



Registrar

National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/ADG(CAD)/TCD-09/ 28493-95

June 8, 2021

M/s RIAA Barker Gillete Chambers
3rd Floor, 65-W, Executive Heights
Block H, Fazal-Ul-Haq Road, Blue Area
Islamabad
Ph: 051-111529937

Subject: **DECISION IN THE MATTER OF COMPLAINT FILED BY M/S ANOUD
POWER GENERATION LIMITED THROUGH RIAA BARKER GELLETTE
UNDER SECTION 39 OF THE REGULATION OF GENERATION,
TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST K-ELECTRIC REGARDING PAYMENT OF DUES
KE-08/02/2021**

Reference is made to your complaint filed with NEPRA on behalf of M/S Anoud Power Generation Limited regarding the subject matter.

2. Please find enclosed herewith the **Decision** of the Member (Consumer Affairs), NEPRA in this regard.

Encl: As above


(Shakil Ahmed)
Additional Director
Registrar Office

Copy to:

1. Chief Executive Officer
K-Electric Limited, KE House No 39-B
Sunset Boulevard Phase-II, Defence Housing Authority, Karachi.
2. Anound Power Generation Limited
Plot # 7-B/1, Adjacent National Refinery Limited
Korangi Industrial Area,
Karachi



**BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY (NEPRA)
Complaint No. KE-08/02/2021**

M/s Anoud Power Generation Limited (APGL) Complainant
Karachi

Versus

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

Date of Hearing: 21st April 2021

On behalf of:

Complainant: 1). Mr. Nádír Altaf, Legal Counsel
2). Mr. Waheed Soomro, Chief Financial Officer, APGL

Respondent: 1) Mr. Asif Shajer, DGM (Regulations)
2) Mr. Mustafa Kamal, Director (Business Finance)
3) Mr. Faizan Pasha, GM (Business Finance)
4) Mr. Fahad Mazhar DGM (Business Finance)
5) Mr. Mudassir Zuberi, Head of Business Development
6) Mr. Fahad Najmi, DGM (Business Development)
7) Mr. Mairah Khan, DM (Business Development)

Subject: DECISION IN THE MATTER OF COMPLAINT FILED BY M/S ANOUD POWER GENERATION LIMITED THROUGH RIAA BARKER GELLETTE UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST K-ELECTRIC LIMITED (KEL) REGARDING PAYMENT OF DUES

DECISION

This Decision shall dispose of the complaint filed by M/s Anoud Power Generation Limited (hereinafter referred to as the "Complainant" or "APGL") against K-Electric Limited (hereinafter referred to as the "Respondent" 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. Brief facts of the case are that NEPRA received a complaint from the Complainant wherein it was submitted that the APGL is a special purpose vehicle owning and operating an approximately 30.95 MW electric power generation plant at Korangi Industrial Area, Karachi and obtained a generation license on February 08, 2005; modified on February 26, 2014. The Complainant sells around 12 MW of its generated electrical power to K-Electric Limited pursuant to a power purchase agreement ("PPA") dated September 15, 2005. The PPA was subsequently amended through an addendum dated April 27, 2010. On December 31, 2019 the Authority issued a decision for the quarterly adjustment of K-Electric's distribution tariff ("Adjustment Decision"). Through the said decision, the Authority directed K-Electric to withhold Rs.65.034 million as penalty from the allowed cost of the Complainant owing to short supply of energy. Consequently, K-Electric withheld the difference from future payments to the Complainant and has continued to withhold amounts purportedly on the basis of the Adjustment Decision. To date, K-Electric has deducted Rs.83.603 million on this basis. Subsequently, the Complainant filed a motion for leave for review of the Adjustment Decision. The Authority issued a decision in relation to the aforesaid motion on December 30, 2020, wherein K-Electric was directed to return Rs.29.926 million to the Complainant. The PPA was entered into between the parties on take-and-pay basis. However, through the Adjustment Decision, the Authority has effectively declared the PPA to be on "take-or-pay" basis, requiring K-Electric to impose additional penalties on account of non-supply of energy. Since the issuance of the Adjustment Decision, K-Electric has been withholding amounts from the Complainant that were otherwise payable thereto. Such withholding has placed the Complainant in dire straits, who has been forced to suspend operations. In order to give effect to the PPA as intended by the parties, the Complainant requested that the Authority may declare the PPA to be on take-and-pay basis, as per Article 3 of the PPA. Consequently, the Complainant would only be required to comply with the energy requirements declared by K-Electric through its dispatch instructions. The Complainant requested that K-Electric be directed to comply with the Authority's instructions and release the payments to the Complainant forthwith.



