



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

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No. NEPRA/Appeal/084/2023/ 456

May 17, 2024

- | | |
|--|---|
| 1. Irfan Naeem,
M/s. United Feed Protein,
62-KM, Multan Road,
Rohi Nala Jumber, District Kasur | 2. Chief Executive Officer,
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Saced Ahmed Bhatti,
Advocate High Court,
66-Khyber Block, Allama Iqbal Town,
Lahore
Cell No. 0300-4350899 | 4. Qaiser Mehmood Ch,
Advocate High Court,
Lawmen Associates,
4-A, Mozang Road, Lahore
Cell No. 0300-9648227 |
| 5. Assistant Manager,
LESCO Ltd,
Jamber Kalan Sub Division,
District Kasur | 6. POI/Electric Inspector
Lahore Region-II, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore |

Subject: **Appeal No.084/2023 (LESCO Vs. Irfan Naeem) Against the Decision Dated 04.04.2023 of the Provincial Office of Inspection to Government of the Punjab Lahore Region-II, Lahore**

Please find enclosed herewith the decision of the Appellate Board dated 17.05.2024 (06 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**

(Ikram Shakeel)
Deputy Director
Appellate Board

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.084/POI-2023

Lahore Electric Supply Company Limited

.....Appellant

Versus

Irfan Naeem, M/s. United Feed Protein, 62-KM, Multan Road, Rohil Nala,
Jumber District Kasur

.....Respondent

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

For the appellant:

Mr. Saeed Ahmed Bhatti Advocate
Mr. M. Nasir SDO

For the Respondent:

Mr. Qaiser Mahmood Ch. Advocate

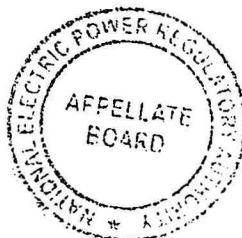
DECISION

1. Briefly speaking, Mr. Irfan Naeem (hereinafter referred to as the "Respondent") is an industrial consumer of Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.24-11743-0990304-U having a sanctioned load of 445 kW and the applicable tariff category is B-2(b). During M&T checking dated 26.07.2022 of the Appellant, both billing and backup meters of the Respondent were found defective (burnt out). Subsequently, both the billing and backup meters were replaced with a new meter by the Appellant on 10.08.2022 and sent to M&T lab for data retrieval. As per the M&T report dated 09.09.2022, both the impugned billing and backup meter were found smokey and the data could not be downloaded due to E-PROM error. Resultantly, a detection bill of Rs.6,686,697/- against 241,814 units+506 kW MDI for the period from 31.01.2022 to 10.08.2022 (06 months and 10 days) was debited to the Respondent on the basis of 40% load factor of the connected load and added to the bill for September 2022.
2. Being aggrieved with the abovementioned actions of the Appellant, the Respondent filed an application before the Provincial Office of Inspection, Lahore Region-II, Lahore (hereinafter referred to as the "POI") on 20.10.2022. The complaint of the Respondent was disposed of by the POI vide ex-parte decision dated 04.04.2023, wherein, the Appellant was directed to

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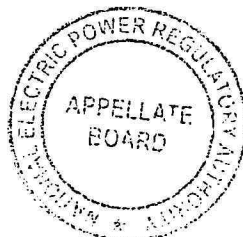




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withdraw the detection bill of Rs.6,686,697/- against 241,814 units+506 kW MDI for the period from 31.01.2022 to 10.08.2022 (06 months and 10 days) being illegal, unjustified and overhaul the billing account of the Respondent.

