



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

NEPRA Office , Ataturk Avenue (East), G5/1, Islamabad  
Tel. No.+92 051 2013200 Fax No. +92 051 2600030  
Website: [www.nepra.org.pk](http://www.nepra.org.pk) E-mail: [office@nepra.org.pk](mailto:office@nepra.org.pk)

No. NEPRA/Appeal/148/2021/ 737

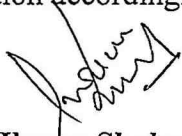
September 19, 2024

- |  |  |
|--|--|
| 1. Sana Ullah,<br>S/o. Muhammad Siddique,<br>R/o. Chak Kharl,<br>Tehsil & District Hafizabad                             | 2. Chief Executive Officer,<br>GEPCO Ltd, 565-A,<br>Model Town, G. T. Road,<br>Gujranwala  |
| 3. Saeed Ahmed Bhatti,<br>Advocate High Court,<br>66-Khyber Block, Allama Iqbal Town,<br>Lahore<br>Cell No. 0300-4350899 | 4. Zafar Iqbal Assad,<br>Advocate High Court,<br>Chamber No. 19-A, Judicial Complex,<br>Jinnah Block, Hafizabad<br>Cell No. 0343-6576720 |
| 5. Sub Divisional Officer,<br>GEPCO Ltd,<br>Sub Division No. 1,<br>Hafizabad   | 6. POI/Electric Inspector,<br>Gujranwala Region,<br>Energy Department, Govt. of Punjab,<br>Munir Chowk, Near Kacheri Road,<br>Gujranwala |

Subject: **Appeal No.148/2021 (GEPCO VS. Sana Ullah) Against the Decision Dated 30.07.2021 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 19.09.2024 (10 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.148/POI-2021

Gujranwala Electric Power Company Limited .....Appellant

Versus

Sana Ullah S/o. Muhammad Siddique,  
R/o. Chak Kharl, Tehsil & District Hafizabad .....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  
Mr. M. Ramzan SDO  
Mr. Faiz Rasool RO

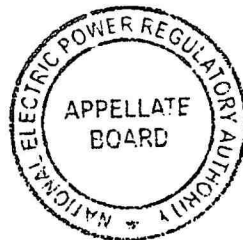
For the Respondent:

Mr. Zafar Iqbal Asad Advocate

## DECISION

1. Brief facts leading to the filing of instant appeal are that Sana Ullah (hereinafter referred to as the "Respondent") is a domestic consumer of Gujranwala Electric Power Company Limited (hereinafter referred to as the "Appellant") bearing Ref. No.04-12241-0033100-U with sanctioned load of 1 kW and the applicable Tariff category is A-1. Metering and Testing (M&T) team of the Appellant checked the meter of the Respondent on 16.10.2019 and reportedly, the Respondent was found stealing electricity through tampering with the meter. Notice dated 18.10.2019 was issued to the Respondent regarding the above discrepancy and an FIR No.553/2019 dated 05.11.2019 was registered against the Respondent due to the theft of electricity. Resultantly, a detection bill of Rs.148,747/- against 6,239 units for six (06) months for the period from May 2019 to October 2019 was charged by the Appellant to the Respondent based on the connected load against which the Respondent approached the Appellant. In response, the Appellant charged the revised detection bill of 2,883 units for four months i.e. May 2019 to October 2019.

Appeal No.148/POI-2021



Page 1 of 10

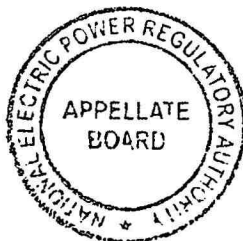


## National Electric Power Regulatory Authority

2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Gujranwala Region, Gujranwala (hereinafter referred to as the "POI") on 21.02.2020 and challenged the above detection bill and the bill of Rs.24,292/- for 145 units in November 2019. Subsequently, the matter was disposed of by the POI vide the decision dated 30.07.2021, wherein the detection bill of Rs.148,747/- for 6,239 units and the bill of November 2019 were cancelled and the Appellant was directed to overhaul the billing account of the Respondent, accordingly.
3. Subject appeal has been filed against the afore-referred decision dated 30.07.2021 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 during the M&T checking dated 16.10.2019 for the dishonest abstraction of electricity, therefore FIR No.553/2019 dated 05.11.2019 was registered against the Respondent and a detection bill of Rs.148,747/- against 6,239 units for six (06) months for the period from May 2019 to October 2019 was charged to the Respondent. As per the 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 SC 371, PLD 2006 SC 328 and 2004 SCMR Page 1679. According to the Appellant, the POI failed to consider the consumption data and did not peruse the documentary evidence in true spirit. The Appellant submitted that the POI failed to decide the matter within 90 days from the date of receipt of the complaint as required under Section 26(6) of the Electricity Act 1910, hence the impugned decision became ex-facie, coram non-judice, and void. 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 09.12.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were filed on 18.03.2022. In his reply, the Respondent prayed for dismissal of the appeal *inter alia* on the following grounds that the Appellant conducted unilateral checking of the metering





## National Electric Power Regulatory Authority

equipment as neither the Respondent nor his representative was associated in the alleged checking; that the Appellant did not follow the procedure as laid down in Chapter 9 of the CSM-2021; that the false and fabricated FIR was registered against the Respondent and the electricity of the premises was disconnected by the Appellant; that the POI is the competent forum to adjudicate the instant matter; that the impugned decision is comprehensive, self-contained and well-reasoned and the same is liable to be maintained.

