

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

CMA No. -K/2018

In

HUMAN RIGHTS CASE NO. 20883-OF 2018

IN THE MATTER OF EXCESSIVE AND UNANNOUNCED LOADSHEDING
IN SINDH

AOR FOR THE K-ELECTRIC (PVT) LTD:
ASC FOR THE K-ELECTRIC (PVT) LTD:

MR. K.A.WAHAB,
MR. ABID S. ZUBERI,

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Karachi
Dated 26/06/2018

K.A.WAHAB
Advocate on Record
For K- Electric

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AOR FOR THE K-ELECTRIC (PVT) LTD:
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MR. K.A. WAHAB,
MR. ABID S. ZUBERI,

**REPORT IN COMPLIANCE OF ORDER DATED JUNE 21, 2018 PASSED
BY THIS HONOURABLE COURT**

Respectfully sheweth,

1. In compliance of the Order dated June 21, 2018 passed by this Honourable Court, K-Electric Limited ("KE") most humbly submits as under.
2. In its previous compliance report filed in the instant HRC case on May 19, 2018, KE had stated that post-Ramzan, its normal load management plan would be implemented in terms of which KE is generating around 3,000 MW of electricity which includes power of 650 MW drawn from NTDC/CPPA-G and power from IPPs such as Gul Ahmed and Tapal as well as KANUPP. Nevertheless, there is still a shortfall of around 400-500 MW which results from the peak demand in the summer months.
3. At present 63.1% of Karachi is load shed free and is classified as low loss which includes strategic feeders as well as industrial zones and low loss commercial and residential consumers. In 36.9% area load shed is carried out at feeder level depending on its loss classification i.e. medium loss (up to 3 hours), high loss (up to 6 hours) and very high loss (up to 7.5 hours). For clarity please note that load shed hours do not include technical faults as well as scheduled outages. In addition, it does not cover force majeure events outside the reasonable control of KE due to external factors.
4. The load management policy of KE is in accordance with the National Power Policy, 2013 and is followed across Pakistan. NEPRA has also

acknowledged the same in its MYT Review Decision dated October 09, 2017 and has noted that the load shed policy is consistent with the Judgment of Honorable Supreme Court of Pakistan in Human right case No.14392/2013 reported at 2014 SCMR 220, whereby supply of electricity to the consumers who believe in law and make payments in time, is encouraged & supply to unauthorized consumers is discouraged.

5. In 2009 when KE's steps towards load management began, only around 23% of Karachi was exempted from load shed, whereas through induction of new generation capacity and reduction in T&D losses from 36% to 22% (in 2017) the number of exempt low loss areas have now been increased to 63.1%.

6. The reduction in T&D losses is due to the efforts of KE to establish its 29 Integrated Business Centres (IBCs), implementation of SAPIS-U (SAP's Industry Specific Solution for Utilities) as well as the replacement of bare conductor wire and LT distribution lines with ABC (aerial bundle cables) which are individually insulated wires which are bundled and twisted, so as to be resistant to insertion of metal hooks (kundas (illegal hook connections)). KE also has regular kunda removal drives across the localities of Karachi but in some sensitive areas which are no go areas where the writ of state is difficult to maintain, KE is continuing to face the problem of removing kundas and having them re-inserted overnight, even where police help has been successfully obtained for their earlier removal. In addition, KE has increased its customer interface by having the biggest 118 call centre in Pakistan for handling any consumer complaints as well as enabling customers to lodge their complaints online and sort out any performance issues they may face by visiting 29 IBCs set up by KE throughout its service territory and simplifying the procedure for new connection applications and making them more accessible through MNCVs (Mobile New Connection Vans) as well as Asaanmeter program.

7. Furthermore on a transmission and distribution level, KE has a SCADA system installed which means that it is able to monitor, identify and rectify transmission and distribution bottlenecks in real time and also provides preventive control to efficiently retrieve the system or back-feed the power in certain cases where grids and circuits trip due to technical problems further up the generation and transmission network of KE caused by

factors beyond KE's reasonable control (such as downing of NTDC circuits when KE has to go in island mode in order to prevent a total blackout across the city). If any area or feeder is affected by a technical fault, the same is addressed by KE on priority basis through back feed and other technical options.

