



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

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No. NEPRA/AB/Appeal/047/2020/ 782

July 25, 2022

1. Abdul Wahid,
S/o. Muhammad Ali Azad,
Manager, Haider Traders,
Pindi By-Pass, Gujranwala
2. Chief Executive Officer
GEPCO Ltd,
565-A, Model Town,
G. T. Road, Gujranwala
3. Saeed Ahmed Bhatti,
Advocate High Court,
66-Khyber Block, Allama Iqbal Town, Lahore
4. Sub Divisional Officer,
GEPCO Ltd,
Shaheen Abad Sub Division,
Gujranwala
5. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala

Subject: **Appeal Titled GEPCO Vs. Abdul Wahid Against the Decision Dated 26.12.2019 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 21.07.2022, 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.047/POI-2020

Gujranwala Electric Power Company LimitedAppellant

Versus

Abdul Wahid S/o Muhammad Ali Azad Manager,
Haider Traders, Pindi Bypass, GujranwalaRespondent

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

For the Appellant:

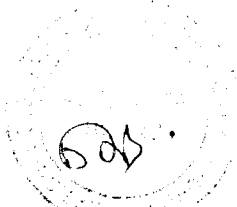
Mr. Saeed Ahmed Bhatti Advocate
Hafiz Muhammad Ibrahim

For the Respondent:

Nemo

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Abdul Wahid (hereinafter referred to as the "Respondent") is a commercial consumer of the Gujranwala Electric Power Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.14-12214-1244900 with a sanctioned load of 1 kW and the applicable Tariff category is A-2(a). The Appellant claims that the billing meter of the Respondent was found functioning slow during the Appellant's checking as compared to the connected load i.e. general load (3.88 kW) + AC load (4 kW), hence it was removed and sent to the Metering and Testing (M&T) for





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checking. As per report of the M&T of the Appellant dated 26.12.2018, the disputed meter was found tampered (loop installed in terminal block) for the dishonest abstraction of electricity. The Appellant lodged FIR No.908/18 dated 26.12.2018 against the Respondent and the disputed meter was handed over to the police. Thereafter, notice dated 27.12.2018 was served to the Respondent regarding the above discrepancy, and a detection bill of Rs.176,000/- for 6,882 units for the period July 2018 to December 2018 six (06) months was charged by the Appellant to the Respondent in December 2018 as per following detail:

- A. Total units to be charged = units of general load + units of AC load
= 5,124 + 3,696 = **8,820 units**
- B. Total units already charged = **1,938 units**
- C. Net detection units = A- B = 8,820 – 1,938 = **6,882 units**

2. Being aggrieved, the Respondent assailed the above detection bill before the Provincial Office of Inspection, Gujranwala Region, Gujranwala (hereinafter referred to as the "POI") vide complaint dated 12.01.2019. The complaint of the Respondent was disposed of by the POI vide the decision dated 26.12.2019, wherein the detection bill of Rs.176,000/- for 6,882 units for the period July 2018 to December 2018 charged to the Respondent 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 26.12.2019





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of the POI by the Appellant before the NEPRA, wherein it is contended that the billing meter of the Respondent was found tampered (loop installed) during the M&T checking dated 26.12.2018 for committing theft of electricity, therefore FIR No.908/2018 was registered with the police against him and the meter under dispute was handed over to the police. The Appellant further contended that notice dated 27.12.2018 thereof was served to the Respondent and a detection bill of Rs.176,000/- for 6,882 units for the period July 2018 to December 2018 was charged to the Respondent on the basis of the connected load. As per Appellant, the POI misconceived the real facts of the case as the above detection bill was debited to the Respondent on account of dishonest abstraction of energy, which does not call for interference by the said forum. Reliance in this regard is placed on the various judgments of the honorable Supreme Court of Pakistan reported reported in PLD 2012 SC 371, PLD 2006 SC 328 and 2004 SCMR Page 1679. According to the Appellant, the POI failed to appreciate the real facts of the case and did not analyze the consumption data in true perspective and declared the above detection bill as null and void. The Appellant submitted that the POI failed to check the disputed meter, which was admittedly lying under the custody of the police department as case property. The Appellant further submitted that the above-referred detection bill was debited on account of dishonest abstraction of electricity, therefore the past consumption data becomes irrelevant and could not be looked into for the determination of dispute, hence the impugned decision is not





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sustainable in law and the same is liable to be set aside.

