



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/077/POI/2022/12/8

November 01, 2022

- | | |
|---|--|
| 1. Muhammad Maskeen,
S/o. Abdul Manan,
Through Raja Mehmood Hussain,
House No. G-176/A2, Ghandara Hotel,
Liaquat 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 (NBP),
F-8 Markaz, Islamabad | 4. Sub Divisional Officer (Operation),
IESCO Ltd,
Gawal Mandi Sub Division,
Office at Darya Abad,
Opposite Police Chowki,
Gawal Mandi, Rawalpindi |
| 5. POI/Electric Inspector,
Islamabad Region,
XEN Office, Irrigation & Power Department,
Rawal Dam Colony, Park Road,
Islamabad | |

Subject: **Appeal Titled IESCO Vs. Muhammad Maskeen Against the Decision Dated 14.07.2021 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 31.10.2022, 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. Additional Director (IT) –for uploading the decision on NEPRA website



National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No.077/POI-2022

Islamabad Electric Supply Company LimitedAppellant

Versus

Muhammad Maskeen S/o Abdul Manan, Ghandara Hotel,
Nanak Pura, Raja Bazar, Lquat Road, RawalpindiRespondent

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

For the Appellant:

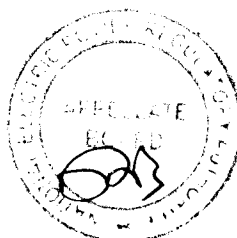
Mr. Faisal Bil Khursheed Advocate

For the Respondent:

Mr. Muhammad Maskeen

DECISION

1. As per facts of the case, Mr. Muhammad Maskeen (hereinafter referred to as the “Respondent”) is a domestic consumer of the Islamabad Electric Supply Company Limited (hereinafter referred to as the “Appellant”) bearing Ref No.02-14312-0392200 with a sanctioned load of 1 kW and the applicable Tariff category is A-1. As per claim of the Appellant, the impugned billing meter of the Respondent was found tampered (deliberately 65% slow) for the dishonest abstraction of electricity during the Metering and Testing (M&T) checking dated 09.08.2019. Therefore, a detection bill of 5,541 units for six (06) months for the period from

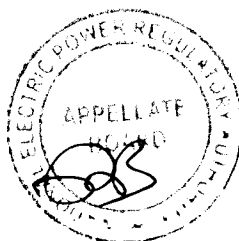




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February 2019 to July 2019 was initially charged by the Appellant to the Respondent and added to the bill for November 2019. On request of the Respondent, the above-said detection bill (the “first detection bill”) was revised for the cost of 3,341 units for three months i.e. May 2019 to July 2019 by the Appellant. Audit Department vide Audit Note No.301 dated 11.11.2019 pointed out that the Multiplication Factor (the “MF”) was not raised from 1 to 2.86 during the period August 2019 to October 2019 due to 65% slowness of the meter and recommended to charge 5,167 units for three months for the period August 2019 to October 2019 to the Respondent due to wrong application of the MF. A check meter was installed in series with the impugned billing meter by the Appellant on 12.11.2019 and during the subsequent comparison on 13.11.2019, the billing meter was found 60% slow as compared to the check meter. The Appellant debited another detection bill (the “second detection bill”) of Rs.132,425/- for 5,167 units for three months i.e. August 2019 to October 2019 to the Respondent based on the Audit Note.

2. Being aggrieved with the billing of the Appellant, the Respondent initially filed a civil suit before the Civil Judge 1st Class Rawalpindi on 09.01.2020, which was disposed of by the honorable Civil Judge vide order dated 07.12.2020 due to lack of jurisdiction. Accordingly, the Appellant lodged a complaint before the Provincial Office of Inspection, Islamabad Region, Islamabad (hereinafter referred to as the “POI”) and challenged the arrears of Rs.264,679/- till January 2020. The complaint of the Respondent was disposed of by the POI vide the decision dated 14.07.2021,





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wherein the arrears of Rs.264,679/- till January 2020 were cancelled and the Appellant was directed to change the defective meter and overhaul the billing account of the Respondent after adjustment of payments made against the disputed bills.

3. Subject appeal has been filed against the afore-referred decision dated 14.07.2021 of the POI (hereinafter referred to as the “impugned decision”) by the Appellant before the NEPRA, wherein it is contended that the billing meter of the Respondent was found tampered (meter deliberately slow) during the M&T checking dated 09.08.2019 for committing theft of electricity, therefore a detection bill of 5,148 units was charged to the Respondent on the basis of the consumption of the new healthy meter. As per the Appellant, the impugned decision is illegal, unjustified, and without lawful authority and the same is liable to be struck down as the sweeping statement of POI regarding the functioning of the check meter within limits is violative of the facts of the case and determination of the Authority. According to the Appellant, the defunct meter was 65% slow and ceased to register energy consumed by the Respondent legitimately. The Appellant submitted that the opinion of POI is scanty, without valid basis and reflection of wheeling and dealing as it was passed without taking into account the expert opinion based on technical testing which shows the real aspects of the case. The Appellant finally prayed for setting aside the impugned decision.





