



National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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No. NEPRA/DG(CAD)/TCD 06/ 24895-87

May 7, 2021

Mr. Saifullah, Chief Executive,
M/s SINCO Steel Re-Rolling Mills (Pvt.) Ltd.,
Mouza Dera Masti, Sama Satta Road,
Bahawalpur.

Subject: **DECISION IN THE MATTER OF COMPLAINT OF M/S SINCO
STEEL RE-ROLLING MILLS LIMITED IN PURSUANCE OF THE
ORDERS OF THE HONORABLE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR, IN WRIT PETITION
NO. 2049/2015: M/S SINCO STEEL RE-ROLLING MILLS (PVT.)
LTD. VS FOP.
MEPCO-23/03/2021**

Enclosed find herewith the Decision of Member (Consumer Affairs) dated
06.05.2021 (05 Pages) dated regarding the subject matter for information, please.

Encl: As above


(Shakil Ahmed)
Additional Director
Registrar Office

Copy to:

1. Chief Executive Officer,
Multan Electric Power Company (MEPCO),
MEPCO Complex, WAPDA Colony,
Khanewal Road, Multan.
2. C.E./Customer Service Director,
Multan Electric Power Company (MEPCO),
MEPCO Complex, WAPDA Colony,
Khanewal Road, Multan.



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No. MEPCO-23/03/2021

M/s SINCO Steel Re-Rolling Mills Limited
Mouza Dera Masti, Sama Satta Road,
Bahawalpur.

..... Petitioner

Versus

Multan Electric Power Company (MEPCO)
MEPCO Complex, WAPDA Colony,
Khanewal Road, Multan.

..... Respondent

Date of Hearing: March 17, 2021
March 26, 2021

Date of Decision: May , 2021

On behalf of

Petitioner: Mr. M. Siddiq Chohan, Legal Advisor

Respondent: 1) Mr. Muhammad Akram Javed, XEN, Model Town Bahawalpur
2) Mr. Zahid Khan, Revenue Officer
3) Mr. Javed ur Rehman, Commercial Superintendent

Subject: **DECISION IN THE MATTER OF COMPLAINT OF M/S SINCO STEEL RE-ROLLING MILLS LIMITED IN PURSUANCE OF THE ORDERS OF THE HONORABLE LAHORE HIGH COURT, BAHAWALPUR BENCH, BAHAWALPUR, IN WRIT PETITION NO. 2049/2015: M/S SINCO STEEL RE-ROLLING MILLS (PVT.) LTD. VS FOP.**

DECISION

1. Through this decision, the petition filed by M/s SINCO Steel Re-Rolling Mills (Pvt) Ltd Mouza Dera Masti, Sama Satta Road Bahawalpur (hereinafter referred to as the "Petitioner") against Multan Electric Power Company Limited (hereinafter referred to as the "Respondent" 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"), is being disposed of.

2. The brief facts of the case are that NEPRA received a copy of the Order of the Honorable Lahore High Court, Bahawalpur Bench dated 11th February 2021 (received in NEPRA on 2nd March 2021) in Writ Petition No. 2049/2015 in the matter of M/s SINCO Steel Re-rolling Mills (Pvt.) Limited vs FOP etc. The Honorable High Court, vide the said Order, has referred the case to NEPRA for decision after providing opportunity of hearing to all concerned.


3. Main contents of the petition dated 21st March 2015 are as under:

- i. The Petitioner, as steel melters, use electricity as raw material provided by MEPCO under the Abridged Conditions of Supply. The Petitioner is billed as per MDI on fixed charges on monthly basis. Due to acute shortage of electricity, MEPCO agreed to extend load management scheme, thus reducing electricity from 24 hours to 12 hours during peak hours against consideration of concession to charge the fixed charges on pro-rata basis, i.e. fixed charges will be calculated on the basis of actual hours of supply.
- ii. The said concession continued in Central Punjab for steel melters, however, this facility was not extended to the Petitioner, which is unlawful.
- iii. The Petitioner firstly approached Lahore High Court, Bahawalpur Bench vide W.P. 3561/2011, whereby the Honorable High Court, vide decision dated 1st July 2011, directed MEPCO to consider and dispose off the Petitioner's request within one month.
- iv. MEPCO has charged extra charges amounting to Rs. 13,443,048/- illegally and deprived the Petitioner from its property which is protected by the Constitution of Pakistan.
- v. The Petitioner again approached the Lahore High Court, Bahawalpur Bench vide W.P. 9204/2014. The Honorable High Court decided that the energy fixed charges should be re-calculated on the basis of actual hours of supply of electricity consumed; meanwhile, the Petitioner shall undertake to deposit the present bill within reasonable time. Despite the directions of the High Court, MEPCO is insisting for payment of Rs. 5,978,166/- for the period of stay with the High Court, which is illegal.
- vi. The fixed charges are required to be calculated in consonance with the provisions of tariffs and supply agreement executed with MEPCO w.r.t. previous period of loadshedding, during period of stay, for current period and in future as well.
- vii. The fixed charges are being recovered in discriminatory manner from the industrial consumers falling in the Bahawalpur Division as compared to consumers of Upper Punjab.
- viii. It is prayed that recovery of fixed charges amounting to Rs. 6,541,944/- in the bills for the period from February 2013 to February 2015 may be suspended till final adjudication of the case. Further, demand of MEPCO for payment of Rs. 5,978,166/- despite Court's directions may be declared as illegal. Moreover, MEPCO be directed to charged fixed charges qua electricity consumed for actual hours for current period and in future as well.

