



National Electric Power Regulatory Authority

ISLAMIC REPUBLIC OF PAKISTAN

NEPRA TOWER

Attaturk Avenue (East) Sector G-5/1, Islamabad.

Ph:051-2013200, Fax: 051-2600021

**Consumer Affairs
Department**

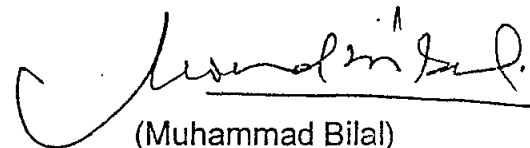
TCD 06/85462021
November 17, 2021

1. Chief Executive Officer
Central Power Purchasing Agency (Guarantee) Ltd
Shaheen Plaza, Plot No. 73-West,
Fazl-ul-Haq Road, Blue Area, Islamabad
2. Chief Executive Officer
Multan Electric Power Company (MEPCO)
MEPCO Complex, WAPDA Colony,
Khanewal Road, Multan

Subject: **DECISION IN THE MATTER OF COMPLAINT FILED BY M/S FATIMA ENERGY LIMITED (FEL) UNDER SECTION 39 OF THE NEPRA ACT, 1997 AGAINST CPPA-G AND MEPCO REGARDING NON-PAYMENT OF 20,873,630 UNITS OF ELECTRIC POWER SUPPLIED TO NATIONAL GRID**
MEPCO-171/10/2020

Enclosed find herewith the Decision of NEPRA Consumer Complaint Tribunal for necessary action, please.

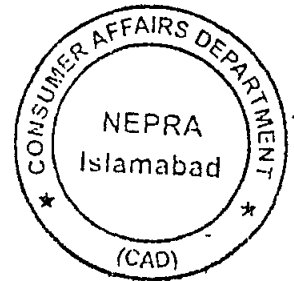
Encl: As above



(Muhammad Bilal)
Additional Director

Copy to:

1. C.E/Customer Services Director
Multan Electric Power Company (MEPCO)
MEPCO Complex, WAPDA Colony,
Khanewal Road, Multan
2. Fatima Energy Limited
E-110, Khayaban-e-Jinnah,
DHA Boulevard, Lahore Cantt





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

Complaint No. MEPCO-171/10/2020

Fatima Energy Limited **Complainant**
through Department Manager (Business Development),
E-110, Khayaban-e-Jinnah,
DHA Boulevard, Lahore Cantt.

Versus

Central Power Purchasing Agency (Guarantee) Ltd **Respondent No. 1**
Shaheen Plaza, A.K Fazal ul Haq Road,
Blue Area, Islamabad.

Multan Electric Power Company (MEPCO) **Respondent No. 2**
MEPCO Complex, WAPDA Colony,
Khanewal Road, Multan.

Date of Hearings: 31st December 2020
20th January 2021
27th January 2021
9th June 2021

On behalf of:

Complainant:

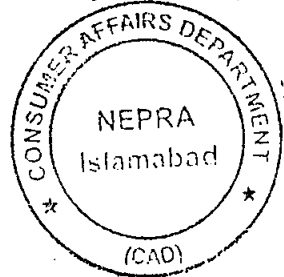
- 1) Mr. Amer Baloch, Commercial Head
- 2) Mr. Waqas Masood, Commercial Manager
- 3) Barrister Asghar Khan, Legal Counsel
- 4) Mr. Shazeb Khan, Lawyer
- 5) Mr. Dawood Iqbal, Lawyer
- 6) Mr. Faisal, Associate/Counsel
- 7) Mr. Zain Tariq, BDO

Respondent No. 1:

- 1) Mr. Hisham Humayun, Manager Legal
- 2) Mr. M. Naeem, Manager Finance
- 3) Mr. Nazif Hasan, Dy. GM (T)
- 4) Mr. Amir Ashraf, Dy. Manager
- 5) Mr. Moin Ahmed, Dy. MF
- 6) Mr. Nasir Jamal, AM (Finance)

