



# National Electric Power Regulatory Authority

## Islamic Republic of Pakistan

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**Registrar**

No. NEPRA/R/D(CAD)/TCD.06/1828-30

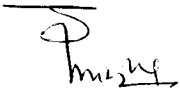
February 13, 2015

Chief Executive Officer  
Multan Electric Power Company Ltd.  
WAPDA Colony, Khanewal Road,  
Multan

Subject: **DECISION OF THE AUTHORITY IN THE MATTER OF COMPLIANT FILED BY M/S JDW SUGAR MILLS LIMITED UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST MEPCO REGARDING RENEWAL OF POWER PURCHASE AGREEMENT AND DETERMINATION OF TARIFF**  
Complaint # MEPCO-56/2014

Please find enclosed herewith the decision of NEPRA dated December 23, 2014, regarding the subject matter, for necessary action and compliance within thirty (30) days of receipt of this letter.

**Encl:/As above**

  
(Syed Safer Hussain)

Copy to:

1. C.E./Customer Service Director  
Multan Electric Power Company Ltd.  
WAPDA Colony, Khanewal Road,  
Multan
2. Mr. Munir Ahmed Daha  
GM (Administration)  
JDW Sugar Mills Limited  
17-Abid Majeed Road,  
Lahore Cantonment.



**BEFORE THE**  
**NATIONAL ELECTRIC POWER REGULATORY AUTHORITY**  
**(NEPRA)**

**Complaint No: MEPCO-56-2014**

**JDW Sugar Mills Limited (JDWSML), Rahim Yar Khan** ..... **Complainant**  
through Mr. Munir Ahmed Daha,  
GM (Administration), JDWSML,  
17 - Abid Majeed Road, Lahore Cantonment.

**Versus**

**Multan Electric Power Company (MEPCO),** ..... **Respondent**  
**MEPCO Complex, WAPDA Colony,**  
**Khanewal Road, Multan.**

**Date of Hearings:** 6<sup>th</sup> May 2014  
1<sup>st</sup> October 2014

**Date of Decision:** 23<sup>rd</sup> December 2014

**On behalf of:**

**Complainant:**

- 1) Mr. Munir Ahmed Daha, GM (Administration), Head Office
- 2) Mr. Safdar Kanjoo, GM (Administration), Site (Sugar Mill)
- 3) Mr. Maqsood Malhi, S.M. Legal
- 4) Mr. Shehzad A. Elahi, Legal Consultant
- 5) Abdul Mohaimin Zafar, Legal Consultant

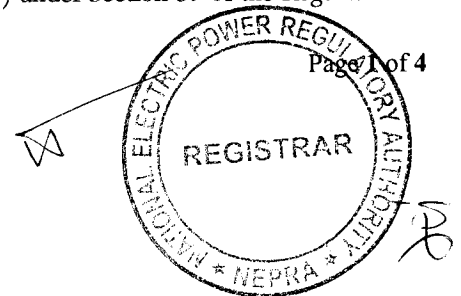
**Respondent:**

- 1) Mr. Fazalullah Durrani, Chief Engineer (O&M)
- 2) Mian Ansar Mahmood, Finance Director
- 3) Ch. M. Siddique, Director (Tariff)
- 4) Mr. M. Arshad Dharala, Addl. Manager

**Subject:** **DECISION OF THE AUTHORITY IN THE MATTER OF COMPLAINT FILED BY M/S JDW SUGAR MILLS LIMITED UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST MEPCO REGARDING RENEWAL OF POWER PURCHASE AGREEMENT AND DETERMINATION OF TARIFF**

**DECISION**

This decision shall dispose of the complaint dated 28<sup>th</sup> January 2014 filed by M/s JDW Sugar Mills Limited, Rahim Yar Khan (hereinafter referred to as the "Complainant" or "JDWSML") against Multan Electric Power Company (hereinafter referred to as the "Respondent" or "MEPCO") under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.



