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

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No. NEPRA/AB/Appeal/059/2020/ 644

October 25, 2023

1. Muhammad Asif,
House No. 2/334,
Liaquatabad No. 02,
Karachi

2. Chief Executive Officer,
K-Electric Ltd, KE House,
39-B, Sunset Boulevard,
DHA-II, Karachi

3. Asif Shajer,
Deputy General Manager,
K-Electric Ltd, KE House,
39-B, Sunset Boulevard, DHA-II,
Karachi

4. Tatheera Fatima,
Deputy General Manager,
Distribution Legal, K-Electric Ltd,
1st Floor, Block F, Elander Complex,
Elander Road, Karachi

5. Aneel Mumtaz,
25-G, Askari Apartments,
School Road, Cantt Karachi

Subject: **Decision of the Appellate Board Regarding Review Petition Filed By K-Electric Vs. Muhammad Asif Against the Decision dated 25.02.2022 of the Appellate Board In the Matter Titled "K-Electric Vs. Muhammad Asif"**

Please find enclosed herewith the decision of the Appellate Board dated 25.10.2023 (08 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Ikram Shakeel)
Deputy Director (AB)

Forwarded for information please.

1. Director (IT) –for uploading the decision on NEPRA website

Before The Appellate Board

In the matter of

REVIEW PETITION FILED BY PETITIONER UNDER THE NEPRA (REVIEW PROCEDURE) REGULATIONS, 2009 AGAINST THE DECISION DATED 25.02.2022 OF NEPRA IN APPEAL NO.059/POI-2020

K-Electric Limited .....Petitioner

Versus

Muhammad Asif, House No.2/334, Liaqutabad No.02, Karachi .....Respondent

For the Petitioner:
Mr. Asif Shajer General Manager
Ms. Tatheera Fatima Deputy General Manager
Mr. Suhail Ahmed Deputy General Manager
Mr. Masahib Ali Manager

For the Respondent:
Mr. Aneel Mumtaz
Mr. Muhammad Asif

DECISION

1. Through this decision, the review petition filed by K-Electric Limited (hereinafter referred to as the "Petitioner") against the decision dated 25.02.2022 of the National Electric Power Regulatory Authority (hereinafter referred to as the "NEPRA") in Appeal No.059/POI-2020 titled "K-Electric Vs Muhammad Asif" is being disposed of.
2. Mr. Muhammad Asif (hereinafter referred to as the "Respondent") is a domestic consumer of the Petitioner bearing Ref No.AL-257214 having sanctioned load of 3 kW under the tariff category A-1R. Facts related to the subject dispute are that the Petitioner charged the following four detection bills to the Respondent on account of the theft of electricity:

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Table-A

SIR	Discrepancy	Detection bill	Amount (Rs.)	Units	Period	
					From	To
24.08.2016	Meter was found stopped and neutral and phase was found direct. Three families living C/L= 8.185 kW	First	46,821/-	1,983	Mar-2016	Aug-2016
30.03.2017	Direct use of electricity through extra phase, three families were living, C/L= 8.185 kW	Second	49,497/-	2,026	Oct-2016	Mar-2017
23.09.2017	Direct use of electricity through an extra phase, three families were living, C/L= 12.71 kW	Third	45,894/-	2,147	Jun-2017	Sep-2017
29.06.2018	Meter was found stopped and neutral and the phase was found direct. Three families living C/L= 11.781 kW	Fourth	120,796/-	5,278	Jan-2018	Jun-2018

3. Being aggrieved with the above actions of the Petitioner, the Respondent filed two applications before the Provincial Office of Inspection, Karachi Region-II, Karachi (hereinafter referred to as the "POI") on 07.08.2018 and 05.11.2018 and assailed the arrears of Rs.451,403/- accumulated till July 2018 and fourth detection bill of Rs.120,796/- respectively. During the joint inspection of the POI on 06.11.2018, the billing meter of the Respondent was found working within permissible limits and the connected load was observed as 1.919 kW. The complaint of the Respondent was disposed of by the POI vide its decision dated 23.12.2019, the operative portion of which is reproduced below:

> "*After conducting several numbers of hearings, giving fair opportunities to hear both the parties, scrutinizing the record, made available with this authority and in the light of the relevant law and Regulations and above findings, this authority is of the firm view that the 04 detection bills amounting to Rs.46,821/- of 1983 units for the period from March 2016 to August 2016, Second detection bill amounting to Rs.49,497/- of 2026 units*

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for the period October 2016 to March 2017 has no legal and technical ground are hereby cancelled. The third detection bill amounting to Rs.45,894/- of 2,147 units for the period from June 2017 to September 2017 and the fourth detection bill amounting to Rs.120,796/- of 5,278 units for the period from January 2018 to June 2018 has no legal and technical ground are hereby cancelled. The opponent is directed to adjust the excessive units for the months of September 2019 and October 2019, 71 and 64 units should be adjusted in future billings as discussed in finding No.06. The Opponent is further directed to waive off the disconnection/ reconnection charges of the complainant during the pendency of this case. The complainant is directed to approach the Office of the Honorable Federal Ombudsman for implementation of his order dated 05.09.2016. The Opponents are directed to act in terms of the above instructions accordingly. The complaint of the applicant is disposed of with the above remarks."

