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Islamic Republic of Pakistan

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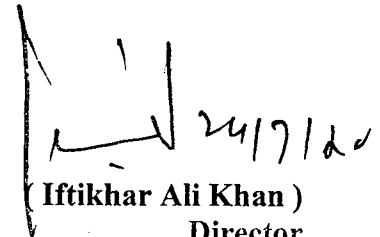
July 24, 2020

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

Subject: **DECISION IN THE MATTER OF COMPLAINT FILED BY EXPORT PROCESSING ZONE AUTHORITY (EPZA) KARACHI UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST K-ELECTRIC LIMITED REGARDING CHARGING OF SHARING COST**
Complaint # KE-19/02/2020

Please find enclosed herewith the Decision of Member Consumer Affairs dated 23.07.2020 (06 Pages) regarding the subject matter for necessary action and compliance within thirty (30) days, please.

Encl: As above


(Iftikhar Ali Khan)
Director
Registrar Office

Copy to:

1. Mr. Ayaz Jaffar Ahmed,
Director (Finance & Regulation),
K-Electric Limited, House No. 39-B,
Sunset Boulevard Phase-II, DHA, Karachi.
2. Engr. Nasir Hidayat Khan, General Manager (Engineering),
Export Processing Zones Authority,
Landhi Industrial Area Extension,
Mehran Highway, Karachi.
Tel: 021-99208039, 99208041



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No. KE-19/02/2020

Export Processing Zone Authority **Complainant**
(EPZA), Landhi Industrial Area Extension
Mehran, Highway
Karachi

VERSUS

K-Electric Limited **Respondent**
KE House No. 39-B, Sunset Boulevard,
Phase-II, Defense Housing Authority,
Karachi.

Date of Hearing: February 12, 2020

On behalf of:

Complainant: 1). Engr. Nasir Hidayat Khan, GM (Engineering) EPZA
2) Mr. Junaid Ahmed Alvi, DGM (Finance) EPZA
3) Mr. Muhammad Naveed, Manager, EPZA

Respondent: 1) Kamran Akhtar Hashmi, Director (New Connection)
2) Mr. Asif Shajar, DGM (Regulations)

Subject: **DECISION IN THE MATTER OF COMPLAINT FILED BY EXPORT PROCESSING ZONE AUTHORITY (EPZA) KARACHI UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST K-ELECTRIC LIMITED REGARDING CHARGING OF SHARING COST**

DECISION

This decision shall dispose of the complaint filed by Export Processing Zone Authority Karachi (hereinafter referred to as the "Complainant" or "EPZA") against K-Electric Limited (hereinafter referred to as the "Respondent" or "K-Electric" or "KE"), under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act").

2. The Complainant in the complaint submitted as under:
- i. EPZA had constructed a 132 kV, 40/52 MVA Grid Station, at cost of Rs. 59.20 Million along with Transmission lines from Pipri and Landhi Grid to Karachi Export Processing Zone Grid station and same was handed over to KE (the then KESC) free of cost in the year 1992 for operation and maintenance, vide an Agreement (hereinafter referred to as "the Agreement") executed between EPZA and KESC.
 - ii. Amongst other clauses of the agreement, clause-4 states that "The 'Contract Demand' shall be enhanced by the Licensee up to 50 MW on the receipt of Consumer's request in writing without demanding charges for carrying out any addition and alteration to the grid station equipment and or the cable laid up to main distribution station of Karachi Export Processing Zones.
 - iii. EPZA was utilizing 7MW load up to the year 2013 under tariff category B-4. Due to increase in demand, EPZA requested KE for enhancement of load from 07 MW to 11 MW which was allowed but C(2) tariff was applied instead of B-4 tariff category.
 - iv. EPZA once again requested K.E for enhancement of load from 11 MW to 27 MW. In response, K.E issued an estimate amounting to Rs. 336.305 Million against Transformer Sharing charges and Rs. 33.280 Million as security deposit for the said extension, which was unacceptable to the Complainant, because Export Processing Zones Authority had handed over 132 kV Grid station of 50 MW capacity to KE for operation and maintenance free of cost. KE is bound to provide enhancement of load to EPZA. The Complainant requested that KE be directed to provide the required extension of load to EPZA without demanding any charges except security deposit.
 - v. The foreign investors are continuously approaching EPZA for enhancement of load in their factories in order to meet the export orders and further to enhance their line of production according to the customers' requirements. This will not only enhance the exports from Export Processing Zone but also Socio Economic activities in the form of employment opportunities for the people of local area adjacent to zone.

3. In order to probe further into the matter, a hearing was held on February 12, 2020 at NEPRA Head Office, Islamabad, which was attended by both the parties. The Complainant re-iterated his earlier version and further added that K-Electric management upgraded the 132 kV EPZA Grid Station

and invested an amount of Rs. 118 Million, whereas, K-Electric has demanded Rs. 336.305 Million from EPZA as transformer sharing cost for the extension of load. The representatives of KE during the hearing submitted as under:

- i. The Clause 4 of the "Agreement" signed between the parties in the year 1992, stated that on request of the consumer; the Contract Demand shall be enhanced upto 50 MW without demanding any charges for carrying out the alterations to the Grid Station equipments and or to the cables laid upto Main Distribution Station or Karachi Export Processing Zone. However, as per the 1st Amendment of the Agreement (hereafter referred to as "Addendum") signed on January 28, 2013, the Article 2.2 states that the article 4 of the agreement shall stand replaced in its entirety and the amended article 4.3 stipulates that:

..... the consumer shall take from KESC a constant supply of electrical energy presently at connected load of eleven(11) MW (7MW existing and 4 MW extended)..... The load extension scheme implementation cost specific to present 4 MW load extension request shall be shared by consumer and KESC in equal proportions as gesture of good will. However, for all further extensions consumer shall be solely responsible to bear the entire cost of any load extension schemes in the future.

