

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

Quorum  
Shri S.K.Chaturvedi, Chairperson  
**Petition No. 144/2014**  
**Date of Order 23.02.2015**

**In the matter of**

Petition under Section 62 (6) of the Electricity Act, 2003 for recovery of excess amount of Rs. 4,82,213/- in flagrant disregard to Electricity Act, 2003 as well as Rules and Regulations framed time to time by the Joint Electricity Regulatory Commission for the State of Goa and UTs.

**And in the matter of**

M/s Perfect Filaments Ltd.

.....Petitioner

**Versus**

Electricity Department- Daman & Diu

.....Respondent

**Argued by for Petitioner**

1. Sh. Praveen Kumar, Advocate

**Argued by for Respondent**

1. Sh. Anand K. Ganesan, Advocate

**Order**

1. The petitioner - M/s Perfect Filaments Ltd. has filed the present petition under Section 62 (6) of the Electricity Act, 2003 for quashing levy and recovery of standby charges for 68399 units @ 7.05 per unit totaling to Rs. 4,82,213/- in the billing month of June, 2014 and for direction to the respondent to adjust the excess amount of Rs. 4,82,213 recovered from the petitioner in bills of successive months.
2. Briefly stated the case of the petitioner is that the petitioner is a power intensive unit. The respondent is Electricity Distribution Licensee for union territory of Daman. The petitioner is a HT consumer of the respondent with sanctioned Connected Load of 5 MW and contract demand of 5 MVA. The petitioner is availing Open Access pursuant to Electricity Act, 2003 (herein in short referred as the Act) and in case of need is purchasing power from sources other than respondent through the power exchange.
3. That the petitioner has entered into an open access agreement with the respondent as per the Regulations framed by the Commission. The petitioner is seeking NOC from the SLDC on regular basis according to its requirement. The petitioner in the aforesaid manner is drawing power both from the respondent as well as power exchange to the extent of 5 MVA (contract demand).
4. That on 12.06.2014 the petitioner as per his requirement made a bid for power purchase for 13.06.2014 but the bid did not pass in the Exchange and accordingly power from exchange was not scheduled on 12.06.2014 for 13.06.2014. Therefore, the petitioner on 13.06.2014 drew power from the respondent only. The drawal of power was well within the contract demand of the petitioner. But when the bill was generated the petitioner came to know that the respondent has applied Stand by charges on 68399 units.
5. That the respondent procured power from UI at Rs. 3.45 per unit but the same was charged to the petitioner at Rs. 11.75 per unit which included the stand by charges of Rs. 7.05 per unit. The imposition of standby charges is illegal and is not in consonance as per his requirement of 5 MVA with the respondent. The petitioner requested the respondent to adjust the excess amount in succeeding bills vide letter dated

26.07.2014. But the respondent vide letter dated 11.08.2014 justified the levy of standby charges stating that the same is in conformity with the tariff order.

