

HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134113, HARYANA

DATE OF HEARING : 30 .09.2010
DATE OF ORDER : 03.12.2010

IN THE MATTER OF:

Petition(s) filed by M/S JSL Limited, OP Jindal Marg, Hisar under regulations 28 (3) of HERC (Terms and Conditions for Open Access for Intra – State Transmission and Distribution System) Regulations, 2005 for non-payment of Unscheduled Interchange (UI) charges for mismatch between the scheduled and actual drawal of power purchased through Indian Energy Exchange (IEX) under Open Access and under section 86 and 94 of the Electricity Act, 2003 read with sections 10 and 11 of the HERA, 1998 on behalf of the petitioner for setting aside the sales instructions No. D-7/2010 dated 16.07.2010 and notice of assessment issued by the Nigam vide memo No. 3585-86 dated 07.08.2010 for payment of Electricity Duty for the period 11/2009 to 7/2010 on the power evacuated from electricity exchange and not supplied by the Nigam.

Parties:

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| 1. | M/S JSL Limited, OP Jindal Marg, Hisar | Petitioner |
| 2. | Dakshin Haryana Bijli Vitran Nigam Limited,
C - Block, Vidyut Sadan, Vidyut Nagar,
Hisar – 125005 | Respondent |
| 3. | Uttar Haryana Bijli Vitran Nigam Limited,
Shakti Bhawan, Sector – 6, Panchkula | Respondent |
| 4. | Haryana Vidyut Prasaran Nigam Limited,
Shakti Bhawan, Sector – 6, Panchkula | Respondent |

Present:

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| 1. | Shri Bhaskar Chatterjee | Chairman |
| 2. | Shri Rohtash Dahiya | Member |

On behalf of the Petitioner

1. Shri R. K. Jain, Advisor
2. Shri R. P. Jindal, Executive Director

On behalf of Respondents:

1. Shri C. K. Sharma, CGM / Commercial DHBVNL
2. Shri Piyush Lohia, Consultant, DHBVNL
3. Shri S. K. Bansal, SE / SO UHBVNL
4. Shri B. Krishna Mohan, Consultant, UHBVNL
5. Shri Pushpendra Singh, XEN/SO, HVPNL

ORDER

Brief background of the case:

The petitioner, M/S JSL Limited filed two separate petitions (i) under regulations 28 (3) of HERC (Terms and Conditions for Open Access for Intra – State Transmission and Distribution System) Regulations, 2005 for non-payment of UI charges for mismatch between the scheduled and actual drawal of power purchased through IEX under Open Access and (ii) under section 86 and 94 of the Electricity Act, 2003 read with sections 10 and 11 of the HERA, 1998 on behalf of the petitioner for setting aside the sales instructions No. D-7/2010 dated 16.07.2010 and notice of assessment issued by the Nigam vide memo No. 3585-86 dated 07.08.2010 for payment of Electricity Duty for the period 11/2009 to 7/2010 on the power evacuated from electricity exchange and not supplied by the Nigam.

1st Petition regarding credit for under drawl of energy

M/S JSL Limited have submitted in their first petition that they are Large Supply industrial consumer of Dakshin Haryana Bijli Vitran Nigam (DHBVNL) having a sanctioned contract demand of 125000 kVA and sanctioned connected load of 115000kW. Since DHBVNL has not been able to meet their entire power requirement JSL is buying power from IEX under short term open access since September 2009 after obtaining necessary concurrence / no objection from Haryana State Load Dispatch Centre (SLDC) for purchase of power through IEX from time to time.

The petitioner has further submitted that SLDC has not been giving due credit for the power under drawn by them while preparing the monthly UI charges

accounts. DHBVNL has been issuing monthly bill based on the implementation schedules without giving any credit for the mismatch or under drawl by the petitioner. The issue was taken up with DHBVNL, however, DHBVNL and HVPNL have not responded to the same.

Due to non receipt of credit for energy underdrawn a considerable money of the petitioner is blocked and a part of the power purchased by them through IEX is going free to the respondents (HVPNL and DHBVNL), resulting in financial loss to them.

Additionally, the petitioner has submitted that:

1. Regulations 17 of the HERC (Terms and Conditions for Open Access for Intra –State Transmission and Distribution Systems) Regulations, 2005 provides as under:

“Unscheduled interchange charges. – The payment for mismatch between the scheduled / actual injections in the grid and the actual drawal shall be governed by the pricing mechanism as specified by the Commission for the State from time to time.”

2. Regulation 20 of the CERC (Open Access in inter – State Transmission) Regulations, 2008 provides as under:

“20(1) All transaction for State Utilities and for Intra – State entities scheduled by the nodal agency under these regulations shall be accounted for and included in the respective day-ahead net interchange schedule of the concerned regional entity issued by the RLDC.

