



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

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No. NEPRA/AB/Appeal-101/POI-2016/ 1507-1512

November 25, 2016

1. Syed Muhammad Imran,
S/o Dilawar Ali,
M-II-E-214, Block-B,
Plot No. 424, Hasrat Mohani Colony,
Mangopir 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,
3rd floor, KE Block,
Civic Centre, Gulshan-e-Iqbal,
Karachi
5. Electric Inspector,
Karachi Region-II,
Block No. 51, Pak Secretariat,
Shahra-e-Iraq, Saddar,
Karachi
6. Syed Saleem Ahmed,
Advocate,
401, 4th Floor, Uni Centre,
Abdullah Haroon Road,
Saddar, Karachi

Subject: **Appeal Titled K-Electric Ltd Vs. Syed Muhammad Imran Against the Decision Dated 12.04.2016 of the Electric Inspector/POI to Government of the Sindh Karachi Region-II, Karachi**

Please find enclosed herewith the decision of the Appellate Board dated 24.11.2016, regarding the subject matter, for information and necessary action accordingly.

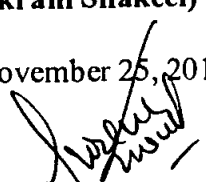
Encl: As Above

No. NEPRA/AB/Appeal-101/POI-2016/ 1513

Forwarded for information please.

(Ikram Shakeel)

November 25, 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-101/2016

K-Electric Ltd

.....Appellant

Versus

Syed Muhammad Imran S/o Dilawar Ali, M-II-E-214, Block-B,
Plot No. D-424, Hasrat Mohani Colony, Mangopir Road, Karachi

.....Respondent

For the appellant:

Ms. Tatheera Fatima Deputy General Manager (Legal Distribution)
Mr. Masahib Ali Deputy Manager
Mr. Imran Hanif Assistant Manager
Mr. Anas Lakhani

For the respondent:

Syed Saleem Ahmed advocate
Syed Muhammad Imran

DECISION

1. This decision shall dispose of the appeal filed by K-Electric against the decision dated 12.04.2016 of Provincial Office of Inspection/Electric Inspector, Karachi Region-II, Karachi (hereinafter referred to as POI).
2. Brief facts of the case are that the respondent is an industrial consumer of K-Electric bearing Ref No.AP-072785 with a sanctioned load of 21 kW under B-I tariff. As per version of K-Electric, electricity meter of the respondent was checked by K-Electric on 16.07.2015 and the meter body was found doubtful, moreover the connected load was also noticed as 55 kW much higher than the sanctioned load. K-Electric submitted that the disputed meter was removed from the site and sent to the meter department, whereby it was declared tampered vide report dated 25.07.2015. New healthy meter was installed by K-Electric on 25.07.2015 and an assessed bill amounting to Rs. 149,905/- for 7,880 units was charged to the respondent for August 2015 and an arrear bill of Rs. 11,458/- on account of meter cost was charged in





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September 2015. After issuing a notice dated 22.09.2015 to the respondent regarding above discrepancy, a detection bill of Rs. 1,160,508/- for 59,265 units for the period 10.01.2015 to 10.07.2015 (6 months) was debited to the respondent on the basis of connected load in October 2015.

3. Being aggrieved with the aforesaid irregular bills, the respondent filed an application before POI on 26.10.2015 and assailed the assessed bill of Rs. 149,905/- for August 2015, arrears bill of Rs. 11,458/- added in September 2015 and the detection bill of Rs. 1,160,508/- charged in October 2015. POI disposed of the matter vide its decision dated 12.04.2016 with the following conclusion:

"After conducting several number of hearings, giving fair opportunities to hear both the parties, scrutinizing the record, made available with this authority and in the light of relevant law & Regulations and above findings, this authority is of the firm view that irregular bill amounting to Rs.1,160,508/- for six months has no justification on legal & technical grounds and liable to be cancelled. The Assessed bill for the month of August - 2015 is liable to be cancelled and revise the same on actual meter reading. The reflected arrears of Rs.11,458/- which were charged for replacement of meter charges are also liable to be cancelled, as the complainant was not at fault and opponents changed/replaced on their own motion. The applicant is directed to regularize his extended load as per codal formalities of the Opponent. The opponents are directed to act in terms of above instructions, accordingly. The application of the applicant is disposed off with above remarks."

