



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

NEPRA Office , Ataturk Avenue (East), G5/1, Islamabad
Tel. No.+92 051 2013200 Fax No. +92 051 2600030
Website: www.nepra.org.pk E-mail: office@nepra.org.pk

No. NEPRA/Appeal/012/2022/ 738

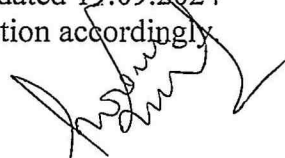
September 19, 2024

- | | |
|--|---|
| 1. Sajjad Ahmad,
S/o. Muhammad Ismail,
R/o. Ghotian Khurd, Tehsil Daska,
District Sialkot | 2. Chief Executive Officer,
GEPCO Ltd, 565-A,
Model Town, G. T. Road,
Gujranwala |
| 3. Muhammad Azam Khokhar,
Advocate High Court,
10-Fatima Jinnah Chambers,
Session Courts, Gujranwala
Cell No. 0301-6434497 | 4. Sub Divisional Officer,
GEPCO Ltd,
Gujranwala Road Sub Division,
132 KV Grid Station, Circular Road,
Daska, District Sialkot |
| 5. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala | |

Subject: Appeal No.012/2022 (GEPCO VS. Sajjad Ahmad) Against the Decision Dated 30.09.2021 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 19.09.2024 (09 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.012/POI-2022

Gujranwala Electric Power Company LimitedAppellant

Versus

Sajjad Ahmed S/o. Muhammad Ismail,
R/o. Glotian Khurd, Tehsil & District SialkotRespondent

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

For the Appellant:

Mr. Manzoor Ahmed SDO

For the Respondent:

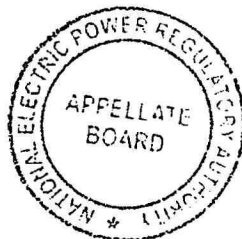
Mr. Muhammad Azam Khokhar Advocate

DECISION

1. Brief facts leading to the filing of instant appeal are that Sajjad Ahmed (hereinafter referred to as the "Respondent") is a domestic consumer of Gujranwala Electric Power Company Limited (hereinafter referred to as the "Appellant") bearing Ref. No.06-12227-0215101 with sanctioned load of 02 kW and the applicable Tariff category is A-1(a). Metering and Testing (M&T) team of the Appellant checked the meter of the Respondent on 07.07.2020 and reportedly, the Respondent was found stealing electricity through tampering with the meter (LCD intentionally damaged). Therefore FIR was registered against the Respondent due to the theft of electricity and a detection bill of Rs.155,552/- against 5,780 units for six (06) months for the period from January 2020 to June 2020 was charged by the Appellant to the Respondent.
2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Gujranwala Region, Gujranwala (hereinafter referred to as the "POI") on 18.11.2020 and challenged the above detection bill. The matter was disposed of by the POI vide the decision dated 30.09.2021, wherein the detection bill of Rs.155,552/- against

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5,780 units for six (06) months for the period from January 2020 to June 2020 was cancelled and the Appellant was directed to revised the bills @ 244 units per months for the period from April 2020 to June 2020 as per consumption of corresponding months of the year 2021.

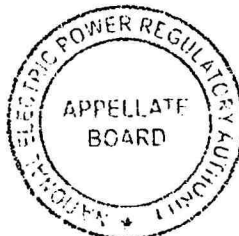
3. Subject appeal has been filed against the afore-referred decision dated 30.09.2021 of the POI (hereinafter referred to as the "impugned decision") by the Appellant before the NEPRA. In its appeal, the Appellant opposed the impugned decision *inter alia*, on the following grounds that the Respondent is not the consumer of the impugned connection as the said connection is registered in the name of Muhammad Irshad, who is the real brother of the Respondent and employee of the Appellant; that the Muhammad Irshad has intentionally damaged the LCD of the impugned meter to conceal the accumulated units; that the accused Muhammad Irshad admitted theft of electricity at the time of replacement of the impugned meter; that FIR No.475/2020 was registered against the accused, however the police declared him innocent and included the name of the Respondent; that show cause notice was issued against the accused against which he moved an application before the labor court wherein he admitted theft of electricity; that the POI did not considered the M&T report and cancelled the detection bill on the basis of consumption analysis; that the Muhammad Sajjad has been terminated from the service, whereas Mr. Shahid Hussain has been given penalty of compulsory retirement, while three increments of Muhammad Irfan had been stopped; that the connected load of the Respondent was observed as 7.44 kW which is much higher than the sanctioned load; that the POI ignored the real aspects of the case while rendering the impugned decision and that the impugned decision is liable to be set aside..

