



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

NEPRA Office , Atta 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/AB/Appeal-168/POI-2016/ 209-212

February 06, 2017

1. Khalid Nadeem,
S/o Allah Bakhsh,
Porp: Anmol Ice Factory,
Chak No. 149/TDA, Basti Faqir Wali,
Tehsil & District Layyah
2. Chief Executive Officer,
MEPCO Ltd,
MEPCO Complex, Khanewal Road,
Multan
3. Muhammad Sharif Bugti,
Sub Divisional Officer,
MEPCO Ltd,
2nd Sub Division,
Layyah
4. Electric Inspector
Multan Region,
249-G, Shah Ruken-e-Alam Colony,
Phase II, Multan

Subject: Appeal Titled MEPCO Vs. Khalid Nadeem Against the Decision Dated 23.08.2016 of the Electric Inspector/POI to Government of the Punjab Multan Region, Multan

Please find enclosed herewith the decision of the Appellate Board dated 06.02.2017, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Ikram Shakeel)

No. NEPRA/AB/Appeal-168/POI-2016/ 213

February 06, 2017

Forwarded for information please.


Assistant Director
Appellate Board

1. Registrar
2. Director (CAD)

CC:

1. Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-168/POI-2016

Multan Electric Power Company Limited

.....Appellant

Versus

Khalid Nadeem Akhtar S/o Allah Bukhsh, Prop: Anmol Ice factory,
Chak No.149/TDA, Basti Faqir Wali, Tehsil & District Layyah

.....Respondent

For the appellant:

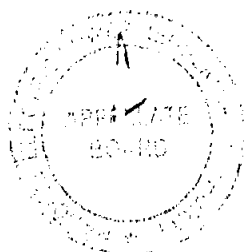
Mr. Muhammad Sharif Bugtti SDO

For the respondent:

Mr. Ejaz Ahmed

DECISION

1. This decision shall dispose of an appeal filed by Multan Electric Power Company Limited (hereinafter referred to as MEPCO) against the decision dated 23.08.2016 of Provincial Office of Inspection, Multan region, Multan (hereinafter referred to as POI) under Section 38 (3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as the NEPRA Act 1997).
2. Brief facts of the case are that the respondent is an industrial consumer of MEPCO bearing Ref No. 27-15732-0906204 with a sanctioned load of 60 kW under B-2 tariff. The respondent was charged MDI by MEPCO from June 2013 and onwards, detail of which is given below:





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Month	MDI charged	Remarks
July 2013	109 kW	Cumulative MDI charged for June 2013 and July 2013 as admitted by SDO
August 2013	52 kW	-
September 2013	52 kW	-
October 2013 to April 2014	-	No MDI charged
May 2014	82 kW	MDI charged beyond the sanctioned load
June 2014	68 kW	-do-

Connected load of the respondent was checked by metering & testing (M&T), MEPCO on 22.04.2014 and 12.06.2015 and on both the occasions, reportedly it was found as 59.68 kW, which is equivalent to the sanctioned load. Pursuant to the Audit note dated 11.05.2015, a demand notice of Rs.77,220/- on account of security and rehabilitation charges was issued to the respondent in consideration of 82 kW load as recorded by MEPCO in May 2014.

3. Being aggrieved with the aforementioned demand notice, the respondent filed a petition dated 17.06.2016 before POI. A joint inspection was carried out by POI on 14.07.2016 and the connected load of the respondent was found as 65.257 kW. POI disposed of the matter vide its decision dated 23.08.2016, the operative portion of which is reproduced below:

"Keeping in view the above aspects of the case and summing up all the above narrated observations/conclusions, this forum declares the charging of Rs.77,220/- and subsequent issuance of Demand Notice of said amount on the basis of Audit Observations/Note as Null, void and without any legal effect. The respondents are directed to withdraw the same in the light of above quoted decisions of Lahore High Court and checking reports available for the year 2014, 2015 and 2016. Disposed of in above terms."

