



National Electric Power Regulatory Authority Islamic Republic of Pakistan

NEPRA Office Building, G-5/1, Attaturk Avenue (East), Islamabad
Phone: 051-9206500, Fax: 051-2600026

Website: www.nepra.org.pk, Email: registrar@nepra.org.pk

OFFICE OF THE
REGISTRAR

No. NEPRA/D(CAD)/TCD-06/ 542-45

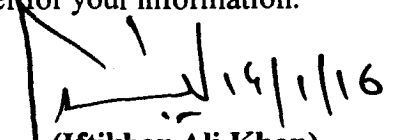
January 14, 2016

Chief Executive Officer (CEO)
SINCO Steel Re-Rolling Mills Ltd.
51, Sama Satta Link Road Dera Masti,
Bahawalpur

Subject: **DECISION IN THE MATTER OF M/S SINCO STEEL RE-ROLLING MILLS PRIVATE LTD. UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST MEPCO REGARDING TARIFF RATIONALIZATION SURCHARGE AND FINANCING COST SURCHARGE**
Complaint # MEPCO-607/2015

In pursuance to the Orders of the Honorable Lahore High Court Bahawalpur Bench dated 20th October, 2015 and 26th October, 2015 regarding Writ Petitions No. 7925/2015 and No. 7927/2015 respectively, the said cases have been decided by NEPRA. Please find enclosed herewith the decision of NEPRA regarding the subject matter for your information.

Encl: As above


(Iftikhar Ali Khan)
Deputy Registrar

Copy to:

1. Deputy Registrar (Judicial)
Lahore High Court,
Bahawalpur Bench, Bahawalpur

{ For Information w.r.t Orders of Lahore High Court, Bahawalpur Bench dated 20.10.15 and 26.10.2015 in W.P No. 7925/2015 and No 7927/2015 respectively.

2. Chief Executive Officer,
Multan Electric Power Company (MEPCO),
MEPCO Complex, WAPDA Colony, Khanewal Road,
Multan.

3. C.E./Customer Service Director
Multan Electric Power Company (MEPCO)
MEPCO Complex, WAPDA Colony,
Khanewal Road, Multan.



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

Complaint No. MEPCO-607/2015

Chief Executive Officer **Complainant**
SINCO Steel Re-Rolling Mills Ltd.
51, Sama Satta Link Road Dera Masti,
Bahawalpur.

Versus

Multan Electric Power Company, **Respondent**
MEPCO Headquarters,
Khanewal Road,
Multan.

Date of Hearing: December 22, 2015

Date of Decision: January 12, 2016

**On behalf of
Complainant:** Nemo

Respondent: 1) Mr. Muhammad Rafiq Abid (Additional Director Commercial)
2) Mr. Javaid-Ur-Rehman (Commercial Superintendent)

Subject: **DECISION IN THE MATTER OF M/S SINCO STEEL RE-ROLLING MILLS PRIVATE LTD. UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST MEPCO REGARDING TARIFF RATIONALIZATION SURCHARGE AND FINANCING COST SURCHARGE**

DECISION

1. In pursuance to the Orders of Honorable Lahore High Court, Bahawalpur Bench dated October 20, 2015 and October 26, 2015 in Writ Petitions No. 7925/15 and No. 7927/15 respectively, this decision shall dispose of the complaints filed by M/s SINCO Steel Re-Rolling Mills Ltd. (hereinafter referred to as the "Complainant" or "Petitioner") under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 against Multan Electric Power Company (hereinafter referred to as the "Respondent" or "MEPCO").

2. Brief facts of the case are that the Complainant filed Writ Petitions No. 7925/15 and No. 7927/15 dated October 19, 2015 before Honorable Lahore High Court, Bahawalpur Bench. Main contents of the petitions are as under:

- i. **Writ Petition No. 7925/15**: In the petition, the Petitioner stated that they are an industrial consumer of MEPCO and electricity charges are one of the biggest components of their production cost and even a slight variation in electricity prices has a direct influence on their production cost. NEPRA has issued tariff determination dated March 27, 2015 in the petition filed by MEPCO for the determination of its consumer-end tariff pertaining to FY-2014-15. Subsequently, MEPCO filed motion for leave for review against Authority's tariff determination dated March 27, 2015. The review motion of MEPCO was dismissed vide NEPRA's letter dated June 16, 2015. As such, decision of NEPRA achieved finality and thereafter, no charges can be imposed by MEPCO. The Petitioner added that MEPCO authorities charged Financing Cost (F.C) Surcharge for the month of October, 2015. The Honorable Court suspended the recovery of F.C Surcharge; resultantly, the recovery was not made by MEPCO for the month of October, 2015 from the Petitioner's company. Moreover, the Honorable Lahore High Court, Multan Bench has already suspended the recovery of F.C charges levied by the Federal Government, therefore, charging of F.C surcharge for the month of October, 2015 and onward is illegal, void and against the principles of natural justice. The Petitioner added that NEPRA can only revise, review, and approve the tariff on account of any variation in electric bill on monthly basis. The NEPRA Act, 1997 does not provide any powers to NEPRA for imposing F.C surcharge and its collection through electricity bill. The Complainant, inter alia, prayed that recovery of F.C surcharge in the electricity bill for the month of October, 2015 and onward may graciously be suspended, F.C Surcharge may not be included in current months' bills till final adjudication of the case and electricity supply of the premises not be disconnected on the basis of F.C Surcharge.
- ii. **Writ Petition No. 7927/15**: In the petition, the Petitioner stated that they are an industrial consumer of MEPCO and electricity charges are one of the biggest components of their production cost and even a slight variation in electricity prices has a direct influence on their production cost. NEPRA has issued tariff determination dated March 27, 2015 in the petition filed by MEPCO for the determination of its consumer-end tariff pertaining to FY-2014-15. Subsequently, MEPCO filed motion for leave for review against Authority's tariff determination dated March 27, 2015. The review motion of MEPCO was dismissed vide NEPRA's letter dated June 16, 2015. As such, decision of NEPRA achieved finality and thereafter, no charge can be charged by MEPCO. The Petitioner added that charging of Tariff Rationalization Surcharge in electric bills for the month of October, 2015 is illegal. The court has already granted relief with regards to charging of Tariff Rationalization Surcharge in electric bill of the Petitioner vide Writ Petition No. 5587-2015/BWP. Further, the Honorable Lahore High Court, Multan Bench has suspended the recovery of Tariff Rationalization Surcharge levied by the Federal Government. The Petitioner added that NEPRA can only revise, review, and approve the tariff on account of any variation in electricity bill on monthly basis. The NEPRA Act, 1997 does not provide any powers to NEPRA for imposing Tariff Rationalization Surcharge and its collection through electricity bills for the month of October, 2015 is illegal, against the principles of natural justice and void ab-initio. The Complainant, inter alia, prayed that recovery of Tariff Rationalization Surcharge in the electricity bill for the month of October, 2015 and onward may graciously be suspended till final adjudication of the case and electricity supply of the premises not be disconnected on the basis of Tariff Rationalization Surcharge.

3. The Honorable Lahore High Court, Bahawalpur Bench disposed of the Writ Petitions No. 7925/15 and No. 7927/15 vide Orders dated October 20, 2015 and October 26, 2015 respectively in following terms:



Writ Petition No. 7925/15:

"..... alternate remedy in the shape of filing review petition before NEPRA is available to the Petitioner, however, as the immediate and efficacious remedy was not available, therefore, the Petitioner has assailed this Order through Constitutional Petition. The Petitioner is directed to approach the proper authority for redressal of his grievances. However, the respondents are directed not to charge the price under F.C Surcharge for the month of October, 2015. The Petitioner shall approach the competent authority for the same relief. The authority is directed to decide the matter expeditiously within a period of one month from today and till then 'F.C Surcharge' is suspended. However, the Petitioner shall deposit the current bill excluding amount of 'F.C Surcharge' till due date".

Writ Petition No. 7927/15:

".....alternate remedy in the shape of filing review petition before NEPRA is available to the Petitioner, however, as the immediate and efficacious remedy was not available, therefore, the petitioner has assailed this Order through Constitutional Petition. The Petitioner is directed to approach the proper authority for redressal of his grievances. However, the respondents are directed not to charge the price under 'Tariff Rationalization Surcharge' for the month of October, 2015. The Petitioner shall approach the competent authority for the same relief. The authority is directed to decide the matter expeditiously within a period of one month from today and till then 'Rationalization Surcharge' is suspended. However, the Petitioner shall deposit the current bill excluding amount of 'Rationalization Surcharge' till October 29, 2015 which shall be subject to decision of the authority".

