



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

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No. NEPRA/Appeal/051/POI/2021/ 094

January 27, 2022

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| 1. Malik Kamran Aslam,
S/o. Malik Muhammad Aslam,
R/o. House No. A-98/A, Lalarukh,
Wah Cantt, Tehsil Taxila,
District 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. Ch. Muhammad Imran Bhatti, Advocate
High Court,
44-District Courts, Faisalabad |
| 5. Sub Divisional Officer (Operation),
IESCO Ltd,
Hassan Abdal Sub Division,
Hassan Abdal | 6. POI/Electric Inspector,
Islamabad Region,
XEN Office, Irrigation & Power Department,
Rawal Dam Colony, Park Road,
Islamabad |

Subject: **Appeal Titled IESCO Vs. Malik Kamran Aslam Against the Decision Dated 30.05.2011 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.051/POI-2021

Islamabad Electric Supply Company Limited

.....Appellant

Versus

Malik Kamran Aslam s/o Malik Muhammad Aslam,
R/o House No.A-98/A, Lalarukh, Wah Cantt,
Tehsil Taxila, District Rawalpindi

.....Respondent

APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

Mr. Faisal Bin Khurshid Advocate

For the Respondent:

Ch. Imran Bhatti Advocate

DECISION

1. Through this decision, an appeal filed by Islamabad Electric Supply Company Limited (IESCO) against the decision dated 30.05.2011 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.27-0034105 with a sanctioned load of 152 kW and the applicable tariff is A-2C. Reportedly, the billing meter of the Respondent was found 35.4% slow during





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IESCO surveillance team checking. Notice dated 17.07.2007 was served to the Respondent regarding the above slowness and a detection bill (first detection bill) of Rs.4,660,386/- for 74,304 units for the period, January 2007 to June 2007 was charged by IESCO to the Respondent on account of said slowness and added in the bill for August 2007. The said billing meter of the Respondent was again checked by the IESCO technical committee on 15.10.2008 and reportedly, it was found 56.51% slow. A check meter was installed in series with the disputed billing meter of the Respondent by IESCO vide meter change order (MCO) No.31/04 dated 15.10.2008. After issuing notice dated 15.12.2008 to the Respondent regarding 56.51% slowness of the billing meter, another detection bill (second detection bill) of 89,032 units+562 kW MDI for the period May 2008 to August 2008 was debited to the Respondent.

3. Being aggrieved, the Respondent assailed the above detection bills before the POI. Metering equipment of the Respondent was checked by the POI on 27.11.2010 in presence of both the parties, wherein the disputed billing meter of the Respondent was found 80% slow. The matter was disposed of by POI vide the decision dated 30.05.2011 (hereinafter referred to as the impugned decision), the operative portion of which is reproduced below:

“After consulting the detection policy of the Respondent, and the consumer service manual I am in opinion that the petitioner may charge the detection bill for 03 months from 03/2007 to 06/2007 instead of 6 months @ 35.40%





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slowness basis. As the meter was 56.51% slow in 10/2018 and a check meter was installed in series with the disputed one, so I am again in opinion to charge the consumer from 12/2007 as 28855 units, 01/2008 as 19280 units, 02, 03, 04, 05, 06, 07, 08, 09, 10/2008 and 11/2008 as a 19280, 20400, 19280, 22720, 21520, 22880, 15600, 14480, 10320, 17200 and 13200 instead of any slowness enhance multiplying factor. As the consumption of check meter existed. Therefore the Respondents are directed to overhaul the account of the petitioner charge as per the direction of the above. Also, charge the consumption of the check meter from 12/2008 to onwards till the replacement of the meter or convert the check meter as a healthy meter if already not converted. Waive off all late payment surcharges levelled. Respondents are directed to overhaul the account of the petitioner and charge as per the directions given above. No LPS be charged. Replace the defective/ disputed meter immediately if not replaced already to avoid further litigation.