### 5. Hearing

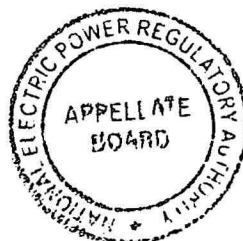
5.1 Hearing was fixed for 02.03.2024 at NEPRA Regional Office Lahore, wherein learned counsels appeared for both the Appellant and the Respondent. During the hearing, learned counsel for the Appellant reiterated the same version as contained in memo of the appeal and contended that the billing meter of the Respondent was checked by the M&T team on 16.10.2019, wherein it was declared tampered, therefore FIR No.553/2019 dated 05.11.2019 was lodged against the Respondent and the detection bill amounting to Rs.148,747/- against 6,239 units for six (06) months for the period from May 2019 to October 2019 was debited to the Respondent. As per learned counsel for the Appellant, the POI neither checked the disputed meter nor perused the consumption data and cancelled the above detection bill. 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.

5.2 On the contrary, learned counsel for the Respondent rebutted the version of the Appellant regarding charging the impugned detection bill and the bill of November 2019 and argued that the Appellant neither associated during the alleged checking nor intimated before charging the impugned detection bill. Learned counsel for the Respondent averred that only 145 units were consumed in November 2019 against which an excessive amount of Rs.24,000/- was charged to the Respondent. Learned counsel for the Respondent finally prayed for dismissal of the appeal being devoid of merits.

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



11-02



## National Electric Power Regulatory Authority

dishonest abstraction of energy. The Appellant contends that in the cases of detection bills, the Electric Inspector of the Government of Punjab Gujranwala Region Gujranwala 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:

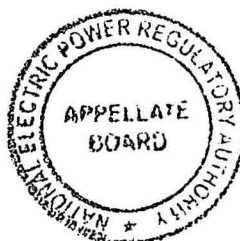
*“(6) Where any difference or dispute arises between a licensee and a consumer as to whether any meter, maximum demand indicator or other measuring apparatus is or is not correct the matter shall be decided, upon the application of either party, by an Electric Inspector, within a period of ninety days 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 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 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:





## National Electric Power Regulatory Authority

*“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 decisions 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*

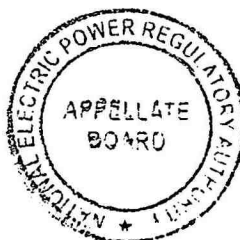
*(c) Enforce penalties determined, by the Provincial Government for any such violation.*

*(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.”*

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 the 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, 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



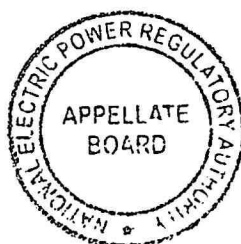


## National Electric Power Regulatory Authority

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 enumerates 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 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

*M.*  
*POI*







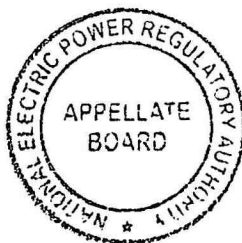
## National Electric Power Regulatory Authority

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 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) 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.
- 6.9. In view of the above-quoted provisions of laws and Judgments, 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 to decide the complaint:**
- As per the record, the Respondent filed his complaint before the POI on 21.02.2020 under Section 38 of the NEPRA Act. POI pronounced its decision on 30.07.2021 after the expiry of 90 days from the date 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







## National Electric Power Regulatory Authority

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 Appellant is rejected.

**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 and, therefore overruled.

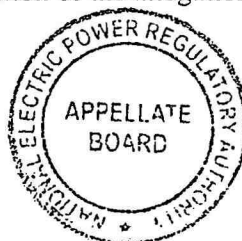
**6.12. Detection bill of Rs.148,747/- against 6,239 units for six (06) months for the period from May 2019 to October 2019**

In the instant case, the Appellant claimed that M&T on 16.10.2019 detected that the impugned meter of the Respondent was intentionally tampered and lodged an FIR against the Respondent. Thereafter, the Appellant debited a detection bill of Rs.148,747/- against 6,239 units for six (06) months for the period from May 2019 to October 2019 to the Respondent, which was challenged by the Respondent before the POI.

6.13. Having found the above discrepancies, the Appellant was required to follow the procedure stipulated in Clause 9.1(b) of the CSM-2010 to confirm the illegal abstraction of electricity by the Respondent and thereafter charge the Respondent accordingly. 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.

