



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

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No. NEPRA/Appeal/013/2016/125

February 28, 2023

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| 1. Pakistan Television Corporation Ltd,
Through its Director Administration,
PTV Headquarters, Constitution Avenue,
F-5/1, Islamabad | 2. Chief Executive Officer,
GEPCO Ltd,
565-A, Model Town,
G. T. Road, Gujranwala |
| 3. Nauman Munir Paracha,
Advocate Supreme Court of Pakistan,
House No. 19, Street No. 59,
F-8/4, Islamabad | 4. Zafar Iqbal Mangan,
Advocate High Court,
First Law Company,
Sir Ganga Ram Mansion,
53, The Mall, Lahore |
| 5. Superintending Engineer,
GEPCO Ltd, Sialkot Circle,
WAPDA Colony, Shahab Pur,
Sialkot | 6. Revenue Officer,
GEPCO Ltd, Pasrur Division,
Near Nawaz Sharif Park,
Pasrur, District Sialkot |
| 7. Sub Divisional Officer,
GEPCO Ltd,
Sub Division No. 01,
Pasrur, District Sialkot | 8. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala |

Subject: **Appeal Titled GEPCO Vs. Pakistan Television Corporation Limited**
Against the Decision Dated 30.04.2012 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 23.02.2023, 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 The Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-013/POI-2016

Gujranwala Electric Power Company Limited

.....Appellant

Versus

Pakistan Television Corporation Limited,
Through its Director Administration/Company Secretary,
PTV Head Quarters, Constitution Avenue, Islamabad

.....Respondent

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

For the Appellant:

Mr. Nauman Paracha Advocate
Hafiz Zabeeh Ullah SDO
Mr. Muhammad Khan RO

For the Respondent:

Mr. Zafar Iqbal Manager

DECISION

1. Briefly speaking, Pakistan Television Corporation Limited (hereinafter referred to as the "Respondent") is a consumer (Rebroadcasting center) of Gujranwala Electric Power Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.24-12441-0220500, which was initially sanctioned industrial tariff with sanctioned load of 50 kW in the year 1982. Since then, the electricity bills charged by the Appellant on the basis of industrial tariff category i.e. B-1 were being paid by the Respondent. It is observed that National Electric Power Regulatory Authority (hereinafter referred to as the "NEPRA") vide its Notification No. S.R.O. 151(1)/2007 dated 23.02.2007 provided a guideline to the DISCOs that the consumers who were





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shifted under tariff A-2 at the time of the notification having sanctioned load above 20 kW, were required to be billed on A-2b tariff till the time they were provided TOU billing meter after which the said consumers were to be billed on tariff category A-2C. Moreover, the consumers having tariff category A-2b at the time of notification were required to be provided with TOU meters not later than June 2008, however, the Appellant continued charging the Respondent on industrial tariff. Later on, the Audit Department vide Audit Note No. MIA/LAP/G-4/322 dated 05.06.2008 pointed out illegal extension of load and use of electricity for commercial activity (*emphasis added*) by the Respondent and recommended charging the difference of tariff i.e. Commercial

(A-2C) instead of Industrial (B-1b) since the date of connection of the Respondent relying upon the endorsement of SE Sialkot Circle communicated vide 03.09.1999. Afterwards, the Appellant installed the TOU billing meter at the premises of the Respondent in July 2009 and charged the onward bills as per the tariff category A-2C, which were paid by the Respondent regularly. Later on, the Appellant issued a notice dated 24.03.2011 to the Respondent regarding the wrong application of tariff category i.e. B-1 instead of A-2C, and debited a detection bill of Rs.1,403,234/- for the period from July 2005 to May 2009 to the Respondent due to change of tariff category from B-1 to A-2C and added to the bill for July 2011.

