Energy & Petroleum Regulatory Authority

IN THE REPUBLIC OF KENYA

ENERGY AND PETROLEUM REGULATORY AUTHORITY

DISPUTE NO: EPRA/PEACP/CP/4/52132804/25/LM/pm

POWERSTAR SUPERMARKETS..PLAINTIFF

VERSUS

KENYA POWER PLC..RESPONDENT

DETERMINATION

A. BACKGROUND

1. The dispute between Powerstar Supermarket (Plaintiff) and Kenya Power and Lighting PLC (Respondent) was brought to the attention of the Energy and Petroleum Regulatory Authority, hereinafter referred to as "the Authority" vide a letter dated 19th June 2025.
2. The dispute is on an alleged meter tampering as well as a bill of KES. 2,677,321/-.

B. PLAINTIFF'S CASE

3. The Plaintiff is engaged in the Supermarket business and has a chain of fifteen branches around the country.
4. The Plaintiff owns KPLC Meter No. [redacted] which supplies Powerstar Kasarani with Power.
5. The Plaintiff challenged the debit of its account of **Kshs. 2,677,321/-** by the Respondent. The reasons and/or justification for the said debit by the Respondent were also put to question.

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6. It is the submission of the Plaintiff that on 24th April 2025, KPLC officers disconnected power in their premises citing phase imbalance on the outgoing sub-circuit.
7. The Plaintiff claims that despite explaining to the officers that their operations primarily rely on single phase chillers and motors, which are supported by 30A solar panels during the day leading to load distribution differences, the Respondent ignored them.
8. It is the Plaintiff's case that a Disconnection Instruction (DI) was issued and their meter board sealed with KPLC's tamper proof seals.
9. The Plaintiff avers that the officers involved (identified by staff IDs 20037 and 83392) demanded KES. 50,000/- as a settlement, threatening punitive consequences if unpaid. The Plaintiff states that they categorically rejected this demand.
10. The Plaintiff further avers that a subsequent visit by another KPLC technical team verified the seal integrity and found to be proper and proceeded to break the seals for a joint technical audit.
11. It is the Plaintiff's case that the audit outcome reportedly discredited the initial claims of imbalance or tampering. The Plaintiff avers that it was based on the findings that their power was restored and meter replaced.
12. The Plaintiff states that following the restoration of power, they received a penalty bill of KES. 2.6 million which was issued unilaterally and without them signing an Acceptance of Liability Form, which is standard KPLC procedure.
13. The Plaintiff avers that the bill was inconsistent with findings since the technical audit nullified the grounds for the original disconnection and also unprocedural, as KPLC failed to uphold due process to provide an avenue for the Plaintiff's fair response or appeal.
14. The Plaintiff submits that a detailed explanation and legal justification for the KES. 2.6 million penalty despite the absence of a signed liability admission be provided by the Respondent.

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C. RESPONDENT'S CASE

15. The Respondent submitted that they have an existing contract with the Plaintiff for the supply of electricity through account number [redacted]
16. Following the inspection at the Plaintiff's premises on 25th April 2025 by their officers, it was found that the meter had been bypassed/ tampered with. This means that part or all of the electrical load is diverted from the incoming supply directly to the consumer's installation without passing through the meter, resulting in unrecorded electricity consumption.
17. The Respondent states that the bypass was captured through a video and also recorded in the Installation Inspection Report in the presence of the customer. Thereafter, the officers disconnected power supply to the premises in accordance with the Energy Act, 2019.
18. The team also visited the Plaintiff's premises on the 7th May 2025 for a repeat inspection and replacement of a new meter to monitor the new meter's averages. The new meter installed was MN[redacted]. The Respondents noted that the reading for the old meter [redacted] was 638026 and the currents were picked as well. The currents picked varied from their first findings which indicated that the meter was now running normally.
19. The Respondent avers that the reason for the second visit was:
    a) To re-inspect the installation in the presence of the Plaintiff as per Plaintiff's request
    b) To replace the meter that was reported as tampered
    c) To restore the supply
20. The Respondent further states that the said meter was taken to the laboratory on 22nd July 2025 for testing and verification of any tampering. The meter test revealed that the meter was healthy, and it passed the accuracy and register test.
21. The Respondent explains that the term "healthy" in technical metering context means that the meter is functioning properly and is internally intact. Specifically, that:
    a) The meter's internal components such as the current and voltage sensors, metrology circuits and memory registers, were operational and showed no signs of damage or compromise.

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b) There was no evidence of internal tampering, programming interference or alteration of recorded data.

c) Consumption data, time-of-use logs (where applicable) were consistent with expected performance parameters.

d) The meter passed all functional and accuracy tests as per the utility's metering standards.

22. The Respondent states that it is critical to note that a "healthy" meter does not eliminate the possibility of external bypass. Bypass methods typically involve direct tapping from the supply cable before the meter terminals, concealed wiring that feeds load circuits without routing through the meter and/or reversible setups that can be disconnected before inspections. The bypasses technically occur outside the meter and therefore may not affect the meter's internal circuitry or be detectable during lab testing. Unless the bypass physically damages the meter or leaves tampering signatures in the event logs, the meter may still be classified as "healthy" in the lab.

