



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

NEPRA Office , Ata Turk Avenue (East), G5/1, Islamabad
Tel. No. +92 051 2013200 Fax No. +92 051 2600030
Website: www.nepra.org.pk E-mail: office@nepra.org.pk

No. NEPRA/AB/Appeal/025/2021/ 425

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. 025/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 GUJHRANWALA REGION, GUJHRANWALA**

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.27-12121-1786800 with a sanctioned load of 79 kW under the A-3(a) tariff category. The Respondent filed an application before the Provincial Office of Inspection, Gujranwala Region, Gujranwala (the POI) on 29.01.2020 and challenged the arrears of



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Rs.27,351,861/- for 1,422,523 units for the period December 2016 to September 2019. Metering equipment 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 and the AMR meter was found dead stop. The POI disposed of the matter vide its decision dated 30.09.2020 with the following conclusion:

"In the light of above facts, it is held:

- i. *That the actual kWh reading index till MCO dated 16.09.2016 was 15232x40 Off Peak & 3980x40 Peak (total=194212x80) which is justified and correct whereas the excess reading charged as 49024x40 O/peak beyond the actual reading index causing 1351680 units excessively recovered is void, unjustified and of no legal effect therefore the petitioner is not liable to pay the same and billing be revised according to the above actual established reading.*
- ii. *that 1408760 units billed from 16.10.2016 to 12.03.20218 are unjustified, void and illegal and the petitioner is not liable to pay the same whereas the actual units recorded by the AMR as 1,180,680 during the above said period are justified and correct and the petitioner is liable to pay the same. The excess units billed as 228,080 units are refundable.*
- iii. *that the respondents are directed to withdraw the excessive charged 1579760 units (1351680+228080) and overhaul the account of petitioner accordingly and refund above said excessive units."*

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 1579760 units (1351680+228080) were charged in excess, whereas the billing from September 2016 till March 2018 was effected correctly as per actual energy recorded by the billing meter; (2) the installation of the AMR meter has no sanctity in the eyes of law and Consumer Service Manual



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(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 to approach the POI; (4) 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 AMR meter of the Respondent was found dead stop, hence the billing cannot be challenged on the basis of reading of the AMR; (6) the POI failed to appreciate that 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; (7) 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; (8) the impugned decisions 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 (9) the complaint could not be entertained as no notice as required under Section 26(6) of the Electricity Act, 1910 was ever served upon the LESCO prior to 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



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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 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 amounting to Rs.27,351,861/- till the month of September 2019, since the total reading found on the AMR meter was 1,973,477, whereas the GEPCO charged total 3,396,000 units for the period December 2016 to September 2019 causing the excessive billing of 1,422,523 units being the difference of AMR 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 billing 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 1,579,760 units. The Respondent supported the impugned decision and prayed for its maintainability and 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



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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 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



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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 1,320,160 units were declared as excessive till February 2018 from the date of installation of the AMR meter. Learned counsel for the Respondent defended the findings of the Director Reconciliation Cell Energy Department conveyed vide order dated 20.04.2018 and the impugned decision of 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



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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. 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 for the period from December 2016 to September 2019 before the POI vide the application dated 29.01.2020. Before approaching the POI, the Respondent disputed the excessive billing before the GEPCO as well as the Director Technical Energy Reconciliation Cell, Lahore in the year 2017 but the matter was not settled. Hence the claim of the Respondent with regard to the above billing be treated as within 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."

Hence the objection of GEPCO in this regard is not valid and overruled.

- iv. The claim of GEPCO that after the payment of the disputed bills for the period December 2016 to September 2019, the Respondent is estopped for agitating it before



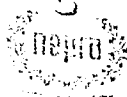
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the POI is not convincing as the Qanoon-e-Shahadat Order 1984 is not applicable stricto-senso in the instant case.