4. **Proceedings by the Appellate Board**

Upon filing of the instant appeal, a Notice dated 28.01.2022 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were filed on 22.09.2022. In his reply, the Respondent prayed for dismissal of the appeal *inter alia* on the following grounds that the instant appeal was returned by the Registrar NEPRA with the direction to resubmit within seven days, whereas the Appellant resubmitted the instant appeal after twelve days and no application for condonation of delay was submitted; that the impugned detection bill was debited on the basis of alleged extended load, which is not compatible with the consumption data of the years 2018, 2019 and 2021;

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that the POI has rightly cancelled the impugned detection bill and declared that the impugned meter defective on w.e.f April 2020 and onwards; that the impugned decision for revision of the bills @ 244 units/month for the period from April 2020 to June 2020 is correct and the same is liable to be upheld; that the Respondent is the occupant of the premises and is admittedly established as holding the entity of consumer as per definition of the NEPRA Act; and that the appeal is liable to be dismissed with cost.

5. Hearing

5.1 Hearing was fixed for 02.03.2024 at NEPRA Regional Office Lahore, wherein both parties tendered appearance. During the hearing, the Appellant reiterated the same version as contained in memo of the appeal and contended that the billing meter of the Respondent was checked by the M&T team on 07.07.2020, wherein it was declared tampered, therefore FIR was lodged against the Respondent and the detection bill amounting to Rs.155,552/- against 5,780 units for six (06) months for the period from January 2020 to June 2020 was debited to the Respondent. The Appellant further contended that the criminal proceedings were under processing and that disciplinary action was taken against the officials involved in the theft of electricity but the POI neither checked the disputed meter nor considered this aspect of the case and cancelled the above detection bill. The Appellant defended the charging of the impugned detection bill and prayed that the same be declared as justified and payable by the Respondent.

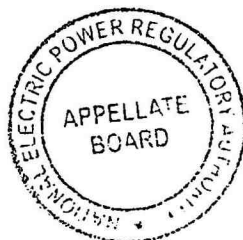
5.2 On the contrary, learned counsel for the Respondent rebutted the version of the Appellant regarding charging the impugned detection bill and argued that the Appellant neither associated during the alleged checking nor intimated before charging the impugned detection bill. Learned counsel for the Respondent averred that the impugned detection bill was assessed based on the alleged load, which has never been recorded in the history of the Respondent. Learned counsel for the Respondent finally prayed for dismissal of the appeal being devoid of merits.

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

6.1 Objection of the Respondent regarding limitation:

While addressing the preliminary objection of the Appellant regarding limitation, it is observed that the copy of the impugned decision dated 30.09.2021 was received on 28.10.2021 and the appeal was initially filed before the NEPRA on 25.11.2021, within 30 days from the date of receipt of the impugned decision as per Section 38(3) of the NEPRA Appeal No.012/POI-2022

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Act. Registrar NEPRA returned the said appeal with some observation to the Appellant on 30.11.2021, in compliance with the direction of the NEPRA, the Appellant resubmitted the appeal before the NEPRA through TCS on 13.12.2021. Hence the objection of the Respondent bears no force and is rejected.

