

National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/ADG(CAD)/TCD-09/18907-6

July 23,2020

Chief Executive Officer, K-Electric Limited (KEL), KE house No 39-B, Sunset Boulevard phase-II, Defence Housing Authority, Karachi

Subject: DECISION OF THE AUTHORITY IN THE MATTER OF REVIEW MOTION FILED BY K-ELECTRIC AGAINST THE DECISION OF THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY REGARDING COMPLAINTS FILED BY ASSOCIATION OF BUILDERS AND DEVELOPERS OF PAKISTAN (ABAD) AND SAIMA REAL ESTATE BUILDERS AND DEVELOPERS UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST K-ELECTRIC REGARDING SELF-FINANCING SCHEME, ETC

Reference is made to the Review Motion filed by K-Electric vide Letter No. KE/BPR/NEPRA/2020/508 received on May 28, 2020 against the decision of the Authority dated April 21, 2020.

2. Please find enclosed herewith the Decision of Authority (11 Pages) for compliance and necessary action.

Encl: As above

(Syed Safeer Hussain)

Copy to:

- Mr. Ayaz Jaffar Ahmed
 Director(Finance & Regulations)
 KE house No 39-B,Sunset Boulevard phase-II,
 Defence Housing Authority, <u>Karachi</u>
- 2. Mr.Ehteshamullah Malik,Secy. General, ASSOCIATION OF BUILDERS AND DEVELOPERS OF PAKISTAN (ABAD) Street 1/D, Block 16, Gulistan-e-Johar, <u>Karachi</u>
- Mr. Zeeshan Saleem
 Saima Real Estate Builders and Developers,
 Survey No. 72, Deh jam Chakro,
 Opposite Sector 1-A/4, North Karachi



<u>BEFORE THE</u> NATIONAL ELECTRIC POWER REGULATORY AUTHORITY Complaint No. KE-20(A)/02/2020 Complaint No. 20/02/2020

Petitioner K-Electric Limited (KEL) KE House No 39-B. Sunset Boulevard Phase-II. Defence Housing Authority, Karachi. **VERSUS** Association of Builders and Developers Complainant No.1 of Pakistan (ABAD), Street 1/D, Block 16, Gulistan-e-Johar, Karachi. M/s Saima Real Estate Builders and Developer Complainant No.2 Survey No. 72, Deh Jam Chakro Opposite Sector 1-A/4, North Karachi Date of Hearing: June 16, 2020 On behalf of Complainants: Mr. Mohsin Sheikhani (Chairman ABAD) Mr. Muhammad Ali Taufeeg (Chairman SR) ii) Mr. Fayyaz liyas (Former VC ABAD) (iii Mr. Danish Bin Rauf (Member)ABAD iv) Mr. Zeeshan Saleem V) G.M Saima Real Estate vi) Mr. Imran Younas Saima Real Estate Respondent: Mr. Ayyaz Jaffar Ahmed i) Director (Finance & Regulations) Director New Connections (KE) Mr. Kamran Akhtar Hashmi ii) Mr. Asif Shajer DGM (KE)

Subject: DECISION OF THE AUTHORITY IN THE MATTER OF REVIEW MOTION FILED BY K-ELECTRIC AGAINST THE DECISION OF THE AUTHORITY REGARDING COMPLAINTS FILED BY ASSOCIATION OF BUILDERS AND DEVELOPERS OF PAKISTAN (ABAD) AND SAIMA REAL ESTATE BUILDERS AND DEVELOPERS UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST K-ELECTRIC REGARDING SELF-FINANCING SCHEME, ETC

DECISION

This decision shall dispose of the Review Motion filed by K-Electric (hereinafter referred to as "KE" or "Petitioner") received on May 28, 2019 against the decision of the Authority dated April

