



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

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No. NEPRA/AB/Appeal-029/POI-2015/ 767-770

August 20, 2015

1. M/s Atta Chemicals
Through Muhammad Sarfraz Rasheed,
S/o Mian Rasheed,
Director of M/s Atta Chemicals (Pvt.) Ltd,
Plot No. 5/C, Industrial Estate,
Multan
2. The Chief Executive Officer
MEPCO Ltd,
Khanewal Road,
Multan
3. Mrs. Salma Imran Goreja,
Advocate High Court,
Rafiq Goreja House,
21-Shadman Colony,
Opposite High Court,
Multan
4. Malik Muhammad Rafiqu Rajwana
Advocate Supreme Court of Pakistan,
27/3, Altaf Town,
Multan

Subject: Appeal Titled MEPCO Vs. M/s Atta Chemicals (Pvt.) Ltd Against the Decision Dated 10.03.2015 of the Electric Inspector/POI to Government of the Punjab Multan Region, Multan

Please find enclosed herewith the decision of the Appellate Board dated 19.08.2015, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-029/POI-2015/ 771

August 20, 2015

Forwarded for information please.


1. Registrar
2. Director (CAD)
3. Electric Inspector/POI, Multan Region
4. Master File

CC:

1. Chairman
2. Vice Chairman/Member (CA)
3. Member (Tariff)
4. Member (M&E)
5. Member (Licensing)


Member Appellate Board

Registrar	8967
Dy No.....	
Dated.....	21-08-15


21/08/15

- DRP-II
- m/f



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-029/POI-2015

Multan Electric Power Company Limited

.....Appellant

Versus

M/s Atta Chemicals, Through Muhammad Sarfraz Rasheed, S/o Mian Rasheed, Director, M/s Atta Chemicals (Pvt.) Ltd, Plot No. 5/C, Industrial Estate, Multan

.....Respondent

For the appellant:

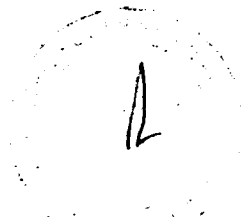
Uma Salma Advocate
Rehan Ali SDO

For the respondent:

Barrister Malik Sohail Ashiq Shuja Advocate
Malik Tariq Rajwanaa Advocate

DECISION

1. This decision shall dispose of appeal filed by Multan Electric Power Company Limited (hereinafter referred to as MEPCO) against the decision dated 10.03.2015 of the Provincial Office of Inspection/Electric Inspector Multan Region, Multan (hereinafter referred to as POI)





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under Section 38(3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as "the Act").

2. Brief facts giving rise to the instant appeal are that MEPCO is a licensee of National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license. The respondent is an industrial consumer of MEPCO bearing Ref No.27-15118-0004600 with a sanctioned load of 456 kW under B-2 tariff.
3. As per facts of the case the respondent being aggrieved with the billing of MEPCO submitted an application dated 21.05.2012 to MEPCO, wherein he complained that despite load shedding excessive billing was being made against his connection. In response to his complaint meter of the respondent was checked by MEPCO on 30.05.2012 and it was found that the date and time of the meter were wrong. Subsequently the respondent vide his application dated 25.07.2012 claimed that the units were being charged in peak hours despite load shedding. He stated that a sum of Rs. 2,170,924/- was paid in excess by him during the period January 2010 to July 2012. The respondent requested for adjustment of the excessive amount. The respondent also filed a writ petition dated 03.09.2012 in Lahore High Court Multan bench against the billing in peak hours during the period January 2010 to July 2012 despite load shedding, which was disposed of by the honourable High Court vide its order dated 12.11.2013. The honourable High Court directed MEPCO to decide the matter within one month strictly in accordance with the law. Pursuant to the direction of the honourable High Court, MEPCO constituted an inquiry committee which submitted its report dated 15.04.2014 and made following recommendations:
 - i. *Disciplinary action is recommended against SSO Incharge, 132 KV Ind/Estate Grid station Multan on account of providing false implementation status to consumer which caused conflict.*
 - ii. *In future, meter with such type of defects should be replaced within one reading cycle to avoid disputes.*
 - iii. *The refund mentioned at para 4 (iii) of Findings may be afforded to consumer to settle the issue."*



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4. During the pendency of the matter before MEPCO, the respondent filed a writ petition before Lahore High Court Multan Bench which was disposed of by the honourable High Court vide its order dated 13.10.2014 with the direction to POI for deciding the complaint through speaking order within a period of one month strictly in accordance with law.
5. Being aggrieved with the recommendation of inquiry committee, the respondent filed a complaint dated 26.08.2014 before POI and prayed as under:

"It is most respectfully prayed that the act of MEPCO by charging excess amount of bills since January, 2010 till February 2012, because of the defective meter may kindly be declared arbitrarily, illegal, discriminating hence be set aside."

