



Registrar

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

NEPRA Tower, Attaturk Avenue (East), G-5/1, Islamabad.
Ph: +92-51-9206500, Fax: +92-51-2600026
Web: www.nepra.org.pk, E-mail: registrar@nepra.org.pk

No. NEPRA/D(CAD)/TCD.09/17321-59

October 20, 2017

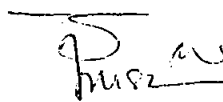
Chief Executive Officer
K-Electric Limited
KE House No. 39-B, Sunset Boulevard,
Phase-II, Defense Housing Authority,
Karachi.

Subject: **ORDER OF THE AUTHORITY REGARDING MOTION FOR LEAVE FOR REVIEW FILED BY K-ELECTRIC LIMITED AGAINST THE DECISION OF MEMBER (CONSUMER AFFAIRS) DATED 29TH AUGUST 2016 IN THE MATTER OF COMPLAINTS FILED BY INDUSTRIAL CONSUMERS OF K-ELECTRIC REGARDING ISSUANCE OF NOTICES ON ACCOUNT OF UNDER UTILIZATION OF LOAD (KE-52/2012)**

Reference is made to Motion for Leave for Review dated 29th September 2016 filed by K-Electric against the decision of Member (Consumer Affairs), NEPRA dated 29th August 2016 in the matter of complaints filed by industrial consumers of K-Electric regarding issuance of notices on account of under-utilization of load.

2. Enclosed find herewith the Order of the Authority (07 Pages) regarding the subject matter for information and further necessary action, please.

Encl: As above


20 X 17
(Syed Safer Hussain)

Copy to:

- | | |
|--|---|
| 1. Mr. Arif Lakhany, Chairman, All Pakistan Textile Processing Mills Association,
H-16, Textile Avenue, S.I.T.E,
<u>Karachi.</u> | 2. Chairman, S.I.T.E Association of Industry,
Aiwan-e-Sanat, H-16, Textile Avenue, S.I.T.E, <u>Karachi.</u> |
| 3. Chairman, Fuel, Gas & Power Sub-committee, S.I.T.E Association of Industry,
• Aiwan-e-Sanat, H-16, Textile Avenue, S.I.T.E, <u>Karachi.</u> | 4. Chairman, Federal B. Area Association of Trade & Industry (FBAATI),
ST-7, Block-22, Federal B. Industrial Area, <u>Karachi.</u> |
| 5. Chairman, Public Sector Utilities, Power & Gas Sub-committee, KCCI,
KCCI's Building, Aiwan-e-Tijarat Road, Off. Shahra-e-Liaquat,
<u>Karachi.</u> | 6. Wintex Industries (Pvt.) Limited (WIPL),
F-300, S.I.T.E, Textile Avenue, Street No. 6, <u>Karachi.</u> |

7. Husein Industries Limited,
HT-8, Landhi Industrial & Trading
Estate, Karachi.
8. Decent Packages (Pvt.) Limited,
F/135 & F/194, S.I.T.E.,
Karachi.
9. Shan Paper & Board Mills,
Plot No. SC-10, Sector 26, Korangi
Industrial Area, Karachi.
10. Ahmad General Mills,
W.S.A 4, Block-17, Federal B. Area,
Karachi.
11. Paramount Lace,
104, Adamjee Dawood Road,
Karachi.
12. Syntech Fibres (Pvt.) Limited
(SFPL),
5-3-1, Sector 15, Korangi Industrial
Area, Karachi.
13. Hamza Vegetable Oil Refinery &
Ghee Mills (Pvt.) Limited
(HOGML),
1-B, Garden Block, Garden Town,
Lahore.
14. Acme Mills (Pvt.) Limited,
A-3, Street 4, S.I.T.E.,
Karachi.
15. Arabian Textile Mills,
Plot No. F-72, S.I.T.E.,
Karachi.
16. Barkah Textile & Printing Mills
(Pvt.) Limited, D-14, Manghopir
Road, S.I.T.E., Karachi.
17. Dalal Industries (Pvt.) Limited,
F-299/A, S.I.T.E.,
Karachi.
18. Dampak Food Industries (Pvt.)
Limited,
F-29, S.I.T.E., Karachi.
19. Genitex Industries,
F-368-A, Near Brigade Station,
S.I.T.E., Karachi.
20. Kruddson (Pvt.) Limited,
C-7, South Avenue, S.I.T.E.,
Karachi.
21. Unique Weaving,
F-447, S.I.T.E., Karachi.
22. Unibro Industries Limited,
F-239, Workers Road, S.I.T.E.,
Karachi.
23. Security Papers Limited,
Jinnah Avenue, Malir Halt,
Karachi.
24. Rizwan Enterprises,
F-50, S.I.T.E. Area, Near SSGC,
Karachi.
25. Rasheed Enterprises,
F-259, Rasheedabad,
Karachi.
26. Soorty Enterprises (Pvt.) Limited,
Plot 26, Sector 23, Korangi
Industrial Area, Karachi.
27. Rastec Industries,
Plot L-28/4, L-28/5, L-28/6, F.B.
Industrial Area, Karachi.
28. Hub Leather (Pvt.) Limited,
Cavish Court, A-35, Block 7/8,
K.C.H.S.U, Shakra-e-Faisal,
Karachi.
29. Jamal Industries,
A-24/B, S.I.T.E.,
Karachi.
30. Maqsood Industries,
D-87, S.I.T.E.,
Karachi.