6. The petitioner challenged levy of standby charges with averments that stand by charges can be levied in case of outages of generator as per The Tariff Policy and non drawal through open access on account of failure of bid on an Energy Exchange cannot be termed as outages of generator and thus the imposition of standby charges in case of the petitioner is violative of The Tariff Policy. The petitioner in case of failure of bid is entitled to draw power from the discom at charges determined by the Commission in terms of the contract demand.
7. That the respondent under section 43 of the Act has universal obligation to supply electricity. Therefore, the supply of electricity cannot be subject to the quantum and schedule of electricity drawn from the respondent. The action of the respondent is against the principle of equality as it has discriminated between the consumers who are availing open access and the ones who are not open access consumers and levy of charge on drawal within the contract demand over and above the tariff for such category is illegal and violative of the Act, 2003 and The National Electricity and Tariff Policy as the standby charges would apply in cases where the drawal exceeds the contract demand and there is an outage of the generators.
8. That as per The National Electricity Policy and The Tariff Policy a consumer resorts to open access because drawal of power is cheaper as compared to the discom and any attempt to frustrate the same would amount to contempt of Regulations framed by the Commission. The respondent can levy charges as mentioned in Regulation 16 of the JERC (Open Access in Transmission and Distribution) Regulations, 2009. The Article 3, point 2.1 of Open Access Agreement entered into between the petitioner and the respondent provides for Standby Charges only for temporary connection and a consumer having contracted demand cannot be deemed to be temporary connection consumer.
9. The petition was received in the Commission on 10.09.2014. The Commission examined the petition and found it technically in line with the JERC (Conduct of Business) Regulations, 2009 and the Act. The Commission admitted the petition on 15.09.2014.
10. The Commission sent hearing notice to the parties for 13.11.2014. Representative of the respondent ED- Daman & Diu appeared on 13.11.2014. The Commission also heard the Counsel for the petitioner and representative of the respondent on 13.11.2014.
11. The respondent filed reply, received in the Commission on 15.01.2015, stating that the petition is not maintainable before the Commission as the dispute is between a consumer and distribution licensee. The petitioner wants to invoke provision of Section 62 (6) of the Act which does not confer jurisdiction. The said provision states the position in law and provide for the consequences in case a distribution licensee recovers charges in excess of the tariff determined. The said provision in no manner confers jurisdiction in any authority or the Commission for adjudication of disputes between a consumer and a distribution licensee. The dispute raised by the petitioner is a billing dispute. The billing dispute between a consumer and licensee cannot be entertained by the Regulatory Commission. The same is required to be adjudicated by the Consumers Grievance Redressal Forum under Section 42 (5) subject to appeal to the Ombudsman under Section 42(6) and (7) of the Act.
12. The case of the respondent further is that the petitioner sought to procure electricity through open access and made an application to the respondent. The application of the petitioner was rejected by the respondent on the ground that supply lines could not accommodate any further capacity over and above the capacity of contract demand of the petitioner with the respondent. The petitioner approached the

Commission and the Commission vide order dated 04.04.2014 allowed the petitioner to take electricity through open access within the existing contract demand so that no additional capacity is required to be maintained and the transmission line for open access to be sought.

13. That the petitioner and the respondent, in compliance of the order dated 04.04.2014 of the Commission, on 02.05.2014 entered into an agreement; and as per the agreement the petitioner was required to pay standby charges during the period in which the petitioner, though procuring electricity through open access, failed to procure such electricity and thereby draw the same from the distribution licensee. The respondent has levied standby charges as approved by the Commission in the tariff order dated 01.05.2014. The petitioner has sought and procured open access on the basis that the total drawal of electricity from open access and from the distribution licensee shall not exceed the total capacity of the line, which corresponds to the contract demand which the petitioner has from the distribution licensee. Whereas in normal circumstances, when there is no other source of supply within the contract demand the distribution licensee is required to make electricity available for drawal by the consumer to the extent of the contract demand. The petitioner has opted for alternate source of supply within the same contract demand. This benefit is not generally available to open access consumers
14. That the respondent is to take open access for 3.5 MW from open access source and in case of failure of open access source the petitioner draws electricity from the distribution licensee, and the same is treated as standby as there is no planning by the distribution licensee to arrange for this 3.5 MW of electricity. Hence, the petitioner is required to pay standby charges for such electricity being procured and the same has nothing to do with the charges payable for the contract demand. The standby electricity is provided when the source of supply chosen by the petitioner fails and the petitioner calls upon the respondent to provide standby supply for failure of the envisaged source of supply. This concept is recognized by the Commission in the Tariff Order dated 01.05.2014 and by the parties in the agreement dated 02.05.2014.
15. The respondent has denied all other allegations of the petition and prayed for dismissal of the petition. The petitioner on 19.01.2015 filed Stay petition with prayer to Stay recovery of standby charges till disposal of the petition, supported by an affidavit and some documents.
16. The Commission heard the learned Counsel for parties at length on 13.11.2014, 17.12.2014 and 20.01.2015. The Commission has gone through the petition, written submissions, reply and related documents carefully and thoroughly and has applied its mind on the facts of the petition, reply, law on the point and submissions made by learned Counsel for the parties.

