



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

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No. NEPRA/Appeal/094/2020/ 104

February 15, 2023

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| 1. M/s. Bhanero Energy Ltd,
Through its Admin Manager,
Muhammad Akram Tabassam,
Ferozewattooan, Faisalabad Road,
District Sheikhpura | 2. Chief Executive Officer,
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Muhammad Arif Malhi,
Advocate High Court,
01-District Courts, Sheikhpura | 4. Muhammad Azam Khokhar,
Advocate High Court,
10-Fatima Jinnah Chambers,
Session Courts, Gujranwala |
| 5. Sub Divisional Officer,
LESCO Ltd,
Bhikhi Sub Division,
Bhiki, District Sheikhpura | 6. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala |

Subject: **Appeal Titled LESCO Vs. M/s. Bhanero Energy Limited Against the Decision Dated 18.03.2020 of the Provincial Office of Inspection to Government of the Punjab Gujranwala Region, Gujranwala**

Please find enclosed herewith the decision of the Appellate Board dated 13.02.2023, 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 The Appellate Board

In the matter of

Appeal No. 094/POI-2020

Lahore Electric Supply Company Limited

.....Appellant

Versus

M/s. Bhanero Energy Ltd, Through
Admin Manager Muhammad Akram Tabassam,
Ferozwattooan, Faisalabad Road, District Sheikhpura

.....Respondent

APPEAL UNDER SECTION 38(3) OF THE REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

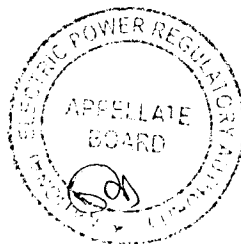
Mr. Muhammad Arif Malhi Advocate
Mr. Salman Majeed Assistant Manager

For the Respondent:

Mr. Muhammad Azam Khokhar Advocate

DECISION

1. As per fact of the case, the Respondent namely, M/s. Bhanero Energy Ltd is a consumer of the Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") having a residential colony connection bearing Ref No.24-116222-2115800 with sanctioned load of 40 kW and the applicable tariff category is H-2. The Audit Department of the Appellant vide Audit Note No.247 dated 23.09.2019 initially pointed out that the Respondent is using electricity from the industrial connection under tariff category B-3 to the residential colony falls under the tariff category H-2 and recommended to charge the difference bill amounting to Rs.586,725/- for the period from July 2017 to June 2019 to the Respondent on account of tariff difference i.e. H-2

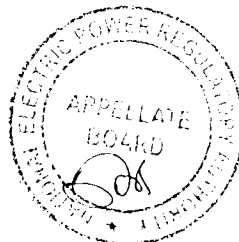




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instead of B-3. Later on, the Audit department recommended charging the difference bill on account of tariff difference i.e.H-2 instead of A-2C based on alleged site verification. Accordingly, the Appellant debited a detection bill of Rs.439,003/- for the period from July 2017 to June 2019 to the Respondent based on audit observation and added to the bill for September 2019.

2. Being aggrieved with the above actions of the Appellant, the Respondent filed a complaint before the Provincial Office of Inspection Lahore Region, Lahore (the "POI") on 20.11.2019 and disputed the aforesaid detection bill. The complaint of the Respondent was disposed of by the POI vide the decision dated 18.03.2020, wherein the detection bill of Rs.439,003/- for the period July 2017 to June 2019 debited by the Appellant on the basis of Audit Note No.247 dated 23.09.2019 was declared null and void. As per the POI decision, the Appellant was directed to refund the 50% payment made by the Respondent against the above detection bill and overhaul the billing account of the Respondent.
3. Subject appeal was filed against the afore-referred decision of the POI (hereinafter referred to as the "impugned decision") by the Appellant before the NEPRA. In the appeal, the Appellant opposed the impugned decision *inter alia*, on the following grounds that the impugned decision is against the facts and law; that the POI overlooked that the Respondent got a connection for industrial tariff category but it was being used for the residential colony attached with the industry; that the Audit department pointed out that the industrial tariff category is cheaper than the residential colony tariff category due to which the detection bill of Rs.439,003/- for the period from July 2017 to June 2019 charged to the Respondent is legal, justified; that the POI decided the fate



