

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Quorum
Shri S.K.Chaturvedi, Chairperson
Petition No. 142/2014
Date of Order 05.05.2015

In the matter of

Petition under Section 42 (4) of the Electricity Act, 2003 and Joint Electricity Regulatory Commission (Open Access in Transmission and Distribution) Regulations, 2009 for determination of Additional Surcharge for FY 2013-14 payable by the consumers in the Territory of Daman and Diu availing power under Open Access.

And in the matter of

Electricity Department- Daman and Diu, Plot No. 35, OIDC Complex, Near Fire Station, Somnath, Daman.Petitioner

Versus

- 1 M/s Wellknown Polyester Ltd. (HTC-364), Plot No. 52, Dabhel Industrial Estate Co-op Society, Dabhel, Daman.
- 2 M/s Wellknown Polyester Ltd. (HTC-1148), Plot No. 210/3, 213/2,3,4, 214/1,2,3, 215, 216/1,2,3,4,5,6,7, 216/4-B, 224/1,2,3, 229/1-A, 213/5-14, 210/5-A, 211/1, 229/2, Dabhel Industrial Estate Co-op Society, Dabhel, Daman.
- 3 M/s Perfect Filament Ltd. (HTC-1059) Survey No. 285, Bhimpore, Daman.

.....Respondents

Argued by:

1. Sh. Gaurav Nand, Consultant, (Respondents No. 1 and 2).

ORDER

The Petitioner – ED- Daman and Diu has filed the present Petition under Section 42 (4) of the Electricity Act, 2003 and Joint Electricity Regulatory Commission (Open Access in Transmission and Distribution) Regulations, 2009 herein after referred as the JERC Regulations for determination of Additional Surcharge for FY 2013-14 payable by the Consumers in the territory of Daman and Diu availing power under Open Access.

The brief facts are that ED- Daman and Diu –Petitioner has allowed Open Access to the Electricity Consumers in the territory of Daman and Diu as per the JERC Regulations. The Commission in the Tariff Orders for FY 2013-14 and FY 2014-15 has allowed various Open Access charges for FY 2013-14 and FY 2014-15. The Petitioner as per the JERC Regulations has notified procedure for long term and short term Open Access on 16.07.2012 in the official Gazette of UT Administration Daman and Diu. There were two Open Access consumers in FY 2013-14 and presently the number of Open Access consumers has increased to three.

The Petitioner during FY 2013-14 had to surrender power from various generating stations to allow Open Access to the consumers. But the Petitioner is liable to pay fixed charges to the generators. The Petitioner has to observe net deficit in recovery of the fixed charges payable to the generators in addition to the Open Access charges declared and recovered from the Open Access consumers. Therefore, the Petitioner according to Regulation 16 of the JERC Regulations seeks recovery of deficit in fixed charges in terms of Additional Surcharge as per the detailed calculations of Additional Surcharge for FY 2013-14 as shown in Annexure-II. The Petitioner has issued provisional bills to the Open Access consumers for FY 2013-14. The Petitioner shall issue final bills and recover Additional Surcharge after approval of the Additional Surcharge.

Hence, the present Petition for determination of Additional Surcharge for FY 2013-14 from Open Access consumers and approval to recover the Additional Surcharge in final Open Access monthly bills or monthly Electricity bills issued by the Petitioner.

The Commission received the Petition on 19.08.2014. The Commission examined the Petition and found it in line with the JERC (Conduct of Business) Regulations, 2009 and Electricity Act, 2003. The Commission admitted the Petition on 20.08.2014 and numbered it as Petition No. 142/2014.

The Commission sent hearing notice to the petitioner for 15.09.2014. The Commission heard the representatives of the Petitioner on 15.09.2014. The Commission pointed out Regulation 16 (iii) (d) of JERC (Open Access in Transmission and Distribution) Regulations, 2009, which runs as under:-

Quote

“The Commission shall scrutinize the statement of accounts submitted by the licensee and obtain objections, if any, of the consumer and determine the amount of additional surcharge, if any, payable by the consumer.”

