



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

NEPRA Office , Ata Turk Avenue (East), G5/1, Islamabad
Tel. No. +92 051 2013200 Fax No. +92 051 2600030
Website: www.nepra.org.pk E-mail: office@nepra.org.pk

No. NEPRA/Appeal/052/POI/2021/ 095


January 27, 2022

- | | |
|--|---|
| 1. Zulfiqar Ali,
Managing Partner,
M/s. Iqbal & Sons, Office No. 1,
First Floor, Satellite Plaza, 6 th Road,
Rawalpindi | 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. Karamat Hussain Janjua,
Advocate High Court,
Janjua Law Associates,
Chamber No. 1A & 2,
Quaid-e-Azam Block, Ground Floor,
Behind District Bar Association,
District Courts, Rawalpindi |
| 5. Deputy Manager (Operation),
IESCO Ltd,
Cantonment Division, Marris Hassan,
Rawalpindi | 6. POI/Electric Inspector,
Islamabad Region,
XEN Office, Irrigation & Power Department,
Rawal Dam Colony, Park Road,
Islamabad |

Subject: **Appeal Titled IESCO Vs. Malik Zulfiqar Ali 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 19.01.2022, 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.052/POI-2021

Islamabad Electric Supply Company Limited

.....Appellant

Versus

Zulfiqar Ali Managing Partner, M/s. Iqbal & Sons, Office No.1,
First Floor, Satellite Plaza, 6th Road, Rawalpindi

.....Respondent

APPEAL U/S 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

Mr. Faisal Bin Khurshid Advocate
Mr. Asif Ali SDO
Mr. Muhammad Ubaid RO

For the Respondent:

Mr. Karamat Hussain Advocate
Mr. Ahsan-ul- Haq GM

DECISION

1. Through this decision, an appeal filed by Islamabad Electric Supply Company Limited (IESCO) against the decision dated 30.09.2011 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 of IESCO bearing Ref No.27-14332-0560801 with a sanctioned load of 285 kW and the applicable





National Electric Power Regulatory Authority

tariff is A-2C. Reportedly, the billing meter of the Respondent was found defective with errors in Segment 1 and 6 during the IESCO surveillance team checking dated 26.01.2010. Resultantly, IESCO recommended to charge 41,120 units for the month November 2009 being less charged and to feed DEF-EST code till the replacement of the defective meter. IESCO replaced the defective meter of the Respondent with a new meter vide the Meter Change Order (MCO) dated 13.03.2010. Meanwhile, the Audit department IESCO pointed out less charging of units and recommended to charge the detection bill of Rs.1,641,298/- for the cost of 162,676 units+288 kW MDI for the period November 2009 to March 2010 to the Respondent. However, IESCO debited the detection bill of Rs.820,949/- to the Respondent in July 2010, which was assailed by him before the POI. The complaint of the Respondent was disposed of by the POI vide the decision dated 30.09.2011 (hereinafter referred to as the impugned decision), wherein the IESCO was directed to withdraw the detection bill of Rs.820,949/- charged to the Respondent based on Audit recommendation and to refund the 50% amount deposited by the Respondent against the above-said detection bill.

3. Being dissatisfied with the impugned decision, the IESCO initially filed an appeal before the Advisory Board, Government of Punjab, Lahore (the Advisory Board) on 27.12.2011, which was returned by the Advisory Board vide order dated 25.02.2011 with the direction to the IESCO to approach the NEPRA being the right forum after the amendment of Section 38 of the NEPRA Act 1997.





National Electric Power Regulatory Authority

4. Through the instant appeal, IESCO has challenged the impugned decision before the NEPRA. In its appeal, the IESCO stated that an appeal was initially preferred before the Advisory Board against the impugned decision, which was returned by the Advisory Board on 25.02.2021 for filing before the NEPRA. IESCO submitted that the appeal filed before the NEPRA is not time-barred with respect to the order dated 25.02.2021 of the Advisory Board. IESCO pleaded for condonation of the delay if any in filing the appeal before the NEPRA. IESCO contended that the billing meter of the Respondent was found defective with error in Segments 1 & 6 during the surveillance team checking dated 26.01.2010, which recommended to charge 41,120 units for November 2009 being less charged and to feed DE-FEST code till the replacement of the defective meter. IESCO further contended that the defective meter of the Respondent was replaced with a new meter vide the MCO dated 13.03.2010. As per IESCO, the Audit department observed less charging of units and recommended charging the detection bill of Rs.1,641,298/- for the cost of 162,676 units+288 kW MDI for the period November 2009 to March 2010 to the Respondent. According to the IESCO, a detection bill of Rs.820,949/- was debited to the Respondent to recover the revenue loss sustained due to the defective meter. 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 further submitted that the defunct billing meter ceased to register energy whatsoever





National Electric Power Regulatory Authority

was consumed by the Respondent legitimately. IESCO stated that the opinion of POI is scanty, without 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.

