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No. NEPRA/DG(M&E)/LAD-01/ 6773

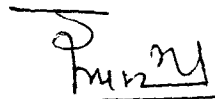
April 19, 2019

Chief Executive Officer
K-Electric Limited (KEL)
KE House, Punjab Chowrangi,
39 – B, Sunset Boulevard, Phase-II
Defence Housing Authority
Karachi.

Subject: **ORDER OF THE AUTHORITY IN THE MATTER OF REVIEW
PETITION FILED BY M/S K-ELECTRIC LIMITED (KEL) UNDER
RULE 5 (1) OF THE NEPRA (FINES) RULES, 2002 AGAINST THE
DECISION OF THE AUTHORITY DATED OCTOBER 30, 2018**

Enclosed please find herewith subject order dated 19.04.2019 (08 Pages) passed by the Authority in the matter of Review Petition filed by M/s. K-Electric Limited (KEL) under Rule 5 (1) of the NEPRA (Fines) Rules, 2002 against the Authority's decision dated 30.10.2018.

Encl: As above


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(Syed Safeer Hussain)

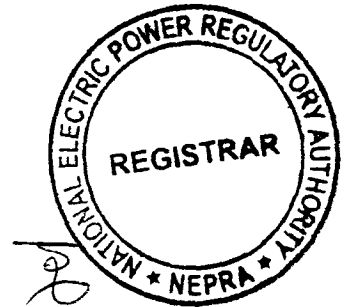


BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

M/s K-Electric Limited Petitioner
KE House, Punjab Chowrangi,
39-B, Sunset Boulevard, Phase-II,
Defence Housing Authority,
Karachi.

Date of Hearing: January 16, 2019

Date of Order: 19th April, 2019



On Behalf of
Petitioner:

(i)	Mr. Ayaz Jaffar	Director (Finance & Regulations)
(ii)	Mr. Arshad Iftikhar	Regional Head (Distribution)
(ii)	Barrister Asghar	Legal Counsel

ORDER IN THE MATTER OF REVIEW FILED BY M/S K-ELECTRIC LIMITED (KEL) UNDER RULE 5 OF THE NEPRA (FINES) RULES 2002 AGAINST THE DECISION OF THE AUTHORITY DATED 30.10.2018.

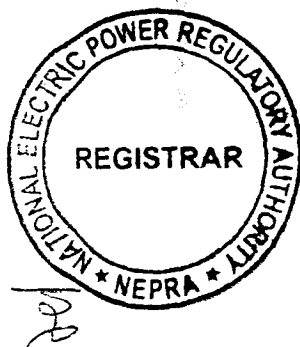
ORDER

1. This Order shall dispose of the review proceedings initiated in the matter of review petition filed by the K-Electric Limited (hereinafter referred to as the "**Licensee**") under Rule 5 of the National Electric Power Regulatory Authority (Fines) Rules, 2002 (hereinafter referred to as the "**Fine Rules**") against the decision of the Authority dated October 30, 2018 (the "Impugned Order"), for non-compliance of the Performance Standards (Distribution) Rules, 2005 (hereinafter referred to as the "**Performance Standards**"), and other Applicable Documents.

2. Brief facts of the case are that the Licensee was granted a distribution license (No. 09/DL/2003) by the National Electric Power Regulatory Authority (NEPRA) on 21.07.2003 in terms of section 20 read with 21 and 25 of the NEPRA Act, 1997 ("Act"). The Licensee is obligated to comply with performance standards prescribed under Act read with Rules, Regulations and other applicable documents.

