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11/09/12

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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Registrar

No. TCD 09/ 6960-62

AD (CA)-III
AD (CA)

28-2012

Chief Executive Officer
Karachi Electric Supply Company Ltd. (KESC)
KESC House, Punjab Chowrangi,
39 - B, Sunset Boulevard, Phase-II
Defence Housing Authority
Karachi.

Subject: Decision of the Authority in the matter of Motion for Leave for Review filed by Karachi Electric Supply Company Ltd. (KESC) against the Decision passed by Member (Consumer Affairs) with respect to Complaint filed by M/s. Jalal Empire Welfare Association against KESC regarding Provision of Electric Connection to Jalal Empire D-32, Al-Hilal Co-operative Housing Society Karachi Complaint # KESC-32/2011

Reference is made to KESC's letter No. DIR(S, P&C)/NEPRA/2012/382 dated 01.06.2012 regarding the review petition in the subject matter.

2. Enclosed please find herewith decision of the Authority in the subject matter for compliance within 30 days of the receipt of this decision.

Encl: As above

Sd/-
(Syed Safer Hussain)

Copy:

1. Mr. Amer Zia
Director (Strategy Planning and Compliance)
Karachi Electric Supply Company Ltd.
House No. 10-B, St. 65,
F-8/3, Islamabad.
2. Secretary
M/s Jalal Empire Residents Welfare Association
D-32, Al-Hilal Co-operative Housing Society,
Main University Road, Karachi

No. TCD 09/ 6963

Forwarded for information, please.

Senior Advisor (CAD) [w.r.t. Dy. No. 797 dated 06.08.2012]
Master File

CC:

1. Acting Chairman / Member (CA)
2. Member (Licensing)
3. Member (M&E)
4. Member (T&D)

28-2012

Registrar

BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No: 32-2011

Karachi Electric Supply Company (KESC) Petitioner

Versus

M/s Jalal Empire Residents Welfare Association
Karachi Complainant

Date of Decision. July 03, 2012

Present:

1) Mr. Ghiasuddin Ahmed	Chairman
2) Mr. Shaukat Ali Kundi	Member (Licensing)
3) Mr. Habibullah Khilji	Member (Monitoring & Enforcement)
4) Khawaja Muhammad Naeem-	Member (Tariff)

Subject: **DECISION OF THE AUTHORITY IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW FILED BY KARACHI ELECTRIC SUPPLY COMPANY (KESC) AGAINST THE DECISION PASSED BY MEMBER (CONSUMER AFFAIRS) WITH RESPECT TO COMPLAINT FILED BY M/S JALAL EMPIRE WELFARE ASSOCIATION AGAINST KESC REGARDING PROVISION OF ELECTRIC CONNECTION TO JALAL EMPIRE D-32, AL HILAL CO-OPERATIVE HOUSING SOCIETY KARACHI**

Decision

1. This decision shall dispose of the review petition dated 01.06.2012 filed by Karachi Electric Supply Company (hereinafter referred to as Petitioner/KESC) against the decision of Member (Consumer Affairs) in the complaint of Syed Tabarak Shah Secretary M/s Jalal Empire Welfare Association, Karachi (hereinafter referred to as 'the Complainant') against Karachi Electric Supply Company filed with NEPRA

under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997. The brief facts of the case are that the complainant in his complaint stated that upon acquiring the flats by the residents, it was revealed that the building is complete but electric connection to the entire building has not yet been provided by KESFC. Initially load of the building was assessed by KESFC as 352 kW on March 07, 2007. On advice of KESFC, a fresh request was submitted to KESFC as already assessed load was time barred and KESFC re-assessed the load as 470 kW. As per KESFC's policy for loads above 400 kW, penalty of Rs.9000/kW is levied on the consumer for their entire load. A joint survey for reassessment of load was carried out and the rise in load assessment was discussed with KESFC staff who informed that KESFC has changed the category of Hilal Society to category A from category C which caused enhancement of load from 352 kW to 470 kW. The complainant further stated that KESFC has approved the load of M/s Suria Tower, an identical building with the same covered area which is adjacent to their building whereas in their case, KESFC is demanding construction of sub station as per their specification and handing over of the system to KESFC free of cost and imposition of penalty (at Rs.9000/kW) of 470 kW. The complainant prayed for waiver of the penalty of Rs.9000/kW, waiver of construction of sub station due to non availability of space and change of category from A to C.

