



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

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No. NEPRA/AB/Appeal-057/POI-2014/ 390 — 392


April 09, 2014

1. M/s Fauji Cement Company Limited,
Through its Chief Executive Officer,
Near Village Jhang Bahtar,
Tehsil Fateh Jang, Distt. Attock
2. Sheikh Muhammad Ali
Advocate High Court,
Corporate & Legal Consilium,
First Floor, Ramzan Medical Centre,
Opposite Out Door Mayo Hospital,
13-Ratan Chand Road,
Lahore
3. Umar Gul Arfidi
Executive Engineer (E),
IESCO Operation Division,
Pindi Gheb,
District Attock

Subject: Appeal Titled "IESCO" Vs. "M/s Fauji Cement Company Limited" Against the Decision Dated 26.11.2013 of the Electric Inspector/POI to Government of the Punjab Islamabad Region, Islamabad

Please find enclosed herewith the decision of the Appellate Board dated 08.04.2014, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above


(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-057/POI-2014/ 393

April 09, 2014

Forwarded for information please.

Member Appellate Board

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

CC:

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



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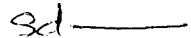
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National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-057/POI-2014

Islamabad Electric Supply Company Limited

..... Appellant

Versus

M/s Fauji Cement Company Limited, Near Village Jhang, Tehsil Fatehjang, District Attock

..... Respondent

Date of Hearing:

24/03/2014

For the Appellant

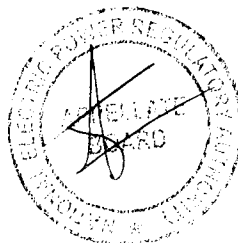
Sheikh Muhammad Ali Advocate
Umar Gul Afridi, XEN IESCO
Muhammad Yamin, C/A CSO

For the Respondent

Noor Muhammad Soomro, Sr. Manager Plant
Farrukh Imran, CRO

ORDER

1. This order shall dispose of the Appeal filed by Islamabad Electric Supply Company (hereinafter referred to as IESCO) against the decision dated 26.11.2013 of the learned Provincial Office of Inspection / Electric Inspector Islamabad Region, Islamabad (hereinafter referred to as POI/EI) under Section 38(3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as "the Act").
2. Brief facts giving rise to the instant Appeal are that IESCO is the licensee of National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in its authorized service territory as per terms and conditions of the license.

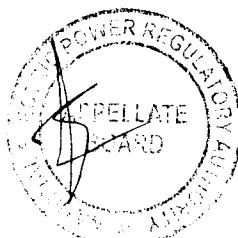




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3. The Respondent is an industrial consumer of IESCO under tariff B-4 with sanctioned load of 24 MW having Reference No. 27/142530098275U. The Respondent made an application to POI/EI dated 14.05.2013, wherein he stated that while taking the monthly readings of his connection on 01.08.2011, the TOD billing meter readings did not tally with the backup electro mechanical meter. So on 02.08.2011, he made a report to IESCO regarding the defective TOD meter which was found faulty by M&T IESCO and replaced on 16.08.2011, stated the Respondent. According to the Respondent the TOD meter became defective in July 2011 and was detected in August 2011. The Respondent further submitted that due to malfunctioning of the TOD meter 2,831,040 KWh units and 6 MW MDI have been charged in excess to him during the billings months of July 2011 and August 2011 for the consumption months of June²⁰¹¹ and July 2011 respectively. The Respondent expressed that his request for adjustment was refused by IESCO and as such he requested the learned POI/EI to direct IESCO for revision of the excessive bills.
4. IESCO in response to the above complaint, in its written statement, submitted that the petition was not maintainable as no notice was issued under section 26 (6) of Electricity Act, 1910. In case of discrepancy between TOD meter and electro mechanical meter the readings of the former would be considered final as per WAPDA decision dated 28.02.2001. IESCO has, inter alia, further contented that the Respondent has rightly been charged KWh units and KW MDI for the billing months of July 2011 and August 2011. In the end IESCO prayed that the petition of the Respondent before POI/EI be dismissed.
6. POI/EI after affording opportunity of hearing to both the parties and examination of relevant record placed before him announced his decision on 26.11.2013. The operative portion of same is reproduced below:

"I have thoroughly examined the maximum load (MDI) for the last two years. As from record the maximum MDI for the last two years came as 19000 KW. As the behavior of meter specially parameter 4.1 (known as KWh Rate-1), 5.2 (known as Rate-2), 21 (known as Cum M.D.), 22.1 (known as Cum M.D KEW Rate-1) & 23.2 (known as Cum M.D. KW Rate-2) were not working properly. So the MDI charged recorded was not taken as registered by the disputed meter in question. Therefore MDI charged for the month of





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8/2011 to the tune of 24088 KW is unjustified and unlawful. Respondent are directed to charge the maximum MDI record for the last two years as maximum to 20000 KW and refund the cost of 4088 KW as per applicable tariff.

