



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

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No. NEPRA/Appeal/006/POI/2020/001

January 03, 2023

- | | |
|---|--|
| 1. Nadeem Ahmed Chadhar,
S/o. Muhammad Bashir,
Chadhar Street, Madharianwala Road,
Madina Colony, Lahore | 2. Chief Executive Officer,
GEPCO Ltd,
565-A, Model Town,
G. T. Road, Gujranwala |
| 3. Mashkoor Haider Kazmi,
Advocate High Court,
Juris Mension, Second Floor,
Opposite Family Hospital,
4-Mozang Road, Lahore | 4. Muhammad Asadullah Bhoon,
Advocate High Court,
Office: 15-G, Gulberg II,
Lahore |
| 5. Sub Divisional Officer,
GEPCO Ltd,
Vanike Tarar Sub Division,
Vanike Tarar, District Hafizabad | 6. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala |

Subject: **Appeal Titled GEPCO Vs. Nadeem Ahmed Chadhar Against the Decision Dated 28.03.2019 of the Provincial Office of Inspection to Government of the Punjab Gujranwala Region, Gujranwala**

Please find enclosed herewith the decision of the Appellate Board dated 03.01.2023, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Ikram Shakeel)
Deputy Director (M&E)/
Appellate Board

Forwarded for information please.

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



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.006/POI-2020

Gujranwala Electric Power Company Limited

.....Appellant

Versus

Nadeem Ahmed Chadhar S/o Muhammad Bashir,
Chadhar Street, Madharianwala Road, Hafizabad

.....Respondent

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

For the Appellant:

Mr. Mashkoor Haider Kazmi Advocate

Mr. Zulfiqar Ali Bhatti

For the Respondent:

Nemo

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Nadeem Ahmed (hereinafter referred to as the "Respondent") is an agricultural consumer of the Gujranwala Electric Power Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.22-122542139301 with sanctioned load of 04 kW and the applicable Tariff category is D-2. The billing meter of the Respondent was checked by the Metering and Testing (M&T) team of the Appellant on 13.07.2015 and reportedly, it was declared as tampered (loop installed in the meter) for the





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dishonest abstraction of electricity. A notice dated 13.07.2015 was served to the Respondent regarding the above discrepancy and the impugned meter of the Respondent was replaced with a new meter by the Appellant vide Meter Change Order (MCO) dated 16.07.2015. Thereafter, a detection bill of Rs.163,899/- against 12,422 units for six (06) months for the period from January 2015 to June 2015 was charged by the Appellant to the Respondent on the basis of connected load and added to the bill for September 2015

2. Being aggrieved, the Respondent initially challenged the above detection bill before the Civil Court and made a partial payment of Rs. 27,607/- against the above detection bill according to the direction of the Civil Court. Subsequently, the Civil Court directed the Respondent to approach the Provincial Office of Inspection, Gujranwala Region, Gujranwala (hereinafter referred to as the "POI") for the redressal of the grievance. Accordingly, the Respondent filed an application before the POI on 22.01.2018 and challenged the detection bill of Rs.163,899/-. The matter was disposed of by the POI vide the decision dated 28.03.2019, wherein the detection bill of Rs.163,899/- against 12,422 units for six (06) months for the period from January 2015 to June 2015 was cancelled. The Appellant was directed to overhaul the billing account of the Respondent and for adjustment of payments made against the above detection bill.
3. Subject appeal has been filed against the afore-referred decision dated 28.03.2019 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



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was found tampered during the M&T checking dated 13.07.2015 for the dishonest abstraction of electricity. The Appellant further contended that notice dated 13.07.2015 thereof was served to the Respondent and a detection bill of Rs.163,899/- against 12,422 units for six (06) months for the period from January 2015 to June 2015 was charged to the Respondent. As per the Appellant, the Respondent admitted theft of electricity through the submission of an undertaking and agreed to pay the above detection bill. According to the Respondent, the POI neither consider the consumption data nor perused the discrepancy of tampering with the meter and rendered the impugned decision based on surmises and conjectures. The Appellant submitted that the POI did not consider 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. The Appellant further submitted that no notice as required under Section 26(6) of the Electricity Act, 1910 has ever been served by the Respondent before approaching the POI. The Appellant contended that the decline in consumption data confirms theft of electricity during the disputed period, hence the above detection bill charged to the Respondent is justified and payable. The Appellant further contended that the POI failed to decide the matter within ninety (90) days as envisaged in Section (6) of the Electricity Act 1910, as such the impugned decision is without jurisdiction and liable to be set aside.