2. To proceed with the matter Consumer Affairs Division (CAD) NEPRA referred the complaint to the KESFC for a detailed report. KESFC in response reported that this is an abandoned self finance scheme wherein the initial applicants (builders) M/s Mansoor Akber and Muhammad Zubair of Jalal Empire D 32 Al Hilal Co-Operative Society Karachi applied for electric connection on January 25, 2007. The builders handed over the apartments to individual owners without completing the infrastructure for provision of electricity. Initially the load was assessed as 352 kW while the building was under construction. After completion of building, the load was reassessed as 469 kW as the applicant deviated from KBCA's approved plan. As per policy, the applicant was asked to provide sub-station space at his plot but he did not respond. On request of the present applicant, Mr. Tabarak Shah, the load was rechecked three times and was found to be above 400 kW thus necessitating a sub-station. Now the complainant has raised the issue that the load was being assessed for upper category and should be assessed in lower category instead, which is not justified as the area falls under category of upper class.
3. The report of KESFC was communicated to the complainant for his rejoinder and also KESFC was directed vide letter dated February 22, 2011 to verify the load through Electric Inspector and to provide the details of the connections of Suria Tower (applied load, assessed load, category used for load assessment, cost estimate, amount deposited and date of connection). In response, the complainant through his Rejoinder dated March 07, 2011 informed that the building has been constructed as per original approved plan of KBCA, therefore KESFC's plea regarding rise of load from 352 kW to 469 kW is invalid. Demand for provision of suitable space and construction of a sub station is beyond the financial strength of the residents. Assessment of load is made on the basis of electric appliances being used practically by the residents and not by area/locality where consumers are residing.
4. In response to CAD letter dated February 22, 2011, KESFC vide its letter dated March 10, 2011 submitted the comparison of the two projects i.e. M/s Jalal empire and the adjacent building Suria Tower. KESFC also informed that it has requested to Electric Inspector Karachi Region 1 for joint survey and verification of the load. Thereafter, the Electric Inspector Karachi Region 1 reported that joint inspection for verification of the load was carried out on April 07, 2011. The total verified assessed load based on the factual position of Residential, Commercial and other

area of the building was found 312.167 kW. However, the KESC's team was emphasizing on specific category and area based load and did not agree with the factual position of the load. Further the KESC's team left the site without verifying the load jointly, and aforesaid load was assessed by Electric Inspector team. Thereafter KESC was asked vide CAD letter dated April 22, 2011 to send its comments on the assessment report of Electric Inspector Karachi and provide policy with respect to categorizing the areas, charging of Rs. 9000/kW and requirement of sub-station for load above 400 kW. In reply, KESC vide its letter dated May 02, 2011 informed that the area of M/s Jalal Empire falls under M/s Al Hilal Cooperative Housing Society which is under Upper Class Area as per the approval for categorization of areas dated April 20, 2004. Estimate has not been issued to the applicant as yet. For load above 400 kW, applicant will have to provide sub-station space as per policy approved in 2004.

5. KESC was asked vide CAD letter dated May 17, 2011 to review the case in light of load assessed by Electric Inspector Karachi and submit report within 30 days of the receipt of the letter. In response, KESC requested NEPRA vide its letter dated June 28, 2011 to review the decision. Since there was no decision in the matter, therefore the parties were called for a hearing on September 22, 2011 at NEPRA Head Office.

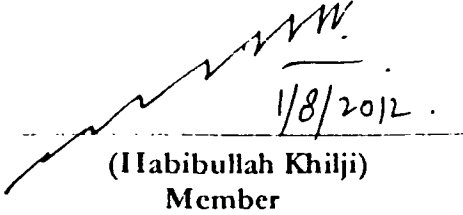
6. The complainant during the hearing stated that there is no change in the approved plan of the building and the actual construction of the building. The builder has left the allottees on the mercy of KESC. Initially the load was assessed as 352 kW but the same was revised to 469 kW by the KESC unilaterally. The connection is on LT side and not on the HT side. The Electric Inspector has assessed the load as 342 kW. KESC should provide connection to M/s Jalal Empire without further delay as the residents are paying huge charges of temporary connection. The complainant further stated that there is no space available in their premises for construction of a sub station.

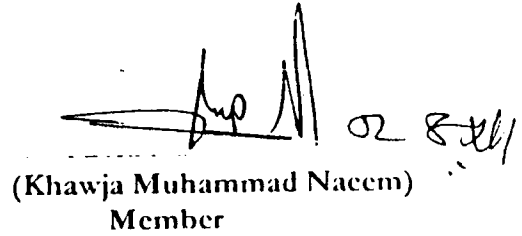
7. Representatives of KESC stated that the load survey report of Electric Inspector Karachi is on the basis of connected/seen load (contrary to the standard policy) which needs consideration by the Authority. KESC load assessment criteria to all multistoried projects is on the basis of covered area as per approved building plan submitted by applicants and as such the load assessed by Electric Inspector Karachi representative on the basis of observed load is not standard design method as it will hamper the basic criteria under which load assessment for such buildings is carried out. KESC like other DISCOs ascertains load for any premises of a new connection applicant as per its standard policy, subject to the essential factors i.e Covered Area (approved building plan / actual construction), Category of service, Consumer (Class of Locality i.e. upper, middle and lower). Initially, the load of 352 kW was worked out on the basis of approved building plan provided while the project was under construction. After completion of construction work, the load was assessed as 469 kW since the applicant deviated from Karachi Building Control Authority's (KBCA) approved building plan. KESC's system is unique and different from other utilities. There is space constraint and KESC has concentrated load parameters which need to be understood. For all the above purposes, a bench mark was established whereby any load less than 400 kW was to be catered through a system that required an overhead system. However, for cases, where the load is determined to be more than 400 kW, a substation is a requirement and has to be provided by the consumer. As regards the criteria developed for determining the load, it is an agreed criterion and was developed after a lot of deliberation and meetings and survey of buildings. The same was also agreed by all the principal stakeholders involved in the construction business in Karachi. KESC representatives denied charging of any penalty @ Rs.9000 per kW on entire load above the loads of 400kW.