Hence the respondents are directed to over haul account of the petitioner on the above findings. The respondents are directed to refund 913,822 KWH Units & 4088 KW MDI to the petitioner. They are directed to make all debits and credits by adjusting all parameters like Peak Hrs rate, Off Peak Hrs rate, FPA, GST and etc to avoid the future litigation”.

7. Being aggrieved with impugned decision dated 26.11.2013 of POI/EI, IESCO has filed the instant Appeal through Sheikh Muhammad Ali Advocate on 30.01.2014 before NEPRA under section 38 (3) of the Act.
8. In the instant Appeal IESCO has stated that the complaint lodged by the Respondent before POI/EI was contested by IESCO wherein it was asserted that the complaint was hit by delay and laches and the complainant had no locus standi to file the complaint before POI/EI. Notice under section 26 (6) of Electricity Act, 1910 was not issued. It was also stated that IESCO has challenged the impugned decision and submitted that the same is against the facts and law. IESCO averred that there was no error found in the joint meter reading of the Respondent's connection on 01.08.2011. The complaint regarding defect of the meter was made on 02.08.2011 which was promptly attended and the defective meter was replaced on 16.08.2011. According to IESCO the refund of 913,822 KWh units and 4088 KW MDI through the impugned decision is wrong, unjustified and against the facts and law. In the end IESCO has prayed as under:

“In view of the facts mentioned in above paras, it is prayed that the impugned Decision dated 26.11.2013 passed by Electric Inspector, Energy Department, Islamabad Region, Islamabad on Complaint titled Fauji Cement Company Limited versus IESCO and other may please be set aside.”

9. In response to the instant Appeal, a notice was issued to the Respondent on 14.02.2014 to file reply/parawise comments which were received on 11.03.2014. The Respondent in his



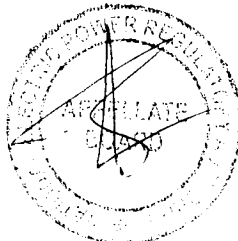


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reply has denied the allegations of IESCO regarding their complaint being hit by delay and laches and having no locus standi. The Respondent explained that after writing several letters to IESCO, he approached Consumer Affairs Division, NEPRA to redress his grievance under Consumer Services Manual as IESCO failed to attend his complaint. Copies of letters written to IESCO has been placed on record by Respondent. Requirement of notice under section 26 of Electricity Act, 1910 was fulfilled by POI/EI when he issued notice for hearing on 30.04.2013. The Respondent submitted that the Electric Inspector is the only authority to decide the case regarding metering disputes. Respondents has also averred that the meter was malfunctioning and therefore it was replaced on 16.08.2011. The POI/EI has based the assessment of consumption after installation of meter on 16.08.2011 which was agreed by IESCO officials during the hearing. He defended the decision of POI/EI and prayed as under:

"In view of the above facts mentioned in the replies of Fauji Cement, it's requested that Decision announced by Electric Inspector Energy Department Govt. of Punjab Islamabad region be upheld and IESCO be asked to overhaul the account as per original decision issued by Electric Inspector Govt of Punjab, Islamabad region."

10. After issuing the notice the Appeal was fixed for hearing on 20.03.2014 at NEPRA Office but on request of Sheikh Muhammad Ali Advocate, the counsel for IESCO, the date of hearing was postponed till 24.03.2014. On the date of hearing of the Appeal i.e 24.03.2014. Sheikh Muhammad Ali Advocate, Umer Gul Afridi, XEN and Muhammad Yamin, CA, CSO appeared on behalf of IESCO and Noor Muhammad Soomro, Senior Manager Plant and Farrukh Imran, CRO were present on behalf of the Respondent. Sheikh Muhammad Ali Advocate, the counsel for IESCO argued that POI/EI has failed to understand the real dispute between the parties and exceeded his jurisdiction while announcing the impugned decision. Learned Counsel of IESCO contended that according to section 24 (A) of the General Clauses Act each and every issue is to be decided by reasoned order which has not been done by POI/EI in the impugned decision, therefore the decision of POI should be set aside being illegal. He also pointed out that the legal objections raised by IESCO before learned POI/EI in their written statement as well in arguments have not been addressed by the POI/EI. On facts, Counsel of IESCO