8. It is respectfully submitted that KE's transition and journey from a loss making public sector enterprise to a financially sound privately managed company has been based on gradual incremental and positive steps which include an increase in its customer focus and its ability to adapt to change in a dynamic environment. Furthermore, KE is the only vertically integrated power utility in Pakistan which not only runs its own generation fleet but also has offtake arrangements with various IPPs as well as the national grid. Karachi is a city with over 22 million inhabitants, it is mushroomed exponentially both vertically and sideways. It is also the largest city in Pakistan and is the economic hub of Pakistan.
9. KE's distribution service territory stretches over 6,500 sq.kms. and has a width of around 350 kms at its widest. It takes into account the city of Karachi its outskirts, parts of Interior Sindh as well as Hub, Uthal, Vindhar and Bela in Baluchistan. The city of Karachi draws more and more people each year from across Pakistan who come in search of work and improving their lives.
10. There is no one set of building and planning regulations which is applicable across Karachi. Some areas are cantonment areas and do not come under the Province of Sindh. Other areas like Defence Housing Authority and the cooperative housing societies have their own bylaws. In areas under the jurisdiction of the Sindh Building Control Authority and the Province of Sindh, by virtue of Section 18G of the SBCA Ordinance, 1979, KE is prevented from granting any temporary and permanent connection without a duly approved construction and completion plan. This means that even where high rise buildings have been constructed and occupied for many years without the relevant SBCA approvals, KE is unable to grant proper metered connections as a matter of law and these residents rely on hook connections for their power needs. In the past few years, KE did a load survey across the city of Karachi and identified around 72 localities of kachiabadis (illegal settlements) where the power

consumption was in excess of 1 MW each. Over the years, KE has managed to bring quite a few of such abadies into its operational domain but the challenges still remain. KE has shown interest in rolling out power schemes in these areas but the same is heavily reliant on support from local administrations and area residents as well as law enforcement agencies together with support from the Province of Sindh and its departments.

11. KE has looked at various means of ensuring smooth and continuous power supply to the different parts of the city of Karachi. It has heavily invested in its TP-I transmission expansion and improvement plan which is close to completion. KE is also actively analyzing expansion beyond TP-I network studies and planning is underway for TP-II. As part of TP-I, it has during this period upgraded its transmission infrastructure through the upgradation and launch of six new trafos with the last being added at Jauhar in the first week of June, 2018. However, in some cases constitutional petitions are pending before the Honourable Sindh High Court and further progress has been delayed pending the disposal of such constitutional petitions on their merits, due to status quo orders remaining in the field. As an example, KE's energization and commissioning of its Mehmoodabad Grid Station located in PECHS has been pending since 2009 due to CP No. 1233 of 2009 (ShamsulHaque and others vs. Federation of Pakistan and others).
12. In June 2017, KE had 1,653 feeders whilst in May, 2018, the number of feeders has increased to 1,735. For the same period in June 2017, the number of PMTs (Pole Mounted Transformers) operated by KE was 25,667 whilst for the period ending May 2018, the number of PMTs had increased to 26,800. The number of PMTs converted by KE to ABC stands close to 5,500 and majority of these PMTs pertaining to VHL areas so as to assist in reducing electricity theft and kunda infestation. Since these attempts at ABC conversion have to be done at street level, it is important to have the support of the communities in the area to prevent area hindrances, acts of violence and obstruction of KE work force in completing these ABC conversions, accordingly progress has to be gradual and slow and the same cannot be done overnight.

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13. Efforts by KE to become self-sufficient in terms of power generation and increase transmission and distribution capacity are ongoing. KE's future investment plan has already been annexed in the Compliance Report dated May 19, 2018 at Page 22. This future investment plan is given for the period commencing FY 2017 to FY 2023 and is based upon the requested Multi Year Tariff by KE which is currently under reconsideration by NEPRA pursuant to a request of the Federal Government for the said reconsideration under the proviso to Section 31(4) of NEPRA Act. Further, the investment plan is subject to approval of NEPRA and is based on current estimates and may have to be revised due to changes in macroeconomic factors, regulatory reforms or any other factor beyond KE's control. Furthermore, KE may pursue additional projects as per demand requirements.

14. It is respectfully submitted that even with the successful implementation of the future investment plan for KE, KE's ability to eliminate load management is conditional upon a variety of factors. K-Electric through its investment plan will gradually reduce the Transmission and Distribution losses and improve recoveries subsequently leading to reduction on load shed. Aerial bundle cable (ABC) project has been yielding promising results, in both reducing losses and improving recoveries from the area. KE plans to convert c.8000 PMTs across Karachi with priority given to very high and high loss areas to improve the power situation in those areas. Along with ABC, plans to install subsidized meters in low income areas has also played a major role in improving the weightage of exempted areas. KE has also started execution of AMR installation on all its PMTs to monitor its energy losses on a lower level. This will also help in targeting initiatives with more focus. With the execution of these planned initiatives, it is forecasted that in c. 87% of the city will be load-shed free by FY 2023.

