



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

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No. NEPRA/AB/Appeal-050/POI-2016/ 1428-1433

November 11, 2016

1. Shahid Hafeez Khawaja,
S/o Abdul Hafeez Khawaja,
R/o House No. D-60,
Block-8, Gulistan-e-Iqbal,
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. Tathcra Fatima,
Deputy General Manager,
K-Electric Ltd,
3rd floor, KE Block,
Civic Centre, Gulshan-e-Iqbal,
Karachi
5. Syed Saleem Ahmed,
Advocate,
401, 4th Floor, Uni Centre,
Abdullah Haroon Road,
Saddar, Karachi
6. Electric Inspector,
Karachi Region-II,
Block No. 51, Pak Secretariat,
Shahra-e-Iraq, Saddar,
Karachi

Subject: Appeal Titled K-Electric Ltd Vs. Shahid Hafeez Against the Decision Dated 29.01.2016 of the Electric Inspector/POI to Government of the Sindh Karachi Region-I, Karachi

Please find enclosed herewith the decision of the Appellate Board dated 10.11.2016, regarding the subject matter, for information and necessary action accordingly.

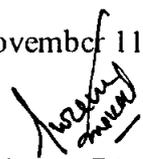
Encl: As Above

(Ikram Shakeel)

No. NEPRA/AB/Appeal-050/POI-2016/ 1434

November 11, 2016

Forwarded for information please.


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-050/2016

K-Electric Ltd

.....Appellant

Versus

Shahid Hafeez Khawaja Plot No.D-60, Block-8, Gulshan-e-Iqbal, Karachi

.....Respondent

For the appellant:

Ms. Tatheera Fatima Deputy General Manager (Legal Distribution)
Mr. Muhammad Rizwan Deputy General Manager
Mr. Masahib Ali Deputy Manager

For the respondent:

Syed Saleem Ahmed advocate

DECISION

1. This decision shall dispose of the appeal filed by K-Electric against the decision dated 29.01.2016 of Provincial Office of Inspection/Electric Inspector, Karachi Region-I, Karachi (hereinafter referred to as POI).
2. Brief facts of the case are that the respondent is a domestic consumer of K-Electric bearing Ref No. AL-930087 having sanctioned load of 5 kW and governed the tariff under A1-R. The respondent had rented out the premises to a tenant, who defaulted in payment of electricity bills. According to version of the respondent, he received a bill of Rs. 615,800/-, which in the opinion of the respondent was excessive. On enquiry by the respondent, it was informed by K-Electric that said bill included adjustment bill of Rs. 13,348/- for the period 01.07.2009 to 31.03.2010 (9 months) and first detection bill of Rs. 24,498/- for 1,671 units for the period 09.03.2010 to 08.09.2010 (6 months) charged to the respondent on 27.10.2010. However a settlement was reached between both the parties (which according to the respondent version was under coercion)





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for payment of arrears of Rs. 5,000/- along with every current monthly electricity bill. As a security, the respondent handed over three cheques to K-Electric amounting to Rs. 200,000/-, Rs. 200,000/- and Rs. 216,400/- respectively. Somehow the settlement between both the parties was not implemented and being aggrieved, the respondent filed a petition CP No. D-3756/2011 before High Court of Sindh, Karachi. During the pendency of case before honorable High Court of Sindh, K-Electric inspected the premises of the respondent on 11.06.2013 and allegedly the respondent was found stealing electricity through an underground cable used for an extra phase. Moreover as per K-Electric, the connected load was also noticed as 22.873 kW, which was much higher than the sanctioned load. A notice was issued to the respondent by K-Electric regarding dishonest abstraction of electricity and FIR No.30/2013 dated 11.06.2013 was also registered against the respondent. Subsequently second detection bill amounting to Rs. 1,349,552/- for 80,338 units for the period 08.09.2010 to 13.05.2013 (31 months) was charged to the respondent on 18.06.2013. Besides above detection bill, an assessed bill of Rs. 25,498/- for 1,921 units was also charged to the respondent in July 2013. The honorable High Court of Sindh, Karachi referred the matter to POI for adjudication vide its order dated 07.08.2013. In pursuance of the direction of honorable High Court of Sindh, Karachi, the respondent filed an application before POI on 16.12.2013 and challenged the inflated bill of Rs. 1,418,652/-.

