



Registrar

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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No. NEPRA/ADG(CAD)/TCD-09/15266-67

October 1, 2018

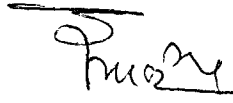
Chief Executive Officer
K-Electric Limited
KE House No. 39-B, Sunset Boulevard,
Phase-II, Defense Housing Authority,
Karachi.

Subject: **ORDER OF THE AUTHORITY IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO K-ELECTRIC UNDER THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY (FINES) RULES, 2002 FOR VIOLATION OF THE AUTHORITY'S DIRECTIONS REGARDING PROVISION OF TOU METERING/BILLING TO ITS CONSUMERS**

Reference is made to Show Cause Notice (05 Pages) issued to K-Electric dated 16th March 2018 and hearing held on 11th July 2018 regarding the subject matter.

2. Please find enclosed herewith the Order of the Authority regarding the subject matter for compliance within thirty (30) days.

Encl: As above


(Syed Saifur Hussain) 01 x 18

Copy to:

Mr. Aamir Ghaziani
Director (Regulations),
K-Electric Limited, KE House No. 39-B, Sunset Boulevard,
Phase-II, Defense Housing Authority, Karachi.



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Date of Hearing: 11th July 2018

Present:

- | | | |
|----|------------------------|---------------------------|
| 1) | Mr. Tariq Saddozai | Chairman |
| 2) | Mr. Rehmatullah | VC/Member(CA)/(Licensing) |
| 3) | Mr. Saif Ullah Chattha | Member (M&E) |
| 4) | Mr. Himayat Ullah Khan | Member (Tariff) |

On behalf of:

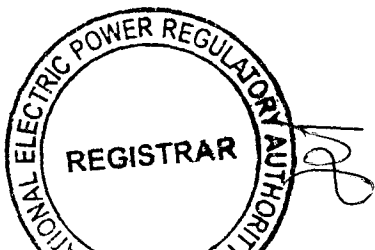
- K-Electric Ltd:**
- 1) Mr. M. Aamir Ghaziani, Director (Finance & Regulations)
 - 2) Mr. Ayaz Jaffar, Director
 - 3) Ms. Uzma Z. Farooqui, General Manager
 - 4) Mr. Nadir Altaf, Advocate
 - 5) Ms. Zoya Mohiuddin, Advocate
 - 6) Ms. Serena Khan, Advocate
 - 7) Mr. Imran, Advocate

Subject: **ORDER OF THE AUTHORITY IN THE MATTER OF SHOW CAUSE NOTICE UNDER RULE 4 (7)&(8) OF THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY (FINES) RULES, 2002 ISSUED TO K-ELECTRIC FOR VIOLATION OF THE AUTHORITY'S DIRECTIONS REGARDING PROVISION OF TOU METERING/BILLING TO ITS CONSUMERS**

ORDER

1. This order shall dispose of the show cause issued under Rule 4 (8) & (9) of the National Electric Power Regulatory Authority (Fines) Rules, 2002 (hereinafter referred to as the "**Fines Rules**") to K-Electric Limited (hereinafter referred to as the "**Licensee**" or "**KE**").

2. The facts of the instant case are that the complainant in the instant case, namely Mr. Nazim F. Haji (hereinafter referred to as the "**Complainant**") is a residential consumer of electric power in KE's service territory. The Complainant had not been provided a Time of Use ("**ToU**") meter at his premises by KE, as required by law. Being aggrieved by such, the Complainant wrote a letter to KE, dated 19th September 2016, which was also forwarded to NEPRA, requesting provision of a ToU Meter at his premises. Being informed



of the Complainant's plea, the Authority also issued directions to KE, vide letter dated 22nd September 2016, to expedite the process of installing ToU Meters and initiate billing to consumers on the applicable ToU tariff.

3. Meanwhile, the Complainant approached the Wafaqi Mohtasib, in complaint no. WMS-ONL/008204/2016 dated 8th October 2016, wherein maladministration on part of KE was alleged due to delay in installation of ToU Meters at the Complainant's premises. The matter was adjudicated before the Wafaqi Mohtasib and disposed of, vide order dated 30th October 2016, with the following findings:

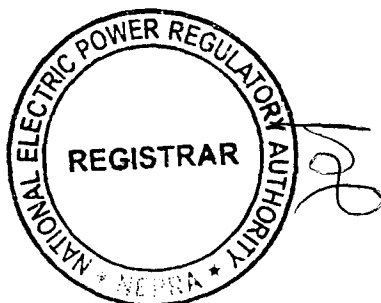
"The Agency (K-Electric), conceding its omission has undertaken to provide proper redressal after the complaint of alleged maladministration was lodged ... In view of undertaking of Agency (K-Electric), further proceedings are closed in terms of Regulation 23(1)(f) of Wafaqi Mohtasib (Investigation & Disposal of Complaints) Regulations 2013. Agency (K-Electric) is required to report compliance within thirty (30) days of receipt of these closure findings"

