



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

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No. NEPRA/Appeal/048/2024/ /*S*7

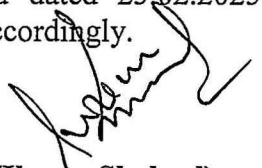
February 25, 2025

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|--|---|
| 1. Zeeshan Ali,
S/o. Muhammad Rafi,
House No. 25, Street No. 3,
Mohallah Purani Abadi, Jia Musa,
Shahdara, 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
Cell No. 0300-4350899 | 4. Assistant Manager (Operation),
LESCO Ltd,
Jia Musa Sub Division,
Lahore |
| 5. POI/Electric Inspector
Lahore Region-I, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore | |

Subject: **Appeal No.048/2024 (LESCO Vs. Zeeshan Ali) Against the Decision Dated 29.03.2024 of the Provincial Office of Inspection to Government of the Punjab Lahore Region-I, Lahore**

Please find enclosed herewith the decision of the Appellate Board dated 25.02.2025 (09 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 of the Appellate Board on the NEPRA website



National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No.048/POI-2024

Lahore Electric Supply Company Limited

.....Appellant

Versus

Zeeshan Ali S/o. Muhammad Rafi,
R/o. House #25, St. No.03, Mohallah Purani Abadi,
Jia Musa, Shahdara, 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:

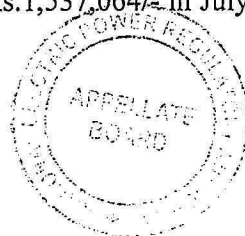
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DECISION

1. Brief facts leading to the filing of instant appeal are that Zeeshan Ali (hereinafter referred to as the "Respondent") is an industrial consumer of Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref. No.24-11132-1529801 with a sanctioned load of 37 kW and the applicable Tariff category is B-2(b). Metering and Testing (M&T) team of the Appellant checked the meter of the Respondent on 15.04.2019 and reportedly, the Respondent was found stealing electricity through tampering with the meter. FIR No.1273/2019 dated 15.04.2019 was registered against the Respondent due to the theft of electricity. Resultantly, a detection bill of 42,730 units for six (06) months for the period from October 2018 to March 2019 was charged by the Appellant to the Respondent based on the connected load and added to the bill for April 2019 against which the Respondent approached the Civil Court. An amount of Rs.690,910/- was deferred in compliance with the orders of the Civil Court. Subsequently, the Respondent received a bill of Rs.1,537,064/- in July 2022, which contained a current

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At



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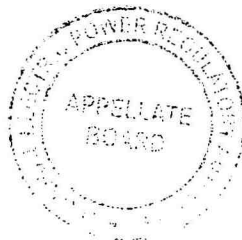
bill of Rs.877,293.78/- +arrears of Rs.691,630.46/- + Rs.31,860.23/-.

2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") on 23.08.2022 and challenged the above bill. The matter was disposed of by the POI vide the decision dated 29.03.2024, wherein the bill of Rs.1,537,064/- charged in July 2022 was cancelled and the Appellant was directed to revise the bill for two months i.e.4387 units+60 kW MDI and 5945 units+60 kW MDI to be charged in February 2019 and March 2019, respectively.
3. Subject appeal has been filed against the afore-referred decision dated 29.03.2024 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 15.04.2019 for the dishonest abstraction of electricity, therefore FIR No.1273/2019 dated 15.04.2019 was registered against the Respondent and a detection bill of 42,730 units for six (06) months for the period from October 2018 to March 2019 was charged to the Respondent. As per the Appellant, the POI misconceived the real facts of the case as the above detection bill was debited to the Respondent on account of dishonest abstraction of energy under Section 26-A of the Electricity Act, 1910, reliance in this regard was placed on the various judgments of the honorable Supreme Court of Pakistan reported in *PLD 2012 SC 371*, *PLD 2006 SC 328* and *2004 SCMR 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 appreciate that the bill of Rs.1,537,064/- was charged in July 2022, which contained the current bill of Rs.877,293.78/- +arrears of Rs.691,630.46/- deferred in October 2019. 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 27.06.2024 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were not filed.

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5. A hearing was fixed for 01.11.2024 at NEPRA Regional Office Lahore, wherein learned counsel appeared for the Appellant and no one entered appearance for 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 15.04.2019, wherein it was declared tampered, therefore FIR No.1273/2019 dated 15.04.2019 was lodged against the Respondent and the detection bill amounting to Rs.811,293/- against 42,730 units for the period from October 2018 to March 2019 was debited to the Respondent in April 2019. 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. According to the learned counsel for the Appellant, the POI vide impugned decision cancelled the total bill of Rs.1,537,064/- charged in July 2022 instead of the decision with regard to the impugned detection bill, which is beyond the prayer of the Respondent and the same is liable to be set aside. 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.