3. Being dissatisfied, the Appellant has filed the instant appeal before NEPRA and assailed the decision dated 04.04.2023 of the POI (hereinafter referred to as the "impugned decision"). In its appeal, the Appellant opposed the maintainability of the impugned decision, *inter-alia*, on the following grounds that both the impugned billing and backup meters were found defective (burnt out) during checking dated 26.07.2022 and the same were replaced with new meters on 10.08.2022; that the M&T vide report dated 09.09.2022 declared both the impugned billing and backup meters smokey; that the data could not be downloaded due to E-PROM error; that a detection bill of Rs.6,686,697/- against 241,814 units+506 kW MDI for the period from 31.01.2022 to 10.08.2022 (06 months and 10 days) was charged to the Respondent in September 2022 in order to recover the revenue loss sustained due to defectiveness of the impugned meters; that the impugned decision is against the law and facts of the case; that the POI failed to give the reasons and justification for passing the ex-parte decision; that the POI has unilaterally given the impugned decision; that the POI failed to decide the matter within 90 days as given in Section 26(6) of the Electricity Act 1910, reliance is placed on the judgment reported in 2006 YLR page 2612; that the complaint could not be entertained as no notice was served by the Respondent before approaching the POI as required under Section 26(6) of the Electricity Act 1910; and that the impugned decision is liable to be set aside.
4. Notice dated 25.09.2023 of the appeal was issued to the Respondent for filing reply/para-wise comment, which were filed on 24.10.2023. In the reply, the Respondent prayed for dismissal of the appeal on the following grounds that 244 kW net metering system was installed on the premises in June 2020; that the display of the impugned billing meters became defective on 09.07.2022 due to internal fault in 11 kV feeder for which the Appellant was approached on 11.07.2022, hence the impugned meters were replaced on 10.08.2022; that the Appellant debited a detection bill of Rs.6,686,697/- against 241,814 units+506 kW MDI for the period from 31.01.2022 to 10.08.2022 (06 months and 10 days) illegally as the electricity is being used through solar system and remaining energy is being dispatched to the National Grid through net metering; that the consumption pattern from the year 2013 to September 2022 suffix that the healthy consumption recorded by the impugned meter during the disputed



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period; that despite repeated notices by the POI, the Appellant failed to appear before the said forum; that the impugned decision is based on merits and the same is liable to be maintained.

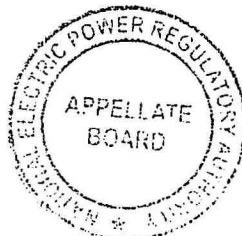
5. Hearing

5.1 Hearing was conducted at NEPRA Regional Office Lahore on 20.01.2024, wherein learned counsels appeared for both the Appellant and the Respondent. Learned counsel for the Appellant contended that the billing and backup meters of the Respondent were found defective (burnt out) on 26.07.2022, which were replaced with new meters on 10.08.2022 and sent to M&T lab for data retrieval. Learned counsel for the Appellant further contended that M&T vide report dated 09.09.2022 declared both the impugned billing and backup meter smokey and the data could not be downloaded due to E-PROM error. As per learned counsel for the Appellant, a detection bill of Rs.6,686,697/- against 241,814 units+506 kW MDI for the period from 31.01.2022 to 10.08.2022 (06 months and 10 days) was charged to the Respondent, which was challenged before the POI. According to the learned counsel for the Appellant, the POI neither afforded the opportunity of hearing nor analyzed the matter on merits and rendered the Ex-parte decision, which is illegal, unjustified and the same is liable to be set aside and the matter be remanded back to POI for redetermination afresh after affording the opportunity of hearing to both parties.

5.2 Conversely, learned counsel for the Respondent repudiated the version of the Appellant and averred that the POI afforded several opportunities of hearing to the Appellant but the Appellant neither filed reply/parawise comments nor joined the proceeding before the said forum, hence the POI has rightly declared the detection bill of Rs.6,686,697/- against 241,814 units + 506 kW MDI for six months for the period from 31.01.2022 to 10.08.2022 as null and void. As per learned counsel for the Respondent, a 244 kW net metering system is installed on the premises of the Respondent and the maximum electricity is being utilized through the solar system. According to the learned counsel for the Respondent, the impugned meter recorded healthy consumption till 08.07.2022, thereafter it became defective due to internal fault, hence the Respondent could not be penalized for six retrospective months, without any valid grounds. Learned counsel for the Respondent defended the impugned decision and prayed for upholding the same.

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

6.1 While addressing the preliminary objection of the Appellant regarding the jurisdiction of the POI, it is observed that the Respondent filed his complaint before the POI on 20.10.2022 under





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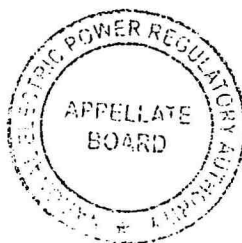
Section 38 of the NEPRA Act. POI pronounced its decision on 04.04.2023 i.e. after ninety (90) days of receipt of the complaint. The Appellant has objected that the POI was bound to decide the matter within 90 days under Section 26(6) of the Electricity Act, 1910. In this regard, it is observed that the 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 *2017 PLJ 627 Lahore* and *2017 PLJ 309 Lahore*. 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 Appellant is dismissed.

6.2 As regards another objection of the Appellant for not issuing notice as per the Electricity Act, 1910 by the Respondent before filing a complaint to the POI, it is elucidated that the matter was adjudicated by the POI under Section 38 of the NEPRA Act, 1997 and as per procedure laid down in Punjab (Establishment and Powers of Office of Inspection) Order, 2005, which do not require for service of any notice before approaching the POI. The above objection of the Appellant is not valid and, therefore overruled.

