



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

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No. NEPRA/AB/Appeal/283/POI/2019/ 033


January 11, 2022

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| 1. M/s. Oasis Gulf & Aqua Resort (Pvt) Ltd,
Through Mr. M. Khalid Fizan Farooqi,
Resort Manager,
Located at Village Nathay Khalsa,
Multan Road Lahore | 2. Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Mehar Shahid Mahmood,
Advocate High Court,
Office No. 34, Third Floor,
Ali Plaza, 3-Mozang Road,
Lahore | 4. A. D. Bhatti,
Advocate High Court,
Office No. 4, First Floor,
Rehmat Tower, 13-Fane Road,
Lahore |
| 5. Assistant Manager (Operation),
LESCO Ltd,
Sarfaraz Nagar Sub Division,
Phool Nagar | 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. M/s. Oasis Gulf & Aqua Resort (Pvt) Ltd Against the Decision Dated 25.06.2019 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 03.01.2022, 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. 283/POI-2019

Lahore Electric Supply Company Limited

.....Appellant

Versus

M/s. Oasis Gulf & Aqua Resort (Pvt) Ltd,

Through Mr. M. Khalid Fizan Farooqi Resort Manager

Located at Village Nathay Khalsa Multan Road, Lahore

.....Respondent

APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST THE DECISION DATED 25.06.2019 PASSED BY PROVINCIAL OFFICE OF INSPECTION LAHORE REGION, LAHORE

For the Appellant:

Mehar Shahid Mehmood Advocate

For the Respondent:

Mr. A.D. Bhatti Advocate

DECISION

1. Through this decision, an appeal filed by Lahore Electric Supply Company Limited (hereinafter referred to as the LESCO) against the decision dated 25.06.2019 of the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the POI) is being disposed of.
2. LESCO is a licensee of the National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license and the Respondent is its commercial consumer bearing Ref No.24-11741-9201002 with a sanctioned load of 480 kW under A-2C tariff category. As per the facts of the case, the billing meter of the Respondent was found defective with erratic behavior during the checking





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by LESCO on 01.01.2018. Average billing was done w.e.f January 2018 and onwards. The Respondent paid the demand notice for the new meter on 25.05.2018 and the defective meter was replaced with a new meter by the LESCO on 29.08.018.

3. Subsequently, the Respondent filed a complaint before the POI on 17.10.2018 and assailed the excessive bills for the months i.e. August 2018 and September 2018. During the joint checking dated 29.01.2019 of the POI, both the billing and backup meters were found within BSS limits, the checking report was signed by both parties without raising any objection. The matter was disposed of by the POI vide decision dated 25.06.2019 in which the bills for the months i.e. August 2018 and September 2018 were cancelled and the LESCO was directed to revise the bills for the period August 2018 to January 2019 for total 357,930 units by dividing the same into five monthly bills. LESCO was further directed to overhaul the billing account of the Respondent accordingly.
4. Being dissatisfied with the decision of the POI dated 25.06.2019 (hereinafter referred to as the impugned decision), the LESCO filed the instant appeal before NEPRA. In its appeal, the LESCO opposed the maintainability of the impugned decision and prayed for its dismissal inter alia, on the following grounds (i) the POI failed to decide the application of the Respondent within 90 days as the application was filed on 17.10.2018 and it was decided on 25.06.2019, which is a clear violation of Section 26(6) of Electricity Act 1910; (2) the billing meter of the Respondent became defective in January 2018 and it was replaced with a new meter





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on 29.08.2018; (3) the bills for August 2018 and September 2018 were charged as per actual meter reading; (4) the POI did not apply judicious mind and passed the impugned decision on illegal assumptions and presumptions; and (5) the POI failed to consider the consumption record.