4. In pursuance of the directions of the Honorable High Court, a hearing was held on 17th March 2021 at NEPRA Head Office, Islamabad which was attended by MEPCO officials only whereas the Petitioner failed to attend the same. In order to provide an opportunity to the Petitioner, another hearing was held on 26th March 2021 at the same venue. The hearing was attended by representatives of both the parties (i.e. Petitioner and

MEPCO) who advanced their respective arguments. During the hearing, representatives of MEPCO submitted their report/written arguments. Main contents of the written/verbal arguments of MEPCO are as under:

- i. The fixed/minimum charges are the component of NEPRA approved tariff which is recoverable, being inevitable, for maintaining the supply of energy system intact. The issue of fixed charges was earlier raised by several industrial consumers during the course of tariff determination for MEPCO and other DISCOs for the financial year 2008-09 through intervention requests. As per said interveners, due to heavy load shedding they were not being supplied electricity during 8-10 hours in a day while they were being charged fixed costs on the basis of 24 hours. As per them, they should be charged on the basis of 50% fixed cost. After giving due consideration to the grievances of all such industrial consumers, the concerns so raised were addressed by NEPRA in its determination of tariff dated 04.09.2009. Said determination has not been challenged by any of the industrial consumers. The issue raised regarding "fixed charges" was addressed in said determination vide para 21.
 - ii. APTMA & Al-Hamd Corporation had also made representation before NEPRA regarding exemption of fixed charges during the load shedding period referring to the decision of Apex Court reported in 1999 SCMR494. After hearing, both cases were decided in favour of MEPCO vide No. NEPRA/R/TCD.06/326-33 dated 10th January 2010.
 - iii. The Petitioner approached Lahore High Court, Bahawalpur Bench vide W.P. 3561/2011, and in compliance of the Honorable High Court's decision dated 1st July 2011, MEPCO decided the case 14th February 2012, whereby it was established that the Petitioner's request to waive-off fixed charges during loadshedding period is not covered under policies.
 - iv. The Honorable Lahore High Court, Bahawalpur Bench, also dismissed the ICA No. 39-2016/BWP on 27th April 2016 filed by the Petitioner against the order of Honorable Single judge passed on 7th March 2016 in writ petition No. 9204/2014/BWP.
 - v. The Petitioner's prayer is that recovered amount of fixed charged amounting to Rs. 6,541,944/- through arrear bill is not correct, as the fixed charges are part of tariff under industrial tariff determined by NEPRA under NEPRA Act-1997 duly notified by the Govt. of Pakistan. Hence, the instant writ petition has become infructuous and is liable to be dismissed. NEPRA has also clarified while submitting the report and para-wise comments in writ petition No. 8032 of 2015: M/s Chiragh Textile Mills (Pvt.) Ltd. Vs GOP and others and also tariff determination 2015-16 (paragraph 5.5.3).
 - vi. At this stage there is nothing outstanding or stands deferred on account of fixed charges towards the Petitioner's account. As such, the petition, being opposed to law, may be dismissed with costs.
5. The case been examined in detail in light of written/verbal arguments of the parties, applicable documents and law. The following has been concluded:
- i. The Petitioner is a consumer of MEPCO under tariff category of B-3, and is engaged in business of textile products. The Petitioner is billed a two-tier tariff i.e. energy charges based on electricity consumed during the month and fixed charges on the basis of maximum demand.

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- ii. The Petitioner has agitated that MEPCO had not provided them electricity supply for 24 hours, rather supply was given for less hours, therefore fixed charges be recovered for actual hours of supply.
- iii. As regards the Petitioner's 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 judgment reported as 1999 SCMR 494 decided that due to load shedding, the fixed charges should be imposed at 50% instead of 100%. The terms and 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.

- iv. 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/CPGA-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 Charges" 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".

- v. Further, MEPCO is a distribution licensee 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 Petitioner, however the Petitioner never 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 2019-20, but none of the same was ever challenged. All such determinations contained a formula of fixed charges.
- vi. 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.

- vii. It is pertinent to mention that in a likewise case, i.e. M/s Roomi Fabrics Limited, Multan vs MEPCO, a tribunal was constituted by the Authority under Section 11 of the NEPRA Act, 1997 to decide the case as per law. The Tribunal, after due process, concluded/decided as under:

The benefit given to the complainants, since FY 2008-09, is much higher from the orders of the Honorable Supreme Court of Pakistan... 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 are already being allowed the benefit at a much higher rate vis a vis the orders of the Honorable Supreme Court of Pakistan.

6. Foregoing in view, the complaint filed by the Complainant, M/s SINCO Steel Re-Rolling Mills Limited, does not merit consideration and is disposed of.


(Rehmatullah Baloch)
Member (Consumer Affairs)

Islamabad, May 06 , 2021.