Unquote

The Commission in the Order dated 15.09.2014 observed that the Petitioner did not disclose names and addresses of the Open Access consumers and also did not implead them as respondents in the Petition. Whereas according to Regulation 16 (iii) (d) of JERC (Open Access in Transmission and Distribution) Regulations, 2009 the Commission is required to invite objections from the Open Access consumers before determination of amount of additional surcharge. The Commission further observed that without impleading them as respondents and disclosing their names and addresses the Open Access consumers can't be served and afforded opportunity to file objections / suggestions against the petition and hearing. Therefore, the Commission directed the Petitioner to implead all the Open Access consumers of their territory as respondents in the present Petition.

The representatives for the Petitioner on 15.09.2014 prayed for 15 days time for impleading all the Open Access consumers as respondents and disclosing their names and addresses. The Commission after considering the prayer of the Petitioner directed the Petitioner to file amended Petition within 15 days after impleading all the Open Access consumers as respondents.

The Commission scheduled hearing on 13.11.2014. The Petitioner submitted amended Petition on 10.11.2014. Therefore, the Commission on 13.11.2014 adjourned the Petition to 17.12.2014 for notice to the Respondents. On 17.12.2014 the representatives of the Respondents appeared and the Petition was adjourned to 20.01.2015 for filing reply / objections / suggestions. On 20.01.2015 the Respondents No.1 and 2 filed joint reply / objections.

The Respondents No. 1 and 2 filed joint reply / objections with averments that they are consumers of the Petitioner and are purchasing power from Open Access as provided u/s 42 of the E.A. The claim of the Petitioner to impose Additional Surcharge on Open Access consumers is illegal and invalid as the Petitioner has failed to demonstrate its claim that the existing Power Purchase commitment has been stranded and continues to be stranded on account of Open Access transactions.

That the claim of the Petitioner for Additional Surcharge should be based on unavoidable obligation of the Licensee to its existing Power Purchase Agreements which are stranded and continues to be stranded. But the Petitioner has not submitted details of the stranded power on account of Open Access allowed to the consumers. The methodology submitted by the Petitioner is totally wrong and not in line with Section 42 (4) of the E.A. The Respondents further submitted that according to Section 8.5.4 of the National Tariff Policy Additional Surcharge can be imposed only when it is conclusively demonstrated that there is unavoidable obligation on the licensee towards existing Power Purchase Agreements which have been stranded and continue to be stranded on account of Open Access transactions corresponding to which licensee is bearing the fixed cost of the contracts, and to recover the same Additional Surcharge can be levied on Open Access consumers. Whereas the Petitioner is claiming the total fixed cost of its existing contracts and not of the stranded power on account of Open Access and the Petitioner has proposed the methodology which is against the spirit of Electricity Act, National Tariff Policy and the JERC Regulations.

The case of the Respondents No. 1 and 2 further is that Punjab State Power Corporation Ltd. filed Petition No. 55 of 2011 on similar grounds for determination of Additional Surcharge before Punjab State Electricity Regulatory Commission and PSERC vide Order dated 22.05.2012 dismissed the Petition on the grounds that there is lot of inconsistency in data supplied by the Petitioner at the time of filing the Petition and additional submissions, therefore, the Commission cannot rely upon the data submitted by PSPCL and the Petitioner also failed to establish Additional Surcharge chargeable from each of the Open Access consumers. Similar view has been taken by the Gujarat Electricity Regulatory Commission in Petition No. 1302 of 2013 in Order dated 12.03.2014.

