



Before the Appellate Board  
National Electric Power Regulatory Authority  
(NEPRA)  
Islamic Republic of Pakistan

NEPRA Office , Atta Turk Avenue (East), G5/1, Islamabad  
Tel. No. +92 051 2013200 Fax No. +92 051 2600030  
Website: [www.nepra.org.pk](http://www.nepra.org.pk) E-mail: [office@nepra.org.pk](mailto:office@nepra.org.pk)

No. NEPRA/AB/Appeal-028/POI-2016/1252 — 1256

September 26, 2016

1. M/s Bawany Air Products Limited,  
16-C, 2<sup>nd</sup> Floor,  
Nadir House I.I,  
Chundrigar Road, Karachi
2. The Chief Executive Officer,  
K-Electric,  
KE House, 39-B,  
Sunset Boulevard, DHA-II,  
Karachi
3. Asif Shajer,  
Deputy General Manager,  
K-Electric, KE House, 39-B,  
Sunset Boulevard, DHA-II,  
Karachi
4. Ms. Tatheera Fatima,  
Deputy General Manager,  
K-Electric Ltd,  
3<sup>rd</sup> floor, KE Block,  
Civic Centre, Gulshan-e-Iqbal,  
Karachi
5. Provincial Office of Inspection/Electric Inspector,  
Hub Region, Government of Balochistan,  
Irrigation & Power Department,  
Sakram Road, Hub, District Lasbela

Subject: **Appeal Titled K-Electric Ltd Vs. M/s Bawany Air Products Limited Against the Decision Dated 28.11.2011 of the Electric Inspector/POI to Government of the Balochistan Hub Region, Hub, District Lasbela**

Please find enclosed herewith the decision of the Appellate Board dated 23.09.2016, regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**

No. NEPRA/AB/Appeal-028/POI-2016/1257  
Forwarded for information please.

(Ikram Shakeel)

September 26, 2016

Assistant Director  
Appellate Board

1. Registrar
2. Director (CAD)

CC:

1. Member (CA)



# National Electric Power Regulatory Authority

## Before Appellate Board

In the matter of

### Appeal No. NEPRA/Appeal-028/POI-2016

K-Electric Ltd

.....Appellant

Versus

M/s. Bawani Air Products Ltd, Khasra No. 52/53,

RCD Highway, Mouza Pathra, Tehsil Hub, District Lasbela, Balochistan .....Respondent

#### For the appellant:

Ms. Tathcra Fatima Deputy General Manager (Distribution Legal)

Mr. Raza Hassan Deputy General Manager

Mr. Masahib Ali Deputy Manager

Mr. Imran Hanif Assistant Manager

#### For the respondent:

Syed Mudasser Hussain Zaidi Advocate

Mr. Muhammad Ahmed

### DECISION

1. Through this decision, an appeal filed by K-Electric Limited (hereinafter referred to as K-Electric) against the decision dated 28.11.2011 of Provincial Office of Inspection/Electric Inspector, Hub Region, Hub(hereinafter referred to as POI) is being disposed of.
2. K-Electric is a licensee of National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license and the respondent is its industrial consumer bearing Ref No.BH-000260 with a sanctioned load of 2,400 kW under B-3 TOD tariff. As per fact of the case, K-Electric issued a notice dated 29.04.2011 regarding undercharging of the MDI (kW) to the respondent and simultaneously included an irregular bill amounting to Rs. 1,754,503/-for the period July 2009 to October 2009 in the bill for April 2011.



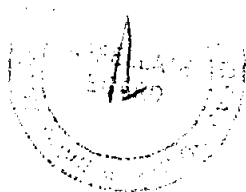


## National Electric Power Regulatory Authority

3. Being aggrieved with the above mentioned irregular bill, the respondent filed a petition before POI on 12.05.2011 and agitated the bill for April 2011 and subsequently the bill for May 2011 was also challenged. The petition was disposed of by POI vide its decision dated 28.11.2011 with the following conclusion:

*"In view of above findings this authority is pleased to direct that; 1. KESC should adjust 150656 K1 Units in the future bills of the consumer. 2. KESC should adjust 17442 P1 Units in the future bills of the consumer. 3. KESC should adjust 940 kW's MDI in the future bill of the consumer. 4. RSS for April 2009 amounting to Rs.33280.65 debited by KESC into the Consumer's Account is hereby validated. 5. KESC should withdraw RSS for October 2009 amounting to Rs.1421681.82. 6. KESC should reverse the amount of Rs.489273.13 towards LPS unlawfully recovered from the consumer. 7. KESC should recall the Notice dated 29.04.2011 and avoid issuance of such unlawful and unwarranted notices to the consumers. 8. To avoid controversies of the sort in future, KESC should promptly incorporate the change of CTs/Meters in the bills of consumers."*

