



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017**

F.11(1894)/DERC/2021-22

**Petition No. 44/2021**

Under section 142 of the Electricity Act, 2003

In the matter of:

**M/s Asian Hotels (North) Limited**

..... **Petitioner**

**VERSUS**

**BSES Rajdhani Power Ltd.**  
**Through its: CEO**

.....**Respondent No. 1**

**State Load Despatch Centre**

.....**Respondent No. 2**

**CORAM:**

**Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson**  
**Hon'ble Dr. A.K. Ambasht, Member**

**Appearance:**

1. Mr. Rohan Singh, Advocate for the Petitioner.
2. Mr. Buddy Ranganadhan, Advocate for the Respondent No. 1
3. Ms. Swagata Boss, Advocate for the Respondent No. 2

**ORDER**

(Date of Hearing: 27.09.2022)

(Date of Order: 14.12.2022)

1. The Instant Petition was filed by M/s Asian Hotels (North) Limited (Hyatt Regency) against the Respondent No. 1 (BRPL) for Non-Compliance of DERC (Renewable Purchase Obligations and Renewable Energy Certificates Framework Implementation) Regulations, 2012 and DERC Open Access Orders dated 24.12.2013 and 01.06.2017. The Petitioner have been procuring energy through green energy sources as per the guidelines of DERC Open Access orders. It has been alleged by the Petitioner that as per the DERC (RPO & REC) Regulations, 2012 and DERC Open Access Orders, if any Open Access consumer is procuring power through green renewable energy sources, consumer shall be allowed an exemption of Cross Subsidy Surcharge to the extent of RPO percentage.

**2. The background of the case**

M/s Asian Hotels (North) Limited (Hyatt Regency) in pursuance to the order passed by this Commission dated 31.12.2019 in Petition no. 56 of 2019 in the

---

**WEAR FACE MASK**

**WASH HANDS REGULARLY**

**MAINTAIN SOCIAL DISTANCING**

matter of Shri Gaurav Nand (owner/Proprietor) on behalf of M/s Indian Energy Regulatory Services, filed the present Petition under Section 142 of the Electricity Act, 2003 for non compliance of DERC (Renewable Purchase Obligations and Renewable Energy Certificates Framework Implementation) Regulations, 2012 and DERC Open Access Orders dated 24.12.2013 and 01.06.2017. While deciding the above mentioned Petition, the Commission observed that the Respondent had raised a specific issue with regard to necessary party having not been impleaded. In view of above the following two issue was considered by the Commission for consideration and decision.

- a) whether the order for which the Petitioner, IERS has filed the instant Petition is directly affecting him in the enjoyment of his legal rights?
- b) whether a party can implead itself as Petitioner in a Petition filed on its behalf by 3rd person claiming to be its representative?

The Commission decided the Petition on above two issues and dismissed the Petition on 31.12.2019. The Commission in the said order also granted liberty given to the Open Access Consumers namely M/s Asian Hotels (North) Limited (Hyatt Regency) and M/s Devki Devi Foundation to file a fresh Petition before the Commission on the issues raised in the instant Petition. The relevant part of order is reproduced below;

*"23 In view of our observation, as above, it is amply clear that a person cannot implead himself in a Petition filed on his behalf. Secondly, IERS can represent party but the Petition should be in the name of parties not in the name of IERS. IERS has to act as representative for the purpose of filing, pleading and preferring arguments. Therefore, the present Petition is liable to be dismissed with a liberty to M/s Asian Hotels (North) Limited (Hyatt Regency) and M/s Devki Devi Foundation to file a fresh Petition in their own name whether on its own or through IERS to represent them.*

*24. In the light of the aforesaid observations, and considering the facts of the instant case, the Petition is dismissed. However, liberty is given to the Open Access Consumers namely M/s Asian Hotels (North) Limited (Hyatt Regency) and M/s Devki Devi Foundation to file a fresh Petition before the Commission on the issues raised in the instant Petition."*

In view of above, the present Petition has been filed by M/s Asian Hotels (North) Limited (Hyatt Regency) praying that the consumer shall be allowed an exemption of Cross Subsidy Surcharge to the extent of RPO percentage. The Petitioner has made the following prayers in its Petition:

- a) *Direct the Respondent No. 1 to refund/settle the Cross Subsidy Surcharge amount to the Green/Renewable Energy Consumer i.e. the Petitioner towards procurement of energy through Open Access route as per DERC RPO Regulations and DERC Open Access guidelines.*
- b) *Non-Compliance of DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 and DERC Open Access and orders dated 24.12.2013 and 01.06.2017 by the Respondent No. 1 shall be dealt as per Section 142 of the Electricity Act, 2003.*

- c) Direct the Respondent No. 2 (Nodal Agency) to timely dispose the Open Access grievance (under Regulations 16(1) of DERC Open Access Regulations) submitted to them by various Open Access consumers.
- d) Pass such directions towards promotion of Renewable Energy Procurement by Delhi Consumer.

