



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

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No. NEPRA/AB/Appeal/077/POI/2019/ 222


March 10, 2021

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| 1. Tahir Javed
S/o. Muhammad Ashiq,
M/s. Urban Developers (Pvt.) Ltd,
Mouza Jhuggian, Through Muhammad Aslam Niazi,
Additional Chie Engineer, Situated at Phase-VIII,
DHA, Ex-Air Avenue Scheme, Opposite Airport,
Lahore | 2. Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Barrister Irfan Ahmad Chattha
Advocate High Court,
Irfan Chattha Law Associates,
Suit No. 69, Third Floor,
Hajvery Complex, 2-Mozang Road,
Lahore | 4. Asad Abbas Butt
Advocate High Court,
Office No. 1, Second Floor,
Nairobi Mansion, 31-Napier Road,
Lahore |
| 5. Sub Divisional Officer (Opr),
LESCO Ltd,
Airport Road 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. Tahir Javed Against the Decision Dated 26.12.2018 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 09.03.2021, 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.

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



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. 077/POI-2019

Lahore Electric Supply Company Limited

.....Appellant

Versus

Tahir Javed S/o Muhammad Asif, M/s. Urban Developers Pvt Ltd,
Mouza Jhuggain, Through Muhammad Aslam Niazi
Additional Chief Engineer Situated Phase-VIII, DHA,
Ex-Air Avenue Scheme, Opposite Airport, Lahore

.....Respondent

For the appellant:

Barrister Irfan Ahmed Chatta Advocate

For the respondent:

Mr. Muhammad Aslam Khan Niazi Addl. CE

DECISION

1. Through this decision an appeal filed by Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) against the decision dated 26.12.2018 of the Provincial Office of Inspection Lahore Region, Lahore (hereinafter referred to as POI) is being disposed of.
2. As per facts of the case, the respondent is a consumer of LESCO having a temporary connection bearing Ref No.24-11526-1753809 with a sanctioned load of 195 kW under the tariff E-1(ii). Electricity Connection of the respondent was sanctioned by LESCO in February 2009 and the TOU billing and backup meters with reading as 0.85 index and 1.52 index respectively were installed on the premises of the respondent on 26.02.2009. Subsequently, the metering equipment of the respondent was checked by

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standing committee LESCO on 25.04.2018 and reportedly a difference of 136,160 units was observed between the TOU billing meter (old billing meter) and backup meter (old backup meter). Consequently, LESCO charged a bill of Rs.3,139,323/- for 93,760 units to the respondent in August 2018, which contained the current bill of 53,760 units and the difference bill of 40,000 units only against the total of 136,160 units. The respondent made a payment of Rs.1,611,574/- against the bill of August 2018.

3. Being aggrieved, the respondent filed an application before POI on 19.09.2018 and challenged the aforesaid bill. The metering equipment of the respondent was again checked by metering and testing (M&T) LESCO on 29.11.2018 and reportedly, a difference of readings was noticed between the old billing and backup meters. During the proceedings before POI, LESCO charged the bill of Rs.3,921,476/- for the cost of 117,120 units in November 2018 to the respondent, which was also assailed before POI. During joint checking dated 10.12.2018 of POI, reading of the old billing meter was noted as 117,936 index and reading of the old backup meter was observed as 119,802 index. The matter was decided by POI vide decision dated 26.12.2018 wherein the bills of Rs.3,139,323/- and Rs.3,921,476/- charged in August 2018 and November 2018 were declared as null and void. As per the POI decision, LESCO was directed to charge revised bills for the period August 2018 to November 2018 and onwards on the basis of actual readings recorded by the old billing meter.