4. Being dissatisfied with the POI decision dated 12.04.2016 (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 contended that meter of the respondent was checked by K-Electric on 16.07.2015 and it was found tampered. As per K-Electric, the disputed meter was removed and sent to meter department, whereby tampering of the meter was established vide meter department report dated 25.07.2015. K-Electric submitted that the assessed bill of Rs. 149,905/- for 7,880 units was charged in August 2015 as actual

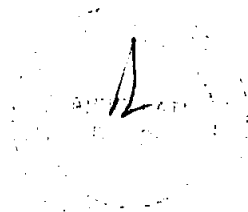




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consumption could not be recorded by the tampered meter. As per K-Electric, a bill of Rs. 11,458/- was included in the bill for September 2015 as meter replacement cost and a detection bill of Rs. 1,160,508/- for 59,265 units for the period 10.01.2015 to 10.07.2015 (6 months) was also charged to the respondent in October 2015 on the basis of connected load. K-Electric contended that it was a theft of electricity case therefore beyond the jurisdiction of Electric Inspector as envisaged in section 26-A of Electricity Act 1910.

5. In response to the above appeal, the respondent was issued a notice for filing reply/parawise comments, which were filed on 22.08.2016. In his reply/parawise comments, the respondent raised the preliminary objection and contended that the impugned decision was pronounced by POI on 12.04.2016, whereas the appeal was filed by K-Electric on 19.05.2016, which is not maintainable being time barred. The respondent refuted the allegation of theft leveled by K-Electric and averred that the meter was checked by K-Electric in August 2015 and no discrepancy whatsoever was observed during checking of the disputed meter. According to the respondent, meter of the respondent was changed unilaterally without associating him or his representative, therefore charging of such arrear bill and detection bill were not justified. The respondent pleaded that the impugned decision rendered by POI was in accordance with the provisions of law and should be maintained.
6. Notice was issued to both the parties and hearing of the appeal was held in Karachi on 31.10.2016 in which Ms. Tatheera Fatima Deputy General Manager (Distribution Legal) along with her team made appearance for the appellant K-Electric and Syed Muhammad Imran Ali the respondent appeared in person along with Syed Saleem Ahmed advocate. Learned representative of K-Electric repeated the same arguments as earlier given in memo of the appeal and contended that the detection bill amounting to Rs. 1,160,508/- for 59,265 units for the period 10.01.2015 to 10.07.2015 (6 months) was charged to the respondent in October 2015 in order to recover the revenue loss sustained by K-Electric due to dishonest abstraction of electricity through tampering of the meter. K-Electric further pointed out that there was low consumption during the period prior to February 2015 but detection bill was charged w.e.f February 2015 restricting it to a period of six months as laid down in Consumer Service Manual (CSM). Representatives of K-Electric submitted that besides above detection bill, assessed bill of Rs. 149,905 was also





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charged to the respondent for August 2015 as the actual energy was not recorded by the tampered electricity meter. K-Electric averred that Rs. 11,458/- being the cost of meter was recoverable from the respondent as he is responsible for tampering the meter. According to K-Electric, consumption of the respondent during disputed period was very low, which established that the respondent was using unfair means. K-Electric pleaded that the impugned decision was unjustified and therefore liable to be set aside. Conversely, learned counsel for the respondent contended that the irregular bills charged to the respondent were not justified and the respondent is not obligated to pay the same. Learned counsel for the respondent pleaded that the impugned decision was rendered in accordance with the provisions of CSM and therefore liable to be upheld.

7. We have heard arguments of both the parties and examined the record placed before us. Following are our observations:

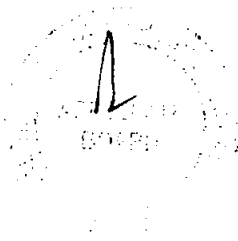
i. Since the theft of electricity was alleged by means of tampering of the meter, therefore pursuant to the decision of honorable Supreme Court of Pakistan. POI/EI has the jurisdiction to adjudicate the matter. Reliance is placed on PLD 2012 Supreme Court 371.

a) *Electricity Act (IX OF 1910---*

---Ss. 26(6) & 26-A---Detection Bill, issuance of---Theft of energy by consumer, charge of ---Jurisdiction of Electric Inspector and Advisory Board---Scope---Electric Inspector for processing special expertise in examining the working of metering equipment and other related apparatus had jurisdiction to certain reference under S.26(6) of Electricity Act, 1910 only in case of dishonest consumption of energy by consumer through deliberate manipulation of or tampering with metering equipment or other similar apparatus--- Electric Inspector would have no jurisdiction in matter of theft by means other than tampering or manipulation of metering equipment etc. falling exclusively under S.26-A of Electricity Act, 1910---Principles."

Objection of K-Electric regarding jurisdiction of POI is not valid and therefore dismissed.

ii. As regards the objection of the respondent for limitation, it is observed that the impugned decision pronounced on 12.04.2016 was received by K-Electric on 25.04.2016. The appeal against the impugned decision was filed before NEPRA on 19.05.2016 within 30 days of its receipt as prescribed under section 38(3) of NEPRA Act 1997. Therefore objection of the respondent in this regard is not valid and liable to be rejected.