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reiterated his earlier arguments and maintained that notice under section 26 (6) of the Electricity Act, 1910 is essential before the referring the matter to POI/EI. He further informed that the Respondent accepted the billing for July 2011 and August 2011 and made the payment without any objection and therefore at a belated stage the Respondent is not entitled to any relief when the transaction was passed and closed. The Respondent however has controverted the arguments of IESCO and stated that the malfunctioning of the meter was noticed on 01.08.2011 during the joint reading and written request was made to IESCO on 02.08.2011. The malfunctioning was confirmed by M&T IESCO during testing and the defective meter was therefore replaced on 16.08.2011. Regarding acceptance of the bill of July 2011 & August 2011, the Respondent asserted that he has raised objection verbally before IESCO but no heed was paid. Sheikh Muhammad Ali Advocate, the counsel for IESCO, in his concluding remarks argued that the MDI was recorded as 23944 KW in the month of February 2013 and as such restricting it to 20,000 KW in the impugned decision is not reasonable and justified. The IESCO's counsel prayed for acceptance of the Appeal and setting aside the impugned decision. On the contrary the Respondent vehemently opposed arguments of IESCO and stated that meter was admittedly malfunctioning beyond any doubt in July 2011 and up to 16.08.211 and as such billing of the Respondent should have not been based upon the defective meter. The Respondent supported the method adopted by POI/EI in calculation of the units based on the consumption recorded by healthy TOD meter installed on 16.08.2011. The Respondent prayed for upholding the decision of POI/EI and dismissal of the Appeal filed by IESCO.

11. We have examined the record placed before us and heard the arguments advanced by both the parties. Following are our observations in the instant Appeal:
 - i. The reading for consumption month of June 2011 was jointly taken and the bill issued was accordingly paid by the Respondent without any objection. However from the perusal of the record of the case it has been revealed that Respondent has also challenged the billing of June 2011 in his application filed with learned POI/EI.



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- ii. The reading of Respondent's connection for July 2011 was recorded jointly on 01.08.2011 and no discrepancy whatsoever was pointed out by the Respondent between the readings of TOD billing meter and electro mechanical backup meter. The electricity bill was issued in August 2011 and paid by the Respondent accordingly without any objection. However, later on the Respondent has challenged the same before the IESCO and upon rejection of the same by IESCO the same was agitated before POI/EI.
- iii. The Respondent wrote the letter on 02.08.2011 to XEN Pindi Gheb IESCO for testing of the TOD meter and its replacement when he suspected error in readings of the meters. Later on the TOD meter was checked by M&T IESCO on 16.08.2011 which found the meter reading erroneous and thus replaced the TOD meter on the same day. Hence the electricity bill for the period 02.08.2011 to 16.08.2011 was issued on the basis of consumption (i.e. 5,161,920 units) recorded by electro mechanical backup meter which was paid by the Respondent without any objection and from the record it is clear that same was not challenged by the Respondent before POI/EI.
- iv. We have noticed that the electricity bill from 17.08.2011 onwards was charged according to new TOD meter installed on 16.08.2011 which was paid by the Respondent and there is no issue about it between the parties.
- v. As per the record it is clear that IESCO has issued bills to the Respondent as detailed below:

Billing Month	Consumption Month	KWh Units	MDI KW	Remarks
July 2011	June 2011	10,779,840	20,808	As recorded by TOD meter
August 2011	July 2011	9,928,320	24,080	As recorded by TOD meter



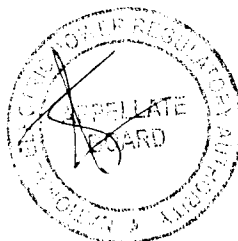


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September 2011	02.08.2011 to 16.08.2011	5,161,920	16,640	KWh units recorded by backup meter and KW MDI recorded by new meter installed on 16.08.2011
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- vi. As pointed out above, that the Respondent had also agitated the charging of bill for the month of July 2011, however it is clear from the record that learned POI/EI has not given any decision regarding the bill for June 2011 which was impugned by the Respondent. On the other hand learned POI/EI has determined the billing for the period 02.08.2011 to 16.08.2011 which was not a dispute before learned POI/EI as it has not be raised in the pleadings filed by the Respondent.
- vii. From the perusal of the record it transpires that the Respondent has challenged the bills for the month of June 2011 & July 2011 (which were issued in July 2011 and August 2011 respectively) on account of the difference of readings observed between the TOD billing meter and elector mechanical backup meter. But learned POI/EI in the impugned decision has given his determination about the billing for the month of July 2011 (issued in August 2011) and for the period 01.08.2011 to 16.08.2011 (issued in September 2011) but the determination is silent about the billing for the month of June 2011 (issued in July 2011).
- viii. The comparison of the consumption of TOD meter and electro mechanical meter from February 2011 to January 2012 is given below:

Billing Month	Cons. Month	MDI (132 KV) TOD Meter	KWH (132 KV) TOD Meter	KWH (132 KV) Elec-mech. Meter	KWH Diff (TOD & Elec-Mech)
Feb-11	Jan-11	18,293	6,063,360	5,972,160	91,200
Mar-11	Feb-11	12,344	2,832,960	2,774,400	58,560
Apr-11	Mar-11	17,392	5,683,200	5,587,200	96,000
May-11	Apr-11	17,299	4,785,120	4,683,840	101,280
Jun-11	May-11	18,755	7,542,720	7,370,880	171,840
Jul-11	Jun-11	20,808	10,779,840	10,025,280	754,560
Aug-11	Jul-11	24,080	9,928,320	7,851,840	2,076,480
Sep-11	Aug-11	0	9,714,240	5,161,920	4,552,320