6.2 Preliminary objection of the Appellant regarding jurisdiction of the POI:

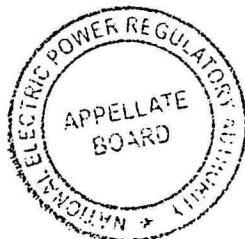
At first, the preliminary objection of the Appellant regarding the jurisdiction of the POI needs to be addressed. In the instant appeal, the learned counsel for the appellant (GEPCO) challenged the jurisdiction of the Provincial Office of Inspection to adjudicate the complaint of the Respondent (Consumer) under Section 38 of the NEPRA Act regarding dishonest abstraction of energy. The Appellant contends that in the cases of detection bills, the Electric Inspector of the Government of Punjab Gujranwala Region Gujranwala is the competent forum to deal with such cases u/s 26(6) of the Electricity Act, 1910.

- 6.3 In order to come up with an opinion on the above-said proposition of law, it is necessary to analyze the relevant laws. Section 26(6) of the Electricity Act, 1910 deals with the disputes between consumers and a licensee over electricity meters and grants power to the Electric Inspector to resolve the same. The said provision reads as under:

“(6) Where any difference or dispute arises between a licensee and a consumer as to whether any meter, maximum demand indicator or other measuring apparatus is or is not correct the matter shall be decided, upon the application of either party, by an Electric Inspector, within a period of ninety days from the date of receipt of such application, after affording the parties an opportunity of being heard, and where the meter, maximum demand indicator or other measuring apparatus has, in the opinion of an Electric Inspector, ceased to be correct, the Electric Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter, indicator or apparatus has not, in the opinion of the Electric Inspector, been correct; and where the Electric Inspector, fails to decide the matter of difference or dispute within the said period or where either the licensee or the consumer decline to accept the decision of the Electric Inspector, the matter shall be referred to the Provincial Government whose decision shall be final:

Provided that, before either a licensee or a consumer applies to the Electric Inspector under this subsection, he shall give to the other party not less than seven days' notice of his intention so to do.”

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6.4 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. According to Section 10 of the above-said order:

“An aggrieved person may file an appeal against the final order made by the Office of Inspection before the Government or if the Government by general or special order, so directs, to the advisory board constituted under section 35 of the Electricity Act, 1910, within 30 days, and the decision of the Government or the advisory board, as the case may be, shall be final in this regard.”

6.5 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 decisions of cases of theft of energy; and

(ii) make 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.

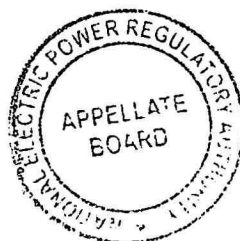
(b) Establish procedures whereby distribution companies and consumers may bring violations of the instructions in respect of metering, billing and collection of tariff and other connected matters before the office of inspection; and

(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.”



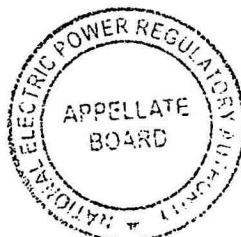
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Here question arises whether disputes related to Section 26(6) of the Electricity Act, 1910 can be heard and decided by the POI, and thereafter appeal lies before the Advisory Board or NEPRA. Both enactments are special laws and provide a mechanism for the determination of disputes between consumers and licensees. Under section 38(1)(a)(ii) of the NEPRA Act, the Provincial Office of Inspection (POI) is empowered to make the determination 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 (IX of 1910), exercisable, in addition to their duties under the said Act. Through the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2011 (XVIII of 2011), subsection (3) to section 38 of the NEPRA Act was inserted on 29.09.2011 whereby an appeal before NEPRA against the decision of POI regarding metering, billing, and collection of the tariff was provided. 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.

