



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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No. NEPRA/ADG(CAD)/TCD 09/1507-08

January 25, 2019

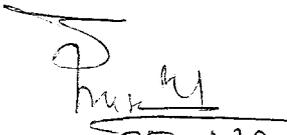
Chief Executive Officer
K-Electric Limited
KE House No. 39-B, Sunset Boulevard,
Phase-II, Defense Housing Authority,
Karachi.

Subject: **ORDER OF THE AUTHORITY IN THE MATTER OF REVIEW FILED BY K-ELECTRIC UNDER RULE 5(1) OF NEPRA (FINES) RULES, 2002 AGAINST THE ORDER OF THE AUTHORITY DATED 28TH SEPTEMBER 2018 IN THE MATTER OF FINE IMPOSED ON K-ELECTRIC FOR VIOLATION OF THE AUTHORITY'S DIRECTIONS REGARDING PROVISION OF TOLL METERING AND BILLING TO ITS CONSUMERS**

Reference is made to Review Motion filed by K-Electric dated 8th October 2018 and hearing held on 27th December 2018 regarding the subject matter.

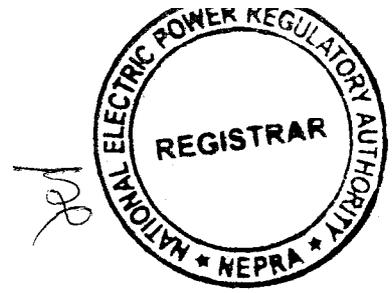
2. Please find enclosed herewith the Order of the Authority (06 Pages) regarding the subject matter for compliance within thirty (30) days.

Encl: As above


25 01 19
(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: 27th December 2018

Present:

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

On behalf of:

- K-Electric Ltd:**
- 1) Barrister Asghar Khan Legal Counsel
 - 2) Mr. Ayaz Jaffar, Director (Finance & Regulations)
 - 3) Mr. Arshad Iftikhar, Director
 - 4) Mr. Mustafa Hussain, Deputy Director

Subject: ORDER OF THE AUTHORITY IN THE MATTER OF REVIEW FILED BY K-ELECTRIC UNDER RULE 5(1) OF NEPRA (FINES) RULES, 2002 AGAINST THE ORDER OF THE AUTHORITY DATED SEPTEMBER 28, 2018 IN THE MATTER OF FINE IMPOSED ON K-ELECTRIC FOR VIOLATION OF THE AUTHORITY'S DIRECTIONS REGARDING PROVISION OF TOU METERING AND BILLING TO ITS CONSUMERS

ORDER

1. This Order shall dispose of the Review filed by K-Electric Limited (the 'Appellant' or 'KE') under Rule 5(1) of the NEPRA (Fines) Rules 2002 (the 'Fine Rules') against the order of the Authority dated 28th September 2018 (the 'Impugned Order') in the matter of fine imposed on KE under Rule 4(13) of the Fine Rules for violation of the Authority's directions regarding provision of ToU metering/billing to its consumers.

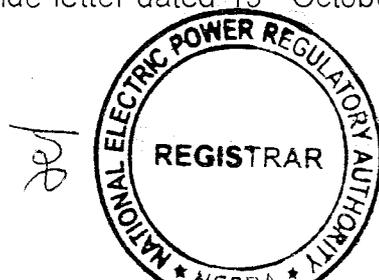
2. Brief facts of the instant case are that a consumer of KE, namely Mr. Nazim F. Haji (hereinafter referred to as the "Complainant") approached KE, vide his letter dated 19th September 2016, requesting for provision of a ToU meter at his premises. The

Complainant also forwarded a copy of the same to NEPRA. Accordingly, the Authority also issued directions to KE, vide letter dated 22nd September 2016, to expedite the process of installing ToU meters and to start billing its consumers on the applicable ToU tariff where such meters have already been installed.

3. Meanwhile, the Complainant approached the Wafaqi Mohtasib, vide Complaint No. WMS-ONL/008204/2016 dated 8th October 2016, alleging maladministration on part of KE for delays in installation of ToU meters. This complaint was disposed of by the Wafaqi Mohtasib, vide its Closure Findings dated 30th October 2016, on the basis of an undertaking provided by KE that the matter would be addressed. Compliance report in this regard was to be submitted to the Wafaqi Mohtasib within thirty (30) days of issuance of the findings. A review was filed by KE against the above order 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. The case was decided by the President's Secretariat, vide order dated 6th June 2017, with directions of setting aside the Wafaqi Mohtasib's earlier order and conversion of complaint into a petition and forwarded to KE for compliance with NEPRA's directions.