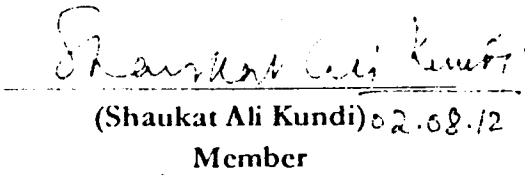
8. Thereafter, KEESC and the complainant were advised vide CAD letter dated December 26, 2011 to provide proof with respect to covered area of the building. The parties could not provide any documentary evidence in this regard. Eventually, the matter was taken up with KBCA for assessment of the covered area of the building. In response, KBCA vide its letter dated February 20, 2012 informed that the proposed building plan is approved by the KBCA for Commercial 1200 square yards plot comprising of Basement + Ground + 08 upper floor with covered area of 59,315.06 square feet and the building has been completed on the basis of approved building plan.
9. The report of KBCA was communicated to KEESC vide CAD letter dated March 01, 2012 for submission of comments. In response, KEESC vide its letter March 13, 2012 informed that KEESC found through physical verification that the actual covered area of the building was enhanced from 60,000 sq ft to 97,756 sq ft. The report submitted by KEESC contained the complete detail of covered area floor wise and units wise. KEESC finally requested that the report of KBCA regarding covered area of the building be verified through joint survey in the presence of KEESC, Electric Inspector, KBCA and NEPRA officials so that the actual covered area may be witnessed by all the concerned and the case be decided accordingly.
10. KEESC was provided various opportunities but it failed to provide any documentary evidence with respect to covered area of the building. Karachi Building Control Authority is competent authority for the buildings and there is no reason to challenge the veracity of their report. Therefore, there was no need of further survey of the building. The complaint was decided on April 11, 2012 by Member (Consumer Affairs) and KEESC was directed to provide connection to M/s Jalal Empire Building as per the initial load assessment i.e 352 kW (which was assessed by KEESC on the basis of the covered area which has also been verified by the Karachi Building Control Authority) after completing the departmental formalities for a new connection keeping into consideration provisions of NEPRA Consumer Eligibility Criteria, 2003, Consumer Service Manual and NEPRA Performance Standards (Distribution) Rules, 2005.
11. Being aggrieved from the above mentioned decision of Member (Consumer Affairs), KEESC filed a motion seeking review inter alia on the grounds that the covered area of the building has been enhanced from 59315.06 square feet to 97756 square feet and the same should be verified by all the relevant agencies in the presence of NEPRA's representatives.
12. The Authority has considered the motion for leave for review and also gone through the relevant record and it has been found that the decision of Member (Consumer Affairs) is rightly based on the report of Karachi Building Control Authority which confirms that the building has been constructed as per approved building plan and the covered area of the building is 59315.06 square feet. KEESC has failed to provide any new grounds/ proof with respect to enhancement in the covered area of the building. Karachi Building Control Authority is the competent authority for construction of buildings and there is no reason to suspect or challenge the veracity of its report. Therefore, there is no need of further survey of the building.
13. Keeping in consideration the above stated facts, the Authority is of the view that in terms of Regulation 3(2) of the NEPRA (Review Procedure) Regulations, 2009, a motion seeking review of an order of the Authority is competent only upon discovery of new and important matter of

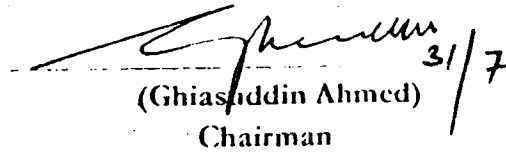
evidence or on account of some mistake or error apparent on the face of record. The perusal of the order sought to be reviewed clearly indicates that all material facts and representation made were examined in detail and there is no occasion to amend the impugned order. No error inviting indulgence as admissible in law has been pleaded out. Therefore, the Authority is convinced that the review would not result in the withdrawal or modification of the impugned order.

14. From what has been discussed above, the Authority is of the considered view that the grounds agitated in the motion for leave for review are not sufficient enough justifying the modification of the impugned order, hence the motion for leave for review is declined.


1/8/2012
(Habibullah Khilji)
Member


(Khawja Muhammad Naeem)
Member


(Shaukat Ali Kundi) 02.08.12
Member


(Ghiasuddin Ahmed) 31/7
Chairman