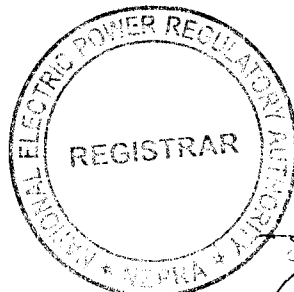
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2. The Complainant in its complaint stated that MEPCO entered into a Power Purchase Agreement (PPA) with JDW Sugar Mills Limited (JDWSML) on 21<sup>st</sup> November 2008 for purchase of bagasse-based power for a period of four (04) years. On 27<sup>th</sup> January 2012, NEPRA directed all DISCOs to file Power Acquisition Requests (PAR) in respect of energy to be purchased from all Captive Power Plants (CPPs). NEPRA also directed all CPPs which were selling/intending to sell electric power to DISCOs, to either approach NEPRA directly or through respective DISCOs for determination of tariff. Accordingly, MEPCO filed a PAR for purchase of 10 MW bagasse-based electric power from JDWSML on 12<sup>th</sup> June 2012, and after fulfillment of procedure provided in NEPRA Interim Power Procurement (Procedure & Standards) Regulations 2005, NEPRA approved MEPCO's PAR on 24<sup>th</sup> December 2012 and same was notified on 31<sup>st</sup> January 2013. On 28<sup>th</sup> February 2013, MEPCO and JDWSML entered into a second PPA wherein it was agreed that MEPCO would purchase electric power from JDWSML for a further period ending on 20<sup>th</sup> November 2013. Before its expiry, MEPCO and JDWSML decided to renew the agreement for a further period of five (05) years. On 20<sup>th</sup> May 2013, MEPCO requested NEPRA for renewal of PPA with JDWSML, and NEPRA granted permission for the same vide letter dated 31<sup>st</sup> July 2013. On 25<sup>th</sup> October 2013, MEPCO provided the copy of draft PPA to JDWSML in which MEPCO had calculated the tariff without using the OGRA reference price. JDWSML vide letter dated 26<sup>th</sup> October 2013 brought to MEPCO's notice that the tariff had been calculated in contravention of the formula stipulated by NEPRA in the Order. On 19<sup>th</sup> November 2013, JDWSML informed MEPCO that its reservations i.r.o draft PPA would be sent to NEPRA for consideration. Further, JDWSML requested MEPCO to purchase electric power from it on an interim basis on the rate as per the PPA dated 28<sup>th</sup> February 2013 (i.e. Rs. 8.515/kWh) until clarification from NEPRA was received. The Complainant further informed that at a meeting between MEPCO and JDWSML on 18<sup>th</sup> November 2013, it was agreed to go ahead with the provisional arrangement proposed by JDWSML and MEPCO has also apprised NEPRA in this regard vide petition dated 22<sup>nd</sup> January 2014. MEPCO is not accepting calculation of the tariff based upon the formula stipulated by NEPRA. NEPRA's determination on the tariff is binding on both CPPs and DISCOs and any deviation by MEPCO from NEPRA's would be a contravention of the NEPRA Act, Distribution license granted by NEPRA to MEPCO and NEPRA Licensing (Distribution) Rules, 1999. The Complainant prayed that MEPCO may be instructed to comply with the Order and follow the formula for calculation of tariff stipulated by NEPRA.

3. The matter was taken up with MEPCO for submission of parawise comments. In response, MEPCO vide its letter dated 25<sup>th</sup> February 2014 reported that the adjustment of fuel cost component has been linked with gas price of Rs. 460/MMBTU; as such, the rate comes to Rs. 8.515/kWh delivered. After negotiation and mutual agreement on the additional terms and conditions, PPA was signed for purchase of 07 MW bagasse-based power on the tariff thereby, incorporating the fuel cost component adjustment mechanism as determined by NEPRA vide order dated 24<sup>th</sup> December 2012. The power producer (i.e. JDWSML) has agreed not to claim arrears for the energy dispersed for period prior to the date of official gazette notification by Ministry of Water and Power. Accordingly, the claim of JDWSML is not acceptable as the power producer has agreed and signed the PPA. Further, MEPCO requested NEPRA to review the tariff for bagasse-based CPPs in light of afore-stated facts and de-link the indexation tariff of bagasse-based CPPs from gas and link it with coal by taking into account the heat value as in the case of upfront tariff for new bagasse-based co-generation or consider any other formula for indexation.

