



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

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No. NEPRA/AB/Appeal-057/POI-2015/ 888-890

September 08, 2015

1. Sheikh Naeem Zafar,
S/o Sheikh Zafar Iqbal,
Prop: Haider International,
Pasrur Road, Lakhanpur,
Sialkot
2. The Chief Executive Officer,
GEPCO Ltd,
Head Office, G.T. Road,
Gujranwala
3. Muhammad Azam Khokhar,
Advocate High Court,
38-Fatima Jinnah Chambers,
Sessions Courts, Gujranwala
4. Saeed Ahmed Bhatti,
Advocate High Court,
2nd Floor, Akram Mansion,
Neela Gumbad, Lahore
5. Mian Abdul Rehman,
SDO (Opr), GEPCO Ltd,
Pasrur Road Sub Division,
Sialkot

Subject: Appeal Titled GEPCO Vs. Sheikh Naeem Zafar Against the Decision Dated 06.05.2015 of the Electric Inspector/POI to Government of the Punjab Gujranwala Region, Gujranwala

Please find enclosed herewith the decision of the Appellate Board dated 08.09.2015, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-057/POI-2015/ 891

September 08, 2015

Forwarded for information please.

M. Qamar Uz Zaman

Member Appellate Board

1. Registrar
2. Director (CAD)
3. Electric Inspector/POI, Gujranwala Region
4. Master File

CC:

1. Chairman
2. Vice Chairman/Member (CA)
3. Member (Tariff)
4. Member (M&E)
5. Member (Licensing)

DR-II
M/F

11/09/15

Registrar
Dy No.....
Dated 11-09-15
9658



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-057/POI-2015

Gujranwala Electric Power Company Limited

.....Appellant

Versus

Sheikh Naeem Zafar, S/o Sheikh Zafar Iqbal, Porp: Haider International, Pasrur Road, Sialkot

.....Respondent

For the Appellant:

Saeed Ahmed Bhatti Advocate
Abdur Rehman SDO

For the Respondent:

Muhammad Azam Khokhar Advocate

DECISION

1. Brief facts giving rise to the instant Appeal are that Gujranwala Electric Power Company Limited (hereinafter referred to as GEPCO) is a licensee of National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license. The respondent is an industrial consumer of GEPCO bearing Ref No.27-12424-1391700 with a sanctioned load of 75 kW under B-2 tariff.



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2. As per facts of the case, the TOU meter was installed by GEPCO on the premises of the respondent in March 2012 pursuant to NEPRA policy for installation of TOU meter to the consumer having sanctioned load above 5 kW. The TOU meter was replaced on 21.01.2013 as its terminal block was burnt as reported by GEPCO. Subsequently the checking of the removed TOU meter was done by M&T GEPCO on 13.05.2014 and it was found 33.33 % slow. Detection bill of Rs. 322,649/- for 20,044 units for the period from July 2012 to February 2013 on the basis of 33.33 % slowness was issued to the respondent in September 2014 which on the protest of the respondent was deferred. Aforementioned bill was repeatedly charged in the months to follow but every month it was excluded and deferred upon the protest of the respondent. Finally the detection bill appeared in the billing month of January 2015.
3. The respondent being aggrieved with the above detection bill amounting to Rs. 322,649/- for 20,044 units for the period July 2012 to February 2013 due to 33.33 % slowness of the meter added in January 2015 filed a petition dated 21.01.2015 before Provincial Office of Inspection Gujranwala Region, Gujranwala (hereinafter referred as POI) and challenged the said detection bill. The matter was contested by both parties before POI and POI after hearing both the parties announced its decision on 06.05.2015. The operative portion of the decision is reproduced below:

"In the light of above facts, it is held that the impugned meter became/remained defective within the period from 2nd to 21st January 2013 for 20 days falling in the billing cycle 02/2013; whereas the impugned detection bill for Rs. 3,22,649/- charged in the bill for 01/2015 for the period from 07/2012 to 02/2013 is void, unjustified and of no legal effect; therefore, the petitioner is not liable to pay the same. However, the respondents are directed to charge the proportionate percentage against 20 days (2nd to 21st January 2013 falling in the billing cycle 02/2013) of the consumption recorded as 5375 units during the corresponding month of previous year i.e. 02/2012. The respondents are also directed to



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over-haul the account of the petitioner and any excess amount recovered be refunded/adjusted in future bills accordingly."

4. Being aggrieved with the impugned decision of POI dated 06.05.2015, GEPCO has filed the instant appeal through Mr. Saeed Ahmed Bhatti Advocate before NEPRA under section 38 (3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as "the Act"). It is submitted by GEPCO that meter of the respondent was replaced on 21.01.2013 due to terminal block being burnt and the said meter was checked by M&T GEPCO on 13.05.2014 and it was found 33.33 % slow due to red phase dead stop. According to GEPCO to recover its loss a detection bill of Rs. 322,649/- was duly prepared for the cost of 20,044 net chargeable units for the period July 2012 to February 2013 (08 months) on the basis of 33.33 % slowness of the metering equipment and same was charged to the respondent after fulfilling codal formalities in September 2014. GEPCO contended that the detection bill was legal, valid and justified and the respondent was obliged under the law to pay the same. According to GEPCO it joined the proceedings before POI and submitted the relevant documents and proved that the aforesaid detection bill was legal, valid and justified but POI accepted petition of the respondent and declared the said detection bill as void, unjustified and of no legal effect. GEPCO pleaded that the decision of POI was illegal, unlawful, arbitrary, vague, misconceived, without lawful authority, without jurisdiction, void ab-initio, biased and based on surmises and conjectures and was liable to be set aside. GEPCO stated that the impugned decision was ex-facie coram non-judice, ab-initio void and without jurisdiction in so far as Electric Inspector has no power or jurisdiction to carry out the proceedings after expiry of 90 days as envisaged under section 26 (6) of the Electricity Act, 1910. According to GEPCO, the application was moved before POI on 21.01.2015 and the same was decided on 06.05.2015 after expiry of statutory period of 90 days, therefore, under the law matter was required to be referred to Provincial Government. Reliance is placed upon the judgment reported in 2006 YLR Page 2612 and PLJ 2015 Lah-470. GEPCO contended that from the comparison of the consumption data of the respondent for FY 2011-2012, 2012-2013,