20(4) any mismatch between the scheduled and the actual drawl at the drawl points and scheduled and actual injection at the injection points for the intra- State entities shall be determined by the concerned SLDC and covered in the intra-State UI accounting scheme.

20(5) unless specified otherwise by the concerned State Commission, UI rate for the intra-State entity shall be 105% (for overdraw or under generation) and 95% (for under drawls or over generation) of UI rate at the periphery of the regional entity.

As no pricing mechanism has been specified by the Commission under regulation 17 of the HERC (Terms and Conditions for Open Access for Intra – State Transmission and Distribution Systems) Regulations, 2005, the petitioner

has prayed that the respondents may be directed to allow adjustment as per CERC regulations till such time HERC notifies its own intra-State UI charges accounting mechanism.

2nd Petition regarding levy of Electricity Duty

The petitioner has submitted that DHBVNL has raised a demand note vide memo No. 3385-86 dated 07.07.2010 requiring them to deposit a sum of ₹ 1,93,33,908/- on account of Electricity duty charged less from 11/09 to 7/10 without providing any details. As per sale circular 34/2006 of DHBVNL, Electricity Duty (ED) shall be payable on energy contracted and drawn through open access. They have threatened to disconnect the electricity connection if the amount is not deposited alongwith the monthly bill of 7/2010.

Levy of ED by DHBVNL was objected to by the petitioner by stating that Electricity Duty can be levied by the State Government as per Punjab Electricity Duty Act, 1958, adopted by Haryana. According to which the ED can be levied on the energy supplied by the Board to a consumer or a licensee. It was also stated that HERC has been directing DHBVNL not to issue sales instructions having financial implications without approval of the Commission by giving reference to Commission's latest order dated 25th March, 2010. Since the energy drawn from IEX through open access on the transmission system of HVPNL at 220 kV is not supplied by DHBVN as such ED cannot be levied. However, DHBVNL issued clarification vide sales instruction No. 7/2010 stating that ED is rightly chargeable to the open access consumers on the power contracted and drawn.

As per sales circulars D-3/2009 and D-4/2010 DHBVNL has exempted levy of Surcharge / Additional surcharge year after year keeping in view the shortage of power in the State of Haryana.

The petitioner have submitted that despite clear direction given by the Commission in its order dated 25th March, 2010 that "DHBVN and UHBVN are advised to desist from collecting any tariff or charge that have not been

approved by the Commission and not to issue any circular which has financial implication without prior approval of the Commission, the utilities are still continuing with the same practice in gross violation of the Commission's order.

The petitioner has prayed for admission of the application and setting aside of letter dated 7th July, 2010 and sales instruction no. D-7/2010. of DHBVNL. They have also requested to grant interim injunction restraining the respondent Nigam from disconnecting the electricity supply to the petitioner till the final decision in the case.

The Commission observed that Haryana Vidyut Prasaran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited have been made respondents by the petitioner. Since the decision of the Commission on the issues raised by the petitioner shall be equally applicable to UHBVNL also, it was decided to make UHBVNL respondent No. 3 and hear all the parties.

Another application was filed by UHBVNL seeking orders of the Commission on the request of the willing consumers seeking open access on mixed feeders and also the pricing mechanism for mismatch in the energy scheduled and the actual drawl by the consumers. The matter was decided to be heard along with the petition of M/S JSL Limited as the issues raised in all the applications were somewhat similar.

Accordingly, a hearing was scheduled for 30th September, 2010 and the notice of hearing was given to the petitioner and the respondents vide letter no. HERC / Tariff (E) / Consumers / JSL Ltd. / 1901-04 dated 21st September, 2010.

The hearing was held on the scheduled date in which petitioner and all the respondents were present. The petitioner represented by Shri R. K. Jain Advisor and Shri R. P. Jindal, Executive Director advanced their arguments at length. Most of the points submitted by them were repetition of their written submissions. DHBVNL submitted that open access consumers cannot be compensated for the energy underdrawn by them as no pricing mechanism has

been decided by the Commission so far. Regarding Electricity Duty, DHBVNL submitted that the issue relates to Government of Haryana and needs to be decided by the Government. In the hearing HVPNL prayed the Commission for grant of time for submission of written reply to the issues raised by the petitioner. UHBVNL did not make any submission in the hearing.

After hearing the parties the Commission directed HVPNL to file their written submissions on the issues raised by the petitioner within 15 days from the date of hearing. HVPNL was also directed to serve a copy of their written reply to the petitioner and the latter was directed to file rejoinder on the reply of HVPNL if any within 10 days. The Commission ordered that it shall consider the case on merit after taking into account the written and oral submissions including rejoinders submitted by the parties and no further hearing of the parties would be held on the subject.

