



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

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No. NEPRA/AB/Appeal/076/POI/2019/893

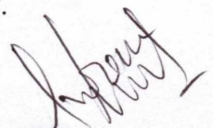
November 22, 2021

- | | |
|---|--|
| 1. The Executive Engineer,
Punjab Irrigation Department,
Irrigation Division, C.B.D.C,
Lahore
(Bucharkhan Pumping Station No. II) | 2. Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Saeed Ahmed Bhatti
Advocate High Court,
66-Khyber Block, Allama Iqbal Town,
Lahore | 4. A. D. Bhatti,
Advocate High Court,
First Floor, Rehmat Tower,
13-Fane Road, Lahore |
| 5. Sub Divisional Officer (Opr),
LESCO Ltd,
Barki Sub Division,
Lahore | 6. POI/Electric Inspector
Lahore Region, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore |

Subject: **Appeal Titled LESCO Vs. Executive Engineer Punjab Irrigation Department
Against the Decision Dated 29.10.2018 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 11.11.2021, regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**


(Ikram Shakeel)
Deputy Director (M&E)
Appellate Board

Forwarded for information please.

1. Director (IT) –for uploading the decision on NEPRA website



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. 076/POI-2019

Lahore Electric Supply Company Limited

.....Appellant

Versus

Executive Engineer, Punjab, Irrigation Department, Irrigation Division,
CBDC, Lahore (Buchar Khana Pumping Station No. II)

.....Respondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 29.10.2018 PASSED BY PROVINCIAL
OFFICE OF INSPECTION LAHORE REGION, LAHORE**

For the Appellant:

Mr. Saeed Ahmed Bhatti Advocate
Mr. Asif Ali SDO

For the Respondent:

Mr. A.D. Bhatti Advocate

DECISION

1. Brief facts of the case are that the Respondent is an agricultural consumer of Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) bearing Ref No.24-11546-0476105-U with a sanctioned load of 112 kW under the tariff D-1b. The Respondent filed an application before the Provincial Office of Inspection Lahore Region Lahore (the POI) on 17.06.2014 and challenged the bill total amounting to Rs.7,894,315 charged by LESCO, which contained the arrears of Rs.7,140,365/- and





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the current bill of Rs.753,950/- for May 2014. The complaint of the Respondent was disposed of by the POI vide decision dated 29.10.2018 with the following conclusion:

"Summing up the foregoing discussion, it is held that the impugned bill amounting to Rs.7,894,315/- for the period from July 2007 to June 2012 charged in the bill for the month of 05/2014 is void, unjustified and of no legal effect; therefore the petitioner is not liable to pay the same. However, the Respondents are allowed to charge revised monthly bills for the above said period of 07/2007 to 06/2012 and onward till the installation of an accurate billing meter on the basis of the average consumption of 16,584 units per month recorded at the AMR meter installed by the Reconciliation Cell, Energy Department, Government of Punjab after excluding the already charged units during the said period. The Respondents are directed to overhaul the account of the petitioner accordingly and any excess amount recovered be adjusted in future bills. They are also directed to install an accurate LT TOU MDI billing meter at the site and shift the billing on the said meter to avoid any further litigation in the future. The petition is disposed of in the above terms."

2. Being dissatisfied, LESCO has filed an instant appeal against the abovementioned decision (hereinafter referred to as the impugned decision) before NEPRA. In its appeal, LESCO opposed the impugned decision inter alia, on the following grounds (1) the billing for the period July 2007 to June 2012 was reconciled on the basis of 80% load factor of the Respondent's sanctioned load i.e. 112 kW vide reconciliation statement dated 08.05.2011; (2) the bill of May 2014 charged as per above reconciliation is quite legal, valid and justified; that the bill of May 2014 contains the current bill of Rs.753,950/- and arrears of Rs.7,140,365/-; (3) the POI misconstrued the real facts of the case and erred in declaring the above bill as void and revised the bills for the period July 2007 to June 2012 and onwards @ 16,584 units/month as recorded