4. Proceedings by the Appellate Board



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Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were filed on 30.06.2020. In the reply, the Respondent denied the allegation of theft of electricity levelled by the Appellant and stated that neither prior notice was issued nor the proceedings i.e. M&T checking were carried out in his presence. The Respondent rebutted the version of the Appellant regarding the submission of the undertaking and submitted that the detection bill of Rs.163,899/- against 12,422 units for six (06) months for the period from January 2015 to June 2015 was charged by the Appellant with ulterior motives and malafide intentions. As per Respondent, the POI has followed the due process of law and passed the well-reasoned order based on facts and figures. The Respondent finally prayed for the dismissal of the appeal being filed after 30 days.

5. Hearing

- 5.1 Hearing in the matter of the subject Appeal was initially fixed for 31.12.2021 at Lahore and accordingly, the notices dated 24.12.2021 were sent to the parties (i.e. the Appellant and the Respondent) to attend the hearing. As per schedule, the hearing of the appeal was conducted at the NEPRA Regional Office Lahore on 31.12.2021 in which learned counsel for the Appellant was present but there was no representation for the Respondent. In order to provide an opportunity for hearing to both parties, the case was adjourned till the next date.
- 5.2 The hearing in the subject matter was again fixed for 10.03.2022 at NEPRA Regional Office Lahore and accordingly, the notices dated 03.03.2022 were sent to



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the parties (i.e. the Appellant and the Respondents) to attend the hearing. On the given date of the hearing, Mr. M. Asadullah learned counsel submitted power of Attorney on behalf of the Respondent and requested for the adjournment, which was allowed till the next date.

5.3 After issuing notices dated 08.06.2022, hearing of the appeal was conducted at NEPRA Regional Office Lahore on 17.06.2022 but no one appeared for both the Appellant and the Respondent. In view of the above, the hearing of the appeal was adjourned till the next date.

5.4 After issuing notices dated 15.08.2022 to both parties, hearing of the appeal was conducted at NEPRA Regional Office Lahore on 23.08.2022, which was attended by the counsel for the Appellant and no one represented the Respondent. In order to provide an opportunity of hearing to both parties, the case was adjourned till the next date.

5.5 Notices dated 21.09.2022 were issued to both parties and hearing of the appeal was conducted on 29.09.2022 again no one appeared for both the Appellant and the Respondent. In view of the above, the hearing of the appeal was adjourned till the next date.

5.6 Lastly, the hearing of the subject appeal was fixed for 25.11.2022 at Lahore for which notices dated 16.11.2022 were issued to both parties. On the given date of the hearing, learned counsel was present on behalf of the Appellant and no one appeared 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



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the billing meter of the Respondent was checked by the M&T team of the Appellant on 13.07.2015, wherein it was declared tampered (loop installed inside the meter) and the connected load was noticed as 14.7 kW being higher than the sanctioned load i.e. 4 kW. Learned counsel for the Appellant stated that notice dated 13.07.2015 was served to the Respondent, which remained unanswered, therefore the detection bill of Rs.163,899/- against 12,422 units for six (06) months for the period from January 2015 to June 2015 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 verified the consumption data of the Respondent 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.

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

6.1 Limitation for filing Appeal:

As per sub-section (3) of Section 38 of the NEPRA Act 1997, any person aggrieved by the decision of the POI may, preferred an appeal to NEPRA within thirty days of receipt of 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





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days in case of submission of appeal through courier is given in the Appeal Procedure Regulations. The Appellant produced a copy of the impugned decision dated 28.03.2019 received from the office of POI on 31.10.2019. Counting 30 days from the date of said receiving, the appeal filed on 02.12.2019 before the NEPRA is within the time limit as prescribed in the above-referred Regulation of Appeal Procedure Regulations. Hence the objection of the Respondent in this regard has no force and is rejected.

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 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.

6.3 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:



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“(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:

“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.”



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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 decision of cases of theft of energy; and

(ii) make determination in respect of disputes over metering, billing and collection of tariff and such powers may be conferred on the Electric Inspectors appointed by the Provincial Government under section 36 of the Electricity Act, 1910 (Act IX of 1910), exercisable, in addition to their duties under the said Act.

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

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

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

(a)

(b) ...

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

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 Advisory Board or NEPRA. Both enactments are special laws and provide a mechanism for the determination of disputes between consumers and licensees.



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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, in section 45 of the Act, it is also provided that provisions of the Act, rules and regulations made and licenses issued thereunder shall have effect notwithstanding anything to the contrary contained in any other law, rule or regulation, for the time being in force and any such law, rule or regulation shall, to the extent of any inconsistency, cease to have any effect from the date of the Act, be exclusively empowered to determine rates, charges and other terms and conditions for electric power services. In the perspective of aforesaid legal position, the provisions of Electricity Act, 1910 to the extent of metering, billing, etc. are superseded by the "instructions of distribution companies" as referred in section 38 of the Act, therefore, any dispute provided in section 24 and 26 of the Electricity Act, 1910





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should have been dealt with by the POI under section 38 of the Act and not by Electric Inspector.

