



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

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No. NEPRA/AB/Appeal/038/2020/ 622

October 10, 2023

- | | |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Ch. Shahid Mehmood,
S/o. Muhammad Latif,
R/o. Asim Town, Near Railway Line,
Harbanspura, Lahore | 2. Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Syed Kashif Ali Bukhari,
Advocate High Court,
170-Ravi Park, Lahore | 4. Muhammad Mukhtar Nadeem Ch,
Advocate High Court,
Nadeem Law Firm, Al-Qadar Centre,
Second Floor, 1-Mozang Road,
Lahore |
| 5. Sub Divisional Officer (Operation),
LESCO Ltd,
Taj Bagh 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. Ch. Shahid Mehmood Against the Decision Dated 26.11.2019 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 10.10.2023 (09 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: As Above


(Ikram Shakeel)
Deputy Director (AB)

Forwarded for information please.

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



National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No.038/POI-2020

Lahore Electric Supply Company LimitedAppellant

Versus

Ch. Shahid Mehmood S/o. Muhammad Latif, R/o
Asim Town, Near Railway Line, Harbanspura, LahoreRespondent

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

For the Appellant:

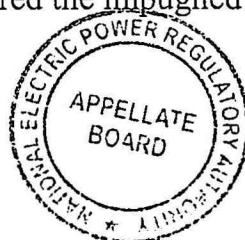
Syed Kashif Ali Bukhari Advocate

For the Respondent:

Ch. Shahid Mehmood

DECISION

1. Brief facts leading to the filing of instant appeal are that Ch. Shahid Mehmood (hereinafter referred to as the "Respondent") is an industrial consumer of the Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref. No.46-11347-2568441-U with sanctioned load of 5 kW and the applicable Tariff category is B-1(b). The impugned billing meter of the Respondent was replaced with a new meter by the Appellant in June 2017 and sent to the Metering and Testing (M&T) lab for checking. Subsequently, M&T vide report dated 24.01.2018 declared the impugned meter as tampered (body repasted)

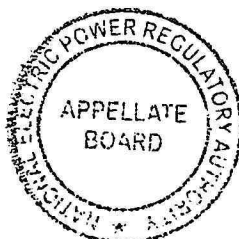




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for the dishonest abstraction of electricity, therefore, a detection bill amounting to Rs.441,227/- against 23,025 units for nine months for the period from September 2016 to May 2017 was charged by the Appellant to the Respondent on the basis of consumption of September 2017.

2. Being aggrieved, the Respondent initially challenged the above detection bill before the Civil Court Lahore. Later on, the honorable Civil Court vide order dated 30.04.2019 disposed of the civil suit with the direction to the Respondent to approach the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI"). Accordingly, the Respondent filed a complaint before the POI on 21.05.2019 and challenged the above detection bill. The matter was disposed of by the POI vide the decision (the "impugned decision") dated 26.11.2019 in which the detection bill of Rs. 441,227/- against 23,025 units for nine months for the period from September 2016 to May 2017 was cancelled and the Appellant was directed to revise the bills w.e.f. April 2017 and onwards till the replacement of the impugned meter on the basis of consumption of corresponding months of the previous year.
3. Subject appeal has been filed against the impugned decision before NEPRA; wherein it is contended that the billing meter of the Respondent was found tampered during the M&T checking for the dishonest abstraction of electricity, therefore a detection bill of Rs.441,227/- against 23,025 units for nine months for the period from September 2016 to May 2017 was charged to the Respondent. As per





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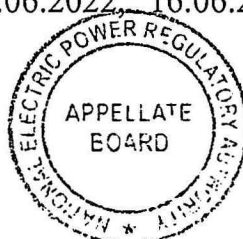
Appellant, the POI misconceived the real facts of the case as the above detection bill was debited to the Respondent on account of dishonest abstraction, whereas the POI decided the fate of the above detection bill as per Clause 4.4 of the Consumer Service Manual 2010 (the "CSM-2010"). According to the Appellant, the impugned decision was passed based on illegal assumptions and presumptions and without perusing the record. As per the Appellant, the POI failed to decide the matter within ninety (90) days as envisaged in Section (6) of the Electricity Act, 1910, which is not maintainable. The Appellant prayed that the impugned decision is not sustainable in law and the same is liable to be set aside.

