



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

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No. NEPRA/AB/Appeal/136/2021/ 427

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. 136/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.27-12121-1786700 with a sanctioned load of 78 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 Rs.1,043,937/- 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



National Electric Power Regulatory Authority

the TOU billing meter was found within BSS limits. The POI vide decision dated 30.09.2020 concluded the matter as under:

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

- i. *That the actual kWh reading index till MCO dated 15.03.2016 was 16837x40 Off Peak & 2846x40 Peak (total=19683x40) which is justified and correct whereas the excess reading charged as 44537x40 O/Peak & 4003x40 Peak (Total=48540x40) beyond the actual reading index causing 1154280 units (48540-19683x40) units excessively recovered is void, unjustified and of no legal effect therefore the petitioner is not liable to pay the same.*
- ii. *that the actual off-peak kWh index till MCO dated 16.09.2016 was 26081x40 which is justified and correct whereas the excess off-peak kWh reading charged as 27737x40 beyond the actual reading index causing 66240 units (27737-26081x40) excessively recovered is void, unjustified and of no legal effect therefore the petitioner is not liable to pay the same;*
- iii. *that on the impugned billing meter (Sr. No.201476/SBEEEX) became defective in between 10/2016 to 21.09.2017 and 652760 units billed by the respondents during the above said period are excessive, unjustified, void, and illegal therefore the petitioner is not liable to pay the same. However the AMR meter (which was found correct during the joint checking dated 02.09.2020) installed with the disputed billing meter recorded total kWh reading index as 12887.664x40 (11110.957 O/P & 1786.707 Peak) and its total advancement of units is 515507 units (12887.664x40) causing 137253 units as excessively billed which are void, unjustified and of no legal effect and the petitioner is not liable to pay the same; and*
- iv. *that the respondents are directed to overhaul the account of the petitioner and refund the petitioner the excess units charges and recovered (as*



National Electric Power Regulatory Authority

mentioned in the foregoing operative paragraph-i, ii & iii) in future bill 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 1,154,280 units were charged in excess till March 2016 as concluded in para No.8(i), 66240 units excessively recovered in September 2016 as concluded in para No.8(ii) and 137,253 units excessively recovered upto 02.09.2020 as conducted in para No.8(iii) of the impugned decision, whereas the billing from December 2016 to September 2019 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 (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 got no cause of action to approach the POI by filing petition on 29.01.2020; (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 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; (6) the POI neither recorded the consumption data nor perused the relevant



National Electric Power Regulatory Authority

record/consumption data in true perspective and decided the application of the Respondent on mere surmises and conjectures; (7) the impugned decisions is ex-facie corum 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 GEPCO 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 however were not filed.
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 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, a 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



National Electric Power Regulatory Authority

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 are 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 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 has 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. 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 heard and the record perused, it is observed as under:

- 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



National Electric Power Regulatory Authority

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. 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).



National Electric Power Regulatory Authority

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



Annex E

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with $\hat{\mu}_1$ and $\hat{\mu}_2$ as

As part of the data collection process, the researchers conducted focus group discussions with the teachers and the students. The purpose of the focus group discussions was to explore the teachers' and students' perceptions of the effectiveness of the intervention. The focus group discussions were conducted with the teachers and the students who had participated in the intervention. The focus group discussions were conducted with the teachers and the students who had participated in the intervention. The focus group discussions were conducted with the teachers and the students who had participated in the intervention.

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This non-affiliated, independent, non-profit
hospital management and the care of the hospital
in several fields of the hospital, the staff of the
for information and further necessary action.

Deputy Assistant (07)
Division No. 2, GPO



National Electric Power Regulatory Authority



Before the Appellate Board
National Electric Power Regulatory Authority
(NEPRA)
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Subject: **HEARING OF APPEAL UNDER NEPRA (PROCEDURE FOR FILING APPEALS) REGULATIONS, 2012**

Appeal No. **025/2021**

GERCO VS. MEDICAL SUPERINTENDENT DHQ HOSPITAL GUJRANWALA

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. Abdul Hameed Khan	Medical Superintendent	0327-4350898	[Signature]
2	David H. Sanyal (Hon. Genl.)	Genl.	0316 3492120	[Signature]
3				
4				

Respondent

#	Name	Designation	Mobile #	Signature
1	M. Saleem	Advocate	03456351034	[Signature]
2	Dr. Atique Ahmed	MD	0333811621	[Signature]
3	Sh. Ali	Sub Engineer	0300 8146497	[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

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National Electric Power Regulatory Authority

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 cannot be disputed being a past and closed transaction. It is further observed that the Respondent assailed the billing for the period from December 2016 to September 2019, whereas the POI also decided the fate of billing prior to December 2016, which is beyond the prayer of the Respondent. Foregoing in view, the impugned decision to the extent of the bill till July 2017 is void, without lawful authority and the same is liable to be set aside.

- 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 authenticity:

Table-A					
Period before dispute		Disputed period		Period after dispute	
Month	Units	Month	Units	Month	Units
May-14	27440	Aug-17	81400	Oct-19	60200
Jun-14	43000	Sep-17	78480	Nov-19	31400
Jul-14	52400	Oct-17	90560	Dec-19	25000
Aug-14	0	Nov-17	54880	Jan-20	40480
Sep-14	0	Dec-17	23280	Feb-20	40480
Oct-14	0	Jan-18	36760	Mar-20	33280
Nov-14	70960	Feb-18	35840	Apr-20	31240
Dec-14	65000	Mar-18	23840	May-20	39760
Jan-15	52720	Apr-18	36120	Jun-20	62960
Feb-15	51120	May-18	70240	Jul-20	168560
Mar-15	52360	Jun-18	104760	Aug-20	87160
Apr-15	51920	Jul-18	89160	Sep-20	110080
May-15	42800	Aug-18	98280	Oct-20	80760
Jun-15	55080	Sep-18	116120	Nov-20	35680
Jul-15	61520	Oct-18	50240	Dec-20	28520



National Electric Power Regulatory Authority

Aug-15	61000	Nov-18	33800	Jan-21	45080
Sep-15	73040	Dec-18	27960	Feb-21	35760
Oct-15	71720	Jan-19	41160	Mar-21	28720
Nov-15	69200	Feb-19	43080	Apr-21	35800
Dec-15	62800	Mar-19	30280	May-21	46200
Jan-16	63960	Apr-19	40600	Jun-21	76960
Feb-16	61680	May-19	64120	Jul-21	87680
Mar-16	65680	Jun-19	84520	Aug-21	97800
Apr-16	69520	Jul-19	101480	Sep-21	82920
May-16	70160	Aug-19	98680	Oct-21	77640
Jun-16	82400	Sep-19	108200	Nov-21	30000
Jul-16	79120			Dec-21	26720
Aug-16	82440				
Sep-16	95080				
Oct-16	90560				
Nov-16	49280				
Dec-16	34880				
Jan-17	35640				
Feb-17	41840				
Mar-17	41200				
Apr-17	85400				
May-17	65080				
Jun-17	9800				
Jul-17	39200				
Average units	54,538	Average units	63,994	Average units	57,243

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:

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National Electric Power Regulatory Authority

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	
=	63,994	(-)	57,243	= 6,751 units
Total units excessive charged = difference of average units x No. of disputed months				
	6,751	x	26	= 175,526 units

6. In view of what has been stated above, we reached the conclusion that 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. The GEPCO should afford a credit of 175,526 units for the period from August 2017 to September 2019, being excessively charged to the Respondent. 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