



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

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No. NEPRA/Appeal/077/2020/045

February 09, 2023

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| 1. Ghulam Bari,
S/o. Bashir Ahmed,
R/o. Village Bhaddar, Tehsil Kharian,
District Gujrat | 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,
Guliana Sub Division,
Mauza Bhaddar, Tehsil Kharian,
District Gujrat |
| 5. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala | |

Subject: **Appeal Titled GEPCO Vs. Ghulam Bari Against the Decision Dated 15.03.2021 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 06.02.2023, 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 Appellate Board

In the matter of

Appeal No.077/POI-2021

Gujranwala Electric Power Company Limited

.....Appellant

Versus

Ghulam Bari S/o Bashir Ahmed,

R/o Village Bhadar, Tehsil Kharian District Gujrat

.....Respondent

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

For the Appellant:

Mr. Saeed Ahmed Bhatti Advocate

Syed Qasim Jan SDO

Mr. Muhammad Ashfaq

For the Respondent:

Nemo

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Ghulam Bari is an industrial consumer of the Gujranwala Electric Power Company Limited (hereinafter referred to as the "Appellant") bearing Ref. No.28-12363-2408701-U with sanctioned load of 490 kW and the applicable Tariff category is B-2(b) and Mr. Muhammad Rasheed is the tenant/occupier of the premises (hereinafter referred to as the "Respondent"). The billing meter of the Respondent was checked by the Metering and





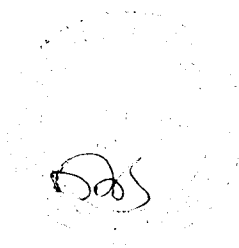
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Testing (M&T) team of the Appellant on 26.06.2020 and it was declared tampered (remote control relay installed) for the dishonest abstraction of electricity vide report dated 02.07.2020, therefore, electricity of the premises was disconnected and impugned meter was submitted to police as material evidence. A notice dated 26.06.2020 was served to the Respondent regarding the above discrepancy and FIR No.293/2020 dated 27.06.2020 was registered against the Respondent due to the theft of electricity. Thereafter, a detection bill of Rs.26,000,000/- against 1,137,330 units for the period from 09.02.2020 to 26.06.2020 was charged by the Appellant to the Respondent on the basis of 80% load factor of the connected load and added to the bill for June 2020.

2. Being aggrieved, the Respondent initially challenged the above detection bill before the Civil Court Gujrat. Later on, the Respondent filed a Writ Petition No. 44440/2020 before the Lahore High Court Lahore against the order dated 04.09.2020 of Additional District Judge Gujrat, which is under adjudication. Meanwhile, the Respondent filed a complaint before the Provincial Office of Inspection, Islamabad Region, Islamabad (hereinafter referred to as the "POI") vide an application on 06.11.2020 and challenged the above detection bill. The matter was disposed of by the POI vide the decision dated 15.03.2021, the operative portion of which is reproduced below:

Summing up all the above observations/discussion and keeping in view all the aspects of the case.

That the impugned, so-called, alleged checking dated 26-6-2020 shown to be so





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made & disconnection of electric supply by the respondents & their employees by removing the equipment from site on the alleged false allegation of stealing of energy etc. is the utter violation of Chapters 14.1, 9, 6, 4 of the NEPRA approved C.S.M of the premises was/is contumacious, unauthorized, ex-parte, unilateral, without notice, illegal, unlawful, based on malafides having no value in the eye of law and is ineffective, inoperative against the respective rights of the complainants and thereafter sending of handy prepared detection bill of huge amount of Rs.2,60,00,000/- for the month June 2020 calculated on the basis of maximum/unbelievable load factor was/is based upon malafides, unlawful, illegal, without notice without show-cause, fake, self estimation, incorrect & unlawful calculation & formula etc., highly excessive, illogical, unilateral, against the actual consumption of electricity so consumed by the complainant No.1/consumer and was/is neither recoverable nor payable by the complainants/owner (as the case may be) ordered to be set-aside along with LPS etc. (if any) being void ab-initio; by making due adjustments of units/MDI and amounts etc. if so recovered by the respondents under coercive measures in respect of A/C No 28- 123632408701-R, Tariff B2b(12)T, S/load 490-KW, in the name of Sajjad Rasheed son of Muhammad Rasheed, Village Bhaddar, Tehsil Kharian;

Hence the respondents are directed to charge difference of units on the basis of defective meter behavior for the cost of 63,487 KWH as whole from February 2021 to June 2021 on the basis of maximum load factor and make all other charging for the huge amount of Rs.2,60,00,000/- for the month of June 2020 was/is based upon malafides, unlawful, illegal, without notice, without show-cause, fake, self-estimation, incorrect & unlawful calculation & formula etc., highly excessive, illogical, unilateral, against the actual consumption of electricity so consumed by the complainant.

The respondents also directed to refund the MDI for the month of March, April, May and June as charged highly/above the technical limit of 567KW, whereas the MDI charged for these months are 651 KW, 650 KW, 643 KW & 680 KW. That Shows the clear status of meter showing defective/abnormal behavior as the capacity of installed transformer is 630 KVA.

