



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

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No. NEPRA/Appeal/098/POI/2020/ 026

January 11, 2023

- | | |
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| 1. Shabbir Hussain Cheema,
S/o. Ghulam Rasool Cheema,
R/o. Kambanwala, Tehsil Daska,
District Sialkot | 2. Chief Executive Officer,
GEPCO Ltd,
565-A, Model Town,
G. T. Road, Gujranwala |
| 3. Saeed Ahmed Bhatti,
Advocate High Court,
66-Khyber Block, Allama Iqbal Town,
Lahore | 4. Muhammad Azam Khokhar,
Advocate High Court,
10-Fatima Jinnah Chambers,
Session Courts, Gujranwala |
| 5. Sub Divisional Officer,
GEPCO Ltd,
Sub Division No. 02,
Daska, District Sialkot | 6. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala |

Subject: **Appeal Titled GEPCO Vs. Shabbir Hussain Cheema Against the Decision Dated 26.02.2020 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 09.01.2023, 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.098/POI-2020

Gujranwala Electric Power Company Limited

.....Appellant

Versus

Shabir Hussain Cheema S/o Ghulam Rasool Cheema,
R/o Kambawala, Tehsil District Gujranwala

.....Respondent

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

For the Appellant:

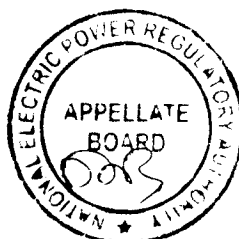
Mr. Saeed Ahmed Bhatti Advocate
Mr. Muzaffar Ahmed XEN

For the Respondent:

Mr. Muhammad Azam Khokhar Advocate

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Shabir Hussain (hereinafter referred to as the “Respondent”) is a residential consumer of the Gujranwala Electric Power Company Limited (hereinafter referred to as the “Appellant”) bearing Ref No.20-1222-1166200-U with sanctioned load of 1 kW and the applicable Tariff category is A-1(a). The billing meter of the Respondent was checked by the Metering and Testing (M&T) team of the Appellant on 13.12.2018 and

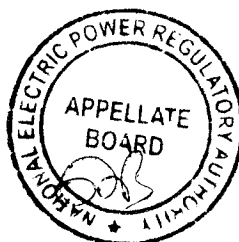




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it was declared tampered (display washed intentionally) for the dishonest abstraction of electricity vide report dated 14.12.2018. A notice dated 14.12.2018 was served to the Respondent regarding the above discrepancy and FIR No.431/2018 dated 15.12.2018 was registered against the Respondent due to the theft of electricity. Thereafter, a detection bill of Rs.124,019/- for the cost of 5,121 units for six (06) months for the period from June 2018 to November 2018 was charged by the Appellant to the Respondent on the basis of connected load and added to the bill for January 2019.

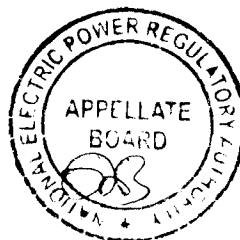
2. Being aggrieved, the Respondent approached Provincial Office of Inspection, Gujranwala Region, Gujranwala (hereinafter referred to as the "POI") vide an application on 25.02.2019 and challenged the above detection bill. The matter was disposed of by the POI vide the decision dated 26.02.2020, wherein the detection bill of Rs.124,019/- for the cost of 5,121 units for six (06) months for the period from June 2018 to November 2018 was cancelled. As per the decision of POI, the Appellant was directed to charge the revised bills @ 333 units per month for the period June 2018 to November 2018 based on the consumption of corresponding months of the year 2017. The Appellant was further 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 26.02.2020 of the POI (hereinafter referred to as the "impugned decision") by the Appellant before





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the NEPRA, wherein it is contended that the billing meter of the Respondent was found tampered (display of the meter intentionally damaged) during the M&T checking dated 13.12.2018 for the dishonest abstraction of electricity. The Appellant further contended that notice dated 14.12.2018 thereof was served to the Respondent and a detection bill of Rs.124,019/- for the cost of 5,121 units for six (06) months for the period from June 2018 to November 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 impugned decision is ex facie, coram non-judice, ab initio void and without jurisdiction as the POI failed to decide the matter within ninety (90) days as envisaged in Section (6) of the Electricity Act, 1910. The Appellant submitted that the POI failed to consider the consumption data and erred in holding that the Respondent was not involved in the dishonest abstraction of electricity and revised the bills for the period from June 2018 to November 2018 as per the average consumption of corresponding months of the year 2017. 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





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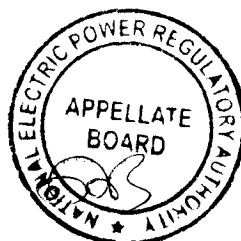
the same. The Appellant prayed that the impugned decision is not sustainable in law and the same is liable to be set aside.

