



National Electric Power Regulatory Authority
ISLAMIC REPUBLIC OF PAKISTAN
NEPRA Head Office,
Attaturk Avenue (East), Sector G-5/1, Islamabad.
Ph: 051 201 3200, Fax: 051 260 0021

No. NEPRA/MEPCO-164/5/2019/ 699-700

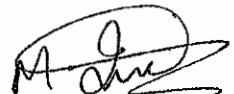
May 31, 2019

1. Manager (Legal & General Affairs)
Hussain Mills Limited
Fazalabad, Vehari Road,
Multan
2. Chief Executive Officer MEPCO
MEPCO Complex, WAPDA Colony,
Khanewal Road, Multan.

Subject: DECISION OF NEPRA IN THE MATTER OF COMPLAINT FILED BY HUSSAIN MILLS LIMITED UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 REGARDING CHARGING OF FIXED CHARGES BY MEPCO

Please find enclosed herewith the decision of the Appellate Tribunal Dated 30-05-2019 regarding the subject matter, for information and necessary action accordingly.

Encl: As above


(Muhammad Imran)
Assistant Director

(Registrar)



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No. MEPCO – 164/5/2019

Hussain Mills Limited Complainant
Fazalabad, Vehari Road,
Multan

Versus

Multan Electric Power Company Limited (MEPCO) Respondent
MEPCO Head Quarter,
Khanewal Road,
Multan

Subject: DECISION OF NEPRA IN THE MATTER OF COMPLAINT FILED BY HUSSAIN MILLS LIMITED UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 REGARDING CHARGING OF FIXED CHARGES BY MEPCO

1. A complaint under section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the “NEPRA Act”) was filed before NEPRA against Multan Electric Power Company Limited (hereinafter referred to as the “Respondent” or “MEPCO”). The facts stated in the complaint are summarized as under:-
 - i. That the complainant is a consumer of Multan Electric Power Company (MEPCO) under tariff category of B-3 & B-4, and is engaged in business of textile products. The complainant is billed a two tier tariff i.e. energy charges based on electricity consumed during the month and fixed charges on the basis of MDI.
 - ii. That the fixed charges are meant to procure electricity according to the demand of consumers in order to ensure the smooth, consistent, efficient and continuous and uninterrupted supply of electricity to the extent of sanctioned load of the consumers,

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however, due to inefficiencies of MEPCO, it is carrying on announced or unannounced load shedding and has never been able to provide continuous supply of electricity to industrial consumers at different hours of the day.

- iii. That the complainant and some other industrial consumers had filed Writ Petitions before the Honorable Islamabad High Court Islamabad on March 02, 2013 stating that fixed charges be calculated on the actual hours of supply of electricity. The Honorable Court vide order dated March 05, 2013 directed the Respondents that in the meanwhile fixed charges against the Complainant be calculated on the basis of actual hours of supply of electricity. In compliance of said orders, MEPCO started charging bills on the basis of actual hours of supply. Subsequently, vide its decision dated November 10, 2014, the Honorable Islamabad High Court observed that since the consumers are located in Multan, therefore, they were directed to approach the Lahore High Court.
- iv. That thereafter, MEPCO started issuing electricity bills inclusive of the amount of fixed charges, and also charged fixed charges for the previous months during which fixed charges were calculated against the actual hours of electricity supplied.
- v. That the complainant filed a Writ Petition No. 15826 of 2014 in the Honorable Lahore High Court Multan Bench regarding charging Fixed Charges in the electricity bills in spite of non-preservation of electricity by MEPCO and interrupted supply of electricity to the Complainant which was decided on 24.2.2015 on the ratio laid down by the Honorable Supreme Court in its judgment reported as 1999 SCMR 494, by extending the same benefit to the Complainant w.e.f. the date of filing of Writ Petition at IHC, if the same relief had earlier not been availed by the Complainant.
- vi. That MEPCO filed an Intra Court Appeal but it was dismissed on January 27, 2016. Said orders were assailed by MEPCO before Honourable Supreme Court of Pakistan by pleading that ICA was not decided on merit rather dismissed on technical grounds. The honourable Supreme Court of Pakistan in its decision dated September 22, 2016 referred the matter back to Lahore High Court Multan Bench with a direction to decide the ICAs on merit.



vii. That during the proceedings of the case, MEPCO obtained clarification from NEPRA on the issue of fixed charges dated February 07, 2017 and sought disposal of the ICAs in light of the clarification provided by NEPRA. Since other petitions were also pending before Honorable Lahore High Court Multan Bench wherein the petitioners requested for referring the matter to NEPRA for a decision but said request was declined, however, vide orders dated 11.10.2018, the Honorable Court observed that "let the petitioners file an appropriate representation before NEPRA for resolution of their grievance which is factual in nature. In case such a representation is filed NEPRA shall decide the same within a period of three months thereafter".