6. Arguments were heard and the record was 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





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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 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."

- 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





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

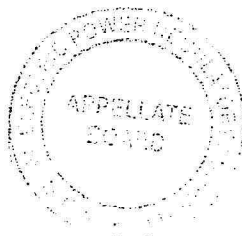
(2) The Provincial Governments may, upon request by the Authority, submit to the Authority—

(a) (b) ...

(3) Any person aggrieved by any decision or order of the Provincial Office of Inspection may, within thirty days of the receipt of the order, prefer an appeal to the Authority in the prescribed manner and the Authority shall decide such appeal within sixty days.”

6.5. Here question arises whether disputes related to Section 26(6) of the Electricity Act, 1910 can be heard and decided by the POI, and thereafter appeal lies before the Advisory Board or NEPRA. Both enactments are special laws and provide a mechanism for the determination of disputes between consumers and licensees. Under section 38(1)(a)(ii) of the NEPRA Act, the Provincial Office of Inspection (POI) is empowered to make the determination in respect of disputes over metering, billing, and collection of tariff and such powers are conferred on the Electric Inspectors appointed by the Provincial Government under section 36 of the Electricity Act, 1910 (IX of 1910), exercisable, in addition to their duties under the said Act. Through the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2011 (XVIII of 2011), subsection (3) to section 38 of the NEPRA Act was inserted on 29.09.2011 whereby an appeal before NEPRA against the decision of POI regarding metering, billing, and collection of the tariff was provided. It is observed that the Provincial Office of Inspection is no different person 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.



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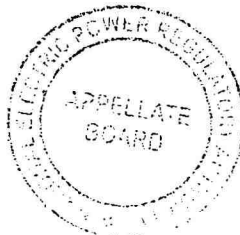
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6.7. The honorable Lahore High Court in its reported Judgement *2018 PLD 399* decided that an appeal against the decision of the Provincial Office of Inspection (POI)/Electric Inspector lies with the Authority. Salient points of the judgment are as under:

- (i) Section 26(6) of the Electricity Act, 1910 the ambit and scope of dispute is confined only to the electricity meters/other measuring apparatuses while the scope of Section 38 of the NEPRA Act is much wider in comparison. Section 38 of the NEPRA Act empowers the Provincial Office of Inspection not only to enforce compliance with the instructions of the distribution companies regarding metering, billing, electricity consumption charges, and decisions in cases of theft of energy but also requires it to make determinations in respect of disputes over metering, billing, and collection of tariff.
- (ii) The reading of the NEPRA Act quite clearly demonstrates that the dispute resolution mechanism provided in the Electricity Act, 1910 has now been replaced by the NEPRA Act, which law is later and is also much wider in its scope as it encompasses disputes over metering, billing, and collection of tariff.
- (iii) Electricity being the Federal subject exclusively, any dispute in regard thereto between distribution companies and their consumers will necessarily have to be adjudicated upon by the Provincial Office of Inspection as per the dictate of the NEPRA Act.
- (iv) Prior to the passing of the Eighteenth Amendment in the Constitution, electricity was placed in the concurrent list. With the introduction of the Eighteenth Amendment through the Constitution (Eighteen Amendment) Act, 2010 the concurrent list was abolished, and electricity was placed at Entry 4 of Part II of the Fourth Schedule where after it became exclusively a Federal subject.
- (v) The two enactments i.e. Electricity Act, of 1910 and the NEPRA Act continue to exist side by side providing two different appellate fora to hear appeals against the orders of the Electric Inspector and the Provincial Office of Inspection. Both enactments are special laws. In a similar situation, the honorable High Court while rendering judgment in Writ Petition No. 6940 of 2013 titled "S.M. Food Makers and others v. Sui Northern Gas Pipelines, etc" held as follows:

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

- (vi) Lahore High Court, in the above circumstances, declared that the decision rendered





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on a complaint filed before the Electric Inspectors shall be treated to have been given by the Provincial Office of Inspection and that the appeal against the decision of the Electric Inspector / Provincial Office of Inspection after the enactment of subsection (3) of Section 38 of the NEPRA Act shall lie before the Authority as defined in NEPRA Act.