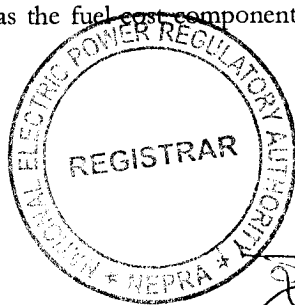
4. The report of MEPCO was sent to the Complainant for information/comments. In response, the Complainant vide letter dated 24<sup>th</sup> March 2014 raised observations on the report of MEPCO, reiterated its earlier version and prayed that MEPCO be directed to implement NEPRA's order dated 24<sup>th</sup> December 2012 and to release pending arrears under the first PPA dated 21<sup>st</sup> November 2008. Further, the clauses inserted in the second PPA dated 28<sup>th</sup> February 2013 in violation of NEPRA's order be amended and pending arrears be released to JDWSML under the second PPA. The payment for electricity supplied under provisional arrangement for 2013-14 crushing season be released to JDWSML and the draft third PPA (circulated by MEPCO to JDWSML on 25<sup>th</sup> October 2013) be revised to bring it in conformity with NEPRA's order and execute the same well before the start of next crushing season.

5. To further explore the matter, a hearing was held on 6<sup>th</sup> May 2014 at NEPRA Head Office, Islamabad which was attended by both the parties who advanced their respective arguments. Subsequent to the hearing, both parties were directed to file their written arguments and any additional facts in support of their case before NEPRA. In response, JDWSML and MEPCO filed their written arguments/documents vide letters dated 20<sup>th</sup> May 2014 and 23<sup>rd</sup> May 2014 respectively. Since the information provided by both the parties was not sufficient enough, therefore, to probe further into the matter, another hearing was held on 1<sup>st</sup> October 2014 at NEPRA Head Office, Islamabad which was attended by both the parties.



6. After examining the case in light of the documents provided by both the parties, arguments advanced during the hearings and applicable law, following has been observed:

- i. MEPCO and JDWSML entered into a PPA for the purchase of 03MW bagasse-based power for a period of 04 years w.e.f. 21<sup>st</sup> November 2008. Later on, the quantum of power purchase was extended from 03 MW to 10 MW.
- ii. The PPA was due to be expired on 20<sup>th</sup> November 2012; however, MEPCO vide its letter dated 13<sup>th</sup> January 2012 communicated to all concerned Power Producers/CPPs that it has decided to purchase bagasse-based power on tariff at the level of previous crushing season 2010-11 and fuel cost component will not be further indexed till fresh tariff is determined by NEPRA. As per the version of JDWSML, they agreed to MEPCO's decision and continued to supply power to MEPCO on the understanding that once the tariff is approved by NEPRA, it would be retrospectively applied. Accordingly, MEPCO requested NEPRA to examine the tariff. Further, it was stated in the letter that MEPCO has decided to cap the tariff, as the fuel cost component for bagasse-based power plants is more than gas-based power plants and the same be de-linked from gas.
- iii. NEPRA vide letter dated 27<sup>th</sup> January 2012 directed all DISCOs to file PAR in respect of energy to be purchased from all CPPs. NEPRA also directed all CPPs to either approach NEPRA directly or through DISCOs for determination of tariff.
- iv. In pursuance to the directions of NEPRA, MEPCO filed PAR on 12<sup>th</sup> June 2012 for purchase of 10 MW bagasse-based electric power from JDWSML. NEPRA admitted the PAR submitted by MEPCO on 28<sup>th</sup> June 2012 and the same was approved on 24<sup>th</sup> December 2012 which was also notified on 31<sup>st</sup> January 2013 wherein the arrangement/agreement made by MEPCO vide first PPA was endorsed by the Authority.
- v. The first PPA expired on 20<sup>th</sup> November 2012 and the next crushing season 2012-13 started before issuance of NEPRA's order/decision dated 24<sup>th</sup> December 2012, therefore, JDWSML conditionally supplied electricity to MEPCO at the rate temporarily fixed by MEPCO till such time the tariff is determined by NEPRA.
- vi. Upon notification of NEPRA's decision, MEPCO entered into agreement with JDWSML on 28<sup>th</sup> February 2013 for a period of one year w.e.f. 21<sup>st</sup> November 2012 to 20<sup>th</sup> November 2013 as per the indexed gas price @ Rs. 460/MMBTU as announced by OGRA, however, the second PPA did not provide for any further higher indexation of gas price. Further, as per the second PPA, arrears could not be claimed by the Power Producer (JDWSML) for the energy dispersed for the period prior to the date of the notification.
- vii. The second PPA was signed by JDWSML, however, JDWSML has submitted that the draft of second PPA was not provided to them in advance and the same was made to be signed in undue haste. However, upon realization that the second PPA was in violation of NEPRA's decision, they communicated their reservations to MEPCO. This stance was submitted by JDWSML in their rejoinder dated 24<sup>th</sup> March 2014 against the initial report of MEPCO, however, the same was not part of their initial complaint.
- viii. MEPCO vide its letter dated 20<sup>th</sup> May 2013 requested NEPRA for approval w.r.t. renewal of PPA with JDWSML. In response, NEPRA vide letter dated 31<sup>st</sup> July 2013 granted permission to MEPCO to renew the PPA on the same rates and terms and conditions as already approved by NEPRA.
- ix. In October 2013, MEPCO provided the draft copy of third PPA to JDWSML in which MEPCO had calculated the tariff without using OGRA reference price. In response, JDWSML highlighted this discrepancy to MEPCO and informed that they will approach NEPRA to look into the matter/for reconsideration. JDWSML further requested MEPCO to purchase power from them on interim basis as per second PPA till final determination by NEPRA. Both parties agreed on the said arrangement.
- x. MEPCO also approached NEPRA vide its letters dated 22<sup>nd</sup> January 2014 and 23<sup>rd</sup> April 2014 and requested that indexation of bagasse-based tariff of CPPs be de-linked from gas and be linked with coal by taking into account heat value, as the fuel cost component for bagasse-based power plants is more than that of gas-based power plants.