15. As to observations and objections raised related to media reports of load shedding and the performance of KE during the period March 27 to April 10, 2018, KE received NEPRA's letter dated April 18, 2018 requesting KE to submit its response/Explanation in accordance with Rule 4(1) and (2) of the NEPRA (Fines) Rules, 2002 read with other enabling provisions of law and other rules of NEPRA. KE responded to the same through its letter dated May 4, 2018 and has denied liability for the allegations raised

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by NEPRA. The issue remains sub-judice with NEPRA as KE's statutory regulator. It is respectfully submitted that any consumer of KE who is affected by any performance related issues has the ability to file a consumer complaint directly with NEPRA under Section 39 of the NEPRA Act for redressal of his grievance. This means that every consumer of KE including an interested person has an alternative and efficacious remedy by complaining to the Consumer Affairs Division of NEPRA without having to file or commence proceedings before the competent court of law.

16. All the above improvements are subject to the receiving by KE of a sustainable tariff from NEPRA under the tariff reconsideration request for the new MYT referred above.

Karachi

Dated: 26/06/2018

AOR FOR K-ELECTRIC LIMITED



Registrar

National Electric Power Regulatory Authority

Islamic Republic of Pakistan

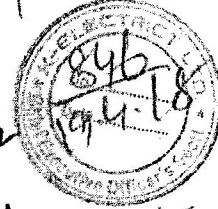


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No. NEPRA/SA(Tech)/LAD-01/6381

Chief Executive Officer,
M/s K-Electric Limited
KE House, 39-B,
Sunset Boulevard, DHA-II,
Karachi

April 18, 2018



Subject: EXPLANATION UNDER RULE 4 (1) & (2) OF THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY (FINES) RULES, 2002

WHEREAS the National Electric Power Regulatory Authority (hereinafter referred to as the "Authority") established under Section 3 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act") is mandated to regulate the provisions of electric power services by the generation, distribution and transmission companies in Pakistan; and

2. **WHEREAS** the Authority granted generation, transmission and distribution licenses bearing Nos. (GL/04/2002), (TL/02/2010) and (09/DL/2003) respectively to M/s K-Electric Limited (hereinafter referred to as "Licensee") to construct, own, operate generation facilities, to provide transmission services in the licensed territory and to construct, own, operate or engage in the distribution of electric power in the licensed territory; and

3. **WHEREAS** the generation license of the Licensee as modified from time to time provides details of generation facilities including Plant III- Korangi Combined Cycle Power Plant (KCCPP) and Plant VIII- Combined Cycle Power Plant Bin Qasim (BQPS-II) in its Schedule I. Fuel details of KCCPP and BQPS-II in the aforementioned Schedule of generation explicitly envisage High Speed Diesel Oil (HSDO) as the alternate/back up fuel for the both power plants; and

4. **WHEREAS** the Schedule II of the generation license of the Licensee as modified from time to time prescribes net capacity at mean site conditions of the generation facilities of the Licensee, particularly Bin Qasim Power Station-I (BQPS- I) as 1107 MW; and

5. **WHEREAS** pursuant to Section 21 (2) (b) of the NEPRA Act, the Licensee is responsible to provide distribution service and make sales of electric power within its territory on a non-discriminatory basis to all the consumers who meet the eligibility criteria laid down by the Authority; and

6. **WHEREAS** pursuant to Rule 4(f) of the NEPRA Performance (Standards) Distribution Rules, 2005, a distribution company shall prepare schedules of load disconnection which demonstrates the priority order and rotation of load disconnections within the groups of consumers in a non-discriminatory manner keeping in view principle of proportionality so as to avoid excessively burden a particular consumer class; and

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7. **WHEREAS** the premises of the Licensee (generation, transmission and distribution facilities) of the Licensee were visited by the NEPRA team from April 11 to 13, 2018 to verify the media reports regarding un-scheduled load shedding carried out by K-Electric in past few days, owing to which consumers were suffering badly; and

8. **WHEREAS** during the visit following, *prima facie*, violations came to the notice of the Authority regarding compliance with provisions of the NEPRA Act, terms & conditions of the generation & distribution license granted to K-Electric and NEPRA Performance Standards (Distribution) Rules, 2005:

- i. Power plants of the Licensee namely; KCCPP and BQPS-II have the provision of dual fuel (natural gas and HSDO) as provided in its generation license. In this regard, infrastructure is already available at the site. However, the Licensee has failed to commission both power plants on alternate fuel as per terms and condition of the generation license in the alleged wake of reduction in gas supply by the Sui Southern Gas Company. Resultantly, the gap between power supply and power demand i.e. the shortfall increased and duration of load shedding extended throughout the city. Therefore, the licensee has, *prima facie*, failed to discharge its obligations to make available its generation facilities in accordance with the terms and conditions of the generation license.
- ii. Power generation from BQPS-I power plant of the Licensee remained unsatisfactory during the period under review (March 27, 2018 to April 10, 2018). A comparison of daily generation at BQPS- I vis-à-vis approved net capacity of the said power plant under generation license as shown in the table below reveal that the Licensee underutilized BQPS-I during the period under review:

Date	BQPS-I Daily Generation	Net Capacity under Generation License
27.03.2018	638	1107.6
28.03.2018	640	1107.6
29.03.2018	655	1107.6
30.03.2018	722	1107.6
31.03.2018	748	1107.6
01.04.2018	620	1107.6
02.04.2018	631	1107.6
03.04.2018	596	1107.6
04.04.2018	610	1107.6
05.04.2018	693	1107.6
06.04.2018	605	1107.6
07.04.2018	603	1107.6
08.04.2018	629	1107.6
09.04.2018	602	1107.6
10.04.2018	709	1107.6
Av. Supply (27.03.2018 to 10.04.2018)	647	1107.6
% Utilization/Loading		58.4%

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Moreover, during morning time BQPS-I was further underutilized whereas it could have been operated at full capacity to minimize load shedding. In view of foregoing, the Licensee reduced the net capacity of BQPS-I during the period of March 27, 2018 to April 10, 2018, *prima facie*, in contravention of terms and condition of the generation license.

- iii. Data available at grid stations of the Licensee shows a huge variation in the licensee's claimed duration of load shedding and the actual load shed recorded in the grid logs. A comparison of total actual load shed and the licensee's claim of load shedding during the period under review (March 27, 2018 to April 10, 2018) is shown in the following table:

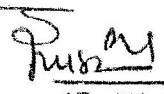
Sr. #	Grid Station	Feeder Name	Category	Date	Load Shedding noted at Grids (Hours)	Duration of Interruptions other than Load Shedding (Hours)	Total Actual Outage Duration (Hours)	KE's Claimed Duration (Hours)	Variation (Hours)
1.	Airport - II	Gulshan-e-Ghazali	ML	29.03.2018	5	3	8	4.5	2.5
		Shamsi Society	ML	09.04.2018	1	7	8	6	2
		Noor Housing	ML	10.04.2018	6	1	7	5	2
		Baba Willavat Shah	HL	09.04.2018	11	0	11	9	2
		Pir Mahfooz	VHL	28.03.2018	9	2	11	9.75	1.25
		Ghazi Town	VHL	10.04.2018	0	18	18	8.5	9.5
2.	Jazohar	Jubilee Gate + PIA Society	LL	29.03.2018	1	9	10	2	8
		Pak SS + Karachi MS	ML	28.03.2018	0	8	8	4.5	3.5
		Prem Villas + Marora	VHL	28.03.2018	11	0	11	9.75	1.25
3.	Liaquatabad	Nazimabad Pumping +	LL	28.03.2018	6	0	6	0	6
		Liberty Cinema	ML	28.03.2018	6	0	6	4.5	1.5
		Café Millat	HL	29.03.2018	11	0	11	8.25	2.75
		Govt. School	VHL	29.03.2018	11	0	11	9.75	1.25
		CI Area	VHL	29.03.2018	11	0	11	9.75	1.25
4.	North Karachi	Faiza Avenue +	LL	10.04.2018	4	0	4	3	1
		Gold Smith	ML	28.03.2018	6	0	6	4.5	1.5
		Country Tower +	HL	29.03.2018	8	4	12	8.25	3.75
		Al-Ahmed Avenue	VHL	09.04.2018	11	3	14	10.5	3.5
5.	Surjani	Global City	HL	29.03.2018	11	0	11	8.25	2.75
		Arsalan Homes	HL	10.04.2018	10	0	10	8	2
		Michael Academy	VHL	09.04.2018	10	10	20	10.5	9.5
		Stylish Garden	VHL	29.03.2018	8	8	16	9.75	6.25
		Abdullah More	VHL	09.04.2018	10	7	17	10.5	7.5

Above table clearly indicates that the Licensee has carried out prolonged hours of unscheduled load shedding during the period from March 27, 2018 to April 10, 2018. Such extended load shedding cannot be attributed to alleged restricted gas supply only. Apparently, it is operational failure of the licensee due to under-utilization of BQPS-I and non-utilization of KCCPP and BQPS-II on alternate fuel and also due to weak and fragile distribution system of the Licensee. Such conduct of the Licensee shows that the Licensee has failed to adhere to principles of load shedding as prescribed under Rule 4(f) of the NEPRA Performance (Standards) Distribution Rules, 2005 and *prima facie* constitutes a failure on part of the Licensee to ensure un-interrupted power supply to its consumers within its service territory and amounts to contravention of section 21(2)(b) of the NEPRA Act.

