



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

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No. NEPRA/Appeal/061/2020/ 196

February 09, 2023

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| 1. Zeshan Hussain,
S/o. Muhammad Hussain,
R/o. Street No. 32, (Ghulam Hayder Jatt Wali),
Mohallah Gulshan Abad,
Nowshera Road, Gujranwala | 2. Chief Executive Officer,
GEPCO Ltd,
565-A, Model Town,
G. T. Road, Gujranwala |
| 3. Saqib Mubarik Bhatti,
Advocate High Court,
49-D, M-A, Johar Town,
Lahore | 4. Raza Waheed Buttar,
Advocate High Court,
33-Kiyani Chambers,
Session Courts, Gujranwala |
| 5. Sub Divisional Officer,
GEPCO Ltd,
Farooq Ganj Sub Division,
Near Aalam Chowk, By-pass,
Gujranwala | 6. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk. Near Kacheri Road,
Gujranwala |

Subject: **Appeal Titled GEPCO Vs. Zeshan Hussain Against the Decision Dated 26.02.2020 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 06.02.2023, 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.061/POI-2021

Gujranwala Electric Power Company LimitedAppellant

Versus

Zeeshan Hussain S/o Muhammad Hussain,
R/o Street No,32 (Ghulam Haider Jatt Wali),
Mohallah Gulshanabad, Nowshera Road, GujranwalaRespondent

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

For the Appellant:

Mr. Saqib Mubarak Bhatti Advocate

Mr. Asim Ali Legal Assistant

For the Respondent:

Mr. Zeeshan Hussain

DECISION

1. Through this decision, the appeal filed by the Gujranwala Electric Power Company Limited (hereinafter referred to as the “Appellant”) against the decision dated 26.02.2020 of the Provincial Office of Inspection, Gujranwala Region, Gujranwala (hereinafter referred to as the “POI”) is being disposed of.
2. Briefly speaking, Mr. Zeeshan Hussain (hereinafter referred to as the “Respondent”) is a domestic consumer of the Appellant bearing Ref No.12-12115-2368200 with sanctioned load of 1kW and the applicable Tariff category is A-1(a). The Appellant has claimed that the old meter of the Respondent was found defective (sticking), hence it was replaced with a new meter vide the Meter Change Order



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("MCO") dated 25.07.2016. Resultantly, a detection bill amounting to Rs.162,841/- against 7,023 units for six months for the period from February 2016 to July 2016 was debited to the Respondent and added to the bill for September 2016.

3. Being aggrieved, the Respondent initially assailed the above detection bill before the Civil Court. The honorable Civil Court vide order dated 22.01.2018 disposed of the matter due to lack of jurisdiction. Thereafter, the Respondent approached the POI on 25.02.2019 and challenged the above detection bill. The complaint of the Respondent was disposed of by the POI vide the decision dated 26.02.2020, wherein the detection bill of Rs.162,841/- against 7,023 units for six months for the period from February 2016 to July 2016 was cancelled.
4. Through the instant appeal, the afore-referred decision dated 26.02.2020 of the POI has been impugned by the Appellant before the NEPRA. In its appeal, the Appellant objected to the maintainability of the impugned decision, *inter alia*, on the main grounds, (1) the POI failed to decide the matter within 90 days as envisaged in Section 26(6) of the Electricity Act, 1910, hence it became ex-facie, coram non judice, void, ab-initio and without jurisdiction pursuant to the judgment reported as 2015 MLD 1307; (2) the POI failed to analyze consumption data in true perspective and erred in holding that the detection bill of Rs.162,841/- against 7,023 units for six months for the period from February 2016 to July 2016 is null and void; (3) the POI did not appreciate that the less consumption was recorded by the impugned meter during the disputed period February 2016 to July 2016; (4) the discrepancy of defective meter was well within knowledge of the Respondent and he did not raise any objection at the time of replacement of the impugned meter; (5) the POI did not record the evidence and rendered the impugned decision based on surmises and



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conjectures; (6) the Respondent did not serve notice prior filing complaint to the POI as required under Section 26(6) of the Electricity Act, 1910. The Appellant finally prayed that the impugned decision is liable to be set aside.