Respondent No. 2:

- 1) Mr. Ahsan Gilani, GM (CS)
- 2) Mr. Muhammad Nawaz, Director (MT&CM)
- 3) Mr. Abid Hussain Buzdar, Dy. Director (Tariff)



Subject:

DECISION IN THE MATTER OF COMPLAINT FILED BY M/S FATIMA ENERGY LIMITED (FEL) UNDER SECTION 39 OF THE NEPRA ACT, 1997 AGAINST CPPA-G AND MEPCO REGARDING NON-PAYMENT OF 20,873,630 UNITS OF ELECTRIC POWER SUPPLIED TO NATIONAL GRID

DECISION

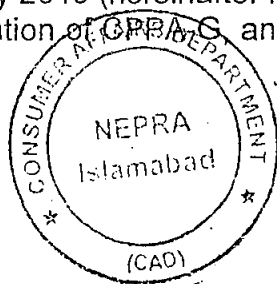
This Decision shall dispose of complaint dated 9th October 2020 filed by M/s Fatima Energy Limited (hereinafter referred to as the "**Complainant**" or "**FEL**") against Central Power Purchasing Agency (Guarantee) Limited (hereinafter referred to as the "**Respondent No. 1**" or "**CPPA-G**") and Multan Electric Power Company (hereinafter referred to as the "**Respondent No. 2**" or "**MEPCO**") under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "**NEPRA Act**").

2. The principal dispute agitated by FEL in their complaint is that from September 2017 to October 2017, FEL supplied 20,873,630 units (banked energy) to CPPA-G and till date, no payment or adjustment has been made. Instead, CPPA-G is repeatedly forcing FEL to pay for the back-feed energy without any adjustment of energy units supplied which are undisputed. FEL has prayed as under:

- a) Declare that FEL has supplied 20,873,630 units to CPPA-G/MEPCO.
- b) Declare that in terms of Clause 2 of the agreement signed between FEL and CPPA-G on 15th February 2017 (hereinafter referred to as the "**Interim Agreement**"), the liabilities accrued prior to termination of the Interim Agreement and under Clause 3 and 4.2 of the Interim Agreement against CPPA-G have to be fulfilled.
- c) Direct CPPA-G and MEPCO to treat 20,873,630 units supplied to the National Grid as banked energy.
- d) Direct MEPCO to wheel 20,873,630 units already supplied to the National Grid to BPCs of FEL under the Energy Wheeling Agreement (hereinafter referred to as the "**EWA**").
- e) Direct CPPA-G not to demand payment of back-feed energy.
- f) Direct CPPA-G to make payments to FEL, under the Interim Agreement, including the delayed payment rate under Clause 4.2 of the Interim Agreement, for supply of 20,873,630 units during the months of September 2017 and October 2017 to the National Grid.

3. The matter was taken-up with CPPA-G and MEPCO for submission of parawise comments, and a hearing was held on 31st December 2020 at NEPRA Head Office, Islamabad. The hearing was attended by representatives of all concerned parties (i.e. CPPA-G, MEPCO and FEL). However, the parties sought time for amicable settlement. In view thereof, a meeting of all concerned parties (i.e. CPPA-G, MEPCO and FEL) was held on 28th January 2021 to calculate the financial impact of energy units on account of import and export for reconciliation.

4. Meanwhile, MEPCO, vide letter dated 23rd December 2020 submitted parawise comments, whereby it was submitted that MEPCO does not buy any power from FEL, however, EWA was signed on 16th May 2014 between FEL and MEPCO. Moreover, the Order of NEPRA Consumer Complaints Tribunal dated 8th May 2019 (hereinafter referred to as the "**Order**") has been implemented by MEPCO with coordination of CPPA-G, and the issue of back-feed units



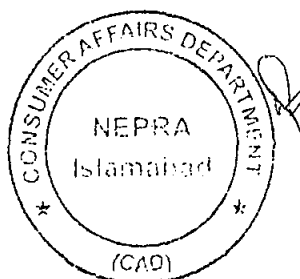
agitated by the Complainant is not agreed with, as it is not covered under the EWA. Further, MEPCO has not purchased electrical energy from FEL, and the concept of banked energy as per clause 11 of the EWA is not applicable in this case.