4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 02.07.2020 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. The Respondent raised the preliminary objection regarding limitation and stated that the appeal was filed before the NEPRA after a delay of 21 days. The Respondent denied the allegation of theft of electricity levelled by the Appellant and submitted that the allegation of the Appellant is false, frivolous, and baseless, hence the impugned decision is quite legal, with proper jurisdiction and sustainable in the eyes of law.

5. Hearing

5.1 Hearings in the matter of the subject Appeal were initially fixed for 03.11.2021, 04.02.2022, 10.03.2022, 02.06.2022, 16.06.2022, 23.08.2022, 24.11.2022 at



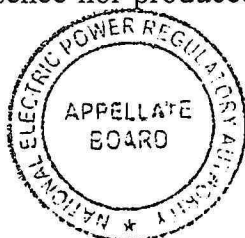


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NEPRA Regional Office Lahore, which were adjourned on the request of either the Appellant or the Respondent.

5.2 Finally, the hearing in the subject matter was again fixed for 02.06.2023 at NEPRA Regional Office Lahore in which a counsel appeared for the Appellant and the Respondent appeared in person. Learned counsel for the Appellant stated that he neither received any notice nor prior intimation given via telephone about the hearing of the subject appeal, hence he is not prepared to plead the case. Learned counsel for the Appellant requested for the adjournment of the case till the next date, which was opposed by the Respondent. In view of the above, the hearing was adjourned till 03.06.2023 with the direction to the parties to ensure their representation.

5.3 Accordingly, both parties appeared on 03.06.2023. During the hearing, learned counsel for the Appellant reiterated the same contentions as given in memo of the appeal and argued that the Respondent was found stealing electricity through tampering with the meter during M&T team checking dated 24.01.2018, therefore a detection bill of Rs.441,227/- for nine months was debited to the Respondent to recover the revenue loss sustained due to theft of electricity. Learned counsel for the Appellant stated that the POI neither perused the documents nor checked the consumption data and wrongly rendered the impugned decision on Chapter of the CSM-2010. He prayed that the impugned decision be set aside and the above detection bill be allowed being justified and payable by the Respondent. Conversely, the Respondent refuted the allegation of theft of electricity levelled by the Appellant and averred that the meter under dispute was neither checked in his presence nor produced before the POI for verification of





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alleged tampering, hence there is no justification for recovery of the above detection bill.

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

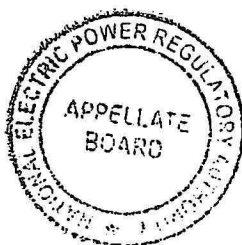
6.1 Preliminary objection of the Respondent regarding limitation:

The Respondent raised the preliminary objection regarding the time-barred appeal, which was duly considered and addressed by the NEPRA Appellate Board, the relevant excerpt of the order dated 20.09.2022 is reproduced below:

"In view of above, the objection of the Respondent regarding limitation is not valid, therefore, dismissed. The Appeal to come up for the hearing on merits on the next date to be intimated through notice."

6.2 The objection of the Appellant regarding the time limit for decision by POI:

As per the record, the Respondent filed his complaint before the POI on 21.05.2019 under Section 38 of the NEPRA Act. POI pronounced its decision on 26.11.2019 i.e. after 586 days of receipt of the complaint. The Appellant has objected that the POI was bound to decide the matter within 90 days under Section 26(6) of the Electricity Act, 1910. In this regard, it is observed that the forum of POI has been established under Section 38 of the NEPRA Act which does not put a restriction of 90 days on POI to decide complaints. Section 38 of the NEPRA Act overrides provisions of the Electricity Act, 1910. Reliance in this regard is placed on the judgments of the honorable Lahore High Court Lahore reported in *PLJ 2017 Lahore 627* and *PLJ 2017 Lahore 309*. Keeping in view the overriding effect of the NEPRA





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Act being later in time, and the above-referred decisions of the honorable High Court, hence the objection of the Respondent is rejected.

6.3 Detection bill of Rs.441,- against 23,025 units for the period from September 2016 to May 2017

In its appeal, the Appellant has claimed that the Respondent was involved in the dishonest abstraction of electricity through tampering with the meter. Clause 9.1(b) of the CSM-2010 specifies the indications of illegal abstraction, while Clause 9.1(c) of the CSM-2010 lays down the procedure to confirm the same and charging the consumer on this account stating *inter alia* as below:

9.1(c): Procedure for establishing illegal abstraction shall be as under:

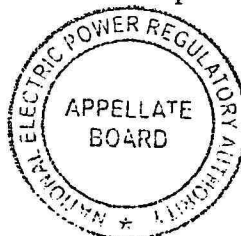
1) "Upon knowledge of any of the items in 9.1(b), the concerned office of the DISCO will act as follows:

(i) Secure the meter without removing it in the presence of the owner /occupier or his Authorized representative/respectable person of the locality.