- 6.3. Further Section 45 of the NEPRA Act enumerates the relationship of the NEPRA Act with other laws and provides that the provisions of the Act, Rules, and Regulations made and licenses issued thereunder shall have the effect notwithstanding anything to the contrary contained and any other law. Rule and Regulation for the time being in force and any such law Rules or Regulations shall to the extent of any inconsistency, cease to have effect from the date this Act comes into force.
- 6.4. The honorable Lahore High Court in its reported Judgement *2018 PLD 399* decided that an appeal against the decision of the Provincial Office of Inspection (POI)/Electric Inspector lies with the Authority. Salient points of the judgment are as under:
- (i) Section 26(6) of the Electricity Act, 1910 the ambit and scope of dispute is confined only to the electricity meters/other measuring apparatuses while the scope of Section 38 of the NEPRA Act is much wider in comparison. Section 38 of the NEPRA Act empowers the Provincial Office of Inspection not only to enforce compliance with the instructions of the distribution companies regarding metering, billing, electricity consumption charges and decisions in cases of theft of energy but also requires it to make determinations in respect of disputes over metering, billing, and collection of tariff.



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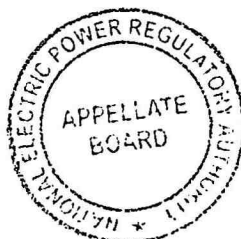
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- (ii) The reading of the NEPRA Act quite clearly demonstrates that the dispute resolution mechanism provided in the Electricity Act, 1910 has now been replaced by the NEPRA Act, which law is later and is also much wider in its scope as it encompasses disputes over metering, billing and collection of tariff.
- (iii) Electricity being the Federal subject exclusively, any dispute in regard thereto between distribution companies and their consumers will necessarily have to be adjudicated upon by the Provincial Office of Inspection as per the dictate of the NEPRA Act.
- (iv) Prior to the passing of the Eighteenth Amendment in the Constitution, electricity was placed in the concurrent list. With the introduction of the Eighteenth Amendment through the Constitution (Eighteen Amendment) Act, 2010 the concurrent list was abolished, and electricity was placed at Entry 4 of Part II of the Fourth Schedule where after it became exclusively a Federal subject.
- (v) The two enactments i.e. Electricity Act, of 1910 and the NEPRA Act continue to exist side by side providing two different appellate fora to hear appeals against the orders of the Electric Inspector and the Provincial Office of Inspection. Both enactments are special laws. In a similar situation, the honorable High Court while rendering judgment in Writ Petition No. 6940 of 2013 titled "S.M. Food Makers and others v. Sui Northern Gas Pipelines, etc" held as follows:

"It is now well settled that the general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one".

- (vi) Lahore High Court, in the above circumstances, declared that the decision rendered on a complaint filed before the Electric Inspectors 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 subsection (3) of Section 38 of the NEPRA Act shall lie before the Authority as defined in NEPRA Act.

6.5. Further, the observations of the Lahore High Court were also endorsed by the honorable Supreme Court of Pakistan vide its Judgement dated 08-03-2022 in Civil Petition 1244 of 2018 titled "GEPCO etc. v/s PTV & another" whereby it was held that a comparative reading of section 10 of Punjab (Establishment and Powers of Office of Inspection) Order, 2005 as well as section 38(3) of the NEPRA Act makes it abundantly clear that provisions of section 10 of the 2005 Order and section 38(3) are clearly in conflict. In view of the fact Appeal No.012/POI-2022



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that the Ordinance is a Federal statute and admittedly the subject of electricity falls within the Federal Legislative List, it would clearly prevail over the 2005 Order.

6.6. In view of the above-quoted provisions of laws and Judgments, we are of the considered view that the disputes under section 26(6) of the Electricity Act and 38(1)(a)(ii) are to be adjudicated by the Provincial Office of Inspection and NEPRA is the competent forum to decide the appeals. In view of the foregoing, the objection of the Appellant is dismissed.