4. Being dissatisfied with the decision dated 23.08.2016 of POI (hereinafter referred to as the impugned decision), MEPCO has filed the instant appeal and inter alia, contended that the impugned decision be set aside being illegal and void. MEPCO further pointed out that being a case of theft of electricity, it was beyond the jurisdiction of POI.
5. Notice of the appeal was issued to the respondent for filing reply/parawise comments, which

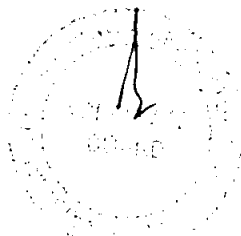




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were filed on 25.11.2016. In his reply, the respondent raised the preliminary objection regarding limitation and the appeal against the impugned decision dated 23.08.2016 was filed before NEPRA on 10.10.2016, which is time barred. The respondent further pointed out that no opportunity of hearing was afforded by the Audit cell while making observation against him vide Audit Notice dated 11.05.2015.

6. After issuing notice, hearing of the appeal was held in Multan on 20.01.2017 in which Mr. Muhammad Shareef Bugtti SDO represented the appellant MEPCO and Mr. Ejaz Ahmed appeared for the respondent. Learned counsel for MEPCO reiterated the same arguments as given in memo of the appeal and contended that the demand notice amounting to Rs.77,220/- issued in line with the Audit observation dated 11.05.2015 was correct and payable by the respondent as his MDI recorded was 82 kW, which is beyond the sanctioned load of 60 kW. Conversely, the respondent in his argument reiterated the stance as contained in reply/parawise comments of the appeal. The respondent contended that he was not associated in the audit proceedings and as such their observation is invalid. As per respondent, pursuant to the decision of Lahore High Court, the audit observation is an internal matter of MEPCO and not applicable to him.
7. We have heard arguments of both the parties and perused the record placed before us. It has been observed that:
 - i. Objection of MEPCO regarding jurisdiction of POI being a theft of electricity case (though not pressed during arguments) is incorrect and dismissed.
 - ii. As regards the preliminary objection raised by the respondent regarding limitation, it is noted that the impugned decision was pronounced by POI on 23.08.2016, copy of where of was received by MEPCO on 05.10.2016 and the appeal against the same was filed before NEPRA on 14.10.2016 after 9 days of its receipt. As such the appeal has been filed within the time limit as envisaged under Section 38(3) of NEPRA Act, 1997. Objection of the respondent in this regard is not sustainable and therefore dismissed.
 - iii. The respondent challenged the charging of Rs.77,220/- (Rs.44,220/- + Rs.33,000/-) being the cost of security and rehabilitation charges on the recommendation of Audit note





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dated 11.05.2015. Prima facie, it is a dispute other than the metering, billing and collection of tariff and as such does not fall in the jurisdiction of POI as contemplated under Section 38(3) of NEPRA Act 1997. However perusal of the Audit note dated 11.05.2015 reveals that such charges were raised due to higher MDI recorded in May 2014 i.e. 82 kW. Since the basis of these charges is the disputed MDI reading, it may be construed a metering dispute, therefore POI has rightly exercised its jurisdiction.

- iv. The respondent was not associated in the audit proceedings and no show cause notice with regard to the recovery of the amount of Rs.77,220/- pursuant to Audit note dated 11.05.2015 was issued. We are in agreement with the contention of the respondent as well as determination of POI that observations of the audit cell are not binding upon the respondent and as such demand notice of Rs.77,220/- is not recoverable from the respondent. Reliance is placed on Lahore High Court Judgment dated 25.09.2007, reported in 2008 YLR 308, which is reproduced below:

“WAPDA through chairman –Petitioner versus Fazal Karim respondent.

Electricity Act (IX of 1910)—

---Ss.24 &26—Demand of amount from consumer on basis of Audit report/objection without issuing show cause notice to him or joining him with proceedings to justify Audit report—Validity—Audit report would neither be binding on consumer nor could he be held responsible for fault of department.”

8. In view of what has been stated above, we do not find any reason to interfere with the impugned decision, which is upheld and the appeal is dismissed.

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener

Muhammad Shafique
Member

Dated: 06.02.2017

