



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

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

No. NEPRA/Appeal/085/2020 & 125/2020/ 676

February 02, 2023

- | | |
|---|---|
| 1. Muhammad Jamil,
S/o. N. Ahmad,
Steel Casting Furnace,
Sultan Mehmood Road,
Baghbanpura, 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 | 4. A. D. Bhatti,
Advocate High Court,
First Floor, Rehmat Tower,
13-Fane Road, Lahore |
| 5. Sub Divisional Officer,
LESCO Ltd,
Mehmood Booti Sub Division,
Lahore | 6. POI/Electric Inspector,
Lahore Region, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore |

Subject: Appeal Titled LESCO Vs. Muhammad Jamil & Muhammad Jamil Vs. LESCO Against the Decision Dated 06.03.2020 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 30.01.2023, 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 The Appellate Board

In the matter of

Appeal No.085/POI-2020

Lahore Electric Supply Company LimitedAppellant

Versus

Muhammad Jamil S/o. N. Ahmed Steel Casting,
Furnace, Sultan Mehmood Road, Baghbanpura, LahoreRespondent

&

Appeal No.125/POI-2020

Muhammad Jamil S/o. N. Ahmed Steel Casting,
Furnace, Sultan Mehmood Road, Baghbanpura, LahoreAppellant

Versus

Lahore Electric Supply Company LimitedRespondent

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

For LESCO:

Mr. Saeed Ahmed Bhatti Advocate

Mr. Kashif Imran SDO

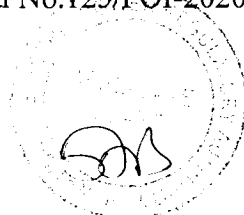
For the Consumer:

Mr. A.D Bhatti Advocate

Mr. Muhammad Jamil

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Muhammad Jamil is an industrial consumer (hereinafter referred to as the “Consumer”) of the Lahore Electric Supply Company Limited (hereinafter referred to as the “LESCO”) bearing Ref No.24-

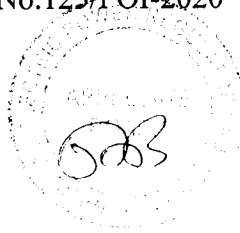




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1355-90012013 with a sanctioned load of 495 kW and the applicable Tariff category is B-2(b). The metering equipment of the Consumer was checked by the Metering and Testing (M&T) team of the LESCO on 01.10.2009, wherein both the billing and backup meter were declared tampered (remote control device installed) for the dishonest abstraction of electricity. A notice dated 01.10.2009 thereof was served by LESCO to the Consumer regarding the above discrepancy. Thereafter, FIR No.1082/2019 dated 01.10.2009 was lodged by LESCO against the Consumer due to the illegal abstraction of electricity. Further, a detection bill amounting to Rs.8,053,370/- for the cost of 1,346,880 units+576 kW MDI for fifteen (15) months for periods from December 2007 to May 2008 and July 2008 to March 2009 was charged by LESCO to the Consumer on the basis of 55% load factor of the connected load i.e. 576 kW and added to the bill for September 2009. Both the impugned billing and backup meters were removed by LESCO and handed over to police as case property.

2. Being aggrieved, the Consumer initially challenged the above detection bill before the Civil Court, Lahore. After litigation in different courts, the honorable Lahore High Court Lahore vide order dated 30.05.2018 referred the matter to POI for decision. Accordingly, the Consumer filed a complaint before the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") on 06.08.2018 and disputed the above detection bill. The disputed meters of the Consumer were checked by POI on 29.11.2019 in presence of both parties, wherein, both the impugned billing and backup meters were found tampered (relay installed inside the

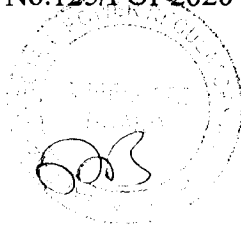




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meters), both parties signed the checking reports without raising any objection. The complaint of the Consumer was disposed of by the POI vide the decision dated 06.03.2020, wherein the detection bill of Rs.8,053,370/- against 1,346,880 units +576 kW MDI for fifteen (15) months for periods from December 2007 to May 2008 and July 2008 to March 2009 charged to the Consumer was cancelled. LESCO was directed to charge the revised bills for October 2008 to March 2009 on the basis of consumption of February 2009 after excluding already charged units. LESCO was further directed to overhaul the billing account of the Consumer and for adjustment of payments made against the above detection bill in the future bills and restoration of electric supply of the premises.