Excessive MDI=651+650+643+680=2623KW-2268KW(567X4 2268)=355KW.





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That respondents be ordered to restore the electric supply of the premises immediately and after making all debits and credits and be restrained to issue and stop overbilling in any manner to complainant No.1 and also be desisted to remove the electric meters from the site by way of disconnecting & interrupting the smooth continuous running of electric supply to the premises of the complainant No 1 and further be refrained to raise LPs, to issue ERO & effect E.R.O. regarding removal of the meter, cables, transformer, etc. be measured in the best interest of justice. Hence the decision is announced. Disposed of in above terms."

3. Subject appeal has been filed against the afore-referred decision dated 15.03.2021 of the POI (hereinafter referred to as the "impugned decision") by the Appellant before the NEPRA, wherein it is contended that the billing meter of the Respondent was found tampered (remote controlled relay installed) during the M&T checking dated 26.06.2020 for the dishonest abstraction of electricity, therefore electricity of the premises was disconnected and removed material was handed over to police. The Appellant further contended that notice dated 26.06.2020 thereof was served to the Respondent and FIR No.293/2020 dated 27.06.2020 was registered against the Respondent and a detection bill of Rs.26,000,000/- against 1,137,330 units for the period from 09.02.2020 to 26.06.2020 was charged to the Respondent. 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 under Section 26-A of the Electricity Act, 1910, reliance in this regard was placed on the various judgments of the honorable Supreme Court of Pakistan reported in PLD 2012





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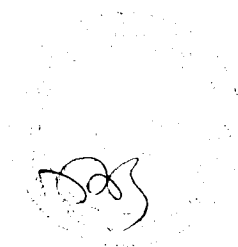
SC 371, PLD 2006 SC 328 and 2004 SCMR Page 1679. According to the Appellant, the impugned decision is ex facie, coram non-judice, ab initio void and without jurisdiction as the POI failed to decide the matter within ninety (90) days as envisaged in Section (6) of the Electricity Act, 1910. The Appellant submitted that the POI failed to consider the consumption data and nor perused the documentary evidence in true spirit. The Appellant further submitted that the POI failed to appreciate that the complaint could not be entertained as no notice as required under Section 26(6) of the Electricity Act 1910 was served upon the Appellants before filing the same. The Appellant prayed that the impugned decision is not 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 11.06.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which however were not filed.

5. **Hearing**

- 5.1 Hearing in the matter of the subject Appeal was initially fixed for 13.10.2022 at NEPRA Regional Office Lahore, which was adjourned for 25.11.2022 in order to provide an opportunity of hearing to the Respondent.
- 5.2 The hearing in the subject matter was again fixed for 25.11.2022 at NEPRA Regional





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Office Lahore in which learned counsel along with other officials was present on behalf of the Appellant and again no one appeared for 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 billing meter of the Respondent was checked by the M&T team on 26.06.2020, wherein it was declared tampered (remote control relay installed), therefore electricity of the premises was disconnected and the removed material was handed to police. Learned counsel for the Appellant stated that notice dated 26.06.2020 was served to the Respondent, which remained unanswered, therefore FIR No.293/2020 dated 27.06.2020 was lodged against the Respondent, and the detection bill amounting to Rs.26,000,000/- against 1,137,330 units for the period from 09.02.2020 to 26.06.2020 was debited to the Respondent on the basis of the connected load. Learned counsel for the Appellant averred that the premises was occupied by the Respondent at rent for the period 19.09.2019 to October 2020. As per learned counsel for the Appellant, the POI neither checked the disputed meter nor verified the consumption data of the Respondent and cancelled the above detection bill. According to the learned counsel for the Appellant, the impugned meter was previously checked on 09.02.2020 and found working OK, therefore the period of detection bill was taken from 09.02.2020 to 26.06.2020. 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.



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

6.1 **Preliminary objection of the Appellant regarding jurisdiction of the POI:**

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 the Provincial Office of Inspection to adjudicate the complaint of the Respondent (Consumer) under Section 38 of the NEPRA Act regarding dishonest abstraction of energy. The Appellant contends that in the cases of detection bills, the Electric Inspector of the Government of Punjab Lahore Region Lahore 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 an opinion on the 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 to 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



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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 of 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."

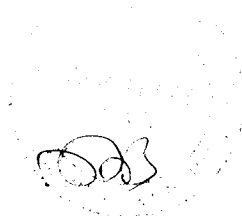
6.3. Section 3 (2) (a) of Punjab ((Establishment and Powers of Office of Inspection) Order, 2005 empowers the POI to deal with the complaints in respect of metering, billing, and collection of tariff and other connected matters and pass necessary orders. According to Section 10 of the above-said order:

"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 the 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





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(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.”

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 enactments are special laws and provide a mechanism for the determination of disputes between consumers and licensees. Under section 38(1)(a)(ii) of the NEPRA Act, the Provincial Office of Inspection (POI) is empowered to make the 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,





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Transmission and Distribution of Electric Power (Amendment) Act, 2011 (XVIII of 2011), subsection (3) to 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 the tariff was provided. It is observed that the Provincial Office of Inspection is no different person rather Electric Inspector conferred with the powers of the Provincial Office of Inspection for deciding disputes between the consumers and the licensees over metering, billing and collection of tariffs.

