



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/084/2022/448

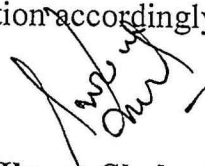
May 13, 2024

1. Faisal Imran,  
S/o. Muhammad Ismail,  
R/o. House No. 03, Street No. 16-A,  
Noorani Abad, Mehmood Booti,  
Lahore  
Cell 0300-4796260
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. Sardar Safdar Hussain Khan,  
Advocate High Court,  
Office No. 13, First Floor,  
Ali Plaza, 3-Mozang Road,  
Lahore
5. Assistant Manager (Operation),  
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 No.084/2022 (LESCO Vs. Faisal Imran) Against the Decision Dated 17.05.2022 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 13.05.2024 (11 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.084/POI-2022

Lahore Electric Supply Company Limited

.....Appellant

Versus

Faisal Imran S/o. Muhammad Ismail, R/o. House No.03, Street No.16-A,  
Noorani Abad, Mehmood Booti, 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  
Mr. Kamran Shaukat XEN

### For the Respondent:

Mr. Faisal Imran Advocate

## DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Faisal Imran (hereinafter referred to as the "Respondent") is a consumer of Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") having the following three connections:

Connection type	Ref No.	Sanctioned Load	Tariff
Industrial	46-11355-2121800-U	4 kW	B-1
Industrial	46-11355-2121801-U	7 kW	B-1
Industrial	46-11355-2121901-U	140 kW	B-2(b)

Reportedly, the Metering and Testing (M&T) team of the Appellant along with FIA checked the metering equipment of all three connections of the Respondent on 10.02.2021, wherein the billing meter of the connection bearing Ref. No.46-11355-2121800 (the "disputed connection") of the Respondent was found tampered for the dishonest





## National Electric Power Regulatory Authority

abstraction of electricity, therefore, FIR No.C-21/2021 dated 02.03.2021 was registered against the Respondent due to the theft of electricity. Thereafter, a detection bill amounting to Rs. 4,400,951/- against 209,452 units for twelve (12) months for the period from February 2020 to January 2021 was charged by the Appellant to the disputed connection of the Respondent on the basis of 40% load factor of the accumulative 85 kW MDI of three connections of the premises as noticed in December 2020 and added to the bill for February 2021.

2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") on 16.03.2021 and challenged the above detection bill. Electricity of the disputed connection was disconnected by the Appellant in April 2021 due to non-payment of the impugned detection bill. The matter was disposed of by the POI vide the decision dated 17.05.2022, wherein the detection bill of Rs. 4,400,951/- was cancelled and the Appellant was allowed to revise the bills for the months i.e. December 2020 and January 2021 as per consumption of corresponding months of the previous year or average consumption of last eleven months, whichever is higher.
3. Subject appeal has been filed against the afore-referred decision dated 17.05.2022 of the POI (hereinafter referred to as the "impugned decision") by the Appellant before NEPRA, wherein it is contended that the billing meter of the disputed connection of the Respondent was found tampered during the M&T checking dated 10.02.2021 for the dishonest abstraction of electricity, therefore FIR No.C-21/2021 dated 02.03.2021 was registered against the Respondent and a detection bill of Rs.4,400,951/- against 209,452 units for twelve (12) months for the period from February 2020 to January 2021 was charged to the disputed connection of 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 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-

M. Q.





## National Electric Power Regulatory Authority

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 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 Appellant deliberately with malafide intention contravened the provisions of the Consumer Service Manual; that the Appellant neither issued prior notice nor he was associated during alleged unilateral checking; that the Appellant charged the excessive bills up-to February 2021 contrary to the reading of the meter printed on the bills; that the Appellant failed to prove the accumulative MDI of 85 kW before the POI; that the FIR could not be considered as material evidence to ascertain the version of the Appellant regarding the theft of electricity; 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; and 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 disputed connection of the Respondent was checked by the M&T team on 10.02.2021, wherein it was declared tampered, therefore FIR No.C-21/2021 dated 02.03.2021 was lodged against the Respondent and the detection bill amounting to Rs. 4,400,951/- against 209,452 units for twelve (12) months for the period from February 2020 to January 2021 was debited to the disputed connection of the Respondent on the basis of the accumulative 85 kW MDI. 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

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## National Electric Power Regulatory Authority

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. 4,400,951/- against 209,452 units for twelve (12) months for the period from February 2020 to January 2021 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 Respondent finally prayed for dismissal of the appeal being devoid of merits.

