



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

NEPRA Office, Ataturk 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/029/2022/ 442

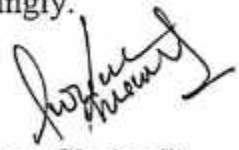
August 10, 2023

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|-----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. M/s. Apparel Textile (Pvt.) Ltd,
Situated at 3-KM, Defence Raiwind Road,
Lahore, Through Haroon Rashid,
DGM Corporate, I.R. | 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 (Operation),
LESCO Ltd,
Chung 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. M/s. Apparel Textile (Pvt.) Ltd. Against the Decision Dated 31.12.2021 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 10.08.2023, regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**


(Ikram Shakeel)
Deputy Director (AB)

Forwarded for information please.

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



National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No.029/POI-2022

Lahore Electric Supply Company LimitedAppellant

Versus

M/s. Apparel Textile (Pvt.) Ltd, situated at 3-KM,
Defence Raiwind Road, LahoreRespondent

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

For the Respondent:

Mr. A.D. Bhatti Advocate
Mr. Haroon Rashid DGM (IR)

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 31.12.2021 of the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") is being disposed of.
2. Briefly speaking, M/s. Abdalian Co-operative Housing Society Ltd (hereinafter referred to as the "Respondent") is an industrial consumer of the Appellant bearing RefNo.24-11243-1000600-U with sanctioned load of 2000 kW and the applicable Tariff is B-3. The Appellant has claimed that one phase of both the billing and



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backup meters of the Respondent was found dead stop during the Metering & Testing ("M&T") team checking dated 17.06.2021. Notice dated 24.06.2021 was issued to the Respondent regarding the above discrepancies in the metering equipment and multiplication factor (MF) of the Respondent was raised from 3000 to 4500 w.e.f June 2021 and onwards due to 33.33% slowness of the meter. In addition, a detection bill of Rs.4,712,635/- for 245,294 units+1,023 kW MDI for four months for the period from February 2021 to May 2021 was debited to the Respondent @ 33% slowness of the new meter and added to the bill for June 2021.

3. Being aggrieved with the abovementioned actions of the Appellant, the Respondent filed an application before the POI on 04.08.2021 and challenged the above detection bill. The metering equipment of the Respondent was checked by the POI on 26.07.2021 in the presence of both parties in which one phase of both the billing and backup meters was found dead stop. The matter was disposed of by the POI vide the decision dated 31.12.2021, wherein the detection bill of Rs.4,712,635/- for 245,294 units+1,023 kW MDI for four months for the period from February 2021 to May 2021 debited @ 33.33% slowness of the meter was cancelled and the Appellant was allowed to recover the detection bill for two months only i.e. April 2021 and May 2021 and onwards bills with enhanced MF=4500 to account for 33.33% slowness.
4. Through the instant appeal, the afore-referred decision dated 31.12.2021 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 POI erred in declaring the detection bill of Rs.4,712,635/- for 245,294 units+1,023 kW MDI for four months for the period from February 2021 to





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May 2021 as null and void and allowed the Appellant to charge revised bills w.e.f April 2021 and onwards till replacement of slow meter @ 33.33% slowness of the meter; (2) the POI failed to analyze the consumption data in true perspective; (3) Clause 4.3.3c(ii) of the CSM-2021 is not applicable in the instant case; (4) the POI did not record the evidence and decided the petition of the Respondent on mere surmises and conjectures; (5) the impugned decision was announced after expiry of 90 days, which is violative of Section 26(6) of Electricity Act 1910; (6) the POI has failed to appreciate that the complaint could not be entertained as notice as required under Section 26(6) of the Electricity Act 1910 was served upon the Appellant before filing the same; (7) the impugned decision is illegal, unlawful, arbitrary and the same is liable to be set aside.

5. Proceedings by the Appellate Board

Upon filing of the instant appeal, a notice dated 25.03.2022 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were filed by him on 26.06.2022. In his reply, the Respondent rebutted the version of the Appellant regarding the charging of the above detection bill and argued that the POI has rightly cancelled the above detection bill after the correct perusal of the record. He supported the impugned decision and prayed for upholding the same.