3. Being dissatisfied with the above-referred decision of POI (hereinafter referred to as the "impugned decision"), both parties filed cross-appeals before the NEPRA. As the facts and subject matter of the appeals are the same, both Appeals i.e. Appeal No.085/POI-2020 and Appeal No.125/POI-2020 have been clubbed and are being disposed of through a single/consolidated decision.
4. In its appeal No.085-2020, LESCO contended that the billing and backup meters of the Consumer were found tampered (relay installed inside the meter) during the M&T checking dated 01.10.2009 for committing theft of electricity, therefore FIR No.1082/2009 dated 01.10.2009 was registered with the police against him. LESCO further contended that notice dated 01.10.2009 thereof was served to the Consumer and a detection bill of Rs.8,053,370/- for the cost of 1,346,880 units+576 kW MDI for

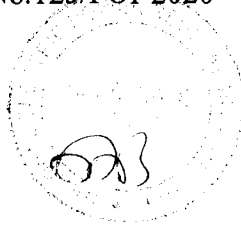




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fifteen (15) months for periods December 2007 to May 2008 and July 2008 to March 2009 was charged to the Consumer on the basis of the connected load. As per LESCO, the POI misconceived the real facts of the case as the above detection bill was debited to the Consumer on account of dishonest abstraction of energy, which does not call for interference by the said forum under Section 38 of the NEPRA Act 1997. 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. LESCO submitted that the POI failed to decide the matter within 90 days as specified in Section 26(6) of the Electricity Act 1910, hence the impugned decision became ex-facie, coram non-judice, ab-initio void and without jurisdiction, reliance in this regard was placed on the judgment reported in 2006 YLR Page 2612. LESCO further submitted that the tampering with the disputed meters was established during the POI joint checking dated 29.11.2019, as such the above detection bill be declared as justified and payable by the Consumer. As per LESCO, the provisions of CSM-2010 could not be made applicable in the instant case, hence the impugned decision is liable to be set aside. According to LESCO, the POI has 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 ever served upon the LESCO before filing the same. LESCO finally prayed for setting aside the impugned decision.

5. In its appeal No.125/2020, the Consumer opposed the impugned decision *inter alia*, on the main grounds that the impugned decision to the extent of imposing a penalty on



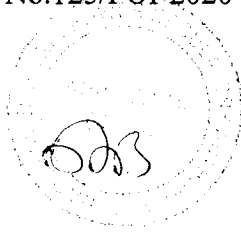


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account of alleged illegal abstraction of energy for six months for the period from October 2008 to March 2009 on the basis of consumption of February 2009 is illegal, unlawful, void, and without jurisdiction; the POI did not advert the real facts of the case that LESCO failed to follow the procedure for theft of electricity as laid down in Chapter 9 of the CSM-2010, hence the above detection bill charged by LESCO is unjustified and the impugned decision is liable to be modified to this extent; that the determination of POI for revision of the bill is erroneous as he is bound to calculate the detection bill based on average of the load of the premises; that the POI neither consider the prior serving of notice by LESCO nor analyzed the consumption data; therefore the impugned decision is non-reasoning, non-speaking, without detail and the detection bill be declared as illegal, unlawful, and void.

6. Proceedings by the Appellate Board:

Notices dated 16.09.2020 and 21.10.2020 were sent to the LESCO and Consumer respectively for filing reply/para-wise comments to the cross-appeals within ten (10) days. However, the Consumer filed its counter reply to Appeal No.085/ POI-2020, wherein he rebutted the version of LESCO for charging the detection bill and submitted that the POI has exclusive jurisdiction in the light of the Judgement of the Supreme Court of Pakistan reported in PLD 2012 SC 371. The Consumer further submitted that the POI has rightly cancelled the above detection bill being illegal and unjustified. The Consumer finally prayed for dismissal of the appeal No.085/POI-2020 being barred by time.

