



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

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No. NEPRA/Appeal/273/POI/2019/ *87*


October 27, 2021

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| 1. Ch. Sarfraz Ahmed
S/o. Allah Bux,
R/o. Village Bahi Khan,
Tehsil Gujar Khan | 2. Chief Executive Officer
IESCO Ltd,
Head Office, St. No. 40,
Sector G-7/4, Islamabad |
| 3. Faisal Bin Khurshid,
Advocate Supreme Court,
Office No. 3, First Floor,
National Arcade, 4-A,
F-8 Markaz, Islamabad | 4. Assistant Manager (Operation),
IESCO Ltd,
Sohawa Sub Division,
G. T. Road, Sohawa, Distt. Jhelum |
| 5. POI/Electric Inspector,
Islamabad Region,
XEN Office, Irrigation & Power Department,
Rawal Dam Colony, Park Road,
Islamabad | |

Subject: **Appeal Titled IESCO Vs. Sarfraz Ahmed Against the Decision Dated 15.07.2019 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 20.10.2021, 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.273/POI-2019

Islamabad Electric Supply Company Limited

.....Appellant

Versus

Ch. Sarfraz Ahmed S/o Allah Bux R/o Village Bahi Khan,
Tehsil Gujar Khan

.....Respondent

For the appellant:

Mr. Faisal Bin Khurshid Advocate

Mr. M. Furqan SDO

Mr. Asif Mahmood CSO

For the Respondent:

Mr. M. Sarfraz Ahmed

DECISION

1. Brief facts giving rise to the instant appeal are that the Respondent is an industrial consumer of Islamabad Electric Supply Company Limited (hereinafter referred to as the IESCO) bearing Ref No.24-14432-8817700 with sanctioned load of 34 kW under the B-2b tariff. The billing meter (first meter) of the Respondent was checked by metering and testing (M&T) IESCO on 31.12.2015 and reportedly it was found defective with manipulated date and time, however, the segment of total reading was found working properly. First meter of the Respondent was replaced with a new meter (second meter) by IESCO vide meter change order (MCO) dated 09.02.2016. Subsequently, the Audit Department vide Audit Note No.06 dated 15.08.2016 pointed out less charging of units during the period from September 2015 to February 2016 (6



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months) and recommended to charge the detection bill of Rs.624,562/- for a total of 35,190 (off peak=29,702 +peak=5,488) units+142 kW MDI for the period September 2015 to February 2016 to the Respondent on the basis of the average consumption of the period March 2016 to June 2016. Hence IESCO charged a detection bill (first detection bill) of Rs.144,866/- to the Respondent based on Audit para and added in November 2017 (however no documents i.e. audit report provided by IESCO in this regard). Afterward, the second meter of the Respondent was found burnt by IESCO in March 2018, hence it was replaced with another meter (third meter) vide MCO dated 14.02.2018. The second meter was checked by M&T IESCO and reportedly 9,581 (off peak=7,000+peak=2,581) units were found pending/uncharged in the second meter. Resultantly, IESCO charged another detection bill (second detection bill) of Rs.170,757/- for 9,581 (off peak=7,000 +peak=2,581) units to the Respondent due to pending units on 25.02.2019. IESCO charged one more detection bill (third detection bill) amounting to Rs.624,562/- for a total of 35,190 (off peak=29,702+ peak= 5,488) units +142 kW MDI for the period September 2015 to February 2016 to the Respondent based on audit recommendation dated 15.08.2016 and added in the bill for March 2019.

2. Being aggrieved, the Respondent filed an application before the Provincial Office of Inspection (POI) and disputed only third detection bill of Rs.624,562/- charged by IESCO in March 2019 based on audit para. In his application, the Respondent submitted that his factory remained closed during the period September 2015 to January 2016 (5 months) due to loss in business and domestic affairs. The Respondent further submitted that he had already paid the first detection bill of Rs.144,866/- charged by IESCO on the basis of audit para. The Respondent finally prayed for setting aside audit notes and for restraining IESCO from disconnection of electric supply. POI



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decided the matter vide decision dated 15.07.2019, the operative portion of which is reproduced below:

“Summing up all the observations/discussion and keeping in view of all the aspects of the case, this forum declares the charging of Rs.624,562/- and Rs.144,866/- on the basis of Audit notes as null, void and without any legal effect and the consumer is not liable to pay the same. The petitioner is directed to pay the pending units as recovered from data retrieval report by M&T Chakwal for the cost of 7000 O/peak units debited to the consumer vide CSO Adjustment Note No.191 dated 25.02.2019 amounting to Rs.170,757/-. IESCO is directed to withdraw the same and overhaul the petitioner's account by adjusting all credits, debits, deferred amount and payments already made by the consumer.”

3. Through the instant appeal, IESCO challenged the POI decision dated 15.07.2019 (hereinafter referred to as the impugned decision) before the NEPRA on the grounds that the Respondent challenged only the third detection bill of Rs.624,562/- charged in March 2019; that the POI declared the undisputed first detection bill of Rs.144,866/- along with third detection bill of Rs.624,562/- as null and void with the following reasoning (1) the first meter of the Respondent was shown defective in the billing for July 2015 and August 2015 but defective code was removed in September 2015; (2) M&T IESCO vide report dated 31.12.2015 declared the first meter of the Respondent as defective with manipulated date and time and recommended for replacement of the same; (3) the Audit Department vide Audit Note No.06 dated 15.08.2016 endorsed to charge the detection bill of Rs.624,562/- for total 35,190 (off peak=29,702+ peak=5,488) units+142 kW MDI for the period September 2015 to February 2016 to the Respondent; (4) IESCO has privilege to recover the above detection bills from the Respondent; (5) the impugned decision suffers from technical, factual, and legal infirmities, which is unlawful, mala fide, arbitrary, and calls for interference by this



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Authority and 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 and that the impugned decision is liable to be set aside.

4. Notice for filing reply/para-wise comments to the appeal was issued to the Respondent, which however were not filed.
5. Hearing of the appeal was conducted in NEPRA Head Office, Islamabad on 11.08.2021, which was attended by learned counsel for the Appellant along with SDO IESCO and the Respondent appeared in person. Learned counsel for IESCO repeated the same contentions same as given in the memorandum of the appeal and asserted that M&T IESCO vide report dated 31.12.2015 observed the illegal extension of load by the Respondent beyond sanctioned load and declared the first meter as defective with upset date and time. Learned counsel for IESCO informed that the Audit Department vide Audit Note No.06 dated 15.08.2016 pointed out less charging of units during the period September 2015 to February 2016 and endorsed to charge third detection bill of Rs.624,562/- for total 35,190 (off peak=29,702+peak=5,488) units+142 kW MDI for the period September 2015 to February 2016 to the Respondent, which was later on charged by IESCO in March 2019. Learned counsel for IESCO defended the charging of third detection bill and prayed for setting aside the impugned decision. On the contrary, the Respondent rebutted the version of IESCO, opposed the charging of third detection bill of Rs.624,562/- on the plea that his hatchery business remained closed during the period September 2015 to February 2016 due to loss in business and



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domestic affairs. The Respondent contended that charging of third detection bill of Rs.624,562/- on the basis of audit observation is illegal, unjustified and the same is liable to be withdrawn. The Respondent finally supported the impugned decision and prayed for upholding the same.

6. We have heard arguments and examined the record. Following are our observations:

i. IESCO charged the following detection bills to the Respondent on different causes of action:

- First detection bill of Rs.144,866/- charged based on audit para and added in November 2017.
- Second detection bill of Rs.170,757/- for 9,581 (off peak=7,000 +peak=2581) units charged on account of pending units and in February 2019.
- Third detection bill of Rs.624,562/- for total 35,190 (off peak=29,702 + peak=5,488) units +142 kW MDI for the period September 2015 to February 2016 charged to the based on audit para dated 15.08.2016 and added in the bill for March 2019.

ii. In its appeal, IESCO objected that the POI afforded relief beyond the prayer of the Respondent and decided the undisputed detection bills. In this regard, contents of the application of the Respondent replicated in the impugned decision were perused which reveals that the Respondent had disputed only third detection bill of Rs.624,562/- charged by IESCO in March 2019. We are convinced with the contention of IESCO that the determination of POI regarding the first detection bill of Rs.144,866 charged in November 2017 and second detection bill of Rs.170,757/-



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charged on 25.02.2019 is incorrect and beyond the prayer of Respondent and the same is liable to be withdrawn to this extent.