4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 22.10.2020 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which however were not filed.

5. Hearing

- 5.1 Hearing in the matter of the subject Appeal was initially fixed for 17.06.2022 at Lahore and accordingly, the notices dated 08.06.2022 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 17.06.2022 in which the Appellants were present but there was no representation for the Respondent. In order to provide an opportunity for hearing, the case was adjourned till the next date.
- 5.2 The hearing in the subject matter was again fixed for 23.08.2022 at NEPRA Regional Office Lahore and accordingly, the notices dated 15.08.2022 were sent to the parties (i.e. the Appellant and the Respondents) to attend the hearing. On the given date of the hearing, Mr. Azam Khokhar learned counsel submitted power of Attorney on behalf of the Respondent, whereas learned counsel for the Appellant requested for the adjournment of the case due to severe illness, which was allowed till the next date.

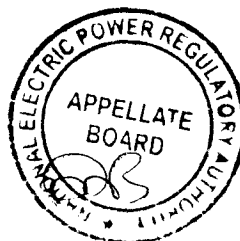




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5.3 Lastly, the hearing of the subject appeal was fixed for 29.09.2022 at Lahore for which notices dated 21.09.2022 were issued to both parties. On the given date of the hearing, learned counsels were present on behalf of the Appellant and Respondent. 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 removed by the Appellant and got checked in M&T laboratory on 13.12.2018, wherein it was declared tampered (display intentionally washed) vide report dated 14.12.2018. Learned counsel for the Appellant stated that notice dated 14.12.2018 was served to the Respondent, which remained unanswered, therefore the detection bill of Rs.124,019/- for the cost of 5,121 units for six (06) months for the period from June 2018 to November 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 verified the consumption data of the Respondent and revised the bills @ 333 units per month for June 2018 to November 2018. 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.

5.4 Learned counsel for the Respondent refuted the allegation of illegal abstraction of electricity levelled by the learned counsel for the Appellant, opposed the charging of the impugned detection bill and argued that the Appellant is responsible to secure the impugned meter and install a check meter to confirm the alleged tampering in the



impugned meter. He submitted that the above detection bill is liable to be withdrawn being unjustified as already declared by the POI and prayed for the maintainability of the impugned decision.

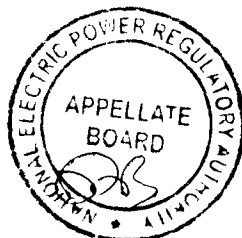
6. Arguments heard and the record perused. Following are our observations:

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 (GEPCO) 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



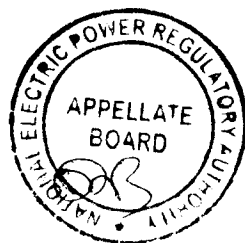
of ninety days from the date of receipt of such application, after affording the parties an opportunity of being heard, and where the meter, maximum demand indicator or other measuring apparatus has, in the opinion of an Electric Inspector, ceased to be correct, the Electric Inspector shall estimate 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 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:





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“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.

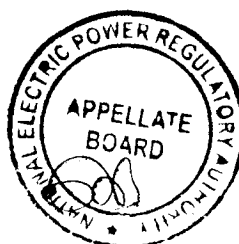
(2) The Provincial Governments may, upon request by the Authority, submit to the Authority—

(a)

(b) ...

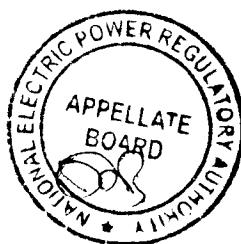
(3) Any person aggrieved by any decision or order of the Provincial Office of Inspection may, within thirty days of the receipt of the order, prefer an appeal to the Authority in the prescribed manner and the Authority shall decide such appeal within sixty days.”

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. 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.

