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

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No. NEPRA/AB/Appeal/016/2019/ 975-979 May 10, 2019

1. M/s. Toheed CNG Station
Through its Managing Director,
Muhammad Ishaq Bhatti,
Head Office: 93-E, Street No. 7,
I-10/3, 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,
Sukho Sub Division, Near UBL,
Sukho Moar, Tehsil Gujar Khan

5. Electric Inspector/POI,
Islamabad Region,
XEN Office, Irrigation & Power Department,
Rawal Dam Colony, Park Road,
Islamabad

Subject: **Appeal Titled IESCO Vs. M/s. Toheed CNG Station Against the Decision Dated 19.10.2018 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 08.05.2019, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Ikram Shakeel)

No. NEPRA/AB/Appeal/016/2019/ 980

Forwarded for information please.

May 10, 2019

Assistant Director
Appellate Board

Registrar

National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.016/2019

Islamabad Electric Supply Company Limited ....Appellant

Versus

M/s. Toheed CNG Station, Through its Managing Director,
Muhammad Ishaq Bhatti S/o Sardar Ali Bhatti, Head Office: 93-E,
Street No.7, I-10/3, Islamabad ....Respondent

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

For the appellant:
Mr. Faisal Bin Khurshid Advocate
Mr. Safdar Ali Khan SDO

For the respondent:
Mr. M. Ishaq Bhatti C.E
Mr. Mohsin Mehmood Manager

DECISION

1. Through this decision, an appeal filed by Islamabad Electric Supply Company Limited (IESCO) against the decision dated 19.10.2018 of the Provincial Office of Inspection, Islamabad region, Islamabad (POI) is being disposed of.

2. As per facts of the case, the respondent is a commercial consumer (CNG station) of IESCO bearing Ref No.27-14566-9950500-R with a sanctioned load of 157 kW

under the A-2c tariff. Meter of the respondent was checked by IESCO in December 2017 and reportedly it was found defective with date and time disturbed, hence average billing was done w.e.f December 2017 and onwards till its replacement with the new meter vide meter change order (MCO) dated 06.02.2018. The removed defective meter was checked by metering and testing (M&T) IESCO and reportedly, found 21,047 units chargeable for the period December 2017 to February 2018. Subsequently, the audit department vide Audit Note Nos. 13, 16 and 17 dated 05.03.2018 recommended to recover Rs.371,456/-, Rs.224,707/- and Rs.474,126/- from the respondent. However IESCO agreed to charge the following detection bills on the basis of audit note Nos. 13 and 17 dated 05.03.2018 (no charging for audit note No. 16 dated 05.03.2018):

Audit Note	Detection bill	Amount (Rs.)	Units (OP/P)	Period	Duration	Billing month
13 dated 05.03.2018	First	371,456/-	21,047 (OP=18,727, P=2,320)	December 2017 to February 2018	3 months	March 2018
17 dated 05.03.2018	Second	474,126/-	63,200 units	March 2016 to February 2018	24 months	August 2018

3. Being aggrieved with the above billing, the respondent filed an application before NEPRA on 24.08.2018 and challenged the above detection bills and excessive MDI charged by IESCO. The complaint of the respondent was forwarded by NEPRA to POI on 29.08.2018 for further adjudication, which was disposed of by POI vide decision dated 19.10.2018 with the following conclusion:

   i. First detection bill of Rs.371,456/- for 21,047 (OP=18,727, P=2,320) units

NATIONAL ELECTRIC POWER REGULATORY AUTHORITY ★ APPELLATE BOARD *for the period December 2017 to February 2018 charged on account of less charging of units as per Audit Note No.13 dated 05.03.2018 is declared null and void. IESCO may charge 878 peak units for the same period.*

ii. *Second detection bill of Rs.474,126/- for 63,200 units for the period March 2016 to February 2018 debited on the basis of Audit Note No.17 dated 05.03.2018 is null and void. IESCO may credit 2,622 units excessively charged during the same period.*

iii. *IESCO charged Rs.582,800/- on account of excessive MDI as the installed Transformer capacity =200 kVA, which is creditable to the respondent.*"

