



National Electric Power Regulatory Authority
ISLAMIC REPUBLIC OF PAKISTAN
NEPRA Head Office,
Attaturk Avenue (East), Sector G-5/1, Islamabad.
Ph: 051 201 3200, Fax: 051 260 0021

**Consumer Affairs
Department**

TCD.08/12237-2018
November 15, 2018

Chief Executive Officer
Quetta Electric Supply Company (QESCO),
Zarghoon Road, Quetta Cantt.

Subject: **ORDER OF NEPRA CONSUMER COMPLAINTS TRIBUNAL IN THE MATTER OF COMPLAINT FILED BY MR. MUHAMMAD LAL UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST QESCO IN PURSUANCE OF THE ORDER OF THE BALOCHISTAN HIGH COURT, QUETTA IN C.P. NO. 276/2018 DATED 8TH AUGUST 2018**
QESCO-14/10/2018

Enclosed find herewith the Order of NEPRA Consumer Complaints Tribunal regarding the subject matter for necessary action and compliance within thirty (30) days, please.

Encl: As above


(Danish Ali Shah)
Deputy Director

Copy to:

- i. C.E./Customer Services Director,
Quetta Electric Supply Company (QESCO)
Zarghoon Road, Quetta Cantt.
- ii. Mr. Muhammad Lal,
Noor Flour Mills, Kasi Road,
Gowalmandi Chowk, Quetta.



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NERPA)
Complaint No. QESCO-14/10/2018

Muhammad Lal **Petitioner**
Ward No. 7, Killi Machan District, Pishin
having business at Al-Nasir Agricultural Foundry Work
Industrial Estate, Quetta

Versus

Quetta Electric Supply Company Limited (QESCO) **Respondent**
Zarghoon Road, Quetta

Date of Hearing: 12th November 2018

Date of Decision: 15th November 2018

On behalf of:

Petitioner:

1)	Mr. Muhammad Lal	
2)	Mr. Muhammad Hayat	
3)	Syed Noor Ahmed	Advocate
4)	Syed Salim Ahmed	Advocate
5)	Mr. Nasir Agha	

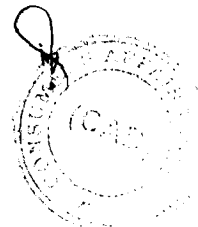
Respondent:

1)	Mr. Baz Muhammad	S.E (QESCO)
2)	Mr. Ghulam Muhammad	S.E (QESCO)
3)	Mr. Gul Nabi Syed	S.E (QESCO)
4)	Mr. Shahid Rahim	XEN (QESCO)
5)	Mr. Inon Das	Dy. Director (QESCO)
6)	Syed Abul Hadi	XEN (QESCO)
7)	Mr. Mumtaz Khan	R.O (QESCO)
8)	Mr. Aman Ullah	SDO (QESCO)

Subject: ORDER IN THE MATTER OF COMPLAINT FILED BY MR. MUHAMMAD LAL UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT 1997 AGAINST QESCO IN PURSUANCE OF THE ORDER OF THE BALUCHISTAN HIGH COURT, QUETTA IN C.P. NO. 276/2018 DATED 28.08.2018

ORDER

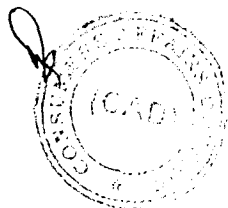
1. This Order shall dispose of the complaint filed by Mr. Muhammad Lal (the "Complainant" or the "Petitioner") against the Quetta Electric Supply Company (the



"Respondent" or "QESCO") and others, which has been referred to the National Electric Power Regulatory Authority (the "Authority" or "NEPRA") by the Honorable Balochistan High Court vide its order dated 28-08-2018 in the CP. No. 276 of 2018 titled as "Muhammad Lal v/s Federation of Pakistan and 4 Others".