4. The Petitioner disputed the afore-referred decision dated 23.12.2019 of the POI before the NEPRA vide the Appeal No.059/POI-2020, which was disposed of vide NEPRA Appellate Board decision dated 25.02.2022 (hereinafter referred to as the "impugned decision") with the following conclusion:

"In consideration of the above, it is concluded that the following detection bills charged to the Respondent by K-Electric along with LPS are unjustified and rightly cancelled by POI:

Table-D

Detection bills	*Period*		*Months*	*Units*	*Amount (Rs.)*
First	*Mar-2016*	*Aug-2016*	*06*	*1983*	*46,821/-*
Second	*Oct-2016*	*Mar-2017*	*06*	*2026*	*49,497/-*
Third	*Jun-2017*	*Sep-2017*	*06*	*2147*	*45894/-*
Fourth	*Jan-2018*	*Jun-2018*	*06*	*5278*	*120796/-*

K-Electric may recover the bills as per the details given below:

Table-E

Bill type	*Units to be recovered*
Second detection bill	*198*
Sep-2019	*466*
Oct-2019	*452*

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The billing account of the Respondent may be revised by K-Electric after adjusting the payments made against the above-disputed bills. In view of the above, the appeal is partially allowed."

5. The Petitioner filed this review petition before the NEPRA, wherein the impugned decision has been opposed, *inter alia*, on the grounds; (1) the POI has no jurisdiction to decide the instant dispute being theft of electricity case through bypassing the meter; (2) the impugned decision for revision of the detection bills on the basis of the sanctioned load is not consistent with the provisions of the revised Consumer Service Manual (the "CSM"), which allows the Petitioner to debit the detection bills on the basis of sanctioned load or connected load, whichever is higher; (3) the detection bill was prepared on the basis of connected load witnessed during the site inspections and the Respondent did not raise any objection on the site inspection reports; (4) the impugned decision for revision of the detection bill should be calculated on the basis of 25% load factor instead of 20% load factor, which is allowed at page 88 of the revised CSM-2021.

6. **Hearing:**

6.1 Hearing in the matter of the subject review petition was initially scheduled for 04.07.2022 and 21.10.2022 at NEPRA Regional Office Karachi, which however were adjourned on the request of either the Appellant or the Respondent.

6.2 Lastly, hearing of the appeal was conducted at NEPRA Regional Office Karachi on 05.05.2023 in which both parties were present. The representatives for the Petitioner opposed the maintainability of the impugned decision dated 25.02.2022 of the NEPRA Appellate Board *inter alia*, on the grounds that the connected load of the Respondent

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was found much higher than the sanctioned load during the various site inspections, however, the Appellate Board based its determination on the sanctioned load, which is inconsistent with the provisions of the CSM-2010 and CSM-2021. The representatives for the Petitioner prayed for review of the impugned decision and requested the verification of the connected load of the Respondent. On the contrary, the representative for the Respondent denied the allegations of the Petitioner regarding the theft of electricity and illegal extension of the connected load. He argued that the review petition cannot be heard by the same forum, which earlier decided the fate of the appeal. The representative for the Respondent contended that the site inspection reports are based on the concocted stories, hence the detection bills charged to the Respondent are unjustified and, hence liable to be rejected. He prayed to address the observations raised before concluding the case.

7. Arguments were heard and the record was examined. Following are our observations:

7.1 As regards the preliminary observation raised by the Respondent, it is clarified that in terms of Order XLVII Rule 1 of the Civil Procedure Code, 1908, the person may apply for a review of judgment to the court which passed the decree or made the order. Further, the Authority under Regulation 3 of the NEPRA (Review Procedure) Regulations, 2009 reviews its own orders passed by it and so reviewing modify, reverse or confirms the same. Moreover, a motion seeking review of any order of the Authority is competent only upon discovery of a mistake or error apparent on the face of the record or a new and important matter of evidence. Hence remedy of review lies with

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the same forum, which has already decided the case. The objection of the Respondent in this regard has no force and, therefore rejected.