The petitioner vide their letter no. JSL / 2010 / 15063 dated 28th October, 2010 submitted that even after expiry of almost one month from the date of hearing and the directions given by the Commission to HVPNL to file written reply, HVPNL has not sent any submission to the petitioner. The petitioner submitted that HVPNL does not appear to be interested in submitting any written reply and requested the Commission to pass orders on their petitions as they are being put to heavy financial burden.

In their reply submitted through an un-dated and un-numbered document, received in the Commission on 27th October, 2010, HVPNL made the following submissions:

1. M/S JSL Limited, Hisar have been granted Short Term Open Access of 10 MW since September, 2009 and necessary concurrence / no-objection from SLDC from time to time were given by them in compliance to HERC regulations.
2. The Commission has not specified any pricing mechanism for payment of mismatch between the schedule / actual injection in the grid and the actual drawl of electricity to an open access consumer under regulations 17 of the HERC (Terms and Conditions for Open Access for Intra –State Transmission and Distribution Systems) Regulations, 2005. Since the

petitioner is a bona-fide consumer of DHBVNL it shall be governed by the pricing mechanism as may be specified by the Commission.

3. Regulation 20 of the CERC (Open Access in inter – State Transmission) Regulations, 2008 deals with the UI charges which is a commercial mechanism to maintain grid discipline by controlling the user of grid in scheduling, despatch and drawl of electricity and not a source of profit / part of tariff.
4. HVPNL prayed that the Commission in consultation with SLDC and the distribution licensee (s) notify commercial mechanism for valuing UI by open access customers embedded in distribution network along with implementation plan (payable / receivable by HPPC) so that the consumer shall not make undue commercial gain through CERC regulations.

The written submissions from UHBVNL and DHBVNL on the issue regarding allowing of open access on mixed feeders as well as pricing mechanism for compensating such consumer for mismatch between the scheduled energy and actual drawl were received after the hearing of the parties. DHBVNL submitted their reply vide letter No. 42 / SE / RA – 230 dated 29th September, 2010 and UHBVNL submitted their reply vide letter No. Ch – 54 / SESO – 67 dated 4th October, 2010. The following written submissions were made by both UHBVNL and DHBVNL:

1. The applicable UI charges for open access consumers should be determined by the Commission under intra – State ABT regulations to be notified.
2. Presently open access is allowed to the consumers on independent feeders only.
3. Open access on mixed feeder cannot be allowed due to the following reasons:
 - (i) On mixed feeder the open access consumer may not be able to get uninterrupted power due to system constraints, power regulatory measures, load shedding.
 - (ii) Even if the open access consumer is compensated the purpose for which open access was sought may not be fulfilled.

- (iii) The energy scheduled by open access consumers may be consumed by agricultural or domestic consumers, realization in which case is low.
 - (iv) Allowing open access on mixed feeders will increase procedural issues.
 - (v) If no power cut is allowed to the open access consumer on a mixed feeder then it would be unjustified and discriminatory to the other consumers facing power cuts during that period.
4. Regarding compensating the open access consumer for power scheduled but not drawn both the distribution licensee have given different comments, which are as under:
- (i) UHBVNL has prayed not to allow open access on mixed feeder and has further submitted that if the same is forced upon them then the compensation should not exceed the per unit cost of power purchase through long term sources.
 - (ii) DHBVNL has submitted that the compensation should be based on the contracted price of open access consumer with generator / trader and also depend on the average UI rate applicable during the time when the load shedding was applied. To avoid conflict between the UI rates or contract prices, open access should not be allowed on mixed feeders. Regarding average UI rate or 95% / 105% (underdrawl / overdrawl) of applicable UI rate, DHBVNL has submitted that load shedding at the feeder would generally be during period of low frequency. During such periods the UI rates would be much higher than the price which the open access consumer may be paying to the supplier. Therefore, this option is not in the overall benefit of the licensee.
 - (iii) The distribution licensee has further submitted that UI charges proposed are contrary to the intra - State ABT regulations.

The Commission observers as under after taking into account the written and oral submission of all the parties and also examining the documents available in the file:

1. The Commission agrees to the submissions of the licensees that the pricing mechanism based on CERC UI rates may result in profit making for the open access consumers. Since the primary objective of CERC UI mechanism is to maintain grid discipline if the same is applied for

compensating open access consumers of Haryana for mismatch between the energy scheduled by them and their actual drawl, the distribution licensee in an event of low grid frequency may suffer huge financial loss by making payment at the rates higher than the rates contracted by the open access consumer with the generators / traders.

