05.2019