2. The Respondent being aggrieved with the above actions of the Appellant, filed a complaint before the Provincial Office of Inspection, Gujranwala Region, Gujranwala (the "POI"), and challenged the above-mentioned detection bill. As per the





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determination of POI, charging the difference in tariff category for the period from July 2005 to May 2009 by the Appellant is unjustified being without prior notice and affording an opportunity of hearing to the Respondent. Finally, the matter was disposed of vide POI decision dated 30.04.2012 with the following conclusion:

"In the light of the above facts, it is held that the impugned amount of Rs.14,03,234/- charged as the difference of tariff from B-1 to A-2 (c) for the period from 05/2005 to 05/2009 added in the bill for 07/2011 is void, unjustified and of no legal effect; therefore, the petitioner is not liable to pay the same. However, tariff A-2 (c) is applicable with effect from 08/2009 when the first bill was issued on the TOU meter. The respondents are further directed to over-haul the account of the petitioner and any excess amount recovered be adjusted in future bills."

3. Being dissatisfied with the POI decision dated 30.04.2012, the Appellant initially filed an appeal before the Advisory Board Govt. of Punjab, Lahore (hereinafter referred to as the "Advisory Board") on 27.07.2012. The Advisory Board vide order dated 04.11.2015 advised the Appellant for filing the appeal before the NEPRA being the competent forum. Accordingly, the Appellant filed Appeal No.013-2016 before NEPRA on 07.12.2015 under Section 38(3) of the NEPRA Act. NEPRA Appellate Board vide decision dated 02.12.2016 dismissed the appeal being time barred.
4. Aggrieved with the NEPRA's decision, the Appellant filed Writ Petition No.6224/2017 before the Lahore High Court Lahore. The honorable High Court vide Judgement dated 12.02.2018 dismissed the Writ Petition of the Appellant; the operative part of the said order is placed below:

"16.The perusal of the order passed by NEPRA shows that it rightly came to conclusion on the strength of section 10 of the Order of 2005 that the appeal before the Advisory Board ought to have been filed within a period of



30 days whereas the petitioner filed the said appeal after a delay of 71 days without any explanation. The petitioner, therefore, failed to make out any case for condonation under section 14 of the Limitation Act, 1908. NEPRA thus rightly rejected the appeal filed by the petitioner.

17. In the circumstances, it is declared that after the promulgation of Order of 2005, the decision rendered on a complaint filed before the Electric Inspector 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 sub-section (3) of section 38 of the NEPRA Act shall lie before the Authority as defined in NEPRA Act. In the result, this writ petition and other connected writ petitions fail and are accordingly dismissed."

5. The Appellant preferred an appeal vide Civil Petition No. 1244 of 2018 before the honorable

Supreme Court of Pakistan against the Judgement dated 12.02.2018 of the Lahore High Court. The honorable Supreme Court of Pakistan vide order dated 08.03.2022 disposed of the abovementioned appeal directing NEPRA to decide the case on merits after providing an opportunity of hearing to the parties; the relevant portion of the above-said order is reproduced below:

"Accordingly, we convert this petition into an appeal and allow the same. A direction is issued to NEPRA to hear and decide the appeal on merits after hearing all concerned parties and in accordance with the law."

6. Hearing:

- 6.1 In compliance with the above-referred order of the honorable Supreme Court of Pakistan, the Appellate Board adjudicated the matter, and hearings of the appeal were conducted on 06.04.2022, 02.06.2022, 17.06.2022 and 23.08.2022, however, the hearings were adjourned on the request of either the Respondent or the Appellant.