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4. Proceedings by the Appellate Board

4.1 Upon filing of the instant appeal, a Notice dated 24.06.2022 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. The Respondent submitted his reply on 28.07.2022, wherein he *inter alia*, prayed for the dismissal of the appeal being barred by time. He further submitted that an attested copy of the impugned decision dated 14.07.2021 was obtained on 02.08.2021 and the same was provided to the Appellant on the same day as evident from the receipt. As per Respondent, the Appellant filed the instant appeal before the NEPRA after a lapse of more than one year from the date of acknowledgment i.e. 02.08.2021. The Respondent defended the impugned decision and prayed for the maintainability of the impugned decision.

5. Hearing

- 5.1 Hearing in the subject matter was fixed for 02.09.2022 at NEPRA Head Office Islamabad and accordingly, the notices dated 26.08.2022 were sent to the parties (i.e. the Appellant and the Respondents) to attend the hearing. On the given date of the hearing, both parties were in attendance.
- 5.2 Learned counsel for the Appellant repeated the same contentions as given in memo of the Appeal and argued that the disputed meter was found tampered during the M&T checking dated 09.08.2019, therefore the detection bill of 5,541 units for six (06) months for the period from February 2019 to July 2019 was debited to recover the revenue loss sustained due to the theft of electricity





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committed by the Respondent. Learned counsel for the Appellant defended the charging of the above detection bill and prayed for setting aside the impugned decision.

5.3 The Respondent appearing in person refuted the allegation of theft of electricity levelled by the Appellant and averred that three meters were installed outside the premises, as such no discrepancy was pointed out by the Appellant during monthly readings prior the alleged checking. The Respondent opposed the charging of the detection bill and argued that neither any FIR was lodged against him on account of theft of electricity nor the meter under dispute was checked in his presence. He pleaded that the impugned decision be maintained and the appeal be dismissed in the best interest of justice.

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

6.1 Limitation for filing appeal:

Under Regulation 4 of the NEPRA (Procedure for filing Appeals) Regulations, 2012, the Appeal is required to be filed within 30 days of the receipt of the impugned decision of POI by the Appellant. Further, a margin of 7 days is provided in case of submission through registered post and 3 days in case of submission of appeal through courier is given in the NEPRA (Procedure for filing Appeals) Regulations, 2012. The Appellant produced a copy of the impugned decision received from the office of POI on 23.05.2022. Counting 30 days from the date of said receiving, the appeal filed on 09.06.2022 before the NEPRA is





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within the time limit as prescribed in the above-referred Regulation of NEPRA (Procedure for filing Appeals) Regulations, 2012.

- 6.2 However, the Respondent claimed that the impugned decision of POI was received on 14.07.2021, and in this regard, a copy of the same was presented to the Appellant on 02.08.2021, which he claimed to have been received by the Appellant on 02.08.2021. On perusal of the said document, it does not contain the identity of its receipt and nowhere from the said copy, it can be established that the same was received by the representative of the Appellant. Therefore considering that the impugned decision was received by the Appellant on 23.05.2022, the appeal filed on 09.06.2022 is within the time limit of 30 days, hence the objection of the Respondent in this regard has no force and is rejected.
- 6.3 Having decided above, it is felt important to highlight a flaw with regard to the intimation of the POI decision to the parties giving rise to dispute on the limitation of time to file the appeal.
- 6.4 It is commonly observed that the decision of the POI is received with much delay after the lapse of months by the Appellant. On various occasions, the Respondent disputes the receiving by the Appellant with such delay. To our surprise, the POI does not send the decision to parties through the mail, and parties are required to receive the decision in person from the office of the POI. This practice leaves it for the parties to receive a decision at the time of their choosing and the Appellant often receives the decision with a delay of months. The time of limitation for filing





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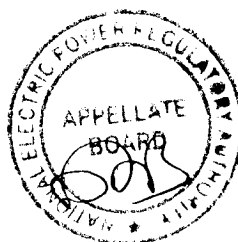
an appeal before the Appellate Board starts from the date of receipt of the decision.

The lag between the date of the decision and its receiving by the Appellant is disconnected. The practice of POI not intimating the decision to the parties through the mail is used by the Appellant to their advantage to receive decisions at the time of their choosing and file the appeal therefore which is gaining the spirit of the time limit stipulated in the law, to avoid the remedy of the appeal.

6.5 In order, therefore, to implement the time limitation in letter and spirit, the POIs are urged to intimate their decision immediately upon pronouncement through the mail and keep a proper record of dispatch of the decision instead of leaving it for the sweet will of the parties to receive the decision at a time suitable to them. The immediate information of the decision is necessary to bound the parties to file the appeal, if they will do so, without wastage time after the pronouncement of the decision of POI and to avoid disputes about time limitation.

6.6 The Respondent assailed the arrears of Rs.264,279/- till January 2020 before the POI, which contained the following two detection bills.

- First detection bill of 3,341 units for three months i.e. May 2019 to July 2019 was charged on account of 65% slowness of the impugned billing meter.
- Second detection bill of Rs.132,425/- for 5,167 units for three months i.e. August 2019 to October 2019 was charged on the basis of Audit Note No.301 dated 11.11.2019.