4. KE proceeded to file a review against the above decision before the Wafaqi Mohtasib, which was rejected vide order dated 9th March 2017. KE then proceeded to file a representation before the President's Secretariat, dated 16th March 2017, which was disposed of, vide order dated 6th June 2017, with the following directions:

"The Honorable President of Pakistan has been pleased to accept the representation of the Agency (KE) and set aside the impugned findings of the Wafaqi Mohtasib... However, in view of the categorical instructions with regard to installation of ToU meter at the residence of the Complainant (Mr. Nazim F. Haji) vide NEPRA's letter No. TCD.09/6196-2016 dated 22nd September 2016 and No. TCD.09/1300-2017 dated 28th February 2017, the complaint lodged before the Mohtasib may be converted into a petition and forwarded to the Agency (KE) for compliance of the direction of the Authority (NEPRA) within stipulated period of 30 days."

5. The Complainant then furnished the foregoing order to NEPRA, vide letter dated 19th June 2017, and sought implementation of the same. NEPRA issued further directions to KE to install a ToU Meter at the Complainant's residence within 30 days. In response, KE asserted, vide letter dated 27th July 2017, that its Multi Year Tariff ("MYT") was still pending determination before the Authority and the instant matter would be resolved once the MYT was notified. Later, NEPRA was informed, vide letter dated 22nd August 2017, that ToU meters have been installed at the Complainant's premises, in compliance with the orders of the President's Secretariat, but ToU billing would be initiated after KE's MYT was determined and notified.

6. Being dissatisfied with KE's response and inaction, the Authority proceeded to initiate legal action under Rule 4 of the Fines Rules against KE. Accordingly, an Explanation Letter, dated 5th October 2017, was issued to KE on the grounds of non-adhering the instructions of the Authority contained in the MYT determination of 2009 regarding TOU billing to the consumers. The KE was directed to either admit or deny the violation of provisions of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act") and 'applicable documents'.



7. KE submitted its response, vide letter dated 19th October 2017, wherein the following was agitated:

- (i) All allegations of wrongdoing are denied
- (ii) The instant explanation letter is not maintainable since an explanation on the same issue has already been issued to KE by NEPRA, vide letter dated 07-02-2014.
- (iii) ToU Tariff Structure, as approved by NEPRA in KE's MYT 2009 does not align with the required objectives of efficiency in the sector and shall negatively impact KE's revenues. The issue of ToU Metering is under evaluation by NEPRA and a committee constituted by the same. As such, the matter is still pending finalization on part of the Authority and its implementation by KE stands deferred.
- (iv) As per tariff provisions of the MYT 2017, KE is allowed to defer implementation of ToU Metering and billing by later of 31-12-2017 and the date on which the MYT 2017 is notified. The impugned issue relates to a past and closed transaction and, as such, no issue of non-compliance arises.
- (v) An opportunity of hearing is sought before the Authority

8. KE was granted an opportunity of hearing before NEPRA, on 12th December 2017, wherein the above contentions agitated in their letter were reiterated.

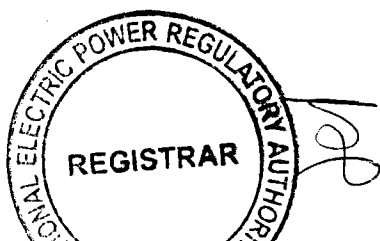
9. The Authority reviewed all documentary information placed on record and KE's submissions made in the instant matter. KE raised the following contentions with respect to the impugned issue:

- (i) Maintainability of the instant action under the Fines Rules in light of preceding action taken by NEPRA on the same issue;
- (ii) The issue stands deferred in light of the unconcluded deliberation exercise by the Authority on the subject of ToU Metering; and
- (iii) Vitiating of obligation to implement ToU metering in light of the revised provisions of KE's MYT 2017.

10. On the issue of maintainability, it is provided that continued violation of law, as alleged, is not immune to penal action under applicable law on the basis of preceding action. Further, on the subject of NEPRA's explanation issued to KE, vide letter dated 7th February 2014, no penal action was taken against KE. Moreover, KE has continued its non-provision of ToU metering and billing to consumers, thereby attracting the instant action.

11. On the issue of deferment, the Authority observed that the obligation to provide ToU metering and billing is a tariff condition under the MYT and subsequent deliberations and proceedings over any subject matter do not vitiate provisions of tariff and obligations thereunder.

