



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

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No. NEPRA/Appeal/102/2022/ 603

July 24, 2024

- | | |
|---|---|
| 1. Malik Ghazali Siddique,
S/o. Muhammad Siddique,
R/o. House No. 28, Street No. 20,
Jinnah Street, Islamia Colony,
Sanda Kalan, Lahore | 2. Chief Executive Officer,
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Saeed Ahmed Bhatti,
Advocate High Court,
66-Khyber Block, Allama Iqbal Town,
Lahore
Cell No. 0300-4350899 | 4. A. D. Bhatti,
Advocate High Court,
First Floor, Rehmat Tower,
13-Fane Road, Lahore
Cell No. 0300-9431653 |
| 5. Assistant Manager (Operation),
LESCO Ltd,
Sanda Sub Division,
Lahore | 6. POI/Electric Inspector,
Lahore Region, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore
Phone No. 042-99250191 |

Subject: Appeal No.102/2022 (LESCO Vs. Malik Ghazali Siddique) Against the Decision Dated 28.06.2022 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 24.07.2024 (05 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.102/POI-2022

Lahore Electric Supply Company Limited

.....Appellant

Versus

Malik Ghazali Siddique S/o. Muhammad Siddique, R/o. House No.28,
Street No.20, Jinnah Street, Islamia Colony, Sanda Kalan, Lahore

.....Respondent

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

For the Appellant:

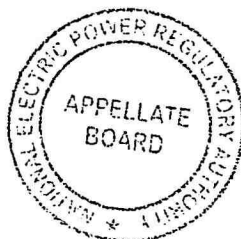
Mr. Saeed Ahmed Bhatti Advocate

For the Respondent:

Mr. A.D Bhatti Advocate

DECISION

1. As per facts of the case, Malik Ghazali Siddique (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.24-11111-9001503 having a sanctioned load of 69 kW and the applicable tariff category is B-2(b). The metering equipment of the Respondent was checked by the M&T team of the Appellant on 26.09.2018, and reportedly the billing and backup meters were found 33% slow due to the yellow phase being dead. Resultantly, a detection bill of Rs.3,616,539/- for 162,960 units+768 kW MDI for sixteen (16) months i.e. from August 2017 to November 2018 was debited to the Respondent @ 33% slowness of the meter and added to the bill for March 2019.
2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the “POI”) on 01.11.2021 and challenged the above detection bill. The complaint of the Respondent was disposed of by the POI vide decision dated 28.06.2022, wherein it was held that the detection bill of Rs.3,616,539/- for 162,960 units+768 kW MDI for sixteen (16) months i.e. from August 2017 to November 2018 is void, unjustified and of no legal effect and the Appellant is allowed to charge revised bills w.e.f. August 2018 and onwards after adding 33% slowness of the meter.



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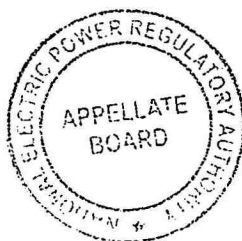


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3. Being dissatisfied, the Appellant has filed the instant appeal before NEPRA and assailed the decision dated 28.06.2022 of the POI (hereinafter referred to as the "impugned decision"). In its appeal, the Appellant opposed the maintainability of the impugned decision, *inter-alia*, on the following grounds that the impugned decision is against the law and facts of the case; that the POI misconceived and misconstrued the real facts of the case and erred in declaring the detection bill of Rs.3,616,539/- for 162,960 units+768 kW MDI for sixteen (16) months i.e. from August 2017 to November 2018 as null and void; that the POI failed to consider the consumption data in true perspective and revise the bills w.e.f August 2018 and onwards; that Clause 4.3.3c(ii) of the CSM-2021 is not applicable in the instant case; that the POI failed to decide the matter within 90 days, which is violative of Section 26(6) of the Electricity Act, 1910; that the Respondent failed to serve notice to the Appellant prior filing complaint before the POI as per Section 24 of the Electricity Act, 1910; and that the impugned decision is liable to be set aside.
4. Notice dated 26.09.2022 of the appeal was issued to the Respondent for filing reply/para-wise comment, which were filed on 14.10.2022. In the reply, the Respondent prayed for dismissal of the appeal on the following grounds that the impugned detection bill of Rs.3,616,539/- for 162,960 units+768 kW MDI for sixteen (16) months i.e. from August 2017 to November 2018 was charged in violation of Clause 4.3.3c(ii) of the CSM-2021; that said clause of the CSM-2021 restricts the Appellant to debit the detection bill maximum for two months in case of a slow meter; that the POI after providing the opportunity of hearing to both parties and perusal of the record rightly reduced the period of detection for two months being in line with the *ibid* clause of the CSM-2021 and that the impugned decision is liable to be upheld.

5. Hearing

- 5.1 Hearing of the appeal was conducted at NEPRA Regional Office Lahore on 19.01.2024, wherein learned counsels appeared for both the Appellant and the Respondent. Learned counsel for the Appellant contended that the billing meter of the Respondent was found 33% slow due to one dead phase during M&T checking dated 26.09.2018, therefore a detection bill of Rs.3,616,539/- for 162,960 units+768 kW MDI for sixteen (16) months i.e. from August 2017 to November 2018 was debited to the Respondent due to 33% slowness of the meter. Learned counsel for the Appellant argued that the POI did not consider the real aspects of the case and erroneously declared the above detection bill as null and void. As per learned counsel



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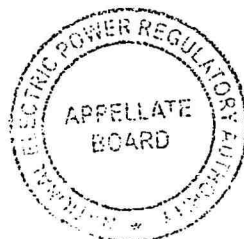
for the Appellant, the honorable Supreme Court of Pakistan vide order dated 08.06.2023 in the C.P.No.691/2020 remanded back the similar nature of the dispute to NEPRA for determination of the period of slowness/defectiveness afresh. According to learned counsel for the Appellant, the Appellate Tribunal (NEPRA) vide order dated 12.12.2023 even remanded back the similar nature of disputes to NEPRA, which are to be decided after revisiting Clause 4.3.3c(ii) of the CSM-2021. Learned counsel for the Appellant finally prayed that the impugned decision is unjustified and the same is liable to be modified after amendment in the foregoing clause of the CSM-2021.