2. Now pursuant to the above observations, the subject complaint has been filed before NEPRA requesting for the following reliefs;

- The one sided and unilateral clarification dated 07-02-2017 (*issued by NEPRA in contravention to the judgment of Honourable Supreme Court reported as 1999 SCMR 494 and the Orders passed by the Honourable High Court dated 24-02-2015& 03-03-2015*) may kindly be declared as illegal, unlawful and void-ab-initio and is liable to be set aside;
- The impugned act of the Respondent by issuing the impugned bills pursuant to NEPRA's clarification may kindly be declared as arbitrary and done in colorful exercise of powers and be set-aside.
- Respondent may be directed not to include henceforth the amount of Fixed Charges for the period of load shedding / stoppage of electricity to the premises of the Complainant;
- The Respondent may be directed to refund all the amounts so far recovered from the Complainant under the head of fixed charges during the period of load shedding/ non-supply of electricity strictly in terms of formula laid down in Paragraph 18 of the judgment of Honourable Supreme Court in 1999 SCMR 494;
- Any other relief deemed appropriate in the peculiar circumstances of the case.

3. While taking the cognizance of the complaint so filed, the Authority in exercise of its powers under section 11 of the NEPRA Act, 1997 constituted a Tribunal comprising of undersigned with a mandate to adjudicate upon the complaint and decide the same as per law. The Tribunal was also delegated with the powers of Authority for hearing and deciding the complaint.

4. While adjudicating the complaint, the Tribunal initially scheduled a hearing of both the parties for March 04, 2019 at Hotel One, Multan; notices thereof were issued to the Complainant and the Respondent i.e. MEPCO. The Respondent, at the start of hearing, requested for time to file its detailed reply on the submissions of the Complainant. The Tribunal while acceding to the request of the Respondent, rescheduled the hearing on March 19, 2019 at Hotel One, Multan; Notices to this effect were also issued to the parties.
5. On the date of hearing, MEPCO submitted its detailed response. The Complainant, however, requested for a reasonable time to review and submit re-joinder to the response submitted by MEPCO. The tribunal acceded to the request of the Complainant and accordingly, the hearing was re-scheduled on April 05, 2019 at NEPRA Tower, Islamabad.
6. The hearing was held as per the schedule and attended by the Technical Director & Legal representative of the Complainant and DG Commercial & Legal counsel of the Respondent.
7. Learned Counsel for complainant re-iterated the same arguments as mentioned in the complaint and submitted that issuing of electricity bills by MEPCO containing the fixed charges is against the principles laid down by Honorable Supreme Court of Pakistan in its judgment reported as 1999 SCMR 494 .Further submitted that the clarification dated 7.2.2017 issued by NEPRA is in contravention of the orders of Lahore High Court and that such clarification is also against the judgment of Supreme Court of Pakistan referred above. Regarding the clarification, learned Counsel referred as "impugned clarification" and submitted that it was issued without taking into confidence the complainant/consumer. As far as the controversy of charging the fixed charges, learned Counsel referred para 18 of the Honorable Supreme Court Judgment reported as 1999-SCMR-494 and pleaded that the formula so laid down therein for charging of MDI/Fixed charges in the event of load shedding is each/per day fixed charged for billing period of 30/31 days and how the said charges will be calculated for the purposes of charging from the consumers. That consumer should not be charged fixed charges of electricity the days of load shedding. As per learned Counsel for complainant there has been a clear cut violation of the judgment of the Honorable Supreme Court of Pakistan by calculating the fixed charges in contravention with the formula laid down in the said judgment. Learned Counsel further submitted that the grievance of the complainant is that the period during which the electricity is not being supplied, the MEPCO cannot recover the fixed charges and this fact has totally been

ignored in the clarification of NEPRA. As per learned Counsel the issue involved is “ whether the fixed charges are to be calculated on hourly basis or of the whole day” as defined in para 18 of Supreme Court judgment but in the impugned clarification of NEPRA dated 7.2.2017, this fact was ignored.

