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National Electric Power Regulatory Authority
Islamic Republic of Pakistan



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Registrar

No. NEPRA/R/D(CAD)/TCD.09/ 6292-93

May 07, 2015

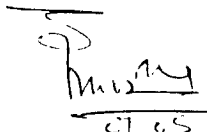
Chief Executive Officer
K-Electric Limited
KE House No. 39-B,
Sunset Boulevard, Phase-II, DHA
Karachi

Subject: **DECISION OF THE AUTHORITY REGARDING MOTION FOR LEAVE FOR REVIEW FILED BY K-ELECTRIC LIMITED AGAINST THE DECISION OF NEPRA IN THE MATTER OF COMPLAINT FILED BY S.M. KALEEM MAKKI, REGARDING DETECTION BILL.**

Reference is made to K-Electric Limited's letter No. GM(RA)/NEPRA/2015/1143 dated 27th February 2015 wherein K-Electric filed Review Motion against the decision of NEPRA dated 28th November 2014 (conveyed vide NEPRA's letter dated 1st December 2014) in the matter of complaint filed by S. M. Kaleem Makki regarding detection bill.

2. Please find enclosed herewith the decision of NEPRA regarding the subject matter for necessary action and compliance within thirty (30) days of receipt of this decision.

Encl:/As above


(Syed Safer Hussain)

Copy to:

Mr. S.M. Kaleem Makki
House No. 36, Street No. 20,
Off Khayaban-e-Mujahid, Phase-V,
DHA, Karachi.



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

Complaint No: KE-97-2014

K- Electric Limited Petitioner
(Formerly, Karachi Electric Supply Company (KESC)
KE House, 39-B, Sunset Boulevard,
DHA-II, Karachi

Versus

S. M. Kaleem Makki Complainant
House No-36, Street No. 20,
Off Khayaban-e-Mujahid, Phase-V
DHA, Karachi.

Date of Decision: 25th March 2015

Present:

- | | | |
|----|-----------------------------|---------------------------|
| 1) | Brig. (Retd) Tariq Saddozai | Chairman |
| 2) | Khawaja Muhammad Naeem | Member (Tariff) |
| 3) | Maj (R) Haroon Rashid | Member (Consumer Affairs) |
| 4) | Mr Humayt Ullah Khan | Member (M&I) |

Subject: **DECISION OF THE AUTHORITY REGARDING MOTION FOR LEAVE FOR REVIEW FILED BY K-ELECTRIC LIMITED AGAINST THE DECISION OF NEPRA IN THE MATTER OF COMPLAINT FILED BY S. M. KALEEM MAKKI REGARDING DETECTION BILL**

DECISION

This decision shall dispose of the review motion dated 27th February 2015 filed by K Electric Limited (hereinafter referred to as the "Petitioner" or "KE") against the decision of NEPRA dated 28th November 2014 in the matter of complaint filed by S. M. Kaleem Makki (hereinafter referred to as the "Complainant") under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.

2 Brief facts of the case are that NEPRA received a complaint dated 18th February 2014 from the Complainant wherein it was stated that KE team visited his premises on 21st August 2013 without any notice and alleged theft of electricity by way of ~~direct~~ connection. KE officials disconnected his electricity supply and upon visiting KE's office for restoration of electricity, a detection bill amounting to Rs. 785,000/- was handed over to him for payment besides regular bill for the month

of August 2013 amounting to Rs. 17,490/-. The Complainant added that owing to medical condition of his wife (who had undergone major surgery), he had no other option but to pay the detection bill. Further, KE coerced him to sign a stamp paper without providing him opportunity to read the contents of the same. The Complainant added that in the next bill for the month of September 2013, there were arrears amounting to Rs. 13,469/- without any reason. Upon approaching KE, he was informed that the previous bill amounting to Rs. 785,000/- was provisional and an additional amount of Rs. 13,469/- is to be paid. The Complainant added that he paid this amount also. The Complainant further stated that KE issued bill for the month of October 2013 amounting to Rs. 40,054/- showing current charges of Rs. 16,874/- and arrears of Rs. 23,179/-. Consequently, the Complainant approached the Provincial Office of Inspection/Electric Inspector Karachi (hereinafter referred to as "POI/EI") and a stay order was obtained. The Complainant prayed that KE be directed to refund the entire exorbitant amount.

3. The matter was taken up with KE for submission of para-wise comments. In response, KE vide letter dated 17th March 2014 reported that a site inspection was carried out at the said premises in the presence of Complainant on August 21, 2013 and the discrepancy of "one phase direct used from underground cable joint" was found with connected load of 24 183 kW. Accordingly, a notice dated 21st August 2013 under sections 39, 39A, 44 & 26A of Electricity Act 1910 was served to the Complainant. Consequently, as per the provisions of Consumer Service Manual (CSM), the electricity of the Complainant was immediately disconnected as it was a case of direct theft and material being used for theft of electricity was removed and preserved as proof of theft. On the next day i.e. 22nd August 2013, KE team was dispatched along with the preserved material of theft to Police station for lodging of FIR and meanwhile the Complainant requested the concerned IBC not to lodge FIR as he is ready to make good the loss occurred to KE. Subsequently, an undertaking was also submitted by the consumer whereby he agreed unconditionally and irrevocably to all the contents of the Site Inspection Report (SIR). KE added that the consumer was charged a detection bill for 46990 units for the period from 10th August 2010 to 12th August 2013 in light of CSM which says that KE shall be authorized to recover its loss by raising a detection bill as per its own procedure in case of direct theft of electricity by registered consumers of KE. The detection bill was charged after fulfilling all the provisions of CSM and FIR was not lodged on the request of the Complainant. KE added that the detection bill charged to the Complainant is justified and liable to be paid by him.

