



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

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No. NEPRA/Appeal/079/2022/ 454


May 17, 2024

1. Fakhar Gulzar,
S/o. Gulzar Ahmed Qamar,
R/o. House No. 60, Street No. 90,
Shamsabad, Jaddah Road,
Shandara Town, Lahore
Cell No. 0321-4278641
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
Cell No. 0300-4350899
4. Afaq Shaheen,
Advocate High Court,
Anwar Law Company, 2nd Floor,
Sadiq Hassan Plaza, 9-Link Farid Kot Road,
Lahore
Cell No. 0321-4278641
5. Assistant Manager (Operation),
LESCO Ltd,
Shahdara 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 No.079/2022 (LESCO Vs. Fakhar Gulzar) Against the Decision Dated 10.02.2022 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 17.05.2024 (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.079/POI-2022

Lahore Electric Supply Company Limited

.....Appellant

Versus

Fakhar Gulzar S/o. Gulzar Ahmed Qamar,
R/o. House No.60, Street No.90, Shamsabad, Jaddah Road,
Shandara Town, Lahore

.....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

For the Respondent:

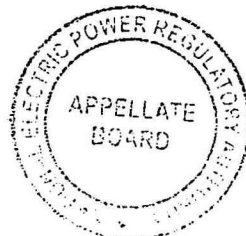
Mr. Afaq Shaheen Advocate

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Fakhar Gulzar (hereinafter referred to as the "Respondent") is a domestic consumer of Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref. No.03-11131-0226003 with sanctioned load of 01 kW and the applicable Tariff category is A-1(a). Reportedly, the billing meter of the Respondent was checked by the Metering and Testing (M&T) team of the Appellant on 08.01.2019 and it was declared tampered (shunt installed) for the dishonest abstraction of electricity, therefore FIR No.61/2019 dated 16.01.2019 was registered against the Respondent due to the theft of electricity. Thereafter, a detection bill of Rs.118,582/- against 5,095 units for six months for the period from July 2018 to December 2018 was charged by the Appellant to the Respondent on the basis of 20% load factor of the connected load 4.78 kW.

2. Being aggrieved, the Respondent filed a complaint dated 24.04.2021 before the Provincial

Appeal No.079/POI-2022



Page 1 of 10

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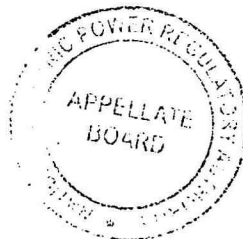
National Electric Power Regulatory Authority

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 10.02.2022, wherein the detection bill of Rs.118,582/- against 5,095 units for six months for the period from July 2018 to December 2018 was cancelled.

3. Subject appeal has been filed against the afore-referred decision dated 10.02.2022 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 (shunt installed) during the M&T checking dated 08.01.2019 for the dishonest abstraction of electricity, therefore FIR No.61/2019 dated 16.01.2019 was registered against the Respondent and a detection bill of Rs.118,582/- against 5,095 units for six months for the period from July 2018 to December 2018 was charged to the Respondent. As per Appellant, the POI misconceived the real facts of the case as the above detection bill was debited to the Respondent on account of dishonest abstraction of energy under Section 26-A of the Electricity Act, 1910, reliance in this regard was placed on the various judgments of the honorable Supreme Court of Pakistan reported in *PLD 2012 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 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 24.06.2022 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were filed on 02.09.2022. In the reply, the Respondent prayed for dismissal of the appeal on the following grounds that the appeal filed before NEPRA is time-barred; that the Appellant did not produce the impugned meter before the POI being material evidence; that the entire proceedings including the unilateral checking are false, fabricated; that the detection amount charged by the Appellant is contrary to the amount mentioned in the FIR; that the impugned detection bill was charged in violation of Chapter 4.3.3c(ii) of the CSM; and



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that the impugned decision is liable to be maintained.