6.2 Lastly, the appeal was heard at Lahore on 29.09.2022 in which counsels for both the Appellant and the Respondent were present. At the outset of the hearing, counsel for the Appellant raised the preliminary objection regarding the jurisdiction of the POI and averred that the NEPRA vide notification dated 23.02.2007 categorized the entertainment places in Commercial tariff category A-2C, therefore, the TOU billing meter was installed at the premises of the Respondent in July 2009 and a detection bill of Rs.1,403,234/- for the period July 2005 to May 2009 was debited to the Respondent due to change of tariff i.e. from B-1 to A-2C in July 2011. Learned counsel for the Appellant submitted that the above detection bill is recoverable from the Respondent as per the Notification dated 23.02.2007 issued by the NEPRA as well as the Audit Note dated 05.06.2008, as such the POI has no lawful authority to decide the legitimate bill. According to the learned counsel for the Appellant, the Respondent was being charged the bills with the wrong tariff category i.e.B-1 instead of A-2, which was initially pointed out by the SE Operation Sialkot Circle vide letter dated 03.09.2009 and subsequently by the audit department. As per learned counsel for the Appellant, the Respondent has admitted the wrong application of tariff and paid 50% of the above detection bill, therefore there is no justification to cancel the above detection bill. Learned counsel for the Appellant prayed that the impugned decision be set aside and to allow the recovery of the above detection bill.

6.3 The representative for the Respondent rebutted the version of learned counsel for the Appellant and argued that the premises is the back office of the Respondent used for reporting purpose and there is no commercial activity on the premises. He submitted

that the detection bill of Rs.1,403,234/- for the period July 2005 to May 2009 debited due to a change of tariff i.e. from B-1 to A-2(c) is illegal, unlawful and the Respondent is not responsible to pay any difference bill due to the negligence on the part of the Appellant. He supported the impugned decision for declaring the above detection bill as void and prayed to uphold the same.

7. Arguments were heard and the record was perused. Following are our observations:

7.1 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. 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. The Appellant contends that the detection bill was debited to the Respondent due to the difference of tariff recoverable as per NEPRA Notification dated 23.02.2007, thus the POI is not authorized to decide the instant matter.

7.2 In order to come up with an opinion, it is necessary to analyze the relevant laws.

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.

7.3 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:

“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 the 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. (emphasis added)
- (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.”

7.4 Under section 38(1)(a)(ii) of the NEPRA Act, the Provincial Office of Inspection (POI) is empowered to determine 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, exercisable, in addition to their duties under the said Act. 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.



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7.5 In view of the above-quoted provisions of laws, we are of the considered view that the disputes of difference of tariff category are to be adjudicated by the Provincial Office of Inspection and the NEPRA is the competent forum to decide the appeals under Section 38(3) of the NEPRA Act 1997. In view of the foregoing discussion, the objection of the Appellant is rejected being devoid of force.

7.6 Detection bill of Rs.1,403,234/- for the period July 2005 to May 2009 debited to the Respondent due to change of tariff i.e. from B-1 to A-2(c)

The crux of the issue is that the Appellant installed electricity connection at the Re-broadcasting center of the Respondent at Pasrur District in the year 1982 under the tariff category B-1 and the sanctioned load of the Respondent was 50 kW. The Appellant kept on raising the bills to the Respondent on the B-1 tariff category till June 2009, when, on pointing out by its Audit Department vide Audit Note No. MIA/LAP/G-4/322 dated 05.06.2008, the Appellant installed a TOU billing meter at the premises of the Respondent in July 2009 and the tariff category of the Respondent was changed from B-1 to A-2C. The record does not show that the Respondent raised any objection to the change of tariff category from B-1 to A-2C and paid the onward bills, accordingly. Thereafter, the Appellant issued a notice dated 24.03.2011 to the Respondent regarding the wrong application of tariff category B-1 instead of A-2C and debited a detection bill of Rs.1,403,234/- for the period from July 2005 to May 2009 to the Respondent due to the change of tariff from B-1 to A-2C and added the same in the bill for July 2011. The Appellant asserted that it changed the tariff category of the Respondent in July 2009 based on Notification No. S.R.O. 151(1)/2007 dated 23.02.2007, whereby the NEPRA defined the A-2 commercial tariff as under:





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"A-2 COMMERCIAL:

1. *This tariff is applicable for supply to commercial offices and commercial establishments such as:*
 - i. *Shops,*
 - ii. *Hotels and Restaurants,*
 - iii. *Petrol Pumps, Service Stations,*
 - iv. *Compressed Natural Gas Filling Station,*
 - v. *Private Hospitals/Clinics/Dispensaries,*
 - vi. *Places of Entertainment, Cinemas, Clubs,*
 - vii. *Guest Houses,*
 - viii. *Office of Lawyers, Solicitors, Law Associates, and Consultants, etc.*
2. *Consumers under tariff A-2 having sanctioned load up to 20KW shall be billed under single Part Kwh rate A- 2(a).*
3. *All existing consumers under tariff A-2 having sanctioned load exceeding 20KW shall be billed on A-2(b) tariff till such time that they are provided T.O.U metering equipment, thereafter such consumers shall be billed on TOU tariff A-2(c).*
4. *All existing consumers under tariff A-2(b) shall be provided T.O.U. meter arrangement by the Company not later than 30th June 2008.*
5. *All new connections having load requirement exceeding 20 KW shall be provided T.O.U. meters and shall be billed under tariff A-2(c).*
6. *The consumer having sanctioned load up to 20KW and below, supply to three phase 400 volts compressor and pump motors of the air conditioning equipment installed centrally air condition premises and other three-phase, 400 volts apparatus general utility in the premises mentioned above under this Tariff, shall be governed the Industrial Tariff B-1. This condition shall not apply to consumers having sanctioned load in excess of 20 KW."*





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- 7.7 The plain reading of condition No.3 above shows that the consumers who were shifted under tariff A-2 at the time of the notification having sanctioned load above 20 kW, were required to be billed on A-2(b) tariff till the time they were provided the TOU billing meter after which the said consumers were to be billed on tariff category A-2C. Similarly, as per condition No.4, the consumers having tariff category A-2b at the time of notification were required to be provided with TOU meters not later than June 2008.
- 7.8 As such, the Respondent was an industrial consumer at the time of NEPRA notification dated 23.02.2007, the terms of the A-2 tariff as given therein did not warrant an automatic change of the B-1 tariff. Apparently, the Appellant changed the tariff category of the Respondent from industrial to commercial assuming it to be the place of entertainment. If so, even then the Appellant was required to first provide a TOU billing meter and then start billing on tariff category A-2C. The TOU billing meter was required to be installed by the Appellant not later than 30th June 2008. However, the Appellant faltered on its obligation and it was not before July 2009 that the TOU billing meter was installed on the premises of the Respondent and shifted the billing of the Respondent from B-1 to A-2C tariff category. As such, the change of tariff category was not agitated by the Respondent, it can be assumed that it had no objection to reclassifying it as a commercial entity for the application of tariff category i.e.A-2C. There is no provision for retrospective application of such tariff in any of the applicable documents.
- 7.9 The Appellant on the observation of its audit department charged a detection bill of Rs.1,403,234/- for the period from July 2005 to May 2009 to the Respondent for recovery of tariff difference i.e. from B-1 to A-2(c) based on Notification dated





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23.02.2007 of NEPRA. As noted earlier, the application of A-2(C) was contingent upon the installation of the TOU billing meter and there was no provision for retrospective recovery of tariff difference.

7.10 The record presented before us shows that in the year 1999, SE Sialkot Circle vide letter dated 03.09.1999 recommended to charge the difference bill to the Respondent since the date of connection due to the wrong application of tariff category from B-1 to A-2. The Appellant did not bother to change the tariff category of the Respondent despite the endorsement of SE Sialkot Circle vide letter dated 03.09.1999 and the billing was being carried out on the tariff category B-1 till the installation of the TOU meter in July 2009. Needless to say that the application of the appropriate category of tariff to any consumer is the responsibility of the distribution company and the consumer cannot be held liable for any lapse in due diligence on the part of the DISCO for deciding its tariff category. As such the anomaly in the tariff category of the Respondent before installation of the TOU meter, if any, as well as the delay in installation of the TOU meter was merely on the part of the Appellant, therefore the Respondent cannot be penalized for such lapses on the part of the Appellant itself.

