



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/231/POI/2019/ 968

September 19, 2022

- | | |
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| 1. Muhammad Younas Bhatti,
S/o. Haji Khair Din Bhatti,
R/o. Pakeeza Colony, Kharra Road,
Kasur | 2. Chief Executive Officer,
LESCO Ltd, 22-A,
Queens Road, Lahore |
| 3. Syed Mumtaz Ali Shah Hamdani,
Advocate Supreme Court,
LG-2, Al Murtaza Centre,
2-Mozang Road, Lahore | 4. Muhammad Shaban,
Advocate High Court,
Suit No. 204, Ali Plaza,
14-B, Temple Road, Lahore |
| 5. Sub Divisional Officer (Operation),
LESCO Ltd,
City Sub Division, 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. Muhammad Younas Bhatti Against the Decision Dated 31.12.2018 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 15.09.2022, 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. Additional Director (IT) --for uploading the decision on NEPRA website



National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No.231/POI-2019

Lahore Electric Supply Company LimitedAppellant

Versus

Muhammad Younas Bhatti S/o Haji Khair Din Bhatti,
R/o Pakeeza Colony, Kharra Road, KasurRespondent

APPEAL U/S 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

Syed Mumtaz Ali Shah Advocate

For the Respondent:

Mr. M Shaban Advocate

Malik Affan Ghazi

DECISION

1. Through this decision, the appeal filed by Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") against the decision dated 31.12.2018 of the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") is being disposed of.
2. Briefly speaking, Mr. Muhammad Younas Bhatti (hereinafter referred to as the "Respondent") is an industrial consumer of the Appellant bearing Ref No. 24-11712-2020501-U with sanctioned load of 260 kW and the applicable Tariff



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category is B-2(b). The Appellant has claimed that the billing meter of the Respondent became 33% slow in the year 2009. The average bills were charged to the Respondent and the arrears accumulated to the tune of Rs.401,645/- till May 2009.

3. Being aggrieved, the Respondent initially assailed the above billing before the Civil Court Kasur through a civil suit, which was dismissed by the honorable Civil Court vide order dated 19.06.2009. Against which an appeal was filed before the Additional District Judge, Kasur. The learned Additional District Judge Kasur vide order dated 30.07.2009 appointed the Provincial Official of Inspection, Lahore Region, Lahore (the "POI") as the local commission to check the accuracy of the metering equipment of the Respondent. Meanwhile, a detection bill amounting to Rs.842,344/- was debited to the Respondent by the Appellant and added to the bill for July 2009. During the inspection of the metering equipment conducted by the POI on 12.08.2009, 33% slowness in the billing meter was found. The POI submitted its report before the Additional District Judge Kasur on 29.09.2009, the operative part of which is reproduced below:

*"Actual Reading on the meter at the start of billing month 01/2009=948,176.
Actual reading on meter as on 12.08.2009 = 972,592 Units chargeable from
01/2009 up to 12.08.2009=972,592-948,176=24,416x5.97=145,764 units.
Already charged units from 01/2009 to 07/2009= 225,654 units. Refundable
excess charged units = 225,654-145,764=79,890 units. Respondents are
required to withdraw 79,890 excess units charged illegally from 01/2009 to
07/2009 and illegal and unjustified detection bill added in the bill for
07/2009 as bill adjustment amounting to Rs.842,344.14/-. From 12.08.2009
onward bills are chargeable by applying enhanced MF=5.97 on advanced*



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reading starting at index reading 972592 shown by the meter till the replacement of the defective/slow meter."