2. The Commission is not in favor of either the open access consumer to suffer on account of non-receipt of adequate compensation for the energy less drawn by it or the distribution licensee for unfairly compensating such consumers for the energy less drawn by the open access consumer but consumed by other consumers of the distribution licensee.
3. The intra-State ABT regulation of the Commission is still at draft stage and may take some time to be notified. Necessary provision covering these issues shall be made in those regulations at appropriate place.
4. Neither the Electricity Act, 2003 nor rules and regulations made there under prohibit allowing open access to consumers on mixed feeders. It is for the consumer to decide whether or not to avail open access on mixed feeder taking into account the related problems.

Keeping in view the above observations the Commission orders as under:

1. Levy of Electricity Duty:

The Commission examined the issue of Electricity Duty (ED) at length and notes that ED is levied in Haryana under the Punjab Electricity Duty Act, 1958 as applicable to Haryana State and was collected on behalf of the State Government by the Haryana State Electricity Board (HSEB) up to 14th August, 1948 and thereafter by UHBVNL & DHBVNL. **As the matter relates to Haryana Government, the State Government decides the rate as well as the manner of collecting the same. Thus the issue of ED is neither covered under the provision of the Haryana Electricity Reform Act, 1997 (No. 10 of 1998) nor the Electricity Act, 2003 (36 of 2003) and hence falls outside the purview of the Commission.**

The petitioner is free to take up the issue with the State Government in this regard.

3. Pricing mechanism for compensating open access consumers for energy under drawn:

The source wise power purchase volume and cost of the distribution licensee during the ensuing financial year is approved by the Commission in the Annual Revenue Requirement and Distribution and Retail Supply Tariff orders. It is an admitted fact that open access connection given to the petitioner i.e. JSL is on an independent feeder. The energy which is under drawn by such open access consumer is consumed by other consumers of the distribution licensee cannot be treated as contracted and approved energy. It is therefore advisable for an open access consumer not to under draw / overdraw. However, as the open access consumer is also a part of the intra – state grid, at times due to one reason or the other i.e. either due to utilities system constraints or sudden surge / drop in the energy requirement of the open access consumer such a situation is unavoidable. In an event of energy being under drawn it is a fact that such under drawn energy which is left in the Grid is consumed by some other consumers of the distribution licensee. However, one cannot ignore the fact that at times the power utilities may also be under – drawing their share of CGS power or backing down their own generation. Since power purchase costs are regulated by the Commission, the distribution licensee cannot be allowed to compensate open access consumers at a rate that may put additional financial burden on the consumers of the grid power. **In case of drawl of power over and above the contracted energy by open access consumer, it is easier to identify the consumer and charge him accordingly. However, in case of under-drawl by open access consumer where the contracted energy has been injected into the grid of the distribution licensees, this additional power is distributed to different existing consumers of the utilities. In that eventuality it becomes difficult to ascertain as to which consumer has actually consumed the power and bill him accordingly. Our regulation on the subject has not dealt with the issue so far. It is likely to be taken up in the new regulation which is under preparation by the Commission. The Commission has examined the issue at length and also**

considered the view point of all the stakeholders. Given the peculiar situation obtaining with regard to under-drawl of power by open access consumers, Commission feels that it would be reasonable to compensate such consumers for the mismatch between the sanctioned open access load and actual drawl at UI rates as per CERC regulations or the approved average cost of power purchase of the distribution licensees whichever is lower. The settlement shall be based on the composite accounts for imbalance transaction issued by the SLDC on weekly basis on net metering.

The issue of open access to a consumer on a mixed feeder shall be dealt by the Commission separately in the relevant regulations to be notified shortly.

The petitioner i.e. M/S JSL Limited shall be compensated by the distribution licensee accordingly for all the power under drawn by them and consumed by other consumers of the distribution licensee since September, 2009. The Commission shall make necessary provisions relating to imbalance charge in its relevant regulations and after notification of those regulations the rates specified therein shall be applicable.

4. Issues regarding non compliance of directions of the Commission by HVPNL and issuance of sales circulars by distribution licensees without approval of the Commission

The consumers and other stake holders, other than licensees, have repeatedly raised the issues of non compliance in different public hearings. The Commission has expressed its displeasure on non-compliance of directives of the Commission by the power utilities and issuance of sales circulars by them without prior approval of the Commission. The Commission is seized with the matter and is separately monitoring the compliance of directives issued by it from time to time including issue of sales circulars having financial implications without approval of the Commission. If any case of non compliance of Commission's directives without seeking exemption / extension in time without a valid reason or issuance of sales circulars having financial impact without prior approval of the Commission comes to the notice of the Commission the

licensee(s) or their officers / officials shall be liable for penal action in accordance with the provision(s) of the Electricity Act, 2003.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 3rd December, 2010.

Date: - 03/12/ 2010

Place: - Panchkula

(Rohtash Dahiya)

Member

(Bhaskar Chatterjee)

Chairman