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

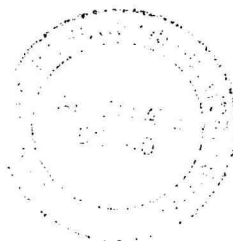
6.1 **Preliminary objection of the Appellant regarding jurisdiction of the POI:**

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 (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*

11.02





## National Electric Power Regulatory Authority

*decline to accept the decision of the Electric Inspector, the matter shall be referred to the Provincial Government whose decision shall be final:*

*Provided that, before either a licensee or a consumer applies to the Electric Inspector under this subsection, he shall give to the other party not less than seven days' notice of his intention so to do."*

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

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

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

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

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

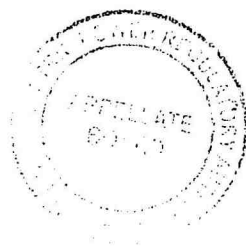
*(b) Establish procedures whereby distribution companies and consumers may bring violations of the instructions in respect of metering, billing and collection of tariff and other connected matters before the office of inspection; and*

*(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) ...*

*M. Sdr*







## National Electric Power Regulatory Authority

*(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 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



11-02



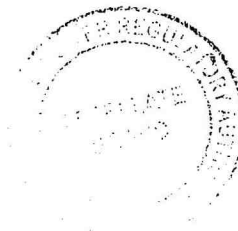
## National Electric Power Regulatory Authority

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 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.







## National Electric Power Regulatory Authority

- 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 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 16.03.2021 under Section 38 of the NEPRA Act. POI pronounced its decision on 17.05.2022 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 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.

6.10 **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.



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62



## National Electric Power Regulatory Authority

**6.11 Detection bill of Rs.4,400,951/- against 209,452 units for twelve (12) months for the period from February 2020 to January 2021**

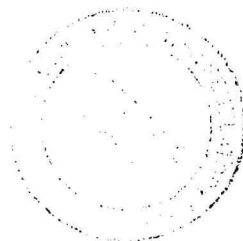
In the instant case, the Appellant claimed that M&T on 10.02.2021 detected that the impugned meter of the disputed connection of the Respondent was intentionally tampered and lodged an FIR dated 02.03.2021 against the Respondent. Thereafter, the Appellant debited a detection bill of Rs.4,400,951/- against 209,452 units for twelve (12) months for the period from February 2020 to January 2021 to the disputed connection of the Respondent based on 40% load factor of the accumulative 85 kW MDI, which was challenged by the Respondent before the POI.

6.12 Having found the above discrepancies, the Appellant was required to follow the procedure stipulated in Clause 9.2 of the CSM-2021 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-2021. From the submissions of the Appellant, it appears that the billing meter of the disputed connection 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.

6.14 It is observed that the Appellant debited the detection bill for twelve months to the disputed connection of the Respondent due to the theft of electricity, which is in contravention of Clause 9.2.3c (iii) of the CSM-2021. Said clause of the CSM-2021 restricts the Appellant to debit the detection bill maximum for six billing cycles. It is further observed that the Appellant assessed the detection bill on the basis of 40% load factor of the accumulative 85 kW MDI recorded by three connections of the Respondent in December 2020, whereas the connection under dispute was sanctioned against 4 kW load only.