4. The Complainant then furnished the above 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 thirty (30) days. In response, KE asserted, vide letter dated 27th July 2017, that its Multi-Year Tariff (hereinafter referred to as the "MYT 2017") was still pending determination before the Authority and installation of a ToU meter at the Complainant's premises would be resolved once the MYT 2017 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 once the MYT 2017 is notified in the official Gazette.

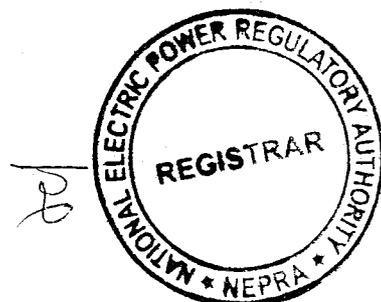
5. Being dissatisfied with KE's response, the Authority proceeded to initiate legal action under Rule 4 of the Fine Rules against KE. Accordingly, an Explanation Letter, dated 5th October 2017, was issued to KE on the grounds of non-adherence of terms and conditions of tariff relating to ToU metering and billing. KE submitted its response to the explanation letter vide letter dated 19th October 2017, and requested for an opportunity



of hearing. The Authority provided an opportunity of hearing to KE on 12th December 2017. The Authority rejected KE's submissions and issued a Show Cause notice, dated 16th March 2018, under Rules 4(8) and 4(9) of the Fine Rules. KE submitted its response to the Show Cause notice, vide letter dated 2nd April 2018, and requested for an opportunity of hearing. Accordingly, the hearing was convened on 11th July 2018. The Authority rejected KE's submissions, vide the Impugned Order dated 28th September 2018, and proceeded to impose a fine of Rs. 1,000,000/- on KE for violations of the directions of the Authority. The Impugned Order was forwarded to KE vide letter dated 1st October 2018.

6. KE has now filed the instant Review under Rule 5(1) of the Fine Rules against the Impugned Order of the Authority. The review application was received by the Authority, vide letter dated 8th October 2018, wherein the following grounds have been raised by KE:

- (i) NEPRA, during a hearing dated 14th October 2014, constituted a 2-member committee to analyze, discuss and resolve issues relating to KE's rollout of ToU Meters. A detailed report on the subject was subsequently submitted by KE to NEPRA vide letter dated 30th January 2015. In view of the Committee constituted by NEPRA itself to deliberate the impugned matter, NEPRA has estopped itself from denying or resiling the same. Reliance is placed on Article 114 of the Qanun-e-Shahadat Order, 1984 and PLD 2015 SC 212.
- (ii) By revising the ToU mechanism and addressing the concerns of KE in the 2017 MYT, NEPRA has consciously, deliberately and intentionally modified/amended the ToU mechanism prescribed in earlier multi-year tariff notified on 1st January 2010 (the "MYT 2009"). Accordingly, there is no previous ToU mechanism in place for NEPRA to complaint about lack of implementation.
- (iii) Further, the MYT 2017 has not been duly notified in the official Gazette so as to become operative and hence KE is under no legal obligation to implement ToU metering for the new tariff period across the board and that the same will be implemented post its notification in the official Gazette.



(iv) NEPRA's decision dated 5th July 2018 in the matter of reconsideration request filed by the GoP in respect of the MYT 2017 clearly directs KE to start billing immediately on ToU rates to the consumers who have already been provided with ToU meters and to provide ToU metering and billing arrangement to all existing consumers having load more than 5kW within three (03) months from the date of notification of the Decision... Since there are two contradictory orders in the field relating to the same subject matter, therefore the latest order, i.e. the MYT 2017 supersedes this Order and becomes binding. Accordingly, KE shall comply with the terms of the MYT related to ToU once it is notified through the official Gazette in line with Section 31 of the NEPRA Act.

7. In furtherance to the foregoing, the Authority granted an opportunity of hearing to KE on 27th December 2018, where KE's representatives reiterated their earlier submissions. The notice was also issued to the Complainant but he did not attend the hearing. However, vide an email dated 27th December 2018, the Complainant raised an issue of non-provision of ToU billing to his industrial connection. The Complainant *inter alia* submitted that the company he represents (M/s Alucan Pvt. Ltd.) was provided with ToU tariff in March 2014, therefore, KE is liable to refund the excess amount charged with effect from applicability of the 2009 MYT. Further, the remaining industries, entitled for ToU metering/billing under the 2009 MYT, were provided with ToU tariff in 2017-18 and, as such, should also be refunded for excessive charges.