23. As far as the respondent is concerned, the current outstanding electricity balance arising from the said meter arose validly and we reconciled the same with the customer's consumption after discovering the meter bypass. The outstanding balance was informed by the following: Debit for a tampered Meter-IIR No.[redacted]meter, Avg cons period 21/12/2023 to 21/07/2024 = 213days, Units per day =321.89(HR) and 202.85(LR) Adjustment period 21/07/2024 to 21/04/2025 =274days. Debit 88197.86 (HR) and 55580.9 (LR) units.

24. The Respondent submits that for these reasons, the complaint be dismissed with costs to the Plaintiff, and the Plaintiff be directed to settle the outstanding bill of KES 2,996,731.00 forthwith.

D. DISPUTE RESOLUTION PROCESS

25. Upon receiving the Plaintiff's dispute, the Authority directed the Plaintiff and the Respondent to file written submissions within 3 days and 14 days respectively vide letter dated 24th June 2025.

26. A virtual hearing of the matter was conducted on 21st July 2025.

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27. The Plaintiff sent their submissions on 21st July 2025, while the Respondent sent their submissions on the 31st July, 2025.

E. ISSUES FOR DETERMINATION

28. Based on the facts and evidence shared by the Parties, the Authority finds that the following issues arise for determination:
   - **a) Whether the Plaintiff interfered and/or bypassed meter number [redacted].**
   - **b) Whether the Plaintiff ought to pay the Respondent, the outstanding electricity bill of <u>Kshs. 2,677,321</u> in relation to meter number [redacted].**

F. ANALYSIS OF THE DISPUTE

a) Whether the Plaintiff interfered and/or bypassed meter number [redacted]

29. The Respondent avers that on the 25th April, 2025 while its representatives were inspecting the Plaintiff's premises they established that the Plaintiff's meter number [redacted] had been bypassed/ tampered with.
30. This dispute was properly placed before the Authority vide the Plaintiff's letter of 19th June 2025 and turns on two interlinked questions: whether the Respondent's allegation of meter interference/bypass at the Plaintiff's Kasarani outlet is sustained on the technical record, and whether the consequential debit of KES 2,677,321 was competently raised.
31. The pleadings and background as filed, confirm that the matter concerns alleged meter tampering and a contested recalculation of electrical energy and therefore lies within the Authority's jurisdiction under the Energy Act, Cap 314, Laws of Kenya and the Energy (Complaints and Dispute Resolution) Regulations, 2012.
32. The Plaintiff receives electricity supply through KPLC Meter No. [redacted] serving the Kasarani branch. The Plaintiff states that on 24th April 2025 KPLC officers disconnected supply citing phase imbalance.

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33. The Plaintiff further avers that its operations rely primarily on single-phase chillers and motors and that daytime demand is offset by "30A solar panels," thereby creating load distribution differences.

34. It is the Plaintiff's position that the meter board was sealed and an unofficial demand for KES 50,000 made and rejected by the Plaintiff.

35. Subsequently, the Respondent's technical team verified the seal integrity and thereafter broke the seals for a joint audit and restored power with a meter replacement.

36. The Plaintiff states that a penalty of approximately KES 2.6 million was thereafter levied unilaterally without an "Acceptance of Liability form" and in a manner inconsistent with the technical audit outcome which discredited the initial imbalance/tampering claim.

37. On the other hand, the Respondent confirms that the parties have entered into a valid electricity supply contract in relation to Account number [redacted]. The Respondent asserts that an inspection at the premises on 25th April 2025, established meter bypass/tampering which was captured in a video and recorded in the Installation Inspection Report, whereupon supply was disconnected in accordance with the Energy Act, Cap 308.

38. The Respondent narrates a follow-up visit on 7th May 2025 for re-inspection and meter replacement "to monitor the new meter's averages,". The new meter was identified as meter number [redacted]. The meter that was removed had a closing reading of <u>**638,026**</u> with site currents taken.

39. The Respondent states that the meter that was removed, underwent a laboratory test on 22nd July 2025 and "passed" accuracy and register tests; The Respondent goes on to state that a "healthy" meter in lab conditions, does not rule out an external bypass effected on the customer's wiring side, which would not leave internal tamper signatures. The Respondent anchors the contested adjustment on reconstructed energy for a defined period using average daily consumption (HR/LR) and cites its unit-build-up in support.

40. Having regard to the foregoing positions, the technical weight of the Respondent's allegation narrows to whether the field evidence proves an external diversion path

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while the meter itself remained internally sound. The laboratory finding that the meter "was healthy, and "passed the accuracy and register test" is inconsistent with an internal disablement but not inconsistent with an external bypass, which—by the Respondent's own explanation—may evade laboratory detection where the diversion is upstream of the meter terminals or otherwise reversible.