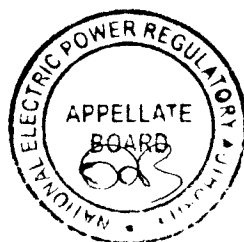
- 6.6. Further Section 45 of the NEPRA Act enumerated the relationship of the NEPRA Act with other laws and provides that the provisions of the Act, Rules and Regulations made and licenses issued thereunder shall have the effect notwithstanding anything to the contrary contained and any other law. Rule and Regulation for the time being in force and any such law Rules or Regulations shall to the extent of any inconsistency, cease to have effect from the date this Act comes into force.
- 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:





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- (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





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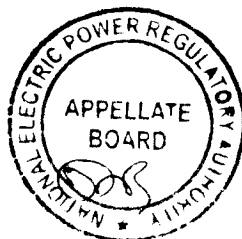
the Fourth Schedule where after it became exclusively a Federal subject.

- (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 "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





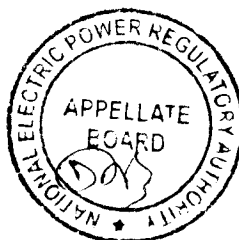
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provisions of section 10 of the 2005 Order and section 38(3) are clearly in conflict. In view of the fact that the Ordinance is a Federal statute and admittedly the subject of electricity falls within the Federal Legislative List, it would clearly 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 25.02.2019 under Section 38 of the NEPRA Act. POI pronounced its decision on 26.02.2020 i.e. after 366 days 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





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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.

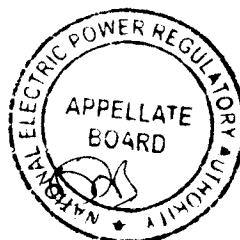
6.12 In its appeal, the Appellant has claimed that the Respondent was involved in the dishonest abstraction of electricity through tampering with the meter. Clause 9.1(b) specifies the indications of illegal abstraction, while Clause 9.1(c) of the CSM-2010 lays down the procedure to confirm the same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





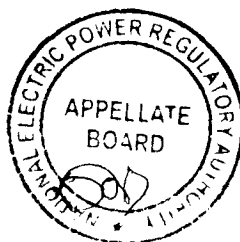
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(iii) Shall constitute a raiding team including Magistrate, Local representative(s) of the area (Councilor/Police officer), Officer of the DISCO (in case of residential/commercial consumers, not below the rank of SDO and in case of other consumers 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 14.12.2018 detected that the display of the impugned meter was intentionally damaged. 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.

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. The Appellant could not produce any documentary evidence before us confirming its claim about meter tampering of the Respondent. This whole scenario manifests that the claim of the Appellant regarding the illegal abstraction of electricity by the Respondent through tampering with the meter is unjustified as neither the Appellant adhered to the





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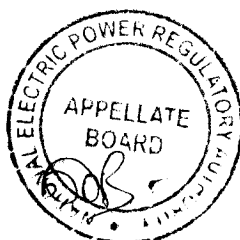
procedure to confirm the illegal abstraction of electricity as envisaged in Chapter 9 of the CSM-2010 nor could produce substantial documentary evidence before us to prove the illegal abstraction through tampering the meter.

6.16 Notwithstanding the above observations, to verify the contention of the Appellant regarding the theft of electricity through tampering with the meter, the consumption data of the Respondent is analyzed in the below table:

Undisputed		Disputed	
Month	Units	Month	Units
Jun-17	703	Jun-18	460
Jul-17	397	Jul-18	283
Aug-17	556	Aug-18	243
Sep-17	190	Sep-18	113
Oct-17	156	Oct-18	343
Nov-17	0	Nov-18	244
Total	2002	Total	1686

The above consumption comparison shows a sketchy pattern as from June 2018 to August 2018, there is a drop in consumption. However, there is considerable increase in consumption of October 2018 and November 2018 as compared to the corresponding months of previous year. The consumption pattern does not indicate conclusively something wrong with the consumption recording by the impugned meter.

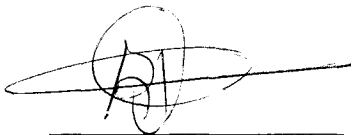
6.17 Under these circumstances, we hold that the detection bill of Rs.124,019/- for the cost of 5,121 units for six (06) months for the period from June 2018 to November 2018 charged to the Respondent is illegal, and unjustified being contrary to Clause 9.1(c) of the CSM-2010, and the same is declared null and void.





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- 6.18 Similarly, the determination of POI for revision of the bills for the period June 2018 to November 2018 as per average consumption of June 2017 to November 2017 is not based on facts and merits of the case and the same is withdrawn to this extent.
- 6.19 The billing account of the Respondent may be overhauled after adjustment of the payments made against the above detection bill.
7. The appeal is disposed of in the above terms.



Syed Zawar Haider
Member



Muhammad Irfan-ul-Haq
Member



Abid Hussain
Convener

Dated: 09/01/2023.

