



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

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No. NEPRA/AB/Appeal/024/2021/ 424

April 182, 2022

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| 1. Medical Superintendent,
District Headquarter Teaching Hospital,
District Gujranwala | 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. Mehar Muhammad Saleem,
Advocate High Court,
117-3 rd Floor, Ch. Rehmat Ali Block,
Session Courts, Gujranwala |
| 5. Deputy Manager Operation,
GEPCO Ltd,
Civil Lines Division,
Gujranwala | 6. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala |

Subject: **Appeal Titled GEPCO Vs. Medical Superintendent DHQ Teaching Hospital Gujranwala Against the Decision Dated 30.09.2020 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 14.04.2022, 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. 024/POI-2021

Gujranwala Electric Power Company Limited

.....Appellant

Versus

Medical Superintendent District Headquarter Teaching Hospital
District Gujranwala

.....Respondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 30.09.2020 PASSED BY PROVINCIAL
OFFICE OF INSPECTION GUJRANWALA REGION, GUJRANWALA**

For the Appellant:

Mr. Saeed Ahmed Bhatti Advocate
Mr. Zahir Hussain Soomro XEN

For the Respondent:

Mr. Muhammad Saleem Advocate
Dr. Atique Ahmed AMS Services
Mr. Sher Afgan Sub Engineer

DECISION

1. As per facts of the case, the Respondent is a general consumer of the GEPCO bearing Ref No.24-12121-1776100 with a sanctioned load of 23 kW under the A-3(a) tariff category. The Respondent filed an application before the Provincial Office of



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Inspection, Gujranwala Region, Gujranwala (the POI) on 29.01.2020 and challenged the billing for the period December 2016 to September 2019 and for recovery of 149,059 excessive units charged till August 2016. The TOU billing meter of the Respondent was checked by the POI on 02.09.2020 in presence of both parties and the TOU billing meter was found within BSS limits. The POI disposed of the matter vide its decision dated 30.09.2020 wherein the GEPCO was directed to withdraw the excessive charged 149,052 units to the Respondent till August 2016 and overhaul his billing account accordingly.

2. Being dissatisfied with the decision dated 30.09.2020 of the POI (hereinafter referred to as the impugned decision), GEPCO has filed the instant appeal before the NEPRA. In its appeal, GEPCO prayed for setting aside the impugned decision, inter alia, on the following grounds; (1) the POI erred in holding that 149,052 units were charged in excess till August 2016, whereas the billing prior August 2016 was effected correctly as per actual energy recorded by the billing meter and no excessive billing was done during the said period; (2) the installation of the AMR meter has no sanctity in the eyes of law and Consumer Service Manual (CSM), as such the same could not be termed as the backup meter nor the consumption of the AMR meter could be made basis for the determination of billing; (3) the POI miserably failed to appreciate that the matter taken up earlier by the Director Technical Energy Department Lahore was resolved amicably on 10.07.2017 when a no billing dispute certificate was prepared and signed by both parties and the Respondent was satisfied with the assessment made till 10.07.2017, hence the Respondent has no cause of action to approach the POI; (4)



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the observation of the POI with regard to the non-pressing of the billing dispute certificate dated 10.07.2017 is absolutely incorrect and erroneous; (5) the POI neither provided the reading of the AMR meter of the Respondent nor discussed the same while passing the impugned decision; (6) the POI failed to appreciate that the petition of the Respondent could not be processed being time barred by limitation; (7) the Respondent was estopped by his words and conduct to institute the instant petition which is hit by Article 114 of the Qanoon-e-Shahadat Order 1984; (8) the POI neither recorded the consumption data nor perused the relevant record/ consumption data in true perspective and decided the application of the Respondent on mere surmises and conjectures; (9) the impugned decision is ex-facie coram non-judice, ab-initio void and without jurisdiction as the POI has no jurisdiction to carry out the proceedings after the expiry of the mandatory period of 90 days as envisaged under Section 26(6) of the Electricity Act, 1910; and (10) the petition of the Respondent could not be entertained as no notice as required under Section 26(6) of the Electricity Act, 1910 was ever served upon the LESCO before filing the same before the POI.