4. The appeal in hand has been filed by IESCO against the POI decision dated 19.10.2018 (hereinafter referred to as the impugned decision) in which IESCO contended that the meter was found defective with the upset date and time in December 2017 and it was replaced with the new meter by IESCO vide MCO dated 06.02.2018. IESCO further contended that 20,147 units were less charged during the period December 2017 to February 2018 but the detection bill was not served to the respondent. According to IESCO, the first detection bill of Rs.371,456/- for 21,047 (OP=18,727, P=2,320) units for the period December 2017 to February 2018 was charged to the respondent in March 2018 as per Audit Note No.13 dated 05.03.2018 and the second detection bill of Rs.474,126/- for 63,200

units for the period, March 2016 to February 2018 was debited to the respondent in August 2018 as per Audit Note No.17 dated 05.03.2018. IESCO opposed the impugned decision on the grounds that POI did not consider the real aspects of the case; that POI flouted the legal, technical facts and impleaded the parties in violation of Order 1 Rule 10 of the CPC; that the impugned decision was pronounced in the absence of the appellants; that POI did not advert the provisions of NEPRA Act, 1997, Electricity Act,1910, the CPC and passed the whimsical order.

5. Notice for reply/para-wise comments to the appeal was sent to the respondent, which were filed on 19.03.2019. In his reply, the respondent explained that the billing meter was declared defective by IESCO in February 2018 and it was replaced with a new meter. The respondent stated that the bills of Rs.596,000/- for February 2018 and Rs.893,588/- for March 2018 were excessive but paid under protest. As per respondent, IESCO charged excessive MDI during the period of June 2016 to July 2018. According to the respondent, IESCO issued an exaggerated bill for August 2018 amounting to Rs.1,044,423/-, which contained the adjustment bill of Rs.474,126/-. The respondent submitted that he approached IESCO against the irregular billing but no action was taken by IESCO.

6. Hearing of the appeal was held in NEPRA Head Office, Islamabad on 04.04.2019 in which both the parties were present. Learned counsel for IESCO reiterated the same version as contained in the memo of the appeal and contended that 21,047 units were

found less charged during data retrieval of the removed meter of the respondent in M&T laboratory, which was also recommended by the audit department vide Audit Note No.13 dated 05.03.2018. Learned counsel for IESCO averred that the date and time of the meter remained disturbed during the period March 2016 to February 2018, hence thesecond detection of Rs.474,126/- for 63,200 units for the period March 2016 to February 2018 was debited to the respondent in August 2018 as per Audit Note No.17 dated 05.03.2018. Learned counsel for IESCO argued that the above detection bills are justified and the impugned decision in this regard is incorrect, void and may be set aside. On the contrary, the representatives of the respondent repudiated the arguments of learned counsel for IESCO and contended that neither prior notice was served for MCO nor the checking of the meter was conducting in their presence, hence there is no justification to charge any detection bill on the basis of audit observation. The representatives for the respondent pointed out that excessive MDI was being charged from June 2016 and onwards against which the complaint was filed before IESCO but no action was taken. As per representatives for the respondent, the bill of Rs.893,588/- for March 2018 was paid under protest in order to avoid disconnection of electric supply.