3. POI disposed of the matter vide its decision dated 29.01.2016 with the following conclusion:

"After conducting several numbers of hearings and finally on 01.10.2015, giving fair opportunities to hear both the parties, scrutinizing the record, made available with this authority and in the light of above findings, this authority is of the firm view that Opponents failed to act in accordance with the mandatory requirements of Electricity Act-1910 and guidelines communicated through Consumer Service Manual of NEPRA as pointed out in above findings. The authority therefore, conclude the matter with the following direction to Opponents:-To cancel the IRB/Supplementary bills amounting to Rs. 13,348/- for the period from 01.07.2009 to 31.03.2010, Rs. 24,498/- of 1671 units for the period from 09.03.2010 to 08.09.2010 & Rs. 1,349,552/- of 80338 units for the period from 08.09.2010 to 13.05.2013 (31 months) issued on 18.06.2013, as the same have no justification on technical and legal grounds. To cancel the assessed bill for Rs. 25,498/- of 1921 units for the month of July 2013 and revise the same on actual consumption recorded by the energy meter. To adjust the already paid amount, by the complainant towards arrears. To waive the reconnection charges and late





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payment surcharge after issuance of the impugned supplementary bill and afterwards, as the complainant was not found at fault. However, complainant is liable to pay the accumulated dues left by the tenant at the premises as per the directions already passed by the Honorable High Court vide order dated 07.08.2013, for payment of Rs. 5,000/- per month in addition to the current charges as per energy consumption recorded by the energy meter. The complaint is disposed off in terms of above, for compliance by the Opponents and complainant as well."

4. Being dissatisfied with the POI decision dated 29.01.2016 (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). In its appeal, K-Electric inter alia, contended that the respondent was involved in theft of electricity and FIR No. 30/2013 was registered against the respondent. According to K-Electric, detection/assessed bills were charged in order to recover the revenue loss sustained by K-Electric due to dishonest abstraction of electricity. K-Electric raised preliminary objection and stated that being a theft of electricity case, it was beyond the jurisdiction of POI.
5. Notice was issued to the respondent for filing reply/parawise comments, which were filed on 09.09.2016 during hearing held in Karachi. In his reply, the respondent raised the preliminary objection that the appeal filed by K-Electric is time barred and liable to be dismissed as the impugned decision was pronounced on 29.01.2016 whereas the appeal was filed on 07.03.2016 after lapse of 37 days without any cogent reason. The respondent refuted the allegation of theft of electricity and stated that neither any notice was served to him by K-Electric nor any inspection of the premises was carried out in his presence, which is a clear violation of Section 20 of Electricity Act 1910 and Consumer Service Manual (CSM). The respondent defended the impugned decision and prayed for dismissal of the appeal.
6. Notice was issued to both the parties and hearing of the appeal was conducted in Karachi on 09.09.2016 in which Ms. Tatheera Fatima Deputy General Manager (Distribution Legal) along with her team appeared for the appellant K-Electric and Syed Salim Ahmed advocate represented the respondent. Learned representative of K-Electric repeated the same arguments as earlier narrated in memo of the appeal and contended that the respondent was habitual in stealing electricity and also due to non-payment of electric bills, his arrears increased. Learned representative for K-Electric submitted that site of the respondent was checked by K-Electric on





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11.06.2013 and the respondent was found consuming electricity illegally through underground cable being used for an extra phase. According to K-Electric, FIR No.30/2013 dated 11.06.2013 was lodged against the respondent and detection bill amounting to Rs. 1,349,552/- for 80,338 units for the period 08.09.2010 to 13.05.2013 (31 months) was charged to the respondent on 18.06.2013 to recover the revenue loss caused due to dishonest abstraction of electricity. K-Electric pleaded that the assessed/detection bills charged to the respondent are legal and justified and payable by the respondent. On the other hand, learned counsel for the respondent denied the allegation of theft and contended that neither any notice was served nor the respondent was associated by K-Electric during inspection of the premises, therefore all supplementary, assessed and detection bills charged by K-Electric were not justified and the respondent is not liable to pay the same. Learned counsel for the respondent defended the impugned decision and pleaded that the same should be upheld.