3. Notice of the appeal was sent to the Respondent for filing reply/para-wise comments, which were filed on 22.12.2021. In his reply, the Respondent contended that the matter of excessive billing was brought to the notice of GEPCO but no remedial measures were taken, and overbilling continued, hence the said matter was taken up with the Director Technical Reconciliation Cell, Energy Department, Lahore, who convened a meeting on 12.05.2017 wherein both the parties were in attendance. The Respondent further contended that the Reconciliation Cell Energy Department has



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been analyzing the GEPCO billing data since August 2016 and onwards on the basis of AMR meter readings and forwarding the excessive billing claim and to afford credit adjustments. As per Respondent, GEPCO has charged excessive billing of 149,052 units till August 2016, since the total reading found on the billing meter was 48,348 till 30.08.2016, whereas the GEPCO charged total 197,400 units till July 2016 causing the excessive billing of 149,052 units being the difference of billing meter reading and the units already charged by the GEPCO. According to the Respondent, after the final decision dated 06.04.2021 of the Director Technical Reconciliation Energy Department, many letters were written to GEPCO and MS DHQ Hospital Gujranwala also approached GEPCO several times for reimbursement of excessive billed units but the dispute of overbilling was not resolved. The Respondent submitted that the POI decided the application in favor of the Respondent and directed the GEPCO for refund of excessively charged 149,052 units. The Respondent supported the impugned decision and prayed for dismissal of the appeal with cost.

4. A hearing in the matter was held at the NEPRA Regional Office Lahore on 14.01.2022 in which learned counsel along with XEN GEPCO represented the Appellant and a counsel along with representatives appeared for the Respondent. At the beginning of the hearing, learned counsel for the GEPCO raised the preliminary objection that the Respondent vide the complaint dated 29.01.2020 raised the billing dispute before the POI for the period December 2016 to September 2019, which is beyond three years, as such the complaint of the Respondent is time-barred and not maintainable as per the Lahore High Court Lahore judgment in the W.P.No.17314-2015. Learned counsel



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for the GEPCO averred that a Reconciliation Certificate dated 10.07.2017 was signed between both the parties and the dispute of billing was settled amicably till 10.07.2017. As per learned counsel for the GEPCO, difference of readings for one month was taken for all sixteen connections of the Respondent in pursuance to the directions of the Reconciliation Cell conveyed vide Minutes of Meeting dated 21.07.2017. According to the learned counsel for the GEPCO, analysis of billing data for the period October 2014 to June 2017 revealed that 9,891,074 units were to be charged whereas the Respondent was billed 7,417,697 units during the said period which were lesser than the consumption assessed. Learned counsel for GEPCO averred that the payments of the above-said bills were made by the Respondent without any objection, hence these cannot be agitated before the POI as the principle of estoppel applies in the instant case. Learned counsel for the GEPCO opposed the impugned determination and argued that the billing cannot be based on AMR meter and the impugned decision is liable to be struck down being incorrect, illegal, and unjustified. On the contrary, learned counsel for the Respondent rebutted the version of learned counsel for the GEPCO and stated that the Reconciliation Certificate dated 10.07.2017 is not valid as it is unilateral and GEPCO had not provided the same in original form. As per learned counsel for the Respondent, if the Reconciliation Certificate dated 10.07.2017 is original as to why learned counsel for the GEPCO did not press the fact before the POI, who rightly disallowed the same. As per learned counsel for the Respondent, total 149,052 units were rightly declared as excessive till August 2016 by the POI. Learned counsel for the Respondent defended the findings



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of the Director Reconciliation Cell Energy Department conveyed vide order dated 20.04.2018 and impugned decision of the POI and prayed for revision of the billing of the Respondent accordingly.