09. **WHEREAS** in view of foregoing, the Licensee has, *prima facie*, violated the Schedule I and II of its generation license and Rule, 4(f) of the NEPRA Performance Standards (Distribution) Rules 2005 read with Section 21(2)(b) of the NEPRA Act; and

10. **WHEREAS** the rules and regulations framed under the NEPRA Act and the generation, transmission and distribution license fall within the definition of 'Applicable Documents' as defined under NEPRA Fine Rule, 2002 and for any violation of the Applicable Documents, fine could be imposed by the Authority; and

11. **NOW THEREFORE**, in view of above, Licensee is hereby called upon under Rule 4(1) and (2) of the NEPRA (Fines) Rules, 2002 to either admit or deny the occurrence of the violations as mentioned above within fifteen (15) days, failing which, it shall be presumed that the Licensee has nothing to say in its defense and the occurrence of the violations is admitted by the Licensee.


18 04 18
(Syed Safer Hussain)
Registrar

Mr. Syed Safeer Hussain,
Registrar,
NEPRA Tower, Attaturk Avenue (East),
Sector G-5/1,
NEPRA
Islamabad

Ref # KE/BPR/NEPRA/2018/214
May 04, 2018

Without Prejudice

SUBJECT: EXPLANATION UNDER RULE 4 (1) & (2) OF THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY (FINES) RULES, 2002

Dear Sir,

This is with reference to NEPRA letter # NEPRA/SA (Tech)/LAD-01/6381 ('the Said Letter') dated April 18, 2018 received in this office on April 19, 2018. In this regard, please find below our response to the Said Letter as follows:

A. Preliminary Objections to the Maintainability

The Said Letter has been issued without consideration of facts and prevailing circumstances and hence suffers from legal infirmities. Further, without prejudice to our rights we hereby put forward following preliminary objections with respect to the maintainability of the Said Letter for due consideration of NEPRA.

- (i) That KE was unable to fully utilize its gas based generation plants due to non-availability of Natural Gas and KE was forced to carry out load management to manage the demand supply situation. It is pertinent to mention that reduction of natural gas supply to KE is a unilateral action by SSGC and is beyond the control of KE as well as in violation of the decision of Economic Cabinet Committee (ECC) and commitment of SSGC. The aforementioned fact has been acknowledged and recognized by NEPRA in its advisory sent to GoP (MoE).
- (ii) That KE from the start of month of March has been raising the issue of reduced gas supply with SSGC management as well as other key stakeholders and has written letters to both the Honorable Governor and Chief Minister for their intervention in the matter as well as wrote letter dated March 07, 2018 to SSGC and urged SSGC to increase the gas supply. (Copies of letters are enclosed herewith as **Annexure A**).
- (iii) That KCCPP and BQPS II were not commissioned on HSD earlier due to commitment given by SSGC for supply of at least 276 MMCFD Natural Gas to KE in line with

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Economic Coordination Committee (ECC) decision. Moreover, during the proceedings of LPM - IV for addition of KE's new gas based plants, SSGC reiterated its commitment to NEPRA for provision of 276 MMCFD gas to KE based on which LPM IV was processed and issued on 22nd August 2013 after a full public hearing. Additionally, no such directions for commissioning on HSD were given by NEPRA earlier in this regard and neither have the heat rate/O&M cost/tariff been determined for HSD.

- (iv) That NEPRA has considered the licensed capacity of BQPS I (1107 MW), which does not account for any outages and reduction in dispatch due to technical constraints. KE's utilization of BQPS I was at 90% (please refer to **Annexure B** for details) of its available capacity after accounting for the forced and maintenance outages during the period from March 27, 2018 to April 10, 2018 (hereinafter referred to as 'the **Affected period**'). Hence, the allegations that KE deliberately under-utilized its BQPS I plant is denied being baseless and without facts.
- (v) That NEPRA has based its findings placing reliance on the data extracted from the grid logs, which do not represent feeder outage for the hour rather reflect the loading position of feeders at a specific point in time, which cannot be treated as a whole hour. For example if a feeder trips at 10:55 a.m. and is restored at 11:05 a.m., the grid log will show "0" at 11:00 a.m., however, the same cannot be assumed as an outage for full hour. Further, if an area is back fed, the same is also not reflected in the grid logs. Additionally, NEPRA needs to consider the fact that the grid logs in KE are not designed for outage management and KE uses Network Status Information System (NSIS) for logging and monitoring outages on feeder level. Therefore, NEPRA's primary reliance on grid logs for outage analysis is misplaced and NEPRA should consider the actual outage information as reported in **Annexure C**.
- (vi) That NEPRA's contention regarding weak and fragile distribution system of KE is unfounded, based on arbitrary observations and is not backed up with any evidence. Moreover, it disregards the improvements in KE's performance indicators (SAIFI and SAIDI) which are substantive evidence of post investment improvement in KE system as shown below:

	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	Cumulative improvement from FY 12 (%)
SAIFI	32.49	31.27	24.72	22.21	20.53	19.61	40 %
SAIDI	1858.2	1790.4	1495.3	1330.3	1210.2	1142.8	38 %
Dist. Losses (%)	28.63	26.91	24.31	22.60	21.20	20.50	8 %

Having said that, please find below our detailed response to the allegations levelled in the Said Letter.

B. Parawise response to the Allegations

Notwithstanding our preliminary objections and submissions, we wish to place on record that KE denies all allegations levied in the Said Letter as not maintainable as a matter of law. Without prejudice to the rights vested under the law, please find below our response to the violations alleged in Paras 8 and 9 of the Said Letter, as follows:

(I) In response to Para 8 of the Said Letter, please find below our point wise reply to the allegations mentioned at serial i to iii of the subject Para:

- (i) In response to Point (i) of the Para 8 it is submitted that the option to commission KCCPP and BQPS II on High Speed Diesel (HSD) was not exercised earlier due to commitment given by SSGC for supply of at least 276 MMCFD Natural Gas to KE in line with Economic Coordination Committee (ECC) decision. Please also note that this is strengthened with the existing stay orders in CP No. 1088 of 2011 (KE vs. Federation of Pakistan and others) in which SSGC and OGRA are co-respondents and in terms of which two earlier orders dated April 19, 2011 and May 31, 2011 which were further relied upon by KE when it obtained its latest order dated April 17, 2018 in which SSGC in particular was directed to immediately make compliance with the earlier orders and to stop the unilateral reduction of supply to KE to avoid severe load shedding in the entire city of Karachi. Copy orders in the said CP are enclosed as **Annexure D** for ease of reference.

Additionally, this ECC commitment for provision of 276 MMCFD gas to KE was reiterated by SSGC to NEPRA during the proceedings of LPM - IV for addition of KE's new gas based plants, based on which LPM IV was processed and issued on 22nd August 2013. Additionally, no such directions for commissioning on HSD were given by NEPRA earlier nor were the heat rates/O&M cost/tariff was determined by NEPRA for operation of these plants on HSD. Hence it was not possible for KE to operate plants on HSD and the same cannot be attributed as irresponsible behavior of KE.

Without prejudice to the foregoing, in view of directions of Cabinet Committee on Energy (CCOE) made in its meeting held on April 23, 2018 ("CCoE Directives") to increase gas supply to KE under an arrangement of 130 MMCFD of natural gas & 60 MMCFD of RLNG and subsequent increase in gas supply together with initiation of RLNG supply, KE has started operating its plants on RLNG with effect from the date of CCoE's directives to bridge the demand-supply gap and to provide immediate relief to its consumers. Accordingly, KE has filed its License Modification Application with NEPRA through letter # KE/BPR/NEPRA/2018/176 dated April 23, 2018 requesting for addition of RLNG as an alternate fuel source for KE's power plants mentioned in Schedule II of KE's Generation License, which has been accepted by NEPRA for consideration. Please note that the option to commission plants on RLNG was the only practical option to provide immediate relief to consumers through full utilization of gas based plants, hence the same is opted for in the current scenario. Additionally, KE is also evaluating the option of commissioning KCCPP and BQPS II on HSD as an optional/backup fuel. In this respect, KE is engaged with General Electric (OEM) for due diligence of operating these plants on HSD and detailed technical & commercial analysis will be prepared and shared with NEPRA along with any required revisions in tariff and approved investment plans by end of June 2018. It is pertinent to mention that the IPPs with whom CPPA (G) / NTDC has Power Purchase Agreements (GOP IPPs) and which are dual fuel with HSD as alternate / backup fuel have been switched to RLNG instead of HSD due to higher efficiency and lower cost of operation.

On the basis of above mentioned arguments, the allegation that KE has prima facie failed to discharge its obligations under its license is denied in its entirety.