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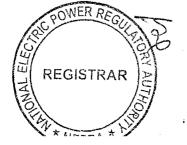
- 21, 2020, in the matter of the Complaints filed by M/s Association of Builders and Developers of Pakistan Karachi(hereinafter referred to as "Complainant No.1" or "ABAD") and M/s Saima Real Estate Builders and Developers Karachi (hereinafter referred to as the "Complainant No.2") against K-Electric, 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 ABAD against KE. The ABAD submitted that KE has terminated its Self-Finance scheme without giving them any notice being an important stakeholder. The ABAD added that KE makes assessment of load of any scheme on higher side. This criteria be get vetted from Pakistan Engineering Council. KE recovers feeder/grid sharing charges on higher side as compared to other distribution companies. The ABAD added that KE recovers huge charges in terms of GST and GST on material is being charged in duplication. ABAD executes work as per the approved specifications. Further, in case KE executes work/scheme; no detail of estimates are provided to ABAD. The Complainant No. 2, M/s Saima Real Estate Builders and Developers Karachi submitted that their two cases pertaining to Saima Villas having case ID No. 909012482 and Saima Elite Villas having case ID No. 903408041 are pending with KE. The Complainant No. 2 requested that KE be directed to allow them to execute the schemes on self-finance basis because schemes being executed by KE are very expensive. Further no details are being provided by KE regarding the estimate. Only one page estimate is being issued.
- 3. After seeking comments from the K-Electric and conducting hearing, the matter was examined in light of the written/verbal arguments of the parties and K-Electric was directed vide decision dated April 21, 2020 to open the self finance scheme and allow the applicants/sponsors the option of self-execution schemes subject to some conditions mentioned in the impugned decision.
- 4. Being aggrieved with the decision, K-Electric vide letter received on May 28, 2020 filed a Review Motion wherein it requested for an opportunity of hearing. Accordingly, a hearing was held on June 16, 2020. The hearing was attended by the representatives of ABAD, Saima Real Estates and Developers and K-Electric through video link.
- 5. KE in its Review Motion and verbal arguments has inter alia submitted as under:
 - (i). KE discontinued the self-finance schemes in the year 2018 due to multiple issues including but not limited to non-compliance of KE specifications, usage of substandard material within KE network, procurement of material from unapproved vendors, higher new connection costs, compromised quality, delays and cost impact:

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- (ii). Applicants were previously allowed to execute schemes on self-finance basis within 120 days; however, extraordinary delays were observed in execution of schemes, with execution of a few schemes taking even more than 3 years for completion.
- (iii). There were instances where project developers were absconding without provision of necessary infrastructure or leaving with partially executed schemes for power supply, resulting in illegal usage of electricity by residents. Subsequently, KE engaged with area residents and developed, negotiated, and energized a scheme accordingly.
- (iv). The load assessment criterion is designed with the active involvement of engineers of KE who are duly registered with Pakistan Engineering Council (PEC). Notwithstanding the above, KE is open to discuss the same with NEPRA and PEC. Also, grid and feeder sharing charges are calculated on the basis of actual cost incurred by KE for construction of grid station and laying of feeder. Moreover, complete details of new connection cost estimates are being provided to builders.
- (v). The estimate for Saima Elite Villas, has recently been issued along with complete breakdown of estimate and bill of material and it has been designed on the basis of prudent cost. Also, detailed breakup of any new connection estimate(s) is shared by KE upon request of applicants. Hence, the claim made by Saima Builders is based on mala fide intentions which is not only factually incorrect but also not supported by any cogent evidence. Further, in the matter of Saima Villas, the application has not been processed by KE yet as NOC issued previously by SBCA has been revoked.
- (vi). In Multi Year Tariff Determination (MYT) 2016, as far as new connection charges are concerned, it is aptly put forward that KE appreciated the initiative of NEPRA to start separate proceedings on this issue. In this regard, KE has duly submitted new connection petition for approval of NEPRA vide its letter dated August 22, 2019 and still waiting for initiation of proceedings by NEPRA in consultation with relevant stakeholders for early conclusion on merits. It is pertinent to mention here that without hearing and decision on the pending petition of KE and thus giving decision by NEPRA on the complaint of ABAD and Saima Builders in isolation without first deciding the pending petition of KE is arbitrary and against the principles of natural justice.
- (vii). Service charges in KE new connection estimate pertaining to labor and transport and store and purchase charges are exactly same as LESCO. The difference in





charges is only on account of supervision charges and sales tax, as explained herein below:

. . .