- iii. As far as the third detection bill amounting to R.624,562/- for a total of 35,190 (off peak=29,702 + peak= 5,488) units +142 kW MDI for the period September 2015 to February 2016 charged to the Respondent based on audit para dated 15.08.2016 is concerned, it is observed that the Audit department relied its observation on M&T IESCO checking report dated 31.12.2015, wherein the second meter was declared defective with manipulated date and time, however total reading of the meter was found as working correctly. Contents of the said report are reproduced for the sake of convenience:

*"M&T Checking report dated 31.12.2015: Date and time segment of 3 phase meter found upset. Reading segments of off-peak and peak values stuck up, A reading is being recorded in peak segment due to software error. **However, segments of total reading were found working properly.** Hence meter should be replaced as per SOP. Moreover, extension load is recorded as 33 KW against the sanctioned load of 13 KW, which should be regularized as per SOP." (emphasis added)*

As evident from the above, the total reading of the second meter was declared as correct, whereas the Audit department recommended to revise the billing for the period September 2015 to February 2016 on the basis of the average consumption of March 2016 to June 2016 instead of division of the total reading in two segments as per tariff determination [off peak=20 hours, peak=4 hours]. It is further observed that the 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 judgments of Lahore High Court reported in 2014 MLD 1253 titled M/s.



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Mehmood Textile Mills v/s MEPCO and 2008 YLR 308 titled WAPDA v/s Fazal Karim. Besides, the Respondent was neither associated during the audit proceedings nor any prior notice was served by IESCO to him. In view of the above discussion, we hold that the recommendation of the Audit Department vide Audit Note No.6 for recovery of third detection bill amounting to R.624,562/- for total 35,190 (off peak=29,702 + peak= 5,488) units +142 kW MDI for the period September 2015 to February 2016 from the Respondent is unjustified; illegal, incorrect and the same is liable to be withdrawn, which is also the determination of POI. However, the billing of the Respondent be charged as per below calculation:

Description	Reading (kWh)
As per MCO dated 09.02.2016	78,355
As per bill for January 2016	69,246
Difference of reading (kWh)	9,109

The above difference units are further segregated in off-peak segment= 20 Hours and peak segment= 4 Hours as per general conditions of NEPRA tariff determination in the below table:

$$\begin{aligned}\text{Off-peak segment} &= \frac{\text{Total units} \times \text{off-peak hours}}{\text{Total hours in a day}} = \frac{9,109 \times 20}{24} = 7,591 \text{ units} \\ \text{Peak segment} &= \frac{\text{Total units} \times \text{peak hours}}{\text{Total hours in a day}} = \frac{9,109 \times 4}{24} = 1,518 \text{ units}\end{aligned}$$

The Respondent is liable to be charged net 9,109 (off peak=7,591+peak=1,518) units as a difference bill. The impugned decision is liable to be modified to this extent.



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7. Foregoing in view, it is concluded as under:

- i. The impugned decision for the first detection bill of Rs.144,866 charged in November 2017 and the second detection bill of Rs.170,757/- charged on 25.02.2019 is beyond the prayer of the Respondent and is therefore set aside to this extent.
 - ii. Third detection bill amounting to R.624,562/- for total of 35,190 (off peak=29,702 + peak= 5,488) units +142 kW MDI for the period September 2015 to February 2016 charged to the Respondent is unjustified, hence withdrawn as already determined in the impugned decision. However, the Respondent should be charged 9,109 (off peak=7,591+peak=1,518) units as a difference bill for the period September 2015 to February 2016.
 - iii. The billing account of the Respondent may be overhauled accordingly.
8. The impugned decision is modified in the above terms.

Abid Hussain
Member/Advisor (CAD)

Maria Rafique
Member/ Legal Advisor

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Dated: 20.10.2021