4. Later on, the impugned billing meter of the Respondent was replaced with a new meter by the Appellant on 21.05.2010. After litigation in different courts, the honorable Lahore High Court Lahore vide order dated 05.05.2016 dismissed the petition of the Respondent on the ground of jurisdiction. Subsequently, the Respondent filed an application before the POI and challenged the above-referred detection bill and the bills for the period January 2009 to May 2009. The metering equipment of the Respondent was checked by POI on 06.12.2018 in presence of both parties in which 13% slowness in the disputed billing meter was confirmed with erratic behavior. The complaint of the Respondent was disposed of by the POI vide the decision dated 31.12.2018 with the following conclusion:

"It is held that;

- I. That the impugned billing meter bearing No.39218943, makes AEG is 33.0% slow w.e.f 01/2009.*
- II. That the impugned average bill amounting to Rs.401,645/- charged in 05/2009, the impugned detection bill amounting to Rs.842,344.14 charged in 07/2009, and the collective sum of Rs.1,243,989/- subsequently charged by the respondents in 04/2016 are void, unjustified and of no legal effect; therefore, the petitioner is not liable to pay the same. However, the respondents are allowed to charge revised monthly bills for the months of 01/2009 to 07/2009 (as per calculations made in para 4(ii) above) and onward till the replacement of the impugned meter/shifting of billing to an accurate meter, after adding the declared 33.0% slowness in the recorded units/MDI at the Billing meter, after excluding the already charged units during the said period.*



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III. That the respondents are further directed to refund the cost of excess charged 79,890 units during 01/2009 to 07/2009 as calculated above.

IV. That the respondents are also directed to over-haul the account of the petitioner accordingly and any excess amount recovered be adjusted in future bills. They are also directed to install an accurate TOU LT MDI meter at the petitioner's premises for future billing to avoid any further litigation.

The petition is disposed of in the above terms."

Vide the above decision S#II, the POI has endorsed the calculation as made in the report dated 29.09.2009 of the local commission on the direction of the honorable Additional District Judge Hafizabad. The relevant para of the report is reproduced in para 3 of this decision. According to the said calculation, the Appellant is liable to refund 79,890 units excessively charged for the period January 2009 to July 2009 as compared to the units recorded by the impugned billing meter.

5. Through the instant appeal, the afore-referred decision dated 31.12.2018 of the POI has been impugned by the Appellant before the NEPRA. In its appeal, the Appellant objected to the maintainability of the impugned decision, inter alia, on the grounds, that (1) the POI has no jurisdiction to accept the application of the Respondent as he has already availed the remedy before the Civil Court and litigation reached to the High Court; (2) the billing meter of the Respondent was unbalanced deliberately; (3) the Respondent committed the pick & choose for filing the application before the POI; (4) the report of the local commission has already been rejected by the Additional District Judge but the Respondent got the benefit of the bias report of the local commissions; (5) the POI did not consider the consumption data from January 2008 to June 2008; (6) the impugned decision is not sustainable in the eye of law.

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The Appellant finally prayed that the impugned decision is liable to be set aside.

6. Proceedings by the Appellate Board

6.1 Upon filing of the instant appeal, a notice was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. However, the Respondent did not submit reply to the Appeal.

7. Hearing

7.1 Hearing in the matter of the subject Appeal was fixed for 26.11.2021 at Lahore and accordingly, the notices were sent to the parties (i.e. Appellant and Respondent) to attend the hearing. As per schedule, the hearing of the appeal was conducted at the NEPRA Regional Office Lahore on 14.01.2022, which was attended by learned counsels for the Appellant and the Respondent. On request of learned counsel for the Appellant, the hearing was adjourned till the next date.

7.2 Again notices dated 24.12.2021 were issued to the parties for hearing of the subject appeal. During the hearing dated 30.12.2021, learned counsel for the Respondent sought adjournment with the plea that negotiations are in progress with the Appellant for amicable settlement of the disputed billing. The adjournment request was opposed by the learned counsel for the Appellant. In order to provide an opportunity for settlement of the dispute, the hearing was adjourned till the next date.