- ii. Furthermore, the miscellaneous Article 4.3 of the Amended Agreement states that:

In the event of any conflict within the provision(s) of the Addendum and the terms set within the Agreement, the provision(s) of the Addendum shall prevail.

- iii. K-Electric further submitted that it has upgraded the 132 kV Grid Station at its own cost. The estimates issued by K-Electric are based on the cost incurred by K-Electric and needs to be paid by the Complainant.

4. The matter has been examined in light of the written/verbal arguments of the parties; the following has been concluded:

- i. EPZA had constructed a 132 kV, 40/52 MVA Grid Station, along with Transmission lines and handed over the same to KE (the then KESC) free of cost in the year 1992 for operation and maintenance; through the Agreement executed between EPZA and KESC on June 28, 1992.

- ii. EPZA was utilizing 7MW load up to the year 2013 under tariff category B-4. Due to increase in demand, EPZA requested KE for enhancement of existing load from 07 MW to 11 MW which was allowed but C(2) tariff was applied instead of B-4 tariff category.
- iii. EPZA applied to KE for enhancement of its load from 11 MW to 27 MW. In response, KE issued an estimate amounting to Rs. 336.305 Million against transformer sharing charges and security deposit amounting to Rs. 33.280 Million on Dec 16, 2019. The Complainant is ready to pay the applicable security deposit, however, the capital cost has been impugned by the Complainant through the instant complaint.
- iv. According to the "Agreement", the 'Contract Demand' could be enhanced by the Licensee up to 50 MW on the receipt of Consumer's request in writing without demanding charges for carrying out any addition and alteration to the 132 kV Grid Station equipment and or the cable laid up to main distribution station of Karachi Export Processing Zones.
- v. Later on, the Agreement was Amended on January 28, 2013 (hereinafter referred to as "Addendum Agreement"), wherein the Article 2.5 of the Addendum Agreement states that the Article 8 of the agreement shall stand replaced in its entirety as per which Article 8.1 reads that:


"Through the handover of the system and equipment at the Grid Station on, or about June 28, 1992, and operation and maintenance of all such equipment being kept by KESC at its own cost, KESC remains the custodian of the equipments as well as the quantum of the energy at the Grid Station. KESC shall have unencumbered right to use the equipment and association facilities to supply electrical energy to other consumers". This shows that KE converted the Dedicated Distribution System of EPZA into Common Distribution System.
- vi. KE has based its arguments on the grounds that the Complainant has signed Addendum Agreement with KE wherein it has agreed to bear the cost of extension of load in future. In this regard, miscellaneous Article 4.3 of the Addendum Agreement mentions that in the event of any conflict within the provision(s) of the Addendum and the terms set within the Agreement, the provision(s) of the Addendum shall prevail. The Article 2.2 (c) of the Addendum Agreement (Article 4.3 of the Agreement) states that in case of any further extensions of load (above 11 MW), the consumer shall be solely responsible to bear the entire cost of any such load extension scheme in future. KE has further submitted that it

has extended/upgraded the Grid Station at its own and has incurred a huge amount on the up gradation.

- vii. The Complainant has argued that K-Electric management upgraded the EPZA Grid Station and invested an amount of Rs. 118 Million, whereas, K-Electric has demanded Rs. 336.305 Million from EPZA as transformer sharing cost for the extension of load.
- viii. Under the provisions of NEPRA Consumer Eligibility Criteria, 2003 that a Sponsored Dedicated Distribution System/Dedicated Distribution System can be converted into Common Distribution System on the request of the sponsor or by the licensee itself in the best public interest. In case, the sponsor requests the distribution company for taking over of the system then no cost shall be reimbursed to the sponsor. However, if the distribution company takes over the system in the best public interest, then distribution company shall compensate the sponsor on mutually agreed terms. In the instant case; the 132 kV Dedicated Grid Station of EPZA had been taken over by KE and been converted into Common Distribution System. Initially the load of EPZA was 7 MW; which was enhanced to 11 MW. EPZA further applied to KE for enhancement of its load from 11 MW to 27 MW. In response, KE issued an estimate amounting to Rs. 336.305 Million against transformer sharing charges on the basis of an agreement dated January 28, 2013 executed between the parties wherein it was agreed by EPZA to bear the cost of extension of load in future. The Complainant submitted that they were forced to sign the agreement because they had no other option for getting extension of load from KE. However, at the time of initial agreement there was no such condition that EPZA would bear capital cost for extension of load, in future.
- ix. Clause 2.1 (b) of the Addendum Agreement stipulates that all rules and regulations enforced by NEPRA from time to time shall be deemed applicable to the Addendum Agreement and its subsequent addendums.
- x. No any agreement can be made by the Licensee with any party which is in violation of NEPRA Act, Rules and Regulations. Whereas, the condition for future load extension set out in Article 2.2(c) of Addendum Agreement (Article 4.3 of the Agreement) is in violation of the NEPRA Act, rules and regulations.
- xi. The demand of K-Electric for recovery of transformer sharing charges is illegal and not justified as the 132 kV Grid Station was constructed by EPZA and handed over to KE for its operation and maintenance.



5. In view of the foregoing, K-Electric is hereby directed to provide the required extension of load from 11 MW to 27MW to the Export Processing Zone Authority (EPZA) Karachi without any sharing charges, however, the Complainant shall pay updated security deposit for the incremental load. A compliance report in the matter be submitted within thirty (30) days. This decision is only applicable for extension of load from 11 MW to 27MW and in case of any further extension, the same shall be dealt separately.


Rehmatullah Baloch
Member (Consumer Affairs)
23/07/2020

Islamabad, July 23 , 2020