5. Proceedings by the Appellate Board

5.1 Upon filing of the instant appeal, a notice dated 03.06.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. The Respondent submitted the reply to the Appeal on 16.06.2021. In the reply, the Respondent raised the preliminary objection regarding limitation and submitted that the appeal was filed by the Appellant before the NEPRA after a lapse of more than thirteen months from the date of the impugned decision. The Appellant further submitted that the POI after analysis of the consumption data from the year 2012 to 2019, rightly cancelled the detection bill of Rs.162,841/- against 7,023 units for six months for the period from February 2016 to July 2016. As per the Appellant, the POI has correctly observed that the impugned meter was neither checked by the SDO nor sent to the M&T laboratory for checking and charged the above-said detection bill with ulterior motives. According to the Respondent, the POI is not bound to decide the matter within 90 days and it varies from case to case. The Respondent supported the impugned decision and prayed for the dismissal of the appeal being barred by time.

6. Hearing

6.1 After issuing notices dated 07.10.2022 to both parties, hearing of the subject appeal was conducted at NEPRA Regional Office Lahore on 13.10.2022 in which a counsel appeared for the Appellant and the Respondent appeared in person. Learned counsel

for the Appellant reiterated the same version as contained in the memo of the appeal and contended that the impugned billing meter of the Respondent was found defective (sticking) due to which it was replaced with a new meter vide MCO dated 25.07.2016. Learned counsel for the Appellant further contended that less consumption was recorded by the impugned meter during the disputed period February 2016 to July 2016 due to which a detection bill of Rs.162,841/- against 7,023 units for six months for the period from February 2016 to July 2016 was debited to the Respondent to recover the revenue loss sustained by the Appellant. As per learned counsel for the Appellant, the POI did not consider the consumption data and declared the above detection bill as null and void. He termed the above detection bill as justified and payable by the Respondent.

6.2 The Respondent rebutted the version of the Appellant and argued that neither notice was served nor the alleged checking was carried out in his presence, hence there is no justification to charge the above detection bill based on false and fabricated allegations. He defended the impugned decision and prayed for upholding the same.

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

7.1 Limitation for filing appeal:

Pursuant to Section 38(3) of the NEPRA Act, any aggrieved party may prefer the appeal before the NEPRA within 30 days from the date of receipt of the decision of the Provincial Office of Inspection. Further, a margin of 7 days is provided in case of submission through registered post, and 3 days in case of submission of appeal through courier is given in the NEPRA (Procedure for filing Appeals) Regulations, 2012. From the perusal of record, it reveals that the impugned decision was passed on

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26-02-2020 and the Appellant applied for the said decision on very next day i.e. 27-02-2020. The POI delivered the impugned decision on 19-03-2021 and the Appellant filed the appeal before NEPRA on 20-04-2021, which is well within the time limit. Hence the objection of the Respondent in this regard has no force and is rejected.

7.2 Objection regarding the time limit for POI for deciding the complaint

As per the record, the Respondent filed his complaint before the POI on 25.02.2019 under Section 38 of the NEPRA Act. POI pronounced its decision on 26.02.2020 i.e. after 367 days of receipt of the complaint. The Appellant has objected that the POI was bound to decide the matter within 90 days under Section 26(6) of the Electricity Act, 1910. In this regard, it is observed that the forum of POI has been established under Section 38 of the NEPRA Act which does not put a restriction of 90 days on POI to decide complaints. Section 38 of the NEPRA Act overrides provisions of the Electricity Act, 1910. Reliance in this regard is placed on the judgments of the honorable Lahore High Court Lahore reported in *PLJ 2017 Lahore 627* and *PLJ 2017 Lahore 309*. Keeping in view the overriding effect of the NEPRA Act being later in time, and the above-referred decisions of the honorable High Court, hence the objection of the Respondent is dismissed.

7.3 Objection regarding prior notice before approaching the POI:

As regards another objection of the Appellant 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 Section 38 of 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



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notice before approaching the POI. The above objection of the Appellant is not valid, therefore overruled.

7.4 Detection bill of Rs.162,841/- against 7,023 units debited in September 2016

The Appellant claimed to have found the billing meter of the Respondent defective (sticking) and replaced it with a new meter vide MCO dated 25.07.2016, therefore a detection bill of Rs.162,841/- against 7,023 units for six months for the period from February 2016 to July 2016 was issued to the Respondent in September 2016, which was assailed by him before the POI. The Appellant has filed this appeal defending the above detection bill charged to the Respondent and prayed for setting aside the impugned decision

7.5 The billing meter of the Respondent was allegedly discovered as defective by the Appellant and the disputed detection bill was issued in September 2016. Therefore the matter will be dealt with under the provisions of the CSM-2010. Clause 4.4 of the CSM-2010 enumerates the procedure to confirm the defect in the metering equipment and charge the Consumer on the basis of thereof. Sub-clauses (b), (c), and (e) of Clause 4.4 of the CSM-2010 being relevant in the instant are reproduced below:

"4.4 Meter Replacement

(b) Should the GEPCO at any time, doubt the accuracy of any metering equipment, the GEPCO may after information the consumer, install another duly calibrated and tested metering equipment in series with the impugned metering equipment to determine the difference in consumption or maximum demand recorded by the check metering equipment and that recorded by the impugned metering equipment during a fixed period. If one such comparative test being made the impugned metering equipment should prove to be incorrect, the impugned metering equipment shall be removed from the premises with the written consent of the consumer, and the GEPCO in the

absence of any interference or alteration in the mechanism of the impugned metering equipment being detected by the GEPCO shall install "correct meter" without any further delay.

(c) Where it is not possible for the GEPCO to install check metering equipment of appropriate capacity in series with the impugned metering equipment, to check the accuracy of the impugned metering equipment as described above, the GEPCO shall, after information (in writing) the consumer, test the accuracy of the impugned metering equipment at site by means of Rotary Sub-Standard or digital power analyzer. If incorrect, the impugned metering equipment shall be removed and immediately replaced upon settlement/ payment of assessed amount. In case if a correct meter is not available then the multiplying factor shall be charged accordingly till the replacement with correct meter.

(d)

(e) The charging of consumers on the basis of defective code, where the meter has become defective and is not recording the actual consumption will not be more than two billing cycles. The basis of charging will be % of the consumption recorded in the same month of the previous year or the average consumption of the last 11 months whichever is higher. Only the Authorized employee of GEPCO will have the power to declare a meter defective. However, the consumer has a right to challenge the defective status of the energy meter and the GEPCO will get the meter checked at the site with a check meter or a rotary sub-standard or digital power analyzer accompanied by an engineer of the metering and testing laboratory free of cost.

Under sub-clause 'b' above, upon doubt about the accuracy of the metering equipment of the Respondent, the Appellant was required to install a check metering equipment, after informing the Respondent, to determine the difference in consumption or maximum demand recorded by the check meter and the impugned meter during a fixed period. In case of confirmation of defectiveness in



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the impugned meter, the same was required to be removed with the written consent of the Consumer.

7.1 Alternatively, the Appellant was required to follow the procedure given in sub-clause (c) of Clause 4.4 of the CSM-2010, which stipulates the checking of metering equipment after informing (in writing) the consumer, by means of a Rotary Sub-standard or digital power analyzer.

7.2 As per the record presented before us, there is no evidence that the Appellant followed the procedure either under sub-clause (b) or sub-clause (c) of the CSM-2010. The Appellant has claimed that the metering equipment was checked in presence of the Respondent, however, they failed to provide Test check proforma in support of their contention. The essence of Clause 4.4 of the CSM-2010 is to ensure transparency by taking the consumer on board. However, the claim of the Appellant about the meter without following the laid down procedure suffers from credibility insufficiency. The Appellant even did not produce the impugned meter before the POI for verification of alleged defectiveness.

7.3 Notwithstanding the above observations, in order to verify the assertions of the Appellant, the consumption data of the Respondent is analyzed in the below table:

Period before dispute		Disputed period		Period after dispute	
Month	Units	Month	Units	Month	Units
Feb-15	98	Feb-16	218	Feb-17	43
Mar-15	45	Mar-16	265	Mar-17	67
Apr-15	141	Apr-16	148	Apr-17	10
May-15	191	May-16	287	May-17	26
Jun-15	208	Jun-16	443	Jun-17	48
Jul-15	199	Jul-16	260	Jul-17	120
Total	882	Total	1,621	Total	314

As evident from the above table, the total consumption of the Respondent during the



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disputed period is much higher than the total consumption recorded during the corresponding months of the preceding and succeeding years, which indicates that the impugned meter of the Respondent was functioning correctly and recording healthy consumption during the disputed period. Hence there is no justification to charge any detection bill on account of the alleged defectiveness of the impugned meter.

- 7.4 Under these circumstances, we hold that the detection bill of Rs.162,841/- against 7,023 units for six months for the period from February 2016 to July 2016 charged to the Respondent due to 33% slowness of the meter is declared null and void.
- 7.5 The billing account of the Respondent may be overhauled after adjustment of the payments made against the above detection bill.
8. Foregoing in view, the appeal is dismissed.

Syed Zavar Haider
Member

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 06/02/2023.

