



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

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No. NEPRA/Appeal/088/2021/ 663


November 20, 2023

- | | |
|---|--|
| 1. Umar Farooq,
Through Mohsin Shafqat,
Plot No. 84/S, Industrial Estate,
Kot Lakhpat, Lahore | 2. Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Hafiz Muhammad Naseer,
Advocate High Court,
1-Asif Chambers, 13-Fane Road,
Lahore | 4. Sub Divisional Officer (Operation),
LESCO Ltd,
Hamza Town Sub Division,
Lahore |
| 5. POI/Electric Inspector,
Lahore Region, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore | |

Subject: **Appeal Titled LESCO Vs. Umar Farooq Against the Decision Dated 17.02.2021 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 20.11.2023 (05 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.088/POI-2021

Lahore Electric Supply Company Limited

.....Appellant

Versus

Umar Farooq Through Mohsin Shafqat,
Plot No.84/S, Industrial Estate, Kot Lakhpat, Lahore

.....Respondent

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

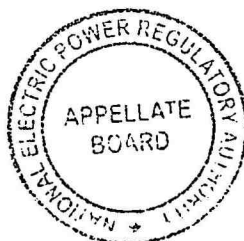
For the Appellant:
Hafiz M. Naseer Advocate

For the Respondent:
Nemo

DECISION

1. Through this decision, the appeal filed by the Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") against the decision dated 17.02.2021 of the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") is being disposed of.
2. Briefly speaking, Mr. Umar Farooq (hereinafter referred to as the "Respondent") is an industrial consumer of the Appellant bearing RefNo.24-11531-2021400-U with sanctioned load of 38 kW and the applicable Tariff category is B-2(b). The Appellant has claimed that the billing meter of the Respondent was checked by the Metering & Testing ("M&T") team on 08.01.2020 and it was declared 33% slow due to the red phase being dead. Therefore, a detection bill of Rs.398,654/- against 43,753 units+79 kW MDI for twelve months for the period from January 2019 to December 2019 was debited to the Respondent @ 33.33% slowness of the meter and added to the bill for February 2020.

Appeal No.088/POI-2021



Page 1 of 5

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National Electric Power Regulatory Authority

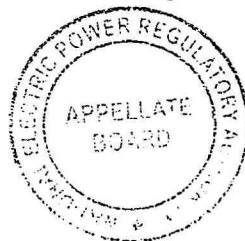
3. Being aggrieved, the Respondent filed a complaint dated 14.09.2020 before the POI and challenged the above detection bill. The complaint of the Respondent was disposed of by the POI vide the decision dated 17.02.2021, wherein the detection bill amounting to Rs.398,654/- against 43,753 units + 79 kW MDI for twelve months for the period from January 2019 to December 2019 was cancelled and the Appellant was allowed to revise the bills w.e.f November 2019 and onwards till the replacement of the impugned meter as per consumption of corresponding months of the previous year.
4. Through the instant appeal, the afore-referred decision 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 main grounds that the detection bill of Rs.398,654/- against 43,753 units+79 kW MDI for twelve months for the period from January 2019 to December 2019 charged to the Respondent is justified, which was erroneously declared null and void; that the POI did not consider the dip in consumption of the disputed period January 2019 to December 2019 due to 33% slowness of the impugned meter; that the POI has no jurisdiction to reduce the period of detection bill in case of theft of electricity through tampering with the meter; that Clause 4.3.3c(ii) of the Consumer Service Manual (the "CSM") is not applicable in the instant case; that the POI did not decide the matter within 90 days, which is violation of Section 26(6) of the Electricity Act 1910; and that the impugned decision is liable to be set aside.

5. Proceedings by the Appellate Board

Upon filing of the instant appeal, a notice dated 17.08.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which however were not submitted by the Respondent.

6. Hearing

- 6.1 Hearings were held at NEPRA Regional Office Lahore on 13.10.2022 and 02.06.2023, which however were adjourned on the request of either the Appellant or the Respondent. Finally, the hearing was conducted at NEPRA Regional Office Lahore on 08.09.2023, which was attended by a counsel for the Appellant, and again the Respondent did not tender appearance. Learned counsel for the Appellant contended that the billing meter of the Respondent was found running 33% slow during checking dated 08.01.2020, therefore the detection bill amounting to Rs.398,654/- against 43,753 units+79 kW MDI for twelve
- Appeal No.088/POI-2021



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months for the period from January 2019 to December 2019 was debited to the Respondent to recover the revenue loss sustained by the Appellant. As per learned counsel for the Appellant, the above detection bill was cancelled by the POI without perusing the documentary evidence, hence the impugned decision is liable to be set aside.