6.3 As per the available record, the impugned billing and backup meters of the Respondent were found defective during the M&T team of the Appellant on 26.07.2022. Data of the impugned meters of the Respondent could not be downloaded due to E-PROM error, therefore, the Appellant charged a detection bill of Rs.6,686,697/- against 241,814 units+506 kW MDI for the period from 31.01.2022 to 10.08.2022 (06 months and 10 days) to the Respondent based on 40% load factor of the connected load, which was assailed by him before the POI.

6.4 According to Clause 4.3.1(b) of the CSM-2021, the Respondent is liable to be charged the detection bill as per 100% consumption of the corresponding month of the previous year or average consumption of the last eleven months, whichever is higher in case of defective meter. It is observed that the Appellant debited the detection bill for more than six months on the basis of connected load, which is violative of Clause 4.3.1(b) of the CSM-2021. It is further observed that the Appellant neither filed reply/para-wise comments nor attended hearings before the POI despite repeated notices, this shows gross negligence on the part of the Appellant for noncompliance with the orders of the POI.

6.5 To further check the justification of the impugned detection bill of Rs.6,686,697/- against 241,814 units+506 kW MDI for the period from 31.01.2022 to 10.08.2022 (06-months and 10



days) charged by the Appellant to the Respondent on the basis of 40% load factor of the connected load, consumption data is analyzed below:

Last eleven undisputed months		Corresponding period before dispute		Disputed period	
Month	Units	Month	Units	Month	Units
Mar-21	124960	Feb-21	104800	Feb-22	64000
Apr-21	123520	Mar-21	124960	Mar-22	0
May-21	144800	Apr-21	123520	Apr-22	292800
Jun-21	37760	May-21	144800	May-22	84000
Jul-21	77920	Jun-21	37760	Jun-22	80160
Aug-21	52640	Jul-21	77920	Jul-22	40480
Sep-21	93920	Aug-21	52640	Aug-22	58080
Oct-21	63360				
Nov-21	110720				
Dec-21	146080				
Jan-22	51680				
Average	93396	Average	95200	Average	88503


The above consumption data shows that the average consumption charged to the Respondent during the disputed period is comparatively lesser than the normal average consumption charged during the corresponding period before the dispute as well as the normal average consumption of the last eleven undisputed months, hence it could be safely concluded that the impugned metering equipment could not record actual consumption due to defectiveness. However, it does not justify the plea of the Appellant to debit such a huge consumption on the basis of 40% load factor of the connected load. In view of the foregoing discussion, it is concluded that the detection bill of Rs.6,686,697/- against 241,814 units+506 kW MDI for the period from 31.01.2022 to 10.08.2022 (06 months and 10 days) charged by the Appellant to the Respondent on the basis of 40% load factor of the connected load is unjustified being violative of Clause 4.3.1(b) of the CSM-2021 and the same is liable to be cancelled.

6.6 Perusal of consumption data shows that healthy consumption was recorded by the impugned meter of the Respondent till April 2022 and recorded less consumption in May 2022 as compared to the corresponding consumption of the previous year, as such the Respondent is liable to be charged the revised bills w.e.f May 2022 and onwards till the replacement of the impugned meter i.e. 10.08.2022 on the basis of 100% consumption of the corresponding month of the previous year or average consumption of the last eleven months, whichever is higher as per Clause 4.3.1(b) of the CSM-2021.





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7. Summing up the aforementioned discussion, we conclude that:
- 7.1 the detection bill of Rs.6,686,697/- against 241,814 units+506 kW MDI for the period from 31.01.2022 to 10.08.2022 (06 months and 10 days) charged by the Appellant to the Respondent on the basis of 40% load factor of the connected load is unjustified and the same is cancelled.
- 7.2 The Respondent may be charged the revised bills w.e.f May 2022 and onwards till the replacement of the impugned meter i.e. 10.08.2022 on the basis of 100% consumption of the corresponding month of the previous year or average consumption of the last eleven months, whichever is higher as per Clause 4.3.1(b) of the CSM-2021.
- 7.3 The billing account of the Respondent may be overhauled after making the adjustment of payments made against the impugned detection bill.
8. The impugned decision is modified in the above terms.


Abid Hussain
Member/Advisor (CAD)

Dated: 17-05-2024


Naweed Illahi Sheikh
Convener/DG (CAD)


Muhammad Irfan-ul-Haq
Member/ALA (Lic.)