5. CPPA-G, vide its written arguments, submitted that FEL has not complied with the Order. CPPA-G has raised a cumulative demand for payment for back-feed units (6,877,060 kWh) and consumed units prior to EWA period (1,105,100 kWh) at the rate of Tariff Category C-3, totaling 7,982,160 kWh (units) amounting to Rs. 164,640,497/-. FEL, vide its letter dated 25th September 2020, assured that payment shall be made after ongoing reconciliation with MEPCO, however, no payment has been made by FEL as yet. FEL filed the instant complaint to avert its payment obligation under the aegis of the Tribunal in total disregard to the Order under which FEL was directed to pay CPPA-G cumulative payment for total units of 7,982,160 kWh, and the same is still outstanding with liability of late payment surcharges accruing. Further, CPPA-G denies that the agreement signed between FEL and CPPA-G on 17th October 2016 (hereinafter referred to as the "Interim Arrangement") did not explicitly or implicitly encapsulate the effectiveness till the conclusion of the Power Purchase Agreement.

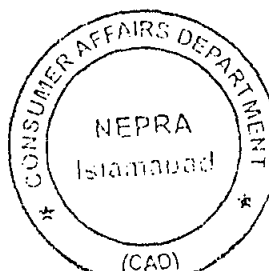
6. A final hearing was held on 9th June 2021 at NEPRA Head Office, Islamabad wherein all the parties participated. During the hearing, detailed deliberations were made on the following proposal submitted by FEL and response by CPPA-G:

Sr.#	FEL's proposal	CPPA-G reply
1)	FEL shall pay to CPPA-G already billed Import Energy (back feed) units of 7,982,160 kWh for a total amount of Rs. 149,732,089/- as per the Order. Payment shall be made on monthly basis for each invoice.	In light of NEPRA's Order and Import Energy bills issued by CPPA-G on 7 th June 2018 and 12 th June 2018, CPPA-G is bound by the Order and insists on its implementation of actual Import Energy charges + Interest (LPS), as raised by Dy. GM (CA&T).
2)	FEL shall pay to CPPA-G unbilled Import Energy (back feed) units of 3,804,050 kWh. CPPA-G shall raise invoice for each respective month on the basis of applicable tariff in respective months, and FEL shall pay on monthly basis for each invoice subject to adjustment of equivalent Export Energy units by MEPCO.	CPPA-G has decided that the invoice(s) for the Import Energy, i.e. 3,804,050 kWh for the period from July 2018 to July 2019, should be issued to FEL immediately based on applicable tariff to avoid triggering any effect of Pakistan Limiting Act, 1908.
3)	Late Payment Surcharge (LPS) of Import Energy (back feed) units of 11,786,210 kWh and LPS of Export Energy units of 20,873,630 kWh shall be mutually waived off.	No provision for any waiver or units being waived off rests with CPPA-G.
4)	Balance Export Energy units of 20,873,630 kWh shall be wheeled to BPCs of FEL under EWA.	CPPA-G is of the considered opinion that the matter falls under EWA, to which FEL and MEPCO are parties.

7. The case has been examined in detail in light of the record made so available by the parties, arguments advanced during the hearings and applicable law. The following has been observed:



- i. FEL was granted Generation License by NEPRA on 31st December 2013 for their 120MW power project in Muzaffargarh. The said license authorized FEL to establish and operate their generation facility and to disperse their energy into MEPCO's distribution network for eventual delivery to 04 Bulk Power Consumers (BPCs) and other such BPCs that FEL could subsequently include in their license vide a license modification. To implement this framework, the EWA was signed between MEPCO and FEL on 16th May 2014 which would govern the terms and conditions by which FEL would use MEPCO's distribution network to wheel and deliver energy from its power plant to its designated BPCs.
- ii. Subsequently, FEL decided to expand its project's scope and sought to disperse/sell energy to distribution companies as well (through CPPA-G). Accordingly, FEL's generation license was modified on 14th September 2015 which authorizes FEL to sell power to the original 04 BPCs, CPPA-G, XWDISCOs, K-Electric, and any other BPC using NTDC's network.
- iii. FEL completed construction of its power project and initiated the plant's testing phase. In this regard, the Interim Arrangement was signed between FEL and CPPA-G on 17th October 2016 under which various technical components of FEL plant were to be tested jointly by CPPA-G and FEL to ensure synchronization of the plant with the national grid.
- iv. An Interim Agreement was executed between FEL and CPPA-G on 15th February 2017. Under the provisions of the Interim Agreement, FEL was required to sale power to CPPA-G and during this period, EWA will remain suspended. The Interim Agreement was effective until the effectiveness of the Power Purchase Agreement between the parties in accordance with the requirements of the Letter of Support (LOS), at which point the Interim Agreement would terminate automatically.
- v. The Authority determined the tariff of FEL on 17th June 2016. Being aggrieved, FEL filed a Review Motion and decision thereof was issued on 18th October 2016. Thereafter, FEL approached the Islamabad High Court, and on 6th September 2017, the Honorable High Court set-aside the Review Tariff Determination and remanded the matter back to NEPRA for decision in accordance with the law.
- vi. FEL supplied 20,873,630 units to National Grid during September, 2017 and October, 2017. Pursuant to the order of the Honorable Islamabad High Court, the Private Power & Infrastructure Board (PPIB) terminated the LOS on 12th January 2018 with retrospective effect (6th September 2017) i.e. from the day of the Judgment of the court. Had PPIB cancelled LOS soon after the judgment of the High Court, FEL would not have supplied these units to CPPA-G.
- vii. Under the Interim Agreement, the liabilities which arose prior to termination shall be settled, therefore, 20,873,630 kWh of net electrical output supplied by FEL to CPPA-G during September 2017 and October 2017 is required to be settled.
- viii. CPPA-G pointed out that payment against 7,982,160 kWh (back-feed units) by FEL was not made in pursuance of the Order of NEPRA dated 8th May 2019. It was clarified to CPPA-G that this office did not receive any complaint from CPPA-G against FEL regarding non-payment of back feed units; otherwise action could have been taken against FEL. In this regard, FEL submitted that it did not make payment of back feed units to CPPA-G in response to the earlier Order of NEPRA due to the reason that payment of their 20,873,630 Units was pending with CPPA-G, otherwise payment should have been made.



- ix. The summary of Exported and Imported Energy by FEL is as under:

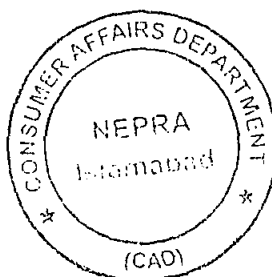
Energy exported by FEL as agreed by the parties:

Sr.#	Month	Energy (kWh)
1	September 2017	19,203,260
2	October 2017	1,670,370
	Total [A]	20,873,630


Energy imported from CPPA-G as agreed by the parties: (back-feed)

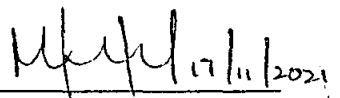
Sr.#	Period	Energy (kWh)
1	05 th November 2016 to 27 th November 2016	1,105,100
2	16 th February 2017 to 30 th June 2018	6,877,060
	Sub-total	7,982,160 (Pertains to the earlier Order)
3	1 st July 2018 to 31 st July 2019	3,804,050
	Total [B]	11,786,210