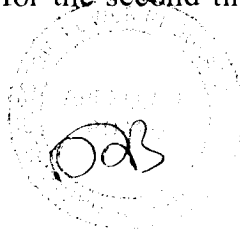
4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 02.07.2020 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. However, no reply/para-wise comments were received from the Respondent.

5. Hearing

5.1. Hearing in the matter of the subject Appeal was fixed for 10.03.2022 at Lahore and accordingly, the notices dated 03.03.2022 were sent to the parties (i.e. the Appellant and the Respondent) to attend the hearing. As per schedule, a hearing of the appeal was conducted at the NEPRA Regional Office Lahore on 10.03.2022, in which learned counsel of the Appellant along with Appellant's officials was present, while no one represented the Respondent. In order to provide an opportunity for hearing to both parties, the hearing was adjourned.

5.2. The hearing in the subject matter was again fixed for 17.06.2022 at NEPRA Regional Office Lahore and accordingly, the notices dated 08.06.2022 were sent to the parties (i.e. the Appellant and the Respondents) to attend the hearing. On the given date of hearing, the learned counsel of the Appellant and its officials were present while again no one entered an appearance for the Respondent. Since the hearing of the appeal had been adjourned earlier and it was rescheduled for the second time wherein the Respondent again



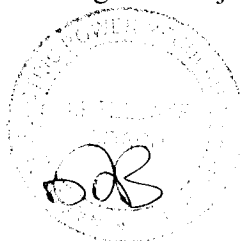


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did not appear; therefore, the Appellate Board proceeded in the absence of the Respondent. During the hearing, learned counsel for the Appellant reiterated the same version as contained in memo of the appeal and contended that the meter of the Respondent was found running slow as compared to the connected load i.e. general load (3.88 kW) + AC load (4 kW), therefore the meter was removed by the Appellant and got checked in M&T laboratory, wherein it was found tampered (loops installed in the terminal block), therefore FIR was filed against the Respondent and the disputed meter was handed over to the Police. Learned counsel for the Appellant stated that notice dated 27.12.2018 was served to the Respondent, which remained unanswered, therefore the detection bill of Rs.176,000/- for 6,882 units for the period July 2018 to December 2018 was debited to the Respondent on the basis of the connected load. As per learned counsel for the Appellant, the POI neither checked the disputed meter nor verified the illegally extended load of the Respondent. Learned counsel for the Appellant defended the charging of the impugned detection bill and prayed that the same be declared as justified and payable by the Respondent.

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

6.1. At first, the preliminary objection of the Appellant regarding the jurisdiction of the POI needs to be addressed. In the instant appeal the learned counsel for the appellant (GEPCO) challenged the jurisdiction of Provincial Office of





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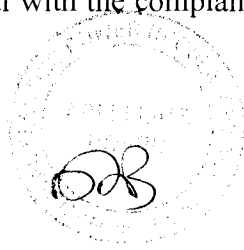
Inspection to adjudicate the complaint of Respondent (Consumer) u/s 38 of the NEPRA Act regarding dishonest abstraction of energy. The Appellant contends that in the cases of detection bill, the Electric Inspector of Government of Punjab Faisalabad Region Faisalabad is the competent forum to deal with such cases u/s 26(6) of the Electricity Act, 1910.