8. The case has been examined in detail, in light of the relevant documents, arguments advanced during the hearing and the applicable law. At the outset, it is observed that the contentions submitted by the Complainant, vide email dated 27th December 2018, pertain to non-provision of ToU metering and billing to industrial enterprises (belonging to him and other individuals). These are new grievances; as the Impugned Order was limited to non-provision of ToU metering and billing at the Complainant's residential premises. Considering the instant proceedings being undertaken under NEPRA's review jurisdiction, additional grievances/prayers beyond the parameters of the Impugned Order cannot be incorporated or granted as part of these proceedings. Therefore, the grievances/prayers submitted by the Complainant, vide email dated 27th December 2018, are dismissed, without prejudice to the Complainant's

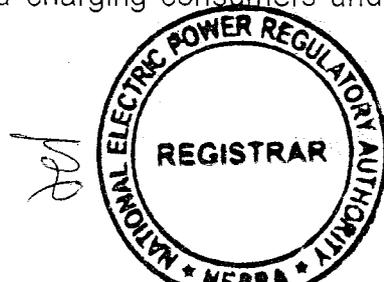


right to seek regulatory action on the said grievances/prayers in separate proceedings afresh.

9. On the ground of constitution of a committee (to investigate the matter of non-provision of ToU metering and billing) acting as a bar on penal action against K-Electric, the issue has already been adjudged by the Authority in Para 10. of the Impugned Order. Relevant excerpt of the Impugned Order is reproduced below for ease of reference:

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 issue 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.

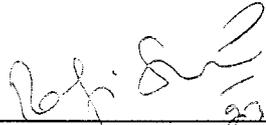
10. On the subject of vitiation and rescission of the MYT 2009 by way of the MYT 2017, KE has submitted conflicting grounds and standpoints. KE has rightly highlighted that the MYT 2017 has not yet been notified in terms of Section 31(7) of the NEPRA Act 1997, thereby rendering the said tariff as presently inoperative. Concurrently, KE has asserted that the same inoperative MYT 2017 has voided the provisions of the MYT 2009, thereby removing the legal obligations thereunder and frustrating the cause of action in the Impugned Order. These are conflicting and mutually destructive pleas. KE has submitted that the MYT 2017 has invalidated the MYT 2009, while in the same breadth arguing that the MYT 2017 is in itself inoperative under law due to non-notification. These are unsustainable pleas and not legally tenable. Moreover, these submission are far removed from the factual position on the subject. The MYT 2017 was determined by the Authority vide determination dated 20th March 2017, and thereafter revised under review, vide determination dated 9th October 2017, and reconsideration request filed by the Federal Government, vide determination dated 5th July 2018. The MYT 2017 to date remains non-notified and KE has proceeded to dispute the said tariff before the Honorable Sindh High Court, in Suit No. 1467/2018. Owing to these deferments in tariff notification, attributable to KE, the distribution company itself is presently operating and charging consumers under the MYT 2009, i.e. the same tariff



that KE is asserting as legally inoperative and non-binding for the purposes of the present proceedings. This matter has also been examined in the Impugned Order in Para 12. Relevant excerpt of the Impugned Order is reproduced below for ease of reference:

12. On the issue of vitiation 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.

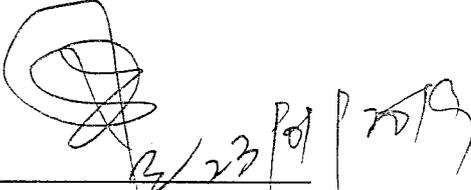
11. The Authority, after reviewing all documentary information placed on record and detailed deliberations and in view of the foregoing finds that KE has not provided sufficient grounds that would result in the Impugned Order to be reversed or altered, nor any error inviting indulgence as admissible in law has been pleaded out. The instant review filed by KE is accordingly dismissed in terms of Rule 5(2) of the Fine Rules and the order of the Authority, dated 28th September 2018, on the impugned issue is maintained.


27/1/2019

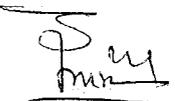
(Rafique Ahmed Sheikh)
Member



(Saif Ullah Chattha)
Member 24.1.2019


13/23/01/2019

(Rehmatullah Baloch)
VC/Member


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