6.14. 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 Appellant did not produce the impugned meter before the POI for verification of the allegation regarding tampering.

*M. S.*





## National Electric Power Regulatory Authority

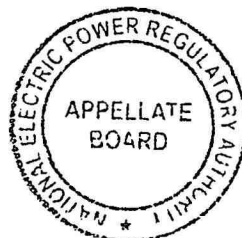
- 6.15. If presumed, the Respondent admitted theft of electricity through tampering with the meter, in such cases, the Appellant may debit the detection bill maximum of three months to the Respondent in the absence of approval of CEO as per Clause 9.1c(3) of the CSM-2010, whereas the Appellant debited the detection bill for six months to the Respondent due to the theft of electricity, which is in contravention of above-mentioned clause of CSM-2010.
- 6.16. To further check the contention of the Appellant regarding charging the impugned detection bill, consumption data is analyzed in the below table:

Period before dispute			disputed period			period after dispute		
Month	Units	Status	Month	Units	Status	Month	Units	Status
May-18	262	Active	May-19	262	Defective	May-20	0	Same read
Jun-18	74	Active	Jun-19	207	MCO	Jun-20	81	Active
Jul-18	213	Defective	Jul-19	486	Active	Jul-20	0	Same read
Aug-18	192	MCO	Aug-19	331	Active	Aug-20	0	Same read
Sep-18	265	Active	Sep-19	319	Active	Sep-20	16	Active
Oct-18	443	Active	Oct-19	113	Active	Oct-20	94	Active
			Nov-19		MCO			
Total	1449		Total	1718		Total	191	

Though above table shows that higher consumption was recorded during the disputed period as compared to the consumption of corresponding months of the preceding and succeeding years. However, it is observed that the meters of the Respondent were replaced thrice i.e. August 2018, June 2019, and November 2019 in just fifteen months. Moreover, an FIR was also registered against the Respondent due to tampering with the meter. This whole scenario indicates that the actual consumption was not recorded by the meter due to tampering with the meter but this does not tantamount the Appellant to debit the detection bill for six months without soliciting approval from the CEO as required in Chapter 9 of the CSM-2010. Moreover, the impugned detection bill was debited based on 3.73 kW load i.e. 5 HP motor, which is contradictory to the load i.e. Toka machine and small tube well found in the subsequent checking.

- 6.17. In view of the foregoing discussion, we are of the considered view that the detection bill of Rs.148,747/- against 6,239 units for six (06) months for the period from May 2019 to October 2019 charged by the Appellant to the Respondent is unjustified and the same is liable to be cancelled as already determined by the POI.
- 6.18. The discrepancy in the impugned meter of the Respondent was observed by the Appellant on 16.10.2019 and theft of electricity through tampering with the meter is observed, hence, it would be fair and appropriate to debit the detection bill for three months retrospectively

11. 50





## National Electric Power Regulatory Authority

i.e. August 2019 to October 2019 to the Respondent and the basis of said detection bill be made as per connected load of the Respondent, calculation in this regard is done below:

Period: August 2019 to October 2019

- A. Total units to be charged =  $S/L \text{ (kW)} \times LF \times \text{No. of Hrs.} \times \text{No. of Months}$   
=  $3.73 \times 0.15 \times 730 \times 3$  = 1,225 units
- B. Total units already charged =  $331+319+113$  = 763 units
- C. Net chargeable units = A- B = 462 units

6.19. The Respondent is liable to be charged net 462 units as detection bill. The impugned decision is liable to be modified to this extent.

6.20. As regards the bill of Rs.24,292/- charged against 145 units for November 2019, it is observed that the said bill seems excessive. The Appellant even could not justify the charging of such an excessive amount in November 2019, therefore, we are convinced with the contention of the Respondent and the bill of November 2019 is liable to be withdrawn and the same may be revised as per the applicable tariff of the said month against 145 units. The impugned decision is liable to be modified to this extent.


7. In view of what has been stated above, it is concluded that:


7.1 the detection bill of Rs.148,747/- against 6,239 units for six (06) months for the period from May 2019 to October 2019 and subsequent revision of the same 2,883 units are unjustified and cancelled.


7.2 Similarly, the bill of Rs.24,292/- charged for 145 units in November 2019 is cancelled being excessive. However, the Respondent may be charged the revised detection bill for net 462 units for three months retrospectively i.e. August 2019 to October 2019, and the revised bill of November 2019 for 145 as per the applicable tariff of the said month.

7.3 The billing account of the Respondent may be overhauled, accordingly.

8. The impugned decision is modified in the above terms.

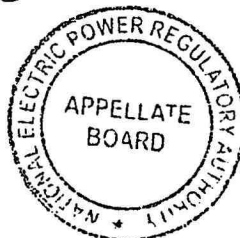
  
Abid Hussain  
Member/Advisor (CAD)

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

  
Naveed Illahi Sheikh  
Convener/DG (CAD)

Dated: 19-09-2024

Appeal No.148/POI-2021



Page 10 of 10