4. Being dissatisfied with the decision dated 26.12.2018 of POI (hereinafter referred to as the impugned decision), LESCO has filed the instant appeal before NEPRA. In its appeal, LESCO inter alia contended that both the old billing and backup meters of the

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respondent were checked by LESCO on 25.04.2018 and a difference of 140,000 units was found between both the old billing and backup meters. LESCO further contended that the bills of Rs.3,139,323/- for 93,760 units and Rs.3,921,476/- for 117,120 units were charged to the respondent in August 2018 and November 2018 respectively on account of difference of reading of both meters. According to LESCO, the reading of the old billing meter was noted as 117,936 index and the reading of the old backup meter was observed as 119,802 index during joint checking dated 10.12.2018 of POI. LESCO submitted that the old billing meter has not recorded the correct reading, hence bills for the months August 2018 and November 2018 were issued based on the difference of readings between the old billing and backup meters. LESCO opposed the impugned decision and stated that POI neither recorded evidence nor perused the relevant record in true perspective and declared the bills of Rs.3,139,323/- and Rs.3,921,476/- charged in August 2018 and November 2018 respectively as null and void. LESCO pointed out that the impugned decision is ex-facie coram non-judice, ab-initio void & without jurisdiction, as such POI has no jurisdiction to carry out the proceedings after the expiry of 90 days as envisaged u/s 26(6) of Electricity Act 1910 and 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 05.09.2019. In his reply, the respondent inter alia opposed the maintainability of the appeal on the grounds that LESCO charged an excessive bill of Rs.3,139,323/- in August 2018; that neither any notice prior the overbilling was issued by LESCO nor the metering equipment was got checked by POI before debiting the Appeal No.077/POI-2019



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excessive bill; that the comparison of the consumption recorded during the disputed period with undisputed period establishes that the old billing meter did not suffer a disability of any slowness that 50,000 units were charged in excess as per reading noted on 03.09.2018; that the appeal was filed before NEPRA with a delay of 5 days; and that the same is liable to be dismissed with cost.

6. Notice was issued and hearing of the appeal was held at NEPRA Regional Office Lahore on 26.02.2021, which was attended by both parties. Learned Counsel for LESCO contended that old billing and backup meters of the respondent were installed on the same date with same reading, which were subsequently checked by LESCO on 25.04.2018 and there was difference of readings noticed between the old billing and backup meters. As per learned counsel for LESCO, the difference bill was charged in two installments i.e. Rs.3,181,236/- for August 2018 and Rs.3,921,476/- for November 2018 due to the difference of readings between the billing and backup meters. According to learned counsel for LESCO, the above bills are justified and payable by the respondent. Learned counsel for LESCO finally prayed that the impugned decision is liable to be set aside. On contrary, the representative for the respondent repeated the contentions as given in the reply/para-wise comments to the appeal, defended the impugned decision, and prayed for upholding the same.

7. Arguments heard and the record examined. 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 as envisaged in Section 26(6) of Electricity Act, 1910, it may be explained that the period of 90 days is provided in Electricity Act,

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1910 which is not relevant for the offices of POI established under Section 38 of NEPRA Act, 1997. NEPRA is the appellate authority against the decisions of POI and not that of Electric Inspectors. It has already been held by Honorable Lahore High Court in the judgments cited as PLJ 2017-Lahore-627 and PLJ-2017-Lahore-309 that the impugned order was passed by POI under section 38 of NEPRA Act, 1997 and not by Electric Inspector under Electricity Act, 1910 therefore, the outer time limit of 90 days is inapplicable. The objection of LESCO in this regard is devoid of force, therefore rejected.

- ii. There is no force in the objection of the respondent regarding the limitation as the copy of the impugned decision dated 26.12.2018 was obtained by LESCO on the same day 26.12.2018 and the appeal was received in NEPRA on 29.01.2019 within 7 days, which is the time allowed for dispatch in accordance with Regulation 4 (2)(b) of NEPRA (Procedure for Filing Appeal) Regulations, 2012. The relevant portion is reproduced below for the sake of convenience:

"Limitation for filing the appeal.—(1) Every appeal shall be filed within a period of thirty days from the date on which a copy of the order against which the appeal is preferred is received by the appellant: Provided that the Authority may, upon an application filed in this behalf, entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the period. (2) Subject to anything contrary on the record the copy of the order against which an appeal is filed shall be presumed to have been received by the appellant if: (a) sent by courier, three days following the day it is dispatched by the Receipt and Issue department of the Authority; (b) sent by registered post, seven days following the date it is mailed by the Receipt and Issue department of the Authority; and (c) sent by hand delivery; on the production of the receipt showing the date it is served on the appellant."