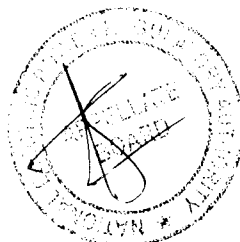


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		16,640	11,633,280	11,598,720	34,560
Oct-11	Sep-11	17,888	7,582,560	7,533,120	49,440
Nov-11	Oct-11	1,972	7,396,800	7,333,440	63,360
Dec-11	Nov-11	19,216	8,196,480	8,121,600	74,880
Jan-12	Dec-11	19,920	9,016,800	8,945,280	71,520

The above data reveals that there was substantial difference in consumption for the month of July 2011 due to difference between the readings of TOD billings meter and backup electro mechanical meter which were recorded on 01.08.2011. This fact clearly indicates that metering equipment was not operating correctly and therefore while calculating the consumption of July 2011 (bill issued in August 2011), the reading of back up meter was relied upon by the IESCO to charge the Respondent. We are therefore convinced that the calculation of bill for July 2011 (issued in August 2011) should neither have been relied upon the TOD meter nor the backup meter as both the meters were admittedly not tested for their accuracy. Hence the bill charged by IESCO for July 2011 (issued in August 2011) for (9,928,320 KWh units+20,800 KW MDI) is not justified and therefore the Respondent is not liable to pay the same.

- ix. The consumption record from 16.08.2011 (when TOD meter was replaced) onwards shows that both the metering equipment were working properly and recorded consumption of electricity within the permissible limits of accuracy. We have observed that on the basis of average consumption worked out by POI/EI i.e. 308,183 KWh units per day to charge the Respondent, is fair and reasonable and should be made applicable for the month of July 2011 as determined by POI/EI. The total units calculated in July 2011 are (31 x 308,183) 9,553,673 units. Similarly 20,000 KW MDI determined by POI/EI being justified is also correctly determined on the basis of consumption of Respondent and therefore the same is also rightly accessed by learned POI/EI.
- x. As regard to claim of IESCO that the complaint of the Respondent is hit by laches or delay, it is observed that the same is not tenable in view of the several letters produced before us along with reply of the Respondent, wherein Respondent had time and again requested IESCO to settle his grievance for excessive charging of the bill. It is also evident from the record that a report of the committee constituted by IESCO



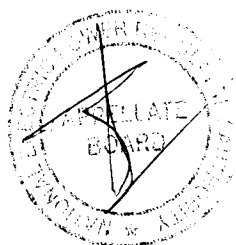


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has been forwarded to the Respondent and later on the Respondent had agitated the matter before NEPRA as well as POI/EI. We note that IESCO has also raised objection regarding non issuance of notice required to be issued under section 26 (6) of the Electricity Act, 1910 before filing complaint before POI/EI. We have considered such objection however, we are of the view that no prejudice has been caused to IESCO in case seven days notice was not issued to IESCO by the Respondent as learned POI/EI has passed the decision dated 26.11.2013 after receiving written reply as well as after hearing both the parties. It is also needless to state that Respondent had agitated the billing before IESCO which was decided by IESCO after a considerable time, therefore at all relevant point in time, the IESCO had notice of grievance of the Respondent.

12. In view of the discussion in foregoing paragraphs we hold that that:

- i. The bill of the Respondent for June 2011 (issued in July 2011) charged by IESCO and already paid by the Respondent in accordance with the readings of the metering equipment is declared valid and maintained accordingly.
- ii. The impugned decision regarding the bill for July 2011 (issued in August 2011) is justified and accordingly upheld. The Respondent has to pay 9,553,373 KWh units and 20,000 KW MDI as worked out/determined by learned PO/EI. Resultantly IESCO has to credit 374,947 KWh units + 4088 KW MDI to the Respondent in the bill for July 2011.
- iii. The impugned decision regarding the billing for the period from 02.08.2011 to 16.08.2011 (included in September 2011) being beyond the scope of the learned POI/EI is declared null and void and of no legal effect. The bill already charged by IESCO for this period and paid by the Respondent being lawful is maintained and need not to be interfered.
- iv. The IESCO is directed to revise the bill for July 2011 according to para 12 (ii) above by adjusting the payments made already by the Respondent.





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13. The Appeal is disposed of in above terms.

Muhammad Qamar-ur-Zaman
Member

Muhammad Saqlain Arshad
Member

Nadir Ali Khoso
Convener

Date: 08.04.2014