3. The matter was taken up with KE. In response KE submitted that APGL is required to provide 5040000 kWh minimum guaranteed units to KE each month and in case of failure to do so APGL is liable to pay a penalty in line with power purchase agreement signed between KE and APGL as well as NEPRA's decision dated December 30, 2020. Hence, penalties are adjusted from payments up till Jan-2021 and now additional amount of penalty is required to be paid by APGL due to unilateral suspension of supply.

4. An online hearing in the matter was held on April 21, 2021 which was attended by both the parties wherein the case was discussed in detail. The parties reiterated their earlier version. Representative of KE informed that APGL has filed a petition in the Islamabad High Court; as such the case is subjudice therefore further proceedings in the matter be closed. The parties were advised to submit their written arguments accordingly.

5. In response, KE vide letter dated May 03, 2021 further submitted that Anoud Power Generation Limited filed the motion for Leave for Review (MLR) against NEPRA order dated December 31, 2019 in the matter of KE's Quarterly Adjustments as well as penalty imposed by KE to APGL owing to undelivered energy against the minimum guaranteed units during the period from July 2016 to June 2019. However, the said MLR was disposed of by NEPRA vide its final order dated December 30, 2020. KE further submitted that as the matter has already been decided by NEPRA vide separate proceedings therefore the same cannot be re-agitated under section 39 of NEPRA Act 1997 and NEPRA (Complaint Handling and Dispute Resolution Procedure) Rules 2015. KE further reported that APGL has also filed a Writ Petition before the Islamabad High Court recently which is pending adjudication and therefore, the matter remains subjudice.

6. The case has been examined in detail in light of written/verbal arguments of the parties, documents made so available by the parties and applicable documents:

- i) The APGL is a public limited company and operates a 32 MW capacity power plant located at Korangi Industrial Area, Karachi. The APGL holds a generation license awarded by the NEPRA on February 08, 2005.



- ii) The APGL and KE entered into an agreement on September 15, 2005 for sale and purchase of 12 MW electric power.
- iii) NEPRA vide its determination December 31, 2019 on Petition of KE for Quarterly Adjustment for the period from July 2016 to March 2019 held that K-Electric is liable to impose penalty on APGL, in case APGL supplies less than the minimum monthly guaranteed units of 5,040,000 kWh. The Authority noted that APGL during the period from July 2016 to June 2019, only provided the required energy in three (03) months, whereas, for the remaining period, APGL did not meet the minimum guaranteed energy of 5,040,000 kWh. K-Electric therefore, in line with clause 1.5 of the 1st addendum to the PPA, was required to impose a penalty of around Rs. 65.034 million on APGL for the undelivered energy.
- iv) Being aggrieved with the determination of the Authority, APGL filed a Review Motion. The Authority disposed of the said motion vide its determination dated December 30, 2020. The Authority directed that both KE and APGL to abide by the clauses of PPA and take timely action for imposition for imposition of penalties if and when become due. The Authority reworked the penalty amount as Rs. 35.108 million, based on actual available data, instead of Rs. 65.034 million already adjusted from the quarterly adjustment of K-Electric. The Authority directed that the differential amount of Rs. 29.926 million shall be included in the subsequent quarterly tariff adjustments of K-Electric.
- v) On one hand, the APGL through its Legal Counsel filed the instant complaint dated February 04, 2021 and prayed that the PPA be declared as being on take-and-pay basis and also requested that KE be directed to release the payments to APGL as per the review decision dated December 30, 2020. On the other hand, the APGL has also filed a petition bearing No. 809/2021 before Honorable Islamabad High Court on February 11, 2021 against the determinations of the Authority dated December 31, 2019 and December 30, 2020 and requested the Honorable Court to set aside the said decisions.



7. The case has already been decided by the Authority; therefore the instant case cannot be agitated under section 39 of NEPRA Act read with NEPRA (Complaint Handling & Dispute Resolution Procedure) Rules, 2015. Further, the APGL has already filed petition in the Islamabad High Court against the determinations of the Authority dated December 31, 2019 and December 30, 2020 and the issue is pending adjudication before the Honorable Court. In view of the said the instant Complaint is not maintainable.



(Rehmatullah Baloch)

Member (Consumer Affairs)

Islamabad, June 07, 2021