



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

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No. NEPRA/AB/Appeal/141/POI/2021/ 2/5


March 02, 2022

- | | |
|---|--|
| 1. Liaqat Ali,
S/o. Nazir Ahmad,
R/o. House No. 55, Street No. 08,
New Malik Park, Ellahi Town,
Bhagat Pura, 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 Afzaal Sulehri,
Advocate High Court,
First Floor, Usman Ghani Block,
Aiwan-e-Adal, Lahore |
| 5. Sub Divisional Officer (Operation),
LESCO Ltd,
Kot Khawaja Saeed 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. Liaqat Ali Against the Decision Dated 03.11.2020 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 14.02.2022, 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. 141/POI-2021

Lahore Electric Supply Company Limited

.....Appellant

Versus

Liaqat Ali S/o Nazir Ahmed, R/o House No.55, Street No.08,
New Malik Park, Ellahi Town, Baghat Pura, Lahore

.....Respondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 03.11.2020 PASSED BY PROVINCIAL
OFFICE OF INSPECTION LAHORE REGION, LAHORE**

For the Appellant:

Mr. Tabassum Ali Advocate

Mr. M. Arshad Javaid SDO

For the Respondent:

Mr. Muhammad Afzal Sulehri Advocate

Mr. Liaqat Ali

DECISION

1. Briefly speaking, the Respondent is an industrial consumer of the LESCO bearing Ref No.46-11351-2135804-U with a sanctioned load of 07 kW under the B-1b tariff category. As per fact of the case, the billing meter of the Respondent was checked by Metering and Testing (M&T) LESCO along with FIA on 04.10.2016, and reportedly,



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it was found tampered (deliberately 90% slow). Notice dated 04.10.2016 was served to the Respondent regarding the above discrepancy and the FIR No.108/2016 dated 04.10.2016 was registered with the police against the Respondent. Afterwards, a detection bill of Rs.9,228,923/- for 521,928 (off-peak=434,940+peak=86,988) units for the period March 2014 to September 2016 thirty-one (31) months was charged to the Respondent by the LESCO on the basis of the connected load i.e. 66 kW and added in the bill for September 2016.

2. Against the charging of the above detection bill, the Respondent initially approached the Civil Judge Lahore, who vide order dated 12.04.2018 directed the Respondent to file the complaint before the POI being the appropriate forum. The Respondent however filed an appeal before the District and Session Judge Lahore against the order dated 12.04.2018 of the Civil Judge Lahore, which was dismissed by the honorable District & Session Judge vide order dated 16.01.2019 with the same directions of lower court. Accordingly, the Respondent filed an application before the Provincial Office of Inspection (the POI) on 27.03.2019 and agitated the above detection bill. The meter under dispute was checked by the POI in presence of both the parties on 18.06.2020 and the tampering in the meter was established. The matter was decided vide POI decision dated 03.11.2020, wherein the detection bill of Rs.9,228,923/- for a total of 521,928 (off-peak=434,940 + peak=86,988) units for the period March 2014 to September 2016 thirty-one (31) months charged by the LESCO was declared as null & void. LESCO was directed to revise the bills @ 8,862 units/month for the period



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April 2016 to September 2016 on the basis of consumption of January 2015. LESCO was further directed to overhaul the billing account of the Respondent accordingly.

3. Being dissatisfied with the decision of the POI dated. 03.11.2020 (hereinafter referred to as the impugned decision), the LESCO filed the instant appeal before NEPRA. In its appeal, LESCO opposed the maintainability of the impugned decision and prayed for setting aside the same inter alia, on the following grounds; (1) the detection bill of Rs.9,228,923/- for 521,928 (off-peak=434,940+peak=86,988) units for the period March 2014 to September 2016 thirty-one (31) months was debited to the Respondent on account of dishonest abstraction of electricity through tampering the meter as observed on 04.10.2016; (2) the FIR No.108/2016 dated 04.10.2016 was registered against the Respondent; (3) the POI has no jurisdiction to adjudicate the instant matter; (4) the POI did not consider the real facts of the case and passed the incomplete and irrelevant impugned decision; (5) the POI neither consider the relevant record nor heard the version of LESCO with regard to the dispute; and (6) the impugned decision is illegal, unlawful, without authority and jurisdiction.
4. Notice for filing reply/para-wise comments to the appeal was served to the Respondent, which were filed on 15.12.2021. In his reply, the Respondent, inter alia, opposed the maintainability of the appeal on the following grounds; (1) the appeal filed by the LESCO is badly time-barred; (2) the LESCO along with FIA visited the premises of the Respondent and declared the meter as tampered deliberately 90% slow and FIR was lodged against him; (3) LESCO neither issued prior notice nor he was

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associated during the alleged checking; (4) the FIR lodged against him is based upon false and frivolous allegations; (5) the allegation of LESCO for installation of relay device in the meter for the commitment of theft of electricity is false, which was verified by the POI during the joint checking; (6) the POI passed the impugned decision after considering all legal and factual aspects of the case; (7) the impugned decision is based on reasoning and the same is liable to be upheld.