7.3 Later on, hearings of the subject appeal were fixed for 14.01.2022, 04.02.2022



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and 02.06.2022 for which prior notices were served to both the parties. However, the above said hearings were adjourned at the request of both parties. Lastly, Notices dated 07.06.2022 were served to the parties, and hearing of the appeal was conducted at the NEPRA Regional Office, Lahore on 16.06.2022, which was attended by the learned counsels for the Appellant and the Respondent. At the outset of hearing, learned counsel for the Respondent raised the preliminary objection regarding limitation and prayed for dismissal of the appeal on this sole ground. In response, learned counsel for the Appellant contended that copy of the impugned decision dated 31.12.2018 was obtained on 03.01.2019 against which the appeal was initially filed before the NEPRA on 11.02.2019 through TCS courier service. Learned counsel for the Appellant further contended that the Appeal was resubmitted before the NEPRA on 17.06.2019 after the removal of observations raised by the NEPRA. 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 became defective in the year 2009, therefore the average bills for the period from January 2009 to May 2009 were charged. Learned counsel for the Appellant further contended that the detection bill amounting to Rs.842,344/- was debited to the Respondent by the Appellant and added to the bill for July 2009 to cover the revenue loss sustained due to the defectiveness of the impugned meter. As per learned counsel for the Appellant, 33% slowness in the billing meter was established during the inspection of the local commission on 12.08.2009.



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According to the learned counsel for the Appellant, the above bills charged to the Respondent are justified and payable by the Respondent. According to the learned counsel for the Appellant, the complaint of the Respondent with regard to the above billing was barred by time as the time was wasted by him at the wrong forum instead of the POI, however, no condonation of delay was filed by him. Learned counsel for the Appellant finally prayed for setting aside the impugned decision.

7.4 Learned counsel for the Respondent rebutted the version of the learned counsel for the Appellant with regard to the time-barred claim and argued that the billing meter became defective on 29.01.2009 for which the Respondent approached the Appellant but the Appellant debited the excessive billing w.e.f January 2009 and onwards instead of rectification of the bills. As per learned counsel for the Respondent, the above billing was assailed before the Civil Court Kasur, who appointed the POI as a local commission for checking the accuracy of the impugned meter. According to learned counsel for the Respondent, the POI submitted its report before the Civil Court Kasur on 29.09.2009, wherein he declared the meter as 33% slow and recommended to refund 79,000 units being excessively charged during the period January 2009 to July 2009. Learned counsel for the Respondent supported the impugned decision and prayed that the same is liable to be set aside.

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

8.1 Before going into the merits of the case, the point of limitation raised by the



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Respondent needs to be addressed. It is observed that the impugned decision was announced by the POI on 31.12.2018, a copy of the same was obtained by the Appellant on 03.01.2019 and an appeal was preferred before the NEPRA on 11.02.2019 against the impugned decision dated 31.12.2018. The Appellant claimed that the appeal was sent to NEPRA through TCS, however, could not provide any evidence in this regard despite assurance.

8.2 Regulation 4(2)(b) of the NEPRA (Procedure for Filing Appeal) Regulations, 2012 has given a privilege of further three (03) days to the Appellant excluding the prescribed time limit of thirty (30) days, if the appeal was dispatched through courier. The relevant excerpt from the Regulation 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 on 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."

8.3 However, the appeal was filed by the Appellant after the lapse of thirty-nine (39) days, which is beyond the time limit allowed in the afore-referred



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Regulation of the NEPRA (Procedure for Filing the Appeals), Regulations, 2012 is time-barred. No sufficient reasons have been given by the Appellant to justify the condonation of delay. The above whole scenario indicates that the Appellant failed to file the instant appeal before the NEPRA within thirty (30) days of receipt of the impugned decision as envisaged under Section 38 (3) of NEPRA Act 1997.

9. Forgoing into consideration, the appeal is dismissed.

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Syed Zawar Haider
Member

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Abid Hussain
Convener

A handwritten signature in black ink, appearing to be 'Muhammad Irfan-ul-Haq', is written over a horizontal line.

Muhammad Irfan-ul-Haq
Member

Dated: 15/9/2022