- | | |
|---|--|
| 31. Pearl Embroidery,
F-748-I, S.I.T.E.,
<u>Karachi.</u> | 32. Rauf Qasim Textile (Pvt.) Limited,
A/15-B, Binoria Chowk, S.I.T.E.,
<u>Karachi.</u> |
| 33. As'habi Textile Mills (Pvt.) Limited,
D-24, South Avenue, S.I.T.E.,
<u>Karachi.</u> | 34. Al-Hamza Industries,
D-10, S.I.T.E., <u>Karachi.</u> |
| 35. Arif Industries,
F/152, Hub River Road, S.I.T.E.,
<u>Karachi.</u> | 36. Indus Pencil Industries (Pvt.)
Limited.
B-54, S.I.T.E., Manghopir Road,
<u>Karachi.</u> |
| 37. Aneela Naeem,
Plot F-98-H, Hub River Road,
S.I.T.E., <u>Karachi.</u> | 38. Shaheena Textile Industries,
27, Rawalpindi Wala Building,
Nikal Road, <u>Karachi.</u> |



**BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)**

K- Electric Limited

KE House, 39-B, Sunset Boulevard,
DHA-II, Karachi.

.....

Petitioner

Versus

Mr. Arif Lakhany,

Chairman, All Pakistan Textile Processing Mills Association,
H-16, Textile Avenue, S.I.T.E, Karachi.

.....

Complainants

Chairman, S.I.T.E Association of Industry,

Aiwan-e-Sanat, H-16, Textile Avenue, S.I.T.E, Karachi.

Chairman, Fuel, Gas & Power Sub-committee, S.I.T.E Association of Industry,
Aiwan-e-Sanat, H-16, Textile Avenue, S.I.T.E, Karachi.

Chairman, Federal B. Area Association of Trade & Industry (FBAATI),
ST-7, Block-22, Federal B. Industrial Area, Karachi.

Chairman, Public Sector Utilities, Power & Gas Sub-committee, KCCI,
KCCI's Building, Aiwan-e-Tijarat Road, Off. Shahra-e-Liaquat, Karachi.

Wintex Industries (Pvt.) Limited (WIPL),
F-300, S.I.T.E, Textile Avenue, Street No. 6, Karachi.

Husein Industries Limited,
HT-8, Landhi Industrial & Trading Estate, Karachi.

Decent Packages (Pvt.) Limited,
F/135 & F/194, S.I.T.E, Karachi.

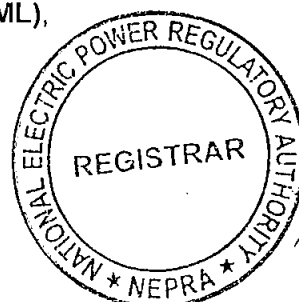
Shan Paper & Board Mills,
Plot No. SC-10, Sector 26, Korangi Industrial Area, Karachi.

Ahmad General Mills,
W.S.A 4, Block-17, Federal B. Area, Karachi.

Paramount Lace,
104, Adamjee Dawood Road, Karachi.

Syntech Fibres (Pvt.) Limited (SFPL),
5-3-1, Sector 15, Korangi Industrial Area, Karachi.

Hamza Vegetable Oil Refinery & Ghee Mills (Pvt.) Limited (HOGML),
1-B, Garden Block, Garden Town, Lahore.