5. Being dissatisfied with the decision of POI dated 28.11.2011 (hereinafter referred to as the impugned decision), K-Electric has filed the instant appeal under section 38 (3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as the NEPRA Act 1997).
6. The respondent was issued a notice for filing reply/parawise comments of the appeal, which were filed on 19.08.2016. In his reply/parawise comments, the respondent raised the preliminary objection regarding limitation. The respondent inter alia, contended that pursuant to section 38(3) of NEPRA Act 1997, an appeal against the impugned decision of POI shall be filed within 30 days of its receipt but the appellant K-Electric failed to do so and therefore the appeal is liable to be dismissed on this ground alone. The respondent further submitted that the version of K-Electric regarding filing the appeal before Secretary Irrigation, Government of Balochistan was incorrect as it was categorically denied by the concerned forum that no such appeal was ever filed with the Government of Balochistan.





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7. Notice of the appeal was issued to both the parties and the appeal was heard in Karachi on 19.08.2016 in which both the parties were present. Syed Mudasser Hussain Zaidi advocate appearing for the respondent raised the preliminary objection regarding the limitation and in this regard reiterated grounds of respondent's parawise comments/reply. According to the learned counsel for the respondent, the appeal against the impugned decision dated 28.11.2011 was filed before NEPRA on 02.02.2016 after a lapse of more than four years and as such it was liable to be dismissed on the ground of limitation. Ms. Tatheera Fatima Deputy General Manager (Distribution Legal) the learned representative for K-Electric contended that the impugned decision was pronounced by Electric Inspector on 28.11.2011, which was received by K-Electric on 07.12.2011 and the appeal against the impugned decision was filed before Secretary Irrigation, Government of Balochistan vide TCS: 306007487295 dated 13.12.2011. K-Electric averred that the impugned decision was rendered by officer as Electric Inspector and as such the appeal was competent before Secretary Irrigation, Government of Balochistan, which is filed within period 90 days pursuant to section 26(6) of Electricity Act 1910. Representative of K-Electric stated that it was advised by the said forum vide its letter No. ED/SO (Admin) 3-12/2015/21-24 dated 05.01.2016 for filing a fresh appeal before NEPRA. As per K-Electric, the appeal was accordingly filed before NEPRA within 30 days of direction of Government of Balochistan and as such it was within the time limit of 30 days as prescribed in the law and may be decided on merits.
8. Arguments of both the parties were heard and the record placed before us was examined. Following are our observations:
- i. Petition was filed by the respondent against the incorrect billing before POI on 12.05.2011, which was decided by POI vide the impugned decision dated 28.11.2011 and received by K-Electric on 07.12.2011.
  - ii. Appeal was to be preferred before NEPRA, pursuant to section 38(3) of NEPRA Act 1997. As such there is no force in the contention of K-Electric that the appeal was filed before Government of Balochistan within 90 days of its receipt under section 26(6) of Electricity Act 1910 as the decision was pronounced by Electric Inspector and not POI. However for the sake of argument, if the appeal was to be filed before Government of





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Balochistan but K-Electric failed to produce concrete proof that any such appeal was filed before Government of Balochistan. We are not inclined to agree with the contention of K-Electric that the appeal against the impugned decision was filed before the Secretary Irrigation Government of Balochistan on 13.12.2011 as that honorable forum has denied the receipt of any such appeal filed by K-Electric and moreover K-Electric failed to produce any concrete proof in this regard.

- iii. Section 38(3) of NEPRA Act 1997, which provides the period for filing the appeal against the decision of POI is reproduced below for the sake of convenience.

**38(3). Provincial offices of inspection.**

*Any person aggrieved by any decision or order of the Provincial Office of Inspection may, within thirty days of the receipt of the order, prefer an appeal to the Authority in the prescribed manner and the Authority shall decide such appeal within sixty days.*

The appeal against the impugned decision dated 28.11.2011 was filed before NEPRA on 02.02.2016 after a delay of more than four years after its receipt on 07.12.2011. K-Electric failed to provide any cogent reason for filing of the appeal after the time limit as prescribed in the law. We are in agreement with the contention of the respondent that the appeal is time barred and liable to be dismissed on this ground alone.

9. In view of position as narrated in the preceding paragraph, it is concluded that the appeal is barred by time and therefore dismissed accordingly.

Muhammad Qamar-uz-Zaman  
Member

Muhammad Shafique  
Member

Nadir Ali Khoso  
Convener

Date: 23.09.2016