6. Hearing

6.1 Hearing of the Appeal was conducted at NEPRA Regional Office Lahore on 24.11.2022, which however was adjourned on the request of the Appellant. Finally,





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hearing of the Appeal was conducted at NEPRA Regional Office Lahore on 02.06.2023 in which counsel along with SDO appeared for the Appellant and a counsel represented the Respondent. Learned counsel for the Appellant repeated the same arguments as contained in memo of the Appeal and submitted that the impugned metering equipment of the Respondent was found 33.33% slow during checking dated 17.06.2021, therefore onward billing was charged with enhanced MF=4500. Learned counsel for the Appellant further submitted that a detection bill of Rs.4,712,635/- for 245,294 units+1,023 kW MDI for four months for the period from February 2021 to May 2021 was debited to the Respondent @ 33.33% slowness of the meter, which is justified and payable by him. He opposed the impugned decision for revision of the detection bill for two months and prayed for setting aside the impugned decision and pleaded to allow the entire detection bill.

6.2 Learned counsel for the Respondent rebutted the version of the Appellant to allow slowness of the meter beyond two billing cycles, supported the impugned decision, and prayed for upholding the same.

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

7.1 Objection regarding the time limit for POI

As per the record, the Respondent filed his complaint before the POI on 04.08.2021 under Section 38 of the NEPRA Act. POI pronounced its decision on 31.12.2021 i.e. after 149 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 NEPRA Act 1910. In this regard, it is observed that the forum of POI has been established





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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 on the Electricity Act, 1910, and the above-referred decisions of the honorable High Court, the objection of the Appellant is dismissed.

7.2 Objection regarding prior notice before filing the complaint before the POI:

As regards another objection of the Appellant for not issuing notice as per the Electricity Act, 1910 by the Respondent before filing a complaint to the POI, it is elucidated that the matter was adjudicated by the POI under Section 38 of the NEPRA Act, 1997 and as per procedure laid down in Punjab (Establishment and Powers of Office of Inspection) Order, 2005, which do not require for service of any notice before approaching the POI. The above objection of the Appellant is not valid, therefore overruled.

7.3 Detection bill of Rs.4,712,635/- for 245,294 units+1,023 kW MDI for four months for the period from February 2021 to May 2021

The metering equipment of the Respondent was checked by the M&T team of the Appellant on 17.06.2021, wherein the impugned meters were found 33% slow. The Appellant debited a detection bill of Rs.1,085,372/- for 32,404 units+188 kW MDI for five months for the period from September 2018 to January 2019 to the Respondent @ 66.66% slowness of the new meter, which was impugned by him before the POI.



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7.4 During joint checking dated 22.09.2020 of the POI, impugned new and old meters of the Respondent were found dead stop, the joint checking report was signed by both parties without raising any objection. The POI allowed the Appellant to recover the detection bill of Rs.4,712,635/- for 245,294 units+1,023 kW MDI for four months for the period from February 2021 to May 2021. Against the impugned decision of the POI, the Appellant has filed this appeal before the NEPRA.

7.5 In its appeal, the Appellant prayed to allow the detection bill of Rs.4,712,635/- for 245,294 units+1,023 kW MDI for four months for the period from February 2021 to May 2021. Clause 4.3.3(c) of the CSM-2021 being relevant in the instant case is reproduced below:

"4.3.3 (c) If the impugned metering installation should prove to be incorrect during the above checking(s), LESCO shall install a "correct meter" immediately or within two billing cycles if meters are not available.

In case slowness is established, LESCO shall enhance multiplying factor for charging actual consumption till the replacement of the defective metering installation.

Further, charging of a bill for the quantum of energy lost if any, because of malfunctioning of metering installation shall not be more than two previous billing cycles."

7.6 Above-referred clause of the CSM-2021 restricts the Appellant to charge the bills maximum for two months in case of a slow/defective meter. Therefore, the contention of the Appellant for recovery of 33.33% slowness for the period February 2021 to May 2021 i.e. four months is inconsistent with the ibid clause of the CSM-2021.



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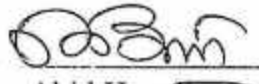
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7.7 In view of the foregoing discussion, we are constrained to assume that the detection bill of Rs.4,712,635/- for 245,294 units+1,023 kW MDI for four months for the period from February 2021 to May 2021 is unjustified and the same is cancelled.


7.8 Similarly, the determination of POI for revision of the bills for two months i.e. April 2021 and May 2021 @ 33.33% slowness of the meter is consistent with Clause 4.3.3c(ii) of the CSM-2021, hence maintained to this extent.

7.9 The billing account of the Respondent be overhauled after adjusting payments made against the above bills.

8. Foregoing in view, this appeal is dismissed.


Abid Hussain
Member


Naweed Illahi Sheikh
Convener


Muhammad Irfan-ul-Haq
Member

Dated: 10-08-2023