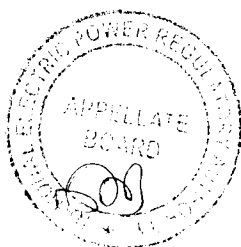


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of disputed bill within the prescribed limit of 90 days as envisaged under Section 26(6) of the Electricity Act 1910; that the impugned decision is liable to be set aside being illegal, unlawful and without lawful authority.

4. Proceedings by the Appellate Board

4.1 Upon the filing of the instant appeal, a Notice dated 02.10.2020 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days which were filed on 15.10.2020. In the reply, the Respondent opposed the maintainability of the appeal *inter alia*, on the following grounds that the appeal is time-barred; that the premises has installed its own power house and no industrial connection under tariff category B-3 has been installed; that an independent connection was obtained from the Appellant under tariff category H-2 for residential colony of labourers; that the electricity for residential colony is used through the connection of the Appellant during the period in which the power house is in-operational; that as per judgments of superior courts, the audit affair is internal matter between the DISCO and its Audit Department and the consumer cannot be held accountable for payment of any amount on the basis of internal report; that the POI has rightly declared the above detection bill of as null and void; that the Appellant failed to prove any nexus of alleged A-2C connection installed on the premises of the Respondent; that the audit party neither checked the site itself nor based on any prior checking report and made observation on presumption having no ground reality; that the POI has exclusive jurisdiction to adjudicate the instant dispute of tariff difference as provided in Section 38 of the NEPRA Act; and that the appeal is liable to be dismissed.

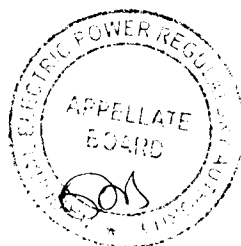




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4. Hearing

- 4.1. Hearing of the subject appeal was held at NEPRA Regional Office Lahore on 16.06.2022 and 23.08.2022 but adjourned on the request of both the parties. Lastly, hearing of the appeal was conducted at NEPRA Regional Office on 24.11.2022, which was attended by both parties. Learned counsel for the Appellant reiterated the same contentions as contained in memo of the appeal and contended that the audit department pointed out that the Respondent was using electricity from the industrial connection having tariff category B-3 for the residential colony attached to the premises, therefore a detection bill of Rs.439,003/- for the period July 2017 to June 2019 was debited to the Respondent on the recommendation of the audit department. Learned counsel for the Appellant further contended that the above detection bill was assailed before the POI, who failed to decide the same within 90 days as envisaged under Section 26(6) of the Electricity Act 1910; that the impugned decision is vague and needs to be reviewed in the light of available documentary evidence. Learned counsel for the Appellant termed the above detection bill as justified and payable by the Respondent.
- 4.2. Learned counsel for the Respondent denied the assertions of counsel for the Appellant and stated that neither any site verification was carried out nor the audit department included the Respondent during the audit proceedings, therefore charging the detection bill of Rs.439,003/- for the period July 2017 to June 2019 on account of unilateral audit proceedings is not justified. He submitted that the superior courts declared that the audit proceeding is an internal matter between DISCO and the audit department and the consumer cannot be held responsible for payment of any detection bill on





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account of audit observation. Reliance in this regard was placed on the judgments of various courts reported as 2002 CLC 1039, NLR 1988 Civil 28. Learned counsel for the Respondent supported the impugned decision and prayed that the appeal be dismissed being time-barred.

