



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

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No. NEPRA/Appeal/121/POI/2020/ 060

January 27, 2023

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|--|---|
| 1. Bilal Ahmad,
S/o. Sheikh Arshad Mahmood,
R/o. Ghulam Hussain Estate,
Khiali By-Pass, 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. Sub Divisional Officer,
GEPCO Ltd,
Chan Da Qila Sub Division,
132 KV WAPDA Town Grid
Station, Gujranwala |
| 5. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala | |

Subject: Appeal Titled GEPCO Vs. Bilal Ahmad Against the Decision Dated 26.08.2020 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 23.01.2023, 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.121/POI-2020

Gujranwala Electric Power Company LimitedAppellant

Versus

Bilal Ahmed S/o Arshad Mehmood,
R/o Ghulam Hussain estate Khiali Bypass, GujranwalaRespondent

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

For the Appellant:

Mr. Saced Ahmed Bhatti Advocate

Mr. Azhar Rasool SDO

For the Respondent:

Nemo

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 26.08.2020 of the Provincial Office of Inspection, Gujranwala Region, Gujranwala (hereinafter referred to as the "POI") is being disposed of.
2. Briefly speaking, Mr. Bilal Ahmed (hereinafter referred to as the "Respondent") is an industrial consumer of the Appellant bearing Ref No.28-12136-1602202 with sanctioned load of 160kW and the applicable Tariff category is 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

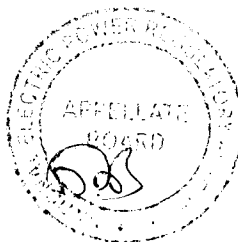




National Electric Power Regulatory Authority

10.07.2019. Therefore, notice dated 12.07.2019 was issued to the Respondent regarding the above discrepancy and the Multiplication Factor (MF) of the Respondent was enhanced from 80 to 120 due to 33.33% slowness of the impugned billing meter w.e.f July 2019 and onwards. Later on, a detection bill amounting to Rs.1,735,926/- against 94,260 units+217 kW MDI for four months for the period from March 2019 to June 2019 was debited to the Respondent @ 33.33% slowness of the meter and added to the bill for August 2019.

3. Being aggrieved with the above actions of the Appellant, the Respondent filed an application before the POI on 19.09.2019 and challenged the above detection bill and the bills with enhanced MF=120 w.e.f July 2019 and onwards. The metering equipment of the Respondent was checked by the POI on 29.07.2020 in presence of both parties and 33.33% slowness in the impugned billing meter was established. The complaint of the Respondent was disposed of by the POI vide the decision dated 26.08.2020, wherein the detection bill of Rs.1,735,926/- against 94,260 units+ 217 kW MDI for four months for the period from March 2019 to June 2019 was cancelled. The Appellant was directed to charge the kWh part of the bill w.e.f July 2019 and the MDI part w.e.f August 2019 and onwards till the replacement of the impugned meter after adding 33.33% slowness.
4. Through the instant appeal, the afore-referred decision dated 26.08.2020 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 billing meter of the Respondent was found running 33.33% slow due to one phase being defective on 10.07.2019, therefore MF was raised from 80 to





National Electric Power Regulatory Authority

120 w.e.f July 2019 and onwards; (2) a detection bill of Rs.1,735,926/- against 94,260 units+217 kW MDI for four months for the period March 2019 to June 2019 was debited to the Respondent in August 2019; (3) the POI failed to analyze consumption data in true perspective and erred in holding that the detection bill of Rs.1,735,926/- against 94,260 units+217 kW MDI for four months for the period from March 2019 to June 2019 is null and void; (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 13.11.2020 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. The Respondent however did not submit the reply to the Appeal.

6. Hearing

6.1 After issuing notices dated 08.06.2022 to both parties, hearing of the subject appeal was conducted at NEPRA Regional Office Lahore on 17.06.2022 in which a counsel appeared for the Appellant and no one represented the Respondent. In order to provide an opportunity for hearing to the Respondent, the case was adjourned till the next date.

6.2 The hearing of the Appeal was rescheduled at Lahore on 23.08.2022 for which





National Electric Power Regulatory Authority

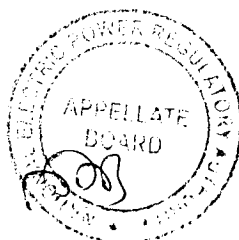
notices dated 15.08.2022 were issued to both the Appellant and the Respondent. On the given date of the hearing, no one appeared for both parties, however, a written request was made by the counsel for the Appellant for the adjournment due to illness. In view of the above, the hearing of the case was adjourned till the next date.

6.3 Notices dated 21.09.2022 were served to the parties and hearing of the appeal was conducted at Lahore on 29.09.2022, which was attended by counsel along with SDO for the Appellant and no one appeared for the Respondent. The representative 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 10.07.2019, as such the detection bill of Rs.1,735,926/- against 94,260 units+ 217 kW MDI for four months for the period from March 2019 to June 2019 was debited to the Respondent. The representative for the Appellant averred that the decrease in MDI part w.e.f April 2019 and onwards supports our contention that the impugned meter remained 33.33% slow during the disputed period from March 2019 to June 2019. As per the representative for the Appellant, the impugned decision for cancellation of the above detection bill is unjustified and the same is liable to be struck down.

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 19.09.2019 under Section 38 of the NEPRA Act. POI pronounced its decision on 26.08.2020 i.e. after 343 days of receipt of the complaint. The Appellant has objected that the POI





National Electric Power Regulatory Authority

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.