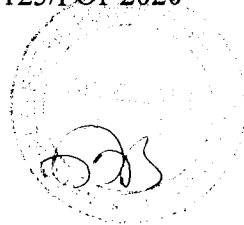




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7. Hearing

7.1 Hearing in the matter of the subject Appeals was fixed for 29.09.2022 at Lahore and accordingly, the notices dated 21.09.2022 were sent to the parties (i.e. LESCO and the Consumer) to attend the hearing. As per schedule, the hearing of the appeal was conducted at the NEPRA Regional Office Lahore on 29.09.2020 in which learned counsels for both LESCO and the Consumer were present. At the outset of the hearing, the learned counsel of the Consumer repeated the question of limitation against the appeal No.085/2020 of LESCO and prayed for dismissal of the same being barred by time. In response, learned counsel for LESCO explained that the copy of the impugned decision dated 06.03.2020 was received on 13.05.2020 and the appeal was sent to the NEPRA on 10.06.2020 and received at NEPRA on 17.06.2020, hence the time of dispatch may be excluded as per provisions given in NEPRA (Procedure for filing Appeals) Regulations, 2012. On merits, learned counsel for LESCO reiterated the same version as contained in the memo of the appeal and contended that the metering equipment of the Consumer was found tampered (relay installed in both TOU billing and backup meter) during checking on 01.10.2009, therefore FIR was filed against the Consumer and the disputed meters were handed over to the Police. Learned counsel for LESCO stated that notice dated 01.10.2009 was served to the Consumer and a detection bill of Rs.8,053,370/- for the cost of 1,346,880 units+576 kW MDI for fifteen (15) months for periods from December 2007 to May 2008 and July 2008 to March 2009 was debited to the Consumer on the basis of the connected load. As per learned





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counsel for LESCO, the POI checked the disputed meters and witnessed the alleged tampering with the disputed meters, but wrongly cancelled the entire detection bill as null and void. According to learned counsel for LESCO, the above detection bill was charged before the enactment of the CSM-2010, hence the determination of POI for revision of the detection bill for six months is incorrect and the same is liable to be set aside. Learned counsel for LESCO defended the charging of the impugned detection bill and prayed that the same be declared as justified and payable by the Consumer.

7.2 Learned counsel for the Consumer denied the allegation of theft of electricity through tampering with the meters levelled by LESCO and stated that the installation of the relay in the impugned meters is not evident from the test check proforma. Learned counsel for the Consumer further stated that neither the representation of the Consumer is witnessed as per check proforma nor any refusal note depicted on the said test check proforma, thus the allegation of LESCO for tampering with the meters is baseless and the same cannot be made a base for charging illegal detection bill. As per learned counsel for the Consumer, the WAPDA detection policy was in the field before the implementation of the CSM-2010, which even was not followed by the LESCO before charging the illegal, unjustified detection bill. Learned counsel for the Consumer prayed for the modification of the impugned decision to the extent of revision of the detection bill for six months and prayed that the entire detection bill be cancelled in the best interest of justice.





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

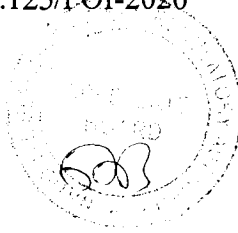
8.1 Preliminary objection of Consumer regarding limitation for filing Appeal No.085/POI-2020:

Under Regulation 4 of the NEPRA (Procedure for filing Appeals) Regulations, 2012, the Appeal is required to be filed within 30 days of the receipt of the impugned decision of POI by the LESCO. Further, a margin of 7 days is provided in case of submission through registered post, and 3 days in case of submission of appeal through courier is given in the NEPRA (Procedure for filing Appeals) Regulations, 2012. LESCO produced a copy of the impugned decision received from the office of POI on 13.05.2020. Counting 30 days from the date of said receiving, the appeal filed on 17.06.2020 before the NEPRA is within the time limit as prescribed in the above-referred Regulation of NEPRA (Procedure for filing Appeals) Regulations, 2012. Hence the objection of the Consumer in this regard has no force and is rejected.

8.2 Jurisdiction of the POI u/s 38 of the NEPRA Act:

In the instant appeal, the learned counsel for LESCO challenged the jurisdiction of the Provincial Office of Inspection to adjudicate the complaint of Consumer (Consumer) under Section 38 of the NEPRA Act regarding the dishonest abstraction of energy. LESCO 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.

8.3 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





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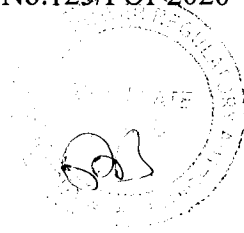
disputes between consumers and a licensee over electricity meters and grants power to the Electric Inspector to resolve the same. The said provision reads as under:

“(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.”

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





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decision of the Government or the advisory board, as the case may be, shall be final in this regard.”

8.4 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

(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

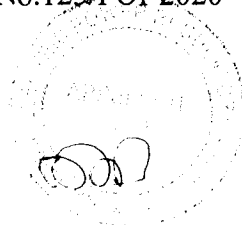
(c) Enforce penalties determined, by the Provincial Government for any such violation.