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

7.1 Objection of the Appellant regarding the jurisdiction of POI:

The Appellant raised the preliminary objection that the POI has no jurisdiction to adjudicate the same matter. It is noted that the matter pertains to the billing due to a slow meter, therefore the POI is empowered to entertain such nature of disputes under Section 38 of the NEPRA Act, 1997. In this regard, the following judgment of the honorable Supreme Court of Pakistan reported in PLD 2012 SC 371 is relevant to cite:

“P L D 2012 Supreme Court 371

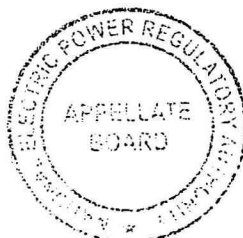
“In case, the theft alleged is by means other than the tampering or manipulation of the metering equipment, etc., the matter would fall exclusively under Section 26-A of the Act, the Electricity Act, outside the scope of powers of the Electric Inspector. Since the Electric Inspector possesses special expertise in examining the working of the metering equipment and other relater 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 the Appellant in this regard is overruled.

7.2 Objection regarding the time limit for POI to decide 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. It is observed that the Respondent filed a complaint before the POI on 14.09.2020 under Section 38 of the NEPRA Act and the POI pronounced its decision on 17.02.2021 after 90 days of receipt of the complaint. Since, 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

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

7.3 Detection bill of Rs.398,654/- against 43,753 units+79 kW MDI for twelve months for the period from January 2019 to December 2019

In its appeal, the Appellant has claimed that one phase of the billing meter of the Respondent was found dead stop during checking dated 08.01.2020. Resultantly, the Appellant charged the detection bill amounting to Rs.398,654/- against 43,753 units + 79 kW MDI for twelve months for the period from January 2019 to December 2019 to the Respondent on account of 33% slowness of the impugned meter, which was challenged before the POI.

7.4 The Appellant did not produce the impugned billing meter of the Respondent before the POI being competent forum for verification of alleged slowness, which is contrary to the provisions of the CSM-2010. The Appellant debited the detection bill for twelve months for the period from January 2019 to December 2019 to the Respondent on account of 33% slowness of the impugned meter, whereas Clause 4.4(e) of the CSM-2010 restricts the Appellant to debit the detection bill maximum for two months in case of a slow meter. Thus we are of the considered view that the detection bill of Rs.398,654/- against 43,753 units+79 kW MDI for twelve months for the period from January 2019 to December 2019 is unjustified and the same is liable to be cancelled. The impugned decision is liable to be maintained to this extent.

7.5 Since 33% slowness in the impugned billing meter of the Respondent was observed on 08.01.2020, the Respondent is liable to be charged 33% slowness for two previous months i.e. November 2019 and December 2019 as per Clause 4.4(e) of CSM-2010, and the bills with enhance MF w.e.f January 2020 and onwards till the replacement of the meter as per Clause 4.4(c) of the CSM-2010. The impugned decision is liable to be modified to this extent.

8. In view of what has been stated above, it is concluded that the detection bill of Rs.398,654/- against 43,753 units+79 kW MDI for twelve months for the period from January 2019 to December 2019 is unjustified and contrary to Clause 4.4 of the CSM-2010. The Respondent may be charged the revised bills for two previous months i.e. November 2019 and December 2019 to account for 33% slowness of the meter as per Clause 4.4(e) of the CSM-2010 and the bills with enhance MF w.e.f January 2020 and onwards till the replacement of the meter



National Electric Power Regulatory Authority

as per Clause 4.4(c) of the CSM-2010. The billing account of the Respondent be overhauled after adjusting payments made against the above detection bills.

9. Impugned decision is modified in the above terms.

Abid Hussain
Member

Muhammad Irfan-ul-Haq
Member

Naweed Illahi Sheikh
Convener

Dated: 20-11-2023

