



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

NEPRA Office , Ata Turk 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/180/POI/2019/ 243

April 06, 2021

- | | |
|---|--|
| 1. Mukhtar Ahmad
S/o. Abdullah,
M/s. Tufail Chemical Industries,
Rohi Nala, Roasa Bhail,
07-KM, Raiwind Road,
Mangha, Lahore | 2. Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Mian Tabassum Ali
Advocate High Court,
Aneexy Auqaf, Chowk High Court,
The Mall, Lahore | 4. Muhammad Younas Chaudhary,
Advocate High Court,
Chaudhary Law Associates,
4-Begum Road, Lahore |
| 5. Sub Divisional Officer (Opr),
LESCO Ltd,
Kot Radha Kishan-I Sub Division,
Kot Radha Kishan, District Kasur | 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. Mukhtar Ahmad Against the Decision Dated 29.06.2018 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 24.03.2021, 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.

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



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. 180/POI-2019

Lahore Electric Supply Company Limited

.....Appellant

Versus

Mukhtar Ahmed S/o Abdullah, M/s. Tufail Chemical Industries, Rohi Nala,
Roasa Bhail, 07-KM, Raiwand Road, Mangha, Lahore

.....Respondent

For the appellant:

Mr. Tabassum Ali Advocate

Mr. Amanullah XEN

For the respondent:

Mr. Muhammad Younas Chaudhary Advocate

DECISION

1. Through this decision an appeal filed by Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) against the decision dated 29.06.2018 of the Provincial Office of Inspection Lahore Region, Lahore (hereinafter referred to as POI) is being disposed of.
2. Briefly speaking, the respondent is an industrial consumer of LESCO having a connection bearing RefNo.24-11751-0216001-U with a sanctioned load of 398 kW and the applicable tariff B-2(b). LESCO installed a backup meter in series with the TOU billing meter on 27.03.2014 and the onward billing continued on the TOU billing meter. Subsequently, two checking of the respondent's metering equipment were carried out by metering & testing (M&T) LESCO on 06.07.2017 & 28.03.2018 and reportedly there is a difference of 255,776 units+2,386 kW MDI was noticed between the TOU



National Electric Power Regulatory Authority

billing and backup meters due to 11% slowness of the TOU billing meter. LESCO issued notice dated 30.03.2018 to the respondent regarding the above discrepancy and billing of the respondent was shifted on the backup meter w.e.f March 2018 and onwards. Thereafter, a detection bill of Rs.5,033,361/- for 255,776 units+2,386 kW MDI for the period 27.03.2014 to 28.03.2018 (48 months) was charged to the respondent being the difference of consumption observed between the TOU billing and backup meters and added in the bill for March 2018.

3. Being aggrieved with the actions of LESCO, the respondent approached the Provincial Office of Inspection (POI) on 19.04.2018 and assailed the above detection bill. During POI joint checking dated 03.05.2018 of the metering equipment of the respondent, the disputed TOU billing meter was found 15% slow and the backup meter was found working within permissible limits. POI vide decision dated 29.06.2018 declared the detection bill amounting to Rs.5,033,361/- for 255,776 units+2,386 kW MDI for the period 27.03.2014 to 28.03.2018 as cancelled and LESCO was allowed to revise the bills w.e.f February 2018 and onwards till the replacement of disputed billing meter @ 15% slowness. LESCO was further directed to overhaul the billing account of the respondent and installed an accurate TOU billing meter to avoid any future litigation.
4. Being dissatisfied with the decision dated 29.06.2018 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 TOU billing and backup meters of the respondent were checked by LESCO on 28.03.2018 and a difference of 255,776 units +2,386 kW MDI was found between the TOU billing and backup meters due to the 11%
Appeal No.180/POI-2019



National Electric Power Regulatory Authority

slowness of yellow phase of the TOU billing meter. LESCO further contended that the detection bill of Rs.5,033,361/- for 255,776 units+2,386 kW MDI for the period 27.03.2014 to 28.03.2018 was charged to the respondent on account of the difference of readings of both the TOU billing and backup meters after serving notice dated 30.03.2018. According to LESCO, POI without applying his expertise rendered the impugned decision based on clause 4.4 of the Consumer Service Manual (CSM) whereas the balance units were charged on the basis of reading of the backup meter as the TOU billing meter was not accurate. LESCO submitted that the above said bill was neither a detection bill nor any slowness was charged by the department. LESCO finally prayed for setting aside the impugned decision.

5. Notice of the appeal was issued to the respondent for filing reply/para-wise comments, which were filed on 02.10.2019. In his reply, the respondent raised the preliminary objection regarding the limitation and contended that the appeal is time-barred and liable to be dismissed with special cost. The respondent further contended that LESCO conducted unilateral checking dated 28.03.2018 of the metering equipment wherein the TOU billing meter was found 11% slow, hence he is not bound to pay any bill on the basis of reading of the backup meter. As per respondent, LESCO is disentitled to charge the bill on the basis of an alleged difference between the billing and backup meter observed during unilateral checking, which is a violation of clause 4.4 of the CSM. According to the respondent, the POI has jurisdiction to decide the matter in view of the verdict of the Supreme Court of Pakistan reported as PLD 2012 SC 371 and POI has rightly allowed the bill for two months on account of 15% slowness of the TOU
- Appeal No.180/POI-2019



National Electric Power Regulatory Authority

billing meter as observed during joint checking dated 03.05.2018, which was signed by both the parties. The respondent finally prayed that the appeal may be dismissed with special costs.