- a. Supervision charges included in KE estimate covers cost of complete scheme designing including development of network drawing, load flow analysis using Cymdist software to keep the lengths of HT/LT network at optimum level to ensure correct end customer voltage. These charges also include supervision of scheme execution done to ensure it meets the quality and safety standards of KE. In case of LESCO, the scheme designing, Bill of Material, Costing and HT/LT Infrastructure Design with Load Flow Study is done by LESCO's Approved Consultants who charge a fee separately for scheme designing from the builders.
- b. Sales tax is charged by KE under the sales tax law. Sales tax is not a cost for any customer registered under sales tax law and can claim it as input tax adjustable against their output tax. We have learnt that LESCO stance of not charging sales tax on new connection charges has not been accepted by FBR and the decision against appeal has been decided in favor of FBR. Nevertheless, on the directions of NEPRA, we have already sought clarification about sales tax matter from FBR and we will appreciate if NEPRA also takes up the matter with FBR for clarification.
- (viii). K-Electric currently does not have any system of approved consultants in place, so even if KE wanted to allow the self-finance option to its consumers then it will take substantial time to bring in place a system wherein a policy or guidelines would have to be developed and put in place by KE governing the eligibility and criteria for the selection from PEC registered / approved consultants for having the schemes duly designed without any compromises on system design compliance as per KE standards and specifications along with the quality of work. Hence, without approved consultants being in place, KE cannot ensure the correct and accurate designing of the schemes and will have to redo the whole scheme designed by unapproved consultants of builders and it will incur additional time and cost apart from being a safety hazard. If KE immediately initiates the process of having prequalified electrical consultants on board, the whole process of inducting approved consultants and training them as per KE standards will take around 6 to 12 months. after which KE will be in a position to consider allowing option of self-finance. Till that time, KE will have to continue the work on network design of the schemes using its own specialized technical planning department and for that KE shall be allowed





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to charge applicants an upfront cost of system design as a percentage of scheme cost.

- (ix). Grid Sharing Cost is worked out on the basis of Actual Grid Construction Cost estimate for a 132 kV GIS grid station with 2 x 40 MVA Power Trafos, 1 x GIS Bay at KE Grid along with Transmission line of 132kV Underground Double Circuit connected with KE Grid within a radius of 1.5km. The primary reasons for variation between the cost charged by LESCO and KE are as follows:
 - a. Specification of equipment to bear coastal climate of Karachi.
 - b. State of the Art GIS being used in KE versus AIS in LESCO.
 - Design based on Underground System.
 - d. ROW in K-Electric's jurisdiction charged by respective civic authorities also contributes significantly to the cost charged by KE.
- (x). Under Grid Sharing cost formula applied in KE, 50 % of grid construction cost is recovered from customer while the remaining 50% is borne by KE. Moreover, Grid Sharing Cost also includes feeder cost on per MW basis and consumers are not required to pay separately for feeders. The breakup of Grid Sharing Cost is given as below:

	<u> </u>
Grid and Transmission Line Cost (50% charged to applicant)	Rs. 13,600 per kW
Feeder Sharing Cost	Rs. 7,900 per kW
Grid Sharing Cost excluding Land	Rs. 21,500 per kW
Share of Land Cost	Rs. 2,000 per kW
Grid Sharing Cost with Land	Rs. 23,500 per kW

(xi). KE and LESCO operate in different technical environments having unique set of policies and procedures to cater for the requirements of their consumers including new connection applicants. Hence, we would reiterate our request to NEPRA to initiate the proceedings to finalize the New Connection petition submitted by KE as per the directions contained in MYT-2016. This would help both KE and LESCO to develop complete understanding of each other's new connection policies and procedures and proceed in an informed manner with mutual consensus. Otherwise, enforcement of cherry-picked options will severely impair KE's ability to serve its prospective applicants of new connections.