5. Hearing

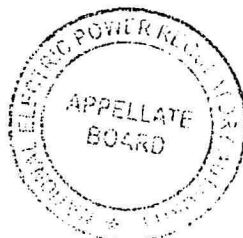
- 5.1 Hearing was fixed for 19.01.2024 at NEPRA Regional Office Lahore, wherein learned counsels appeared for both the Appellant and the Respondent. During the hearing, learned counsel for the Appellant reiterated the same version as contained in memo of the appeal and contended that the billing meter of the Respondent was checked by the M&T team on 08.01.2019, wherein it was declared tampered, therefore FIR No.61/2019 dated 16.01.2019 was lodged against the Respondent and the detection bill amounting to Rs.118,582/- against 5,095 units for six months for the period from July 2018 to December 2018 was debited to the Respondent on the basis of the connected load. As per learned counsel for the Appellant, the POI neither checked the disputed meter nor 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 refuted the allegation of theft of electricity levelled by the Appellant and averred that the Appellant failed to produce the impugned meter before the POI for checking. As per learned counsel for the Respondent, the detection bill of Rs.118,582/- against 5,095 units for six months for the period from July 2018 to December 2018 was debited by the Appellant with malafide intention, which was cancelled by the POI after due consideration of facts and record of the case. Learned counsel for the Appellant finally prayed for dismissal of the appeal being devoid of merits.

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

6.1 Point of limitation raised by the Respondent:

While considering the preliminary objection of limitation raised by the Respondent, it is noted that the Appellant applied for the copy of the impugned decision dated 10.02.2022 on 17.05.2022, which was delivered by the POI on 23.05.2022. The Appellant filed the appeal before the NEPRA on 08.06.2022 which is within thirty (30) days of the receipt of the impugned decision as per Section 38 of the NEPRA Act, 1997. In view of the above, the objection of the Respondent regarding limitation is not valid and, therefore dismissed.

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National Electric Power Regulatory Authority

6.2 Preliminary objection of the Appellant regarding jurisdiction of the POI:

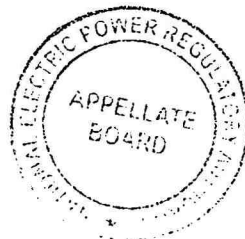
At first, the preliminary objection of the Appellant regarding the jurisdiction of the POI needs to be addressed. In the instant appeal, the learned counsel for the appellant (LESCO) challenged the jurisdiction of the Provincial Office of Inspection to adjudicate the complaint of the Respondent (Consumer) 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.

- 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:



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National Electric Power Regulatory Authority

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

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

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

(i) Enforce compliance with distribution companies' instructions respecting metering, billing, electricity consumption charges and 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

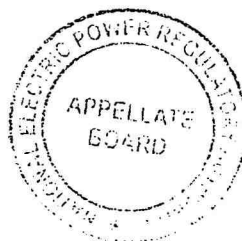
(c) Enforce penalties determined, by the Provincial Government for any such violation.

(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



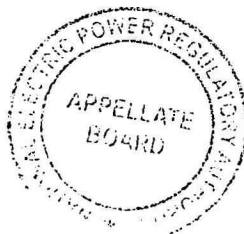
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National Electric Power Regulatory Authority

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 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





National Electric Power Regulatory Authority

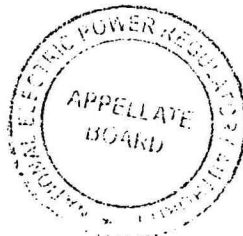
between distribution companies and their consumers will necessarily have to be adjudicated upon by the Provincial Office of Inspection as per the dictate of the NEPRA Act.

- (iv) Prior to the passing of the Eighteenth Amendment in the Constitution, electricity was placed in the concurrent list. With the introduction of the Eighteenth Amendment through the Constitution (Eighteen Amendment) Act, 2010 the concurrent list was abolished, and electricity was placed at Entry 4 of Part II of the Fourth Schedule where after it became exclusively a Federal subject.
- (v) The two enactments i.e. Electricity Act, of 1910 and the NEPRA Act continue to exist side by side providing two different appellate fora to hear appeals against the orders of the Electric Inspector and the Provincial Office of Inspection. Both enactments are special laws. In a similar situation, the honorable High Court while rendering judgment in Writ Petition No. 6940 of 2013 titled "S.M. Food Makers and others v. Sui Northern Gas Pipelines, etc" held as follows:

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

- (vi) The Lahore High Court, in the above circumstances, declared that the decision rendered on a complaint filed before the Electric Inspectors shall be treated to have been given by the Provincial Office of Inspection and that the appeal against the decision of the Electric Inspector / Provincial Office of Inspection after the enactment of subsection (3) of Section 38 of the NEPRA Act shall lie before the Authority as defined in NEPRA Act.
- 6.8. Further, the observations of the Lahore High Court were also endorsed by the honorable Supreme Court of Pakistan vide its Judgement dated 08-03-2022 in Civil Petition 1244 of 2018 titled "LESCO, 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 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

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National Electric Power Regulatory Authority

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 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.

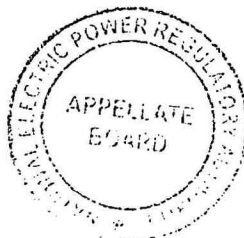
6.11 Detection bill of Rs.118,582/- against 5,095 units for six months for the period from July 2018 to December 2018

In the instant case, the Appellant claimed that M&T on 08.01.2019 detected that the impugned meter was intentionally tampered (shunt installed) and debited a detection bill of Rs.118,582/- against 5,095 units for six months for the period from July 2018 to December 2018 to the Respondent based on 20% load factor of the connected load i.e. 4.78 kW.

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

6.13 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 with the impugned meter of the Respondent.

6.14 To further verify the contention of the Appellant regarding the illegal abstraction of electricity, the consumption data of both connections of the Respondent as provided by the Appellant is examined in the below table:



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National Electric Power Regulatory Authority

Period after dispute		Disputed period	
Month	Units	Month	Units
Jul-20	820	Jul-18	467
Aug-20	697	Aug-18	370
Sep-20	640	Sep-18	314
Oct-20	441	Oct-18	341
Nov-20	233	Nov-18	0
Dec-20	162	Dec-18	0
Average	499	Average	249

Detection units = 1,298 units per month

Perusal of the consumption data of the Respondent reveals that the average consumption of the Respondent during the disputed period is much less than the average consumption of the corresponding period of the year 2020. This indicates that the impugned meter of the Respondent could not record actual consumption during the disputed period due to tampering. However, the above detection bill was charged beyond three billing cycles to the Respondent being a general supply consumer without soliciting approval from the Chief Executive Officer as laid down in Clause 9.1c(3) of the CSM-2010.

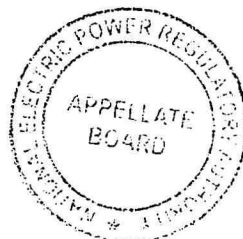
- 6.15 In view of the foregoing discussion, we are of the considered view that the detection bill amounting to Rs.118,582/- against 5,095 units for six months for the period from July 2018 to December 2018 charged by the Appellant to the Respondent on the basis of connected load is unjustified and the same is cancelled, which is also the determination of the POI.
- 6.16 Since the discrepancy of the tampered meter was observed by the Appellant on 08.01.2019, hence it would be fair and appropriate to debit the detection bill for three retrospective billing cycles i.e. October 2018 to December 2018, however, 600 AC units are chargeable only for October 2018. Calculation in this regard is done below:

Period: October 2018 to December 2018

- A. Total units to be charged = Load (kW) x L.F x No. of Hrs. x No. of Months + AC units
= 4.78 x 0.2 x 730 x 3 + 600 = 2,693 units
- B. Total units already charged = 341+0+0 = 341 units
- C. Net chargeable units = A-B = 2,352 units

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

- 7.1 the detection bill of Rs.118,582/- against 5,095 units for six months for the period from July 2018 to December 2018 charged to the Respondent is unjustified and the same is cancelled.



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- 7.2 The Respondent may be charged the revised detection bill for net 2,352 units for three months i.e. October 2018 to December 2018.
- 7.3 The billing account of the Respondent be overhauled, accordingly.
8. Impugned decision is modified in the above terms.

Abid Hussain
Member/Advisor (CAD)

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

Naweed Illahi Sheikh
Convener/DG (CAD)

Dated: 17-05-2024