6. Notice was issued and hearing of the appeal was held at NEPRA Regional Office Lahore on 11.03.2021, which was attended by both parties. Learned counsel for LESCO repeated the contentions of the appeal and argued that there is a difference of consumption between the TOU billing and backup meters was noticed due to 11% slowness of the TOU billing meter, as such the detection bill of Rs.5,033,361/- for 255,776 units+2,386 kW MDI for the period, 27.03.2014 to 28.03.2018 was charged to the respondent due to the difference of consumption between the TOU billing and backup meters. As per learned counsel for LESCO, 15% slowness was established in the TOU billing meter during POI joint checking dated 03.05.2018 and the above difference bill was charged on account of pending units. Learned counsel for LESCO termed the above detection bill as justified and prayed for upholding the same. On the other hand, learned counsel appearing for the respondent rebutted the version of learned counsel for LESCO and averred that the matter about the slowness of the billing meter, therefore the detection bill for two months is chargeable as per CSM. Learned counsel for the respondent submitted that SDO LESCO takes the monthly readings of the respondent's premises having B-2(b) connection as such no discrepancy was noticed by the said officer during monthly readings. Learned counsel for the respondent defended the impugned decision and prayed for maintaining the same.





National Electric Power Regulatory Authority

7. Arguments heard and the record examined. It is observed as under:

- i. There is no force in the objection of the respondent regarding the limitation as the copy of the impugned decision dated 29.06.2018 was obtained by LESCO on 24.07.2018 and the appeal was initially received in NEPRA on 27.07.2018 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."

- ii. M&T LESCO checked the metering equipment on 28.03.2018 and reportedly a difference of 255,776 units+2,386 kW MDI was observed between the TOU billing and backup meters of the respondent. Consequently, LESCO charged the detection bill of Rs.5,033,361/- for 255,776 units+2,386 kW MDI for the period 27.03.2014 to 28.03.2018 (48 months) to the respondent due to the difference of consumption between the TOU billing and backup meters, which was disputed by him before POI. The billing of the respondent was shifted by LESCO on the backup meter



National Electric Power Regulatory Authority

w.e.f March 2018 and onwards. During joint checking of POI dated 03.05.2018, the TOU billing meter was found 15% slow and the backup meter was found within BSS limits of accuracy and the difference of consumption was also observed between the TOU billing and backup meters of the respondent. Both the parties signed the joint checking report without raising any objection.

- iii. As per record provided by LESCO, the backup meter with a reading index of 0.59 was installed in series the disputed TOU billing meter with a reading index of 37,305 on the premises of the respondent on 27.03.2014. The billing continued on the basis of reading of the TOU billing meter of the respondent, however, LESCO never pointed out any discrepancy of readings between the TOU billing and backup meters in a long span of time i.e. from the date of installation of the backup meter i.e. 27.03.2014 to M&T checking dated 28.03.2018 (4 years) which is gross negligence on the part of LESCO. Moreover, the claim of LESCO for pending 255,776 units+2,386 kW MDI being the difference of consumption of the TOU billing and backup meters for the four years i.e. 27.03.2014 to 28.03.2018 is inconsistent with Article 181 of Limitation Act, 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



National Electric Power Regulatory Authority

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 detection bill of Rs.5,033,361/- for 255,776 units+2,386 kW MDI for the period 27.03.2014 to 28.03.2018 along with late payment surcharges (LPS) is unjustified and not payable by the respondent, which is also the determination of POI.

- iii. Since the difference of consumption between the TOU billing and backup meters was observed by LESCO on 28.03.2018 and subsequently verified by POI during joint checking dated 03.05.2018. Hence it would be judicious to charge the bills for the last three years i.e. March 2015 to February 2018 based on the difference of consumption between the TOU billing and backup meters in pursuance of Article 181 of Limitation Act, 1908. Calculation in this regard is done below:

Period: March 2015 to February 2018 (3 years)

- **Units to be charged** = $\frac{\text{Units charged as per final reading} \times \text{No. of years allowed}}{\text{No. of disputed years}}$
- **Total units to be charged** = $\frac{255,776 \times 3}{4} = 191,832 \text{ units}$

According to clause 6.2(b) of CSM, accumulated units may be segregated equally into the number of disputed months and the recovery of the bills be made as per applicable tariff of the relevant months in order to give relief to the respondent. In this regard, the chargeable units/months are calculated below:

- **Units/month to be charged** = $\frac{\text{Total Units}}{\text{No. of Months}} = \frac{191,832}{36} = 5,328 \text{ units/month}$



National Electric Power Regulatory Authority

Hence the respondent is liable to be charged 5,328 units/month for 36 months along with the current monthly bill. 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 detection bill of Rs.5,033,361/- for 255,776 units+2,386 kW MDI for the period 27.03.2014 to 28.03.2018 along with LPS is illegal, excessive, unjustified, and rightly cancelled by POI. The respondent may be charged 5,328 units/month for 36 months along with the current bill. However, any payment made against the above detection bill should be adjusted by LESCO in the revised 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: 24.03.2021