2. Brief facts of the case are that the Petitioner is engaged in the manufacturing business under the name and style M/s Asia Steel Factory and undertakes business operations as a tenant at the Al-Nasir Agriculture Foundry Work, Industrial Estate, Quetta and is a consumer of QESCO bearing reference no. 24-48134-0361201 with sanctioned load of 495kW under Tariff Category B-II.

3. QESCO received an anonymous application inferring therein that the Petitioner was engaged in theft of electric power by using a specific technique involving his neutral wiring to control the consumption recorded by the metering equipment. To investigate the matter, QESCO constituted an Inquiry Committee and deputed its officers to investigate the matter. A team comprising of SE Central Circle, Regional Manager (M&T), Circle Manager (M&T), XEN Sariab and SDO Spezand (along with other supporting staff) proceeded to the Petitioner's premises on 18-01-2018. The team inspected the transformer, security slips on LT bushes and meter security box, which were found intact and untampered. The team then proceeded to inspect the Petitioner's switch room (where the main switch and control panel were installed). The room was found locked and the Petitioner's staff present at the scene refused to open the said room. The room was later opened and the inspection team found the neutral conductor broken and both ends of the neutral conductor to be connected via a 07/29 wire. In this state the Petitioner's meter was showing normal functioning. However, when the 07/29 wire was detached from the load side and connected to the bare portion of the phase, it was found that the meter was stopped though there was load. These prima facie facts led the inspection team to conclude that the Petitioner had been using this method to bypass the meter and illegally abstracted power. This method was completely identical to that described in the anonymous application. This prompted the inspection team to seal the switch room with security slips/postal orders and to immediately disconnect the Petitioner's power supply.



4. The following day i.e. on 19-01-2018, QESCO proceeded to download data from the concerned meter installed at site. The same day, QESCO issued a detection bill for 733115 units to the Petitioner for a sum amounting to Rs. 13,267,113, (the "Impugned Detection Bill") and registered an FIR against the owner of the connection vide FIR No. 07/18, on 20-01-18.

5. Being aggrieved with the afore-stated actions of QESCO the Petitioner filed the Constitutional Petition No. 276/18 before the Balochistan High Court, Quetta which was disposed by the Honorable Court, vide order dated 28-08-2018, in the following terms:

"We have heard the learned counsel for the parties and have gone through the relevant law. A petitioner under Article 199 of the Constitution is not maintainable in the presence of an alternate remedy, therefore, the parties agreed to resolve their issue through competent forum. The learned counsel for the petitioner requested for an order to de-seal the meter, for which the petitioner is ready to furnish sureties equivalent to the disputed amount contained in the bill in question.

The Petitioner is permitted to approach the Provincial Office of Inspection, NEPRA by filing complaint as provided by the referred law. In case a complaint is received, the Provincial Office of the Inspection NEPRA should provide an opportunity of hearing to the parties and to decide the matter strictly in accordance with law and on its own merits, possibly within a period of thirty (30) days after receiving a copy of this order.

As per the request so made by the learned counsel for the petitioner, the Mill of the petitioner shall be de-sealed and its electricity connection is directed to be restored, subject to furnishing of surety, equivalent to the disputed bill before the authority (NEPRA).



As far as the request for quashment of the FIR is concerned, since the Challan has been submitted before the trial Court, therefore, the petitioner may approach that Court for the relief, which may decide the same strictly in accordance with law.

The petition is disposed accordingly."

6. In furtherance of the above directions of the Honorable Court, the Complainant has filed the instant complaint under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the "**NEPRA Act**"), on October 22, 2018, wherein *inter alia* he prayer as under:

- i. To declare the Impugned Detection Bill as null and void due to non-compliance with the applicable provisions of the Consumer Service Manual 2010 (the "**CSM**") with regards to investigation/raid and issuance of detection bill;
- ii. To direct QESCO to de-seal the Petitioner's switch room; and
- iii. To direct QESCO to restore the Petitioner's energy connection subject to payment of future monthly bills as per actual meter readings;

7. Upon receiving the above complaint, the Authority scheduled a hearing for 7th November 2018 at NEPRA Head Office Islamabad, which was communicated to the concerned parties vide letter dated 24th October 2018. However, the Petitioner submitted a request for postponement of hearing, vide letter dated 29th October 2018. The hearing was then rescheduled for 12th November 2018 at NEPRA Regional Office Quetta, which was communicated to the concerned parties vide letter dated 5th November 2018. It was further directed that all officers, who took part in the raid/investigation on 18-01-2018, be present during the hearing.

