



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

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No. NEPRA/Appeal/019/POI/2019/140

February 24, 2021

- | | |
|--|---|
| 1. Malik Ghulam Raza
S/o. Malik Fateh Muhammad,
R/o. House No. 590, Street No. 19,
I-8/3, 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. Shafqat Saleem Khokhar
Advocate High Court,
29-S/31-S, Madina Chambers,
District Courts, Rawalpindi |
| 5. Sub Divisional Officer (Operation)
IESCO Ltd,
Domeli Sub Division,
Tehsil Sohawa, District Jhelum | 6. POI/Electric Inspector,
Islamabad Region,
XEN Office, Irrigation & Power
Department,
Rawal Dam Colony, Park Road,
Islamabad |

Subject: **Appeal Titled IESCO Vs. Malik Ghulam Raza Against the Decision Dated 12.11.2018 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 23.02.2021, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

**(Ikram Shakeel)
Deputy Director (M&E)
Appellate Board**

Forwarded for information please.

1. Director (IT) –for uploading the decision on NEPRA website



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.019/POI-2019

Islamabad Electric Supply Company Limited

.....Appellant

Versus

Malik Ghulam Raza, Coal Mine, Fore Pothi,
Tehsil Sohawa, District Jhelum

.....Respondent

For the appellant:

Mr. Faisal Bin Khurshid Advocate
Mr. Aleem Khan SDO

For the respondent:

Nemo

DECISION

1. Through this decision, an appeal filed by Islamabad Electric Supply Company Limited (hereinafter referred to as IESCO) against the decision dated 12.11.2018 of the Provincial Office of Inspection Islamabad Region, Islamabad (hereinafter referred to as POI) under Section 38(3) of the NEPRA Act 1997 is being disposed of.
2. Brief facts giving rise to the instant appeal are that the respondent is an industrial consumer of IESCO bearing Ref No.28-14424-8270400 with sanctioned load of 38 kW under the B-2 tariff. The billing meter of the respondent was checked by Metering and Testing (M&T) IESCO on 04.05.2015 and reportedly it was found dead stop with washed LCD. The defective meter of the respondent was replaced with a new meter by IESCO on 28.05.2015. Subsequently, the Audit Department vide Audit Note No.90 dated 08.12.2015 recommended to charge a detection bill amounting to Rs.957,925/-



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for 51,992 units/135 kW MIDI for the period November 2014 to June 2015 (8 months) to the respondent on the basis of the average consumption of last eleven months i.e. December 2013 to October 2014. However, IESCO charged the detection bill of Rs.505,434/- for 28,574 units for the period November 2014 to June 2015 (8 months) to the respondent and added in the bill for October 2016.

3. The respondent being aggrieved with the above detection bill filed an application before POI, who disposed of the matter vide decision dated 17.01.2017 (hereinafter referred to as the first decision) with the following conclusion:

"I have thoroughly scrutinized the case and reached the factual position that the plea of the respondents is Unjustified and illegal because the data maintained by the audit team was not convincing. They adopted two methods and repeated the procedures according to their own wish. The competent authority disagreed with the audit party and partially agreed with the audit observation for 28574 units instead of 51992 units vide his letter No. 1680-81 dated 30.9.2016. The audit note was debited with Rs. 505438/- in the bill of the consumer in 10/2016. When we scrutinized the record then reached the factual position that meter display washed due to LCD washed and meter replaced with vide MCO No. 8/286 Dated 28.05.2015, the respondents are directed to charge 7340 KWH units as a whole both peak and off-peak for a period from 03/2015 to 06/2015 as the rest of charging is illegal and unjustified because it is well law be a superior court of Pakistan that audit Para is a matter in between the respondents and department and consumer has no concerned. Reliance is based upon the judgment 1988-CLC-501. Hence the respondents are directed to charge above mentioned from 03/2015 to 06/2015 and the petitioner is to pay the liabilities of respondents smoothly to avoid future litigation. The rest of the plea of the petitioner is set aside can be declared null and void."

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4. LESCO challenged the POI decision dated 17.01.2017 (hereinafter referred to as the impugned decision) before the NEPRA through the appeal No.090/2017. NEPRA Appellate Board vide decision dated 02.11.2017 set aside the POI first decision and remanded back the matter to POI to issue a speaking order. Consequently, the POI reheard matter and decided the case vide decision dated 12.11.2018, the operative portion of which is reproduced below:

"Summing up all the above observations/discussion and keeping in view all the aspects of the case this forum declares that charging of excessive amount of Rs.957,925/- separately for the cost of 51992 (off-peak and peak units) for the previous period from 11/2013 to 06/2015 based on Audit Notes are set aside as null, void and without any legal effect and the consumer is not liable to pay the same. The IESCO/Respondents are directed to withdraw the same and overhaul the petitioner's account by adjusting (and issue the bill for the cost of 7,340 units as detection on less charging from 03/2015 to 06/2015 when the meter was defective/dead stop due to LCD washed) all Credits, Debits, Deferred Amount & Payments already made by the consumer."