- 6.2 In order to come up with the opinion on above-said proposition of law, it is necessary to analyze the relevant laws. Section 26(6) of the Electricity Act, 1910 deals with the disputes between consumers and a licensee over electricity meters and grants power unto the Electric Inspector to resolve the same. The said provision reads as under:

“(6) Where any difference or dispute arises between a licensee and a consumer as to whether any meter, maximum demand indicator or other measuring apparatus is or is not correct the matter shall be decided, upon the application of either party, by an Electric Inspector, within a period of ninety days from the date of receipt of such application, after affording the parties an opportunity of being heard, and where the meter, maximum demand indicator or other measuring apparatus has, in the opinion of an Electric Inspector, ceased to be correct, the Electric Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter, indicator or apparatus has not, in the opinion of the Electric Inspector, been correct; and where the Electric Inspector, fails to decide the matter of difference or dispute within the said period or where either the licensee or the consumer decline to accept the decision of the Electric Inspector, the matter shall be referred to the Provincial Government whose decision shall be final:

Provided that, before either a licensee or a consumer applies to the Electric Inspector under this subsection, he shall give to the other party not less than seven days' notice of his intention so to do.”

- 6.3. Section 3 (2) (a) of Punjab ((Establishment and Powers of Office of Inspection) Order, 2005 empowers POI to deal with the complaints in respect of metering, billing and





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collection of tariff and other connected matters and pass necessary orders. According to Section 10 *“An aggrieved person may file an appeal against the final order made by the Office of Inspection before the Government or if the Government by general or special order, so directs, to the advisory board constituted under section 35 of the Electricity Act, 1910, within 30 days, and the decision of the Government or the advisory board, as the case may be, shall be final in this regard.”*

6.4. Section 38 of the NEPRA Act also provides a mechanism for determination of disputes between the consumers and the distribution licensee. The said provision reads as under:

“38. Provincial offices of inspection.-(1) Each Provincial Government shall-
(a) establish offices of inspection that shall be empowered to-

(i) enforce compliance with distribution companies' instructions respecting metering, billing, electricity consumption charges and decision of cases of theft of energy; and

(ii) make determination in respect of disputes over metering, billing and collection of tariff and such powers may be conferred on the Electric Inspectors appointed by the Provincial Government under section 36 of the Electricity Act, 1910 (Act IX of 1910), exercisable, in addition to their duties under the said Act.

(b) Establish procedures whereby distribution companies and consumers may bring violations of the instructions in respect of metering, billing and collection of tariff and other connected matters before the office of inspection; and

(c) Enforce penalties determined, by the Provincial Government for any such violation.

(2) The Provincial Governments may, upon request by the Authority, submit to the Authority—

(a)

(b) ...

(3) Any person aggrieved by any decision or order of the Provincial Office of Inspection may, within thirty days of the receipt of the order, prefer an appeal to the Authority in the prescribed manner and the Authority shall decide such appeal within sixty days.”

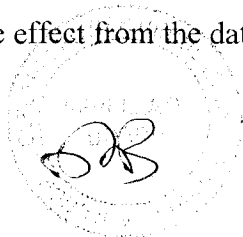




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6.5. Here question arises whether disputes related to section 26(6) of the Electricity Act, 1910 can be heard and decided by the POI and thereafter appeal lies before Advisory Board or NEPRA. Both the enactments are special laws and provide mechanism for determination of disputes between the consumers and licensees. Under section 38(1)(a)(ii) of the NEPRA Act, the Provincial Office of Inspection (POI) is empowered to make determination in respect of disputes over metering, billing and collection of tariff and such powers are conferred on the Electric Inspectors appointed by the Provincial Government under section 36 of the Electricity Act, 1910 (IX of 1910), exercisable, in addition to their duties under the said Act. Through the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2011 (XVIII of 2011), sub-section (3) to the section 38 of the NEPRA Act was inserted on 29.09.2011 whereby an appeal before NEPRA against the decision of POI regarding metering, billing and collection of tariff was provided. It is observed that Provincial Office of Inspection is no different person rather Electric Inspector conferred with the powers of Provincial Office of Inspection for deciding disputes between the consumers and the licensees over metering, billing and collection of tariff.

6.6. Further Section 45 of the NEPRA Act enumerated the relationship of the NEPRA Act with other laws and provides that the provisions of the Act, Rules and Regulations made and licenses issued thereunder shall have the effect notwithstanding anything to the contrary contained and any other law. Rule and Regulation for the time being in force and any such law Rules or Regulations shall to the extent of any inconsistency, cease to have effect from the date this Act comes into force.