Acme Mills (Pvt.) Limited,
A-3, Street 4, S.I.T.E., Karachi.

Arabian Textile Mills,
Plot No. F-72, S.I.T.E., Karachi.

Barkah Textile & Printing Mills (Pvt.) Limited,
D-14, Manghopir Road, S.I.T.E., Karachi.

Dalal Industries (Pvt.) Limited,
F-299/A, S.I.T.E., Karachi.

Danpak Food Industries (Pvt.) Limited,
E-29, S.I.T.E., Karachi.

Genitex Industries,
F-368-A, Near Brigade Station, S.I.T.E., Karachi.

Kruddson (Pvt.) Limited,
C-7, South Avenue, S.I.T.E., Karachi.

Unique Weaving,
F-447, S.I.T.E., Karachi.

Unibro Industries Limited,
F-239, Workers Road, S.I.T.E., Karachi.

Security Papers Limited,
Jinnah Avenue, Malir Halt, Karachi.

Rizwan Enterprises,
F-50, S.I.T.E. Area, Near SSGC, Karachi.

Rasheed Enterprises,
F-259, Rasheedabad, Karachi.

Soorty Enterprises (Pvt.) Limited,
Plot 26, Sector 23, Korangi Industrial Area, Karachi.

Rastec Industries,
Plot L-28/4, L-28/5, L-28/6, F.B. Industrial Area, Karachi.

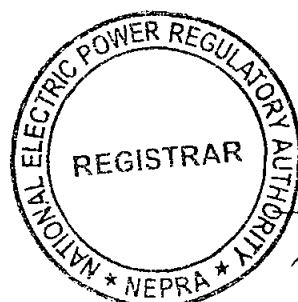
Hub Leather (Pvt.) Limited,
Cavish Court, A-35, Block 7/8, K.C.H.S.U, Shahra-e-Faisal, Karachi.

Jamal Industries,
A-24/B, S.I.T.E., Karachi.

Maqsood Industries,
D-87, S.I.T.E., Karachi.

Pearl Embroidery,
F-748-I, S.I.T.E., Karachi.

Rauf Qasim Textile (Pvt.) Limited,
A/15-B, Binoria Chowk, S.I.T.E., Karachi.



As'habi Textile Mills (Pvt.) Limited,
D-24, South Avenue, S.I.T.E., Karachi.

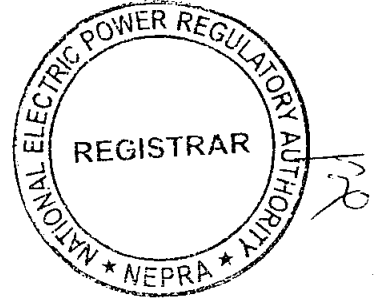
Al-Hamza Industries,
D-10, S.I.T.E., Karachi.

Arif Industries,
F/152, Hub River Road, S.I.T.E., Karachi.

Indus Pencil Industries (Pvt.) Limited,
B-54, S.I.T.E., Manghopir Road, Karachi.

Aneela Naeem,
Plot F-98-H, Hub River Road, S.I.T.E., Karachi.

Shaheena Textile Industries,
27, Rawalpindi Wala Building, Nikal Road, Karachi.



Date of Hearing: 17th August 2017

Authority:

- | | | |
|----|------------------------------|---------------------------|
| 1) | Brig. (Retd.) Tariq Saddozai | Chairman |
| 2) | Mr. Saif Ullah Chattha | VC/Member (M&E) |
| 3) | Maj. (Retd.) Haroon Rashid | Member (Licensing) |
| 4) | Mr. Himayat Ullah Khan | Member (Tariff) |
| 5) | Syed Masood-ul-Hassan Naqvi | Member (Consumer Affairs) |

On behalf of:

- Petitioner:**
- 1) Mr. Amer Zia, Chief Distribution Officer
 - 2) Mr. M. Aamir Ghaziani, Director
 - 3) Ms. Uzma Farooqi, General Manager
 - 4) Mr. Ayaz Jaffar, Deputy Director

- Complainants:**
- 1) Mr. Jawed Bilwani, PHMA/S.I.T.E.
 - 2) Mr. Hafiz Bilal Ahmed, Hub Leather (Pvt.) Limited
 - 3) Mr. Rehan Jawed, Shan Paper & Board Mills
 - 4) Mr. Allah Ditta, Hub Leather (Pvt.) Limited