From the contentions of the parties following issues arise for consideration:-

  1. Whether Standby Charges are applicable only on power drawn over and above the Contract Demand or whether the same can be imposed irrespective of power drawn within the Contract Demand?
  2. Whether the petition is not maintainable before this Commission and only the Grievance Redressal Forum provided u/s 42 (5) and 42 (6) of the Act can decide the matter?
17. The Commission will discuss the issues one by one. The first issue is regarding levy and recovery of standby charges for 68399 units @ 7.05 per unit totaling to Rs. 4,82,213/- in the billing month of June, 2014.
18. The learned Counsel for the petitioner argued that the petitioner is a consumer of the respondent with Contract Demand of 5 MW. The petitioner is regularly paying fixed charges and energy charges as calculated by the respondent. The petitioner and the respondent entered into an agreement for supply of 3.5 MW electricity through open access and remaining 1.5 MW electricity from the respondent (total

contract demand 5 MW). The petitioner has agreed to pay open access charges. But the respondent is not entitled to levy standby charges for the electricity that the Petitioner has drawn from the Respondent due to failure of the open access source of supply. He further argued that the Petitioner has a contract demand to the extent of 5 MW from the Respondent and also has the facility of taking supply of electricity through open access within the said capacity of 5 MW. The Petitioner has the unrestricted freedom to take supply from either the Respondent or the open access source and no standby charges can be levied by the Respondent. In support of his arguments he relied upon case law reported as Indian Aluminum Co. Ltd. Vs. West Bengal Electricity 2006 ELR APTEL 791 and BBN Industries Association Vs. H.P. Electricity Regulatory Commission 2006 ELR APTEL 806 and common Judgment in Appeals No. 194, 195 and 196 of 2011 titled Delhi Jal Board Vs. DERC delivered by Hon'ble APTEL.

19. Whereas the learned Counsel for the respondent argued that the Petitioner cannot rely on the total contract demand with the Respondent to claim that no standby charges are to be levied. The same would be levied if the open access supply is over and above the supply by the respondent which in the instant case gets reduced to 1.5 MW. The Petitioner has agreed to have two sources of supply within the contract demand. This is a substantial benefit given to the Petitioner. The Petitioner would be at liberty to take supply of electricity from the designated source as decided by it. The Petitioner has decided to take electricity to the extent of 3.5 MW from open access and balance of 1.5 MW from the Distribution Licensee. Therefore, if there is failure of supply of 3.5 MW from open access supply he cannot call upon the Distribution Licensee to offset such failure and not discharge his liability of paying standby charges which are required to be paid by the open access consumers.
20. Hence, if the Petitioner challenges the above proposition, the very basis for open access being supplied and there being two sources of supply within the capacity of the contract demand is nullified. The Petitioner cannot take advantage of the benefit and facility granted and thereafter dispute the charges that are payable as a natural and logical consequence of the facility being granted. The Respondent is to ensure that the supply lines and infrastructural facilities are maintained at all points of time to ensure that there is no interruption in the supply of electricity to the Petitioner. The fixed charges are not meant solely for the obligation to supply or to purchase electricity, but are meant for the infrastructural facilities and supply lines to be maintained.
21. He further argued that this aspect can be seen from another angle also. The Petitioner is entitled to draw total of 5 MW and to communicate in advance that 3.5 MW would be drawn from open access source and only 1.5 MW would be drawn from the Respondent. The Respondent is under an obligation to ensure that the system, infrastructure etc. are ready and operational so that 5 MW can be drawn by the Petitioner from the sources that he chooses. However, with regard to the actual supply obligation, the Respondent is under no obligation to supply more than 1.5 MW, which the Petitioner has communicated that it would draw from the Respondent. Therefore, the Petitioner cannot avoid payment of such charges that are specifically provided for by the Commission, relying on the total contract demand of the Petitioner even though the Petitioner has chosen to take supply of electricity from open access sources by informing in advance about the drawal of electricity from the Respondent to a limited extent.
22. The learned Counsel for the respondent also argued that in case the standby charges are sought to be avoided, it would lead to chaos in the electricity sector. Every consumer can claim two sources of supply within the contract demand and then take the position that he will draw electricity as and when required and at the last moment when the open access source fails. In these circumstances there may be very little or no demand from the Respondent Distribution Licensee, in case of failure of open access source all the