12. On the issue of vitiating of tariff obligations, the Authority observed that KE is currently functioning under a MYT, as determined by the Authority on 23rd December 2009, and charging its consumers under the same. Pending approval of MYT tariff before the Authority has not vitiated the operative MYT. Moreover, KE has itself not ceased abiding



by the same. As such, KE is obligated to adhere to all tariff conditions prescribed under the operative MYT, including conditions relating to ToU Metering and Billing.

13. The Authority examined the arguments of the KE and found it unconvincing; thereby rejected the reply of KE and issued a Show Cause Notice dated 16th March 2018 to the KE under Rules 4(8) & (9) of the Fines Rules to show cause as to why a fine amounting to Rupees One Hundred Million (Rs. 100,000,000/-) should not be imposed upon the Licensee for the alleged violations of law.

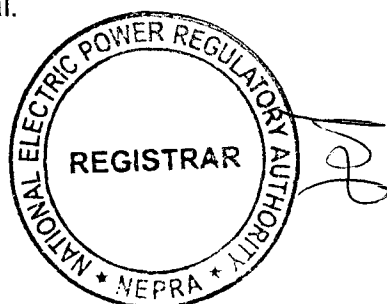
14. KE submitted its response vide letter dated 2nd April 2018, wherein KE amongst its earlier objections mentioned in Para 7 above agitated that there is no question of continued violation of law attracting penal action considering the inaction of committee with respect to implementation of directions contained in the MYT 2009 and attracts principle of estoppel which arises from mere silence, inaction or even inconsistent conduct of a person. Furthermore, KE requested for an opportunity of hearing.

15. KE was granted an opportunity of hearing on 24th May 2018 but it was adjourned on the request of KE. Subsequently, the hearing was held on 11th July 2018 wherein KE reiterated its stance on earlier version and prayed for acceptance of the response of KE and withdrawal of the Show Cause Notice.

16. On the issue of inaction of the committee, it is an admitted fact that K-Electric has not adhered to the directions of the Authority regarding billing the consumers on the basis of ToU meter and the violation continues since the notification of MYT 2009. Furthermore, since the MYT 2017 is not operative due to non-notification in the official Gazette, the MYT 2009 still holds the field. In view thereof, KE cannot agitate the principle of estoppel in this case.


17. Furthermore, the Authority has granted distribution license to the KE and being a licensee of NEPRA, it is bound to follow the provisions of the NEPRA Act and rules & regulations made thereunder. As per Section 7(3)(a) read with Section 31(4) of the NEPRA Act, the Authority shall determine tariff, rates, charges and other terms and conditions for supply of electric power services by the generation, transmission and distribution companies and recommend the same to Federal Government for its notification. In accordance with Section 21(1)(b) of the Act, the distribution company shall provide non-discriminatory service to all consumers within its service territory and as per rule 6 of National Electric Power Regulatory Authority Licensing (Distribution) Rules, 1999 and Article 6.1 of the distribution license, KE shall charge only such tariff as approved by the Authority from time to time. By not providing ToU metering and billing to the domestic, commercial and other categories of consumers (except industrial), KE is committing discrimination amongst its classes of consumers and thus violating the terms and conditions for supply of electric power services, provisions of its distribution license and applicable documents.

18. Furthermore, KE is providing ToU billing to industrial consumers which is also part of MYT 2009. KE under terms and conditions of its distribution license is not allowed to pick and choose the provisions specified in any applicable document which it considers beneficial to itself. The KE is required to implement the MYT 2009 *in toto* and not in piece meal.

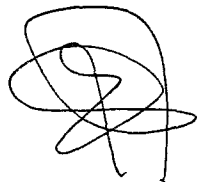


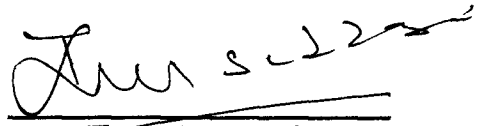
19. For the reasons stated above, the Authority hereby rejects the explanation provided by KE in response to Show Cause Notice issued on 16th March 2018 and declares KE as delinquent under Rule 4(13) of the Fines Rules. Furthermore, Authority imposes a fine of Rs. 1,000,000/- (Rupees One Million only) on KE for aforementioned violations of applicable documents.

20. Accordingly, KE is directed to pay the amount of fine, Rs. 1,000,000/- (Rupees One Million only) in designated bank of the Authority within a period of thirty (30) days from the date of issuance of this order and shall forward a copy of the paid instrument to the Registrar Office for information, failing which, the Authority shall recover the amount due, under Section 41 of the NEPRA Act as arrears of land revenue.

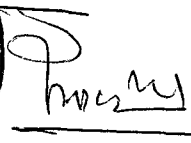

(Saif Ullah Chattha)
Member 28-9-2018

(Retired)
(Himayat Ullah Khan)
Member


28/09/2018
(Rehmatullah)
VC/Member


(Tariq Saddozai)
Chairman




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