4. Being dissatisfied with the impugned decision, the IESCO filed an appeal before the Advisory Board, Government of Punjab, Lahore (the Advisory Board), which was returned by the Advisory Board vide order dated 24.02.2021 with the direction to IESCO to approach the NEPRA being the right forum after the amendment of Section 38 of the NEPRA Act 1997.
5. Through the instant appeal, the IESCO has challenged the impugned decision of the POI 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





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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 35.4% slow for which notice dated 17.07.2007 was served to the Respondent and the first detection bill of Rs.4,660,386/- for 74,304 units for the period January 2007 to June 2007 was charged to the Respondent. IESCO further contended that the said billing meter of the Respondent was subsequently found 56.51% slow during another checking dated 15.10.2008, hence a check meter was installed in series with the disputed billing meter of the Respondent by IESCO vide MCO No.31/04 dated 15.10.2008. As per IESCO, the second detection bill of 89,032 units+562 kW MDI for the period May 2008 to August 2008 was debited to the Respondent on account of 56.51% slowness of the meter. According to IESCO, the billing meter of the Respondent was found 80% slow during the POI joint checking dated 27.11.2010. 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 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.





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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 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 28.04.2021 after a delay of 9 years, 10 months and 22 days from the date of receipt of first copy of the impugned decision on 05.07.2011; that the IESCO filed time barred appeal before the Advisory Board on 17.01.2012 which was returned by the said forum being lack of jurisdiction on 25.02.2021; that the appeal was neither filed with certified copy of the impugned decision dated 30.05.2011 nor through unauthorized IESCO officials; that the electricity meter was working within BSS limits and the meter reader did not notice any discrepancy during the monthly readings; that the consumption of electricity varies due to slump in the market and imposition of illegal, unscheduled load shedding; that the IESCO charged the first detection bill of Rs.4,660,386/- for 74,304 units for the period January 2007 to June 2007 on the plea that the disputed billing meter was found 35.4%, which was paid under duress on 27.08.2007; that the IESCO neither installed the check meter nor got checked the disputed billing meter from the POI; that the IESCO checking dated 15.10.2008 was conducted in his absence, hence raising of the second detection bill of 89,032 units on the basis of 56.51% slowness is not credible; that the IESCO with malafide intention issued the bill of Rs.2,082,236/- in December 2018 which contained the arrears of





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Rs.1,347,812/-; that writ petition No.4350-2018 was filed in the Islamabad High Court, which was referred to the POI by the honorable High Court vide order dated 28.12.2018; that the POI vide decision dated 05.03.2019 directed the IESCO to implement the impugned decision; and that the appeal is liable to be dismissed in the best interest of justice.

7. Hearing of the appeal was conducted at the NEPRA Head Office, Islamabad on 10.12.2021, which was attended by both parties. At the outset of the 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 nine years since the first and second copies of the impugned decision were obtained by the IESCO on 05.07.2011 and 19.09.2011 respectively. Learned counsel for the Respondent informed that the IESCO with malafide intention preferred the time-barred 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 of condonation of delay is not submitted by the IESCO, as such the appeal is liable to be dismissed being badly time-barred. 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 19.09.2011 and the appeal was filed before the Advisory Board on 17.01.2012, which was returned by the





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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 IESCO reiterated the same contentions as given in memo of the appeal and contended that the TOU billing meter of the Respondent was found 35.4% slow for which the first detection bill of Rs.466,386/- was charged to the Respondent. Learned counsel for IESCO further contended that the second detection bill of 89,032 units+562 kW MDI was debited on account of 56.51% slowness as observed on 15.10.2008, which was replaced with a new billing meter vide the MCO dated 15.10.2008. Learned counsel for the IESCO informed that 80% slowness in the disputed billing meter of the Respondent was established during POI joint checking dated 27.11.201. He finally prayed that the first detection bill is justified and payable by the Respondent.

8. 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 addressed. It is noticed that the POI pronounced impugned decision on 31.05.2011, admittedly copy of the impugned decision was received by the IESCO on 19.09.2011 and the appeal was filed before the Advisory Board on 17.01.2012. According to Clause 10 of the Punjab (Establishment and Powers of Office of Inspection) Order, 2005, any aggrieved





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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 even before the Advisory Board after the lapse of one-twenty (120) 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. Honorable Supreme Court of Pakistan in the judgment reported in PLD 2018 Lahore 399 held that the exclusion of time of proceeding before the wrong forum could not





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be resorted for condonation of delay in filing appeals before the right forum. We are convinced that the appeal is time-barred and liable to be dismissed.

9. 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