- (ii) In response to Point (ii) of Para 8, we would like to place on record that the Net Capacity of 1107 MW as mentioned in KE's generation license does not account for any outages and reduction in dispatch due to technical considerations. Further, during the **Affected period**, the available operating capacity of BQPS I was further reduced to an average of around 717 MW due to forced outages/maintenance of some of its units. However, even during the **Affected period** BQPS I was operated at around 90% capacity contrary to 58 % as mentioned in the Said Letter. Detailed calculations are entailed in **Annexure B** for your kind perusal. It is pertinent to mention here that the

outage/maintenance of these units would not have impacted the load management as KE had sufficient gas-based capacity which remained idle due to unprecedented and abrupt reduction in supply of gas by SSGC.

- (iii) In response Point (iii) of Para 8, it is submitted that the outage duration mentioned in the Said Letter is based on grid logs obtained during their visit, which do not represent hourly load shed but rather record the load in Amperes at specific point in time and therefore cannot be treated as outage for the whole hour. For example, if a feeder trips at 10:55 am and is restored at 11:05 am, the grid log will show "0" at 11 am, however, the same cannot be assumed as outage for full one hour. Additionally, an outage on a feeder does not represent an outage for an area, as owing to deployment of radial infrastructure, KE immediately back feeds the area wherever possible. Further, this log is only used to assess loading position of feeder and accordingly all feeders having a load below 10 AMP at that specific point in time are recorded as "0". An intermittent reading cannot be extrapolated or attributed to the entire duration for the purposes of determining outages.

Therefore, the instantaneous grid log reading cannot be extrapolated or relied to assess outage duration and any such exercise will result in notional assumptions and not factual position. Moreover, the distribution network of KE is radial in nature and hence interruption of a feeder does not necessarily result in interruption of electric power services to the consumers who are provided electric power from alternate feeders. Here, it is also pertinent to mention that few of the feeders mentioned as 'Low Loss' and 'High Loss' in the Said Letter fall within the category of 'Medium Loss' and 'Very High Loss' as per KE's policy. Additionally, data for 5 feeders reported by NEPRA in the Said Letter do not corroborate with their actual readings mentioned in the grid logs. For the sake of clarity, the actual duration of outage after accounting for the load management carried out due to the material events is tabulated as Annexure C.

As evident from the annexed table, on 21 out of 23 feeders, either outages were in line or of reduced duration than the reported load management plan (11 instances) and ten instances were observed of minimum outage of less than an hour duration, which were adequately back fed/normalized. Further, only two instances were observed on data of 14 days of six selected grids which

comprise of total 182 feeders, where outage duration ranged between 4 to 5 hours in excess of reported load management. These outages were due to technical reasons as these areas are highly kunda infested and KE teams face difficult operating environment which create difficulty in maintaining operational continuity.

Further in compliance to rule 4 (f) of the NEPRA PSDR 2005, KE carried out load management during the **Affected Period** aptly demonstrating the priority order and also rotated load shed in a non-discriminate manner. Further to avoid excessive load shed on residential and commercial consumers of High loss (HL) and Very High Loss (VHL) feeders, load shed was carried out on rotational basis in low loss areas of the city including the industrial segment as well.

In view of above, KE denies that it has failed to adhere to the principles of load shedding as prescribed under Rule 4(f) of NEPRA PSDR 2005 as well as contravened section 21(2)(b) of the NEPRA Act.

- (II) In response to Para 9 of the Said Letter, we are unable to understand as to how KE has prima facie violated Schedule I and II of its Generation License as well as Rule 4 (f) of the NEPRA PSDR 2005 read with section 21(2) (b) of the NEPRA Act. In this regard, please note that KCCPP and BQPS II were not commissioned on alternate fuel owing to gas supply commitment given by SSGC and no directions were given by NEPRA to run these plants on High Speed Diesel (HSD). Hence as such these plants only operated on Natural Gas. Furthermore, the issue of gas availability, which affected KE's generation through its gas based plants in winter months has been brought to the knowledge of NEPRA several times during our monthly and quarterly tariff adjustments hearings and which has been duly noted by NEPRA in its tariff determination dated March 14, 2017 for the quarter ended December 2015, relevant excerpt reproduced below for ease of reference:

"...In addition, lack of gas availability as well as low gas pressure has continued to affect utilization of its highly efficient gas based plants...."

In view of above, we are unable to understand as to how KE has violated the terms and conditions of its license by not commissioning its plants on alternate fuel, when KE has never been mandated or directed by NEPRA to commission these plants on HSD nor

any term and condition of KE's Generation License requires KE to keep its plants operational on alternate fuel. Therefore, we deny any liability for any alleged breach.