consumers would start drawing from the Respondent Distribution Licensee leading to huge power purchase cost. This is the concept envisaged for standby charges where the standby facilities are provided in case of failure of open access source, which was the designated source. Hence, the petitioner being an open access consumer is liable to pay standby charges. In support of his argument he also relied upon case law reported as Indian Aluminum Co. Ltd. Vs. West Bengal Electricity 2006 ELR APTEL 791 and BBN Industries Association Vs. H.P. Electricity Regulatory Commission 2006 ELR APTEL 806 and Transmission Corporation of Andhra Pradesh Limited Vs. Sai Renewable Power Private Ltd. & Others 2011 (11) SCC 34 and common Judgment in Appeals No. 194, 195 and 196 of 2011 titled Delhi Jal Board Vs. DERC delivered by Hon'ble APTEL.

23. After having heard both the sides at length, going through the pleadings of the parties, documents relied upon by the parties and case law relied upon by the learned Counsel for the parties carefully and thoroughly the Commission is of the opinion that the petitioner has a contract demand of 5 MW and the petitioner entered into an agreement dated 02.05.2014 with the respondent for supply of 3.5 MW electricity through open access and remaining 1.5 MW electricity from the respondent. The petitioner has agreed to pay open access charges. Before proceeding further it is worthwhile to reproduce Article 1 (1), (2) and (3) of the agreement dated 02.05.2014, which runs as under:-

**Quote**

**"Article 1: General Terms and Conditions**

1. Any definition (or meaning) and/or terms & conditions not mentioned in the agreement but mentioned in the JERC (Open Access in Transmission and Distribution) Regulations, 2009 or Short Term Open Access procedure notified by ED-DD shall be binding.
2. The OAC agrees to pay the various open access charges as determined by Hon'ble Commission from time to time. Charges not explicitly mentioned in the Agreement, but needs to be recovered from OAC under guidelines of JERC/CERC shall also be recovered from OAC by ED-DD from time to time. The open access charges shall include but not limited to,
  - a. Transmission charges
  - b. Wheeling charges
  - c. SLDC Charges
  - d. Standby charges
  - e. UI charges
  - f. Additional surcharges
  - g. Reactive Energy Charges
3. The OAC also agrees to pay charges towards, Standby Capacity reservation, UI, SLDC scheduling/revision charges or any other charges identified in line with JERC (Open Access in Transmission and Distribution) Regulations, 2009 and/or Short Term Open Access procedure notified by ED-DD."

**Unquote**

24. Before proceeding further the provisions of Regulation 3.3 (7) of the JERC (Electricity Supply Code) Regulations, 2010 are also reproduced for ready reference:-

**Quote**

**"Regulation 3.3 (7)**

When the licensee completes the work of extension of distribution mains and is ready to give supply, the licensee shall serve a notice on the consumer to take power supply within one month in case of LT and three months in case of HT or EHT. If the consumer fails to avail supply within the notice period,

the agreement shall come into force from the day following the end of the notice period, and thereafter the consumer shall be liable to pay charges as applicable, as per the agreement."

**Unquote**

25. It is also worthwhile to reproduce clause 8.5.6 of Tariff Policy 2006, which runs as under:-

**Quote**

"In case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee on the payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission".