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



14. 09



## National Electric Power Regulatory Authority

Period before dispute					Disputed period					Period After dispute				
Month	C-1	C-2	C-3	Total	Month	C-1	C-2	C-3	Total	Month	C-1	C-2	C-3	Total
Feb-19	1338	777	4560	6675	Feb-20	0	920	7040	7960	Feb-21	0	1097	5280	6377
Mar-19	1317	3666	3360	8343	Mar-20	2200	524	4080	6804	Mar-21	0	1221	6800	8021
Apr-19	2914	562	5760	9236	Apr-20	1147	40	1600	2787	Apr-21	0	756	6640	7396
May-19	933	1911	5520	8364	May-20	2530	1160	4400	8090	May-21	0	1193	5520	6713
Jun-19	1641	1763	3600	7004	Jun-20	2008	574	5840	8422	Jun-21	0	3561	7440	11001
Jul-19	2687	666	320	3673	Jul-20	2063	1100	5920	9083	Jul-21	0	1823	6160	7983
Aug-19	726	2267	5840	8833	Aug-20	515	2005	4400	6920	Aug-21	0	230	6080	6310
Sep-19	1346	196	12160	13702	Sep-20	2000	261	7120	9381	Sep-21	0	10	5840	5850
Oct-19	1304	272	4400	5976	Oct-20	2236	1168	2640	6044	Oct-21	0	506	5520	6026
Nov-19	1080	2087	3040	6207	Nov-20	1741	2567	3200	7508	Nov-21	0	255	5960	6215
Dec-19	1508	220	2800	4528	Dec-20	5701	329	3760	9790	Dec-21	0	902	3520	4422
Jan-20	654	570	4320	5544	Jan-21	12	1077	4400	5489	Jan-22	7019	457	3840	11316
Total	17448	14957	55680	88085	Total	22153	11725	54400	88278	Total	7019	12011	68600	87630

**Detection units = 24,820 units per month**

Perusal of the consumption data of the Respondent reveals that the total consumption of three connections of the Respondent during the disputed period is compatible with the total consumption of the corresponding periods of the preceding and succeeding years. Even otherwise, the total consumption of the disputed connection C-1 recorded during the disputed period is much higher than the total consumption of corresponding months of the preceding and succeeding years. It is noticed that the Appellant debited the detection bill @ 24,820 units per month to the disputed connection of the Respondent, which has never been recorded in the billing history of all three connections, which is contrary to Clause 9.2.3(b) of the CSM-2021.

6.16 In view of the foregoing discussion, we are of the considered view that the detection bill amounting to Rs.4,400,951/- against 209,452 units for twelve (12) months for the period from February 2020 to January 2021 charged by the Appellant to the disputed connection of the Respondent on the basis of 40% load factor of the accumulative MDI i.e. 85 kW is unjustified and the same is liable to be cancelled as already determined by the POI.

6.17 The discrepancy in the impugned meter of the disputed connection of the Respondent was observed by the Appellant on 10.02.2021, which is also evident from the consumption of the disputed meter from January 2021 to March 2021. Thus, it would be fair and appropriate to debit the detection bill for January 2021 to March 2021 and the basis of the

11-02





## National Electric Power Regulatory Authority

said detection bill be made as per the sanctioned load i.e. 4 kW. Calculation in this regard is done in the below table:

Period: January 2021 to March 2021

A. Total units to be charged = Load (kW) x LF x No. of Hrs. x No. of Months	
= 4 x 0.4 x 730 x 3	= 3,504 units
B. Total units already charged =	12+0+0 = 12 units
C. Net chargeable units =	A-B = 3,492 units


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


7.1 the detection bill of Rs.4,400,951/- against 209,452 units for twelve (12) months for the period from February 2020 to January 2021 charged to the disputed connection of the Respondent is unjustified and the same is cancelled.


7.2 The disputed connection of the Respondent may be charged the revised detection bill for net 3,492 units for three months i.e. January 2021 to March 2021.

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: 13-05-2024