Background:

3. According to the media reports, large area of Karachi remained without electricity due to tripping of almost 700 feeders during rainy weather on 28.06.2017 and onwards, which resulted in long power supply outage ranging from 24 hours to 48 hours in almost 50% of Karachi. Further, fatal injuries to public were also reported due to electrocution. The Authority took notice of above situation in Karachi and directed the Licensee vide letter dated 30.06.2017 to immediately provide a detailed report on feeder tripping and electrocution incidents which occurred during abovementioned spell of rain along with preventive and corrective steps taken by the Licensee.
4. In response, the Licensee vide its letter dated 04.07.2017 submitted a report. The salient points of the report are as under;

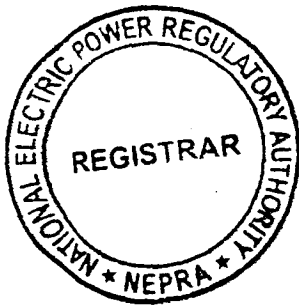


- a. KE denied that almost 50% of the city was facing a power outage or 700 feeders were tripped during June 28-29, 2017. There were temporary electricity supply disruptions due to monsoon rains in Karachi which were exaggerated in the media in order to sensationalize the issue. The period in question does not reflect the normal working conditions due to abnormal flooding and traffic jams, clogging of sewerage lines, water drains etc. across the city, which posed challenges in restoration activities. The city faced heavy rain fall in two days, i.e. 30mm rain on first day and around 60mm on second day and as a result, the city government declared an emergency in the city. However, despite all challenges, KE teams worked round the clock and coordinated with respective civic agencies (KMC, Cantonment Board etc.) to ensure early restoration of power supply in the affected areas.
- b. KE further stated that due to well-coordinated efforts with other department, KE swiftly normalized the affected feeders on June 28 & 29, 2017. However, small pockets in different areas of the city faced slightly longer outages due to localized faults or abnormal conditions which affected the distribution network and more so the underground cables. KE also submitted the feeder tripping status in 2016 & 2017 for June 28. The same is as under;

Day	2016			2017		
	Feeders	Tripped	% tripping	Feeders	Tripped	% Tripping
28 th June	1524	810	53%	1653	584	35%

In addition to above, KE teams and management worked 24 hours to ensure supply and restoration of power in timely manner.

- c. KE has further mentioned that Karachi received monsoon rains on 28th & 29th June, 2017 much greater than in previous year. The detailed data as per MET office (in mm) is as under;



In 2017: North Karachi 62, Saddar 59, Faisal base 56, Nazimabad 51, Gulshan e Hadid 49, Model Observatory 39, Landhi 22. While in 2016: the city received an average of over 30mm of rain, including 25mm in Nazimabad, 43mm in the Airport and Pehlwan Goth areas, 15mm at Faisal Base and Landhi.

Anticipating the forthcoming rains, additional technical staff was assigned to meet turnaround time for complaints and ensure swift response within time. Further, crisis management team was activated to monitor on-ground situation and ensure any crisis is dealt as soon as possible. Even, the supply chain/material management teams were engaged pre-emptively to have sufficient stock of most required materials as well.

- d. As far as safety of the public is concerned, it is aptly put forward that KE being a socially responsible organization is committed to high standards of public safety, especially in rainy season. Public safety under the jurisdiction of KE network is of paramount importance both from the point of view of customer centric policy of the company and to abide by the NEPRA Power Safety Code 2014. KE in view of its policy as well as ensuring compliance with all applicable legal requirements, follows good electrical utility work practices in order to ensure safety of the public.
 - e. One fatality was reported at KE's complaint centres. Upon investigation of public electrocution cases reported by media, three instances were confirmed out of six reported by media.
5. The Authority examined the aforementioned response of the Licensee and observed that the reply of the Licensee is not satisfactory. Therefore, the Authority decided to issue an Explanation to the Licensee under NEPRA Fine Rules 2002 (the "Fine Rules") for non-compliance of the relevant provisions of Performance Standards.

