



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

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No. NEPRA/Appeal/162/POI/2018/ *2303-2307*

October 17, 2019

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| 1. Syed Sharafat Hussain
Power Consultant,
PTCL Headquarters,
Sector G-8/4, Islamabad | 2. Chief Executive Officer
IESCO Ltd,
Head Office, St. No. 40,
Sector G-7/4, Islamabad |
| 3. Faisal Bin Khurshid,
Advocate Supreme Court,
Al Rushd Advocates,
32-Haroon-Ur-Rasheed Block,
Near Post Office, Johar Road,
F-8 Markaz, Islamabad | 4. Sub Divisional Officer
IESCO Ltd,
G-7 Sub Division,
Near Suparco Chowk,
Al-Mansoor Market, Street No. 14,
G-8/1, Islamabad |
| 5. Electric Inspector/POI,
Islamabad Region,
XEN Office, Irrigation & Power Department,
Rawal Dam Colony, Park Road,
Islamabad | |

Subject: **Appeal Titled IESCO Vs. PTCL Against the Decision Dated 30.09.2011 of the Provincial Office of Inspection to Government of the Punjab Islamabad Region, Islamabad**

Please find enclosed herewith the decision of the Appellate Board dated 15.10.2019, regarding the subject matter, for information and necessary action accordingly.

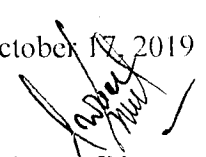
Encl: As Above

(Ikram Shakeel)

No. NEPRA/Appeal/162/POI/2018/ *2308*

October 17, 2019

Forwarded for information please.


Assistant Director
Appellate Board

1. Registrar
2. Director (IT) --for uploading the decision on NEPRA website



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.162/2018

Islamabad Electric Supply Company Limited

.....Appellant

Versus

Syed Sharafat Hussain, Power Consultant,
PTCL Headquarters, Sector G-8/4, Islamabad

.....Respondent

APPEAL FILED UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION ACT 1997 AGAINST THE DECISION DATED 30.09.2011 OF PROVINCIAL OFFICE OF INSPECTION, ISLAMABAD REGION, ISLAMABAD

For the appellant:

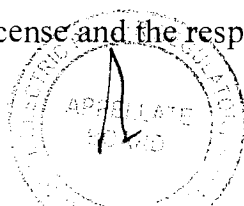
Mr. Faisal Bin Khurshid Advocate
Mr. Umair Aslam Add. XEN

For the respondent:

Syed Sharafat Hussain

DECISION

1. Through this decision, an appeal filed by Islamabad Electric Supply Company Limited (hereinafter referred to as IESCO) against the decision dated 30.09.2011 of the Provincial Office of Inspection, Islamabad Region, Islamabad (hereinafter referred to as POI) is being disposed of.
2. IESCO 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 and the respondent is its commercial consumer

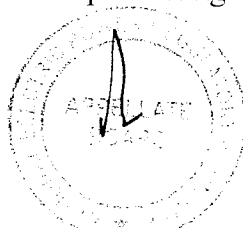




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(PTCL) bearing Ref No.27-14113-00725503 with a sanctioned load of 1,882 kW under A-2(c) tariff. Briefly speaking, the respondent approached IESCO for replacement of the old billing meter due to overshoot MDI recorded during the billing month of January 2010. Later on, the said meter was checked by metering and testing (M&T) IESCO and reportedly found defective, hence it was replaced with a new meter by IESCO on 11.06.2010. Subsequently, the new billing meter of the respondent was found 33.12% slow/defective during IESCO checking dated 01.12.2010, which was confirmed when compared with the readings of checking meter on 16.03.2011. Notice dated 31.03.2011 was served to the respondent regarding the above discrepancy. IESCO charged the detection bill of 413,005 units/1699.12 kW MDI for the period August 2010 to October 2010 to the respondent @ 33% slowness of the new meter.

3. Being aggrieved, the respondent initially filed a complaint before the Wafaqi Mohtasib on 07.12.2010 against the above detection bill. The honorable Wafaqi Mohtasib vide order dated 12.04.2011 directed the respondent to approach POI for redressal of the grievance. Consequently the respondent filed an application before POI, wherein he inter alia prayed that (i) the bills for the period January 2010 to June 2010 be revised as per corresponding consumption of the year 2009, (ii) 33% slowness of the new meter be charged as per consumption of the old meter as the estimated billing was done on new meter, (iii) Low Power Factor Penalty of Rs.424,952.95/- pertaining to the period February 2010 to





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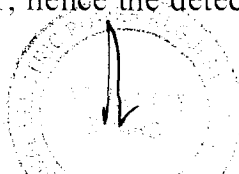
April 2011 be waived off. POI disposed of the matter vide its decision dated 30.09.2011 and concluded as under:

"Dispute-I: Billing from January 2010 to June 2010 on old billing meter: IESCO may feed defective code w.e.f 02.04.2010 till MCO and refund 54,181 units/2,221 kW MDI for May 2010 to June 2010.