7.11 The connection of the Respondent was installed by the Appellant in the year 1982. NEPRA notification dated 23.02.2007 based on which the Appellant raised the detection bill of Rs.1,403,234/- for the period from July 2005 to May 2009 to the Respondent due to change of tariff i.e. from B-1 to A-2(c) and issued in July 2011, which prima facie does not allow retrospective application of tariff category. The Audit Department of the Appellant vide audit note dated 05.06.2008 required recovery from the date of connection of the Respondent, however, strangely, the Appellant has



claimed recovery for the period July 2005 to May 2009, when asked the reason for claim recovery from July 2005 and onwards, the counsel for the Appellant could not give any justification to satisfy this forum. The above detection bill, therefore, appeared to have been issued arbitrarily without any legal justification.

7.12 The Appellant raised the detection bill of Rs.1,403,234/- for the period from July 2005 to May 2009 to the Respondent due to change of tariff i.e. from B-1 to A-2C based on the audit note dated 05.06.2008, which is not tenable in the eyes of law. GEPCO is a licensee of NEPRA and can only charge such tariff which is determined or approved by the Authority. It is the failure of GEPCO to apply correct tariff and it cannot compensate itself by recovering the same from consumer. A consumer has a reasonable expectancy that what is being billed to it is actually the cost of electricity consumed by it and it is past and closed transaction from the perspective of consumer. It may also be relevant to mention here that the failure of GEPCO to charge a tariff different from one approved by the Authority for a particular period amounts to violation of its license terms and NEPRA applicable laws. Moreover, GEPCO is a separate legal entity and as per established jurisprudence, the outsiders dealing with the company cannot be made liable for loss which has resulted due to mismanagement within a company. The outsider, the consumer in the instant case, is entitled to presume that the company is functioning in accordance with law and is charging them tariff which is approved for that point of time. Therefore, the Audit observation is an internal matter between the DISCO and the Audit Department and the consumer cannot be held responsible for the payment of any detection bill based on the Audit Para. The honorable Lahore High Court in its judgment in the "Water and Power Development Authority, etc v. Umaid



Khan” (1988 CLC 501) held that *no amount could be recovered from the consumer on the basis of the audit report as the audit affair is between the WAPDA and its audit department and no audit report could in any manner make consumer liable for any amount and the same could not bring about any agreement between the WAPDA and the consumer making consumer liable on the basis of so-called audit report.* The courts in similar cases relied on the same principle in cases reported cited as 2014 MLD 1253 and 2008 YLR 308.

7.13 Even otherwise, the Audit recommendation to debit the difference of tariff i.e.A-2 instead of B-1 since the date of connection is not based on merits as the industrial connection with a load of 50 kW was sanctioned by the Appellant in the year 1982 after completion of codal and departmental formalities. Since then, the bills were debited to the Respondent as per tariff category B-1 almost twenty-six years before the alleged audit observation.

7.14 Besides all the above observations, the claim of the Appellant is also time-barred as the Audit Department vide Audit Note dated 05.06.2008 recommended to recover the tariff difference i.e. industrial instead of commercial, whereas the Appellant charged the detection bill of Rs.1,403,234/- for the period from July 2005 to May 2009 to the Respondent in July 2011 after a lapse of more than three years, which is inconsistent with Article 181 of the Limitation Act, 1908.

7.15 In view of the above discussion, we are of the considered view that the detection bill of Rs.1,403,234/- for the period from July 2005 to May 2009 debited to the Respondent due to the change of tariff i.e. from B-1 to A-2C and added to the bill for July 2011 is illegal, unjustified and the same is declared null and void.




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8. Foregoing in view, we do not find any reason to intervene with the impugned decision of POI, the same is maintained and consequently the appeal is dismissed.


Syed Zavar Haider
Member


Abid Hussain
Convener


Muhammad Irfan-ul-Haq
Member

Dated: 23/02/2023.