- (xii). Different load thresholds are considered by KE and LESCO to propose cost sharing options. In this regard, LESCO charges feeder sharing cost separately for loads up to 1 MW and the same are termed R&R Charges. Moreover, for cases with load requirement of above the 1 MW threshold, a dedicated Feeder is mandated by LESCO. On the contrary, K-Electric provides an option to applicants to choose between dedicated feeder and feeder sharing for loads up to 5MW.
- (xiii). Consumer Eligibility Criteria provides both options i.e. development of SDDS either through sponsors itself as per approved standards of distribution company or through the concerned Distribution company subject to mutually agreed terms. In this regard, it is submitted that as the mutually agreed terms had been violated multiple times by the members of ABAD including Saima Builders and hence KE was forced to discontinue this option in the larger public interest.
- (xiv). The sales tax on issuance of new connection estimates are being collected and deposited with FBR in accordance with the provisions of Sales Tax Act 1990. The sales tax paid by the consumers registered for sales tax purposes either with the FBR or Provincial departments like SBR, PRA etc. is claimable as input tax adjustments.KE has sought further clarification in this regard from FBR vide letter dated May 12, 2020 and any advice as received from FBR will be implemented in letter and spirit and duly shared with NEPRA as well.
- (xv). The connection charges collected from applicants form part of "other income" which has been deducted from allowed costs in determining tariff for KE. Hence, NEPRA is requested to consider the impact of proposed changes on the "other income' deducted in base tariff for the control period so that the same can be implemented.
- (xvi). That the hearing on the complaint of ABAD and Saima Builders took place on February 12, 2020 in NEPRA Head Office Islamabad under the chair of Director Consumer Affairs, which was not conducted by the Authority as per law. Whereas, under Section-5 (2) of NEPRA Act 1997, it is clearly stated that for any decision by the Authority, the quorum shall be complete which consists of three members of NEPRA, Section-5 (2) is mandatory in nature. Therefore, any hearing without the quorum being complete as specified above and being conducted by an officer of NEPRA is not mandated under the law, and cannot be construed as a hearing by the Authority (NEPRA) which completely invalidates any such proceedings and / or any subsequent decision thereof on legal grounds, thus making the impugned Decision unlawful and without any legal footing.



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- (xvii). K-Electric quoted some cases and submitted that substandard material was procured, however the same were rejected by KE and some cases where inordinate delay in execution of work took place.
- The representatives of the Complainants during the hearing submitted that the cases mentioned by KE wherein inordinate delay has occurred or substandard material has been used, do not pertain to them. The Complainants further submitted that they get their work executed through approved contractors of KE and no substandard material has ever been used and the material used in projects is of the same specifications as that used by KE itself. They complete their projects within time and there is no inordinate delay. The projects are only taken over by KE if the same have been completed as per specifications of KE. If there is any project pertaining to ABAD, where work has not yet been executed, the same be intimated and ABAD is ready to complete the same on urgent basis. The Complainants were advised to submit further documents/arguments, if they want in support of their case, however, no further arguments were submitted. KE vide its letter dated June 30, 2020 submitted arguments and reiterated its earlier stance.
- 7. The case has been examined in detail and in the light of the written/verbal arguments of the parties. The following has been concluded:
 - I. KE is of the view that it discontinued the self-finance schemes in the year 2018 due to multiple issues including but not limited to non-compliance of KE specifications, usage of sub-standard material, and procurement of material from unapproved vendors, higher new connection costs, compromised quality. Further, extraordinary delays were observed in execution of schemes. The Complainants submitted that none of the schemes pertain to them. The impugned decision addresses this doubt of KE wherein it has been directed that the electrification work should be carried out through K-Electric's approved contractors. The material shall be procured from K-Electric's approved vendors and the same be as per the specifications of K-Electric. Further, the delay in execution of work goes to the disadvantage of the sponsor yet, the impugned decision also addresses this point of KE wherein it has been directed that the electrification work should be carried out within the specified time period.
 - II. KE has averred that developers were absconding without provision of necessary infrastructure or leaving with partially executed schemes for power supply, resulting in illegal usage of electricity by residents. The Complainants disagreed with the version of KE and submitted that they have never left any scheme on the mercy of the residents and always completed their projects. The impugned decision clearly address this grief of KE wherein it has been held that the sponsor is required to pay to K-Electric an amount equal to 25% of total estimate as security in the form of bank guarantee/pay-order; which shall be returned







by KE upon completion of the scheme. The same practice is in vogue in all other distribution companies across the country.