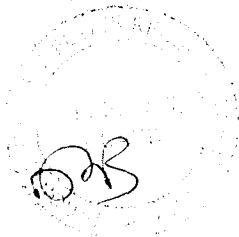




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6.7. The honorable Lahore High Court in its reported Judgement **2018 PLD 399** decided that an appeal against the decision of Provincial Office of Inspection (POI)/Electric Inspector lies with the Authority. Salient points of the judgment are as under:

- (i) Section 26(6) of the Electricity Act, 1910 the ambit and scope of dispute is confined only to the electricity meters/other measuring apparatuses while the scope of Section 38 of NEPRA Act is much wider in comparison. Section 38 of the NEPRA Act empowers the Provincial Office of Inspection not only to enforce compliance of the instructions of the instructions of the distribution companies regarding metering, billing, electricity consumption charges and decisions of cases of theft of energy but also requires it to make determination in respect of disputes over metering, billing and collection of tariff.
- (ii) The reading of the NEPRA Act quite clearly demonstrates that the dispute resolution mechanism provided in Electricity Act, 1910 has now been replaced by NEPRA Act, which law is later in time and is also much wider in its scope as it encompasses disputes over metering, billing and collection of tariff.
- (iii) Electricity being the Federal subject exclusively, any dispute in regard thereto between distribution companies and their consumers will necessarily has to be adjudicated upon by the Provincial Office of Inspection as per the dictate of NEPRA Act.
- (iv) Prior to the passing of the Eighteenth amendment in the Constitution, electricity was placed in the concurrent list. With the introduction of





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Eighteenth Amendment though Constitution (Eighteen Amendment) Act, 2010 the concurrent list was abolished and electricity was placed at Entry 4 of Part II of the Fourth Schedule whereafter it became exclusively at Federal subject.

- (v) The two enactments i.e. Electricity Act, 1910 and NEPRA Act continue to exist side by side providing two different appellate fora to hear appeals against the orders of Electric Inspector and the Provincial Office of Inspection. Both enactments are special laws. In a similar situation, this Court while rendering judgment in Writ Petition No. 6940 of 2013 titled "S.M. Food Makers and others v. Sui Northern Gas Pipelines etc" held as follows:

"It is now well settled that the general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one".

- (vi) The Lahore High Court, in the above circumstances declared that the decision rendered on a complaint filed before the Electric Inspectors shall be treated to have been given by the Provincial Office of Inspection and that the appeal against the decision of the Electric Inspector / Provincial Office of Inspection after the enactment of subsection (3) of Section 38 of the NEPRA Act shall lie before the Authority as defined in NEPRA Act.

6.8. Further, the observations of Lahore High Court was also endorsed by the honorable Supreme Court of Pakistan vide its Judgement dated 08-03-2022 in Civil Petition 1244 of 2018 titled "GEPCO etc. v/s PTV & another" whereby it was held that a comparative reading of section 10 of the Punjab (Establishment and Powers of Office of Inspection) Order, 2005 as well as section 38(3) of the NEPRA Act makes it





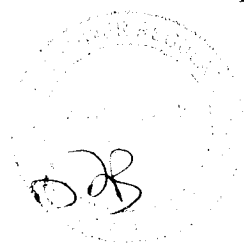
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abundant clear that provisions of section 10 of the 2005 Order and section 38(3) are clearly in conflict. In view of the fact that Ordinance is a Federal Statute and admittedly the subject of electricity falls within the Federal Legislative List, it would be clearly prevail over 2005 Order.

6.8.1. In view of above-quoted provisions of laws and Judgements, we are of the opinion that the disputes under section 26(6) of the Electricity Act and 38(1)(a)(ii) are to be adjudicated by the Provincial Office of Inspection and NEPRA is the competent forum to decide the appeals. In view of foregoing, the objection of the Appellant is dismissed.

6.8.2. At para 2 of its appeal, the Appellant has claimed that the Respondent was involved in the dishonest abstraction of electricity. Further, at para d of the Appeal as well as during the hearing, the Appellant has accused the Respondent for theft of electricity.

