



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

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No. NEPRA/AB/Appeal/032/POI/2020/ 189


January 27, 2022

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|---|--|
| 1. Nadeem Ahmed,
S/o. Bashir Ahmed,
R/o. House No. 1556/B,
Gali Phalla Nanak, Androon Bhatti Gate,
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. A. D. Bhatti,
Advocate High Court,
First Floor, Rehmat Tower,
13-Fane Road, Lahore |
| 5. Sub Divisional Officer (Operation),
LESCO Ltd,
Sheranwala Gate 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. Nadeem Ahmed Against the Decision Dated 31.10.2019 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 19.01.2022, 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. 032/POI-2020

Lahore Electric Supply Company Limited

.....Appellant

Versus

Naeem Ahmed S/o Bashir Ahmed, R/o House No.1556/B,
Gali Phalla Namak, Androon Bhatti Gate, Lahore

.....Respondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 31.10.2019 PASSED BY PROVINCIAL
OFFICE OF INSPECTION LAHORE REGION, LAHORE**

For the Appellant:

Mr. Saeed Bhatti Advocate

For the Respondent:

Mr. A.D. Bhatti Advocate

Mt. Naeem Ahmed

DECISION

1. Through this decision, an appeal filed by Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) against the decision dated 31.10.2019 of the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the POI) is being disposed of.





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2. LESCO is a licensee of the National Electric Power Regulatory Authority (hereinafter referred to as the NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license and the Respondent is its domestic consumer bearing Ref No.07-11143-0775900 with a sanctioned load of 1 kW under the A-1(a) tariff category. As per fact of the case, the billing meter of the Respondent was checked by Metering and Testing (M&T) LESCO on 13.12.2018 and reportedly, it was found tampered. Notice dated 28.12.2018 was served to the Respondent regarding the above discrepancy and the FIR No.05/2019 dated 01.01.2019 was registered with the police against the Respondent. Afterwards, a detection bill of Rs.105,388/- for 4,609 units for the period July 2018 to December 2018 six (6) months was charged to the Respondent by the LESCO on the basis of the connected load and added in the bill for April 2019.
3. Being aggrieved, the Respondent filed a complaint dated 25.06.2019 before the POI and assailed the above detection bill. The matter was disposed of by the POI vide decision dated 31.10.2019, wherein the detection bill of Rs.105,388/- for 4,609 units for the period, July 2018 to December 2018 six (6) months charged by the LESCO was declared as null & void. LESCO was directed to revise the bills of November 2018 and December 2018 on the basis of consumption of November 2017 and December 2017. LESCO was further directed to overhaul the billing account of the Respondent accordingly.
4. Being dissatisfied with the decision of the POI dated. 31.10.2019 (hereinafter referred





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to as the impugned decision), the LESCO filed the instant appeal before NEPRA. In its appeal, LESCO opposed the maintainability of the impugned decision inter alia, on the following grounds; (1) the detection bill of Rs.105,388/- for 4,609 units for the period July 2018 to December 2018 six (6) months was debited to the Respondent on account of dishonest abstraction of electricity through tampering the meter as observed on 13.12.2018; (2) the FIR No.05/2019 dated 01.01.2019 was registered against the respondent; (3) the POI misconceived the real facts of the case as the above detection bill was debited to the Respondent on account of dishonest abstraction of energy which does not call for interference by the said forum, (4) the POI failed to analyze the consumption data in true perspective and declared the above detection bill as void, (5) the POI failed to examine the disputed meter which is essential to resolve the controversy between the parties, (6) the impugned decision was rendered by the POI after the expiry of statutory period of ninety (90) days, hence it is ex-facie coram non judice, ab-initio void and without jurisdiction; (7) the impugned decision is illegal, unlawful, without authority & jurisdiction, void ab-initio, biased and based on surmises and conjectures. LESCO prayed that the impugned decision is liable to be set aside.

5. Notice for filing reply/para-wise comments to the appeal was served to the Respondent, which were filed on 24.07.2020. In his reply, the Respondent inter alia opposed the maintainability of the appeal on the following grounds; (1) LESCO neither issued prior notice nor he was associated during the alleged checking; (2) the





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FIR lodged against him is based upon false and frivolous allegations; (3) the allegation of LESCO for installation of AC or air cooler is false as the premises is of 1 Marla; (4) the POI passed the impugned decision after considering all legal and factual aspects of the case; (5) the impugned decision is based on reasoning; that the proceedings were carried out by the lower forum in the capacity as POI; therefore sanction of ninety (90) days as provided in the Electricity Act 1910 is not applicable in the instant case and that the impugned decision is liable to be upheld.