(ii) Install a check meter and declare it as billing meter

(iii) Shall constitute a raiding team including Magistrate, Local representative(s) of the area (Councilor/Police officer), Officer of the DISCO (in case of residential/commercial consumers, not below the rank of SDO and in case of other consumers not below the rank of XEN) and an officer of the metering and testing division of the DISCO (who should be an Electrical Engineer) inspect the meter secured at site and declare that illegal abstraction of electricity has, and/or is being carried out. However, for industrial consumers (B-2 and above), a representative of the POI/Electric Inspector is mandatory.

6.4 In the instant case, the Appellant claimed that M&T on 24.01.2018 detected that the impugned meter was intentionally tampered (body repasted). Having found the above discrepancies, the Appellant was required to follow the procedure stipulated





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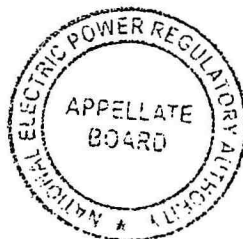
in Clause 9.1(c) of the CSM-2010 to confirm the illegal abstraction of electricity by the Respondent and thereafter charge the Respondent accordingly.

6.5 However, in the instant case, the Appellant has not followed the procedure as stipulated under the ibid clause of the CSM-2010. From the submissions of the Appellant, it appears that the billing meter of the Respondent was checked and removed by the Appellant in the absence of the Respondent.

6.6 As per the judgment of the Supreme Court of Pakistan reported in PLD 2012 SC 371, the POI is the competent forum to check the metering equipment, wherein theft of electricity was committed through tampering with the meter and decide the fate of the disputed bill, accordingly. However, in the instant case, the Appellant failed to produce the impugned meter to verify the allegation of tampering with the impugned meter.

6.7 Until and unless the allegation of theft of electricity through tampering with the meter is not confirmed, neither the Appellant nor the POI could determine the quantum of energy loss. Thus, in this situation, we are convinced with the contention of the Respondent that the detection bill of Rs.441,227/- against 23,025 units for nine months for the period from September 2016 to May 2017 charged to the Respondent is illegal, unjustified and the same is liable to be cancelled.

6.8 Since the impugned tampered meter was replaced with a new meter by the Appellant in June 2017, however, the period of tampering/defectiveness could only be





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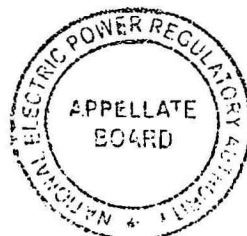
determined through the analysis of the consumption data of the Respondent in the below table:

Disputed period		Undisputed period	
Month	Units	Month	Units
Dec-15	0	Dec-16	0
Jan-16	175	Jan-17	0
Feb-16	3078	Feb-17	1000
Mar-16	2324	Mar-17	686
Apr-16	1939	Apr-17	2000
May-16	4356	May-17	2278
Average	1979	Average	994

6.9 Above table shows that the total consumption recorded by the impugned meter during the disputed period is much lesser than the total consumption recorded during the corresponding months of the previous year. Therefore, it would be judicious to charge the revised bills for the last six months i.e. December 2016 to May 2017 as per consumption of corresponding months of the previous year. The impugned decision is liable to be modified to this extent.

7. Summing up the foregoing discussion, it is concluded that:

7.1 The detection bill of Rs.441,227/- against 23,025 units for nine months for the period from September 2016 to May 2017 charged to the Respondent is illegal, unjustified, and cancelled.





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- 7.2 The Respondent may be charged the revised bills for the last six months i.e. December 2016 to May 2017 as per consumption of the corresponding month of the previous year.
- 7.3 The billing account of the Respondent may be overhauled after adjusting payments made against the above detection bill.
8. Impugned decision is modified in the above terms.

Abid Hussain
Member

Naweed Illahi Sheikh
Convener

Muhammad Irfan-ul-Haq
Member

Dated: 10-10-2023