(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.”

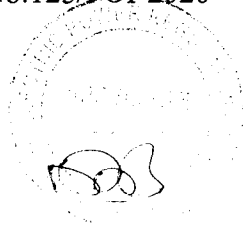




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8.5 Here question arises whether disputes related to Section 26(6) of the Electricity Act, 1910 can be heard and decided by the POI, and thereafter appeal lies before Advisory Board or NEPRA. Both enactments are special laws and provide a mechanism 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, 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 the 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.

8.6 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



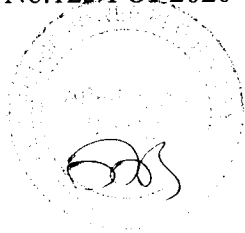


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and any such law Rules or Regulations shall to the extent of any inconsistency, cease to have effect from the date this Act comes into force.

8.7 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.





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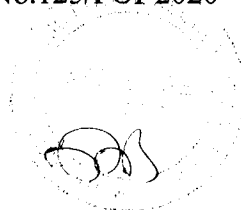
(iv) Prior to the passing of the Eighteenth amendment in the Constitution, electricity was placed in the concurrent list. With the introduction of the Eighteenth Amendment through the Constitution (Eighteen Amendment) Act, 2010 the concurrent list was abolished, and electricity was placed at Entry 4 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 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.

8.8 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





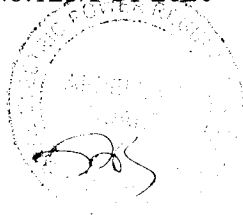
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of 2018 titled “GEPCO, etc. v/s PTV & another” whereby it was held that a comparative reading of Section 10 of Punjab (Establishment and Powers of Office of Inspection) Order, 2005 as well as Section 38(3) of the NEPRA Act makes it abundantly clear 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.

8.9 In view of the above-quoted provisions of laws and Judgements, we are of the considered opinion that the disputes under Section 26(6) of the Electricity Act and 38(1)(a)(ii) of the NEPRA Act 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 LESCO is dismissed.

8.10 **Objection regarding the time limit for POI**

As per the record presented before us, the Consumer filed his complaint before the POI on 08.04.2019 under Section 38 of the NEPRA Act. POI pronounced its decision on 12.12.2019 i.e. after 157 days of receipt of the complaint. LESCO has objected that the POI was bound to decide the matter within 90 days under Section 26(6) of the NEPRA 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





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High Court Lahore reported in PLJ 2017-Lahore-627 and PLJ-2017-Lahore-309. 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 Consumer is dismissed.

8.11 Objection regarding prior notice before filing the complaint before the POI:

As regards another objection of the LESCO for not issuing notice as per the Electricity Act, 1910 by the Consumer 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 LESCO is not valid, therefore overruled.

8.12 Detection bill of Rs.8,053,370/- against 1,346,880 units+576 kW MDI for fifteen months for the periods from December 2007 to May 2008 and July 2008 to March 2009 charged on the connected load and added to the bill for September 2009

In its appeal, LESCO has claimed that the Consumer was involved in the dishonest abstraction of electricity through tampering (remote control device installed) with both the billing and backup meters during checking dated 01.10.2009. A notice dated 01.10.2009 thereof was served to the Consumer regarding the above discrepancy. Thereafter, FIR No.1082/2019 dated 01.10.2009 was registered against the Consumer due to the illegal abstraction of electricity and a detection bill of Rs.8,053,370/- for the cost of 1,346,880 units +576 kW MDI for fifteen (15) months for the periods from



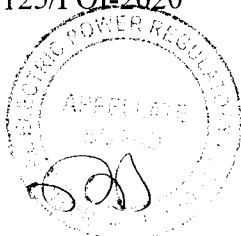


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December 2007 to May 2008 and July 2008 to March 2009 was charged by the LESCO to the Consumer based on the connected load and added to the bill for September 2009. Both the impugned billing and backup meters were removed by LESCO and handed over to police as case property.