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2013-2014, it was established that the disputed meter remained slow during the period July 2012 to January 2013 and the detection bill issued to the respondent for the period was quite legal, valid and justified. GEPCO further added that POI failed to appreciate that the complaint of the respondent could not be entertained as no notice as required under section 26 (6) of the Electricity Act, 1910 was ever served upon the appellant before filing the petition before POI. GEPCO averred that it would cause an irreparable loss to the public exchequer if the impugned decision was not set aside. Finally GEPCO prayed that the impugned decision dated 06.05.2015 passed by POI may be set aside and appeal moved by the respondent be dismissed with costs.

5. In response to the above appeal, the respondent was issued notice for filing reply/parawise comments which were filed on 31.07.2015. In his reply/parawise comments, the respondent vehemently denied assertions of GEPCO and stated that the titled appeal was against the facts and laws and based on misconception and misinterpretation and was liable to be dismissed. According to the respondent, GEPCO was not authorized to charge any detection bill unilaterally without determination of accuracy of the meter and chargeable consumption by POI and GEPCO was not entitled to charge detection bill for previous month on account of slowness or defectiveness of the meter. According to the respondent checking carried out by GEPCO unilaterally/arbitrary had no legal sanctity. The respondent stated that he was not associated in the M&T checking dated 13.05.2014. The respondent pleaded that section 26 (6) was not relevant as no theft of energy was alleged and detection bill was raised due to defectiveness of the meter. The respondent defended the impugned decision of POI and prayed that the appeal may be dismissed and impugned decision of POI may be upheld.
6. After issuing notice to both the parties the hearing of the appeal was held in Lahore on 17.08.2015. Mr. Saeed Ahmed Bhatti Advocate and Mr. Abdur Rehman SDO GEPCO appeared for the appellant and the respondent was represented by Mr. Muhammad Azam Khokhar Advocate. Mr. Saeed Ahmed Bhatti Advocate, learned counsel for the appellant, reiterated the same arguments mentioned in memo of the appeal. Learned counsel for the



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appellant asserted that 33.33 % slowness of the meter was established from consumption data of the respondent, therefore detection bill Rs. 322,649/- for 20,044 units for the period from July 2012 to February 2013 was justified and the respondent was liable to pay the same. Mr. Muhammad Azam Khokhar Advocate, learned counsel for the respondent repeated the same arguments which were given in the reply/parawise comments. He argued that no defect in the meter was noticed or reported by GEPCO when it was removed/replaced on 21.01.2013 and subsequent unilateral checking dated 13.05.2014 had no sanctity and was not valid in the eyes of law. Learned counsel for the respondent contended that there was no increase in the consumption after replacement of the disputed meter in the year 2013. According to him both MDI and kWh are technically affected due to slowness but in the instant detection bill 33.33 % slowness was accounted for kWh only which was incorrect. Regarding the objection of learned counsel for GEPCO for failure of POI to refer the matter to Provincial Government, learned counsel for the respondent clarified that as per procedure envisaged vide Government of Punjab notification dated 19.04.2015, the time period for deciding the matter by POI was 120 days and in case of delay the reason of delay shall recorded in writing. In the instant case the matter was decided in 104 days which was in line with the prescribed procedure claimed counsel for the respondent.

7. We have heard arguments of both the parties examined the record placed before us. Following are our observations:

- i. The petition was filed by the respondent on 21.01.2015 and it was decided by POI on 06.05.2015 after 104 days, which is within the time period of 120 days as prescribed in the procedure envisaged by Government of Punjab notification dated 19.04.2015. The objection of GEPCO is therefore dismissed.
- ii. Since a sufficient opportunity was given by POI to both the parties for hearing submission of documents and arguments therefore no harm was caused to the




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appellant for failure to serve notice by the respondent under section 26 (6) of Electricity Act, 1910. The objection of GEPCO in this regard is dismissed.


- iii. No discrepancy regarding slowness of the meter was reported by GEPCO when the disputed meter was replaced on 21.01.2013. We are in agreement with stance of the respondent that the 33.33 % slowness allegedly detected by GEPCO unilaterally in M&T checking dated 13.05.2014 has no validity.
 - iv. We are inclined to agree with determination of POI that no discrepancy was noticed by GEPCO in routine checking on 02.01.2013 and the meter was found with burnt terminal block when replaced on 21.01.2013. Evidently meter was okay till 02.01.2013. Therefore as per impugned decision the respondent is liable to be billed from 02.01.2013 to 21.01.2013 (20 days) on the basis of consumption of same period of previous year which is worked out as 5,375 units.
 - v. We are inclined to agree with determination of POI that the detection bill of Rs. 322,649/- for 20,044 units for the period from July 2012 to February 2013 charged in January 2015 is void, unjustified and the respondent is not liable to pay the same.
8. For reason given in foregoing paragraphs we do not find any reason to interfere in impugned decision dated 06.05.2015 of POI which is upheld and the appeal is dismissed accordingly.



Muhammad Qamar-uz-Zaman
Member



Muhammad Shafique
Member



Nadir Ali Khoso
Convener

Date: 08.09.2015