



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

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No. NEPRA/Appeal/009/POI/2021/ 002

January 03, 2023

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| 1. Project Director (CLTR),
Cooperative Department,
CLTR, Second Floor, PCBL Building,
Mall View Plaza, Bank Square,
Neela Gumbad, Lahore | 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. Assistant Manager (Operation),
LESCO Ltd,
Anarkli Sub Division,
Lahore |
| 5. POI/Electric Inspector,
Lahore Region, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore | |

Subject: **Appeal Titled LESCO Vs. The Project Director (CLTR) Against the Decision Dated 08.06.2018 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 03.01.2023, 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. Additional Director (IT) –for uploading the decision on NEPRA website



National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No.009/POI-2021

Lahore Electric Supply Company Limited

.....Appellant

Versus

Project Director (CLTR) Cooperative Department, 2nd floor,
PCBL Building, Mall view Plaza, Bank Square,
Neela Gumbad, Lahore

.....Respondent

APPEAL U/S 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

Mr. Saeed Ahmed Bhatti Advocate
Mr. Waseem Abbas SDO
Mr. Jameel Asif TA

For the Respondent:

Mr. Ghulam Mustafa Town Planner

DECISION

1. Through this decision, the appeal filed by the Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") against the decision dated 08.06.2018 of the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") is being disposed of.
2. Briefly speaking, M/s. Project Director (CLTR) Cooperative Department (hereinafter referred to as the "Respondent") is a commercial consumer of the Appellant bearing Ref No.44-11331-0946000 with sanctioned load of 12 kW and the applicable Tariff category is A-2(c). The Appellant has claimed that the electric





National Electric Power Regulatory Authority

connection of the Respondent was disconnected due to non-payment of the electricity charges vide ERO No.0524 dated 20.02.2017, but the meter was not physically removed and remained running at the site. Thereafter, the Respondent made payment of the outstanding arrears vide cheque No.2899585 dated 24.04.2017, thus the re-connection was processed in papers for future billing. The Appellant charged a bill of Rs.574,422/-for the cost of 30,489 units to the Respondent in September 2017.

3. Being aggrieved, the Respondent assailed the above bill before the POI on 18.12.2017. The Respondent further filed two complaints before the POI and agitated the bills for the period October 2017 to April 2018. During the joint checking of the POI dated 18.05.2018, the display of the billing meter was found vanished, the joint checking report was signed by both parties without raising any objection. The complaint of the Respondent was disposed of by the POI vide the decision dated 08.06.2018 with the following conclusion:

"Summing up the foregoing discussion, it is held:

(I) That the impugned monthly bills from 09/2017 to 04/2018 charged on some exaggerated average are void, unjustified and of no legal effect; therefore, the petitioner is not liable to pay the same. Similar is the case with the monthly bills from 05/2017 to 08/2017.

(II) That the respondents are allowed to charge revised monthly bills for the months of 05/2017 to 04/2018 and onward till the replacement of the billing meter/ shifting of billing to an accurate meter, based on the consumption recorded during the corresponding months of the previous year i.e. 05/2016 to 04/2017, being undisputed between the parties, after excluding the already charged units during the said period.

(III) That the respondents are directed to over-haul the account of the petitioner accordingly and any excess amount recovered be adjusted in future bills. They are also directed to install an accurate meter at the petitioner's premises for future billing to avoid any further litigation."



National Electric Power Regulatory Authority

4. Through the instant appeal, the afore-referred decision dated 08.06.2018 of the POI has been impugned by the Appellant before the NEPRA. In its appeal, the Appellant objected to the maintainability of the impugned decision, *inter alia*, on the main grounds, (1) the impugned decision was rendered by the POI after the expiry of the statutory period of ninety (90) days, hence it is ex-facie, coram non-judice, void, ab-initio without lawful authority and jurisdiction; (2) the POI erred in holding that the bills for the period September 2017 to April 2018 are null and void and the Respondent may be charged the bills for May 2017 to April 2018 as per average consumption of May 2016 to April 2017; (3) the disputed arrears pertain to the accumulated readings as the connection of the Respondent was disconnected vide ERO dated 20.02.2017 on paper but the electricity of the Respondent was not disconnected physically due to which the reading advanced and units accumulated to the tune of 30,489 units till September 2017; (4) the bill of October 2017 was charged as per meter reading shown on the snapshot, thereafter meter became defective in November 2017 and defective code was applied for onward billing; (5) the data of the impugned meter was downloaded in August 2018 wherein final reading retrieved as 76,026; (6) POI neither recorded consumption nor perused the evidence and the rendered the impugned decision illegally; (7) the impugned decision is based on surmises and conjectures and the same is liable to be set aside.