5. Subject appeal has been filed by IESCO against the afore-referred decision of POI (hereinafter referred to as the impugned decision) before NEPRA. In its appeal, IESCO contended that the display of the meter of the respondent was found defective during checking dated 05.05.2015 and it was replaced with a new meter vide MCO dated 28.05.2015. IESCO further contended that the Audit Department vide Audit Note No.090 dated 08.12.2015 pointed out less charging of units/MDI during the period



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November 2014 to June 2015 (8 months) and recommended to charge the detection bill of Rs.957,925/- for 51,992 units/135 kW MDI for the period November 2014 to June 2015 (8 months) to the respondent on the basis of average consumption (off peak=7,328, peak=1,370) of the period December 2013 to October 2014. As per IESCO, three billing meters of the respondent were replaced with new meters on 28.05.2015, 01.04.2016 and 26.01.2017 and the discrepancies observed in the removed billing meters purports the illegal abstraction of electricity and extension of load, hence IESCO has the privilege to recover the above detection bill being justified. IESCO submitted that the impugned decision suffers from technical, factual, and legal infirmities, which is unlawful, malafide, arbitrary, and calls for interference by this Authority. IESCO supported the Audit Report and stated that it has legal length, which was flouted by POI while passing the impugned decision. According to IESCO, the opinion of POI is scanty, without a valid basis and reflection of wheeling and dealing as it is passed without taking into account the expert opinion based on technical testing which shows the real aspects of the case. IESCO finally prayed for setting aside the impugned decision.

6. Notice for filing reply/para-wise comments to the appeal was issued to the respondent, which however were not filed.
7. Hearing of the appeal was conducted in NEPRA Head Office, Islamabad on 09.02.2021, which was attended by learned counsel along with SDO IESCO for the appellant and no one represented the respondent. Learned counsel for IESCO argued



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that the Audit Department vide Audit Note No.090 dated 08.12.2015 pointed out the less charging of units/MDI during the period November 2014 to June 2015 and recommended to charge the detection bill of Rs.957,925/- for 51,992 units/135 kW MDI for the period November 2014 to June 2015 (8 months) to the respondent. Learned counsel for IESCO submitted that IESCO charged the detection bill of Rs.505,434/- for 28,574 units for the period November 2014 to June 2015 instead of 51,992 units as pointed out by the Audit Department, which is justified and payable by the respondent. Further, he opposed the determination of POI for revision of the detection bill for the period March 2015 to June 2015 (4 months) only instead of November 2014 to June 2015 (8 months) and prayed for setting aside the impugned decision.

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

- i. The billing meter of the respondent was found dead stop with washed LCD during IESCO checking dated 04.05.2015 and it was replaced with a new meter on 28.05.2015. Audit Department vide Audit Note No.90 dated 08.12.2015 recommended to charge the detection bill of Rs.957,925/- for 51,992 units/135 kW MDI for the period November 2014 to June 2015 to the respondent on the basis of the average consumption of the last eleven months i.e. December 2013 to October 2014. However, IESCO charged the detection bill of Rs.505,434/- for 28,574 units to the respondent and added in the bill for October 2016, which was disputed by him before POI.



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- ii. Audit para is an internal matter between IESCO and the Audit Department and the respondent cannot be held responsible for payment of any detection bill on the recommendation of the Audit Department. 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. Besides, the respondent was neither associated during the M&T checking dated 04.05.2015 nor the disputed billing meter was produced before the POI for checking. Moreover, the above detection bill was charged for a period of eight months i.e. November 2014 to June 2015 by IESCO on account of a defective meter, which is violative of clause 4.4(c) of the Consumer Service Manual (CSM). In view of the above discussion, we hold that the recommendation of the Audit Department vide Audit Note No.90 dated 08.12.2015 for recovery of the detection bill amounting to Rs.957,925/- for 51,992 units/135 kW MDI for the period November 2014 to June 2015 from the respondent on the basis of the average consumption of last eleven months i.e. December 2013 to October 2014 and charging of the detection bill of Rs.505,434/- for 28,574 units for the period November 2014 to June 2015 (8 months) to the respondent are unjustified, illegal, incorrect and the same are liable to be withdrawn, which is also the determination of POI.
- iii. Since the billing meter of the respondent was found defective on 04.05.2015 and replaced vide MCO dated 28.05.2015, hence the respondent is liable to be charged the detection bill for March 2015 to June 2015 as already determined by POI. However the mode of charging the bills be assessed on the basis of clause



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4.4(e) of CSM, which prescribes that the bills be charged @ 100% consumption of the corresponding month of the previous year or average consumption of last eleven months, whichever is higher.

Period: March 2015 to June 2015

Period	Units/month	MDI/month
Disputed month: March 2015 to May 2015	2,822	12
Corresponding month of previous year: March 2014 to May 2015	6,068	30
Last eleven undisputed months: April 2014 to February 2015	5,573	28

The above comparison of consumption data transpires that the units/MDI charged @ 2,822 units+ 12 kW MDI per month for the disputed period March 2015 to May 2015 are lesser than the corresponding consumption of the previous year and the average consumption of the last eleven undisputed months. Hence, it would be judicious to charge the bills @ 6,068 units+30 kW MDI per month for the disputed period March 2015 to May 2015 as per average consumption of the corresponding month of the previous year i.e. 2014 being higher in pursuance of clause 4.4(e) of CSM. The impugned decision is liable to be modified to this extent.

9. Summing the foregoing discussion, it is concluded as under:

- Charging of the detection bill of Rs.505,434/- for 28,574 units for the period November 2014 to June 2015 (8 months) to the respondent by IESCO is illegal, unjustified, incorrect and the same should be withdrawn.



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- ii. The respondent should be charged the bills @ 6,068 units+30 kW MDI per month for the period March 2015 to May 2015 as per normal average consumption of corresponding months of the previous year, however, the units already charged during the period March 2015 to May 2015 should be adjusted in the revised bill.
- iii. The billing account of the respondent may be overhauled after making adjustment of payment made (if any) against the above detection bill.

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

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener

Dated: 23.02.2021