7. Arguments heard and record perused. Following are our observations:

   i. IESCO charged first detection bill of Rs.371,456/- for 21,047 (OP=18,727, P=2,320) units for the period December 2017 to February 2018 to the respondent in March 2018 on account of less charging of units as per Audit Note No.13 dated 05.03.2018. Second detection bill of Rs.474,126/- for 63,200 units for the period March 2016 to February 2018 was debited to the respondent in August 2018 on the basis of Audit Note No.17 dated 05.03.2018. The respondent challenged the above detection bills and excessive MDI charged by IESCO from June 2016 and onwards before POI.

ii. **Issue-I**: First detection bill of Rs.371,456/- for 21,047 (OP=18,727, P=2,320) units for the period December 2017 to February 2018 charged to the respondent in March 2018 as per Audit Note No.13 dated 05.03.2018.The audit observation is an internal matter between the DISCO and the Audit Department and the respondent cannot be held responsible for payment of the same. In this regard, reliance is placed on the cases reported in 2014 MLD 1253 titled M/s. Mehmood Textile Mills v/s MEPCO and 2008 YLR 308 titled WAPDA v/s Fazal Karim. In view of above, the first detection bill of Rs.371,456/- for 21,047 units for the period December 2017 to February 2018 charged to the respondent as per Audit Note No.13 dated 05.03.2018 is illegal, unjustified and liable to be canceled as already determined in the impugned decision. It has been observed that the respondent was charged on an estimated basis for the period December 2017 to February 2018 (3 months) due to defective meter, which was replaced with the new meter by IESCO vide MCO dated 06.02.2018. The final reading of the defective meter was retrieved as OP=17,153, P=3,014 by M&T IESCO, which was not disputed both by the respondent and POI, so the below calculation will be based on the said final reading.

Table-A **Period: December 2017 to February 2018**

Reading	(A) Dec-2017	(B) Feb-2018 as per M&T	(C)=(B)-(A) Difference	(D) M.F	**(E)**=(C)x(D) **Units to be charged**	**(F)** **Units already charged**	**(G)** = (E)-(F) **Net units to be charged**
OP	16,133	17,153	1,020	80	**81,600**	=18,873+20,000+24,000 **62,873**	**18,727**
P	2,898	3,014	116	80	**9,280**	=1,120+1,120+4,720 **6,960**	**2,320**

As evident from the above table, IESCO may recover the (OP=18,727 units, P=2,320 units) for the period December 2017 to February 2018 from the respondent, however these units should be segregated equally in the four months in pursuance of clause 6.2(b) of Consumer Service Manual (CSM), which is reproduced below:

"In cases where accumulated readings are recorded, segregate bills shall be prepared to keep in view the number of months for which the readings have been accumulated to give relief to the consumer."

The determination of POI for affording credit of 2,622 units to the respondent is not justified and the impugned decision is withdrawn to this extent.

iii. **Issue-II**: Second detection bill of Rs.474,126/- for 63,200 units for the period March 2016 to February 2018 as per Audit Note No.17 dated 05.03.2018. There are a number of judgments of superior courts that the audit is an internal matter between the DISCO and audit department and the consumer cannot be held responsible for payment of any detection/difference bill based on audit observation. Reliance in this regard is placed on the judgments reported in 2014 MLD 1253 titled M/s. Mehmood Textile Mills v/s MEPCO and 2008 YLR 308 titled WAPDA v/s Fazal Karim. In view of above, second detection bill of Rs.474,126/- for 63,200 units for the period March 2016 to February 2018 charged to the respondent as per Audit Note No.17 dated 05.03.2018 is liable to be declared null and void. However, the perusal of M&T test check proforma dated 07.02.2018 reveals that the date and time of the meter were upset (Date was shown as 01.01.2000 instead of 07.02.2018, the time was shown as 00:21:00 AM instead of 11:50:00 AM). As the second dispute pertains to the period from March 2016 to February 2018, so the billing for the said period is being examined as under::

Table-B **Period: March 2016 to February 2018**

Reading	**(A)** Mar-2016	**(B)** Feb-2018	**(C)= (B)-(A)** Difference	**(D)** **% of units charged**
Off Peak	11,308	17,153	5,845	=Off Peak reading x100/Total reading = 5,845x100/6,066 = **96.35%**
Peak	2,793	3,014	221	=Peak reading x100/Total reading = 221x100/6,066 = **3.65%**
Total	14,101	20,167	6,066	**100%**

Above calculation clearly reflects that off-peak and peak components of the consumption were not correctly recorded during the disputed period March 2016

to February 2018 due to disturbed date and time of the defective meter. As the final reading of the defective meter noted on 06.02.2018 was accepted by the respondent and POI, so the total 6,066 reading advanced during the period March 2016 to February 2018 need to be bifurcated in off-peak and peak components same as the percentage of off-peak and peak components calculated on the basis of the final reading of the defective meter.