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



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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, this Court while rendering judgment in Writ Petition No. 6940 of 2013 titled "S.M. Food Makers and others v. Sui Northern Gas Pipelines, etc" held as follows:

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

- (vi) The Lahore High Court, in the above circumstances, declared that the decision rendered on a complaint filed before the Electric Inspectors shall be treated to have been given by the Provincial Office of Inspection and that the appeal against the decision of the Electric Inspector /



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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 the 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:**

As per the record, the Respondent filed his complaint before the POI on 22.01.2018 under Section 38 of the NEPRA Act. POI pronounced its decision on 28.03.2019 i.e. after 429 days of receipt of the complaint. The Appellant has objected that the



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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 Respondent is rejected.

6.11 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.

6.12 In its appeal, the Appellant has claimed that the Respondent was involved in the dishonest abstraction of electricity through tampering with the meter. Clause 9.1(b) specifies the indications of illegal abstraction, while Clause 9.1(c) of the CSM-2010



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lays down the procedure to confirm the same and charging the consumer on this account stating *inter alia* as below:

9.1(c): Procedure for establishing illegal abstraction shall be as under:

1) "Upon knowledge of any of the items in 9.1(b), the concerned office of the DISCO will act as follows:

(i) Secure the meter without removing it in the presence of the owner /occupier or his Authorized representative/respectable person of the locality.

(ii) Install a check meter and declare it as billing meter

(iii) Shall constitute a raiding team including Magistrate, Local representative(s) of the area (Councilor/Police officer), Officer of the DISCO (in case of residential/commercial consumers, not below the rank of SDO and in case of other consumers not below the rank of XEN) and an officer of the metering and testing division of the DISCO (who should be an Electrical Engineer) inspect the meter secured at site and declare that illegal abstraction of electricity has, and/or is being carried out. However, for industrial consumers (B-2 and above), a representative of the POI/Electric Inspector is mandatory.

6.13 In the instant case, the Appellant claimed that M&T on 13.07.2015 detected the discrepancy of the tampered meter. 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.

6.14 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.



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6.15 As per the impugned decision, the Appellant failed to produce the disputed meter before the POI for confirmation of the alleged tampering in the disputed meter. Under these circumstances, consumption data can be analyzed to verify the contention of the Appellant regarding the theft of electricity in the below table:

Disputed period		Period after dispute	
Month	Units	Month	Units
Jan-15	359	Jan-16	250
Feb-15	226	Feb-16	3065
Mar-15	70	Mar-16	1306
Apr-15	2686	Apr-16	1486
May-15	542	May-16	2473
Jun-15	2500	Jun-16	3241
Total	6,383	Total	11,821
Detection bill of 18,805 units			

Examination of the consumption data reveals that the detection bill of 18,805 units charged for the disputed period from January 2015 to June 2015 is much higher than the undisputed consumption of corresponding months of the year 2016. The Appellant did not provide clarity in the detection proforma that on what basis 18,805 units were assessed for recovery from the Respondent. The Appellant though claimed that the 14.7 kW MDI was recorded but could not produce any document that the efforts were done by the Appellant to regularize the alleged extended load of the Respondent. In view of the foregoing discussion, we are of the opinion that the detection bill of Rs.163,899/- against 12,422 units for six (06) months for the period from January 2015 to June 2015 charged to the Respondent is unjustified and the same is cancelled.



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6.16 As evident from the above table, actual consumption was not recorded by the impugned meter during the disputed period January 2015 to June 2015 viz-a-viz comparison with the consumption of the corresponding months of the succeeding year 2016, which supports the version of the Appellant for recovery of unclaimed energy. Hence, it would be judicious to revise the billing of the Respondent for the period January 2015 to June 2015 as per healthy consumption recorded by the new meter during the period January 2016 to June 2016. The impugned decision is liable to be modified to this extent.

7. Summing up the foregoing discussion, it is concluded that:

7.1 the detection bill of Rs.163,899/- against 12,422 units for six (06) months for the period from January 2015 to June 2015 is cancelled.

7.2 The Appellant may charge the revised bills for the period January 2015 to June 2015 as per consumption of January 2016 to June 2016.

7.3 The billing account of the Respondent may be overhauled after adjustment of the payments made against the above detection bill.

8. The Appeal is disposed of in the above terms.

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 03-01-2023