6.8.3. It is necessary to highlight that in the CSM 2010, theft of electricity through bypassing the meter and illegal abstraction of energy through tampering the meter are two distinct offenses, which have been defined separately. Different procedures have been laid down in CSM-2010 to establish each of the above offenses. Clause 9.1(a) of the CSM-2010 pertaining to theft of electricity directly by registered/unregistered consumers and Clause 9.1(b) of the CSM-2010 specifying the indicators which may lead to investigations by a DISCO to confirm illegal abstraction of electricity by registered consumers through interfering with the meter are reproduced below:





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"9.1 (a) DIRECT THEFT OF ELECTRICITY BY REGISTERED/UN-REGISTERED CONSUMERS OF GEPCO.

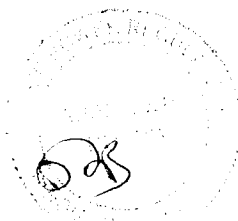
- i) *If a premises/person is found to be hooked directly with the GEPCO's general supply line by bypassing the metering equipment or if the consumer is using electricity direct from the GEPCO supply line and/or the person living on the premises is not a consumer of the GEPCO; then the GEPCO shall inert alia, process the case of THEFT of electricity. For all such cases, the GEPCO shall register FIR with the Police. The FIR is to be registered by a responsible officer of the GEPCO, not below the rank of Sub Divisional Officer.*
- ii) *All theft cases of direct hooking would be dealt by GEPCO strictly in accordance with relevant clauses of the Electricity Act 1910. The disconnection of electricity shall be carried out immediately under the supervision of the Sub Divisional Officer of the area or any other authorized Officer of the GEPCO. The removed material shall be handed over to the police authorities while reporting to the Police.*
- iii) *The GEPCO shall be authorized to recover its loss by raising a detection bill as per its own procedure."*

9.1(b) ILLEGAL ABSTRACTION OF ELECTRICITY BY REGISTERED CONSUMERS

The following indications shall lead to further investigation by GEPCO for the illegal abstraction of electricity. For such cases, GEPCO shall observe the procedure as laid down under Clause 9.1(c)

- i. *Prize bond/postal order/meter security slip removed.*
- ii. *Bond terminal covers seal of the meter broken/bogus/tampered.*
- iii. *Terminal cover of the meter missing.*
- iv. *Holes made in the KWH meter missing.*
- v. *MSB of the meter showing signs of tampering.*
- vi. *Meter hanging oose/titled/physically unbalanced.*
- vii. *Meter glass broken*
- viii. *Meter dead stop/burnt*
- ix. *Meter sticking*
- x. *Meter digits upset*
- xi. *Meter running reverse*
- xii. *Meter connected on temporarily/ permanently disconnected premises*
- xiii. *Meter found missing at site*
- xiv. *Meter found a site but no record exists in the office.*
- xv. *Any other means which can cause interference in true recording of quantum of energy (units) by the metering equipment.*

6.8.4. In the instant case, the Appellant claimed that the disputed meter was found slow, hence it was removed and sent to M&T for checking. As per the statement of Appellant, M&T found the meter tampered (loop installed in terminal block) for the dishonest abstraction of electricity. From these facts as stated by the Appellant, it transpires that the alleged offense does not fall in any of the three offenses declared as acts of direct theft of electricity under Clause 9.1(a) of the CSM. The tampering with metering equipment falls under





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the illegal abstraction of electricity by the registered consumer under Clause 9.1(b) of the CSM, which required the Appellant to follow the following procedure stipulated under Clause 9.1(c) of the CSM-2010:

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 meter without removing it in the presence of the owner /occupier or his Authorized representative/respectable person of the locality.*
 - (ii) *Install 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 POI/Electric Inspector is mandatory.*
 - (iv) *Once confirmed that illegal abstraction is being done, serve notice to the consumer informing him of the allegations and the findings and the requirement of a written reply from the consumer.*
 - (v) *Should wait for seven working days for receipt of reply*
 - (vi) *The reply to the notice shall be examined by the officer higher in grade than the inspecting officer. If the reply is not convincing or if no reply is received or if the allegations as levied are proved, the inspecting office with the approval of the Page 8 of 13 next higher office will immediately serve a detection bill for unclaimed energy limited to the period of three billing months or six months with the approval of CEO previous from the date of establishment of illegal abstraction as elaborated at 9.1(c) (3).*
 - (vii) *The detection bill along with a disconnection notice for payment within seven days will be issued by the inspecting office.*



