



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

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No. NEPRA/AB/Appeal/106/2021/ 639

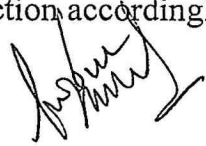
October 18, 2023

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| 1. Muhammad Saleem,<br>S/o. Khursheed Ahmad,<br>R/o. 1191-A, Said Mittha Bazar,<br>Inside Lohari Mangi/Gate,<br>Lahore | 2. Chief Executive Officer<br>LESCO Ltd,<br>22-A, Queens Road,<br>Lahore   |
| 3. Syed Kashif Ali Bukhari,<br>Advocate High Court,<br>170-Ravi Park, Lahore   | 4. Amanat Ali Mian,<br>Advocate High Court,<br>54-The Mall, Lahore   |
| 5. Sub Divisional Officer (Operation),<br>LESCO Ltd,<br>Sheranwala Gate Sub Division,<br>Lahore                        | 6. P.OI/Electric Inspector,<br>Lahore Region, Energy Department,<br>Govt. of Punjab, Block No. 1,<br>Irrigation Complex, Canal Bank,<br>Dharampura, Lahore |

Subject: **Appeal Titled LESCO Vs. Muhammad Saleem Against the Decision Dated 15.06.2021 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 18.10.2023 (14 pages), regarding the subject matter, for information and necessary action accordingly.

**Encl: As Above**

  
**(Ikram Shakeel)  
Deputy Director (AB)**

Forwarded for information please.

1. Director (IT) –for uploading the decision on NEPRA website



# National Electric Power Regulatory Authority

## Before Appellate Board

In the matter of

## Appeal No.106/POI-2021

Lahore Electric Supply Company Limited .....Appellant

Versus

Muhammad Saleem, S/o. Khursheed Ahmad, R/o. 1191-A,  
Said Mitha Bazar, Inside Lohari Mangi/Gate, Lahore .....Respondent

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

For the Appellant:

Syed Kashif Ali Bukhari Advocate

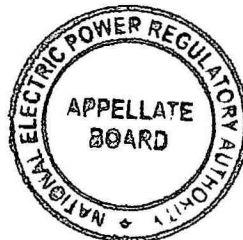
Mr. Asim Bukhari SDO

For the Respondent:

Mr. Muhammad Saleem

## DECISION

1. Through this decision, the appeal filed by the Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") against the decision dated 15.06.2021 of the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") is being disposed of.
2. Brief facts of the case are that Mr. Muhammad Saleem (hereinafter referred to as the "Respondent") is a domestic consumer of the Appellant bearing Ref No.08-11143-0881600-U with sanctioned load of 1 kW and the applicable Tariff category is A-1a(01). The premises of the Respondent was checked by the Metering and



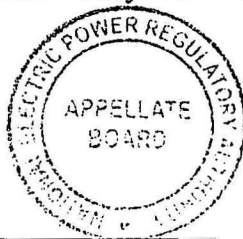
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## National Electric Power Regulatory Authority

Testing (M&T) team of the Appellant on 24.05.2019 and reportedly, the billing meter of the Respondent was found tampered (shunt installed) for dishonest abstraction of electricity. Notice dated 29.05.2019 was issued to the Respondent regarding the above discrepancy and FIR No.272/2019 dated 01.06.2019 was registered with the police against the Respondent on account of the theft of electricity. Thereafter, a detection bill amounting to Rs.129,527/- against 5,472 units for six months for the period from May 2018 to October 2018 was charged by the Appellant to the Respondent on the basis of connected load and added to the bill for July 2019.

3. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") and challenged the above detection bill. The matter was disposed of by the POI vide the decision dated 15.06.2021, wherein the detection bill of Rs.129,527/- against 5,472 units for six months for the period from May 2018 to October 2018 was declared null and void.
4. Subject appeal has been filed against the afore-referred decision dated 15.06.2021 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 24.05.2019 for the dishonest abstraction of electricity, therefore FIR No. 272/2019 dated 01.06.2019 was registered against him and a detection bill of Rs.129,527/- against 5,472 units for six months for the period from May 2018 to October 2018 was charged to the



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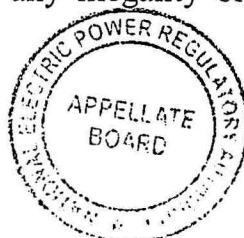


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Respondent. As per the Appellant, the above detection bill was debited to the Respondent on account of dishonest abstraction of energy under Section 26-A of the Electricity Act, 1910, which does not call interference of the POI, reliance in this regard is placed on the judgment 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 misconceived the real facts of the case and miserably failed to analyze the consumption data in true perspective and erred in holding that the above detection bill is null and void. The Appellant submitted that the above detection bill was debited to the Respondent after the completion of legal and departmental formalities, which is justified and payable by the Respondent. The Appellant stated 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.

