



Registrar

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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No. NEPRA/ADG(CAD)/TCD 09/ 16232-33

September 5, 2019

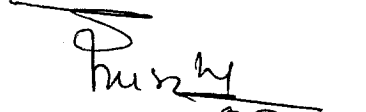
Chief Executive Officer
K-Electric Limited
KE House No. 39-B, Sunset Boulevard,
Phase-II, Defense Housing Authority,
Karachi.

Subject: **ORDER OF THE AUTHORITY IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW FILED BY K-ELECTRIC LTD. AGAINST THE ORDER OF THE AUTHORITY DATED 3RD DECEMBER 2018 REGARDING ILLEGAL DISTRIBUTION/RESALE OF ELECTRIC POWER BY BULK SUPPLY CONSUMERS/HIGH-RISE BUILDINGS / COMPLEXES / HOUSING SOCIETIES**

Reference is made to Motion for Leave for Review filed by K-Electric Ltd. dated 3rd January 2019 and hearing held on 6th March 2019 regarding the subject matter.

2. Please find enclosed herewith the Order of the Authority (04 Pages) regarding the subject matter for compliance.

Encl: As above


(Syed Safer Hussain)
Registrar

Copy to:

Mr. Ayaz Jaffer Ahmed
Director (Finance & 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: 6th March 2019

Present:

- | | | |
|----|--------------------------|--------------------|
| 1) | Engr. Bahadur Shah | VC/Member(M&E) |
| 2) | Mr. Saif Ullah Chattha | Member(Tariff) |
| 3) | Mr. Rehmatullah Baloch | Member (CA) |
| 4) | Mr. Rafique Ahmed Sheikh | Member (Licensing) |

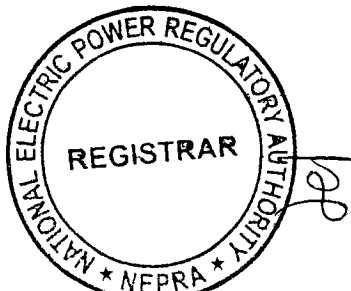
On behalf of:

- K-Electric Ltd:
- 1) Barrister Asghar Khan, Legal Counsel
 - 2) Mr. Ayaz Jaffar, Director
 - 3) Ms. Uzma Farooqui, General Manager
 - 4) Mr. Abdul Muqet, Manager

Subject: **ORDER OF THE AUTHORITY IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW FILED BY K-ELECTRIC LIMITED AGAINST THE ORDER OF THE AUTHORITY DATED 3RD DECEMBER 2018 REGARDING ILLEGAL DISTRIBUTION / RESALE OF ELECTRIC POWER BY BULK SUPPLY CONSUMERS / HIGH-RISE BUILDINGS / COMPLEXES / HOUSING SOCIETIES**

ORDER

1. This Order shall dispose of the Motion for Leave for Review dated 3rd January 2019 filed by K-Electric Limited (hereinafter referred to as the "Petitioner" or "KE") against the Order of the Authority dated 3rd December 2018 in the matter of illegal distribution / resale of electric power by bulk supply consumers / high-rise buildings / complexes / housing societies.
2. The facts of the instant case are that housing colonies, housing societies, industrial estates, high rise buildings, complexes and plazas are involved in distribution and resale of electricity which is against the legal framework provided in Section 20 of the NEPRA Act, 1997. The said provision of law provides that no person shall, except under the authority of a license issued by the Authority and subject to the conditions specified in the NEPRA Act, 1997, engage in the distribution of electric power.
3. For the purpose of distribution and sale of electricity, the Authority has granted Distribution License bearing No. 09/DL/2003 to KE. Further, the Authority framed NEPRA (Supply of Electric Power) Regulations, 2015 (hereinafter referred to as "SEPR 2015" or the



"Regulations") to regulate lawful supply of electric power under the NEPRA Act. Under SEPR 2015, following options are available to any entity for regularization of distribution arrangement:

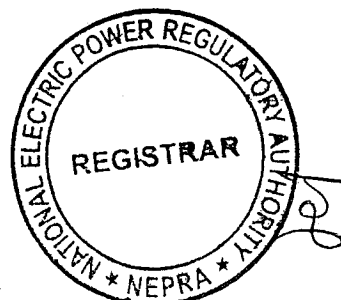
- (i) Apply for a distribution licence (where the applicant has a proposed/existing distribution network of not less than 20MW and also owns a 132kV Grid Station);
- (ii) Surrender the distribution network to the concerned Distribution Company;
- (iii) Execute an O&M Agreement with the concerned Distribution Company; or
- (iv) approval and notification of an Authorized Agent.