7.2 The observation of the Petitioner regarding the jurisdiction of the POI was duly considered and deliberated by the Appellate Board and has already been addressed in the impugned decision, the operative portion of which is reproduced below:

> *"K-Electric raised the preliminary objection against the jurisdiction of POI being theft of electricity case but failed to follow the procedure of CSM and did not take any legal action against the Respondent on account of theft of electricity. Obviously, it is a metering & and billing dispute and falls within the jurisdiction of the POI. The objection of K-Electric in this regard is devoid of force, therefore rejected."*

7.3 As far as the allegation of the Petitioner regarding the illegal extension of load, it was decided by the NEPRA Appellate Board to arrange a joint inspection to verify the connected load of the premises of the Respondent, for which parties were informed vide notice dated 06.06.2023 of the NEPRA Appellate Board. However, on the given date of joint inspection i.e. 11.07.2023, the Respondent refused to allow the inspection team of the Petitioner in the presence of NEPRA representative to verify the connected load of the premises. Moreover, the consumption recorded during the undisputed period is even higher than the units assessed as per sanctioned load i.e. 3 kW of the Respondent. Under these circumstances, we are constrained to assume that the connected load observed by the Petitioner during various site inspections is correct and higher than the sanctioned load of the Respondent. The connected loads observed during the various site inspections of the Petitioner may be based to calculate the detection bills, however, the period of detection bills be restricted to three billings cycles to be debited to the Respondent being a general supply consumer as per Clause 9.1c(3) of the CSM-2010.

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7.4 In the instant case, the Petitioner debited the four detection bills each for six months to the Respondent without soliciting the approval of the Chief Executive Office as laid down in Chapter 9 of the CSM, thus the impugned decision of the Appellate Board for cancellation of the following four detection bills is correct and maintained to this extent.

Detection bills	Period		Months	Units	Amount (Rs.)
First	Mar-2016	Aug-2016	06	1983	46,821/-
Second	Oct-2016	Mar-2017	06	2026	49,497/-
Third	Jun-2017	Sep-2017	06	2147	45894/-
Fourth	Jan-2018	Jun-2018	06	5278	120796/-

7.5 As per Clause 9.1c(3) of the CSM-2010, the Respondent may be charged the detection bill maximum for three months in case of theft of electricity, and calculation of the four detection bills be made as per connected load observed during the various site inspections and in accordance with the formula given in Annex-VIII of the CSM-2010.

First detection bill: June 2016 to August 2016 (3 months)

A. Total units to be charged = C/L(kW) x LF x No. of Hrs. x No. of Months
8.185 x 0.15 x 730 x 3 = 2,689 units

B. Total units already charged = 943+669+552 = 2,164 units

C. Net units to be charged = A-B = **525 units**

Second detection bill: January 2017 to March 2017 (3 months)

A. Total units to be charged = C/L(kW) x LF x No. of Hrs. x No. of Months
8.511 x 0.15 x 730 x 3 = 2,796 units

B. Total units already charged = 293+295+528 = 1,116 units

C. Net units to be charged = A-B = **1,680 units**

Third detection bill: July 2017 to September 2017 (3 months)

A. Total units to be charged = C/L(kW) x LF x No. of Hrs. x No. of Months
12.7 x 0.15 x 730 x 3 = 4,172 units

B. Total units already charged = 713+794+788 = 2,295 units

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C. Net units to be charged = A-B = **1,877 units**

Fourth detection bill: April 2018 to June 2018 (3 months)

A. Total units to be charged = C/L(kW) x LF x No. of Hrs. x No. of Months
11.78 x 0.15 x 730 x 3 = 3,870 units

B. Total units already charged = 381+532+627 = 1,540 units

C. Net units to be charged = A-B = **2,330 units**

8. In consideration of the above, we conclude that:

8.1 The impugned decision is modified to the extent of revision of the four detection bills each for three months as per the connected load noticed during the site inspection of the Petitioner, pursuant to Clause 9.1c(3) of the CSM-2010:

Detection bills	Period		Months	Units to be charged
First	Jun-2016	Aug-2016	03	525
Second	Jan-2016	Mar-2017	03	1,680
Third	Jul-2017	Sep-2017	03	1,877
Fourth	Apr-2018	Jun-2018	03	2,330

8.2 The billing account of the Respondent be overhauled after adjusting payments made if any against the above detection bills.

9. In view of above, the review petition is disposed of.

Abid Hussain
Member

Muhammad Irfan-ul-Haq
Member

Naweed Illahi Sheikh
Convener

Dated: 25-10-2023

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