5. Proceedings by the Appellate Board

5.1 Upon filing of the instant appeal, a notice dated 29.01.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days.

The Respondent submitted the reply to the Appeal before the NEPRA on 11.02.2021.





National Electric Power Regulatory Authority

In the reply, the Respondent rebutted the stance of the Appellant regarding the charging of the bill of Rs.574,422/- for September 2017 for the cost of 30,489 units. The Respondent submitted that such high consumption has neither been recorded in the billing history nor compatible with the sanctioned load i.e. 12 kW. As per Respondent, the Appellant was intimated vide registered post about the announcement of the impugned decision, as such, the appeal is barred by the time being filed after a lapse of nineteen months of intimation with regard to the pronouncement of the impugned decision. According to the Respondent, the display of the impugned meter became defective in May 2017 and no consumption was charged by the Appellant till August 2017. The Respondent defended the impugned decision and prayed for upholding the same.

6. Hearing

- 6.1 After issuing notices dated 07.06.2022 to both parties, hearing of the subject appeal was conducted at NEPRA Regional Office Lahore on 16.06.2022 in which a counsel appeared for the Appellant and a representative was present for the Respondent. The representative for the Respondent sought an adjournment to engage the counsel in the appeal, which was allowed till the next date.
- 6.2 The hearing of the Appeal was rescheduled at Lahore on 23.08.2022 for which notices dated 15.08.2022 were issued to both the Appellant and the Respondent. On the given date of the hearing, no one appeared for the Appellant and the representative for the Respondent were present, however, a written request was made by the counsel for the Appellant for the adjournment due to illness. In view of the



National Electric Power Regulatory Authority

above, the hearing of the case was adjourned till the next date.

- 6.3 Notices dated 21.09.2022 were served to the parties and hearing of the appeal was conducted at Lahore on 29.09.2022, which was attended by both parties. Learned counsel for the Appellant reiterated the same version as contained in the memo of the appeal and contended that the electricity connection was disconnected due to non-payment of arrears vide ERO dated 20.02.2017, which was restored on 24.04.2017. Learned counsel for the Appellant further contended that nil consumption was charged during the period May 2017 to August 2017 to the Respondent due to the late affection of RCO. He submitted that 30,489 units were accumulated during the said period which is evident from the snapshot of the bill for September 2017. Learned counsel for the Appellant defended the charging of the bill of Rs.574,422/- in September 2017 and argued that the reading shown on the bill for October 2017 confirms that the Respondent was charged bills as per meter reading. He stated that the impugned meter became defective in November 2017 therefore onward billing was carried out on the DEF-EST code. Learned counsel for the Appellant averred that the final reading of the impugned meter was retrieved as 76,076 as per the data retrieval report dated 08.08.2018. Learned counsel for the Appellant finally prayed to allow the entire bills for the period September 2017 to April 2018.
- 6.4 The representative for the Respondent repudiated the version of learned counsel for the Appellant and asserted that the display of the meter became defective in May 2017 due to which nil consumption was charged till August 2017, however, the



National Electric Power Regulatory Authority

Appellant charged the bill of 30,489 units in September 2017 which is much higher than the previous consumption and not in line with the connected load of the premises. He averred that the bills for the period October 2017 to April 2018 were charged with excessive readings. The representative for the Respondent submitted that the impugned decision for revision of the bills for May 2018 to April 2018 on the basis of average consumption recorded from May 2016 to April 2017 is based on just reasoning and the same is liable to be maintained.

7. Arguments heard and the record perused. Following are our observations:

7.1 **Preliminary objection of the Respondent regarding limitation:**

While addressing the preliminary objection of the Respondent regarding limitation, it is observed that copy of the impugned decision dated 08.06.2018 was obtained on 13.12.2019 and the appeal was filed on 13.01.2020 within 30 days of the receipt of the impugned decision. There is no force in the arguments of the Respondent that the time of limitation starts from the date of knowledge. Reliance in this regard is placed on the judgment dated 25.04.2016 of the Honorable Lahore High Court Lahore in the Writ Petitions No. 812, 5119, 1637, 11039, 13470, 13908, 14895, 16172, 16677, 18195, 19762, 19763, 19882, 19916, 29335 and 39623 of 2015, wherein it was held that the POI is required to send the copy of the impugned decision to the parties and the period of limitation for filing the appeal will start from the date of receipt of the impugned decision. In view of the above, the objection of the Respondent regarding limitation is not valid, therefore dismissed.