It is also prayed that impugned order dated 7-5-2014 to the extent of not allowing the refund to the complainant for the period from January, 2010 till February 2012 be set aside/modified and complainant be granted relief for the above said period.

It is further prayed that the MEPCO may kindly be directed to refund excess amount along with the tax and scheduled markup rate till date (for the period from January, 2010 till February, 2012), alternatively the same amount owed to the Complainant Company may be adjusted in the future monthly bills.

Any other relief which the honorable court deems fit may also be granted in this regards."

6. After affording opportunity of hearing to both the parties and perusal of the record/documents POI announced its decision on 10.03.2015. The operative portion of the decision is reproduced below:

"Keeping in view all the aspects of the case and summing up all the above observations/conclusions, this forum declares the charging of current bills for the period 01/2010 to 07/2012 for excessive Peak Hour consumption due to wrong time of the meter as Null, Void & of no legal effect. The respondents are directed to recalculate the same as per above Table and afford the consumer the credit for the cost of difference of 278215-KWh units



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from Peak Hour to Off-Peak Hour. They are also directed to overhaul petitioner's account by adjusting all Debits, Credits & Payments already made by the consumer/petitioner.

Disposed of in above terms."

7. Being aggrieved with the above decision dated 10.03.2015 of POI, MEPCO has filed the instant appeal through Uma Salma Advocate. The respondent in his appeal, inter alia, stated that pursuant to the orders of honourable Lahore High Court Multan Bench relief of Rs. 261,784/- for the period March 2012 to July 2012 was given to the respondent on the recommendation of MEPCO inquiry committee. MEPCO contended that the impugned claim of the respondent for the period January 2010 to February 2012 was based upon his after thought as no such demand was previously made prior to his application dated 21.05.2012 and as such the same shall be deemed to have been voluntary waived and for the reason thereof the respondent was debarred/estopped from advancing any claim prior to 21.05.2012. According to MEPCO the impugned decision dated 10.03.2015 of POI was void abintio, result of misreading and non reading of the relevant record, runs upon conjectures and surmises, without lawful authority, whimsical, arbitrary, capricious and manifestly against law and facts and the same was liable to be set aside. MEPCO pleaded that POI failed to examine the case in true perspective which resulted in gross miscarriage of justice and the impugned decision was passed by POI illegally with material irregularity. MEPCO contended that while passing the impugned decision POI did not record any cogent reason and also failed to give proper opportunity to the appellant to prove their case. Finally MEPCO prayed as under:

"In view of the above submission, it is most respectfully prayed that this appeal may very kindly be accepted, the impugned Decision, dated 10-3-2015, passed by the respondent no. 2 may very graciously be set-aside and application/petition filed by respondent no. 1, may benignly be dismissed, in the interest of justice.

Any other relief, which this Hon'ble Authority may deem fit and appropriate, may also benignly be granted to the appellants."



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8. The respondent was issued a notice for filing reply/parawise comments which were submitted on 25.05.2015. In his reply/comments the respondent vehemently opposed the submissions of MEPCO and pleaded that the meter of the respondent was defective due to which excessive billing in peak hours was charged to the respondent which was not justified. He contended that the impugned order passed by POI was unequivocally a speaking order after application of independent judicial mind, careful examination and reading of the relevant record and based upon cogent and sound reasoning. According to the respondent the appeal disclosed no plausible justification, errors of law or misreading of document evidence on record and was therefore liable to be dismissed. Finally the respondent prayed as under:

"In view of the Preliminary Objections, Preliminary Submissions and Para-wise Comments mentioned herinabove, it is most humbly prayed that the instant Appeal may very kindly be dismissed with costs, and the Decision, dated 10-03-2015 passed by Respondent No. 2 may very graciously be upheld."