**Unquote**

26. The respondent in petition no. 114/2013 for determination of Annual Revenue Requirement and Retail Tariff for FY 2014-15 for open access consumers proposed standby power supply facilities to all the customers opting for open access as under:-

**Quote**

"In case of any default or failure of open access power supplier, the open access customer may draw power from the existing ED-DD network with prior information of the incidence and the respondent proposed standby tariff rates as approved by the Commission in the tariff order for Daman & Diu for FY 2013-14 for Temporary Supply for respective category of the consumer."

**Unquote**

27. The Commission vide order dated 01.05.2014 passed in petition no. 114/2013 for determination of Annual Revenue Requirement and Retail Tariff for FY 2014-15 held as under:-

**Quote**

"The standby charges are approved as submitted by the Petitioner. The standby charges for FY 2014-15 are approved at the same tariff as applicable for the Temporary Supply for the respective category of the consumer for FY 2014-15."

**Unquote**

28. From the agreement dated 02.05.2014, Regulation 3.3 (7) of the JERC Regulations, Tariff order dated 01.05.2014 and clause 8.5.6 of Tariff policy it is clear that the petitioner had contract demand of 5 MW electricity with the respondent. The petitioner on 02.05.2014 entered into an agreement with the respondent and decided to take electricity to the extent of 3.5 MW from open access and balance of 1.5 MW from the respondent. The Petitioner has agreed to have two sources of supply within the contract demand. This is a substantial benefit given to the Petitioner. The Petitioner would be at liberty to take supply of electricity from the designated source as decided by it. The Petitioner has decided to take electricity to the extent of 3.5 MW from open access and balance of 1.5 MW from the Distribution Licensee. Therefore, if there is failure of supply of 3.5 MW from open access supply he cannot call upon the Distribution Licensee to offset such failure. The respondent is entitled to levy standby charges as per Article 1 (1), (2) and (3) of the agreement, clause 8.5.6 of Tariff policy and order dated 01.05.2014.

29. Therefore, the submissions made by learned Counsel for the petitioner are not tenable. The case law relied upon by him in Indian Aluminum Co. Ltd.'s, BBN Industries Association's and Delhi Jal Board's cases (Supra) are of no help to the petitioner. The submission made by learned Counsel for the respondent are forceful and tenable as well as the case law relied upon even by the learned Counsel for the petitioner supports the contentions of the learned Counsel for the respondent and the case law Transmission Corporation of Andhra Pradesh Limited's (Supra) has full force on the facts of the present petition.

30. Therefore, the Commission is of the opinion that Standby Charges are applicable on power drawn over and above the power drawn by the petitioner above 1.5 MW and the respondent has rightly levied standby charges for 68399 units @ 7.05 per unit totaling to Rs. 4,82,213/- in the billing month of June, 2014 of the petitioner as on 12.06.2014, the petitioner as per his requirement made a bid for power purchase for 13.06.2014 but the bid has not passed in the Exchange and accordingly power from exchange was not scheduled on 12.06.2014 for 13.06.2014. Therefore, the petitioner on 13.06.2014 drew power from the respondent only. Hence, this issue is decided against the petitioner and in favour of respondent.
31. Now the Commission shall decide the issue no. 2 regarding maintainability of the petition before this Commission and the Consumer Grievance Redressal Forum provided u/s 42 (5) and 42 (6) of the Act only is competent to decide this dispute.
32. Learned Counsel for the respondent argued that the respondent has levied standby charges strictly at the rate approved by this Commission. The petitioner has disputed the bill. Hence, it is a dispute between a consumer and distribution licensee, therefore, the Forums created under Section 42 (5) and (6) of the Act has jurisdiction to adjudicate the dispute. The Commission has no powers to adjudicate such consumer dispute or entertain dispute between a consumer and a distribution licensee. He further argued that the case of the petitioner does not fall within the ambit of Section 62 (6) of the Act. In support of his argument he relied upon case law reported as Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Limited & Others, 2007 (8) SCC 381. Wherein it is held:

"31. The basic question which arise for our consideration in this appeal is **whether the individual consumer can approach the Commission under the Act or not.**"

"32. For deciding this question, the relevant provision is Section 42(5) of the Act, which reads as under:

"42. Duties of Distribution Licensee and open access.—(1)-(4) \* \* \* (5) Every Distribution Licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission."