The Respondents No. 1 and 2 further submitted that the Petitioner has submitted that it has raised provisional bills to the Open Access consumers in FY 2013-14 whereas the bills received by the consumers are final. The JERC Regulations provides that Open Access charges shall not be levied on retrospective basis and only this Commission can impose adhoc Open Access charges without retrospective effect. In the present scenario of the country Additional Surcharge can be imposed where the State is running in surplus power and on account of Open Access, it is unavoidable for the licensee to surrender the power. Whereas the scenario submitted by the Petitioner is of a deficit power and most of the time the Petitioner is making over drawal from the grid in UI. which is evident from the UI data submitted by the Petitioner along with the present Petition.

That Open Access is envisaged in the Electricity Act and the National Tariff Policy to promote competition in the power sector. The same also provides that cross Subsidy Surcharge or Additional Surcharge should not be so onerous that it eliminates competition through Open Access. Therefore for promoting competition in the power sector, it is prayed that no Additional Surcharge on Open Access should be determined and levied on the Open Access consumers and the Petition may kindly be dismissed.

The Commission on request of Counsel for Respondent No. 3 fixed the Petition on 13.02.2015 for submitting reply by the Respondent No. 3. On 12.02.2015 an e-mail was received from Counsel for Respondent No.3 with a request that he was unable to attend hearing on 13.02.2015 and prayed to adjourn the Petition and fix another date of hearing. The Commission on 12.02.2015 decided that the next date of hearing shall be fixed in the month of April. The Commission on 27.03.2015 decided to hear the Petition on 23.04.2015. The Commission sent notices for hearing for 23.04.2015.

The Commission on 23.04.2015 heard Shri Gaurav Nand representative for Respondents No. 1 and 2, whereas no one was present on behalf of the Petitioner and Respondent No. 3. The Commission has carefully and thoroughly gone through the Petition, reply / objections submitted by the Respondents No. 1 and 2, provisions of Section 42 of E.A., Section 8.5.4. of the National Tariff Policy as well as the JERC Regulations.

Before proceeding further, it is worthwhile to reproduce the provisions of Section 42 (4) of the E.A., Section 8.5.4 of the National Tariff Policy and Regulation 16 of the JERC Regulations. These provisions provide for determination of Additional Surcharge to be recovered from Open Access consumers by the Licensee of his area of supply and approval of the appropriate Commission for recovery of the Additional Surcharge.

Section 42 (4) of the Electricity Act, 2003

" Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply."

Section 8.5.4 of the National Tariff Policy

" The additional surcharge for obligation to supply as per section 42(4) of the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges".

Regulation 16 (iii) of the JERC (Open Access Transmission and Distribution) Regulations, 2009

Additional Surcharge

- a. *A consumer availing open access and receiving supply of electricity from a person other than the distribution licensee of his area of supply shall pay to the distribution licensee an additional surcharge, in addition to wheeling charges and cross-subsidy surcharge, to meet the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of section 42 of the Act.*
- b. *The additional surcharge for obligation to supply shall become payable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such contract.*
- c. *The distribution licensee whose consumer intends to avail open access shall submit to the Commission within thirty days of receipt of application on account of fixed cost paid by such open access user which the licensee is incurring towards his obligation to supply and demonstrate if any part of the fixed cost has become stranded.*

- d. The Commission shall scrutinize the statement of accounts submitted by the licensee and obtain objections, if any, of the consumer and determine the amount of additional surcharge, if any, payable by the consumer"*
- e. The additional surcharge shall be liable for such period not normally exceeding one year as the Commission may determine."*

From reading of the provisions of Section 42 (4) of the E.A., it is clear that the Commission is empowered to determine Additional Surcharge on the charges of billing and the Open Access consumer is liable to pay the Additional Surcharge to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

From the provisions of Section 8.5.4 of the National Tariff Policy and Regulation 16 (iii) (a) & (b), it is clear that Additional Surcharge can be imposed only when it is conclusively demonstrated by the licensee that there is an unavoidable obligation on the licensee towards its existing Power Purchase Agreements which have been stranded and continue to be stranded on account of Open Access transactions corresponding to which licensee is bearing the fixed cost of the contracts, and to recover the same Additional Surcharge can be levied on Open Access consumers.