5.2 Conversely, learned counsel for the Respondent repudiated the version of the Appellant and contended that the billing meter was found 33% slow on 26.09.2018, hence the POI has rightly allowed the Appellant to recover the bills w.e.f. August 2018 and onwards @ 33% slowness of the meter as per Clause 4.3.3c(ii) of the CSM-2021. 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 objection of the Appellant regarding the jurisdiction of the POI, the Respondent filed his complaint before the POI on 01.11.2021 under Section 38 of the NEPRA Act. POI pronounced its decision on 28.06.2022 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.





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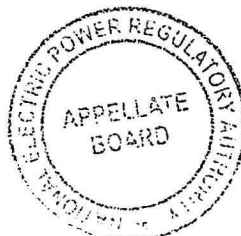
6.3 As per the available record, the billing meter of the Respondent was found 33% slow due to the yellow dead phase during the M&T team of the Appellant on 26.09.2018. Therefore, the Appellant charged a detection bill of Rs.3,616,539/- for 162,960 units+768 kW MDI for sixteen (16) months i.e. from August 2017 to November 2018 to the Respondent, which was assailed by him before the POI against which the Appellant file instant appeal before the NEPRA.

6.4 During the hearing, the Appellant pointed out that the honorable Supreme Court of Pakistan vide order dated 17.05.2023 remanded back the matter to NEPRA to revisit clause 4.4(e) of the CSM-2010 (existing clause 4.3.3 of the CSM-2021), hence the decision in the subject appeal be rendered after redetermination of the period of slowness by the Authority.

6.5 It is clarified that after detailed deliberation with the stakeholders i.e. distribution companies and consumers, the Authority vide order dated 13.06.2024 retained the period of supplementary/detection bill for two billing cycles in case of the slowness of the metering equipment/defective CTs as mentioned in clause 4.4(e) of CSM- 2010 (existing clause 4.3.3 of CSM-2021), the operative portion of which is reproduced below:

"For the reasons stated above, we reject the proposal of the distribution companies and retain the period of the supplementary bills for two (02) billing cycles in the case of the slowness of the metering installation/defective CTs as mentioned in clause 4.4(e) of CSM-2010 (existing clause 4.3 of CSM-2021). In a vigilant system, slowness of the metering installation should be detected timely, hence the distribution companies must bring efficiency in their working and replace the slow meters/defective CTs within the stipulated period as provided in clause 4.3 of the CSM-2021 in true letter and spirit. The distribution companies should ensure the charging of supplementary bills maximum for two billing cycles. If in the cases where the slowness of the metering installation is not pointed out timely and the metering installation is not replaced within maximum period of two (02) billing cycles, the competent authority of the relevant distribution company shall take disciplinary action against the concerned officials and fix the responsibility for negligence in such cases."

6.6 In light of the foregoing order of the Authority, we are of the considered view that the charging of the detection bill beyond two billing cycles is inconsistent with the foregoing clause of the CSM-2021. Therefore, the detection bill amounting to Rs.3,616,539/- for 162,960 units + 768 kW MDI for sixteen (16) months i.e. from August 2017 to November 2018 debited to the Respondent is unjustified and the same is liable to be cancelled as already determined by the POI.



11.6



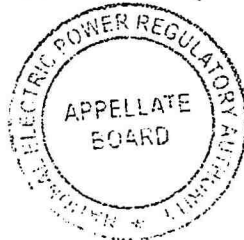
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- 6.7 33% slowness in the impugned billing meter of the Respondent was observed by the M&T team of the Appellant on 26.09.2018, therefore, the Respondent is liable to be charged the revised supplementary bill for two billing cycles prior to checking dated 26.09.2018 @ 33% slowness of the meter, according to Clause 4.4(e) of the CSM-2010.
- 6.8 Moreover, the bills w.e.f checking dated 26.0.2018 and onwards till the replacement of the impugned meter are liable to be revised by adding 33% slowness of the meter as per Clause 4.4(e) of the CSM-2010.
7. In view of what has been stated above, it is concluded that:
- 7.1 the detection bill of Rs.3,616,539/- for 162,960 units+768 kW MDI for sixteen (16) months i.e. from August 2017 to November 2018 debited to the Respondent is unjustified and the same is cancelled.
- 7.2 The Respondent may be charged the revised supplementary bill for two billing cycles prior to checking dated 26.09.2018 @ 33% slowness of the meter, according to Clause 4.4(e) of the CSM-2010.
- 7.3 Similarly, the bills w.e.f checking dated 26.09.2018 and onwards till the replacement of the impugned meter be revised by raising MF due to 33% slowness of the meter as per Clause 4.4(c) of the CSM-2010.
- 7.4 The billing account of the Respondent 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: 24-07-2024

Naweed Illahi Sheikh
Convener/DG (CAD)



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