



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

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No. NEPRA/Appeal/152/2021/ 802


October 09, 2024

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| 1. Muhammad Haris Saleem,
S/o. Saleem Raza,
R/o. Sector E-, Jalil Town,
Ghausia Darbar Street Chan Da Qila,
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
Cell No. 0300-4350899 | 4. Muhammad Jalil Kamboh,
Advocate High Court,
110-Kiyani Chambers,
Session Courts, Gujranwala
Cell No. 0320-6301130 |
| 5. Sub Divisional Officer,
GEPCO Ltd,
Eimanabad Sub Division,
Wapda Town Grid Station,
Gujranwala | 6. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala |

Subject: **Appeal No.152/2021 (GEPCO VS. Muhammad Haris Saleem) Against the Decision Dated 20.09.2021 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 09.10.2024 (06 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: As Above


(Ikram Shakeel)
Deputy Director
Appellate Board

Forwarded for information please.

1. Director (IT) –for uploading the decision on NEPRA website



National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No.152/POI-2021

Gujranwala Electric Power Company Limited

.....Appellant

Versus

Muhammad Haris Saleem S/o. Saleem Raza, R/o. Sector E,
Jalil Town, Ghausia Darbar, Street Chan Da Qila, Gujranwala

.....Respondent

APPEAL UNDER SECTION 38(3) OF THE REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

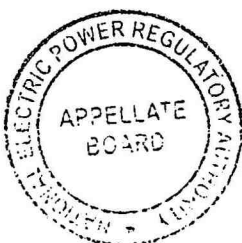
Mr. Saeed Ahmed Bhatti Advocate
Mr. Muhammad Hafeez SDO

For the Respondent:

Mr. Muhammad Jalil Kamboh Advocate

DECISION

1. As per the facts of the case, Muhammad Haris Saleem (hereinafter referred to as the "Respondent") is an industrial consumer of Gujranwala Electric Power Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.28-12134-1602202 having a sanctioned load of 250 kW and the applicable tariff category is B-2(b). The metering equipment of the Respondent was checked by the M&T team of the Appellant on 21.10.2019, and reportedly the billing meter was found 33% slow due to the blue phase being dead. Therefore, MF was raised from 160 to 240 on account of 33% slowness of the disputed meter w.e.f November 2019 and onwards. Subsequently, a detection bill of Rs.1,398,608/- for 53,979 units for six (06) months i.e. from May 2019 to October 2019 was debited to the Respondent @ 33% slowness of the meter and added to the bill for February 2020
2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Gujranwala Region, Gujranwala (hereinafter referred to as the "POI") on 28.09.2020 and challenged the above detection bill. The complaint of the Respondent was disposed of by the POI vide decision dated 20.09.2021, wherein it was held that the detection bill of Rs.1,398,608/- for 53,979 units for six (06) months i.e. from May 2019 to October 2019, and the MDI charged in January 2018 and February 2018 are void, unjustified and of no legal effect



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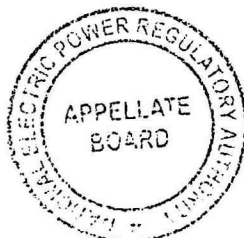
and the Appellant is allowed to charge the revise detection for October 2019 due to 33% slowness of the meter and the revised bills against 274 kW MDI and 200 kW MDI to the Respondent for January 2018 and February 2018 respectively.

3. Being dissatisfied, the Appellant has filed the instant appeal before NEPRA and assailed the decision dated 20.09.2021 of the POI (hereinafter referred to as the "impugned decision"). In its appeal, the Appellant opposed the maintainability of the impugned decision, *inter-alia*, on the following grounds that the impugned decision is against the law and facts of the case; that the POI misconceived and misconstrued the real facts of the case and erred in declaring the detection bill of Rs.1,398,608/- for 53,979 units for six (06) months i.e. from May 2019 to October 2019 as null and void; that the POI failed to consider the consumption data in true perspective and revise bills with respect of kWh reading w.e.f October 2019 and onwards; that Clause 4.3.3c(ii) of the CSM-2021 is not applicable in the instant case; that the POI failed to decide the matter within 90 days, which is violative of Section 26(6) of the Electricity Act, 1910; that the Respondent failed to serve notice to the Appellant prior filing complaint before the POI as per Section 24 of the Electricity Act, 1910; and that the impugned decision is liable to be set aside.
4. Notice dated 12.01.2022 of the appeal was issued to the Respondent for filing reply/para-wise comment, which were filed on 02.03.2024. In the reply, the Respondent prayed for dismissal of the appeal on the following grounds that the Appellant never pointed out slowness in the metering equipment before alleged checking; that Clause 4.3.3c(ii) of the CSM-2021 restricts the Appellant to debit the detection bill maximum for two months whereas the impugned detection bill of Rs.1,398,608/- for 53,979 units for six (06) months i.e. from May 2019 to October 2019 was charged in violation of Clause 4.3.3c(ii) of the CSM-2021; that the POI after providing the opportunity of hearing to both parties and perusal of the record rightly cancelled the above-said detection bill; and that the impugned decision is liable to be upheld.