### 5. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 11.11.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were filed on 03.12.2021. In his reply, the Respondent prayed for dismissal of the appeal on the grounds, *inter alia*, that the impugned decision being a comprehensive, well reason does not warrant any interference; that the Appellant miserably failed to pinpoint any illegality or jurisdictional defect, infirmity or



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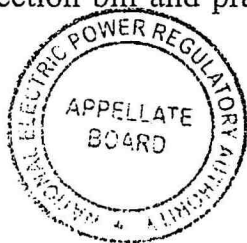
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passivity in the impugned decision; that the above detection bill was debited without any justification as the premises remained closed during the period from October 2018 to May 2019, therefore the Appellant is not entitled to get any relief from this forum; that the appeal filed before the NEPRA is barred by time; that the impugned meter was neither checked in presence of Respondent nor issued any notice before the checking of the metering equipment and that the impugned decision is liable to be maintained.

### 6. Hearing

6.1 Hearing in the matter of the subject Appeal was fixed for 02.06.2023 at NEPRA

Regional Office Lahore in which learned counsel along with other officials were present on behalf of the Appellant and the Respondent appeared in person. 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 24.05.2019, wherein it was declared tampered for committing theft of electricity. Learned counsel for the Appellant further contended that the detection bill amounting to Rs.129,527/- against 5,472 units for six months for the period from May 2018 to October 2018 was debited to the Respondent. Learned counsel for the Appellant averred that the FIR was registered against the Respondent due to theft of electricity and the electricity of the premises was disconnected. As per the learned counsel for the Appellant, the Respondent is under trial. Learned counsel for the Appellant defended the charging of the impugned detection bill and prayed that the same be declared as





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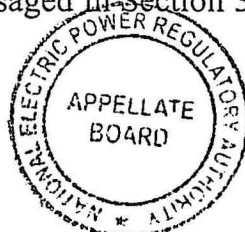
justified and payable by the Respondent.

6.2 The Respondent repudiated the contentions of counsel for the Appellant regarding the theft of electricity and averred that no shunt was installed inside the meter. Learned counsel for the Respondent stated that the Appellant failed to produce the impugned metering equipment before the POI for checking, hence their allegation for theft of electricity is not correct and the impugned detection bill was rightly cancelled by the POI. He prayed that the impugned decision be upheld and the appeal be dismissed being devoid of merits.

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

**7.1 Limitation for filing Appeal before the NEPRA:**

Before going into the merits of the case, the preliminary objection of the Respondent regarding limitation needs to be addressed. It is observed that the copy of the impugned decision was obtained by the Appellant on 02.08.2021 and the appeal was filed before the NEPRA on 27.08.2021 within the prescribed time limit of 30 days. As per sub-section (3) of Section 38 of the NEPRA Act, any person aggrieved by the decision of the POI may prefer an appeal to NEPRA within thirty days of receipt of the order. Further, it is supplemented with Regulation 4 of the NEPRA (Procedure for filing Appeals) Regulations, 2012 (the "Appeal Procedure Regulations") which also states that the Appeal is required to be filed within 30 days of the receipt of the impugned decision of POI by the Appellant, however, 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 Appeal Procedure Regulations. Thus, the appeal was filed before the NEPRA within the prescribed time limit as envisaged in Section 38(3) of the NEPRA Act. Hence the





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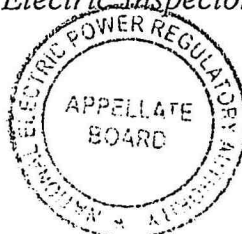
objection of the Respondent is rejected being devoid of force.

### **7.2 Preliminary objection of the Appellant regarding jurisdiction of the POI in the theft of electricity cases:**

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 (LESCO) 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.