8. During the hearing legal counsel for the Petitioner asserted that QESCO had violated numerous applicable laws in the instant case. As per Clause 14.1 of the CSM, a 3-day prior notice was to be issued to the Petitioner before QESCO could conduct the impugned investigation. As per Clause 9.1(c), the investigation/raid had



to be undertaken in the presence of the Petitioner/authorized representative, Magistrate and a Local Representative of the area. As per Clause 9.1(c), the raiding/investigation team was also required to include the representative of Electric Inspector/Provincial Office of Inspection. QESCO was in violation of the foregoing mandatory provisions of law during their investigation/raid of the Petitioner's premises on 18-01-2018.

9. In addition to the above lapses of law, QESCO also failed to comply with the mandatory provisions of the CSM relating to issuance of detection bill and disconnection of supply, the latter of which requires a mandatory 7-day prior notice as per Chapter 8 of the CSM. Complainant's counsel further argued that QESCO's officers had been regularly visiting the consumer's premises for inspection and meter readings and had found all equipment to be functioning properly. On query, the Complainant denied involvement of QESCO's officers/officials in the alleged illegal abstraction of power.

10. Legal counsel for the Petitioner further argued that the proceedings initiated by QESCO had been done under the provisions of the Electricity Act 1910, specifically under Section 39 thereof. It is noted that the FIR registered against the Petitioner, dated 20-01-2018, has also been registered against the offence prescribed under Section 39. However, this provision of the Electricity Act has been repealed vide the Criminal Law (Amendment) Act, 2016 (the "**Amendment Act**") and the said offences have now been made part of the Penal Code, under Sections 462H-M thereof. As such, the entire proceedings and actions of QESCO lack legal foundation and are therefore unlawful.

11. Representatives of QESCO submitted that all mandatory provisions of law had been complied with and that there was sufficient factual evidence to establish illegal abstraction of power by the Petitioner. In this regard, they submitted that a comprehensive team of QESCO's officers were deputed to investigate the matter on the basis of an anonymous tip. The Petitioner's switch room was locked when they arrived at the premises. The room was later opened by the Petitioner's workers themselves who were present at the scene. In the room, QESCO's officers found evidence of tampering with the relevant metering equipment and by replicating the method described in the anonymous complaint they found the Petitioner's meter to

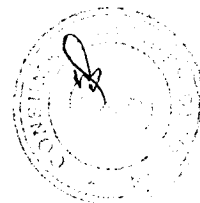


drop its reading to nil. The officers concluded these findings as sufficient evidence of illegal abstraction of power and proceeded to seal the concerned switch room for preservation of evidence. Photographic evidence of the concerned wire tampering was also provided.

12. To further investigate the matter, immediately after concluding the hearing, NEPRA officers undertook a site inspection of the Petitioner's premises. They were accompanied by the QESCO officers present at the hearing (who had also executed the impugned site inspection/raid on 18-01-2018) and the Petitioner and his legal counsel. At the premises, QESCO's officers were asked to demonstrate the alleged method of illegal abstraction witnessed by the same officers in their raid on 18-01-2018 (touching the energized load wire with the tampered neutral wire resulting in the concerned meter reading dropping to nil). However, the officers showed their inability to demonstrate the illegal abstraction method with the plea that the Petitioner might have removed some device which was instrumental in facilitating the said arrangement of theft of electric power. They also apprehended that repeating the same action at this stage could result in short circuiting and damage to electric installations.