From reading of Regulation 16 (iii) (c) of the JERC Regulations, it is also clear that the licensee is to submit account of fixed cost paid by such Open access user which the licensee is incurring towards his obligation to supply, and demonstrate that a part of fixed cost has become stranded to the Commission within thirty days of receipt of the application for permission for Open Access. The Commission is to scrutinize the statement of accounts submitted by the licensee and if the Commission comes to the conclusion that the licensee has been able to demonstrate that the obligation of the licensee in terms of existing Power Purchase commitments has been and continues to be stranded and there is an unavoidable obligation to bear the fixed cost consequent to such contract the Commission shall determine the Additional Surcharge. But if the licensee fails to demonstrate that the obligation of the licensee in terms of existing Power Purchase commitments does not continue to be stranded the Commission is not to determine the Surcharge.

After going through the Petition and reply carefully and thoroughly the Commission is of the opinion that the Petitioner has failed to demonstrate that there is an unavoidable obligation on the licensee towards its existing Power Purchase Agreements which have been stranded and continue to be stranded on account of Open Access transactions corresponding to which the licensee is bearing the fixed cost of the contracts and to recover the same the Petitioner is entitled for determination of the Additional Surcharge and approval of the Commission to recover the same from the Open Access consumers.

The Petitioner has prayed for determination of Additional Surcharge on wheeling charges and cross subsidy charges to meet the fixed cost of the distribution licensee arising out of his obligation to supply as provided under Section 42 (4) of the E.A. for FY 2013-14. But the present Petition is filed on 19.08.2014. FY 2013-14 had already passed before filing the present Petition. The Petitioner as provided under Regulation 16 (iii) (c) was required to file the present Petition within one month from filing the application by the Open Access consumer for permission for Open Access with the licensee. But, there is nothing on the record to show that the application is filed within thirty days of the receipt of the application for permission for Open Access. Hence, the Petition is not filed within the prescribed period of thirty days under Regulation 16 (iii) (c) of JERC Regulations.

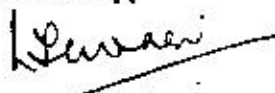
The Commission at page No. 52 of the Order dated 31.03.2015 passed in Petition No. 148 of 2014 of Electricity Department, Daman and Diu for True up of ARR for FY 2013-14, Review of ARR for 2014-15 and Determination of Aggregate Revenue Requirement and Retail Tariff for FY 2015-16 has approved True up for FY 2013-14 of Electricity Department, Daman and Diu. Hence, the accounts of Electricity Department for ED, Daman and Diu for FY 2013-14 are finalized and once the accounts are finalized the Petitioner cannot be allowed to recover any Additional Surcharge on wheeling charges and cross subsidy charges to meet the fixed cost of the distribution licensee arising out of his obligation to supply as provided under Section 42 (4) of the E.A. for FY 2013-14. Therefore, the Petition has become infructuous.

The Commission at page No. 191 of the Order dated 22.03.2013 passed in Petition No. 90 of 2012 of Electricity Department, Daman and Diu for True up of ARR for FY 2011-12, Review of ARR for 2012-13 and Determination of Aggregate Revenue Requirement and Retail Tariff for FY 2013-14 approved "NIL" Additional Surcharge to promote competition in Open Access. Therefore, also the Petitioner is not entitled for determination of Additional Surcharge on wheeling charges and cross subsidy charges to meet the fixed cost of the distribution licensee arising out of his obligation to supply as provided under Section 42 (4) of the E.A. for FY 2013-14.

In light of the above observations and findings of the Commission, there is no merit in the Petition, and the same is hereby dismissed.

Sd/-
(S.K.CHATURVEDI)
CHAIRMAN

Certified Copy



(Keerti Tewari)
Secretary