4. The report of KE was forwarded to the Complainant for information and comments. In response, the Complainant raised observations over the report of KE and further stated that he never requested KE for any clemency, however, he was coerced to sign the undertaking. To probe further into the matter, a hearing was held on 5th September 2014 at Karachi which was attended by the representatives of both the parties. During the hearing, the parties advanced arguments on the basis of their earlier versions. The representative of the Complainant provided documents with respect to withdrawal of the complaint from the office of POI/EI and further stated that the Complainant paid unwarranted bills under protest and emphasized that he was coerced by KE's officials into signing the affidavit.

5. The case was examined in detail in light of written/verbal arguments of KE and the Complainant and applicable documents/law. The case was decided by Member (Consumer Affairs) NEPRA vide decision dated 28th November 2014 (conveyed to KE for compliance vide letter dated 1st December 2014), wherein KE was directed to "revise the detection bill from 36 months to 06 months" on the basis of the following:

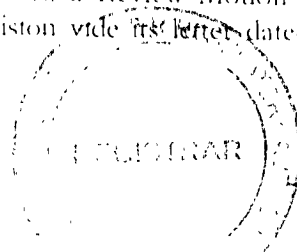
1. As per the report of KE, the premises was inspected on 21st August 2013 and use of direct electricity was suspected through the testing equipment and the Complainant was informed accordingly. KE informed the Complainant that the area underneath the meter is required

to be dug. The Complainant allowed KEI to dig that place. As per KEI, upon digging direct use of one phase was found. KEI also placed a video on record as per which a direct wire was shown from the incoming cable. The Complainant has denied the charges leveled against him by KEI and has informed that KEI dug the place when he went inside the house and later he was called by KEI officials and a wire was shown to him, without having any joint at both ends. KEI disconnected the supply of electric power to the premises on spot without serving any prior notice

- ii. On the basis of alleged theft of electricity through direct wire, KEI charged a detection bill for 46990 units for the period from 10th August 2010 to 12th August 2013 (36 months). The Complainant is of the view that he paid the bill under protest due to medical condition of his wife.
- iii. As per KEI, the material was preserved and KEI's team was dispatched to Police station for lodging of FIR and meanwhile the Complainant requested the concerned IBC not to lodge FIR as he is ready to make good the loss sustained by KEI as a result of theft of electricity. However, KEI failed to substantiate the same by producing evidence to this effect on record. The Complainant has denied submitting any request to KEI officials for clemency.
- iv. As per provisions of CSM, FIR is mandatory in case of direct theft of electricity, whereas neither any FIR was lodged nor the matter was reported to the concerned police station for lodging of FIR by KEI. If the plea of KEI is accepted that the FIR was not lodged because the Complainant submitted an affidavit whereby he agreed unconditionally and irrevocably to all the contents of SIR, the undertaking taken by KEI has no legal justification as the undertaking was signed by the Complainant on 22nd August 2013 on a stamp paper which was issued on 27th June 2013. The stamp paper is also silent with respect to the identity of the person to whom it was issued. This clearly shows that the Complainant was coerced into signing the undertaking.
- v. Evidence on record by KEI is insufficient, to substantiate that the Complainant has committed theft of electricity. As stated above the undertaking signed by the Complainant on 22nd August 2013 was issued on 27th June 2013, from which the Complainant's version appears to be correct that the electricity supply was disconnected and he was forced to sign the paper/undertaking
- vi. There is a minor increase in the consumption pattern of the Complainant after site inspection. The increase in consumption pattern can be on account of various reasons. It could also be due to slowness of previous meter, etc. Even if we accept the plea of KEI, still the units charged by KEI are on higher side i.e. 46990 units charged for 36 months against a domestic connection with sanctioned load of 5 kW. Keeping in view the increase in consumption pattern, KEI was allowed to charge detection bill for 06 months.