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.

6.7. The honorable Lahore High Court in its reported Judgement **2018 PLD 399** decided that an appeal against the decision of the 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 the NEPRA Act is much wider in comparison. Section 38 of the NEPRA Act empowers the Provincial Office of Inspection not only to



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enforce compliance with the instructions of the distribution companies regarding metering, billing, electricity consumption charges and decisions in cases of theft of energy but also requires it to make determinations 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 the Electricity Act, 1910 has now been replaced by the NEPRA Act, which law is later 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 have to be adjudicated upon by the Provincial Office of Inspection as per the dictate of the 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 the Eighteenth Amendment through the Constitution (Eighteen Amendment) Act, 2010 the concurrent list was abolished, and electricity was placed at Entry 4 of Part II of the Fourth Schedule where after it became exclusively a Federal subject.
- (v) The two enactments i.e. Electricity Act, of 1910 and the NEPRA Act continue to exist side by side providing two different appellate fora to hear appeals against the orders of the Electric Inspector and the Provincial Office of Inspection. Both





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enactments are special laws. In a similar situation, the honorable High 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 the Lahore High Court were 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 Punjab (Establishment and Powers of Office of Inspection) Order, 2005 as well as section 38(3) of the NEPRA Act makes it abundantly clear that provisions of section 10 of the 2005 Order and section 38(3) are clearly in conflict. In view of the fact that the Ordinance is a Federal statute and admittedly the subject of electricity falls within the Federal Legislative List, it would clearly prevail over the 2005 Order.



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6.9. In view of the above-quoted provisions of laws and Judgements, we are of the considered view 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 the foregoing, the objection of the Appellant is dismissed.

6.10 **Objection regarding the time limit for POI for deciding the complaint:**

As per the record, the Respondent filed his complaint before the POI on 06.11.2020 under Section 38 of the NEPRA Act. POI pronounced its decision on 15.03.2021 i.e. after 129 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 *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, hence the objection of the Respondent is rejected.





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6.11 Objection regarding prior notice before approaching the POI:

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, therefore overruled.

6.12 Detection bill of Rs.26,000,000/- against 1,137,330 units for the period from 09.02.2020 to 26.06.2020

In its appeal, the Appellant has claimed that the Respondent was involved in the dishonest abstraction of electricity through tampering with the meter. Clause 9.1(b) of the CSM-2010 specifies the indications of illegal abstraction, while Clause 9.1(c) of the CSM-2010 lays down the procedure to confirm the same and charging the consumer on this account stating *inter alia* as below:

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 the meter without removing it in the presence of the owner /occupier or his Authorized representative/respectable person of the locality.

(ii) Install a check meter and declare it as billing meter





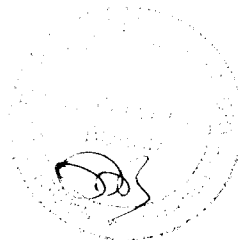
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(iii) Shall constitute a raiding team including Magistrate, Local representative(s) of the area (Councilor/Police officer), Officer of the DISCO (in case of residential/commercial consumers, not below the rank of SDO and in case of other consumers 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 the POI/Electric Inspector is mandatory.

6.13 In the instant case, the Appellant claimed that M&T on 26.06.2020 detected that the impugned meter was intentionally tampered (relay installed). Having found the above discrepancies, the Appellant was required to follow the procedure stipulated in Clause 9.1(c) of the CSM-2010 to confirm the illegal abstraction of electricity by the Respondent and thereafter charge the Respondent accordingly.

6.14 However, in the instant case, the Appellant has not followed the procedure as stipulated under the ibid clause of the CSM-2010. From the submissions of the Appellant, it appears that the billing meter of the Respondent was checked and removed by the Appellant in the absence of the Respondent.

6.15 The Appellant claims that the meter under dispute was removed and handed over to police as case property. As per the judgment of the Supreme Court of Pakistan reported in PLD 2012 SC 371, the POI is the competent forum to check the metering equipment, wherein theft of electricity was committed through tampering with the meter and decide the fate of the disputed bill, accordingly. However, in the instant case, the POI failed to





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fulfill its responsibility to verify the allegation of the Appellant regarding tampering with the impugned meter of the Respondent.

6.16 Until and unless, the allegation of theft of electricity through tampering with the meter is not confirmed, neither the Appellant nor the POI could determine the quantum of energy loss. The Respondent even failed to submit reply/para-wise comments against the Appeal and to attend the hearing despite repeated notices. Thus, in this situation, we are convinced with the contention of the Appellant that the impugned decision was rendered by the POI without confirmation of the alleged theft of electricity through tampering with the meter, which is non-speaking, devoid of merits, and the same is liable to be set aside.

7. In view of the above, the matter is remanded back to the POI for deciding afresh after checking of impugned metering equipment and providing the opportunity of hearing to both parties in accordance with the law within thirty (30) days from the date of receipt of the NEPRA decision.

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 26/02/2023