8.13 The record shows that the POI checked the impugned meter on 29.11.2019 in the presence of the representation of both LESCO and the Consumer. The joint checking report duly signed by the POI as well as both parties concludes that the impugned metering equipment was tampered for the dishonest abstraction of electricity. Although during the hearing, the Consumer denied the allegation of theft of electricity, however, the said checking report signed by the representative of the Consumer speaks otherwise and provides evidence of the impugned metering equipment having been tampered for the illegal abstraction of electricity. Therefore, the Consumer's assertion of not being involved in illegal abstraction is contrary to the evidence, hence rejected. As regards the Consumer's argument about non-adherence to the procedure specified in CSM-2010 by LESCO, it is observed that the dispute pertains to the periods December 2007 to May 2008 and July 2008 to March 2009, when the CSM-2010 was not in the field. Therefore reference of CSM-2010 in the instant case is not relevant.

8.14 Thus, the instant dispute of the detection bill will be dealt strictly in accordance with WAPDA Policy and Procedures on detection bills circulated vide letter No.1468-99/M (P)/GMCS/ DD (R&CP)/56217 dated 26.10.1999. The relevant excerpt of the above-said policy is reproduced below:





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SUBJECT: POLICY AND PROCEDURE ON DETECTION BILLS

In the suppression of policy on the subject circulated vide No. 2889-3282/MDD /GMCS/DG(R&CP)/56217 dated 18th October 1995 following guidelines are laid down for compliance with immediate effect.

2. It has been noticed that at times detection bills are prepared arbitrarily. Subsequently when these bills are challenged in a legal forum or a court of law then it becomes difficult to defend the cases. This gives rise not only to unnecessary litigation but also reflects adversely on the position of receivables. It has therefore been decided to lay down the following policy and procedure for detection bills and matters ancillary thereto to be followed strictly.

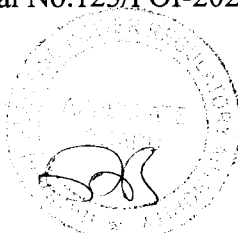
3. DETECTIONS BILLING

i. DETECTION BILLING FOR THEFT OF ENERGY

- a. While preparing the detection bill the provisions of S-26-A S-39 S-39-A and S-48 of the Electricity Act, 1910 as amended shall be complied with strictly.*
- b. Detection bills for dishonest abstraction or consumption of energy will be assessed strictly in accordance with the provisions of section 26-A of the electricity act 1910 detection bill will be prepared on prescribed Performa attached as annex-A.*
- c. Before service of the detection bill, a notice prescribed at annex B will be served upon the person whoever is found indulged in the theft of energy as defined in sections 39 & 39-A of the electricity act 1910.*

ii. DETECTION BILLING FOR DIRECT HOOKING

Whoever is found to have connected his installations appliances and apparatus with the works of license for the purpose of supply of energy without its written consent commits an offense to be prosecuted under sections 39 & 39-A of the Electricity Act 1910 which requires an FIR to be lodged with police further to compensate the loss sustained on account of theft of electricity in pursuance of provisions of section 48 ibid a detection/assessment bill is to be served as per laid down procedure to such illegal and unregistered consumer. For assessment of the amount of energy deemed to have been dishonestly abstracted consumed or used for the period of a direct electrical connection from the aerial line/supply line through artificial means, the provisions of section 26-A





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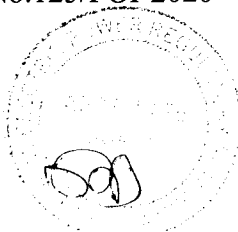
will be followed strictly. The owner or occupier of the premises which are found for the time being connected illegally for the purpose of supply of energy with the works of the license are liable for payment of detection /assessment bill prepared and served to compensate the loss sustained on account of theft of electricity.

Section 26-A of the Electricity Act 1910;

26 A. Notwithstanding anything contained in section 23, the licensee may charge the consumer on the basis of one or more of the following considerations for the amount of energy deemed to have been dishonestly abstracted, consumed, or used, for the period during which the meter, maximum demand indicator or other measuring apparatus had, in the opinion of the licensee, remained connected, disconnected, injured, altered or prevented from registering the amount of energy supplied or the electrical quantity contained in the supply: --

- a) Consumer's connected load or maximum demand in kilowatts during any period.*
- b) Consumer's maximum consumption of energy in kilowatt-hours during any period Consumer's load factor;*
- c) The power factor of consumer's load;*
- d) The hours and the time for which the energy is deemed to have been abstracted, consumed, or used by the consumer; and*
- e) The purpose for which the energy is deemed to have been abstracted, consumed, or used by the consumer.*

As evident from the above, the LESCO is entitled to recover the detection bill from the Consumer on account of dishonest abstraction of electricity through tampering with the meter as per Section 26-A of the Electricity Act 1910. Perusal of the detection proforma shows that the above detection bill was assessed by the LESCO on the basis of 55% load factor of the connected load i.e.576 kW. However, LESCO neither regularized the load extended beyond the sanctioned load i.e.495 kW nor got verified by the POI being the competent authority. It is further observed that 55% load factor





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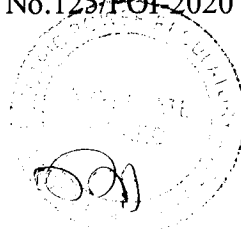
used for the calculation of the above detection bill is not in line with the applicable load factor as per WAPDA Circular No.426/GMS/DG (C)/D(R&CP)/56217 dated 03.03.2003.

