



Registrar

**National Electric Power Regulatory Authority**  
**Islamic Republic of Pakistan**

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No. NEPRA/D(CAD)/TCD-06/ 19125-87

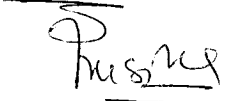
November 24, 2017

1. Chief Executive Officer  
Multan Electric Power Company (MEPCO)  
MEPCO Complex, WAPDA Colony,  
Khanewal Road, Multan.
2. Mr. Munir Ahmed Daha  
GM (Administration), JDW Sugar Mills Limited,  
17-Abid Majeed Road,  
Lahore Cantonment.

Subject: **Order in the matter of JDW Sugar Mills Limited Vs MEPCO in Pursuance to the Judgment of Lahore High Court, Lahore in Writ Petition No. 35230/2015: M/s. JDW Sugar Mills Vs NEPRA etc**

Please find enclosed herewith the Order of the Authority (06 Pages) in pursuance to the Judgment of the Lahore High Court, Lahore in Writ Petition No. 35230/2015: M/s. JDW Sugar Mills Vs NEPRA etc for information and necessary action.

Encl: As above

  
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( Syed Safer Hussain )

Copy to:

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



BEFORE THE  
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY  
(NERPA)

Complaint No. MEPCO-56/2014

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

Versus

**Multan Electric Supply Company (MEPCO)** ..... Respondent  
MEPCO Complex, WAPDA Colony  
Kanewal Road, Multan

Date of Hearings: May 30, 2017  
June 13, 2017

On behalf of:

**Complainant:**

1)	Mr. Munir Ahmed Daha	GM, (JDWSML)
2)	Mr. Shehzad A. Elahi	Advocate, (JDWSML)
3)	Mr. M. Zafar	Advocate, (JDWSML)

**Respondent:**

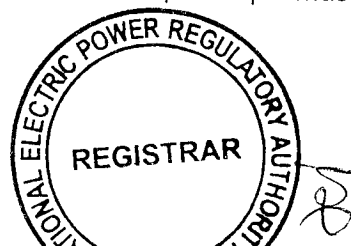
1)	Mr. Zafar Hussain Bhatti	Manager (MEPCO)
2)	Mr. M. Arshad Dharala	Addl. Manager (MEPCO)
3)	Mr. Hamza Wajid	Legal Counsel
4)	Mr. Syed Ahmad Hasan Shah	Legal Counsel
5)	Mr. Badar Iqbal Choudhary	Legal Counsel

Subject: ORDER IN THE MATTER OF JDW SUGAR MILLS LIMITED VS MEPCO IN PURSUANCE OF JUDGEMENT OF THE LAHORE HIGH COURT, LAHORE IN WRIT PETITION NO. 35230/2015: M/S JDW SUGAR MILLS VS NEPRA ETC.

**ORDER**

1. This Order is in pursuance of the directions of the Honorable Lahore High Court, vide order dated April 05, 2017, in Writ Petition No. 35230/2015 titled M/s JDW Sugar Mills vs NEPRA etc.

2. Brief facts of the case are that NEPRA received a complaint, vide letter dated January 28, 2014, from JDW Sugar Mills (hereinafter referred to as "JDWSML" or the "Complainant") against the Multan Electric Supply Company (hereinafter referred to as "MEPCO" or the "Respondent") on the subject of renewal of power purchase agreement and determination of tariff.



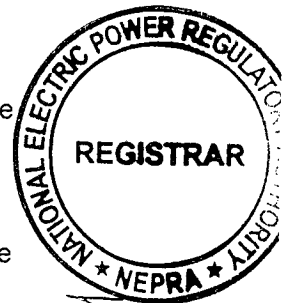
3. It is worth to mention that NEPRA vide letter dated January 27, 2012 directed all Distribution Companies to file Power Acquisition Requests (**PARs**) in respect of energy to be purchased from Captive Power Plants (**CPPs**). It was further directed that all CPPs that were selling, or had intention to sell, electric power to Distribution Companies to apply for determination of tariff, either through their respective Distribution Companies or directly to NEPRA.

4. JDWSML and MEPCO had signed a power purchase agreement on November 21, 2008 (**PPA-1**) for purchase of bagasse-based power for a period of 04 years. On the directions of the Authority, MEPCO filed a PAR for PPA-1, vide letter dated June 08, 2012, which was approved by NEPRA on December 24, 2012. A single change was made in the power purchase agreement by NEPRA, whereby the fuel cost component was linked with rates notified by OGRA for CPPs, in place of the original linkage with rates notified in respect of WAPDA's power plants. The approved tariff was subsequently notified on January 31, 2013.