41. Consequently, the probative value turns on the completeness and reliability of the site artefacts said to exist. The Installation Inspection Report, the video capture, the per-phase current observations, the condition of seals before removal, and the chain-of-custody from site to laboratory. Those items, rather than the bench test alone, are determinative of whether a diversion occurred on the installation side and for what duration.

42. On the reconstruction of charges, the Respondent's computation is presented as an adjustment derived from historic averages over a stated base period and applied to an identified adjustment window, split by high-rate and low-rate energy registers. Such an approach is, in principle, compatible with regulatory practice where unrecorded consumption is established.

43. However, its soundness in any given case depends on the following;
    a) Establishing the start and end dates of the anomaly with evidence (e.g., inspection findings, interval data, or last normal period).
    b) Demonstrating that comparator periods are representative.
    c) Adjusting for any known, documented changes on site that materially alter demand.

44. The Respondent has disclosed the headline HR/LR unit totals it used, but the Authority must still test whether the chosen baseline and the applied periodization are consistent with the site's operational profile during the alleged bypass window and whether the unit build-up is not overstated relative to verified demand.

45. The Plaintiff on the other hand, attributes the observed reduction in grid bills from mid-2024 onwards to the commissioning of **<u>on-site solar and single-phase process</u>** loads. That assertion, if substantiated, would be material to the assessment of both motive and magnitude—because a genuine PV offset reduces daytime imports and can

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create apparent imbalances on three-phase metering where load is asymmetrical yet lawful.

46. However, the Authority notes that while the Plaintiff relied on a solar explanation in submissions, the Plaintiff was directed after the hearing to furnish objective proof—such as a completion/commissioning certificate, interconnection approval, or inverter generation logs but ***no such report or certificate was filed and/or shared with the Authority.*** In the absence of that corroboration, the solar claim remains unsubstantiated and cannot, by itself, displace a properly evidenced finding of diversion should the Respondent's site record meet the requisite standard.

47. Procedurally, the timeline reflects that written submissions were called for by the Authority's letter of 24th June 2025; a virtual hearing was conducted on 21st July 2025; and the parties' submissions were received on 21st and 31st July 2025 respectively.

48. The above steps, are consistent with the Energy (Complaints and Dispute Resolution) Regulations, 2012 and support the Authority's mandate to investigate, receive evidence, and determine disputes concerning recalculation of energy and meter interference.

49. The Plaintiff's complaint regarding the absence of a signed Acceptance of Liability form is also noted; whether liability was admitted is not, however, dispositive where a licensee proves interference by evidence independent of admission, though the manner and timing of notices, disconnection, sealing, and meter handling remain relevant to fairness and weight.

50. On the totality of the record, the Authority finds that the contemporaneous onsite inspection recorded abnormally low/near-zero currents on the red and yellow phases while the remaining phase carried load. Such a signature is incompatible with normal three-phase utilization at the premises and is technically consistent with an external diversion or interference on the customer side.

51. The subsequent laboratory examination establishes that the removed meter's measuring elements and registers are accurate and in good order, thereby excluding an internal meter defect as the cause of under-registration. The Plaintiff was expressly directed to furnish documentary proof of the alleged solar PV installation and any

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commissioning or generation records; no certificate, report, or equivalent evidence was filed.

52. Accordingly, the Authority determines that the Respondent has established, on a balance of probabilities, that unauthorized interference occurred during the particularized period, and that the consequential reconstruction of charges was competently raised. The impugned debit of KES 2,677,321 is therefore upheld as lawful and payable, together with any applicable charges under the governing tariff and regulations.

53. In light of the above, the Authority finds that the Plaintiff interfered and bypassed meter number [redacted].

b) Whether the Plaintiff ought to pay the Respondent, the outstanding electricity bill of <u>Kshs. 2,677,321</u> in relation to meter number [redacted].

54. Following the above finding, that the Plaintiff interfered and bypassed meter number [redacted], the Authority determines that the disputed electricity bill of **<u>Kshs. 2,677,321</u>** is lawful and payable, together with any applicable charges under the governing tariff and regulations.

<u>DETERMINATION</u>

55. The Authority has considered the Plaintiff's and the Respondent's case and hereby makes the following determination;

   a) That the Plaintiff interfered and bypassed meter number [redacted]
   b) That the Plaintiff is **<u>directed</u>** to pay the Respondent the outstanding electricity bill of **<u>Kshs. 2,667,321.</u>**
   c) That this Determination is final and binding upon both parties.
   d) That each party to bear their own costs.
   e) That the Parties are at liberty to exercise their right of appeal to this decision at the Energy and Petroleum Tribunal pursuant to the provisions of the Energy Act, Cap 314, Laws of Kenya.

DATED AT NAIROBI THIS ...14th...... DAY OF ...AUGUST.......2025

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CPA CYPRIAN M. NYAKUNDI

FOR: DIRECTOR GENERAL