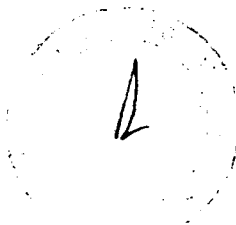
9. After issuing notice to both the parties, the appeal was finally heard in Multan on 08.07.2015. On the day of hearing both the parties were present. Ms. Uma Salam Advocate appearing for the appellants reiterated the same arguments which have been incorporated in the memo of appeal. The learned counsel for MEPCO stated that the respondent raised his grievance regarding billing in peak hours despite load shedding first time vide his application dated 21.05.2012 and in response the meter was checked and its time was found out of order. The learned counsel contended that pursuant to the direction of Lahore High Court Multan Bench, MEPCO granted relief to the respondent as per recommendation of high power inquiry committee constituted by CEO MEPCO. The learned counsel further informed that an adjustment of Rs. 261,784/- was granted to the respondent and there was no justification for the POI to set aside the already paid bills during the period January 2010 to July 2012. According to the learned counsel for MEPCO it was past and disclosed transaction and the respondent was not entitled to raise any claim in this regard and as such impugned decision of the POI declaring the bills during this period as null and void was contrary to facts and law and needed to be set aside. Barrister Malik Sohail Ashiq Shujra, learned counsel for the respondent rebutted the arguments of MEPCO and contended



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that MEPCO indulged in billing of the consumer for peak hours inspite of the fact that the electricity was not provided during peak hours. Learned counsel disclosed that the fact regarding the charging of bill in peak hours came to the knowledge of the respondent when the meter was checked by MEPCO on 30.05.2012 and its time was found out of order and after acquiring the knowledge he claimed for refund of the excess amount for the period January 2010 to February 2012 was raised before honourable Lahore High Court Multan Bench and subsequently complaint in this regard was also made to the POI. The learned counsel further contended that the charging of units in peak hours despite load shedding was proved from the statement provided by SSO Incharge 132 KV grid station. Ms. Uma Salma Advocate, the learned counsel for MEPCO pleaded that the statement provided by SSO Incharge 132 KV grid station was not valid therefore action was taking against him. According to the learned counsel, the load shedding program was not strictly followed and it was confirmed from the record that other consumers located at the same 11 KV feeder were also charged units in peak hours. The learned counsel submitted that the impugned decision of POI was not in accordance with law and the facts and was liable to be set-aside.

10. We have heard arguments of both parties and examined the record placed before us. Following are the observations:
- i. The respondent was paying his electricity bills without any objection till he challenged the billing vide the application dated 21.05.2012.
 - ii. The meter of the respondent was checked by MEPCO on 30.05.2012 and timing was found out of order. The meter was however replaced on 04.07.2012.
 - iii. The respondent claimed refund of Rs. 2,170,924/- which were allegedly charged in excess due to recording of consumption in peak hours despite load shedding during the period January 2010 to July 2012.
 - iv. MEPCO provided an adjustment of Rs. 261,784/- to the respondent pursuant to the recommendations of it's inquiry committee but the respondent was not satisfied.
 - v. The TOU meter of the respondent was checked in routine by MEPCO. No defect or discrepancy was reported in the meter checking conducted by MEPCO on 07.01.2011.

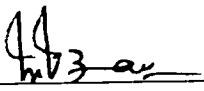




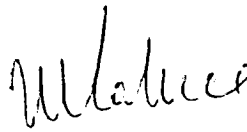
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It is evident that there was no wrong billing prior to January 2011 and no refund or claim prior to January 2011 by the respondent is justified.


- vi. POI in its impugned decision granted credit for the cost of 278,215 units from peak to off peak during the period January 2010 to July 2012 owing to defective TOU meter. Since the meter remained correct till January 2011, no such credit can be afforded to the respondent prior to January 2011. The respondent is entitled for the credit due to adjustment of peak hours into off peak hours units from February 2011 to July 2012. The total units worked out by POI during the period February 2011 to July 2012 are 264,926 units for which the respondent is entitled to be granted relief.
11. In view of the forgoing discussion it is concluded that the billing of the respondent from February 2011 to July 2012 is incorrect. MEPCO is directed to afford a credit for the cost difference of 264,926 units from peak hours to off peak hours during the period February 2011 to July 2012. MEPCO is also directed to revise the billing of the respondent and carry out adjustments accordingly. The impugned decision of POI is modified to the above extent.



Muhammad Qamar-uz-Zaman
Member



Nadir Ali Khoso
Convener



Muhammad Shafique
Member

Date: 19.08.2015