7.2 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.1,735,926/- against 94,260 units+217 kW MDI debited in August 2019

The Appellant has claimed that the billing meter of the Respondent was found defective due to one dead stop during checking dated 10.07.2019, therefore a





National Electric Power Regulatory Authority

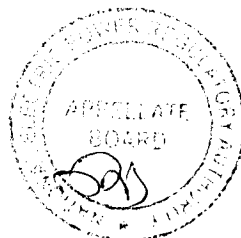
detection bill of Rs.1,735,926/- against 94,260 units+217 kW MDI for four months for the period from March 2019 to June 2019 was issued to the Respondent in August 2019, which was assailed by him before the POI. The Appellant has filed this appeal defending the above detection bill charged to the Respondent and prayed for setting aside the impugned decision.

7.4 One phase of the billing meter of the Respondent was allegedly discovered as dead stop by the Appellant on 10.07.2019 and the disputed detection bill was issued in August 2019. 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





National Electric Power Regulatory Authority

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 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.

7.5 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.

7.6 As per the record presented before us, there is no evidence that the Appellant





National Electric Power Regulatory Authority

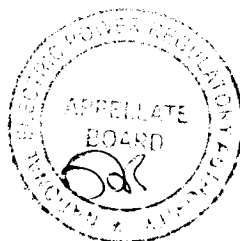
followed the procedure either under sub-clause (b) or sub-clause (c) of the CSM-2010. The Appellant has claimed that the metering equipment was checked in presence of the Respondent, however, the Test check proforma dated 10.07.2019 as submitted by the Appellant is not signed by the Respondent. The essence of Clause 4.4 of the CSM-2010 is to ensure transparency by taking the consumer on board. The claim of the Appellant about the meter without following the laid down procedure suffers from credibility insufficiency.

7.7 The Appellant claims that the decrease in MDI part w.e.f April 2019 confirms 33.33% slowness in the impugned meter. To verify this assertion of the Appellant, the consumption data of the Respondent is analyzed in the below table:

Undisputed			Disputed			% increase/decrease (MDI)
Month	Units	MDI	Month	Units	MDI	
Mar-18	48560	82	Mar-19	28960	144	76%
Apr-18	53120	82	Apr-19	66960	98	20%
May-18	64720	81	May-19	62640	102	26%
Jun-18	15760	78	Jun-19	29760	90	15%
Total	182160	323	Total	188320	434	34%

As evident from the above table, total MDI increased by 34% during the disputed period March 2019 to June 2019 in comparison with the total MDI recorded during the corresponding months of the year 2018, which indicates that the impugned meter of the Respondent was functioning correctly during the disputed period March 2019 to June 2019. Hence there is no justification to charge any detection bill on account of the alleged 33% slowness of the impugned meter.

7.8 Under these circumstances, we hold that the detection bill of Rs.1,735,926/- against 94,260 units+217 kW MDI for four months for the period from March 2019 to





National Electric Power Regulatory Authority

June 2019 charge to the Respondent due to the 33.33% slowness of the meter is liable to be declared null and void.

7.9 Bills with enhanced MF=120 charged in July 2019 and August 2019

As regards the determination of POI for revision of the kWh part for July 2019 and the MDI part for August 2019 after adding 33.33% slowness, it is observed that 33.33% slowness in the impugned meter was witnessed by the Appellant on 10.07.2019, however the impugned meter was checked by the POI during joint checking dated 29.07.2020, wherein the discrepancy of 33.33% slowness was confirmed. Thus we are constrained to assume that the impugned meter was 33.33% slow since the date of checking dated 10.07.2019. Clause 4.4(c) of the CSM-2010 empowers the Appellant to enhance MF from 80 to 120 due to the 33.33% slowness of the meter for the onward billing till the replacement of the slow meter. Whereas, Clause 4.4(e) of the CSM-2010 restrain the Appellant to recover the bills on account of defect including slowness of the meter, maximum for two months. Reading the Clause 4.4(c) & table under Clause 4.4(e) of the CSM-2010 together. The intent of law is amply clear that upon discovery of slowness of the meter, the concerned distribution company needs to replace the meter within two months, which is maximum period for which it can charge the Consumer with enhanced MF. In case of Distribution Company's failure to replace the meter within two month, the consumer may not be liable to be charged for such extended period beyond two billing cycles. In view of foregoing discussion, we are of the considered view that the determination of POI for revision of the bills for July 2019 and August 2019 on





National Electric Power Regulatory Authority

kWh part and MDI part respectively is not correct being contrary to the collective reading of Clause 4.4(c) and Clause 4.4(e) of the CSM-2010 and the same is liable to be withdrawn to this extent.

7.10 33.33% slowness in the impugned meter was observed by the Appellant on 10.07.2019, hence the recovery of the bills with enhanced MF=120 for July 2019 and August 2019 is allowed being consistent with Clause 4.4(c) of the CSM-2010.

8. In view of what has been stated above, it is concluded that:

8.1 The detection bill of Rs.1,735,926/- against 94,260 units+217 kW MDI for four months for the period from March 2019 to June 2019 charged to the Respondent due to the 33.33% slowness of the meter is declared null and void.

8.2 The Appellant may recover the bills after adding 33.33% slowness of the meter for July 2019 and August 2019 being justified and payable by the Respondent. .

8.3 The billing account of the Respondent may be overhauled after adjustment of the payments made against the above detection bill.

9. The impugned decision is modified in the above terms.

Syed Zawar Haider
Member

Abid Hussain
Convener

Muhammad Irfan-ul-Haq
Member

Dated: 23/01/2023.