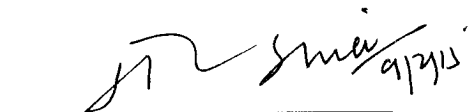
xi. NEPRA vide letter dated 24<sup>th</sup> November 2014 issued decision in the matter of revision/modification of fuel cost component indexation w.r.t. PAR filed by MEPCO, wherein the decision dated 24<sup>th</sup> December 2012 has been modified to the extent that fuel cost component adjustment mechanism has been de-linked from gas and linked with imported coal.

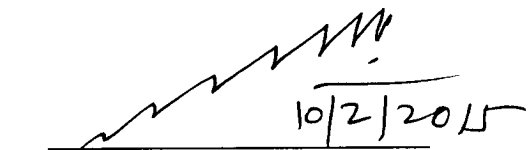
7. The Authority, after detailed deliberations on the case, decided as under::

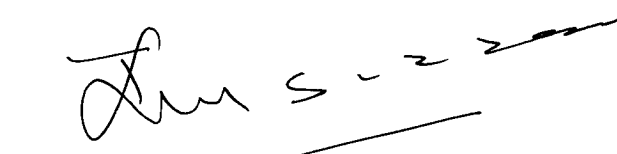
i. Upon request of MEPCO, the Power Purchase Agreement (PPA) was approved by NEPRA on 24<sup>th</sup> December 2012 and the same was notified on 31<sup>st</sup> January 2013. However, the parties entered into fresh agreement with reduced rates as compared to the rates approved by NEPRA. Since both the parties agreed for fresh PPA with reduced rates, therefore, considering the fact that it was beneficial for the consumers, both the parties may observe the terms and conditions as per rates agreed between them; therefore, the claim of JDW Sugar Mills Limited with respect to arrears prior to 21<sup>st</sup> November 2013 has no legal justification. MEPCO, however, is required to seek ex-post facto approval of PPA with reduced rates.

ii. Subsequent to expiry of second PPA (dated 28<sup>th</sup> February 2013) on 20<sup>th</sup> November 2013, third agreement could not be signed due to dispute over reference gas price, therefore, both parties decided to sale/purchase power on interim arrangements subject to decision on purchase price by NEPRA. In this regard, MEPCO is directed to file a request with NEPRA in terms of NEPRA Interim Power Procurement (Procedures & Standards) Regulations, 2005 for approval of PPA for the period from 21<sup>st</sup> November 2013 onward.

8. Compliance report be submitted within thirty (30) days.

  
\_\_\_\_\_  
(Maj. (R) Haroon Rashid)  
Member

  
\_\_\_\_\_  
(Habibullah Khilji)  
Vice Chairman

  
\_\_\_\_\_  
(Brig. (R) Tariq Saddozai)  
Chairman