Dispute-II: Detection bill for the period August 2010 to October 2010 charged @ 33% slowness of the new meter: The respondent may be charged 33% slowness from August 2010 and onwards till checking dated 16.03.2011 and MDI be charged as per maximum MDI recorded during last 8 months.

Dispute-III: Low Power Factor Penalty: LPF of Rs.424,953/- for the period February 2010 to April 2011 disallowed."

4. IESCO had initially filed the appeal before the Advisory Board, Government of Punjab Lahore (the Advisory Board) against the decision dated 30.09.2011 of POI (hereinafter referred to as the impugned decision). During the pendency of the appeal before the Advisory Board, IESCO approached the Lahore High Court, Lahore through Writ Petition No.176692/2018 and the honorable High Court vide order dated 09.03.2018 directed the Advisory Board to decide the matter within 30 days from the date of receipt of the order. Consequently, the Advisory Board vide its decision dated 16.07.2018 returned the appeal to IESCO for filing the same before the appropriate forum as per law.
5. IESCO has the filed the instant appeal before NEPRA, wherein it is inter alia. contended that the new TOU billing meter installed on the premises of the respondent on 11.06.2010 was found 33% slow during subsequent checking dated 01.12.2010 and 31.03.2011, hence the detection bill of 413,005 units/1699.12 kW

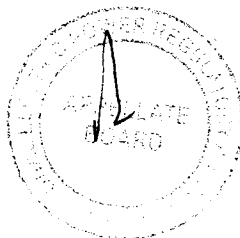




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MDI for the period August 2010 to October 2010 was debited to the respondent to recover the loss sustained due to 33% slowness of the new meter but POI wrongly declared the above detection bill as null and void without perusing the facts of the case. IESCO explained that the appeal against the impugned decision was initially filed before the Advisory Board, to expedite the matter WP No.176692/2018 was filed before Lahore High Court, Lahore, the honorable High Court vide order dated 09.03.2018 disposed of the matter and the Advisory Board decided the appeal vide order dated 16.07.2018 and the appellant received the copy of the said order on 27.07.2018. IESCO submitted that the instant appeal was filed within the time and prayed for setting the impugned decision.

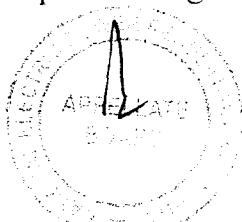
6. Notice of the appeal was issued to the respondent for filing reply/para-wise comment, which were filed on 31.07.2019. In his reply, the respondent raised the preliminary objection of limitation and contended that the POI pronounced the decision on 30.09.2019 but the appeal was filed before the Advisory Board Lahore on 09.01.2012 after elapse of 101 days. As per respondent, the Advisory Board announced the decision on 16.07.2018 and returned the appeal to IESCO for lodging the same before the appropriate forum, hence the Advisory Board has no jurisdiction to condone the delay in filing the appeal against the impugned decision. The respondent finally prayed for dismissal of the appeal on the ground of limitation and implementation of the impugned decision in true spirit.





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7. Notice was issued and hearing of the appeal was held in NEPRA head office on 24.09.2019 in which both the parties were in attendance. In response to the question of limitation raised by this forum, learned counsel for IESCO pleaded that the impugned decision was announced by POI on 30.09.2011 against which the appeal was filed before the Advisory Board on 09.01.2012 but the Advisory Board kept it pending and after the direction of Lahore High Court, Lahore, the Advisory Board decided the appeal vide the order dated 16.07.2018, the appellant got the copy of the said decision on 27.07.2018 and the appeal was filed before NEPRA on 16.08.2018. As per learned counsel for IESCO, the time consumed during this process is liable to be excluded. Learned counsel for IESCO finally prayed for the condonation of the delay and the decision on merits.
8. We have heard the arguments of both the parties and examined the record placed before us. As the point of limitation was raised, therefore it will be judicious to decide the matter on limitation in the first instance. It is observed that the impugned decision was announced on 30.09.2011, admittedly copy of the same was received by IESCO on 28.10.2011 and the appeal was filed before the NEPRA on 16.08.2018 after a lapse of more than 6 years. As per IESCO, the appeal was filed before the Advisory Board on 09.01.2012 and the time was lost due to the pendency of the appeal before that forum, which is liable to be condoned. For the sake of arguments, if it is assumed that IESCO was under the impression to file the appeal against the impugned decision before the provincial government, it is noted that the appeal was





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filed before the Advisory Board on 09.01.2012 after the expiry of 73 days of receipt of the impugned decision. Prior to the insertion of subsection 3 of Section 38 of NEPRA Act, 1997 on 25.09.2011, any aggrieved person may file an appeal against the final order made by the Office of Inspection before the Advisory Board constituted within 30 days in pursuance of clause 10 of the Punjab (Establishment and Powers of Office of Inspection) Order, 2005. Even before the wrong forum, the appeal was filed after expiry of time provided in the Punjab (Establishment and Powers of Office of Inspection) Order, 2005.

9. From the discussion made above, we have reached to the conclusion that the appeal filed by IESCO is time-barred, hence dismissed on the ground of limitation.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Dated: 15.10.2019