13. We have heard the arguments of both the parties at length and have perused the documents and facts on record. At the outset it is apprised that criminal prosecution for illegal abstraction/wire tampering, and cognizance thereof, are to be undertaken as per the applicable penal and procedural provisions. NEPRA's jurisdiction is limited to administration of the NEPRA Act and the Rules, Regulations and Manuals prescribed and approved thereunder. Therefore, criminal proceedings associated with the instant case do not fall under the purview of this Tribunal and the same shall refrain from adjudging thereupon, including the question of repealed penal provisions of the Electricity Act vide the Amendment Act. The Honorable High Court of Balochistan has also echoed this jurisdictional component in their order dated 28-08-2018, vide the following observations:

"As far as the request for quashment of the FIR is concerned, since the Challan has been submitted before the trial Court, therefore, the petitioner may approach that Court for the relief, which may decide the same strictly in accordance with law."



14. The main thrust of the Petitioner's arguments is that QESCO's investigation/raid on their premises on 18-01-2018 is plagued with procedural lapses of law on numerous counts. Clause 9.1(c) of the CSM (reproduced below) provides an exhaustive procedure for establishing illegal abstraction of power by a distribution company.

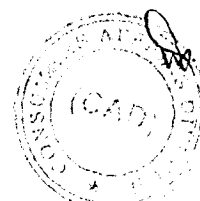
CHAPTER 9
DISHONEST ABSTRACTION, CONSUMPTION OR USE OF
ENERGY

9.1 THEFT OF ELECTRICITY/ENERGY

(b) Illegal Abstraction of Electricity by Registered Consumers

1) The following indications shall lead to further investigations by DISCO for illegal abstraction of electricity. For such cases the DISCO shall observe the procedure as laid down under 9.1(c).

- i) Prize bond/postal order/meter security slip removed.
- ii) Bond/Terminal cover seal of the meter broken/bogus/tampered.
- iii) Terminal cover of the meter missing.
- iv) Holes made in the KWH meter bodies.
- v) MSB of the meter showing signs of tampering.
- vi) Meter hanging loose/tilted/physically unbalanced.
- vii) Meter glass broken.
- viii) Meter dead stop/burnt.
- ix) Meter sticking.
- x) Meter digits upset.
- xi) Meter running reverse.
- xii) Meter connected on temporarily/permanently disconnected premises.
- xiii) Meter found missing at site.
- xiv) Meter found at site but no record exists in the office.
- xv) Any other means which can cause interference in true recording of quantum of energy (Units) by the metering equipment



(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 meter without removing it in the presence of the owner /occupier or his Authorized representative/respectable person of the locality.
 - (ii) Install 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 POI/Electric Inspector is mandatory.
 - (iv) Once confirmed that illegal abstraction is being done, serve notice to the consumer informing him of the allegations and the findings and the requirement of a written reply from the consumer.
 - (v) Should wait for seven working days for receipt of reply
 - (vi) The reply to the notice shall be examined by the officer higher in grade than the inspecting officer. If the reply is not convincing or if no reply is received or if the allegations as levied are proved, the inspecting office with the approval of the



next higher office will immediately serve a detection bill for unclaimed energy limited to the period of three billing months or six months with the approval of CEO previous from the date of establishment of illegal abstraction as elaborated at 9.1(c) (3).

(vii) The detection bill along with a disconnection notice for payment within seven days will be issued by the inspecting office.

(viii) Upon payment of the detection bill, the tampered meter shall be replaced by the DISCO at the cost of consumer and no further action will be taken by the DISCO.

2) In case the consumer does not make payment and also does not dispute over the quantum of energy assessed, then after the expiry of the stipulated period his premises be disconnected and the procedure for disconnection and reconnection as per Chapter 8 be followed thereafter.