8. Learned Counsel for complainant further argued that calculation of electricity bill are comprises of 60% variable charges and 40% fixed charges and the complainant in case of load shedding is entitled to a proportionate reduction from the said 40%. The sole argument of learned Counsel was against the clarification of NEPRA dated 7.2.17 with the contention that it was arbitrarily stated therein that the tariff for B-3 consumers comprises of two part tariff (i) variable charges and (ii) fixed charges. The variable charges are the sale rate per kWh charged to the consumers based on the electricity consumption. As per learned Counsel the respondents acclaimed that the complainants are already getting more benefit than determined in the cited judgment of Honorable Supreme Court but such argument was satisfactorily dealt with by the Honorable High Court in its judgment in WP 503/15 wherein it was held that judgment of Supreme Court is fully applicable to NEPRA which is the creature of Act of 1997 whereas the judgment of Honorable Supreme Court was pronounced on 11th December 1998.
9. Learned Counsel for complainant also refer para 16 of judgment of Honorable Supreme Court whereby on calculating proportionate amount in regard to load-shedding period, half from it (50)% of such amount be reduced from minimum “fixed charges” and adjusted to the benefit of consumers. Thus the consumers are only allowed benefit during the period of load shedding not otherwise.
10. Learned Counsel for MEPCO/Respondent argued that consumer-end tariff of MEPCO is determined by NEPRA, which also issued clarification wherein it is stated that benefits of the Honourable Supreme Court Judgement has been granted to the Complainant. MEPCO is charging Fixed Charges / MDI strictly in accordance with the determination of NEPRA, thus the instant complaint is not proceed able and liable to be dismissed. For every year NEPRA, determines the tariff rates, charges, fixed charges etc. for MEPCO after following the due process of law. The applicant / industrial consumers have never ever objected the determination & mechanism for charging of fixed charges/MDI by NEPRA since 04.09.2009, hence, the instant complaint against the MEPCO is not tenable and liable to be dismissed. Learned Counsel further

submitted that u/s 39 of NEPRA Act, 1997, a complaint could be filed against a licensee but in this case, the complainant is challenging a clarification of NEPRA before NEPRA, thus it is a complaint of NEPRA before NEPRA which cannot be done within the ambit of section 39 of the NEPRA Act, 1997. As per learned Counsel, the clarification of NEPRA may be treated as one of the decision of NEPRA against which the appropriate remedy could be availed but the complaint as such is not maintainable.

11. Having gone through the arguments advanced on behalf of complainant and respondent and after perusal of record, it is observed at the very outset that no complaint could be filed before NEPRA against its own decision against which appropriate remedy could be availed; therefore, the grievance of the complainant pertaining to the clarification of NEPRA dated 7.2.2017 is not maintainable before NEPRA. As regards the grievance pertaining to the fixed charges, it is a matter of record that the matter of fixed charges was initially raised prior to the unbundling of WAPDA. The Honorable Supreme Court of Pakistan vide its judgement reported as 1999 SCMR 494 decided that due to load shedding, the fixed charges should be imposed at 50% instead of 100%. The terms & conditions with respect to fixed charges as indicated in the schedule of tariff prior to un-bundling of WAPDA were as under;

“Billing Demand” For the purpose of this tariff during a month, means the highest of the following;-

- (a) The actual Maximum demand recorded during the month;
- (b) 50% of the total sanctioned load.

“Fixed charges” mean the charges for the Authority’s reservation of power for consumer’s billing demand in kilowatt as defined above.

12. As per the aforementioned definition of fixed charges, WAPDA was liable to provide the reserved power to the respective consumer and accordingly, the consumer was required to pay fixed charges at 50% of the sanctioned load. However, in the new scenario after unbundling of WAPDA, whereby the functions of Generation, Transmission and Distribution were separated, the analogy of reservation of power became irrelevant, since the DISCOs became dependent on the supply of power from NTDCL/ CPPA-G and in the current scenario of Power Shortfall, reservation of Power could not be maintained. In view thereof, NEPRA re-defined the term “Fixed Charges” as under:-



"Fixed Charge means the part of sale rate in two part tariff to be recovered on the basis of "Billing Demand" in kilowatt on monthly basis."

