



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

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No. NEPRA/Appeal/111/2021/ 096

February 09, 2023

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| 1. M/s. Halcyon Pakistan (Pvt.) Ltd,
Ghannia Town, Near Madina CNG,
G. T. Road, Kamoke 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. Muhammad Azam Khokhar,
Advocate High Court,
10-Fatima Jinnah Chambers,
Session Courts, Gujranwala |
| 5. Sub Divisional Officer,
GEPCO Ltd,
Sub Division No. 3, Kamoke,
District Gujranwala | 6. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala |

Subject: **Appeal Titled GEPCO Vs. M/s. Halcyon Pakistan (Pvt.) Limited Against the Decision Dated 14.06.2021 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.111/POI-2021

Gujranwala Electric Power Company LimitedAppellant

Versus

M/s. Halcyon Pakistan (Pvt.) Ltd, Ghannia Town, Near Madina
CNG, GT Road, Kamoke, District GujranwalaRespondent

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

For the Appellant:

Mr. Saeed Ahmed Bhatti Advocate
Mian Mansoor Ahmed SDO

For the Respondent:

Mr. Muhammad Azam Khokhar Advocate

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 14.06.2021 of the Provincial Office of Inspection, Gujranwala Region, Gujranwala (hereinafter referred to as the “POI”) is being disposed of.
2. Briefly speaking, M/s. Halcyon Pakistan (Pvt.) Ltd (hereinafter referred to as the “Respondent”) is an industrial consumer of the Appellant bearing Ref No.28-12143-1190600 with sanctioned load of 257kW and the applicable tariff category is



National Electric Power Regulatory Authority

B-2(b). The Appellant has claimed that one phase of the billing meter of the Respondent was found dead stop during the Metering & Testing ("M&T") team checking dated 28.10.2019. Therefore, notice dated 20.11.2019 was issued to the Respondent regarding the above discrepancy, and the Multiplication Factor ("MF") of the Respondent was raised from 80 to 120 w.e.f October 2019 and onwards due to 33.33% slowness of the meter. Subsequently, the impugned meter of the Respondent was replaced with a new meter by the Appellant in December 2019. Afterward, a detection bill of Rs.1,213,314/- against 53,600 (Off peak=50,960 + Peak=2,640) units+350 kW MDI for six months for the period from April 2019 to September 2019 was debited to the Respondent @ 33% slowness of the meter and added to the bill for July 2020.

3. Being aggrieved, the Respondent assailed the above detection bill before the POI on 17.08.2020. The complaint of the Respondent was disposed of by the POI vide the decision dated 14.06.2021, wherein the detection bill of Rs.1,213,314/- against 53,600 (Off-peak=50,960+Peak=2,640) units+350 kW MDI for six months for the period from April 2019 to September 2019 was cancelled. The Appellant was directed to issue the revised bill for two months i.e. August 2019 and September 2019 after adding 33% slowness of the meter to the Respondent. The Appellant was further directed to overhaul the billing account of the Respondent.
4. Through the instant appeal, the afore-referred decision dated 14.06.2021 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



National Electric Power Regulatory Authority

(1) one phase of the billing meter of the Respondent was found defective on 28.10.2019, therefore, a detection bill amounting to Rs.1,213,314/- for 53,600 (Off-peak=50,960 + Peak=2,640) units+350 kW MDI for six months for the period from April 2019 to September 2019 was debited to the Respondent; (2) the POI failed to analyze consumption data in true perspective and erred in holding that the detection bill of Rs.1,213,314/- against 53,600 (Off-peak=50,960+Peak=2,640) units+350 kW MDI for six months for the period from April 2019 to September 2019 is null and void and revised the same for two months i.e. August 2019 and September 2019 as per provisions of Consumer Service Manual (the “CSM”); (3) the impugned decision was rendered by the POI after the expiry of the statutory period of ninety (90) days, hence it is ex-facie, coram non-judice, void, ab-initio without lawful authority and jurisdiction; (4) 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 05.11.2021 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 18.03.2022 wherein, the Respondent rebutted the version of the Appellant regarding charging the detection bill of Rs.1,213,314/- against 53,600 (Off-peak=50,960+Peak=2,640) units+350 kW MDI for six months for the period from April 2019 to September 2019 and contended that the Appellant cannot





National Electric Power Regulatory Authority

charge the detection bill maximum for two months as per Chapter 4 of the CSM. The Respondent further contended that the POI after analysis of consumption data reduce the period of the above detection bill for two months as the consumption recorded by the impugned meter during the disputed period is higher than the consumption of the period before the dispute. As per Respondent, the Appellant did not point out any discrepancy during the monthly readings of the impugned meter, hence the above detection bill be declared null and void. As per Respondent, the limit of 90 days for the decision provided in Section 26(6) of the Electricity Act, 1910 has ceased its effect after the enactment of Section 45 of the NEPRA Act as no period has been provided in Section 38 of the NEPRA Act. The Respondent supported the impugned decision and prayed for the dismissal of the appeal.