Subject: ORDER OF THE AUTHORITY REGARDING MOTION FOR LEAVE FOR REVIEW FILED BY K-ELECTRIC LIMITED AGAINST THE DECISION OF MEMBER (CONSUMER AFFAIRS) DATED 29TH AUGUST 2016 IN THE MATTER OF COMPLAINTS FILED BY INDUSTRIAL CONSUMERS OF K-ELECTRIC REGARDING ISSUANCE OF NOTICES ON ACCOUNT OF UNDER UTILIZATION OF LOAD

ORDER

This Order shall dispose of the Motion for Leave for Review dated 29th September 2016 filed by K-Electric Limited (hereinafter referred to as the "Petitioner" or "KE") under Regulations 3(2) of the National Electric Power Regulatory Authority (Review Procedure) Regulations, 2009 (hereinafter referred to as the "Review Regulations") against the decision of Member (Consumer

Affairs) dated 29th August 2016 in the matter of complaints filed by KE's industrial consumers regarding issuance of notices on account of under-utilization of load.

2. Brief facts of the case are that the National Electric Power Regulatory Authority (hereinafter referred to as "NEPRA" or the "Authority") received numerous complaints from KE's industrial consumers in March 2012 regarding issuance of disconnection notices by KE on account of under-utilization of sanctioned load. Such notices were issued by KE to more than 300 industrial consumers. The notices alleged that consumers were generating their own electricity while keeping connections provided by KE for standby purposes, which was tantamount to 'use of electricity for purpose other than that for which it was sanctioned'. In light of such, KE proceeded with disconnecting multiple industrial electricity connections. The Complainants further alleged that KE had coercively obtained undertakings from them for utilization of 50% of sanctioned load.

3. The matter was taken-up with KE for submission of comments/report, along with directions to KE, vide letter dated 5th March 2012 to refrain from disconnecting electricity supply of consumers who had already been issued notices on account of under-utilization of load but were continuously making payments of their bills. Further, the Authority passed the following Interim Order dated 12th March 2012 on the impugned issue:

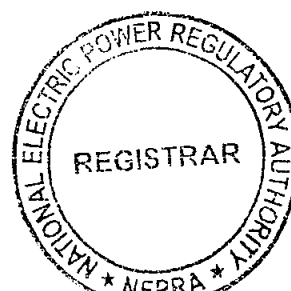
"The KESCL shall not disconnect power supply to industrial consumers who have been issued notices of disconnection under Section 20 of the Electricity Act 1910 read with Chapters 8 & 14 of the Consumer Service Manual for under-utilization of the sanctioned load. The Authority shall examine the legal status of these notices separately, meanwhile, the Authority directs KESCL to restore power supply to all such consumers whose connections were disconnected after issuance of the notices, within a period of three days, i.e. till 15th March 2012 unless these consumers were either defaulters for payments of their electricity dues or were involved in the theft of electricity."

4. KE, instead of complying with the directions of the Authority, proceeded to challenge the Authority's Interim Order in the High Court of Sindh by filing a Constitutional Petition No. D-956 of 2012 (KE vs NEPRA etc). The Honorable Court through an order dated 15th March 2012 suspended the Authority's order to the extent of restoration of electric supply of already disconnected consumers.

5. Simultaneously, various industrial consumers, aggrieved by KE's actions, directly approached the Honorable High Court of Sindh and filed petitions of similar nature. The cases were decided in favor of KE by the Single Bench vide Judgment dated 17th April 2012. Intra court appeals were subsequently filed against the said Judgment, which were dismissed. The industrial consumers then approached the Honorable Supreme Court of Pakistan by filing Civil Petition No. 1546 of 2012 who referred the matter back to the Honorable High Court of Sindh for decision, vide order dated 15th October 2012, owing to already pending case filed by KE in C.P. No. D-956 of 2012.

6. Subsequently, the Honorable High Court of Sindh, vide Judgment dated 23rd September 2015, directed that NEPRA shall proceed with the complaints pending with it and give a decision in accordance with law. The operative excerpt of the order is as under:

"10. In view of what has been discussed above, Respondent No. 1 (NEPRA) while being seized of the complaint filed with it by Respondent No. 2 was justified in restraining the Petitioner No. 1 (KE) from disconnecting the electricity of the industrial consumers facing disconnection notice. Hence, no case for interference under Article 199 of the Constitution is made out. Respondent No. 1 shall proceed



with the complaint pending with it and give its decision in accordance with law.
The Petitioner stands dismissed."