Explanation

6. Accordingly, an Explanation dated 31.08.2017 was issued to the Licensee under Rule 4(1) and (2) of the Fine Rules. Salient parts of the Explanation are as under:
3. *WHEREAS according to the media reports, large area of Karachi remained without electricity due to tripping of almost 700 feeders during rainy weather on 28.06.2017 and onwards, which resulted in long power supply outage ranging from 24 hours to 48 hours in almost 50% of Karachi; and*
 4. *WHEREAS fatal accidents to public due to electrocution were reported in media as 6 on 26.06.2017, 11 on 29.06.2017 and 05 on 30.06.2017; and*
 5. *WHEREAS the Authority took serious note of above situation in Karachi and directed the Licensee vide letter dated 30.06.2017 to immediately provide a detailed report on feeder tripping and electrocution incidents which occurred during the abovementioned spell of rain along with preventive and corrective steps taken by the Licensee and;*
 6. *WHEREAS, the Licensee submitted its response vide letter dated 04.07.2017 and reported tripping of 584 feeders which reveals that the licensee has failed to ensure supply of electricity as prescribed under Guaranteed Standards of Maximum Number of Unplanned Long Duration Power Supply Interruptions and therefore is, prima facie, in violation of Rule 3 (b) of the Performance Standards (Distribution) Rules, 2005;*
 7. *WHEREAS the Licensee has failed to provide information regarding duration of interruptions against the alleged duration of 24 hours to 48 hours during the rain spell as mentioned in para 3 above. Therefore, the Licensee has failed to provide the*

requisite information and is in violation of article 15 of its license read with rule 20 of NEPRA Licensing (Distribution) Rules 1999 and section 44 of the NEPRA Act. Moreover, such long duration of unplanned power supply interruptions as reported in media (24 hours to 48 hours) is in violation of Guaranteed Standards of Restoration following Unplanned Long Duration Power Supply Interruptions as provided in Rule 3 (a) of the Performance Standards (Distribution) Rules, 2005; and

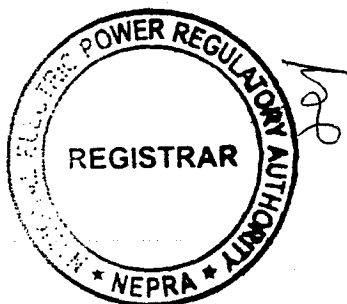
8. *WHEREAS against the 22 fatal accidents as reported in the media, the Licensee has submitted only 3 public fatalities during the rain spell and has failed to provide any satisfactory response. Therefore, the Licensee is, prima facie, in violation of Rule 4 (g) (iii) of the Performance Standard (Distribution) Rules, 2005; and*
7. The Licensee vide its letter dated 19.09.2017 submitted its response to the above mentioned Explanation. The Authority considered the response of the Licensee and accepted the request to provide an opportunity of hearing under Rule 4(5) of the Fine Rules. Accordingly, hearing in the matter was held on 12.12.2017.

Hearing

8. The Authority considered the submissions made by the Licensee during hearing and directed the Licensee's representatives to provide authentic data and documentary evidence through automated means such as SCADA System. Accordingly, a letter followed by a reminder was also sent to Licensee on 15.12.2017 and 02.01.2018 respectively. However, the Licensee failed to provide the same and submitted that presently AMR system is not used for recording of operational outages.
9. The Authority considered the submissions and after detailed deliberations observed that the Licensee has submitted justified explanation to the extent of para 6 of the Explanation with respect to Maximum Number of Unplanned Long Duration Power Supply Interruptions – Rule 3 (b) of Performance Standard Rules and accordingly, the Authority accepted it. Whereas, the Licensee has not submitted satisfactory explanation to the allegations mentioned at para 7 and 8 of the Explanation, therefore, the Authority decided to issue Show Cause Notice on the allegations of non-compliance with Rule 3 (3) (a) – Restoration of Power Supply within prescribed time frame and Rule 4 (g) – Safety of Performance Standard Rules.

Show Cause Notice:

10. Accordingly, a Show Cause Notice No. 7395 dated 08.05.2018 was issued to the Licensee under Rule 4 (8) of the Fine Rules. The Licensee submitted its reply to the Show Cause Notice on 25.05.2018. A hearing in the matter was scheduled on 08.08.2018, wherein representatives of the Licensee made submissions and arguments. The Authority considered the submissions of the Licensee and observed that the Licensee has violated Rule 3 (3) (a) of Performance Standards Rules by failing to restore the power supply within the time frame and Rule 4 (g) (iii) of Performance Standards Rules by failing to ensure the safety of public and a fine of Rs. 2 million was imposed on the Licensee vide order dated 30.10.2018.