5. Arguments were heard and the record placed before us was perused.

Following are our observations:

- i. As regards the preliminary objection of GEPCO regarding the failure of the POI in deciding the matter within 90 days under Section 26(6) of the Electricity Act, 1910, it may be noted that the said restriction of the time limit is inapplicable for the POI established under Section 38 of NEPRA Act, 1997. Reliance in this regard is placed on the Lahore High Court judgments cited as PLJ 2017-Lahore-627 and PLJ-2017-Lahore-309. As such the objection of GEPCO in this regard carries no weight, hence rejected.
- ii. As regards another objection of the GEPCO 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 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 GEPCO is not valid, therefore overruled.
- iii. The claim of GEPCO that after the payment of the disputed bills till September



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2019, the Respondent is estopped for agitating it before the POI is not convincing as the Qanoon-e-Shahadat Order 1984 is not applicable stricto-senso in the present case.

- iv. As far as the objection of GEPCO regarding the time-barred claim of the Respondent, it is observed that the Respondent raised the billing dispute before the POI vide the application dated 29.01.2020, which contained two parts i.e. (i) the billing of 149,052 units till August 2016 and (ii) the billing for the period from December 2016 to September 2019.
- v. Billing of 149,052 units till August 2016: GEPCO claims that the billing dispute till July 2017 was amicably settled between the parties vide the Reconciliation Certificate dated 10.07.2017 and the billing till July 2017 cannot be disputed before any forum. The Respondent rebutted the claim of GEPCO and stated that neither the original certificate in this regard was provided nor the said certificate was signed by the DHIQ Hospital Management. To ascertain the contention of both the parties, the following documents were analyzed:



Annex E

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(NEPRA)
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Subject: **HEARING OF APPEAL UNDER NEPRA (PROCEDURE FOR FILING APPEALS) REGULATIONS, 2012**

Appeal No. **025/2021**

GEPCO VS. MEDICAL SUPERINTENDENT DHQ HOSPITAL, GUIBANWALA

A hearing was held on January 14, 2022 at 11:00 AM in NEPRA Provincial Office, Office No. 212, 2nd Floor, National Tower, Egerton Road, Opposite LDA Plaza, Lahore. Following participated:

Appellant

#	Name	Designation	Mobile #	Signature
1	Dr. Atique Ahmed	Medical	03274350898	[Signature]
2	Dr. H. S. S. S. S. S.	Gen. Secy	0316 3992120	[Signature]
3				
4				

Respondent

#	Name	Designation	Mobile #	Signature
1	M. Saleem	Advocate	03456251834	[Signature]
2	Dr. Atique Ahmed	Gen. Secy	03338111621	[Signature]
3	Sh. H. S. S. S.	Sub Engineer	0300 8106447	[Signature]
4				

Examination of the above images manifests that the signature of Dr. Atique Ahmed representing the Respondent on the attendance sheet tallies with the signature made on the Reconciliation Certificate dated 10.07.2017, hence the said Reconciliation Certificate cannot be termed as bogus as claimed by the Respondent. We are inclined to agree with the contention of the GEPCO that the billing dispute of nine

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connections including the disputed connection was amicably settled between the parties till July 2017 and the billing for the said period cannot be disputed being a past and closed transaction. Even otherwise the complaint of the Respondent before the POI with regard to the billing till August 2016 is time-barred being filed after the prescribed time limit of three (3) years as per Article 181 of the Limitation Act, 1908. In this regard, reliance is placed on the Lahore High Court, judgment dated 30.11.2015 passed in the Writ Petition No.17314-2015 titled “Muhammad Hanif v/s NEPRA and others”, wherein it is held as under:

“The petitioner at the most can invoke Article 181 of The Limitation Act, 1908 which is the residuary provision and caters the issue of limitation where no period of limitation is provided elsewhere in the Schedule of The Limitation Act, 1908 or under Section 48 of The Code of Civil Procedure (V of 1908). Article 181 of The Limitation Act, 1908 prescribes the period of three years for filing an application that applies when the right to apply accrues as prescribed in Article 181 of Limitation Act, 1908.”

Foregoing into consideration, we hold that the billing dispute till July 2017 was amicably settled between the parties, as such the impugned decision for a refund of 149,052 units till August 2016 to the Respondent is incorrect and the same is liable to be set aside.