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 counsels appeared for both the Appellant and the Respondent. Learned counsel for the Appellant reiterated the same version as contained in the memo of the appeal and contended that one phase of the billing meter of the Respondent was found dead stop on 28.10.2019, as such the detection bill of Rs.1,213,314/- against 53,600 (Off-peak=50,960 + Peak=2,640) units+350 kW MDI for six months for the period from April 2019 to September 2019 was debited to the Respondent. Learned counsel for the Appellant



National Electric Power Regulatory Authority

averred that the increase in consumption after the replacement of the impugned meter supports our claim regarding the above detection bill. He opposed the finding of POI for revision of the bill for two months and argued that the dip in consumption is w.e.f April 2019 and onwards. As per learned counsel for the Appellant, the impugned decision for cancellation of the above detection bill is unjustified and the same is liable to be struck down.

6.2 Learned counsel for the Respondent repudiated the version of the Appellant regarding charging the above detection and supported the impugned decision for revision of the above detection bill for two months being consistent with the provisions of the CSM. He prayed that the impugned decision be maintained and the appeal be dismissed.

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

7.1 Objection regarding the time limit for POI

As per the record, the Respondent filed his complaint before the POI on 17.08.2020 under Section 38 of the NEPRA Act. POI pronounced its decision on 14.06.2021 i.e. after 302 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



National Electric Power Regulatory Authority

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.

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

7.3 Detection bill of Rs.1,213,314/- against 53,600 (Off-peak=50,960+Peak=2,640) units+350 kW MDI for six months for the period from April 2019 to September 2019 debited in July 2020

The Appellant claimed to have found the billing meter of the Respondent defective due to one dead stop during checking dated 28.10.2019 owing which detection bill of Rs.1,213,314/- against 53,600 (Off-peak=50,960+Peak=2,640) units+350 kW MDI for six months for the period from April 2019 to September 2019 was issued to the Respondent in July 2020.

7.4 Clause 4.4 of the CSM-2010 applicable during the disputed period enumerates the



National Electric Power Regulatory Authority

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 removed 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



National Electric Power Regulatory Authority

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

7.5 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 Clause 4.4(e) of the CSM-2010. The Appellant has claimed that the metering equipment was checked in presence of the Respondent; however, the Test check proforma dated 28.10.2019 as submitted by the Appellant is not signed by the Respondent. 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



National Electric Power Regulatory Authority

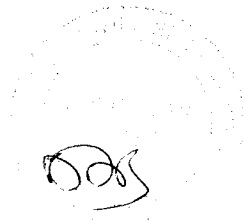
suffers from credibility insufficiency.

7.6 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	
Month	Units	Month	Units
Apr-18	30720	Apr-19	13360
May-18	34880	May-19	15400
Jun-18	30960	Jun-19	13120
Jul-18	34960	Jul-19	20480
Aug-18	38720	Aug-19	17760
Sep-18	33600	Sep-19	27040
Total	203840	Total	107160

The above consumption data shows a considerable decrease in consumption of the Respondent during the disputed period i.e. April 2019 to September 2019 vis-a-vis consumption of corresponding months of the previous year, which may indicate slowness of the impugned meter during the disputed period. Under Clause 4.4(e) of the CSM-2010, DISCO may charge the bills maximum for two billing cycles to the consumer on account of defectiveness/slowness of the meter, which in the instant case was not adhered by the Appellant while debiting the detection bill beyond two billing cycles.

7.7 Therefore, we hold that the detection bill of Rs.1,213,314/- against 53,600 (Off-peak=50,960+Peak=2,640) units+350 kW MDI for six months for the period from April 2019 to September 2019 charged to the Respondent due to the 33% slowness of





National Electric Power Regulatory Authority

the meter is liable to be declared null and void being inconsistent with the foregoing clauses of the CSM-2010.

7.8 As evident above, the actual consumption was not recorded by the impugned meter of the Respondent due to its slowness, therefore the Respondent may be charged the revised bills for two months after adding 33% slowness of the impugned meter as per Clause 4.4(e) of the CSM-2010.

7.9 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