5. Notice for filing reply/para-wise comments to the appeal was issued to the Respondent, which was submitted on 01.06.2021. In the reply, the Respondent objected the maintainability of the appeal inter alia, on the grounds that the appeal was filed before the NEPRA on 04.05.2021 after a decade from the date of impugned decision; that the IESCO filed an appeal before the Advisory Board on 27.12.2011 after the receipt of the impugned decision on 13.10.2011, which is also time barred being filed after 30 days from the date of impugned decision; that the appeal was not filed through authorized IESCO officials and without fresh resolution of the public company; that the Sub Section 3 was inserted in Section 38 of the NEPRA Act 1997 vide the notification dated 29.09.2011 and the impugned decision was pronounced on 30.09.2011 as to why the IESCO approached the inappropriate forum i.e. Advisory Board and after a decade, the IESCO filed time barred appeal before the NEPRA on 04.05.2021; that in response to the notice of SDO IESCO for less consumption in November 2009, the IESCO was informed that the less consumption of electricity in the said month occurred due to the loadshedding of the gas twice in a day; that the





National Electric Power Regulatory Authority

electricity meter was found working within permissible limits during the IESCO checking in March 2010, which was replaced with the plea that two segments were not functioning; that the detection bill of Rs.820,949/- was debited in July 2010 on the basis of Audit para; that the audit department did not provide any opportunity of hearing and issued the illegal detection bill; that the POI had rendered the well-reasoned order and the appeal is liable to be dismissed being hopelessly barred by time in the interest of justice.

6. Hearing in the matter was conducted at the NEPRA Head Office, Islamabad on 10.12.2021, which was attended by both parties. At the outset of hearing, learned counsel for the Respondent repeated preliminary objection regarding the limitation and averred that the appeal was filed by the IESCO before the NEPRA after a delay of more than ten (10) years since the first and second copies of the impugned decision were obtained by the IESCO on 13.10.2011 and 26.10.2011 respectively. Learned counsel for the Respondent informed that the IESCO with malafide intention preferred the time-barred appeal before the Advisory Board and no efforts were made by the IESCO to approach the NEPRA being competent forum after the insertion of Sub Section 3 in Section 38 of the NEPRA Act 1997. Learned counsel for the Respondent submitted that the application for condonation of the delay was not submitted by the IESCO, as such the appeal is liable to be dismissed being badly time-barred. Learned counsel for the Respondent relied upon the judgment of the Honorable Supreme Court





National Electric Power Regulatory Authority

of Pakistan reported as PLD 2018 Lahore 399 titled GEPCO vs PTV etc. On the contrary, learned counsel for the IESCO rebutted the version of learned counsel for the Respondent and argued that the copy of the impugned decision was obtained on 26.10.2011 and the appeal was filed before the Advisory Board on 27.12.2011 being the competent forum, which was subsequently returned by the Advisory Board on 25.02.2021 and the instant appeal was filed by the IESCO before the NEPRA within 30 days of the said order of the Advisory Board. Learned counsel for the IESCO prayed that the delay in filing the appeal is not intentional and same may be condoned. Learned counsel for the IESCO reiterated the same contentions as given in memo of the appeal and contended that the billing meter of the Respondent was found defective during the IESCO checking dated 26.01.2010 and the audit department vide audit note No.349 dated 13.03.2010 pointed out less charging of units, therefore the detection bill of Rs.820,949/- was debited to the Respondent in July 2010. Learned counsel for the IESCO finally prayed that the above detection bill is justified and payable by the Respondent and the impugned decision is liable to be set aside.

7. Arguments heard and the record perused. Following are our observations:
 - i. Before going into the merits of the case, preliminary objection raised by the Respondent for limitation needs to be deliberated. It is noticed that the POI pronounced impugned decision on 30.09.2011, admittedly copy of the impugned decision was received by the IESCO on 26.10.2011 and the appeal was filed before





National Electric Power Regulatory Authority

the Advisory Board on 27.12.2011. According to Clause 10 of the Punjab (Establishment and Powers of Office of Inspection) Order, 2005, any aggrieved party may file the appeal before the Provincial Government within thirty (30) days of the POI decision, the relevant Clause is reproduced below for the sake of convenience:

10. Appeal.— An aggrieved person may file an appeal against the final order made by the Office of Inspection before the Government or if the Government, by general or special order, so directs, to the advisory board constitute under Section 35 of the Electricity Act 1910, within 30 days, and the decision of the Government or advisory board, as the case may be, shall be final in this regard.

However, in the instant case, IESCO filed the appeal before the Advisory Board after the lapse of sixty (60) days from the date of receipt of the impugned decision. Obviously, the appeal filed before the Advisory Board was badly time-barred. This analysis has been given just for the sake of arguments. Otherwise after enactment of Sub-Section 3 in Section 38 of the NEPRA Act 1997 on 25.09.2011, the NEPRA is the competent forum to entertain the appeals against the decisions of the POI, not the Advisory Board. However, the IESCO approached the wrong forum i.e. Advisory Board, and remained negligent for a period of more than nine years about the disposal of the appeal. Reliance is placed on the various judgments reported as PLD 2001 SC 49, 2003 CLR (SC) 301, and 2004 SCMR 870. Further, the honorable Supreme Court of Pakistan in the judgment reported in PLD 2018 Lahore 399 titled





National Electric Power Regulatory Authority

GEPCO vs PTV, etc. held that the exclusion of time of proceeding before the wrong forum could not be resorted for condonation of the delay in filing appeals before the right forum. We are convinced that the appeal is time-barred and liable to be dismissed.

8. Foregoing in view, we do not find any reason to interfere with the impugned decision, the same is upheld and the appeal is dismissed accordingly.

Abid Hussain
Member/Advisor (CAD)

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Dated: 19.01.2022