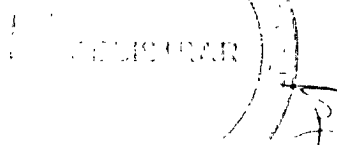
6. Further, it is clarified that if FIR is lodged against a consumer for illegal abstraction of electricity, even then, DISCO cannot charge a detection bill as per its own choice. Upon lodging of FIR, there are two processes, i.e. (1) to initiate criminal proceedings; (2) to recover the loss sustained by the DISCO which can be determined keeping in view the consumer's billing record/previous consumption data

7. Being aggrieved with the impugned decision, KEI filed a Review Motion under NIEPRA (Review Procedure) Regulations, 2009 against the said decision vide its letter dated 27th February 2015. The main contents of the Review Motion are as under:



- i. With regards to disconnection without notice, the Complainant's statement is completely denied as notice was served to him before site inspection which was duly acknowledged by him. The same can also be verified from the video (enclosed therein) which shows presence of the Complainant during site inspection and digging of the ground, as discrepancy was linked to the underground cable. The video also shows that theft was being conducted through joint in underground cable.
- ii. The statement of the Complainant that he paid the bill under protest is denied, as he was found involved in direct theft; in order to avoid legal complications, he requested KEI not to lodge an FIR as he is ready to make good the loss incurred by KEI. On the request of the Complainant, KEI did not lodge FIR and he also signed an undertaking wherein he agreed and paid the bill accordingly. Moreover, the alleged theft was proved and same can be verified through the video, SIR and the undertaking.
- iii. With regards to non-provision of any documentary evidence w.r.t. lodging of FIR, it is clarified that KEI was in the process of lodging an FIR and team was also dispatched with preserved theft material to the police station. However, FIR was not lodged upon Complainant's request. The undertaking is the evidence of consumer's plea to KEI for not lodging FIR against him.
- iv. With regard to NEPRA's query regarding legal value of the undertaking, it was submitted that if the undertaking meets the ingredients of a contract, then it is binding on the parties executing it. Even otherwise, an undertaking can be enforced in favor of the beneficiary thereof. The undertaking agreed by the Complainant was a guarantee to KEI's satisfaction as per Clause 3 of NEPRA Consumer Eligibility Criteria, 2003, and hence, the same is legally justified.
- v. The evidences in the form of video/SIR/undertaking/photos are live proof of theft being conducted through joint in underground cable by the Complainant and the same corroborates with the version of KEI. As far as the stamp paper/undertaking is concerned, the same is a legal document and was in force when it was signed by the Complainant. Further, the Complainant's version regarding forceful signing of the undertaking is completely denied, as he willingly signed the papers and no such evidence is available with the consumer showing that he signed the papers under protest and compulsion. The Complainant should have mentioned in the undertaking that he is signing the same under protest. As the consumer was found involved in direct theft of electricity, therefore, KEI through the rights vested in it by virtue of NEPRA Act and CSM, was fully authorized to disconnect the premises of the Complainant.
- vi. With regards to units charged by KEI allegedly being on higher side, it is clarified that as per Chapter 9 of CSM, in case of direct theft KEI shall be authorized to recover its loss by raising a detection bill as per its own procedure. During site inspection dated 21st August 2013, discrepancy of 'one phase direct used from underground cable joint' was revealed; therefore, KEI charged the consumer from the month of decrease in consumption as per the procedure. As far as NEPRA's finding that there is no big difference in consumption after detection of theft is concerned, it is informed that consumers who are detected with theft tend to control consumption in order to support their baseless plea before any forum.
- vii. NEPRA's decision to revise the detection bill even after admission by the Complainant regarding theft of electricity would set an un-healthy precedent, as it would further

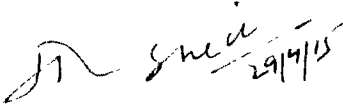
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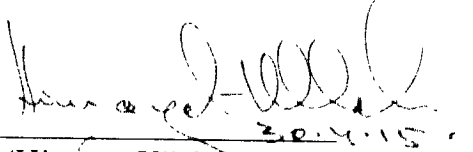


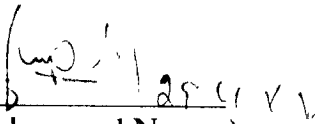
encourage the already burgeoning electricity theft in the society. The decision of Member (Consumer Affairs) may be reconsidered / reviewed in the interest of justice and the detection bill against the Complainant be condoned and accepted as binding on the Complainant in light of his admission of theft of electricity.


viii. KE may be given an opportunity of presenting its viewpoint regarding the right of appeal against the decision of Single Member as per Section 12-A of the NEPRA Act, 1997 before the Authority


8 The Authority, after detailed deliberations on the review motion filed by KE, decided that in terms of Regulation 3(2) of NEPRA (Review Procedure) Regulations, 2009, a motion seeking review of any order of the Authority is competent only upon discovery of new and important matter of evidence or on account of some mistake or error apparent on the face of record. The perusal of the decision sought to be reviewed clearly indicates that all material facts and representations made were examined in detail and there is neither any occasion to amend the impugned decision nor any error inviting indulgence as admissible in law has been pleaded out. Therefore, the Authority is convinced that the review would not result in the withdrawal or modification of the impugned decision. Hence, the motion for review is declined.


(Maj (Retd.) Haroon Rashid)
Member


(Himayat Ullah Khan)
Member


(Khawaja Muhammad Naem)
Member


(Brig (Retd.) Tariq Saddozai)
Chairman


P. Naem
07.05.15