7.3 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 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*



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*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."*

7.4 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."*

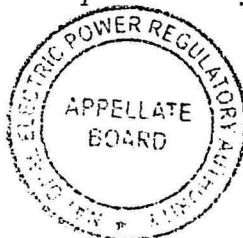
7.5 Section 38 of the NEPRA Act also provides a mechanism for the determination of disputes between the consumers and the distribution licensee. The said provision reads as under:

*"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*



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*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.”*

7.6 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



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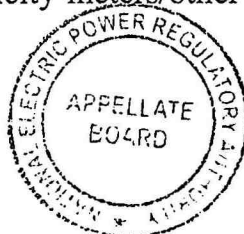
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Electricity Act, 1910 (IX of 1910), exercisable, in addition to their duties under the said Act. Through the Regulation of Generation, Transmission, and Distribution of Electric Power (Amendment) Act, 2011 (XVIII of 2011), subsection (3) to section 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 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.

7.7 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.

7.8 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



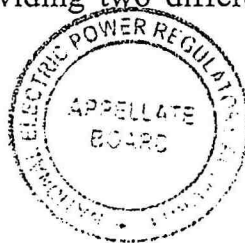
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scope of Section 38 of the NEPRA Act is much wider in comparison. Section 38 of the NEPRA Act empowers the Provincial Office of Inspection not only to enforce compliance with the instructions of the distribution companies regarding metering, billing, 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 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





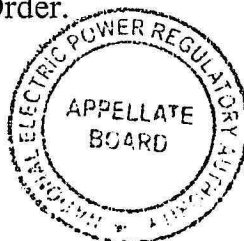
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against the orders of the Electric Inspector and the Provincial Office of Inspection. Both enactments are special laws. In a similar situation, the honorable High Court while rendering judgment in Writ Petition No. 6940 of 2013 titled "S.M. Food Makers 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) 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.

7.9 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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7.10 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.

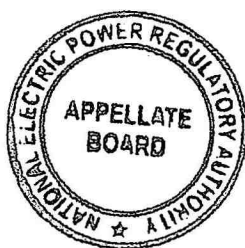
7.11 **Objection regarding prior notice before approaching the POI:**

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.

7.12 **Detection bill of Rs.129,527/- against 5,472 units for six months for the period from May 2018 to October 2018**

In its appeal, the Appellant has claimed that the Respondent was involved in the dishonest abstraction of electricity through tampering with the meter. FIR was also registered against the Respondent due to the theft of electricity. Hence the Appellant may charge the detection bill maximum for six months as per Chapter 9 of the CSM-2010.

7.13 However, the period of detection bill charged to the Respondent is irrelevant as the site inspection was carried out in May 2019, whereas the period of detection bill was debited from May 2018 to October 2018.



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7.14 In view of the foregoing discussion, we hold that charging of the detection bill of Rs.129,527/- against 5,472 units for six months for the period from May 2018 to October 2018 to the Respondent is unjustified and the same is rightly cancelled by the POI.

7.15 According to Clause 9.1c(3) of the CSM-2010, the Appellant may charge the detection bill maximum for six months before the date of discrepancy pointed out and the basis of said detection bill be made on the connected load i.e.5.455 kW being higher. Calculation in this regard is done below as per the formula given in Annex-VIII of the CSM-2010:

Period: March 2019 to May 2019 (3 months)

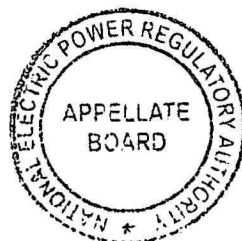
- Total units to be charged = Connected Load x LF x No. of Hrs. x No. of Months  
= 5.455 x 0.2 x 730 x 3 = 2,389 units

7.16 Thus the Respondent is liable to be charged the revised detection bill of 2,389 units for six months for the period from March 2019 to May 2019.

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

8.1 The detection bill of Rs.129,527/- against 5,472 units for six months for the period from May 2018 to October 2018 charged to the Respondent is unjustified and the same is cancelled.

8.2 The Respondent may be charged the revised detection bill of 2,389 units for three months for the period from March 2019 to May 2019.



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8.3 The billing account of the Respondent be overhauled after the adjustment of payment made against the above detection bill.

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

Abid Hussain

Member

Muhammad Irfan-ul-Haq

Member

Naweed Illahi Sheikh

Convener

Dated: 18-10-2023