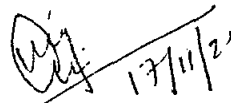
- x. FEL vide letter dated 3rd October, 2017 submitted request to the Authority for approval of Fuel Cost Component for the month of September 2017. In response, the Authority held that sale/purchase between FEL and CPPA-G was stopped by virtue of the Honorable Islamabad High Court's Order dated 6th September 2017. Further, the tariff of NEPRA awarded to FEL on 18th October 2016 was suspended by the Islamabad High Court; thereafter the Authority returned the application for adjustment of fuel cost component for the month of September 2017. In addition, the tariff issued by NEPRA on 18th January 2018 has also not yet been notified.
- xi. CPPA-G submitted that units sent by FEL w.e.f. 6th September 2017 are not part of the Interim Agreement, as the Interim Agreement was terminated in response to PPIB's letter dated 12th January 2018, therefore payment of units sent by FEL to CPPA-G (National Grid) cannot be made. CPPA-G also submitted that these units can be considered under EWA to be wheeled by MEPCO to the BPCs of FEL.
- xii. The PPIB cancelled the LOS with retrospective effect i.e. the period during which FEL had delivered units to CPPA-G and these units have been sold by CPPA-G. There is no tariff available for the month of September 2017 and October 2017, therefore the only solution to settle these units as suggested by CPPA-G is that these units, already sold by CPPA-G, be transferred to MEPCO for its onward wheeling to the BPCs of FEL under EWA regardless of the procedure to be followed under EWA, being an issue beyond the control of the parties.
- xiii. The role of MEPCO will be to coordinate with the parties and to receive units from CPPA-G for wheeling to the BPCs of FEL under EWA subject to payment of wheeling charges by FEL.
- xiv. The units sent from 1st September 2017 to 5th September 2017 be paid by CPPA-G to FEL on the rates of August 2017 and the units received w.e.f. 6th September 2017 to 31st October 2017 be considered as banked units under EWA, and to be wheeled by MEPCO to BPCs of FEL.



- xv. Payment calculated against exported units by FEL to CPPA-G w.e.f. 1st September 2017 to 5th September 2017 be adjusted against payment calculated against back feed units.
8. Foregoing in view, following has been decided:
- The Import Energy (back-feed) units at the end of FEL are 11,786,210 kWh, out of which 7,982,160 kWh pertain to the earlier Order dated 8th May 2019. FEL is liable to pay for the back-feed units i.e. 11,786,210 kWh to CPPA-G as per the tariff agreed between the parties, i.e. C-3.
 - It has also been established that 20,873,630 units were exported to CPPA-G and the concerned parties have not raised any objection regarding quantum of these units. Units provided by FEL to CPPA-G w.e.f. 1st September 2017 to 5th September 2017 be paid as per the tariff of August 2017. The units supplied w.e.f. 6th September 2017 to 31st October 2017 by FEL to CPPA-G be treated as banked units and be wheeled by MEPCO to the BPCs of FEL under the provisions of EWA.
 - As the units have already been received and sold by CPPA-G, therefore CPPA-G shall coordinate with MEPCO for wheeling of units to the BPCs of FEL under EWA regardless of the procedure to be followed under EWA being an issue beyond the control of the parties. MEPCO to coordinate with the parties and to receive units from CPPA-G for onward wheeling to the BPCs of FEL under EWA, however wheeling charges as per the provisions of EWA shall be applicable.
 - Since the settlement was delayed due to dispute between the parties for payment of back feed units by FEL and payment of exported 20,873,630 kWh units by CPPA-G, therefore, Late Payment Surcharge claimed by both the parties i.e. CPPA-G and FEL be withdrawn.
 - Payment calculated against exported units by FEL to CPPA-G w.e.f. 1st September 2017 to 5th September 2017 be adjusted against payment calculated against back feed units.
 - The parties i.e. FEL and CPPA-G to ensure payment of back feed units as well as wheeling of exported units simultaneously. The parties may enter into an agreement for execution of above arrangements.
9. The above arrangement shall take place within 03 months maximum i.e. by 28th February 2022. A preliminary report in this regard be submitted within thirty (30) days.


Lashkar Khan Qambrani
Director
Member


Moqem Ul Hassan
Assistant Legal Advisor
Member


Naveed Illahi Shaikh
Director General
Convener