3) The maximum period for charging in such cases shall be restricted to three billing cycles for general supply consumers i.e. A-1 & A-II. For period beyond three billing cycles up to a maximum of six months is subject to approval of the Chief Executive of the DISCO. The CEO may delegate its powers and authorize a committee of Chief Engineer /Director level officers to allow charging of detection bill up to six months to general supply consumers after proper scrutiny so that no injustice is done. Also for such cases action will also be initiated against the officer in charge for not being vigilant enough. For other consumer classes, the period of charging can be more than three billing cycles up to a maximum of six billing cycles.

4) If the consumer objects payment or disputes over the quantum of the units detected by the DISCO, the Appellant authority for revision of detection bill would be the review committee of the DISCO headed by the next higher officer. The consumer will also be given personal hearing by the review committee.



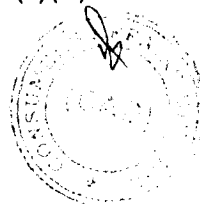
15. Clause 9.1(c) provides the procedure for establishing illegal abstraction of power by registered consumers, which is exhaustive unless otherwise specified. Upon discovering or becoming aware of any indication of illegal abstraction, as provided in Clause 9.1(b), the relevant distribution company is to initiate further investigation strictly in accordance with the procedure provided in Clause 9.1(c). The first step is to secure the concerned meter in the presence of the specified persons, install a check meter and declare the same as the billing meter, constitute a raiding team (comprising of prescribed persons) and conduct a raid at the consumer's premises/site, establish illegal abstraction from the findings of the said raid, issue a notice to the offender (and provide a 7-day time period for the consumer to respond) and, only after fulfilling the above procedure, issue a detection bill to the consumer (calculated as per Clause 9.1(3)). It is abundantly clear that a distribution company is not required to issue prior notice for raiding a consumer's premises under Clause 9.1(c) for establishing illegal abstraction of power.

16. Further, the requirement of 3-day prior notice for entering a consumer premises under Clause 14.1 of the CSM relates to cases involving general inspections, testing or removal of equipment in pursuance of maintaining proper energy supply. The requirement does not apply in cases of alleged illegal abstraction of power, which is governed under Clause 9.1(c).

17. The above interpretation is further bolstered by the fact that the procedure of raiding a consumer's premises prescribed under Clause 9.1(c)(iii) would be rendered infructuous in its entirety where an offending consumer is informed beforehand by the raiding party itself.

18. Therefore, the Petitioner's contention of procedural non-compliance due to non-issuance of prior notice of investigation is misplaced and accordingly dismissed.

19. Having said so, from the record it is apparent that QESCO's officers failed to comply with other mandatory provisions of the CSM, specifically the securing of the impugned meter (Clause 9.1(c)(i)) and installation of check meter (Clause 9.1(c)(ii)). Also, no Magistrate/local representative/POI representative was present with the raiding party as required under Clause 9.1(c)(iii).

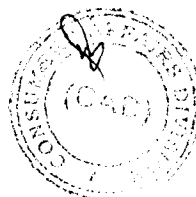


20. The other procedural lapse on part of QESCO appears to be in relation to disconnection of the Petitioner's power supply. After following the procedure for issuance of detection bill (elaborated in para 15. above), the distribution company is required to issue a disconnection notice to the consumer and provide a period of 7-days for the consumer to respond (Clause 9.1(c)(vii) CSM). If the consumer complies and pays the issued detection bill within the stipulated timeframe, the distribution company is restricted from taking further action or from disconnecting the consumer (Clause 9.1(c)(viii)). It is only in cases where the detection bill remains unpaid and where the consumer does not dispute the quantum of said bill, is the distribution company permitted to disconnect power supply (Clause 9.1(2)). This has to be undertaken in accordance with the disconnection procedure prescribed in Chapter 8 of the CSM, which also provides for a 7-day notice period before disconnection (Clause 8.1(b)). In any case, a mandatory 7-day notice period is legally required before a distribution company may disconnect a consumer's power supply.