5. PPA-1 expired as of November 21, 2012 prompting negotiations of a new power purchase agreement between JDWSML and MPECO. On January 19, 2013 JDWSML signed an interim arrangement with MEPCO for provision of electricity at a rate of Rs. 7.336/kWh from November 20, 2012 onwards (i.e. expiration of PPA-1) until a new power purchase agreement was negotiated and signed between the parties.

6. On February 28, 2013, MEPCO and JDWSML signed a new power purchase agreement (**PPA-2**) for a term of one (01) year, effective from November 21, 2012. The PPA-2 stipulated that the same tariff, as approved by NEPRA vide order dated December 24, 2012 for PPA-1, shall be incorporated, with *inter alia* the following conditions –

- (i) The fuel cost component will only be adjusted for any decrease in the Reference Gas Price and no higher/upward indexation will be allowed;
- (ii) The decision of NEPRA regarding fuel cost component shall be applicable with effect from January 31, 2013; and
- (iii) JDWSML shall not claim arrears for the energy dispersed prior to the date of official gazette notification (i.e. January 31, 2013)



7. After signing of PPA-2, MEPCO approached NEPRA for approval of renewing PPA-2 for a further period of 5 years, vide letter dated May 20, 2013. NEPRA, vide letter No. R/PAR-87/9369 dated July 31, 2013, granted approval for renewal of the PPA on the same

- terms and conditions as already approved by the Authority for PPA-1, including indexation of pricing. However, when the Complainant received the draft PPA-3, MEPCO had calculated the tariff without using the OGRA Reference Price, thereby contravening the formula approved by the Authority.

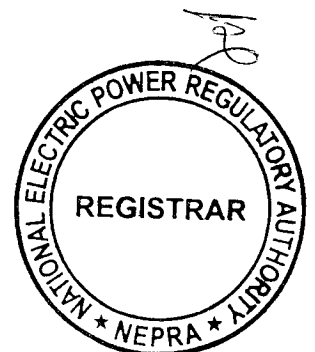
8. In lieu of the foregoing facts, JDWSML proceeded to file a complaint with the Authority, vide letter dated January 28, 2014. The complainant apprised that, on August 23, 2013, OGRA announced a revised reference gas price at a flat rate of Rs. 573.28/MMBTU. As per the directions of the Authority dated July 31, 2013, the PPA-3 was to be signed on the same terms and conditions as PPA-1, including the price indexation mechanism with OGRA's Gas Reference Price.

9. MEPCO approached NEPRA, vide letters dated January 22, 2014 and April 23, 2014 requesting that indexation of bagasse-based tariff of CPPs (including the Complainant's tariff) be de-linked from Gas and be linked with Coal. NEPRA, vide letter dated November 24, 2014, issued a decision on the matter of revision/modification of fuel cost component indexation, wherein NEPRA's decision dated December 24, 2012 (i.e. approval of PAR for PPA-1) was modified to the extent that fuel cost component adjustment mechanism had been de-linked from Gas and linked with imported Coal.

10. Meanwhile, an Explanation was issued to MEPCO and JDWSML on November 2, 2015 on the ground that both the parties have been engaged in purchasing/selling power without execution of a legally valid and binding PPA since November 21, 2013 after expiry of the previous PPA dated February 28, 2013. In response, MEPCO and JDWSML submitted their replies vide letters dated November 16, 2015 and November 18, 2015 respectively, which were deemed unsatisfactory. Subsequently, Show Cause Notices were issued to MEPCO and JDWSML on January 19, 2017. In response, only JDWSML vide its letter dated February 3, 2017 submitted its reply.

11. JDWSML's complaint was disposed of by NEPRA, vide order dated December 23, 2014, after reviewing submissions and arguments from both parties. The relevant excerpts of the order are as follows –

- Upon request of MEPCO, the Power Purchase Agreement was approved by NEPRA on December 24, 2012 and the same was notified on January 31, 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*



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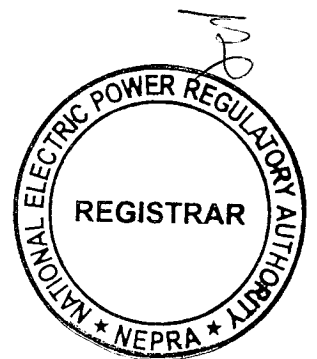
per rates agreed between them; therefore, the claim of JDW Sugar Mills Limited with respect to arrears prior to November 21, 2013 has no legal justification. MEPCO, however, required to seek ex-post facto approval of PPA with reduced rates.

ii. Subsequent to expiry of second PPA (dated February 28, 2013) on November 20, 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 November 21, 2013 onwards.

12. JDWSML proceeded to file a review motion against the preceding order of the Authority, dated December 23, 2014, which was admitted for hearing. For reasons recorded in order dated August 11, 2015 NEPRA declined the review motion and the original order was maintained.