- vi. Billing dispute for the remaining period August 2017 to September 2019: During the joint checking of the metering equipment of the Respondent by the POI on 02.09.2020, the TOU billing meter was found within BSS limits whereas the accuracy of the AMR meter was not checked by the said forum. Hence the



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readings of the AMR meter cannot be made the basis for the determination of the billing for the period August 2017 to September 2019.

vii. The billing for the remaining disputed period i.e. August 2017 to September 2019 done by the GEPCO is compared below with the undisputed billing before and after the dispute to ascertain its justification:

Table-A

Period before dispute		Disputed period		Period after dispute	
Month	Units	Month	Units	Month	Units
Aug-15	22915	Aug-17	0	Oct-19	4868
Sep-15	19835	Sep-17	398	Nov-19	1120
Oct-15	19557	Oct-17	0	Dec-19	1055
Nov-15	20424	Nov-17	3462	Jan-20	1997
Dec-15	13779	Dec-17	6804	Feb-20	1625
Jan-16	14668	Jan-18	15425	Mar-20	1770
Feb-16	17017	Feb-18	2332	Apr-20	1345
Mar-16	16203	Mar-18	1971	May-20	1540
Apr-16	16004	Apr-18	2384	Jun-20	5790
May-16	20799	May-18	2356	Jul-20	614
Jun-16	26182	Jun-18	3316	Aug-20	3278
Jul-16	24265	Jul-18	3315	Sep-20	3647
Aug-16	26617	Aug-18	2625	Oct-20	4016
Sep-16	25171	Sep-18	5704	Nov-20	3153
Oct-16	24888	Oct-18	2106	Dec-20	150
Nov-16	20424	Nov-18	1925	Jan-21	5790
Dec-16	14019	Dec-18	1938	Feb-21	0
Jan-17	14668	Jan-19	1969	Mar-21	0
Feb-17	17453	Feb-19	2200	Apr-21	179
Mar-17	16622	Mar-19	2023	May-21	0
Apr-17	21960	Apr-19	2171	Jun-21	596
May-17	23606	May-19	2351	Jul-21	4472
Jun-17	0	Jun-19	2888	Aug-21	4694
Jul-17	0	Jul-19	2715	Sep-21	4999
		Aug-19	3655	Oct-21	4640
		Sep-19	7206	Nov-21	4240



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				Dec-21	3506
Average units/month	18,211	Average units/month	3,201	Average units/month	2,559

Above comparison of consumption data transpires that the average consumption of the Respondent during the disputed period i.e. August 2017 to September 2019 (26 months) remained low as compared to the average consumption of the period before the dispute and slightly higher in comparison with the average consumption of the period after the dispute. To further analyze the consumption of the disputed period August 2017 to September 2019, it is compared below with the units/month assessed as per Annex-VIII of the CSM.

Units/months charged by the GEPCO (Ref Table-A)	Units/month assessed as per CSM
3,201 units	$= \text{Load (kW)} \times \text{No. of Hours} \times \text{Load Factor}$ $= 23 \times 730 \times 0.2 = \mathbf{3,358 \text{ units}}$

The above table even indicates that the units/month charged during the disputed period August 2017 to September 2019 are compatible with the units/month assessed as per Annex-VIII of the CSM. We hold that the consumption charged during the disputed period August 2017 to September 2019 by the GEPCO to the Respondent is justified and payable by the Respondent.

6. In view of what has been stated above, we have reached the following conclusion:
 - i. The dispute of billing till July 2017 is amicably settled between the parties as per the Reconciliation Certificate dated 10.07.2017 and the billing account of the Respondent be overhauled till July 2017 accordingly.



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ii. Moreover, the bills charged by the GEPCO during the remaining disputed period August 2017 to September 2019 are justified and recoverable from the Respondent.

7. In view of the above, the appeal is accepted and the impugned decision is set aside.

Abid Hussain
Member/Advisor (CAD)

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Date: 14.04.2022