Review Petition:

11. The Licensee filed a review petition on 06.11.2018, under Rule 5 of the Fine Rules against the Impugned Order of the Authority dated 30.10.2018. A summary of grounds taken in the review petition is given as under;

a. *That the NEPRA Authority has not considered the request of the force majeure tendered by the KE under Rule 2 (d) of the PSDR 2005 read with Rule 10 of the PSDR 2005 which has materially prejudiced KE through the absolute application Guaranteed Standard 1- (Unplanned Power Supply Interruptions) without making prior determination of the force majeure claim despite KE intimating the same to the NEPRA Authority, within the prescribed time.*

b. *Please be advised that KE's through its letter dated June 30, 2017 informed NEPRA in advance about the occurrence of likely emergency situation in Karachi as per the alert issued by National Disaster and Management Authority (NDMA) along with imposition of rain emergency by Karachi Municipal Corporation (KMC) and requested NEPRA Authority not to construe delays and or penalize the delays in restoration of power supply due to prevalence of exceptional circumstances which are permitted under the head of force majeure under the PSDR 2005.*

c. *KE has justified the delay due to the ground realities of these 3 feeders in detail. 2 of these feeders include Cast Iron and Amin Mazda are industrial feeders, restoration of power to which was delayed due to the following reasons:*

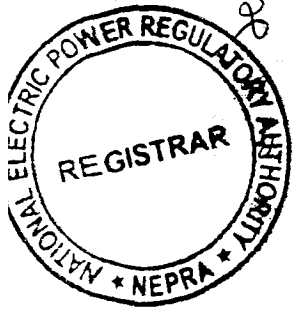
- *Access issues with roads blocked with water, rubbish and debris; and*
- *Rain water remained accumulated for many days due to the low-lying area*

Further, the third feeder (Michael Academy) supplies electricity to the northern outskirts of the city i.e. parts of Surjani and delay was caused due to:

- *Absence of movement & access; roads leading to this area were blocked due to water accumulation, rubbish and debris resulting in area becoming isolated;*
- *Further aggravated by under construction Green line bus project; and*
- *Unplanned kunda infested area with strong political influences*

e. *Additionally, during the hearing dated August 08, 2018 NEPRA Authority was duly apprised in detail through a video regarding the condition of the area which hindered KE's operation to restore power. Various pictorial illustrations and newspaper clippings were submitted to NEPRA during the hearings and through KE's letter dated September 19, 2017 (enclosed as Annexure A-1). However, NEPRA has just reiterated its observation from Explanation and Show Cause Notice and did not provide any specific reasons/ supports for rejecting KE's justification of the delay. Accordingly, observation of NEPRA is without any basis and hence shall be withdrawn.*

f. *NEPRA Authority requested for information and documentary evidence for feeder tripping from automated means such as SCADA system through its letters dated December 15, 2017 and January 02, 2018. In response, KE provided complete details of the tripping as requested by NEPRA through its letter dated January 05, 2018 and also informed NEPRA Authority about the current limitations of Automated Metering Infrastructure (AMI) system for recording of operational outages and future Meter Data Management (MDM) role out plan. In this regard, a hearing was held by NEPRA Authority on April 17, 2018 where KE in detail explained current AMI system and its future roll out plan after which NEPRA is being updated on the progress of KE's AMI program on a monthly basis. It is pertinent to note that KE is recording its operational outages through its internal system and is not required by law or any applicable document to record such outages through SCADA system in this regard, it is pertinent to mention that NEPRA never raised any objection on the*



submissions of KE through its Show Cause Notice or during the hearings and did not ask KE to further substantiate its claim through additional documents.

