



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/097/2021/438

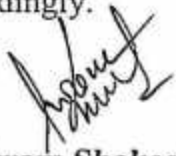
August 10, 2023

1. M/s. Yousaf Packages,
C/o. Ch. Muhammad Yousaf,
Hadbast Khano Karney, Kahna Nou,
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,
Kahna 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. M/s. Yousaf Packages Against the Decision Dated 24.03.2021 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.097/POI-2021

Lahore Electric Supply Company Limited

.....Appellant

Versus

M/s. Yousaf Packages, C/o Ch. Muhammad Yousaf,
Hadbast Khano Karney, Kahna Nou, 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

For the Respondent:

Nemo

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 24.03.2021 of the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") is being disposed of.
2. Brief facts of the case are that M/s. Yousaf Packages (hereinafter referred to as the "Respondent") is an industrial consumer of the Appellant bearing Ref No.24-11534-0509009 with sanctioned load of 39 kW and the applicable Tariff is B-2(b). The Appellant has claimed that the billing meter of the Respondent was found defective with reading stop and upset date and time during checking dated 24.08.2017, hence it was replaced with a new meter on 26.08.2017. During the subsequent Metering &

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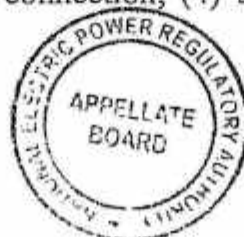
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Testing ("M&T") team checking dated 15.09.2017, the defectiveness of the impugned billing meter was confirmed with reading index noted as 475,494. Subsequently, the Appellant debited a detection bill of Rs.1,674,694/- for the cost of 96,240 units for the period from March 2017 to September 2017 to the Respondent based on consumption of February 2018.

3. Being aggrieved with the above-mentioned actions of the Appellant, the Respondent approached the POI on 17.12.2018 and challenged the above detection bill. The matter was disposed of by the POI vide the decision dated 24.03.2021, wherein the detection bill of Rs.1,674,694/- for the cost of 96,240 units for seven months for the period from March 2017 to September 2017 was cancelled. The POI directed the Appellant to revise the bills for August 2017 and September 2017 as per the consumption of August 2016 and September 2016.
4. Through the instant appeal, the afore-referred decision dated 24.03.2021 of the POI has been impugned by the Appellant before the NEPRA. In its appeal, the Appellant objected the maintainability of the impugned decision, *inter alia*, on the main grounds, (1) the POI misconceived and misconstrued the real facts of the case and erred in declaring the detection bill of Rs.1,674,694/- for the cost of 96,240 units for the period from March 2017 to September 2017 as null and void and allowed the Appellant to charge the revised bills for August 2017 and September 2017 on the basis of consumption of August 2016 and September 2016; (2) Clause 4.3.3(c)(ii) of the Consumer Service Manual 2020 (the "CSM-2020") could not be made applicable in the instant case; (3) the POI while deciding the complaint of the Respondent ignored the consumption data, which confirms that the Respondent shifted the load of another connection to this connection; (4) the impugned decision is ex-facie,



corum non-judice, ab-initio, void and without jurisdiction as the POI has no jurisdiction to carry out the proceedings after expiry of 90 days as envisaged under Section 26(6) of the Electricity Act 1910; (5) 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 27.09.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which however were not filed.

6. **Hearing**

6.1 Hearing of the appeal was conducted at Lahore on 13.10.2022, which however was adjourned till the next date due to the absence of the Respondent. Hearing of the appeal was again conducted at NEPRA Regional Office Lahore on 02.06.2023, which was attended by counsel for the Appellant, whereas again no one entered appearance for the Respondent. Learned counsel for the Appellant reiterated the same version as contained in the memo of the appeal and contended that the billing meter of the Respondent remained defective during the period from March 2017 to September 2017 due to upset reading segments; hence it was replaced with a new meter on 15.09.2017. Learned counsel for the Appellant further contended that the detection bill of Rs.1,674,694/- for the cost of 96,240 units for the period from March 2017 to September 2017 was charged on the basis of healthy consumption of a new meter. As per the Appellant, consumption of the Respondent increased after the replacement of the impugned billing meter, which justifies the charging of the above detection bill. He prayed for setting aside the impugned decision in the best interest



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of justice and to allow the above detection ill.

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

7.1 Objection regarding the time limit for POI for deciding the complaint

As per the record, the Respondent filed his complaint before the POI on 17.12.2018 under Section 38 of the NEPRA Act. POI pronounced its decision on 24.03.2021 i.e. after 828 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, of 1910. Reliance in this regard is placed on the judgments of the honorable Lahore High Court Lahore reported in 2017 PLJ 627 Lahore and 2017 PLJ 309 Lahore. 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 Detection bill of Rs.1,674,694/- for the cost of 96,240 units for the period from March 2017 to September 2017

The impugned meter of the Respondent was found defective during checking dated 24.08.2017 and it was replaced with a new meter on 26.08.2017. Subsequently, the Appellant debited a detection bill of Rs.1,674,694/- for the cost of 96,240 units for the period from March 2017 to September 2017 based on consumption recorded in February 2018 with the plea that actual consumption was not recorded by the impugned meter due to upset readings.



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7.3 In its appeal, the Appellant prayed to set aside the impugned decision and allow the above detection bill. Clause 4.4(e) of the CSM-2010 being relevant in the instant case is reproduced below:

(e) The charging of consumers on the basis of defective code, where the meter has become defective and is not recording the actual consumption will not be more than two billing cycles. The basis of charging will be 100% of the consumption recorded in the same month of the previous year or the average consumption of the last 11 months whichever is higher. Only the Authorized employee of GEPCO will have the power to declare a meter defective. However, the consumer has a right to challenge the defective status of the energy meter and the GEPCO will get the meter checked at the site with a check meter or a rotary sub-standard or digital power analyzer accompanied by an engineer of the metering and testing laboratory free of cost."

7.4 Above-referred clause of the CSM-2010 restricts the Appellant to charge defectiveness maximum for two months. Therefore, the contention of the Appellant for recovery of the detection bill of Rs.1,674,694/- for the cost of 96,240 units for the period from March 2017 to September 2017 from the Respondent based on consumption of February 2018 is inconsistent with the foregoing clause of the CSM-2010 and the same is set aside.

7.5 Similarly, the impugned decision of the POI for revision of the bills for two months i.e. August 2017 and September 2017 on the basis of consumption of August 2016 and September 2016 is neither consistent with the facts nor in line with the foregoing clause of the CSM-2010 and the same is liable to be withdrawn to this extent.

7.6 Since the discrepancy of the defective meter was observed by the Appellant on 24.08.2017 and it was replaced with a new meter on 26.08.2017, hence the Respondent is liable to be charged the detection bill for two previous months i.e.

June 2017 and July 2017 and the bill of August 2017 be revised as per DEF-EST
Appeal No.097/POI-2021

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code as per Clause 4.4(e) of the CSM 2010. The impugned decision is liable to be modified to this extent.


8. Summing up the above discussion, it is concluded as under;


8.1 The detection bill of Rs.1,674,694/- for the cost of 96,240 units for the period from March 2017 to September 2017 is cancelled.

8.2 The Respondent may be charged the detection bill for two previous months i.e. June 2017 and July 2017 and the current bill of August 2017 be revised as per DEF-EST code as per Clause 4.4(e) of the CSM-2010.

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

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


Abid Hussain
Member


Muhammad Irfan-ul-Haq
Member


Naweed Illahi Sheikh
Convener

Dated: 10-08-2023