5. Hearing

- 5.1 Hearing of the appeal was conducted at NEPRA Regional Office Lahore on 07.06.2024, wherein learned counsels appeared for both the Appellant and the Respondent. Learned counsel for the Appellant contended that the billing meter of the Respondent was found 33% slow due to one dead phase during M&T checking dated 21.10.2019, therefore a detection bill of Rs.1,398,608/- for 53,979 units for six (06) months i.e. from May 2019 to October 2019

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was debited to the Respondent due to 33% slowness of the meter. Learned counsel for the Appellant argued that the POI did not consider the real aspects of the case and erroneously declared the above detection bill as null and void. As per learned counsel for the Appellant, the honorable Supreme Court of Pakistan vide order dated 08.06.2023 in the C.P.No.691/2020 remanded back the similar nature of the dispute to NEPRA for determination of the period of slowness/defectiveness afresh. According to learned counsel for the Appellant, the Appellate Tribunal (NEPRA) vide order dated 12.12.2023 even remanded back the similar nature of disputes to NEPRA, which are to be decided after revisiting Clause 4.3.3c(ii) of the CSM-2021. Learned counsel for the Appellant finally prayed that the impugned decision is unjustified and the same is liable to be modified after amendment in the foregoing clause of the CSM-2021.

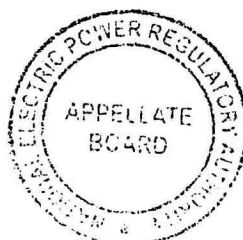
5.2 Conversely, learned counsel for the Respondent repudiated the version of the Appellant and contended that the billing meter was found 33% slow on 21.10.2019, hence the POI has rightly allowed the Appellant to recover the bills w.e.f. October 2019 and onwards @ 33% slowness of the meter as per Clause 4.3.3c(ii) of the CSM-2021. Learned counsel for the Respondent defended the impugned decision and prayed for upholding the same.

6. Having heard the arguments and record perused. Following are our observations:

6.1 While addressing the objection of the Appellant regarding the jurisdiction of the POI, the Respondent filed his complaint before the POI on 28.09.2020 under Section 38 of the NEPRA Act. POI pronounced its decision on 20.09.2021 i.e. after ninety (90) 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*. The relevant excerpt of the above judgments is reproduced below:

"PLJ 2017-Lahore-627:

Regulation of Generation Transmission and Distribution of Electric Power Act, 1997---838(3)--Electricity Act, 1910, S. 26(6)--Constitution of Pakistan, 1973. Art. 199--Constitutional petition--Consumer of LESCO.. The sanctioned load was differed with the connected load--Determine the difference of charges of the previous period of misuse to be recovered from the consumer--Validity--No disconnection or penal action was taken against petitioner rather only difference of charges between sanctioned load and load actually used by petitioner was charged, hence Clause 7.5 of Consumer Service Manual



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has not been violated-Issuance of detection bill itself amounts to notice and petitioner had also availed remedy before POI against determination--Order passed by POI was beyond 90 days--Order was not passed by the respondent under Section 26(6) of the Act as Electric Inspector rather the order was passed by him in the capacity of POI under Section 38(3) of Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (NEPRA Act), therefore, argument has no substance.

PLJ-2017-Lahore-309:

The learned counsel for the petitioner submitted that there was an outer time limit of 90 days for a decision by the Electric Inspector which has not been observed and which rendered the decision of the Electric Inspector a nullity. This submission of the learned counsel has been dealt with by the Appellate Board and in any case, is fallacious- The short and simple answer rendered by the Appellate Board was that the decision was made under Section 38 of the Act, 1997 and not in terms of Section 26 of the Electricity Act, 1910. Therefore, the outer time limit of 90 days was inapplicable."

Keeping in view the overriding effect of the NEPRA Act on the Electricity Act, 1910, and the above-referred decisions of the honorable High Court, the objection of the Appellant is dismissed.