Table-C

% Off Peak = final off-peak reading x100/total reading = 17,153x100/20,167 = **85%**		
% Peak	= final peak reading x100/total reading = 3,014x100/20,167	= **15%**

Table-D

(A) Units	(B) To be billed	(C) Already billed	(D) debit	(E) credit
Off peak	=total reading x % OP x MF =6,066 x 0.85 x 80 = **412,488**	=off peak x MF =5,845*80 = **467,600**	-	**55,112**
Peak	=total reading x % P x MF =6,066 x 0.15 x 80 = **72,792**	=off peak x MF =221*80 = **17,680**	**55,112**	-
Total	**485,280**	**485,280**		

The respondent's billing for the period March 2016 to February 2018 be revised after affording debit/credit of units as calculated in table-D above.

iv. **Issue-III:** The respondent agitated the excessive MDI (kW) billed during the period of June 2016 to February 2018. MDI chart for the disputed months is given below:

Table-E

Month	MDI (kW) charged
June 2016	268
November 2016	320
December 2016	320
January 2017	320
February 2017	400
March 2017	240
April 2017	480
September 2017	229
February 2018	320

Above MDI chart indicates that MDI charged during these months is much higher than the sanctioned load of the respondent i.e. 157 kW. Besides, 200 kVA Transformer dedicated to supply the electricity to the premises has the capacity of not more than 160 kW at 0.8 power factor. How could it be possible that such high MDI recorded without extension of load and installation of transformer beyond 160 kW capacity? IESCO could not provide any justification for charging such high MDI to the respondent. We are inclined to agree with the findings of POI that excessive MDI already charged during the period June 2016 to February 2018 be credited to the respondent, the calculation in this regard is done below:

Table-F

Month	(A) MDI already charged	(B) MDI to be charged	©=(B)-(C) Difference of MDI	(D) Fixed Charges/Kw	(E)=(C)*(D) Amount to be credited (Rs.)
Jun-16	268	160	108	400	43,200/-
Nov-16	320	160	160	400	64,000/-
Dec-16	320	160	160	400	64,000/-
Jan-17	320	160	160	400	64,000/-
Feb-17	400	160	240	400	96,000/-
Mar-17	240	160	80	400	32,000/-
Apr-17	480	160	320	400	128,000/-
Sep-17	229	160	69	400	27,600/-
Feb-18	320	160	160	400	64,000/-
Total amount to be credited to the respondent					**582,800/-**

Impugned decision for affording credit of Rs. 582,800/- on account of excessive MDI is correct and liable to be maintained to this extent.

8. The upshot of the above discussion is as under:

   i. First detection bill of Rs.371,456/- for 21,047 (OP=18,727, P=2,320) units for the period December 2017 to February 2018 charged as per Audit Note No.13 dated 05.03.2018 is null and void. However the respondent is responsible to pay 21,047 (OP = 18,727, P = 2,320) units for the aforesaid period.

   ii. Second detection bill of Rs.474,126/- for 63,200 units for the period March 2016 to February 2018 charged on the basis of Audit Note No.17 dated 05.03.2018 is unjustified and declared null and void. However the respondent is obligated to pay the difference of tariff from off peak to peak for 55,112 units for the above

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said period.

iii. The respondent shall be afforded credit of Rs. 582,800/- on account of amount charged for excessive MDI.

iv. Billing account of the respondent be overhauled after making debit/credit adjustment of units/MDI and the payments already made against the above bills.

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

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Dated: 09.05.2019