8.15 Under these circumstances, we hold that the detection bill of Rs.8,053,370/- for the cost of 1,346,880 units +576 kW MDI for fifteen (15) months for the periods from December 2007 to May 2008 and July 2008 to March 2009 is illegal, unjustified and the same is liable to be declared as null and void.

8.16 Since tampering in the impugned metering equipment of the Consumer is established during the POI joint checking dated 29.11.2019, therefore the Consumer is liable to pay the detection bill to be calculated on the basis of 50% applicable load factor of the sanctioned load of 495 kW as laid down in the above-referred WAPDA Circular dated 03.03.2003. Calculation in this regard is done below:

Units per month assessed = SL (kW) x LF x No. of hours per month			
=	495	x 0.5 x	730 = 180,675 units

8.17 The only question that remained to be resolved is the period of detection bill. In this regard consumption recorded during the disputed period December 2007 to May 2008 and July 2008 to March 2009 compared below with the detection units assessed @ 180,675 units/month:

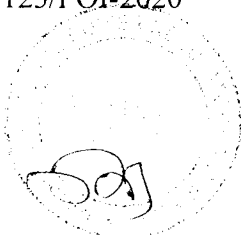




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Month	Units already charged	Units/month assessed
Dec-07	160480	180,675
Jan-08	121760	
Feb-08	157120	
Mar-08	134400	
Apr-08	96800	
May-08	7200	
Jul-08	109120	
Aug-08	146720	
Sep-08	151680	
Oct-08	184640	
Nov-08	186720	
Dec-08	136690	
Jan-09	182400	
Feb-09	230080	
Mar-09	112800	

Above table shows that except for four months i.e. October 2008, November 2008, January 2009, and February 2009, during the remaining months, the consumption recorded by the meter is much lesser than the monthly assessed consumption. Therefore, having the illegal abstraction confirmed during the above period, the Consumer may be charged the difference of units+ kW MDI in months during which less consumption was recorded. Calculation in this regard is done below:





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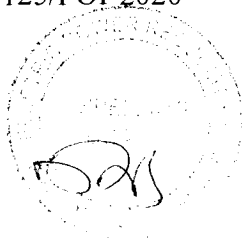
Month	Units already charged	Units to be charged	Net units chargeable	MDI already charged	MDI to be charged	Net MDI chargeable
Dec-07	160480	180675	20195	461	495	34
Jan-08	121760	180675	58915	445	495	50
Feb-08	157120	180675	23555	438	495	57
Mar-08	134400	180675	46275	448	495	47
Apr-08	96800	180675	83875	432	495	63
May-08	7200	180675	173475	413	495	82
Jul-08	109120	180675	71555	547	-	-
Aug-08	146720	180675	33955	496	-	-
Sep-08	151680	180675	28995	512	-	-
Dec-08	136690	180675	43985	467	495	28
Jan-09	182400	-	-	458	495	37
Mar-09	112800	180675	67875	494	495	1
Net chargeable			652,655	Net chargeable		399

As above, the Consumer is liable to be charged the revised detection bill for net 652,655 units+399 kW MDI. The impugned decision is liable to be modified to this extent.

9. Summing up the foregoing discussion, it is concluded as under:

9.1 The detection bill of Rs.8,053,370/- for the cost of 1,346,880 units+576 kW MDI for fifteen (15) months for the periods from December 2007 to May 2008 and July 2008 to March 2009 charged by the LESCO to the Consumer and added to the bill for September 2009 is unjustified and cancelled.

9.2 The Consumer may be charged the revised bill of 652,655 units+399 kW MDI for the periods i.e. December 2007 to May 2008 and July 2008 to September 2008.





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9.3 The billing account of the Consumer may be overhauled after adjusting payments made against the above detection bill.

10. Both appeals are disposed of in the above terms.

Syed Zavar Haider
Member

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 30/01/2023.