7. In compliance with the orders of the Honorable High Court, a hearing was scheduled for 12th January 2016 at NEPRA Head Office, Islamabad. However, KE responded that it has filed an appeal against the decision of the Honorable High Court before the Supreme Court of Pakistan and requested that the matter before NEPRA be held in abeyance till decision of the Supreme Court on the impugned issue is given.

8. Since no restraining orders from the Honorable Supreme Court were in field at the time, NEPRA proceeded to comply with the orders of the High Court of Sindh and a hearing in this regard was held on 18th March 2016 at Karachi, which was attended by the representatives of KE and some of the Complainants. The impugned matter was disposed of by Member (Consumer Affairs), vide order dated 29th August 2016, wherein the following was held:

"7. Foregoing in view, it is established that the action of KE with respect to issuance of notices to industrial consumers on account of under-utilization of sanctioned load and obtaining undertaking from them to utilize 50% of the load is illegal and in violation of the provisions of the NEPRA Act and applicable documents. Therefore, KE is directed to refrain from issuing such notices and disconnection of supply and obtaining such undertaking(s) from its consumers in the future. The complaints are disposed of accordingly."

9. Being aggrieved by the order of Member (Consumer Affairs), dated 29th August 2016, KE filed the instant motion for leave for review, vide letter dated 29th September 2016, under Regulation 3(2) of the Review Regulations. The motion was granted and admitted for hearing by the Authority. The hearing of the parties was scheduled for 8th December 2016 at NEPRA Head Office, Islamabad, however, most of the industrial consumers requested for postponement of the hearing and its rescheduling at Karachi. The Authority considered their request and the hearing was rescheduled for 16th June 2017 at Karachi. However, the said hearing was also postponed on request of KE. Finally, the hearing was held on 17th August 2017 at NEPRA Head Office, Islamabad, wherein representatives of KE and industrial consumers participated and reiterated their earlier point of view.

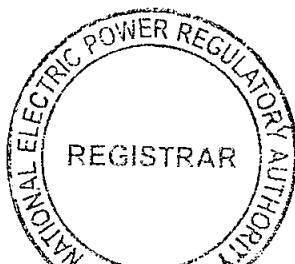
10. This case has been examined in detail in light of the relevant documents, arguments advanced during the hearings and the applicable law. KE has made various arguments pertaining to the impugned matter of legality of disconnection of consumer connections on grounds of underutilization, majority of which have already been examined and addressed in NEPRA's order dated 29th August 2016. No new facts have been apprised during proceedings:

11. The impugned issue is premised upon interpretation of clause 8.1 of the Consumer Service Manual (CSM), reproduced hereunder –

"8.1 DISCONNECTION

A premises is liable to be disconnected if the consumer is a defaulter in making payments of the energy consumption charges bill(s), or if he is using the electric connection for a purpose other than for which it was sanctioned, or if he has extended his load beyond the sanctioned load even after receipt of a notice in this respect from the respective distribution company"

12. KE has argued that non-use or underutilization of electric connection is tantamount to "using the electric connection for a purpose other than for which it has been sanctioned", thereby attracting disconnection as per clause 8.1 of the CSM. In practice, however, this provision has been interpreted to denote change in consumption category (i.e. domestic, industrial, commercial



etc.). The provision is applicable in cases where an electricity connection has been granted for a specific category and is utilized for another category. In the instant case, the aggrieved Complainants have not utilized their electricity connections for a category other than for industrial usage. As such, clause 8.1 of the CSM is not applicable in the instant case.

13. The Complainants have apprised that they were compelled to switch over to self-generation because KE had consistently failed to supply uninterrupted electric supply. As per Section 21(2)(b) of the NEPRA Act, 1997 and Clause 3 of the NEPRA Consumer Eligibility Criteria, 2003, it is the responsibility of the licensee to supply electricity within its service territory on a non-discriminatory basis to all such consumers who meet the eligibility criteria laid down by Authority. KE has failed to provide uninterrupted power supply to the Complainants, which has compelled the same to underutilize their connections with the Distribution Company in favor of self-generation. Had KE provided uninterrupted electric power to the Complainants, the impugned issue would not have arisen. In consideration of the foregoing, it is unjustifiable and unlawful for KE to disconnect the industrial consumers' electricity connections for underutilization.

14. KE has further relied on Clause 20(1)(c) of the Electricity Act 1910 (reproduced below) to justify removal of electricity supply from the Complainants.