- iii. M&T LESCO checked the metering equipment on 25.04.2018 and reportedly a difference of 136,160 units was observed between the old billing and backup

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meters. During another checking dated 29.11.2018 of LESCO, a difference of 149,520 units was observed between the old billing and backup meters. Consequently, LESCO charged two bills in August 2018 and November 2018 to the respondent as per detail given below:

Month	Units charged	Amount (Rs.)
Aug-18	93,760	3,139,323
Nov-18	117,120	3,921,476
Total	210,880	7,060,799

The respondent disputed the above bills before POI. During joint checking of POI dated 04.12.2018, a total difference of 149,520 units was observed between the billing and backup meters, detail of which is reproduced below:

POI checking	(A) Billing meter Reading			(B) Backup meter Reading	(C)=(B)- (A)	(D)	(E)=(C)x(D)
Dated	Off-peak	Peak	Total	Total	Difference	MF	Units
10.12.2018	97047	20886	117933	119802	1869	80	149,520

As per record provided by LESCO, the disputed old billing and backup meters were installed on the premises of the respondent on 26.02.2009 and the billing continued on the same metering equipment since then. However, LESCO meter readers never pointed out any discrepancy of readings between the old billing and backup meters in a long span of time i.e. from the date of installation of the meter i.e. 26.02.2009 to M&T checking dated 25.04.2018 (almost 9 years) which is gross negligence on the part of LESCO. Moreover, the claim of LESCO for 136,160 pending units on the old metering equipment installed for the nine years i.e. February 2009 to April 2018 is inconsistent with Article 181 of Limitation Act,



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1908, which restricts the period of claim for three years only. In this regard, reliance is placed on the Lahore High Court, judgment dated 30.11.2015 in respect of writ petition No.17314-2015 titled “Muhammad Hanif v/s NEPRA and others”, wherein it is held as under:

“The petitioner at the most can invoke Article 181 of The Limitation Act, 1908 which is the residuary provision and caters the issue of limitation where no period of limitation is provided elsewhere in the Schedule of The Limitation Act, 1908 or under Section 48 of The Code of Civil Procedure (V of 1908). Article 181 of The Limitation Act, 1908 prescribes the period of three years for filing an application that applies when the right to apply accrues as prescribed in Article 181 of Limitation Act, 1908.”

In consideration of the above facts, the bills of Rs.3,139,323/- and Rs.3,921,476/- charged by LESCO in August 2018 and November 2018 respectively along with LPS are unjustified and not payable by the respondent, which is also the determination of POI.

- iv. LESCO observed a difference of 149,520 units during checking dated 29.11.2018 and the same difference of units was confirmed by POI during joint checking dated 10.12.2018. Both parties signed the POI checking report without raising any objection. Hence it would be judicious to charge the bills for the last three years i.e. December 2015 to November 2018 based on the difference of consumption between the billing and backup meters observed by POI. Calculation in this regard is done below:

Period: December 2015 to November 2018 (3 years)

- **Units to be charged** = $\frac{\text{Units charged as per final reading} \times \text{No. of years allowed}}{\text{No. of disputed years}}$
- **Units to be charged** = $\frac{149,520 \times 3}{9} = 49,840 \text{ units}$



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Hence the difference bill of 49,840 units be recovered from the respondent. The impugned decision is liable to be modified to this extent.

8. In view of what has been stated above, it is concluded that the bills of Rs.3,139,323/- and Rs.3,921,476/- charged by LESCO in August 2018 and November 2018 respectively along with LPS are illegal, excessive, unjustified, and rightly cancelled by POI. The respondent may be charged 49,840 units as difference bill by LESCO, however, any payment made against the above disputed bills should be adjusted in the revised difference bill.
9. Forgoing into consideration, the appeal is partially accepted.

Muhammad Qamar-uz-Zaman
Member/SA (Finance)

Nadir Ali Khoso
Convener/DG (M&E)

Dated: 09.03.2021