4. It came to the knowledge of the Authority that even after the promulgation of SEPR 2015, the illegal distribution/resale of electricity was still prevailing. The Authority took cognizance of illegal distribution and resale of electricity and KE was directed vide letter No. NEPRA/CAD/TCD.10/10041 dated 13th June 2017 to investigate and report persons involved in such unlawful activities in its service territory. In response, KE, vide its letter No. KE/BPR/NEPRA/2017/200 dated 3rd November 2017, submitted a list of fifty seven (57) consumers involved in the resale of electricity to the public/consumers, in contravention of Section 20 of the NEPRA Act, 1997 and SEPR 2015. The Authority showed serious concerns for non-implementation of SEPR 2015 on part of KE for regularization of distribution/resale of electricity.

5. Any contravention of the NEPRA Act and the Rules and Regulations made thereunder, falls within the scope of 'applicable documents' as defined in NEPRA (Fines) Rules, 2002 (hereinafter referred to as the "Fine Rules") and thereby attract penal action under the provisions of the Fine Rules.

6. The Authority, after considering the report, decided to initiate legal proceedings against the KE and directed the Registrar to seek an Explanation under Rule 4 (1) & (2) of the Fine Rules for non-adherence of provisions of the NEPRA Act, 1997 and SEPR 2015. In this respect, an Explanation dated 16th February 2018 was issued under Rule (1) & (2) of the Fine Rules. The KE was directed to either admit or deny the violation of provisions of the NEPRA Act and SEPR 2015 within fifteen (15) days of receipt of Explanation Letter and if found non-responsive within prescribed time period, admission of the occurrence of the concerned violation(s) shall be presumed, and the Authority shall proceed with imposing fines under Rule 4 of the Fine Rules read with other enabling provisions of the NEPRA Act, 1997 and Rules & Regulations made thereunder.

7. The KE submitted its response vide letter No. KE/BPR/NEPRA/2018/115 dated 19th March 2018. In its reply, KE stated that supply to residential and commercial establishments is provided in accordance with NEPRA Tariff terms & conditions and not for resale of electricity to occupants. No violation of NEPRA Act, 1997, KE's distribution license or KE's tariff has arisen on account of supply of electric power services to bulk PMTs within the service area of KE as the same has been done under various written arrangements known as collection and maintenance service agreements with independent consumers/operators. Essentially, these arrangements were similar to O&M contracts with the operator being supplied power at a single



meter and the operator taking responsibility for payments of electricity charges against the consumption so recorded. However, owing to the performance failures of these contractors, KE, to a large extent, has terminated these arrangements or allowed them to lapse. In some cases, the operators have combined together and filed cases/Constitutional Petitions against KE seeking restraining orders against terminations of their arrangements. These arrangements have not been declared illegal by the court. Further, supply to industrial states such as Export Processing Zones Authority (EPZA) and Lasbela Industrial Estate Development Authority (LIEDA) existed prior to enactment of NEPRA Act and issuance of distribution license to KE. However, KE is negotiating in good faith with these industrial estates for execution of an O&M agreement. KE requested the Authority to withdraw the proceedings against it.

8. The response of KE against the Explanation was analyzed and considered by the Authority. Finally, Order dated 3rd December 2018 was issued to KE, whereby the legal proceedings initiated against KE under Rule 4(1)&(2) of the Fine Rules were closed, however, KE was directed to proceed as under:

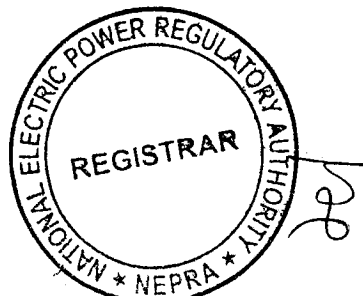
- i. KE shall regularize resale of electric power activity occurring within its service territory under the NEPRA Act and NEPRA (Supply of Electric Power) Regulations, 2015, particularly regularization of the reported cases; or

KE shall acquire ownership and operation of distribution networks and assets from persons seeking to surrender such networks as per Rule 4(6) of the Regulations and upon taking over the system, responsibility of operation and maintenance shall rest solely with KE.