- 6.8. Further, the observations of the Lahore High Court were also endorsed by the honorable Supreme Court of Pakistan vide its Judgement dated 08-03-2022 in Civil Petition 1244 of 2018 titled "GEPCO etc. v/s PTV & another" whereby it was held that a comparative reading of section 10 of Punjab (Establishment and Powers of Office of Inspection) Order, 2005 as well as section 38(3) of the NEPRA Act makes it abundantly clear that provisions of section 10 of the 2005 Order and section 38(3) are clearly in conflict. In view of the fact that the Ordinance is a Federal statute and admittedly the subject of electricity falls within the Federal Legislative List, it would prevail over the 2005 Order.
- 6.9. In view of the above-quoted provisions of laws and Judgments, we are of the considered view that the disputes under section 26(6) of the Electricity Act and 38(1)(a)(ii) are to be adjudicated by the Provincial Office of Inspection and NEPRA is the competent forum to decide the appeals. In view of the foregoing, the objection of the Appellant is dismissed.
- 6.10. **Objection regarding 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 42,730 units for six (06) months for the period from October 2018 to March 2019**

In the instant case, the Appellant claimed that M&T on 15.04.2019 detected that the impugned meter of the Respondent was intentionally tampered and lodged an FIR against the Respondent. Thereafter, the Appellant debited a detection bill of Rs.811,293/- for 42,730 units for six (06) months for the period from October 2018 to March 2019 to the Respondent, which was challenged by the Respondent before the POI.





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- 6.12. Having found the above discrepancies, the Appellant was required to follow the procedure stipulated in Clause 9.1(b) of the CSM-2010 to confirm the illegal abstraction of electricity by the Respondent and thereafter charge the Respondent accordingly. However, in the instant case, the Appellant has not followed the procedure as stipulated under the ibid clause of the CSM-2010. From the submissions of the Appellant, it appears that the billing meter of the Respondent was checked and removed by the Appellant in the absence of the Respondent.
- 6.13. 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. To further check the contention of the Appellant regarding charging the impugned detection bill, consumption data is analyzed in the below table:

Period before dispute		Period before dispute		Disputed period	
Month	Units	Month	Units	Month	Units
Oct-17	11645	Oct-18	11	Oct-19	0
Nov-17	7514	Nov-18	624	Nov-19	21416
Dec-17	10861	Dec-18	3128	Dec-19	0
Jan-18	10853	Jan-19	6247	Jan-20	14394
Feb-18	7057	Feb-19	4387	Feb-20	4168
Mar-18	14213	Mar-19	5945	Mar-20	5105
Average	10357	Average	3390	Average	7514
Detection bill charged @ 10,512 units/month					

The above table shows that the normal average consumption charged during the disputed period is much less than the normal average consumption charged during the periods before and after the dispute. This indicates that the actual consumption was not recorded by the meter due to tampering with the meter but this does not tantamount the Appellant to debit the detection bill @ 10,512 units/month, which has never been recorded during the period before and after the dispute.

- 6.15. In view of the foregoing discussion, we are of the considered view that the detection bill of 42,730 units for six (06) months for the period from October 2018 to March 2019 charged by the Appellant to the Respondent is unjustified and the same is liable to be cancelled as already determined by the POI.



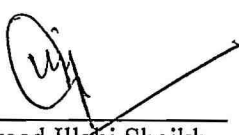



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- 6.16. The discrepancy in the impugned meter of the Respondent was observed by the Appellant on 15.04.2019 and theft of electricity through tampering with the meter is confirmed through analysis of consumption data. The Respondent even did not join the proceedings before this forum to defend the case of theft of electricity. Under these circumstances, it would be fair and appropriate to debit the detection bill @ 10,357 units/month for six months retrospectively i.e. October 2018 to March 2019 to the Respondent as recorded during the corresponding period of the preceding year. The impugned decision is liable to be modified to this extent.
- 6.17. Moreover, the impugned decision of POI for cancellation of the current bill of Rs.877,293.78/- for July 2022 is unjustified, beyond the prayer of the Respondent, contrary to the facts of the case and the same is liable to be withdrawn to this extent.
7. In view of what has been stated above, it is concluded that:
- 7.1 The detection bill of 42,730 units for six (06) months for the period from October 2018 to March 2019 is unjustified and cancelled.
- 7.2 The Appellant may charge the revised detection bill @ 10,357 units/month for six months retrospectively i.e. October 2018 to March 2019 to the Respondent as recorded during the corresponding period of the preceding year.
- 7.3. Similarly, the impugned decision for cancellation of the current bill of Rs.877,293.78/- for July 2022 is unjustified, beyond the prayer of the Respondent, contrary to the facts of the case, and the same is withdrawn to this extent.
- 7.4. The billing account of the Respondent may be overhauled, accordingly.
8. The impugned decision is modified in the above terms.

On leave
Abid Hussain
Member/Advisor (CAD)

Dated: 25-02-2025


Naveed Illahi Sheikh
Convener/DG (CAD)


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