7. We have heard arguments of both the parties and examined the record placed before us. Following are our observations:
- i. Theft of electricity by the respondent was alleged by K-Electric through underground cable thereby restricting the meter to record the actual consumption, accordingly FIR No. 30./2013 was registered against the respondent for dishonest abstraction of electricity but K-Electric failed to follow the procedure as laid down in the chapter 9 of CSM. Moreover K-Electric did not take any stance before honorable High Court of Sindh, Karachi regarding lack of jurisdiction of POI, when the case was remanded to POI for adjudication. The objection of K-Electric in this regard at this stage has no ground and therefore liable to be over ruled.
 - ii. As regards the objection of the respondent for limitation, it is observed that the impugned decision pronounced on 29.01.2016 was received by K-Electric on 09.02.2016. The appeal against the impugned decision was filed before NEPRA on 09.03.2016 within the time limit of its receipt as prescribed under section 38(3) of NEPRA Act 1997. Therefore the objection of the respondent in this regard is not valid and liable to be dismissed.
 - iii. Adjustment bill of Rs. 13,348/- for the period 01.07.2009 to 31.03.2010 (9 months) and first detection bill of Rs.24,498/- for 1,671 units for the period 09.03.2010 to 08.09.2010 (6 months) were charged to the respondent on 27.10.2010 but no explanation or justification for charging these bills has been given by K-Electric. Subsequently second detection bill of





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Rs. 1,349,552/- for 80,338 units for the period 08.09.2010 to 13.05.2013 (31 months) was also charged to the respondent on 18.06.2013 during the pendency of case before High Court of Sindh, Karachi. Moreover an assessed bill of Rs. 25,498/- for 1,921 units was also charged in July 2013. The respondent challenged the aforesaid assessed/detection bills before POI vide his application dated 16.12.2013.

- iv. No justification has been given by K-Electric for charging the adjustment bill of Rs. 13,348/- for 01.07.2009 to 31.03.2010 (9 months) and assessed bill amounting to Rs. 25,498/- for July 2013. Impugned decision for cancellation of the aforesaid adjustment and assessed bills is correct and liable to be maintained.
- v. According to clause 9.1 c (3) of CSM, being a domestic consumer, the respondent is liable to be billed maximum for three billing cycles as nothing has been placed by K-Electric that approval for charging the detection bill beyond three months (maximum up-to six months) was obtained from Chief Executive of the K-Electric and any action was initiated against the officer in charge for not being vigilant enough. Charging of the detection bills to the respondent consecutively for the period 09.03.2010 to 13.05.2013 (37 months) is violative of the provision of CSM. Therefore charging of first detection bill of Rs. 24,498/- for 1,671 units for the period 09.03.2010 to 08.09.2010 (6 months) on 27.10.2010 and second detection bill of Rs. 1,349,552/- for 80,338 units for the period 08.09.2010 to 13.05.2013 (31 months) have no justification and liable to be cancelled as determined in the impugned decision. Impugned decision to this extent is liable to be maintained.
- vi. Pursuant to clause 9.1c(3) of CSM, the respondent is liable to be charged the detection units for 3 months only, detail of which is worked out as under:

Detection Bill already charged	Detection units to be charged for 3 months only as per chapter 9 of CSM
i. First detection bill of Rs.24,498/- for <u>1,671</u> units for the period 09.03.2010 to 08.09.2010 (6 months) charged on 27.10.2010.	(<u>82,009 units</u>) x 3 months 37 months
ii. Second detection bill Rs.1,349,552/- for <u>80,338</u> units for the period 08.09.2010 to 13.05.2013 (31 months) charged on 18.06.2013.	= 6,649 units
Total units charged for 37 months = 82,009 units	Total units to be charged = 6,649 units





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8. In view of foregoing discussion, we have reached to the conclusion that:
- Adjustment bill of Rs. 13,348/- for 01.07.2009 to 31.03.2010 (9 months) and assessed bill amounting to Rs. 25,498/- charged to the respondent in March 2010 and July 2013 respectively are not justified and therefore cancelled. The same should be revised on the basis of actual consumption of the meter. First detection bill of Rs.24,498/- for 1,671 units for the period 09.03.2010 to 08.09.2010 and second detection bill Rs.1,349,552/- for 80,338 units for the period 08.09.2010 to 13.05.2013 are also declared null, void and the respondent is not liable to pay the same. Late payment surcharges (LPS) imposed due to nonpayment of above disputed bills stand waived off. The impugned decision to this extent is upheld.
 - The respondent should be charged 6,649 units for the disputed period i.e. March 2013 to May 2013 (3 months) only. The impugned decision stands modified to this extent.
 - The respondent has to pay the arrears @ Rs. 5,000/- along with each current monthly bill till clearance of the accumulated dues left by the tenant as already determined in the impugned decision.
9. The impugned decision is modified in above terms.

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener

Muhammad Shafique
Member

Date: 10.11.2016