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6.7 The POI vide impugned decision cancelled the entire arrears of Rs.264,279/- till January 2020 against which the Appellant filed the instant appeal before NEPRA. The Appellant prayed for setting aside the impugned decision being contrary to the facts of the case. Our observations on the two detection bills raised by the Appellant are in the following paras.

6.8 First detection bill of 3,341 units for three months i.e. May 2019 to July 2019:

In its appeal, the Appellant claimed that the billing meter of the Respondent was found tampered (deliberately 65% slow) for the dishonest abstraction of electricity during the M&T checking dated 06.08.2019. Since the matter pertains to the billing dispute of 2019, the same shall be dealt with under Chapter 9 of the then-applicable Consumer Service Manual-2010 (the "CSM-2010").

6.9 Clause 9.1(b) specifies the indications of illegal abstraction of electricity while Clause 9.1(c) stipulates the procedure to be adopted to establish illegal abstraction and raise detection bills. Clause 9.1(c)(i) of the CSM-2010 stipulating legal formalities to establish the charge of illegal abstraction states that:

9.1(c): Procedure for establishing illegal abstraction shall be as under:

1) "Upon knowledge of any of the items in 9.1(b), the concerned office of the DISCO will act as follows:

(i) Secure the meter without removing it in the presence of the owner /occupier or his Authorized representative/respectable person of the locality.

(ii) Install check meter and declare it as billing meter

(iii) Shall constitute a raiding team including Magistrate, Local representative(s) of the area (Councilor/Police officer), Officer of the DISCO (in case of residential/commercial consumers, not below the rank of SDO and





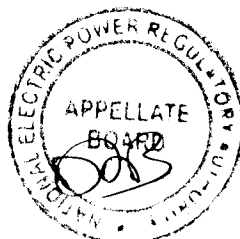
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in case of other consumers not below the rank of XEN) and an officer of the metering and testing division of the DISCO (who should be an Electrical Engineer) inspect the meter secured at site and declare that illegal abstraction of electricity has, and/or is being carried out. However, for industrial consumers (B-2 and above), a representative of the POI/Electric Inspector is mandatory."

6.10 In the instant case, the Appellant did not fulfill the formalities stipulated in the above provisions of the CSM-2010 to establish illegal abstraction and raised the detection bill on the pretext that the meter of the Respondent was checked by the M&T and found tampered (65% slow). The action of the Appellant is in complete disregard of the applicable law and therefore the claim of the Appellant that the meter was found tampered is devoid of credibility.

6.11 The Appellant claims that 60% slowness in the billing meter was established during the subsequent comparison with the consumption of the check meter. However, neither the disputed billing meter was got checked by the POI being competent to verify the alleged slowness due to tampering nor the comparison report was produced before the POI and NEPRA. As such raising the first detection bill in these circumstances is entirely uncalled for and liable to be rejected being in violation of applicable law and without the support of any verifiable evidence.

6.12 Under these circumstances, we hold that the first detection bill of 3,341 units for three months i.e. May 2019 to July 2019 charged to the Respondent is illegal, unjustified, and contrary to Clause 9.1(c) of the CSM-2010, and the same is declared as null and void.





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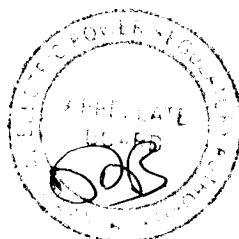
6.13 The second detection bill of Rs.132,425/- for 5,167 units for three months i.e. August 2019 to October 2019 charged on the basis of Audit Note No.301 dated 11.11.2019.

As per Appellant, Audit Department vide its Audit Note No.301 dated 11.11.2019 pointed out that the billing meter of the Respondent was found 65% slow (tampered) during checking dated 09.08.2019 but MF was not enhanced from 1 to 2.86, resultantly less units were charged due to wrong application of MF during the months i.e. August 2019 to October 2019. Consequently, the Appellant charged the second detection bill of Rs.132,425/- for 5,167 units for three months i.e. August 2019 to October 2019 to the Respondent on the basis of Audit Note No.301 dated 11.11.2019.

6.14 In view of discussion at paras 6.10 to 6.12, the Appellant has failed to prove the alleged 65% slowness or tampering with the impugned billing meter. Therefore there is no justification to revise the onward billing from August 2019 to October 2019 with enhanced MF=2.86 due to the alleged 65% slowness of the impugned billing meter.

6.15 Even otherwise, the Audit observation is an internal matter between the DISCO and the Audit Department and the Respondent cannot be held responsible for the payment of any detection bill based on the Audit Para. Reliance in this regard 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.

6.16 In view of the foregoing discussion, we hold that the second detection bill of Rs.132,425/- for 5,167 units for three months i.e. August 2019 to October 2019





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charged to the Respondent by the Appellant on the basis of Audit Note No.301

dated 11.11.2019 is also illegal, unjustified and the same is liable to be set aside.

6.17 The billing account of the Respondent may be overhauled after adjusting payments made against the above-disputed bills.

7. Foregoing in view, the appeal is dismissed.

Syed Zavar Haider
Member

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 31/10/2022