- v. The Respondent assailed the bills pertaining to the period December 2016 to September 2019 before the POI. 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 AMR meter was found dead stop. Hence the readings of the AMR meter cannot be made the basis for the determination of the billing for the period December 2016 to September 2019.
- vi. 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 DHQ Hospital Management. To ascertain the contention of both the parties, the following documents were analyzed:



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NEPRA Office: 1st Floor, 1st Avenue, 1st Floor, Islamabad
Tel. No. 02-45120420 Fax No. 02-45120400
Website: www.nepa.org.pk E-mail: info@nepa.org.pk

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

Appeal No. **025/2021**

GEPCO VS. MEDICAL SUPERINTENDENT DHQ HOSPITAL, GUIRANWALA

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 Officer	037-4350899	[Signature]
2	Dr. H. H. H. H. H.	Gen. Secy	0318 3992120	[Signature]
3				
4				

Respondent

#	Name	Designation	Mobile #	Signature
1	M. Saleem	Advocate	03456251530	[Signature]
2	Dr. Atique Ahmed	Medical Officer	0338811621	[Signature]
3	Dr. Atique Ahmed	Sub Engineer	0338811621	[Signature]
4				

Examination of the above images manifests that the signature of Dr. Atique Ahmed 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 connections including the disputed connection was amicably settled between the parties till July 2017 and the billing for the said period

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cannot be disputed being a past and closed transaction.

- 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
May-14	2398	Aug-17	110120	Oct-19	107720
Jun-14	93520	Sep-17	163400	Nov-19	52480
Jul-14	102400	Oct-17	153320	Dec-19	34760
Aug-14	0	Nov-17	94200	Jan-20	53280
Sep-14	0	Dec-17	40480	Feb-20	41600
Oct-14	0	Jan-18	56380	Mar-20	25920
Nov-14	69000	Feb-18	50080	Apr-20	34920
Dec-14	85960	Mar-18	36160	May-20	53240
Jan-15	84400	Apr-18	69080	Jun-20	96160
Feb-15	80640	May-18	110360	Jul-20	164880
Mar-15	96280	Jun-18	182560	Aug-20	169520
Apr-15	93960	Jul-18	167980	Sep-20	178000
May-15	72960	Aug-18	187080	Oct-20	104120
Jun-15	89560	Sep-18	189360	Nov-20	34720
Jul-15	112480	Oct-18	153360	Dec-20	25740
Aug-15	110360	Nov-18	94180	Jan-21	55740
Sep-15	114320	Dec-18	33920	Feb-21	40560
Oct-15	112000	Jan-19	49600	Mar-21	30060
Nov-15	83560	Feb-19	55040	Apr-21	50480
Dec-15	87720	Mar-19	37160	May-21	90480
Jan-16	88120	Apr-19	58920	Jun-21	147440
Feb-16	87920	May-19	120560	Jul-21	164040
Mar-16	93320	Jun-19	165080	Aug-21	179680
Apr-16	95920	Jul-19	192640	Sep-21	154280
May-16	91680	Aug-19	181080	Oct-21	118400
Jun-16	102320	Sep-19	204840	Nov-21	38880
Jul-16	112400			Dec-21	26720
Aug-16	110120				
Sep-16	102720				

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Oct-16	104400		
Nov-16	67960		
Dec-16	57040		
Jan-17	55880		
Feb-17	58000		
Mar-17	56120		
Apr-17	87760		
May-17	91680		
Jun-17	102320		
Jul-17	12400		
Average units/month	78,708	Average units/month	113,728
		Average units/month	84,215

Above comparison of consumption data transpires that the Respondent was charged excessive bills during the disputed period i.e. August 2017 to September 2019 (26 months) by the GEPCO in comparison with the consumption of the periods before and after the dispute.

It would be fair and appropriate to afford the credit of units as per the average consumption recorded during the period after the dispute i.e. October 2019 to December 2021. Calculation in this regard is done below:

Table-B

Disputed period: August 2017 to September 2019 (26 months)

• Difference of = average units	Average units recorded during the disputed period	(-)	Average units recorded during the period after the dispute	
=	113,728	(-)	84,215	29,513 units
• Total units excessive charged =	difference of average units x No. of disputed months = 29,513 x 26 = 767,335 units			

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6. In view of what has been stated above, we 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 Respondent should pay the bills till July 2017 accordingly.
 - ii. The GEPCO should afford a credit of 767,335 units for the period from August 2017 to September 2019, being excessively charged to the Respondent.
 - iii. The billing account of the Respondent be overhauled accordingly.
7. The impugned decision is modified in the above terms.

Abid Hussain
Member/Advisor (CAD)

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Date: 14.04.2022