"Billing demand means the highest of maximum demand recorded in a month except in the case of agriculture tariff D-2 where "Billing Demand" shall mean the sanctioned load".

13. It may be stated that MEPCO is one of the distribution licensees of NEPRA who is mandated to make sale of electric power to consumers as per rates and terms and conditions so defined by NEPRA and notified in the official gazette. Each Distribution Company files a petition seeking determination of tariff (which includes the calculation of fixed charges etc.) and before such determination, due opportunity of raising objections etc. is provided to all stake holders including the complainant but the complainant never ever agitated the issue before NEPRA nor file any objection. After conclusion of proceedings the tariffs are determined which are then intimated to the Federal Government for notification in the official gazette in terms of section 31(7) of the NEPRA Act, 1997. Tariff so notified has attained finality. It is also a matter of record that the tariff determinations for MEPCO which were notified in the official gazette were for the year 2004, and then from 2007 to 2018 but none of the same was ever challenged. All such determinations contained a formula of fixed charges.

14. That the above-referred re-definition of the term "fixed charges" were made purely keeping in view the decision of the honorable Supreme Court of Pakistan and the consumers' interest, whereby payment of minimum amount of fixed charges @ 50% of the sanctioned load was excluded and the same was linked with actual load consumed. In view thereof, around 40% of the fixed cost was designed to be recovered from the consumers as "fixed charges" based on actual MDI and the remaining 60% was made part of variable charges, to be recovered based on actual electricity consumption.

15. Hence, the argument of the Learned Counsel for the complainant that in case of load shedding it is entitled for a proportionate reduction from the said 40%, which is determined by the Authority as fixed charges is not correct, as the Order of the Honorable Supreme Court of Pakistan for 50% reduction in fixed cost was to be made from the total fixed cost rather than the amount being charged from the consumers.

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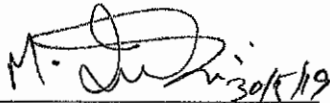
16. For the purpose of clarity, the following table is prepared, whereby, the total amount of fixed charges in terms of Rs./kW/M of MEPCO for the last 10 years viz a viz the amount being billed to the consumers are shown;

Description		Total Fixed Charges	50% of Fixed Charges	Industrial Consumers Categories		
				Fixed Charges for B-2	Fixed Charges for B-3	Fixed Charges for B-4
FY 2008-09	Rs./kW/M	1,110	555	315	305	291
	%			28%	27%	27%
FY 2009-10	Rs./kW/M	1,483	742	400	380	362
	%			27%	26%	24%
FY 2010-11	Rs./kW/M	1,227	614	400	380	362
	%			33%	31%	29%
FY 2011-12	Rs./kW/M	1,213	606	400	380	362
	%			33%	31%	30%
FY 2012-13	Rs./kW/M	1,688	844	400	380	362
	%			24%	23%	21%
FY 2013-14	Rs./kW/M	1,490	745	400	380	362
	%			27%	25%	24%
FY 2014-15	Rs./kW/M	1,000	500	400	380	362
	%			40%	38%	36%
FY 2015-16	Rs./kW/M	1,207	603	400	380	362
	%			33%	31%	30%
FY 2016-17 & FY 2017-18	Rs./kW/M	3,259	1,629	400	380	362
	%			12%	12%	11%

17. The above table clearly shows that the benefit given to the complainants/consumers, since FY 2008-09, is much higher from the orders of the Honorable Supreme Court of Pakistan. As per above, the fixed charges are being recovered from different industrial consumer categories in

the range of 11% to 40% of the total fixed charges, whereas the Honorable Supreme Court of Pakistan has ordered to recover the same @ 50%. Thus, the complainants / consumers are already being allowed the benefit at a much higher rate vis a vis the orders of the Honorable Supreme Court of Pakistan.

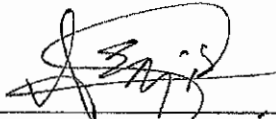
18. In view of the aforementioned, we are of the view that the complaint filed by M/s Hussain Mills Limited is without any merits and therefore rejected.



(Muhammad Imran)
Member



(Muhammad Shafique)
Member



(Sajid Akram)
Convener