- III. According to K-Electric, the load assessment criterion is designed with the active involvement of engineers of KE who are duly registered with Pakistan Engineering Council (PEC). The Complainants have shown reservations over the load assessment criteria adopted by KE. The consultants of the Complainants are also registered with PEC. The impugned decision mentions that this issue is to be rectified. Accordingly, the Consumer Service Manual has been revised which prescribes assessment of load.
- KE has submitted that in Multi Year Tariff Determination of KE for the period from July 01, IV. 2016 to June 30, 2023 (MYT 2016), the Authority decided to start separate proceedings on the issue of connection charges and accordingly, it has submitted new connection petition for approval of NEPRA vide letter dated August 22, 2019 and still waiting for initiation of proceedings by NEPRA in consultation with relevant stakeholders and decision on the pending petition of KE and thus giving decision by NEPRA on the complaint of ABAD and Saima Builders in isolation without first deciding the pending petition of KE is arbitrary and against the principles of natural justice. The fact remains that keeping the anomalies in connection charges and to proceed with the provisions of MYT 2016 of KE regarding consultation on connection charges, the Authority decided to address the issue while revision of Consumer Service Manual which was already in progress. Accordingly, a notice was issued on January 16, 2020 for conducting a consultative session on January 28, 2020 at NEPRA Head Office Islamabad. In the notice all DISCOs including K-Electric were directed to attend the session along with SOPs/policies pertaining to load assessment criteria, connection charges etc. The said session was also attended by the representatives of KE. This issue has been addressed in the Consumer Service Manual which has been approved by the Authority and circulated to all stakeholders, therefore there is no need to conduct separate proceedings on connection charges.
- V. The Authority in the MYT 2016 also held that till such time, K-Electric shall ensure that other connection charges pertaining to new connection to the prospective consumers are comparable with the XWDISCOs preferably LESCO. KE has submitted that service charges in KE new connection estimate pertaining to labor and transport and store and purchase charges are exactly same as LESCO. The difference in charges is only on account of supervision charges and sales tax. Supervision charges included in KE estimate covers cost of complete scheme designing including development of network, drawing and load flow analysis. These charges also include supervision of scheme and execution to ensure it meets the quality and safety standards of KE. In case of LESCO, the scheme designing, Bill of Material, Costing and HT/LT Infrastructure Design with Load Flow Study is done by LESCO's approved consultants who charge a fee separately for scheme designing from the builders. KE has further submitted that Sales tax is charged by KE under the sales tax law.

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Sales tax is not a cost for any customer registered under sales tax law and can claim it as input tax adjustable against their output tax. Nevertheless, on the directions of NEPRA, KE has sought clarification about sales tax matter from FBR. However, no up dates have been received from KE despite lapse of a considerable time period.

- VI. There is a large difference in connection charges of other DISCOs preferably LESCO and K-Electric as detailed hereunder:
 - i). The connection charges, charged by KE where the work is carried out by KE itself are as under:
 - (a) Material Cost=A
 - (b) Labour and transport charges=B=12 % of A
 - (c) Store and purchase charges=C= 8 % of A
 - (d) Sub-total =A+B+C
 - (e) Network planning/designing and supervision charges=D=15% of (A+B+C)
 - (f) Total cost = E = (A + B + C + D)
 - (g) GST= F= 17% of E
 - (h) Further tax = 3% of E (for Non Sales Tax Registration Number applicants)
 - ii). The connection charges; charged by LESCO where the work is carried out by LESCO itself are as under:
 - (a) Cost of material including 12% store charges = A
 - (b) Installation charges= 8% of A
 - (c) Vetting of the proposal———1.5% of the estimated total capital cost in case of electrification of housing scheme etc.
- VII. The above details show that KE has violated the directions of the Authority and it has also admitted itself that there is difference in charging connection charges between KE and other DISCOs. KE has submitted unreasonable grounds for charging of supervision charges and sales tax. The DISCOs charge supervision charges where electrification work is executed by the sponsor itself through approved contractors of DISCOs and in this regard DISCO recover Supervision charges @1.5% of the estimated total capital cost of electrification. KE is charging 15 % supervision charges which is not only on much higher side but also against the spirit of MYT 2016. KE is required to vet the electrification design and not to completely prepare it as the sponsors get the electrification design prepared through PEC approved consultants on cost negotiable basis.