6. After issuing notice, hearing of the appeal was held at the NEPRA Regional Office Lahore on 30.12.2021, which was attended by learned counsels for the Appellant and the Respondent respectively. Learned counsel for the LESCO reiterated the same contentions as given in memo of the appeal and contended that the detection bill of Rs.105,388/- for 4,609 units for the period July 2018 to December 2018 six (6) months was charged to the Respondent due to theft of electricity committed through the tampered meter as noticed by LESCO during checking on 13.12.2018. Learned counsel for LESCO further opposed the analysis of the POI for revision of the detection bill as per Chapter 4 of the CSM and argued that Chapter 9 of the CSM is applicable in the instant case being theft of electricity dispute. As per learned counsel for LESCO, the above detection bill was approved by Deputy Commercial Manager LESCO who is authorized in this behalf by the Chief Executive Officer LESCO. Learned counsel for LESCO prayed for setting aside the impugned decision being violative of Chapter 9 of the CSM.





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7. Argument heard and the record examined. Following are our observations:

- i. With regard to the preliminary objection of the LESCO for the failure of the POI in deciding the matter within ninety (90) days as provided under Section 26(6) of the Electricity Act, 1910, it is clarified that the period of ninety (90) days provided in the Electricity Act, 1910 is not relevant for the POI established under the Section 38 of NEPRA Act, 1997. NEPRA is the appellate authority against the decisions of the POI and not that of Electric Inspectors. The same has already been held by the Honorable Lahore High Court, Lahore in the judgments reported in PLJ 2017-Lahore-627 and PLJ-2017-Lahore-309. Therefore, the stated time limit of ninety (90) days is inapplicable. The objection of the LESCO in this regard carries no weight, therefore rejected.
- ii. LESCO raised another objection regarding the jurisdiction of the POI. It is observed that the dispute of billing pertains to the theft of electricity through tampering with the metering equipment. As such, the POI has exclusive jurisdiction to adjudicate such disputes of billing where metering equipment is involved as per judgment of honorable Supreme Court of Pakistan reported in PLD 2012 SC 371. The relevant excerpts from the mentioned paragraphs are reproduced as follows:

"P L D 2012 Supreme Court 371

"In case, the theft alleged is by means other than the tampering or manipulation





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of the metering equipment, etc., the matter would fall exclusively under Section 26-A of the Act, the Electricity Act, outside the scope of powers of the Electric Inspector. Since the Electric Inspector possesses special expertise in examining the working of the metering equipment and other related apparatus, it makes sense that any issue regarding their working, functioning, or correctness, whether or not deliberately caused, be examined by him. It may be added that Section 26-A is an enabling provision empowering the licensee to charge the consumer for dishonest extraction or consumption of electricity. It does not provide any procedure for resolving any dispute between the consumer and the licensee on a charge of theft. It should be, therefore be read in conjunction with the other relevant provisions including section 26(6) of the Act."

In view of the above, the objection of LESCO is not valid and rejected.

- iii. The disputed billing meter of the Respondent was found tampered with during the LESCO checking on 13.12.2018. Resultantly, a detection bill of Rs.105,388/- for 4,609 units for the period July 2018 to December 2018 six (6) months was charged to the Respondent by LESCO, which was agitated before the POI.
- iv. LESCO charged the above detection bill for a period of six (6) months i.e. July 2018 to December 2018 to the Respondent being a general supply consumer i.e. A-I due to theft of electricity, which is violative of Clause 9.1c(3) of the CSM. Said Clause of CSM allows LESCO to recover the detection bill maximum for three (3) months as no approval was granted by the Chief Executive Officer LESCO. In addition to the above, the meter under dispute was not produced before the POI for verification of alleged tampering. Moreover, the LESCO charged the above detection bill based on 5.8 kW including the AC load, however, LESCO did not produce any document, which may show that the illegally extended load as





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alleged was regularized by the LESCO. Hence, we hold that the detection bill of Rs.105,388/- for 4,609 units for the period July 2018 to December 2018, six (6) months charged to the Respondent by the LESCO is unjustified and liable to be declared as null and void, which concurs with the determination of the POI.

- v. According to Clause 9.1c(3) of the CSM, the Respondent is liable to be charged the detection bill as per the sanctioned load maximum for three (3) months i.e. October 2018 to December 2018. Calculation of the detection bill in this regard is done below as per formula given in Annex VIII of the CSM:

$$\begin{aligned} \text{Units/month to be charged} &= \text{Sanctioned load (kW)} \times \text{No. of Hours} \times \text{Load factor} \\ &= 1 \times 730 \times 0.2 = \mathbf{146 \text{ units/month}} \end{aligned}$$

Period: October 2018 to December 2018 (Three (3) months)

(A) Total Units assessed	=Units/ month x No. of Months = 146 x 3 = 438 units
(B) Total units already charged	=152+92+66 = 310 units
(C) Net chargeable units	= (A) - (B) = 438-310 = 128 units

8. The upshot of the above discussion is that:

- the impugned decision for cancellation of the detection bill of Rs.105,388/- for 4,609 units for the period July 2018 to December 2018 six (6) months is correct and maintained to this extent.
- LESCO is directed to charge the detection bill for net 128 units for the period October 2018 to December 2018 three (3) months to the Respondent.





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- iii. The billing account of the Respondent should be revised by LESCO after adjusting payments made against the above detection bill.
9. The impugned decision is modified in the above terms.

Abid Hussain
Member/Advisor (CAD)

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Date: 19.01.2022