5. 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.9,228,923/- for 521,928 (off-peak=434,940+peak=86,988) units for the period March 2014 to September 2016 thirty-one (31) months was charged to the Respondent due to theft of electricity committed through the tampered meter as noticed by the LESCO during checking on 04.10.2016, which was confirmed by the POI during the joint checking. Learned counsel for LESCO further opposed the analysis of the POI for revision of the detection bill for six months as per Chapter 9 of the CSM and argued that the consumption data of the Respondent proves that the Respondent illegally extended load i.e. 66 kW beyond the sanctioned load. Learned counsel for LESCO submitted that the POI has no jurisdiction to entertain the instant matter and prayed for setting aside the impugned decision. On the other hand, learned counsel for the Respondent defended the impugned decision and averred that neither discrepancy of



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tampering the meter was noticed by the LESCO during the monthly readings since the installation of connection nor any prior notice was given in this regard, hence there is no justification to charge the unjustified detection bill. Learned counsel for the Respondent rebutted the version of learned counsel for the LESCO and stated that the POI has exclusive jurisdiction to entertain the instant dispute as per Section 38 of the NEPRA Act. As per learned counsel for the Respondent, no permission was given by the Chief Executive Officer LESCO for charging the detection bill beyond six (6) billing cycles.

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

- i. With regard to the preliminary objection of the Respondent for limitation, it is observed that the copy of the impugned decision dated 30.11.2020 was received by the LESCO on 22.12.2020 and the appeal was filed by the LESCO before the NEPRA on 01.01.2020 within 30 days of receipt of the impugned decision as per Section 38(3) of the NEPRA Act 1997. The objection of the Respondent in this regard carries no weight and is overruled.
- ii. LESCO objected to 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



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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 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 and the connected load was noticed as 66 kW during the LESCO checking on 04.10.2016. Resultantly, a detection bill of Rs.9,228,923/- for 521,928 (off-peak=434,940 + peak=86,988) units for the period March 2014 to September 2016 thirty-one (31) 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 thirty-one months i.e. March 2014 to September 2016 to the Respondent due to theft of electricity, which is violative of Clause 9.1c(3) of the CSM. Said Clause of CSM allows LESCO to



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recover the detection bill maximum for six (6) months. Hence, we hold that the detection bill of Rs.9,228,923/- for 521,928 (off-peak=434,940 + peak=86,988) units for the period March 2014 to September 2016 thirty-one (31) 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. LESCO claimed that the Respondent was using illegally extended load i.e.66 kW against which there is no denial by the Respondent. According to Clause 9.1c(3) of the CSM, the Respondent is liable to be charged the detection bill maximum for six (6) months i.e. March 2016 to August 2016. Calculation of the detection bill in this regard is done below as per the formula given in Annex VIII of the CSM:

$$\begin{aligned}\text{Units/month to be charged} &= \text{Connected load (kW)} \times \text{No. of Hours} \times \text{Load factor} \\ 66 \times 730 \times 0.4 &= \mathbf{19,272 \text{ units/month}}\end{aligned}$$

Period: March 2016 to August 2016 six (6) months

(A) Total Units assessed	=Units/ month x No. of Months = 19,272 x 6	= 115,632 units
(B) Total units already charged	=7100+714+480+75+3258+1912	= 13,539 units
(C) Net chargeable units	= (A) - (B) = 115,632 - 13,539	= 102,093 units

7. The upshot of the above discussion is that the impugned decision for cancellation of the detection bill of Rs.9,228,923/- for 521,928 (off-peak=434,940 + peak=86,988) units for the period March 2014 to September 2016 thirty one (31) months is correct and maintained to this extent. LESCO is directed to charge the detection bill for net 102,093 units for the period March 2016 to August 2016 six (6) months to the



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Respondent. The billing account of the Respondent should be revised by LESCO after adjusting payments made against the above detection bill.

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

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Abid Hussain
Member/Advisor (CAD)

A handwritten signature in black ink, appearing to read "Nadir Ali Khoso", is positioned above a horizontal line.

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Date: 14.02.2022