4. In order to comply with the aforementioned Orders of the Honorable Court, the Authority constituted a tribunal under section 11 of the NEPRA Act, 1997 and accorded powers to the tribunal to hear and decide the case. Accordingly, a notice dated December 10, 2015 was issued to the Petitioner and MEPCO with directions to appear before NEPRA on December 22, 2015 at NEPRA Head Office, Islamabad along with written arguments. In response, MEPCO vide its letter dated December 18, 2015 requested for rescheduling of the hearing, however, the request of MEPCO was regretted and MEPCO was directed vide letter dated December 18, 2015 that the hearing will be held as per schedule. Accordingly, hearing was held on December 22, 2015 at NEPRA Head Office, Islamabad. The said hearing was attended only by representatives of MEPCO, however, the Petitioner neither attended the hearing nor any request for adjournment was received in this office. MEPCO in its written/verbal arguments has submitted as under:

- i. M/s Sinco Steel Re-Rolling Mills, Bahawalpur filed Writ Petitions No. 7925/15 and No. 7927/15 in the Lahore High Court, Bahawalpur Bench and challenged the charging of 'Tariff Rationalization Surcharge' and 'Financing Cost Surcharge' billed during the month of October, 2015. The Honorable Court passed the Orders on October 20, 2015 and October 26, 2015 in terms that "the petitioner is directed to approach the proper authority for redressal of his grievance. However, the respondents are directed not to charge the price under "Tariff Rationalization Surcharge & Financing Cost Surcharge' for the month of October 2015".
- ii. NEPRA has decided likewise matters on November 19, 2015 vide No. NEPRA/TRF-100/SAT/16742-44, No. 16746-48 & No.16762-64 in the Writ Petitions No.5587/2015, No.6324/2015 and No.6325/2015. Keeping in view the decision of NEPRA, MEPCO served bill to the Petitioner for Rs. 11,126,637.00 (including FC surcharge amounting to Rs. 5,43,864/- and Tariff Rationalization Surcharge amounting to Rs. 25,29,600/- for the month of October 2015) for the period from July 2015 to October 2015. The Petitioner approached MEPCO for payment in easy installments. Accordingly, MEPCO allowed for payment of total amount in 04 installments. The Petitioner paid the 1st installment amounting to Rs.

30,00,000 and has submitted an affidavit on non-judicial paper regarding payment of remaining installments.

- iii. The matter has since been decided in pursuance to Honorable Court's directions/orders in writ petitions No.5587/2015, No.6324/2015 and No.6325/2015 respectively. Hence, at this stage there is no need of further arguments against the writ petitions No. 7925/2015 and No.7927/2015, having similar nature, as the Petitioner agreed and accepted the decisions already announced by NEPRA on November 19, 2015 and also paid such surcharges billed during the month of November 2015.

5. Since the Petitioner failed to enter appearance despite issuance of notice and as per directions of the Honorable Court, the case was to be decided within one month, therefore, it was decided to proceed in the matter on the basis of the available record. The case has been analysed in detail in light of available record, arguments advanced by MEPCO in the hearing and applicable law. Following has been observed:

- i. It is a matter of record that MEPCO is a distribution licensee of NEPRA and it could charge only such tariff from the consumers which is determined by NEPRA and is notified in the official Gazette by the Government of Pakistan in terms of section 31(4) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (NEPRA Act). The tariff of a distribution licensee is determined in accordance with the procedure provided in NEPRA Tariff (Standards & Procedure) Rules, 1998. All Distribution Licensees of NEPRA file their tariff petitions before NEPRA seeking determination of consumer-end tariff. Upon admission of such petitions, the salient features of the petitions are published in the national newspapers inviting comments, replies, and intervention requests from interested persons. Subsequently, a hearing is also held for which notices are also published in the national newspapers. After considering the submissions of the petitioners, commentators (if any) interveners (if any), evidence produced, arguments given by respective parties, the tariff determinations are issued by NEPRA which are then intimated to the Federal Government for notification in the official Gazette under Section 31(4) of the NEPRA Act, 1997 which reads as under:

(4) 'Notification of the Authority's approved tariff, rates, charges, and other terms and conditions for the supply of electric power services by generation, transmission and distribution companies shall be made, in the official Gazette, by the Federal Government upon intimation by the Authority:

Provided that the Federal Government may, as soon as may be, but not later than fifteen days of receipt of the Authority's intimation, require the Authority to reconsider its determination of such tariff, rates, charges and other terms and conditions. Whereupon the Authority shall, within fifteen days, determine these anew after reconsideration and intimate the same to the Federal Government;"

- ii. Tariff determination of MEPCO for Financial Year 2014-15 was given by NEPRA after fulfilling all legal formalities and the same was intimated to the Federal Government for notification in the official Gazette. However, the Federal Government under proviso to Section 31(4) of NEPRA Act, 1997 filed a re-consideration request on May 21, 2015 whereby it was intimated that Federal Government is desirous to provide "subsidy" to certain categories of consumers. It was also intimated that the Federal Government in exercise of its powers under Section 31(5) of NEPRA Act, 1997 had imposed certain "surcharges". As per re-consideration request of Federal Government, NEPRA was required to incorporate the amounts of "subsidy" as well as "surcharges" so levied in the "schedule of tariff" for ex-WAPDA Distribution Companies. Though there was no change required in the already determined tariff by NEPRA, but the amount of "surcharges" was to be recovered from the consumers; therefore, in order to meet with the ends of natural justice, a public hearing was conducted by NEPRA on May 29, 2015 for which prior notices were published in the national newspapers. After considering the concerns so raised by the interested parties, the

decision of NEPRA upon re-consideration request was given on June 9, 2015. Pursuant to the said decision, the modified schedule of tariff was intimated to the Federal Government for notification in the official Gazette on June 9, 2015 and the tariff so intimated was notified by the Government of Pakistan in the official Gazette vide S.R.O. 572(I)/2015 dated June 10, 2015.

- iii. It is pertinent to mention here that through the impugned decision of NEPRA dated June 9, 2015, NEPRA has not modified the tariff determination earlier intimated to the Federal Government for notification in the Official Gazette. The only amendment made through the impugned decision is that surcharges imposed by the Federal Government under Section 31(5) of NEPRA Act were incorporated in the Schedule of Tariff so that all stakeholders may know what is the total price of electricity they are being charged.
- iv. It is important to mention here that under sub-section 5 of Section 31 of NEPRA Act, the power to levy surcharges vests only with the Federal Government and NEPRA has not been given any role in levying or determining the surcharges. The said sub-section 5 reads as under:

(5) Each distribution company shall pay to the Federal Government such surcharge as the Federal Government, from time to time, notify in respect of each unit of electric power sold to the consumers and any amount paid under this sub-section shall be considered as a cost incurred by the distribution company to be included in the tariff determined by the Authority.

- v. It will not be out of place to mention that the Honorable Lahore High Court, Lahore declared vide Judgment dated May 29, 2015 passed in ICA No.1068/2014 titled as Flying Cement Company Vs Federation of Pakistan and Others that imposition of surcharges under Section 31(5) of NEPRA Act is illegal. However, the said Order was challenged by the Federal Government before the Honorable Supreme Court of Pakistan through CP No.1078/2015. The Honorable Supreme Court vide Order dated June 9, 2015 has granted leave to appeal (now CPLA is numbered as CA No.551/2015) and suspended the impugned judgment of honorable Lahore High Court Lahore, therefore at present the "Surcharges" levied in the tariff determinations are being recovered from the electricity consumers.
- vi. There is no force in the contention of the Complainant/Petitioner and therefore his plea for suspension of the impugned surcharges is liable to be dismissed.
6. Keeping in view the fact that NEPRA has not imposed the impugned surcharge; rather the same has been levied by the Federal Government under Section 31(5) of NEPRA Act, 1997 and also the fact that matter pertaining to levy of "surcharges" by the Government of Pakistan is already *sub-judice* before the Honorable Supreme Court of Pakistan, the request of the Petitioner is not maintainable at this point in time and is hereby declined. The complaints are disposed of accordingly.



(Lashkar Khan Qambrani)
Deputy Director



Naweed Illahi Shaikh
Director



(Mian Ahmed Ibrahim)
Legal Advisor



Nadir Ali Khoso
Senior Advisor