13. Being aggrieved by the orders of the Authority in the matters of complaint and review, dated December 23, 2014 and August 11, 2015 respectively, JDWSML proceeded to file Writ Petition No. 35230/2015 at the Lahore High Court, Lahore with the following prayer:-

- a) *The impugned decisions (dated December 23, 2014 and August 11, 2015) may be declared illegal, ultra vires and without lawful authority and justification.*
- b) *MEPCO may be directed to adhere to the power purchase agreement and tariff approved by NEPRA on December 24, 2012.*
- c) *MEPCO may be directed to release the pending and prospective claims of arrears to JDWSML immediately.*



14. The Honorable Lahore High Court disposed of petition, vide order dated April 05, 2017 reproduced as under:-

*“Learned Counsel for Respondent (NEPRA) as per instructions submits that NEPRA is prepared to pass a fresh order after hearing the Petitioner (JDWSML) and Respondent No. 2 (MEPCO) on the matter in dispute between the same. Further submits that the impugned orders dated*

*December 23, 2014 and August 11, 2015 will be withdrawn at the time passing the fresh order"*

15. In compliance with the directions of the Honorable Lahore High Court, multiple hearings were conducted on May 30, 2017 and June 13, 2017 wherein MEPCO and JDWSML participated and advanced their arguments.

16. The case has been examined in detail, in light of the relevant documents, arguments advanced during the hearings and the applicable law. Both parties have advanced earlier submissions and arguments on the impugned issues and no new material argument or fact has been presented before the Authority.

17. The controversy in the instant case is twofold –

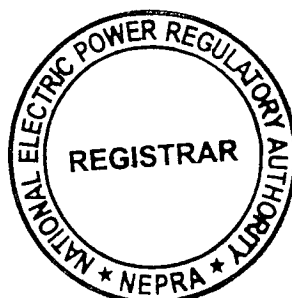
- (i) Whether the PPA-2 dated February 28, 2013 is a valid contract between MEPCO and JDWSML. Can JDWSML claim arrears under the provision of PPA-2 for period pertaining to PPA-1?
- (ii) Which price indexation mechanism shall be implemented for draft PPA-3 and whether MEPCO has failed to apply the correct mechanism, in compliance with the orders of the Authority dated December 24, 2012?

18. Foregoing in view, the case is disposed of as under:

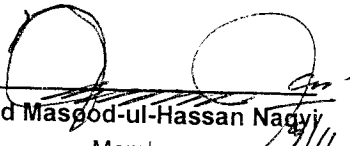
- (i) PPA-2 is a legally valid and binding contract between both parties having consented to the provisions contained therein. Therefore, JDWSML has effectively waived its right. With regard to the issue of arrears, under the provisions of PPA-2 (relevant sections reproduced below) the parties have agreed that JDWSML shall not claim any arrears prior to January 31, 2013 –

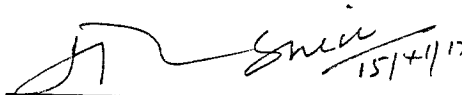
*"I) The Power Producer (JDWSML) shall not be allowed to claim arrear according to newly approved tariff for the energy dispersed for the period prior to the date of official Gazette notification (i.e. January 31, 2013) by Ministry of Water and Power Islamabad"*

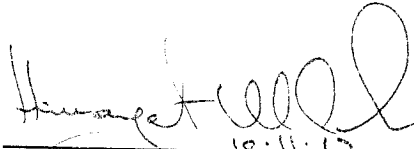
The provisions of PPA-2 bar JDWSML from claiming any arrears prior to the January 31, 2013 which includes the time period under which PPA-1 was in effect.




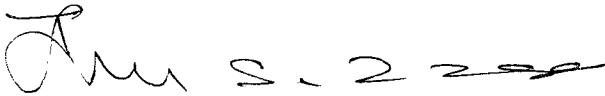
- (ii) As per the directions of the Authority, dated July 31, 2013, the PPA-3 was to be signed on the same terms and conditions as PPA-1, which includes the price indexation mechanism approved by the Authority. However, PPA-3 could not be signed due to change in terms and conditions by MEPCO. Therefore, the indexation mechanism approved by the Authority dated December 24, 2012 (notified on January 31, 2013), and subsequently amended and linked to Imported Coal instead of Gas vide decision issued on November 24, 2014, shall be applied in the PPA-3 accordingly.
- (iii) The orders of the Authority dated December 23, 2014 & August 11, 2015 and Show Cause Notices dated January 19, 2017 stand withdrawn upon the passing of this order.

  
Syed Masood-ul-Hassan Nagvi  
Member

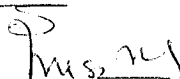
  
Maj. (Retd.) Haroon Rashid  
Member

  
Himayat Ullah Khan  
Member

  
Saif Ullah Chattha  
VC / Member 17.11.2017

  
Tariq Saddozai  
Chairman



  
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