5. Notice for filing reply/para-wise comments to the appeal was served to the Respondent, which were filed on 22.10.2020. In his reply, the Respondent raised the preliminary objection that the appeal is time-barred being filed with a delay of two (2) months and liable to be dismissed. The Respondent contended that the POI has minutely adjudged the question of law and facts involved in the case, therefore, the LESCO had no reason to agitate the matter through the instant appeal which deserves rejection. As per the Respondent, the LESCO charged excessive bills for August 2018 and September 2018 and the POI rightly directed the LESCO to charge the revised bills for August 2018 to January 2019 for 357930 units as consumed during the said period. According to the Respondent, the impugned decision was rendered by the lower forum in the capacity as the POI under the provisions of the NEPRA Act 1997, therefore the limitation of ninety (90) days is not applicable in the present case in pursuance of the Judgment reported as PLJ 2017 Lahore 627. The Respondent finally prayed for the dismissal of the appeal with special cost.
6. A hearing in the matter was held at the NEPRA Regional Office Lahore on 26.11.2021, which was attended by learned counsels for both the parties. In response to the question of limitation, learned counsel for LESCO stated that the





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copy of the impugned decision dated 25.06.2019 was received by LESCO on 25.07.2019, and the appeal was filed on 20.08.2019 within thirty (30) days of receipt of the impugned decision as per Section 38(3) of NEPRA Act 1997. Learned counsel for LESCO reiterated the same contentions as given in memo of the appeal and contended that the billing meter of the Respondent was found defective with erratic behavior during the checking on 01.01.2018, hence the average billing was prepared from January 2018 and onwards till its replacement on 29.08.2018. As per learned counsel for the LESCO, the POI checked the new meter, whereas the defective billing meter was replaced before the joint checking of the POI, therefore the impugned decision is liable to be set aside being devoid of merits. Learned counsel for the LESCO defended the charging of the bills for the period August 2018 to January 2019 and pleaded that the same may be allowed to be charged as per meter reading. On the other hand, learned counsel for the Respondent defended the impugned decision and stated that the bills for the disputed months i.e. August 2018 and September 2018 were excessively charged by the LESCO and the POI rightly revised the same as per the undisputed consumption of September 2018 to January 2019. Learned counsel for the Respondent finally prayed that the impugned decision is liable to be maintained.

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

- i. At first, the point of limitation should be addressed before going into the merits of the case. It is observed that the impugned decision was announced by POI on 25.06.2019, copy of the same was received by LESCO on 25.07.2019 against





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which LESCO filed an appeal before NEPRA on 20.08.2019, which is within thirty (30) days as envisaged in Section 38(3) of the NEPRA Act 1997. Hence the appeal is treated within time.

- ii. As regards the preliminary objection of LESCO regarding the failure of POI in deciding the matter within ninety (90) days as envisaged in Section 26(6) of Electricity Act, 1910, it may be explained that the period of ninety (90) days is provided in the Electricity Act, 1910 which is not relevant for the offices of POI established under Section 38 of NEPRA Act, 1997. NEPRA is the appellate forum against the decisions of POI and not that of Electric Inspectors. The same has been held by the honorable Lahore High Court in the following cited judgments PLJ 2017-Lahore-627 and PLJ-2017-Lahore-309. The objection of LESCO in this regard is devoid of force, therefore rejected.
- iii. The Respondent disputed the bills for August 2018 and September 2018 before the POI. Therefore the impugned decision to the extent of revision of the bills for August 2018 to January 2019 based on consumption of new meter during the said period is incorrect, beyond the prayer of the Respondent, and the same is withdrawn.
- iv. It is an admitted fact that the disputed billing meter became defective in January 2018 and it was replaced with a new meter in August 2018. Therefore, the bill of August 2018 be charged as per consumption of August 2017 or the average consumption of the last eleven months i.e. September 2017 to





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July 2018, whichever is higher, pursuant to Clause 4.4 of the CSM. Since the new meter was installed on the premises of the Respondent in August 2018, therefore the bill of September 2018 be charged as per the actual consumption recorded by the new meter. The impugned decision is liable to be modified to this extent.

8. The upshot of the above discussion is that the bills for August 2018 and September 2018 are cancelled. LESCO is directed to charge the bill of August 2018 as per consumption of August 2017 or average consumption of the last eleven months i.e. September 2017 to July 2018, whichever is higher, and the bill of September 2018 as per the actual consumption recorded by the new meter. The billing account of the Respondent should be revised by LESCO after adjusting payments made against the above bills.
9. The impugned decision is modified in the above terms.

Abid Hussain
Member/Advisor (CAD)

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Dated: 03.01.2022