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- VIII. K-Electric has submitted that currently it does not have any system of approved consultants in place, so even if KE wanted to allow the self-finance option to its consumers then it will take substantial time to bring in place a system wherein a policy or guidelines would have to be developed and put in place. If it takes time to KE to bring in place approved contractors then in the meanwhile KE is required to charge same connection charges as per para 7(VI)(ii) where work is to be executed by KE itself.
 - IX. The issue of grid sharing charges and feeder sharing charges has also been addressed in the Consumer Service Manual.
 - X. KE has submitted that the Consumer Eligibility Criteria provides both options i.e. development of SDDS either through sponsors itself as per approved standards of Distribution Company or through the concerned Distribution Company subject to mutually agreed terms. However, the mutually agreed terms had been violated multiple times by the members of ABAD including Saima Builders and hence KE was forced to discontinue this option in the larger public interest. The representatives of ABAD and Saima denied breach of any mutual agreement on their part. ABAD has submitted that if there was any violation of standards by any builder then why KE took over such system and it should have asked the builder for removal/rectification of discrepancy, if any and had refused taking over such system.
 - XI. KE in its review has submitted that the connection charges collected from applicants form part of "other income", which has been deducted from allowed costs in determining tariff for KE. KE has requested to consider the impact of proposed changes on the "other income' deducted in base tariff for the control period so that the same can be implemented. Please note that the other income was considered by the Authority at the time of MYT 2016 and was allowed as a part of overall MYT regime with no subsequent adjustments. At the time of the decision, the Authority was cognizant of the higher rates being charged by KE, therefore KE was directed to ensure that other connection charges pertaining to new connections to the prospective consumers should be comparable with the XWDISCOs preferably LESCO and was also directed to file a petition for approval of connection charges. In view thereof, KS's version in this regard is not justified.
- XII. KE has submitted that hearing on the complaints took place on February 12, 2020 in NEPRA Head Office Islamabad under the chair of Director General (Consumer Affairs), which was not conducted by the Authority as per law. It is clarified that under section 39 of the NEPRA Act an opportunity of hearing is to be provided to the licensee by the Authority. The Authority has delegated its powers to Member (Consumer Affairs) and Consumer Complaints Tribunal headed by Director General (Consumer Affairs) to hear and decide the complaints. In the instant case the hearing was chaired by the Chairman along with Member (Consumer Affairs) and the Consumer Complaints Tribunal was also part of the proceedings. As such

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an opportunity of hearing was provided to the petitioner. Further, on the instant review, another opportunity of hearing was provided to KE by the full strength of the Authority, however, no new grounds were submitted by KE to alter the decision.

- 8. In view of the foregoing, we have perused the case, written/verbal arguments of the parties and the applicable law. A motion seeking review of any order of the Authority is competent only upon the 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 decision sought to be reviewed clearly indicates that all material facts and representations made were examined in detail and there is neither any occasion to amend the impugned decision nor any error inviting indulgence, as admissible in law, has been pointed out. Therefore, we are convinced that the review would not result in withdrawal or modification of the impugned decision. Hence, the motion for review is declined.
- 9. In addition to above, KE is further directed to recover connection charges where electrification work is carried out by KE itself in accordance with the provisions of revised Consumer Service Manual

(Rehmatullah Baloch Member

(Rafique Ahmad Shaikh) Member

(Saif Uilah Chaftha)

Member

(Engr. Bahadur Shah) Member

(Tauseef H. Faroogi)

Chairman

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