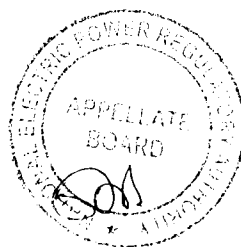
5. Arguments were heard and the record placed before us was examined. Following are our findings:

5.1 Limitation for filing the appeal before the NEPRA:

According to Section 38(3) of the NEPRA Act, any aggrieved party may prefer an appeal before the NEPRA within 30 days from the date of receipt of the decision of the Provincial Office of Inspection. 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 NEPRA (Procedure for filing Appeals) Regulations, 2012. The Appellant produced a copy of the impugned decision received from the office of POI on 23.07.2020. Counting 30 days from the date of said receiving, the appeal filed on 25.08.2020 before the NEPRA is within the time limit as prescribed in the above-referred Regulation of NEPRA (Procedure for filing Appeals) Regulations, 2012, hence the objection of the Respondent in this regard has no force and is rejected.

5.2 Objection regarding the time limit for POI to decide the complaint

As per the record, the Respondent filed his complaint before the POI on 20.11.2019 under Section 38 of the NEPRA Act. POI pronounced its decision on 18.03.2020 i.e. after 120 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





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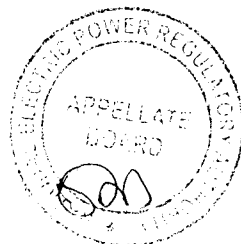
decide complaints. Section 38 of the NEPRA Act overrides provisions of the Electricity Act, of 1910. Reliance in this regard is placed on the judgments of the honorable Lahore High Court Lahore reported in PLJ 2017-Lahore-627 and PLJ-2017-Lahore-309. Keeping in view the overriding effect of the NEPRA Act on the Electricity Act, 1910, and the above-referred decisions of the honorable High Court, the objection of the Respondent is dismissed.

5.3 Detection bill of Rs.439,003/- for the period July 2017 to June 2019 charged to the Respondent based on Audit Note No.247 dated 23.09.2019

As per the Appellant, Audit Department vide its Audit Note No.247 dated 23.09.2019 pointed out that the Respondent is using electricity from an industrial connection to the residential colony and recommended to charge the difference of tariff from B-3 to H-2. Consequently, the Appellant charged the detection bill of Rs.439,003/- for the period from July 2017 to June 2019 to the Respondent based on Audit Note No.247 dated 23.09.2019.

5.4 However, the Appellant neither provided any document i.e. checking report, notice, and Audit Note nor could prove their allegation for misuse of tariff by the Respondent. Though the billing statement as provided by the Appellant shows nil consumption charged for the period from January 2018 to July 2019 to the Respondent but the Appellant did not take any coercive action against the Respondent for misuse of tariff category. This shows gross negligence on the part of the Appellant and the Respondent cannot be held accountable for payment of any bill in the absence of verifiable evidence. The Appellant even did not adhere to the procedure as laid down in Chapter 7 of the CSM-2010 to establish misuse of tariff category.

5.5 Even the arrears raised in electricity bills on the basis of Audit observation is not tenable





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in the eyes of law. The Audit observation is an internal matter between the DISCO and the Audit Department and the Consumer cannot be held responsible for the payment of any detection bill based on the Audit Para. The honourable Lahore High Court in its judgement in the “Water and Power Development Authority, etc v. Umaid Khan” (1988 CLC 501) held that *no amount could be recovered from the consumer on the basis of audit report as the audit affair is between the WAPDA and its audit department and no audit report could in any manner make consumer liable for any amount and the same could not bring about any agreement between the WAPDA and consumer making consumer liable on the basis of so called audit report.* The courts in similar cases relied on the same principle in cases reported cited as 2014 MLD 1253 and 2008 YLR 308.

5.6 In view of the foregoing discussion, we hold that the detection bill of Rs.439,003/- for the period July 2017 to June 2019 charged to the Respondent by the Appellant on the basis of Audit Note No.247 dated 23.09.2019 is illegal, unjustified and the same is liable to be set aside.

5.7 The billing account of the Respondent may be overhauled after adjusting payments made against the above-disputed bill.

6. Foregoing in view, the appeal is dismissed.

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 13/02/2023

Appeal No.094/POI-2020