33. As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy under Section 42(5) of the Act and according to sub-section (5) every Distribution Licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as "the 2003 Regulations") and created Consumer Grievance Redressal Forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. Therefore, now by virtue of subsection (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. This question has already been considered and decided by a Division Bench of the Delhi High Court in Suresh Jindal v. BSES Rajdhani Power Ltd. [(2006) 132 DLT 339 (DB)] and Dheeraj Singh v. BSES Yamuna Power Ltd. [Ed.: (2006) 127 DLT 525 (DB)] and we approve of these decisions. It has been held in these decisions that the forum and ombudsman have power to grant interim orders. Thus a complete machinery has been provided in Sections 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a forum/ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue, As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under sub-section (5) of Section 42 of the Act.

34. In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Subsection (1)(f) of the said section lays down the adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that is Section 42(5) and thereafter Section 42(6) read with the Regulations of 2003 as referred to hereinabove.

35. Therefore, in the facts and circumstances of the present case, we are of the opinion that the views taken by the Commission as well as the appellate authority are unsustainable and they have erred in coming to the conclusion that the Commission has jurisdiction. "Consequently, we set aside the order dated 18-10-2005 passed by the Commission and the orders dated 5-4-2006 and 2-6-2006 passed by the appellate authority and remit the matter to the proper forum created under Section 42(5) of the Act to decide the grievance of the Respondent herein in accordance with law. We make it clear that we have not made any observation with regard to the merits of the demand raised by the appellant upon the Respondent Company and it will be open for the proper forum to adjudicate the same. The payment, if any, made by the Company will not operate as an estoppel against the Respondent Company. We hope that the forum will decide the matter expeditiously."

33. While refuting the arguments advanced by the learned Counsel for the respondent, the learned Counsel for the petitioner argued that the petitioner has not raised a billing dispute rather interpretation of the Regulations has been invoked in the backdrop of concept of Contract Demand, which can only be done by this Commission. He further argued that the Redressal Mechanism provided under the JERC (Open Access in Transmission and Distribution) Regulations, 2009, i.e. SLDC has not been appointed. Therefore, this Commission has the jurisdiction to entertain the petition. His contention finds support from Maharashtra Electricity Regulatory Commission's case (Supra) wherein it is held that Commission shall not entertain disputes where alternate forums has been constituted and Commission shall have the jurisdiction. Regulation 11.6 of JERC (Electricity Supply code) Regulations, 2010 provides Jurisdiction of the Commission. Even the Open Access Agreement dated 02.05.2014 provides Jurisdiction of the Commission. As far as non-mentioning of provision is concerned this issue is no longer res integra as it has been held by catena of judgments of Supreme Court and various High Courts that mentioning of Sections and provisions is not important what has to be seen is the content and the relief and if a case is made out within the jurisdiction of that particular court the court shall have jurisdiction.

34. Before proceeding further the provisions of Section 62 (6) of Electricity Act, 2003 are reproduced below:-

**Quote**

**Section 62 (6) of the Electricity Act, 2003**

"If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this Section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

**Unquote**

35. The provisions of Section 86 (1)(f) of Electricity Act, 2003 are reproduced below:-

**Quote**

**Section 86 (1) (f) of the Electricity Act, 2003**

"adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration."



**Unquote**

36. The provisions of Regulations 28 of JERC (Open Access in Transmission and Distribution) Regulations, 2009, are also reproduced below:-

**Quote**

**"Regulation 28 of JERC (Open Access in Transmission and Distribution) Regulations, 2009**

- (i) All disputes and complaints relating to open access shall be made to the State Load Dispatch Centre, which may investigate and endeavor to resolve the grievance within 30 days, and
- (ii) Where State Load Dispatch Center is unable to resolve a grievance, State Grid Code Review Committee constituted under State Grid Code shall endeavor to resolve the grievance within 30 days, and
- (iii) Where State Grid Code Review Committee has not been constituted or is unable to resolve the grievance in the time period specified above, the grievance shall be referred to the Commission.
- (iv) The responsibilities assigned to the State Load Dispatch Centers for formulation of procedures, guidelines and application forms under these regulations shall be coordinated by the State Transmission Utility."