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by the Automatic Meter Recording (AMR) meter during January 2017 to May 2018; (4) the AMR meter has no sanctity in the eye of law and the provisions of the Consumer Service Manual (CSM); (5) the future consumption of AMR meter could not be made the basis for charging the past period i.e. July 2007 to June 2012; (6) the Respondent was estopped by his words and conduct to challenge the bill in question; (7) the application of the Respondent was hit by Qanoon-e-Shahadat Order 1984; (8) the POI neither recorded the evidence nor perused the consumption data in true perspective; that the impugned decision is ex-facie coram non judice, void ab-initio and without jurisdiction and the POI has no power to carry out the proceedings after the mandatory period of ninety (90) days as envisaged under Section 26(6) of the Electricity Act, 1910 and therefore the impugned decision is liable to be set aside.

3. Notice of the appeal was issued to the Respondent for filing reply/para-wise comments, which however were not filed.
4. Notice was issued and hearing of the appeal was held at the NEPRA Regional Office Lahore on 24.09.2021, wherein both the parties were in attendance. Learned counsel for LESCO repeated the same version as contained in memo of the appeal and contended that the billing for the period July 2007 to June 2012 was already reconciled between the parties through a reconciliation dated 08.05.2011 and the bill of May 2014 was charged on the basis of 80% load factor of the sanctioned load of the Respondent. Learned counsel for LESCO further contended that the AMR meter was installed in series with the metering equipment of the Respondent as per the Memorandum of





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Understanding (MOU) signed between the Energy Department, Government of Punjab and LESCO on 22.08.2016 for future billing. As per learned counsel for LESCO, the POI neither checked the metering equipment of the Respondent nor pursued the consumption data in true perspective. According to the learned counsel for LESCO, the disputed billing cannot be revised on the basis of future consumption of AMR meter being violative of provisions of CSM. Learned counsel for LESCO averred that the arrear of Rs.7,140,365/- included in the bill for May 2014 pertaining to the billing of the previous ten (10) months, whereas, the POI revised the undisputed billing for the period July 2007 to June 2012, which had already been reconciled between the parties. Learned counsel for LESCO submitted that the impugned decision is beyond the prayer of the Respondent and the same may be set aside. On the contrary, learned counsel appearing for the Respondent repudiated the contentions of learned counsel for LESCO and asserted that the billing meter of the Respondent was defective since long for which demand notice was also paid but LESCO debited exaggerated bills to the Respondent due to defective billing meter. Learned counsel for the Respondent argued that LESCO neither installed a check meter nor replaced the defective meter, hence, the POI relied its findings upon the meter reading of the AMR meter. Learned counsel for the Respondent averred that AMR meter is a modern meter with better technology being more accurate than ordinary matter. Learned counsel for the Respondent supported the impugned decision and prayed for maintainability of the same.

5. Arguments were heard and the record was examined. Following are our findings:





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- i. At the addressing the preliminary objection of the LESCO regarding the failure of the POI in deciding the matter within ninety (90) days under Section 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 the Section 38 of the NEPRA Act, 1997. Same has already been held by the Honorable Lahore High Court in the following cited judgments, PLJ 2017-Lahore-627 and PLJ-2017-Lahore-309. As such the objection of the LESCO in this regard carries no weight, hence rejected.
- ii. The Respondent assailed a bill total amounting to Rs.7,894,315 debited by LESCO in May 2014 before the POI, which included the arrears of Rs.7,140,365/- and the current bill of Rs.753,950/-. LESCO claims that the above arrears pertain to the billing for the previous ten (10) months i.e. July 2013 to April 2014, whereas, the POI decided the fate of billing for the period July 2007 to June 2012 and onwards on the basis of future consumption of AMR meter. Having arrived at the conclusion, the only question remains to be resolved is the assessment of the billing of the Respondent till May 2014 which is replicated below:

Month	Units	MDI	Arrears	Payment
May-13	65400	90	-6204575	0
Jun-13	65400	112	-221038	0
Jul-13	65400	112	655065	0
Aug-13	65400	112	1545114	0
Sep-13	65400	112	2364708	0
Oct-13	65400	112	3500116	0
Nov-13	65400	112	4518260	674738
Dec-13	65400	112	4680513	0
Jan-14	65400	112	5509182	0
Feb-14	65400	112	6427962	0





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Mar-14	65400	112	7222165	0
Apr-14	65400	112	8232416	500000
May-14	65400	112	7894315	0

Perusal of the above billing statement reveals that LESCO afforded credit to the Respondent till June 2013. Thereafter, a bill amounting to Rs.655, 065/- for 65,400 units+112 kW MDI was charged by LESCO to the Respondent in July 2013, which however was not paid by him. LESCO continued billing @ 65,400 units+112 kW MDI per month against which the Respondent made partial payments in November 2013 and April 2014. Hence, the arrears increased to the tune of Rs.7,894,315/- till May 2014 due to non-payment of the above bills, which were agitated by him before POI. Obviously, the dispute pertains to the bills for the period July 2013 to May 2014 eleven (11) months. Therefore the impugned decision regarding the billing for the period July 2007 to June 2012 which was not the subject matter of the dispute is not justified. Therefore we are convinced with the arguments of learned counsel for LESCO that the relief granted to the Respondent is beyond the prayer of the Respondent and as such the impugned decision with regard to the bills for the period, July 2007 to June 2012 is liable to be set aside.

- iii. The bills for the period July 2013 to May 2014 eleven (11) months have been charged @ 65,400 units/month by LESCO to the Respondent in accordance with the reconciliation dated 08.05.2011. It may be noted that this method of billing was prescribed for the period up to February 2011. The reconciliation dated 08.05.2011 is not relevant for the disputed period July 2013 to May 2014. Similarly, the





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determination of POI for revision of the above bills @ 16,584 units per month on the basis of average consumption of AMR meter recorded during the period January 2017 to May 2018 is inconsistent with the procedure as laid down in CSM. Under these circumstances, both the charging of bills @ 65,400 units+112 kW MDI per month for the period July 2013 to May 2014 by LESCO and the determination of POI for revision of the same @ 16,584 units per month are unjustified, incorrect, and the same are liable to be declared as null and void.

- iv. As discussed in the preceding paragraph, the billing carried out @ 65,400 units/month for the disputed period i.e. July 2013 to May 2014 by LESCO as well as the determination of the POI for revision of the bills of the above said period on future consumption of the AMR meter are incorrect. Moreover, the billing of the Respondent for the disputed period July 2013 to May 2014 cannot be based on the previous billing as the consumption data was not made available. Therefore, we are relying upon the WAPDA notification No.426/GMCS/DG(C)/D(R&CP)/56217 dated 03.03.2013 for determining the billing for the disputed period July 2013 to May 2014 as per detail given below:

- Load factor applicable for the agricultural consumer = 60%
- Period: July 2013 to May 2014 (11 months)
- Chargeable units/month = Load (kW) x LF x No. of Hrs./month
$$= 112 \times 0.6 \times 730 = 49,056 \text{ units}$$





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6. In view of what has been stated above, it is concluded that:

- i. The impugned decision for revision of the bills for the period July 2007 to June 2012 and onwards @ 16,584 units/month on the basis of average consumption of AMR meter recorded during the period January 2017 to May 2018 is unjustified, incorrect and is set aside.
- ii. Similarly, charging of the bills for the period July 2013 to May 2014 @ 65,400 units/month by LESCO to the Respondent is unjustified and therefore cancelled.
- iii. The Respondent should be charged the bills @ 49,056 units/month for the period July 2013 to May 2014 as calculated in para 5 (iv) above.
- iv. The billing account of the Respondent may be overhauled after adjustment of payments made, if any by the Respondent against the bills for the period July 2013 to May 2014.

7. The impugned decision is modified in the above terms.

Abid Hussain
Member/Advisor (CAD)

Maria Rafique
Member/ Legal Advisor

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Dated: 11.11.2021

