



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

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No. NEPRA/Appeal/049/POI/2021/039

January 16, 2023

- | | |
|---|---|
| 1. Fayyaz Ahmed,
S/o. Haji Muhammad Ishaq,
R/o. 135-Main R. A. Bazar,
Lahore Cantt | 2. Chief Executive Officer,
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Zobia Naz,
Advocate High Court,
Office No. 211, Second Floor,
Atif Dawood Centre, Near Jain Mandar,
Lahore | 4. Muhammad Nauman Aslam Raza,
Advocate High Court,
Suite No. 110-111, First Floor,
Fazal-e-Meeran Law Chambers,
4-A, Mozang Road, Lahore |
| 5. Additional Executive Engineer,
LESCO Ltd,
Cavalary Ground 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. Fayyaz Ahmed Against the Decision Dated 07.12.2020 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 13.01.2023, 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 Appellate Board

In the matter of

Appeal No.049/POI-2021

Lahore Electric Supply Company LimitedAppellant

Versus

Faraz Ahmed S/o Haji Muhammad Ishaq,
R/o House No.135, Main RA Bazar, LahoreRespondent

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

For the Appellant:

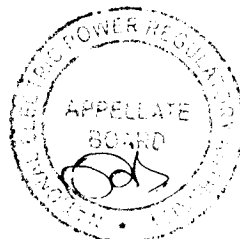
Ms. Zobia Naz Advocate
Mr. Tanveer Akhtar SDO

For the Respondent:

Mr. Abdul Razaq Mirza Advocate

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Faraz Ahmed (hereinafter referred to as the "Respondent") is a commercial consumer of the Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.09-11541-1339000 with sanctioned load of 1 kW and the applicable Tariff category is A-2(a). The billing meter of the Respondent was checked by the Metering and Testing (M&T) team of the Appellant on 02.11.2015 and it was declared as tampered (body repasted) for the dishonest abstraction of electricity and the connected

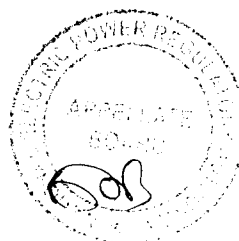




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load was observed higher than the sanctioned load. Therefore, a detection bill of Rs.87,472/- against 3,501 units for six (06) months for the period from May 2015 to October 2015 was charged by the Appellant to the Respondent on the basis of connected load and added to the bill for November 2015.

2. Being aggrieved, the Respondent initially filed a civil suit before the Civil Court, Lahore on 14.11.2015 against the charging of the above detection bill. The Honorable Civil Court vide order dated 17.01.2019 directed the Respondent to approach the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") for redressal of his grievance. Subsequently, the Respondent filed an application before the POI on 06.09.2019 and challenged the abovementioned detection bill. The matter was disposed of by the POI vide the decision dated 07.12.2020, wherein the detection bill of Rs.87,472/- against 3,501 units for six (06) months for the period from May 2015 to October 2015 was cancelled. As per the decision of POI, the Appellant was directed to overhaul the billing account of the Respondent and for adjustment of payments made against the above detection bill.
3. Subject appeal has been filed against the afore-referred decision dated 07.12.2020 of the POI (hereinafter referred to as the "impugned decision") by the Appellant before the NEPRA, wherein it is contended that the billing meter of the Respondent was found tampered (body repasted) during the M&T checking dated 02.11.2015 for the dishonest abstraction of electricity and running load was noticed as 2.1 Amp. The



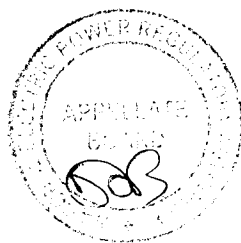


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Appellant further contended that a detection bill of Rs.87,472/- against 3,501 units for six (06) months for the period from May 2015 to October 2015 was charged to the Respondent on the basis of the connected load. As per the Appellant, the POI lacks the jurisdiction to try and adjudicate on the matter related to the above detection bill. According to the Appellant, the POI did not consider the material evidence i.e. meter checking report, detection bill, and downloading report, according to which 3,501 units were found uncharged. According to the Appellant, the above detection bill is justified and payable by the Respondent. The Appellant finally prayed for setting aside the impugned decision.

4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 19.05.2021 was sent to the Respondent for filing reply/parawise comments to the appeal within ten (10) days. The Respondent submitted his reply before the NEPRA on 01.06.2021, wherein he challenged the maintainability of the appeal *inter alia*, on the grounds (i) that the appeal was filed before the NEPRA after a lapse of 34 days; that the Appellant raised objection before the Civil Court regarding jurisdiction claiming that the POI is competent forum due to which the civil suit was returned by the honorable court with the direction to file the same before the POI, therefore limitation does not apply in the instant case; (ii) that the impugned meter was installed at the premises in December 2014 and since then it was neither replaced nor sent to the laboratory for checking; and (iii) that charging of





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3,501 units is unjustified and that the POI has rightly cancelled the same. Based on above grounds the appeal be dismissed with cost in the best interest of justice.