- ii. The KE is directed to submit compliance report within three (03) months of issuance of this Order.

9. Being aggrieved, KE, vide letter dated 3rd January 2019, filed a Review Motion which was admitted, and hearing in the matter was held on 6th March 2019, wherein representatives of KE participated and advanced their arguments. KE raised the following contentions with respect to the impugned issue:

- i. SEPR 2015 contain inherent limitations and a number of legal, factual and regulatory infirmities, which if implemented unilaterally will result in unnecessary and unintended operational consequences. Further, post notification of SEPR 2015, a consultative session was conducted by NEPRA on 4th October 2017, wherein KE explained in detail its apprehensions, legitimate concerns and positive suggestions which were also agreed by all DISCOs and also appreciated by NEPRA.
- ii. Subsequently, NEPRA directed KE to submit comments/suggestions in writing along with draft O&M Agreement so that it could be used as template by other DISCOs for entering into O&M Agreements with high-rise buildings, plazas, complexes, industrial estates, housing societies, etc, instead of granting them distribution licenses. KE submitted its reply/comments vide letter dated 14th November 2017. However, neither has any response been received from NEPRA nor any further constitutions/discussions have been held, and accordingly, the issues raised by KE remained unaddressed.
- iii. Foregoing in view, implementation of SEPR 2015 without conclusion of an ongoing matter to the extent of grant of distribution licenses to the entities is premature as



well as *volte face* to the understanding developed with NEPRA and DISCOs during the said consultative meeting/session. Accordingly, it is submitted that until the inherent limitations associated with SEPR 2015 are resolved on merit, KE shall ensure compliance with the directives of NEPRA either:


- a. Continue execution of O&M Agreements with the entities opting for this route; or
- b. Take-over operation and control of distribution networks from the entities seeking to surrender such networks.

10. During the hearing, the representatives of KE also contended that (i) NEPRA did not consider the reservations of KE regarding SEPR 2015 and there was no outcome of the consultative session in view thereof; and (ii) keeping in view the provisions of Distribution License granted by NEPRA, KE has exclusive rights of distribution of electric power within its service territory, and hence, granting of license to any other entity within the service territory of KE is not supported.


11. On the contention of SEPR 2015, it is provided that following the consultative session, a standard template of O&M Agreement was approved by the Authority and uploaded on NEPRA website for information of all stakeholders. All other Distribution Companies are following the said template for regularization of illegal distribution/resale activity.

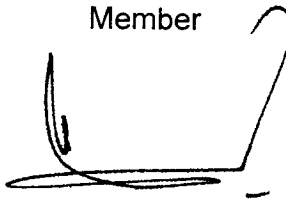
12. On the contention of exclusivity, it is provided that previously, Section 21(2)(a) of the NEPRA Act, 1997 prescribed the duties and responsibilities of a Distribution Company to include an exclusive right to provide distribution service within its service territory. However, as per the 2018 Amendment in NEPRA Act, 1997, the word 'exclusive' has been omitted in view of making the power sector more competitive.

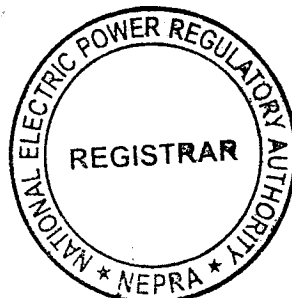
13. The case has been reviewed in detail. Perusal of the Order sought to be modified/reviewed clearly indicates that all material facts and representations made were examined in detail and no new evidence/ground was placed on record by KE. Therefore, the Authority is convinced that there is no need to withdraw or modify the impugned Order. Hence, the Review Motion filed by KE is declined and the earlier Order dated 3rd December 2018 is upheld.

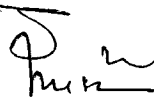

22/23/19
(Rehmatullah Baloch)
Member


(Rafique Ahmed Shaikh)
Member


(Saif Ullah Chattha) 20.8.2019
Member


(Engr. Bahadur Shah)
VC/Member




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