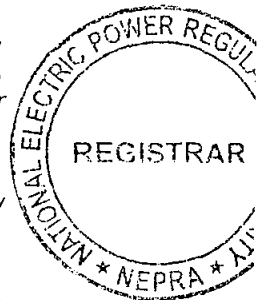
20. Power for licensee to enter premises and to remove fittings or other apparatus of licensee.— (1) A Licensee or any person duly authorised by the licensee may, at any reasonable time, and on informing the occupier of his intention, enter the premises to which energy is or has been, or is to be, supplied by him, for the purpose of—

- (a) examining, inspecting and testing the electric supply-lines, meters, maximum demand indicators or other measuring apparatus, electric wires, fittings, works and apparatus for the supply or use of energy, whether belonging to the licensee or to the consumer; or
- (b) ascertaining the amount of energy supplied or the electrical quantity contained in the supply or the apparatus; or
- (c) removing, where a supply of energy is no longer required, or where the licensee is authorised to take away and cut off such supply, any electric supply-lines, meters, maximum demand indicators or other measuring apparatus, fittings, works or apparatus belonging to the licensee:

Provided that, where a consumer's apparatus is involved, no person shall be deemed to have been so authorised by the licensee unless, at the time of entry into such premises, he is in possession of a written authorisation from the secretary, manager or any other officer of the licensee not below the rank of a Divisional Officer in the Public Works Department:

15. From the facts, it is evident that the Complainants did require continuous supply of energy. Since KE was unable to provide reliable and uninterrupted supply, they were compelled to seek other arrangements and place the Distribution Company's connections on standby. Their energy requirements have remained unchanged during the course of these proceedings. As such, Clause 20(1)(c) of the Electricity Act 1910 cannot be employed by KE to disconnect electricity connections from the Complainants on the pretext that supply of energy was no longer required.

16. The other impugned issue in the instant case is legality of the undertakings appropriated by KE from the Complainants for utilization of 50% of the sanctioned load. It is pertinent to highlight that as per standard tariff terms and conditions prescribed by NEPRA, a consumer is not required



consume or utilize their sanction load or to maintain a minimum load factor. Therefore, by underutilizing their electricity connections, the Complainants are not in violation of any law, rules, regulations or terms and conditions of Tariff determined by NEPRA.

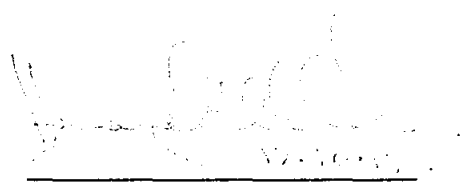
17. Further, industrial consumers pay fixed charges to Distribution Companies, based on sanctioned load, irrespective of actual consumption. In lieu of such payments, KE is obligated to maintain the sanctioned load at all times, regardless of end consumer consumption.

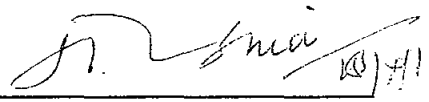
18. In consideration of the foregoing, the undertakings obtained by KE from the Complainants are unjustified.


19. Lastly, KE has argued that the Authority's determination on the impugned issues creates challenges for the DISCO's distribution business, operations and planning and may burden other consumers due to additional pass through items in tariff. These arguments, pertaining to operational challenges of KE, are immaterial to the application of law in the instant case.

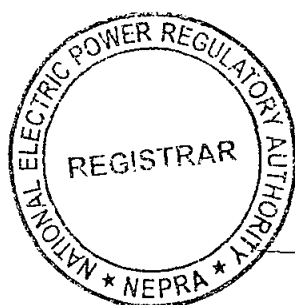
20. In light of the foregoing, the Authority hereby finds that KE has not provided sufficient grounds that would result in the decision of the Authority, dated 29th August 2016, to be reversed or altered. Therefore, the instant motion for leave for review filed by KE, vide letter dated 29th September 2016, is hereby dismissed and the order of the Authority, dated 29th August 2016, on the impugned issue is upheld.

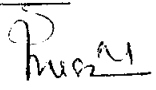

(Syed Masood-ul Hassan Naqvi)
Member
17/2/17



(Himayat Ullah Khan)
Member


(Maj (Retd.) Haroon Rashid)
Member


(Saif Ullah Chattha)
VC/Member
18.10.2017




20X17


(Tariq Saddozai)
Chairman