- g. NEPRA Authority has mentioned that 6 fatalities are being reported in NDMA report submitted by KE whereas KE investigation limits total fatalities to only 3. In this regard, please be informed that fatalities reported in NDMA report relates to the entire province of Sindh for period of 20 days (June 26, 2017 to July 15, 2017) while KE's investigation is limited to its Service Territory for a period of 5 days (June 26, 2017 to June 30, 2017) as NEPRA reported media fatalities for these 5 days only. Further, the deaths mentioned in the report may have been caused due to multiple reasons such as road accidents, slipping into manholes etc. and not just limited to electrocution.*
- h. Please be advised that maintenance of distribution system cannot be primarily linked with fatalities as the potential hazard of electrocution increases during the rainy season due to other reasons not limited to lack of proper drainage system resulting in accumulation of water on roads, pervasive kunda wires, electrocution of accumulated water through underground kundas and lack of safety measures taken by the victims while handling switch boards and appliances within their own premises.*

Hearing:

12. A hearing in the matter was scheduled on 16.01.2019. During hearing, the Licensee made following submissions;

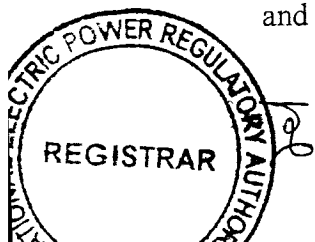
- a. It is agreed that around 700 feeders were tripped due to heavy rain on 28.06.2017 and after hectic efforts, all the feeders were restored within prescribed time except three (03). One is domestic feeder of Surjani Town and two are industrial of site area.*
- b. The delay in restoration of these three (03) feeders was occurred due to flooding situation and ongoing work of green line bus project, which resulted in limited access and restriction of vehicle movement.*
- c. Regarding provision of authentic data, it was already submitted to NEPRA that plan related to AMR with Meter Data Management (MDM) is being roll out and will be finalized in June, 2019. Currently, NSIS is being used for sharing the data with NEPRA.*
- d. Regarding number of fatalities, media exaggerated the situation, however, after thorough survey, three (03) number of fatalities were recorded in KE's jurisdiction. Out of these three (03), one was occurred due to work on internal house wiring. Second was the resident of VHL area and trying to infest underground kunda through LL area. The 3rd one was happened somehow due to KE's system, but again, conductor was broken due to kunda connections.*
- e. Legal representative stated that KE has been charged due to breach of Guaranteed Standard 1 – Rule 3 (3) (a) of PSDR 2005. In this regard, it is submitted that KE already applied for exemption of this Standard because of Force Majeure condition as there were abnormal conditions as technical professional briefed the Authority. So without giving any finding on that KE's application, the Authority cannot apply Guaranteed Standard 1 and then impose a fine on it. Secondly, Guaranteed Standard 3 prescribes restoration limits on annual basis and SAIFI & SAIDI are also calculated annually. Therefore, it has to be read in totality and the Authority cannot impose fine by only applying Guaranteed Standard 1.*



13. With respect to the submission of legal counsel as given at para 12 (e) above, a clarification was sought from Licensee vide letter dated 04.02.2019, which was replied by the Licensee on 07.02.2018.

Analysis/Findings:

14. With respect to the restoration of power supply, the Licensee in its review petition has repeated its earlier stance as was submitted during Explanation and Show Cause Notice that by doing hectic efforts, all feeders were restored within the prescribed time frame except three (03) feeders. Two (02) feeders including Cast Iron and Amin Mazda, where, restoration was delayed due to access issues with roads blocked with water, rubbish, debris and rain water remained accumulated for many days due to low-lying area. The third feeder (Michael Academy) supplies electricity to the northern outskirts of the city and delay was caused due to absence of movement & access, blocked roads, construction of green line bus project and Kunda infested area with strong political influences. In this regard, the Authority observes that the Licensee has itself admitted that three (03) feeders on 28th June, 2017 could not be restored within the time prescribed in Performance Standards Rules, however, the Licensee has failed to justify such delay with any cogent reason. The reasons such as access and movement issues and blockage of roads with water as given by the Licensee are baseless. Such situation was in whole Karachi because of rain and not only in the areas of these three feeders. Moreover, the Licensee could not substantiate its claim to normalize tripping within prescribed time limit despite direction of the Authority to provide documentary evidence through automated means such as SCADA system. In view of foregoing, the Authority is constrained to believe that the Licensee is in contravention of Rule 3 (3) (a) of Performance Standards Rules.
15. With respect to fatal accidents occurred due to electrocution, the Licensee has repeated the same instance as was given in its response against Explanation and Show Cause that 22 fatalities reported by media during 28.06.2017 and onwards were investigated and only three (03) fatalities were confirmed. Further, the Licensee has submitted that six (06) fatalities were reported in NDMA report which relates to entire province of Sindh for period of 20 days. The Licensee has also submitted that these fatalities were occurred due to victim's own fault as they were involved in infesting kundas. The Authority has considered the submissions of the Licensee and observes that there is no cogent evidence placed on record regarding exact number of fatalities. The investigation conducted by the Licensee reveals 03 fatalities whereas this number extends to 06 according to NDMA report. Further, the argument of the Licensee that the fatalities occurred due to kunda connections is baseless. It is the sole responsibility of the Licensee that it up-grades and maintains its network in such a manner that it cannot be accessed for kunda purpose. The Authority further observes with concern that people have been electrocuted and died due to poor maintenance of distribution network by the Licensee. The Authority is also of the view that every single human life matters and there is no tolerance for loss of even single life. For such unsafe conditions of distribution network, the Licensee is held liable for failure to ensure safety for public and is in violation of Rule 4 (g) (iii) of Performance Standards Rules.





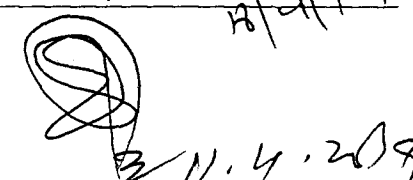
16. During hearing in the matter of review petition, Licensee's legal counsel raised objection that force majeure request has been made for exemption of Rule 3 (3) (a) of Performance Standards Rules and Authority may give its finding on such request before concluding these proceedings. In this regard, the Licensee was asked to substantiate its claim and submit a copy of such request for force majeure made to the Authority (if any). In response, the Licensee has referred to a review filed against NEPRA's decision dated 01.08.2017. The Authority has considered the response and observes that the Licensee is referring to the events of power breakdowns in Karachi in the months of May & June, 2017. For such events of power breakdowns the Licensee requested for Force Majeure vide its letter dated 22.05.2017 and the same was rejected by the Authority through the decision communicated on 01.08.2017. However, the issue at hand relates to breakdown on 28th June, 2017 for which, there is no such request of Force Majeure claim filed by the Licensee. Therefore, the argument of the Licensee is misleading and baseless.
17. After reviewing all relevant documents and applicable law, and considering the arguments of the Licensee, the Authority finds that the Licensee has not provided sufficient or plausible ground that would result in the decision of the Authority, dated 30.10.2018, to be reversed or altered. The review filed by the Licensee, vide letter dated 06.11.2018, is hereby rejected. The Authority upholds its earlier order dated 30.10.2018, and the Licensee is directed to pay the fine Rs. 2 million within fifteen (15) days of the issuance of this order.

Authority

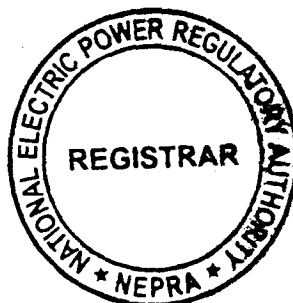
Saif Ullah Chattha
Member (M&E/Tariff)

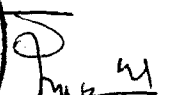
Rafique Ahmed Shaikh
Member (Lic)

Rehmatullah Baloch
VC/Member (CA)


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Dated: 19th April, 2019






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