21. From the documents on record, specifically the investigation report submitted by QESCO, it is evident that the Petitioner's power supply was disconnected on the day of the raid (18-01-2018). The concerned officers allegedly found evidence of illegal abstraction and proceeded to immediately disconnect the consumer's power supply on site.

22. In view of the foregoing, it is evident that QESCO's officers were in explicit non-compliance of the mandatory procedure elaborated by the provisions of the CSM with respect to securing of the impugned meter, installation of check meter, presence of Magistrate/ local representative/POI representative during the raid and immediate disconnection of supply without prior notice.

23. In addition to procedural infirmity in QESCO's actions, the detection bill issued to the Petitioner is also erroneous. Data provided by QESCO shows that the impugned connection was previously used from November 2012 to January 14, after which it remained dormant for three years except light load. Consumption again resumed from June 2017 till January 2018. It is pertinent to highlight that an inspection report on record shows that QESCO had undertaken a routine inspection of the Petitioner's premises on 18-09-2017 and found all equipment to be functioning



normally and within limits. In view of this report by QESCO itself, it is untenable for the distribution company to now issue a detection bill prior to the date of this report (i.e. September 2017) whereas QESCO has issued the detection bill spanning this period of consumption (i.e. June 2017 – January 2018) for a sum amounting to over **Rs. 13 million**. QESCO has assessed consumption of the Complainant as 116424 units per month. This exorbitant amount does not stand to reason and the calculating mechanism employed by QESCO is not consistent with the mechanisms provided in Annexure VIII of the CSM.

24. Further still, the high consumption pattern observed on the meter (during the 2012-14 period) cannot be attributed to the Petitioner for the purposes of calculating the detection bill, since the Petitioner was not operating on the premises at that time. The Petitioner occupied the premises vide a tenancy agreement duly executed on 15-05-2017, which is available on record however the said agreement was never provided to QESCO earlier.

25. The other document requiring examination in this case is the meter data retrieval report submitted by QESCO. The report contains event logs and information on any interruption or bypassing event that were experienced by the meter, which shows that the impugned meter experienced twenty C.T. By Pass Events between 01-Dec-2017 till 18-January-2018. Amongst these, one event is notable where the meter remained inoperative for a period of 9 days (08-Dec-2017 – 17-Dec-2017). This data shows unassailable evidence that the concerned meter was unable to record actual consumption of the Petitioner and this data shows erratic behavior of the meter and proves that the metering equipment was not recording the actual consumption of energy. This fact is substantiated by the low consumption @ 24780 units on average per month during the disputed period. Moreover, the Petitioner failed to produce production data of his industry for our examination with respect to low consumption recorded on the metering equipment. In view of the foregoing, the provisions of CSM laid down in chapter 4 are attracted as per which a period of loss of the distribution company could be for two months maximum.



26. In summation of the above, we have found that the detection bill calculated by QESCO is unreasonably exorbitant and also does not reflect the true loss that the distribution company may have suffered from the erratic behavior of the meter.

27. In view of the foregoing, and in the interest of equity, we hereby direct the detection bill issued by QESCO, dated January 19, 2018, to be withdrawn and a revised detection bill be issued to the Petitioner calculated as follows:

Detection Bill Amount = Load x load factor x 730 x rate x 2 months

Where:

Load = Sanctioned Load or Installed Load (whichever is higher)

28. QESCO is directed to reconnect the energy supply of the Petitioner by installing new metering equipment subject to payment of the revised detection bill to QESCO.

29. This order is issued without prejudice to any further action that the Authority may initiate on account of any violation of law. The findings, observations and decision rendered through this order is strictly in accordance with the rules and regulations administered by the Authority and shall not in any way effect or prejudice any case (criminal or civil) pending before any court of competent jurisdiction



Lashkar Khan Qambrani
Member
Consumer Complaints Tribunal



Mian Ahmed Ibrahim
Member
Consumer Complaints Tribunal