5. Hearing

- 5.1 Hearing in the matter of the subject Appeal was fixed for 13.10.2022 at NEPRA Regional Office Lahore and accordingly, the notices dated 07.10.2022 were sent to the parties. Learned counsel for the Appellant raised the objection that the complaint filed by the Respondent before the POI is barred by time and hence rejected on this score alone. Learned counsel for the Appellant reiterated the same version as contained in memo of the appeal and contended that the billing meter of the Respondent was checked by the Appellant on 02.11.2015, wherein it was declared tampered (body repasted). Learned counsel for the Appellant stated that the detection bill of Rs.87,472/- against 3,501 units for six (06) months for the period from May 2015 to October 2015 was debited to the Respondent on the basis of the connected load. As per learned counsel for the Appellant, the POI ignored tampering with the meter of the Respondent and canceled the above detection bill. According to learned counsel for the Appellant, the impugned meter is installed at the premises to date as material evidence. Learned counsel pleaded that the impugned decision be struck down and the above detection bill is allowed.
- 5.2 Learned counsel for the Respondent refuted the allegation of illegal abstraction of electricity levelled by the learned counsel for the Appellant, opposed the charging of





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the impugned detection bill and argued that the Appellant is responsible to secure the impugned meter and install a check meter to confirm the alleged tampering in the impugned meter. He submitted that the above detection bill is liable to be withdrawn being unjustified as already declared by the POI and prayed for dismissal of this Appeal. Learned counsel for the Respondent lastly informed that the appeal filed before the NEPRA is barred by time and prayed for dismissal of the appeal on the ground of limitation.

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

6.1 Limitation for filing appeal:

According to section 38(3) of the NEPRA Act, any aggrieved party can avail the remedy of appeal against the decision of POI within 30 days of such decision. Further, under Regulation 4 of the NEPRA (Procedure for filing Appeals) Regulations, 2012 (the "Appeal Regulations"), the Appeal is required to be filed within 30 days of the receipt of the impugned decision of POI by the Appellant. Further, a margin of 7 days is provided in case of submission through registered post, and 3 days in case of submission of appeal through courier is given in the Appeal Regulations. The Appellant produced a copy of the impugned decision received from the office of POI on 05.01.2021. Counting 30 days from the date of said receiving, the appeal filed on 11.01.2021 before the NEPRA is within the time limit as prescribed in Regulation 4 of the Appeal Regulations. Therefore considering that the impugned decision was received





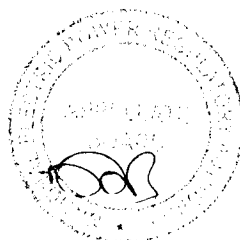
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by the Appellant on 05.01.2021, the appeal filed on 11.01.2021 is within the time limit of 30 days, hence the objection of the Respondent in this regard has no force and is rejected.

6.2 Objection of the Appellant regarding the time-barred complaint before the POI:

The Respondent initially filed a civil suit before the Civil Court, Lahore on 14.11.2015 against the detection bill of Rs.87,472/- for 3,501 units for six (06) months for the period from May 2015 to October 2015 charged by the Appellant. Subsequently, the honorable Civil Court, Lahore vide order dated 17.01.2019 returned the civil suit with the direction to the Respondent to approach the POI for redressal of grievance. Accordingly, the Respondent filed a complaint before the POI on 05.09.2019 and challenged the above detection bill. Thus, the time consumed at the wrong forum is excluded as the Respondent availed the remedy by filing the complaint before the POI within three years from the date of order of the honorable Civil Court i.e. 17.01.2019 as envisaged in Article 181 of the Limitation Act 1908. Even otherwise, the POI is a competent forum to adjudicate the instant dispute of billing raised due to the theft of electricity through tampering with the meter. Reliance in this regard is placed on the judgment of the Honorable Supreme Court of Pakistan reported in PLD 2012 SC 371. Therefore the objection of the Appellant in this regard bears no force and is overruled.

6.3 Detection bill of Rs.87,472/- against 3,501 units for six (06) months for the period May 2015 to October 2015





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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) 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:

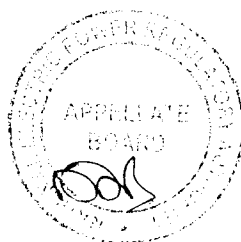
1) "Upon knowledge of any of the items in 9.1(b), the concerned office of the DISCO will act as follows:

(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 02.11.2015 detected that the body of the impugned meter was repasted. Having found the above discrepancies, the Appellant was required to follow the procedure stipulated in Clause 9.1(c) of the





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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 by the Appellant in the absence of the Respondent.

6.6 As per the impugned decision, the Appellant failed to produce the disputed meter before the POI for confirmation of the alleged tampering in the disputed meter. The Appellant could not produce any documentary evidence before us confirming its claim about meter tampering of the Respondent. This whole scenario manifests that the claim of the Appellant regarding the illegal abstraction of electricity by the Respondent through tampering with the meter is unjustified as neither the Appellant adhered to the procedure to confirm the illegal abstraction of electricity as envisaged in Chapter 9 of the CSM-2010 nor could produce substantial documentary evidence before us to prove the illegal abstraction through tampering the meter.

6.7 To further verify the contention of the Appellant regarding the theft of electricity through tampering with the meter, consumption data is examined in the below table:

Period before dispute		Disputed period	
Month	Units	Month	Units
May-14	51	May-15	50
Jun-14	218	Jun-15	114
Jul-14	218	Jul-15	283







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Aug-14	199	Aug-15	269
Sep-14	191	Sep-15	228
Oct-14	101	Oct-15	205
Total	978	Total	1149

As evident from the above table, the total consumption charged during the disputed period is higher than the total consumption recorded during the corresponding period before the dispute, which indicates that the meter under dispute was functioning correctly during the dispute period from May 2015 and October 2015. Under these circumstances, we hold that the detection bill of Rs.87,472/- against 3,501 units for six (06) months for the period from May 2015 to October 2015 charged to the Respondent is illegal, and unjustified being contrary to Clause 9.1(c) of the CSM-2010, and the same is declared null and void.

- 6.8 The billing account of the Respondent may be overhauled after adjustment of the payments made against the above detection bill.
7. Foregoing in view, the appeal is dismissed.


Syed Zavar Haider
Member


Muhammad Irfan-ul-Haq
Member


Abid Hussain
Convener

Dated: 13-01-2023