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- (viii) *Upon payment of the detection bill, the tampered meter shall be replaced by the DISCO at the cost of consumer and no further action will be taken by the DISCO.*
- 2) *In case the consumer does not make payment and also does not dispute over the quantum of energy assessed, then after the expiry of the stipulated period his premises be disconnected and the procedure for disconnection and reconnection as per Chapter 8 be followed thereafter.*
- 3) *The maximum period for charging in such cases shall be restricted to three billing cycles for general supply consumers i.e. A-1 & A-II. For period beyond three billing cycles up to a maximum of six months is subject to approval of the Chief Executive of the DISCO. The CEO may delegate its powers and authorize a committee of Chief Engineer /Director level officers to allow charging of detection bill up to six months to general supply consumers after proper scrutiny so that no injustice is done. Also for such cases action will also be initiated against the officer in charge for not being vigilant enough. For other consumer classes, the period of charging can be more than three billing cycles up to a maximum of six billing cycles.*
- 4) *If the consumer objects payment or disputes over the quantum of the units detected by the DISCO, the Appellant authority for revision of detection bill would be the review committee of the DISCO headed by the next higher officer. The consumer will also be given personal hearing by the review committee.*
- 5) *In case, the dispute remains unresolved even after exhaustive review, the DISCO after getting approval of the Chief Executive Officer may lodge the F.I.R. The consumer may also approach a competent court of law under the relevant provisions of Electricity Act, 1910."*

6.9. In the instant case, the Appellant has not followed the procedure as stipulated under the ibid clause of the CSM to confirm the illegal abstraction of electricity and charging the detection bill thereof. Instead of adopting the proper recourse given in the applicable law, the Appellant removed the meter and lodged FIR, and handed over the meter to the police, which is uncalled for at initial stage in the case of illegal abstraction of electricity under the law. As per the impugned



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decision, the Appellant failed to produce the disputed meter before the POI for confirmation of the alleged tampering despite repeated notices i.e. 23.07.2019, 31.07.2019, 08.08.2019, and 12.09.2019. There is no documentary evidence before us confirming the claim of the Appellant about meter tampering of the Respondent. In the above circumstances, the consumption data of the Respondent may be seen to check any abnormal variation/reduction in the consumption during the disputed period i.e. July 2018 to December 2018 with the corresponding consumption of the year 2019.

Disputed period		Undisputed period	
Month	Units	Month	Units
Jul-18	40	Jul-19	303
Aug-18	106	Aug-19	302
Sep-18	454	Sep-19	387
Oct-18	593	Oct-19	249
Nov-18	433	Nov-19	225
Dec-18	312	Dec-19	0
Total	1938	Total	1466

The above consumption also do not support the contention of the Appellant. This whole scenario manifests that the claim of the Appellant regarding the illegal abstraction of electricity by the Respondent is unjustified as neither the Appellant adhered to the procedure to confirm the theft of electricity as envisaged in Chapter 9 of the CSM nor could produce substantial documented evidence before us to prove the illegal abstraction through tampering the meter.

7. Under these circumstances, we hold that the detection bill of Rs.176,000/- for 6,882 units for the period July 2018 to December 2018 charged to the Respondent is





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illegal, unjustified being contrary to Clause 9.1(c) of the CSM-2010 and the same is declared as null and void. The billing account of the Respondent may be overhauled after adjusting payments made against the disputed detection bill.

8. Foregoing in view, the impugned decision of the POI is maintained and consequently, the appeal is dismissed.

Syed Zawar Haider
Member

Abid Hussain
Convener

Muhammad Irfan-ul-Haq
Member

Dated: 21/07/2022