6.7. **Detection bill of Rs.155,552/-:**

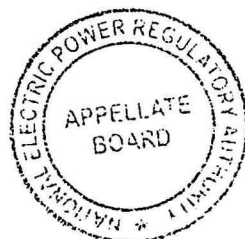
As per the record, the Appellant claimed that M&T on 07.07.2020 detected that the impugned meter of the Respondent was intentionally tampered and lodged an FIR against the Respondent. Thereafter, the Appellant debited a detection bill of Rs.155,552/- against 5,780 units for six (06) months for the period from January 2020 to June 2020 to the Respondent, which was challenged by the Respondent before the POI.

6.8. The Respondent admitted theft of electricity before the Additional Session Judge, Daska, therefore. The honorable Additional Session Judge vide order dated 08.12.2020 withheld the sentence of the Respondent for one year subject to the submission of the surety bond of Rs.50,000/-, the operative portion of which is reproduced below:

“ As per the record, the accused is first offender and if he is convicted and sent in jail, there is every likelihood that he would be spoiled in the jail atmosphere. While making the confession, the accused sought the mercy of this Court and surrendered himself before the Court. Taking a lenient view and keeping in view the voluntary confession, he is found involved in the occurrence and is hereby convicted. Instead of passing sentence, as the convict has shown his repentance, so, the sentence is withheld and he is on probation for 01 year. The convict/accused is directed to execute a personal bond in the sum of Rs.50,000/- to the satisfaction of the probation Officer, and he would be bound by the terms and conditions of the bond of probation. If the accused/convict makes any default or violates the terms and conditions of the bond, he would be arrested and produced before this Court, so that sentence may be passed upon him in accordance with law on the basis of conviction. Case property be destroyed after expiry of period of appeal or revision, if any. File be consigned to record room.”

In view of the above confessional statement of the Respondent regarding the theft of electricity, the detection bill for three months is chargeable to the Respondent being general supply consumer in the absence of approval of the CEO, according to Clause 9.2.3c(i) of Appeal No.012/POI-2022

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the CSM-2020. However, the Appellant debited the impugned detection bill for six months in contravention of the foregoing clause of the CSM-2020. Hence, we are of the considered view that the detection bill of Rs.155,552/- against 5,780 units for six (06) months for the period from January 2020 to June 2020 charged by the Appellant to the Respondent is unjustified and the same is liable to be cancelled as already determined by the POI.

- 6.9. The discrepancy in the impugned meter of the Respondent was observed by the Appellant on 07.07.2020 and theft of electricity through tampering with the meter is admitted by the Respondent before the honorable court, hence, it would be fair and appropriate to debit the detection bill for three months retrospectively i.e. April 2020 to June 2020 to the Respondent and the basis of said detection bill be made as per connected load of the Respondent, calculation in this regard is done below:

Period: April 2020 to June 2020

- A. Total units to be charged = S/L (kW) x LF x No. of Hrs. x No. of Months
= 7.44 x 0.2 x 730 x 3 = 3,259 units
- B. Total units already charged = 132+150+152 = 434 units
- C. Net chargeable units = A- B = **2,825 units**

- 6.10. The Respondent is liable to be charged net 2,825 units as a detection bill. The impugned decision is liable to be modified to this extent.

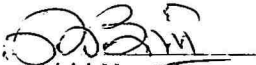
7. In view of what has been stated above, it is concluded that:

7.1 the detection bill of Rs.155,552/- against 5,780 units for six (06) months for the period from January 2020 to June 2020 is unjustified and cancelled.

7.2 However, the Respondent may be charged the revised detection bill for net 2,825 units for three months retrospectively i.e. April 2020 to June 2020.

7.3 The billing account of the Respondent may be overhauled, accordingly.


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


Abid Hussain

Member/Advisor (CAD)

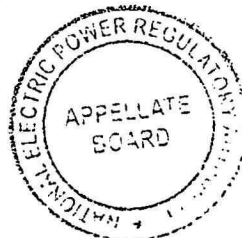


Muhammad Irfan-ul-Haq
Member/ALA (Lic.)


Naweed Illahi Sheikh
Convener/DG (CAD)

Dated: 19-09-2024

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