**Unquote**

37. From bare reading of Section 62 (6) of EA it is clear that if any licensee or a generating company recovered price or charge exceeding tariff determined u/s 62 of EA the licensee or a generating company shall refund the excessive amount recovered.
38. From reading of Section 86 (1) (f) of EA it is also clear that the Commission can adjudicate upon a dispute between a licensee and generating company.
39. The Regulation 28 of JERC (Open Access in Transmission and Distribution) Regulations, 2009 states that all disputes and complaints relating to open access shall be made to State Load Dispatch Center.
40. Powers and Functions of the Commission are provided u/s 86 (1) (f) of the EA. The Commission u/s 86 (1) (f) of the EA has no power to adjudicate or entertain any dispute of a consumer and licensee. The Commission u/s 86 (1) (f) of the EA has powers to adjudicate upon a dispute between the licensee and the generating company.
41. Before proceeding further it is also worthwhile to reproduce Section 42 (5) of the EA, which reads as under:-

**Quote**

**Section 42 (5) of the EA**

"Every Distribution Licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission."

**Unquote**

42. From reading of Section 42 (5) of EA it is clear that if any grievance is made by a consumer, then they have a remedy under Section 42 (5) of the Act and according to sub-section (5) every Distribution Licensee has to appoint a forum for redressal of grievances of the consumers.
43. In exercise of this power the Govt. of India has already constituted Joint Electricity Regulatory Commission for the State of Goa and UTs and the respondent has also formed Consumer Grievance Redressal Forum u/s 42 (5) of EA. The Commission has also framed JERC (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009 for redressal of the grievances of individual consumers. Therefore, now by virtue of subsection (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only.

44. But in the present petition the petitioner has raised not only a billing dispute but rather a interpretation of the Regulations has been invoked in the backdrop of concept of Contract Demand, which can only be done by this Commission. The Grievance Redressal Mechanism provided under the JERC (Open Access in Transmission and Distribution) Regulations, 2009, i.e. SLDC has not been appointed. Therefore, this Commission has the jurisdiction to entertain and decide the petition. The case law relied upon by learned Counsel for the petitioner in Maharashtra Electricity Regulatory Commission's case (Supra) wherein it is held that Commission shall not entertain disputes where alternate forums have been constituted and Commission shall have the jurisdiction has full force on the facts and circumstances of this petition. The Regulation 11.6 of JERC (Electricity Supply code) Regulations, 2010 provides Jurisdiction of the Commission. Even the Open Access Agreement dated 02.05.2014 provides Jurisdiction of the Commission. As far as non- mentioning of provision is concerned this issue is no longer res integra as it has been held by catena of judgments of Supreme Court and various High Courts that mentioning of Sections and provisions is not important. What has to be seen is the content and the relief and if a case is made out within the jurisdiction of that particular court the court shall have jurisdiction.
45. In the light of above discussion and observations the Commission is of the opinion that Standby Charges are applicable on power drawn over and above 1.5 MW by the petitioner and the respondent has rightly levied standby charges for 68399 units @ 7.05 per unit totaling to Rs. 4,82,213/- in the billing month of June, 2014 of the petitioner, as on 12.06.2014 the petitioner, as per his requirement made a bid for power purchase for 13.06.2014 but the bid was not passed in the Exchange and accordingly power from exchange was not scheduled on 12.06.2014 for 13.06.2014. Therefore, the petitioner on 13.06.2014 drew power from the respondent only.
46. Hence, the petition fails and is hereby dismissed.

Sd/-  
(S.K.Chaturvedi)  
Chairperson

Certified Copy  
  
(Anish Garg)  
Director (F&L)