Further, KE has always complied with Rule 4(f) of NEPRA PSDR 2005 in both letter and spirit. However, owing to significant curtailment of gas supply from SSGC during the **Affected Period**, KE was forced to load shed in order to maintain system stability. Further, to avoid burdening any particular class of consumers, KE also initiated load shed on low loss Residential and Commercial (R&C) feeders and Industrial Zones so as to provide relief to other consumers of KE.

Additionally, we maintain that KE at all times has duly complied with all the relevant requirements of law, NEPRA Act and applicable documents as part of prudent utility practices.

C. Submissions and Prayer

In light of aforesaid preliminary objections, facts, grounds and averments, it is submitted and prayed:

- (i) That any violation as alleged in the Said Letter of any provisions of the applicable license, applicable documents or the rules, regulations and sections relied upon by NEPRA are entirely denied by KE as if the same were specifically set out herein and traversed, to this extent, KE has not violated any provisions of the NEPRA Act nor has violated any applicable NEPRA Rules and Regulations, terms and conditions of its Generation and Distribution license.
- (ii) That KE's generation fleet includes gas fired plants, which were not fully utilized due to significant curtailment of Natural Gas by unilateral action of SSGC which was beyond the reasonable control of KE and not foreseeable. In previous years, KE and SSGC have mutually agreed through payment plans to have additional supplies of natural gas in the hot summer months to cater for the higher electricity consumption during these periods. However, surprisingly this year, SSGC refused to increase gas supply from 90 MMCFD.
- (iii) That had there been no shortage / curtailment of gas supplies by SSGC to the KE, the power supply situation to the city would have remained normal and no-load management would have been carried out.

- (iv) That NEPRA in its advisory to GoP (MoE), acknowledged that gas curtailment is one of the major issues which was required to be addressed on top priority to eliminate the suffering of consumers and recommended immediate restoration of gas supply to 190 MMCFD.
- (v) That the shortage / curtailment of gas supplies by SSGC to the KE power plants has been duly acknowledged by the GOP whereby the Prime Minister of Pakistan had to intervene to restore the supply of gas to KE pursuant to which the electric power services were restored to the levels occurring / existing prior to the unscheduled gas outages caused by SSGC.
- (vi) That the shortage / curtailment of gas supplies by SSGC to the KE power plants is a force majeure event due to its peculiar, exceptional and unusual circumstances and hence KE is exempted in light of Rule 10 (2) of the NEPRA Performance Standard (Distribution) Rules 2005.
- (vii) That two plants of KE namely KCCPP and BQPS II were not commissioned on alternate fuel i.e. HSD as requirement to operate them on HSD never ensued due to commitment of SSGC and ECC allocation for supply of 276 MMCFD natural gas to KE, on the basis of which addition of the aforementioned plants was approved by NEPRA through issuance of LPM IV of KE's generation license.
- (viii) That NEPRA never directed KE to keep KCCPP and BQPS II operational on High Speed Diesel (HSD) or RLNG as an alternate fuel, neither separate heat rates/tariff/O&M costs have been determined by NEPRA.
- (ix) That to avert the crisis and effectively manage the situation at hand, KE carried out load management, which included load shed on low loss as well as industrial feeders so as to avoid discrimination between particular classes of consumers.
- (x) That there is no omission on the part of KE that constitutes violation of the provisions of the NEPRA Act or the applicable documents.
- (xi) That even otherwise the notice of explanation issued by NEPRA is time barred pursuant to Rule 4 (1) of the NEPRA (Fines) Rules 2002 as NEPRA cannot issue any explanation notice after passage of fifteen (15) days of coming to knowledge of any alleged violation.

- (xii) That KE denies the occurrence of any violation of the provisions of the NEPRA Act, Rules, Regulations and or applicable documents.

D. Prayer

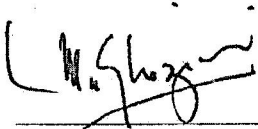
In light of aforesaid, it is prayed that:

- i. The aforementioned KE's response to the Said Letter dated April 18, 2018 under Rule 4 (1) & (2) of the Fines Rules is accepted.
- ii. The Said Letter should be withdrawn by NEPRA.

However, if NEPRA wishes to proceed further in the matter, we would like to avail the opportunity of personal hearing in this matter as permitted under the Fines Rules to fully elaborate our point of view supported by valid and cogent evidence to clarify its grounds of objection and defense to the Said Letter.

In addition to aforementioned, KE reserves the right to raise further grounds, facts and circumstances in the future. Further this letter is being issued without prejudice to KE rights at law or equity.

Sincerely,



Muhammad Aamir Ghaziani
Director - Finance and Regulations

Enclosure: Annexures A-D