- 6.2 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 and, therefore overruled.
- 6.3 As per the available record, the billing meter of the Respondent was found 33% slow due to the blue dead phase during the M&T team of the Appellant on 21.10.2019. Therefore, the Appellant charged a detection bill of Rs.1,398,608/- for 53,979 units for six (06) months i.e. from May 2019 to October 2019 to the Respondent, which was assailed by him before the POI against which the Appellant file instant appeal before the NEPRA.
- 6.4 During the hearing, the Appellant pointed out that the honorable Supreme Court of Pakistan vide order dated 08.06.2023 remanded back the matter to NEPRA to revisit clause 4.4(e) of the CSM-2010 (existing clause 4.3.3 of the CSM-2021), hence the decision in the subject appeal be rendered after redetermination of the period of slowness by the Authority.
- 6.5 It is clarified that after detailed deliberation with the stakeholders i.e. distribution companies and consumers, the Authority vide order dated 13.06.2024 retained the period of supplementary/detection bill for two billing cycles in case of the slowness of the metering



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equipment/defective CTs as mentioned in clause 4.4(e) of CSM- 2010 (existing clause 4.3.3 of CSM-2021), the operative portion of which is reproduced below:

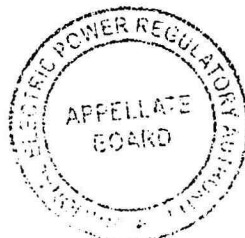
"For the reasons stated above, we reject the proposal of the distribution companies and retain the period of the supplementary bills for two (02) billing cycles in the case of the slowness of the metering installation/defective CTs as mentioned in clause 4.4(e) of CSM-2010 (existing clause 4.3 of CSM-2021). In a vigilant system, slowness of the metering installation should be detected timely, hence the distribution companies must bring efficiency in their working and replace the slow meters/defective CTs within the stipulated period as provided in clause 4.3 of the CSM-2021 in true letter and spirit. The distribution companies should ensure the charging of supplementary bills maximum for two billing cycles. If in the cases where the slowness of the metering installation is not pointed out timely and the metering installation is not replaced within maximum period of two (02) billing cycles, the competent authority of the relevant distribution company shall take disciplinary action against the concerned officials and fix the responsibility for negligence in such cases."

6.6 In light of the foregoing order of the Authority, we are of the considered view that the charging of the detection bill beyond two billing cycles is inconsistent with the foregoing clause of the CSM-2021. Therefore, the detection bill amounting to Rs.1,398,608/- for 53,979 units for six (06) months i.e. from May 2019 to October 2019 debited to the Respondent is unjustified and the same is liable to be cancelled as already determined by the POI.

6.7 33% slowness in the impugned billing meter of the Respondent was observed by the M&T team of the Appellant on 21.10.2019, therefore, the Respondent is liable to be charged the revised supplementary bill for two billing cycles before checking dated 21.10.2019 @ 33% slowness of the meter, according to Clause 4.4(e) of the CSM-2010.

6.8 Moreover, the bills already charged with enhanced MF=240 w.e.f November 2019 and onwards till the replacement of the impugned meter are justified being consistent with Clause 4.4(c) of the CSM-2010 and the Respondent is liable to pay the same. The impugned decision is liable to be modified to this extent.

6.9 As far as the complaint of the Respondent regarding excessive peak hour MDI charged by the Appellant in January 2018 and February 2018, it is observed that peak hour MDI reading charged as 24.95 kW MDI in the bill for July 2018, whereas during subsequent checking dated 21.10.2019 of the Appellant, peak hour MDI is noted as 24.67 kW MDI. This indicates that the Respondent was billed with excessive MDI in peak hours by the Appellant, therefore we





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are inclined to agree with the determination of the POI for revision of the peak hour MDI part against 274 kW and 200 kW for January 2018 and February 2018 respectively.

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

7.1 The detection bill of Rs.1,398,608/- for 53,979 units for six (06) months i.e. from May 2019 to October 2019 debited to the Respondent is unjustified and the same is cancelled.

7.2 The Respondent may be charged the revised supplementary bill for two billing cycles before checking dated 21.10.2019 @ 33% slowness of the meter, according to Clause 4.4(e) of the CSM-2010.

7.3 Similarly, the bills already charged with enhanced MF=240 w.e.f checking dated 21.10.2019 and onwards till the replacement of the impugned meter are justified as being consistent with Clause 4.4(c) of the CSM-2010.


7.4 Furthermore, the Respondent may be charged the revised bills for January 2018 and February 2018 against 274 kW and 200 kW MDI.

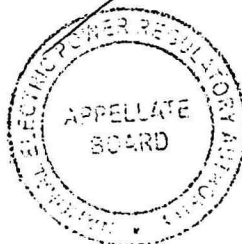
7.5 The billing account of the Respondent be overhauled after making the adjustment of payments made against the impugned detection bill.


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

On leave
Abid Hussain
Member/Advisor (CAD)

Dated: 09-10-2024


Naweed Illahi Sheikh
Convener/DG (CAD)




Muhammad Irfan-ul-Haq
Member/ALA (Lic.)