7.2 **Objection regarding the time limit for POI**





National Electric Power Regulatory Authority

As per the record, the Respondent filed his complaint before the POI on 18.12.2017 under Section 38 of the NEPRA Act. POI pronounced its decision on 08.06.2018 i.e. after 173 days of receipt of the complaint. The Appellant has objected that the POI was bound to decide the matter within 90 days under Section 26(6) of the Electricity Act, 1910. In this regard, it is observed that the forum of POI has been established under Section 38 of the NEPRA Act which does not put a restriction of 90 days on POI to decide complaints. Section 38 of the NEPRA Act overrides provisions of the Electricity Act, 1910. Reliance in this regard is placed on the judgments of the honorable Lahore High Court Lahore reported in *PLJ 2017 Lahore 627* and *PLJ 2017 Lahore 309*. Keeping in view the overriding effect of the NEPRA Act being later in time, and the above-referred decisions of the honorable High Court, hence the objection of the Respondent is dismissed.

7.3 Dispute of billing for the period May 2017 to April 2018

The Respondent assailed the bills for the period September 2017 to April 2018 before the POI vide different applications. During joint checking dated 18.05.2018 of the POI, the discrepancy of the vanished display in the impugned billing meter was witnessed, and the joint checking report dated 18.05.2018 of the POI was signed by both parties without raising any objection. Thus, only the fate of billing for the period September 2017 to April 2018 needs to be examined for which the billing statement as provided by the Appellant is reproduced below:



National Electric Power Regulatory Authority

Meter No.1259		
Month	Units	Status
Jan-17	527	Active
Feb-17	592	Active
Mar-17	1265	Defective
Apr-17	1279	P-Disc
May-17	0	Disconnection
Jun-17	0	Reconnection
Jul-17	0	Same reading
Aug-17	0	Same reading
Sep-17	30489	Active
Oct-17	2465	Active
Nov-17	5977	Defective
Dec-17	6841	Defective
Jan-18	7277	Defective
Feb-18	8135	Defective
Mar-18	9126	Defective
Apr-18	10258	Defective
May-18	10177	Replaced

As evident from the above table, the impugned billing meter was functioning correctly till February 2017 and it became defective in March 2017. Thereafter, the billing of the Respondent for the period May 2017 to August 2017 was done with nil consumption. In the month of September 2017, the Appellant debited 30,489 units to the Respondent on the ground that the connection of the Respondent was disconnected on paper but it remained connected physically during the period May 2017 to September 2017 due to which accumulated units were charged to him. To confirm the veracity of the claim of the Appellant, a copy of the bill for September 2017 was perused, wherein snapshot of the meter reading was not given. To further confirm that 30,489 units were recorded during five months i.e. May 2017 to September 2017, the disputed consumption was compared with the corresponding consumption of the previous year i.e. 2016 in the below table:



National Electric Power Regulatory Authority

Undisputed		Disputed	
Month	Units	Month	Units
May-16	591	May-17	0
Jun-16	578	Jun-17	0
Jul-16	292	Jul-17	0
Aug-16	290	Aug-17	0
Sep-16	1,250	Sep-17	30,489
Average	600	Average	6,098

The above comparison of the consumption data clearly shows that the Respondent was charged on the much higher side as compared to the corresponding consumption of the previous year 2016. The Appellant did not produce the bill of September 2017 showing clear image of the snapshot before the POI as well as before us to justify the charging of much higher consumption in September 2017.

- 7.4 Since the discrepancy of the vanished display in the impugned meter was confirmed by the POI on 18.05.2018, therefore the billing for the period May 2017 to September 2017 be revised as per consumption of corresponding months of the previous year or average consumption of the last eleven months, whichever is higher.
- 7.5 Similarly, the bills for the period October 2017 to April 2018 were charged on much higher side viz-a-viz comparison with consumption of corresponding months of the year 2016 done below:

Undisputed		Disputed	
Month	Units	Month	Units
Oct-16	1,201	Oct-17	2,465
Nov-16	852	Nov-17	5,977
Dec-16	2,510	Dec-17	6,841
Jan-17	527	Jan-18	7,277
Feb-17	592	Feb-18	8,135
Mar-17	1,265	Mar-18	9,126
Apr-17	1,279	Apr-18	10,258
Average	1,175	Average	7,154



National Electric Power Regulatory Authority

In view of the above, we are of the firm view that the bills for the period October 2017 to April 2018 be revised as per consumption of corresponding months of the previous year or average consumption of the last eleven months, whichever is higher.

8. Summing up the aforesaid discussion, it is concluded that:

8.1 The bills for the period May 2017 to April 2018 charged by the Appellant are unjustified and the same should be cancelled.

8.2 The Appellant may charge the revised bills for the period May 2017 to April 2018 as per consumption of the corresponding month of the previous year or average consumption of the last eleven months, whichever is higher.

8.3 The billing account of the Respondent may be overhauled after adjustment of the payments made against the above bills.

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

Syed Zavar Haider
Member

Abid Hussain
Convener

Muhammad Irfan-ul-Haq
Member

Dated: 03-01-2023