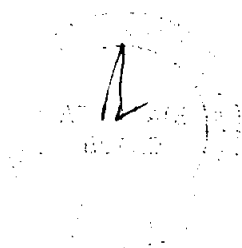


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- iii. Assessed bill amounting to Rs. 149,905/- for 7,880 units was debited to the respondent by K-Electric for August 2015 on the ground that the meter could not record actual consumption. It is observed that such high consumption was not noticed in the undisputed period i.e. January 2014 to January 2015 and even after installation of new meter, a consumption of 3,073 units was recorded in September 2015. Therefore charging of such high consumption was not justified and liable to be set aside. However it would be appropriate to charge 3,073 units for August 2015 as recorded by the healthy meter in September 2015. Impugned decision to this extent is liable to be modified.
- iv. As there is no evidence that tampering was done by the respondent, therefore the cost of replacement of meter amounting to Rs. 11,458/- charged in September 2015 is not recoverable from the respondent. Impugned decision to this extent is liable to be maintained.
- v. As regards charging the detection bill of Rs. 1,160,508/- for 59,265 units for the period 10.01.2015 to 10.07.2015 (6 months) to the respondent in October 2015 due to tampering of the meter. Following analysis is being made as per consumption data provided by K-Electric:

Period	Normal Mode Average Units/Month	Detection Mode Average Units/Month
Before dispute March 2014 to January 2015 (11 months)	$(2,823+2,383+1,291+2,464+1,120+2,450+2,242+2,653+2,453+1,923+2,664) \div 11 = 2,224$	-
Disputed February 2015 to July 2015 (6 months)	$(1,820+1,631+2,100+2,090+4,046+1,120) \div 6 = 2,135$	12,012
After dispute September 2015 to July 2016 (11 months)	$(3,073+2,058+2,713+3,448+2,791+3,067+2,650+5,645+5,836+5,485+2,438) \div 11 = 3,564$	-

It is evident from the above table that the detection bill charged @ 12.012 units/month during the disputed period i.e. February 2015 to July 2015 is much higher than the average consumption of 2,224 units/month and 3,564 units/month charged in normal mode during





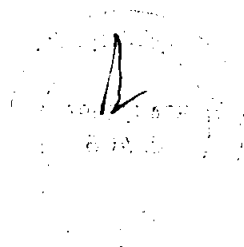
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the periods before and after dispute respectively. Therefore the detection bill amounting to Rs. 1,160,508/- for 59,265 units for the period 10.01.2015 to 10.07.2015 (6 months) charged in October 2015 has no justification and the respondent is not liable to pay the same. Impugned decision to this extent is liable to be maintained.

Average consumption of 2,135 units/month during the disputed period is less than the average consumption of 2,224 units/month and 3,564 units/month recorded in normal during the periods before and after dispute respectively, which established that the actual consumption was not recorded during the disputed period. Since the previous consumption for the period March 2014 to January 2015 has been suspected by K-Electric, therefore it could not made basis for determination of consumption for the disputed period i.e. February 2015 to September 2015. Moreover bills/units for August 2015 were also charged in assessed mode and cannot be relied upon for the billing of the disputed period i.e. February 2015 to September 2015. It would be appropriate to charge the detection bill @ 3,564 units/month for the disputed period February 2015 to July 2015 as recorded in the succeeding undisputed period i.e. September 2015 to July 2016. However the respondent is liable to be billed after adjustment of units already charged in normal mode by K-Electric during the disputed period i.e. February 2015 to July 2015. Impugned decision to this extent is liable to be modified.

8. In view of foregoing discussion, we have reached to the conclusion that:

- i. POI had jurisdiction to entertain the application filed by the respondent, therefore objection of K-Electric in this regard is not valid and rejected.
- ii. The appeal was filed by K-Electric within the time. Objection of the respondent in this regard is not correct and therefore dismissed.
- iii. Assessed bill amounting to Rs. 149,905/- for 7,880 units charged to the respondent in August 2015 is not justified and therefore cancelled. Cost of meter amounting to Rs. 11,458/- charged in September 2015 is not recoverable from the respondent and should be withdrawn. Detection bill of Rs. 1,160,508/- for 59,265 units for the period 10.01.2015





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to 10.07.2015 (6 months) added in October 2015 is declared null, void and not payable by the respondent. Impugned decision to this extent is upheld.

iv. The respondent should be charged the detection bill @ 3,564 units/month for the period i.e. February 2015 to July 2015 and 3,073 units for the billing month of August 2015. Impugned decision to this extent stands modified.

v. Consumer's account of the respondent should be overhauled by making adjustment of bills/units already paid. The electricity bills be revised/issued accordingly.

9. The appeal is disposed of in above terms.

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener

Muhammad Shafique
Member

Date: 24.11.2016