### 3. Submissions of Petitioner:

i. During the power procurement made from green energy sources by the Petitioner, the Respondent no. 1 have neither refunded nor settled cross subsidy surcharge to the consumer due to which huge financial loss is caused to them.

ii. Regulation 9(4) of DERC (RPO and REC Framework Implementation), Regulations 2012 states that:

*“Open Access consumer receiving electricity from renewable energy sources shall be exempted from the cross-subsidy surcharge determined by the commission from time to time to the extent of RPO. However, no banking facility shall be provided for supply of electricity from renewable energy”*

The provision is very much lucid regarding non-levy of cross subsidy surcharge to the extent of RPO volume on Open access consumers who are receiving electricity from renewable/green sources. But, the respondent no. 1 has willingly mis-interpreted the provisions in order to dent the Petitioner to procure power through green energy sources due to which huge financial losses is caused to the consumer.

iii. That it is clearly mentioned in clause xii of the DERC Open Access order dated 24.12.2013 that-

*“the Commission is of the view that no UI, wheeling, transmission charges or additional surcharge should be applicable on Open Access consumers availing energy from all renewable Energy Sources as defined by MNRE in Delhi. However, Open access consumers shall comply with DERC Regulations on RPO and rooftop solar”*

iv. That clause 6(2) of DERC Open Access Order dated 01.06.2017 states that:

*“wheeling, transmission and Additional Surcharge shall not be applicable on Open Access Consumers availing energy from all renewable energy sources within or outside Delhi. Open Access consumers receiving electricity from renewable energy sources shall be exempted from Cross subsidy surcharge to the extent of RPO. Provided that the generators using renewable energy sources shall certify that no REC/RPO claim for this power has been made”*

v. It is important to apprise the Commission regarding the recent judgement passed by the Hon'ble APTEL in the case of TPDDL vs M/s

Duggar Fiber Pvt. Ltd and Ors. in Appeal no. 17 of 2016. The Hon'ble APTEL vide its judgement dated 05.08.2019 directed TPDDL to refund the excess cross subsidy surcharge. Relevant extracts of the APTEL's judgment are as follows:

*"8.11 the state commission has correctly held that the appellant is liable to refund the excess charged cross subsidy charges and we do not feel necessary to interfere with the decision of the state commission."*

#### **4. Submissions of Respondent No. 1/BRPL:**

- a) The Present Petition has been deliberately, willfully and wrongfully filed whereby invoking Section 142 of the Electricity Act, 2003 with the express intention to avoid raising the dispute before the Consumer Grievance Redressal Forum (CGRF) which is a statutory relief granted to individual consumers under Section 42 (5) of the Electricity Act, 2003.
- b) The Petitioner deliberately chose to omit his own wrongdoings and shortcomings by not complying with the DERC (RPO and REC Framework Implementation), Regulations 2012 as well as the Open Access orders passed by this Hon'ble Commission on 24.12.2013 and 01.06.2017.
- c) that under clause 8(2) of the DERC (RPO and REC Framework Implementation), Regulations 2012, any Open Access Consumer who shall purchase RE and or REC or generate RE for its own consumption shall be considered for RPO purposes only after certificate from the State Nodal Agency. However, in the present case the Petitioner has failed to submit any such certification thus invalidating his claim for Cross Subsidy Surcharge exemption.

*"8(2) captive user(s) and open access consumer(s) shall purchase renewable energy and/or renewable energy certificate(s) as stated in clause 4(1) of these Regulations or generate renewable energy for its consumption, which shall be considered for RPO purposes only after certification by the State Nodal Agency"*

- d) The answering respondent has relayed multiple correspondences with the Petitioner before the institution of present Petition wherein the non-compliance of DERC (RPO and REC Framework Implementation), Regulations 2012, along with Open Access Orders by the Petitioner was clearly highlighted. Further, in a similar letter dated 12.09.2017, the answering respondent intimated the Petitioner about compliance of Regulations 8(2) of the DERC (RPO and REC Framework Implementation), Regulations 2012 as well as clause 6(2) of DERC Open Access Order dated 01.06.2017.
- e) The present matter entails two important questions before the Commission. i.e. (1) what are the RPO percentages targeted by the Petitioner and as to how the same calculation/value has been reached at, without providing any information qua the Total Energy consumed by them? And (2) whether the present Petition is liable to be dismissed on the grounds of non-compliance of DERC (RPO and REC Framework Implementation), Regulations 2012 as well as DERC Open Access Order by the Petitioners?

- f) At the outset, the answer to the 1<sup>st</sup> problem related to the obligation of the Petitioner to provide details of the Total Energy consumed by the Open Access Consumer so as to calculate the Cross Subsidy Surcharge exemption if any. However, in the present case the Petitioner has failed to provide any such calculations or information made by the Respondent no. 1 requesting the Petitioner to provide the same.
- g) Answering respondent requested the Petitioner to provide details of the total energy consumed by them which included (Open Access Units scheduled; Open Access units consumed) during each month and also all the respective RPO obligation for the period as notified by the Commission which included the certification from State Nodal agency along with supporting documents so that the same could be verified by the answering respondent. However, the Petitioner to this date has chosen not to provide any details as requested by the answering respondent.
- h) Respondent once again on 10.08.2018 sent a letter to the Petitioner intimating the need of complying with Regulation 8(2) of the DERC (RPO and REC Framework Implementation), Regulations 2012. Furthermore, through the same letter the answering respondent intimated the Petitioner about the need to provide the RE Certificates for RPO purposes from the State Nodal Agency, which in the present case was Energy Efficiency and renewable Management Centre (EE&REM Centre). Also, through the same letter, the answering respondent once again requested the Petitioner to provide the details of the Total energy consumed by them during each month as well as other RPO obligations for the said period as notified by this Commission.
- i) As for the 2<sup>nd</sup> issue, not furnishing any certification from the State Nodal Agency proving that the Open Access consumer is receiving electricity from RE sources to the extent of RPO as well as not providing any certification qua the generators not claiming any REC for supplying REC to the Open Access Consumers is *sine dubio probationem* that the Petitioner has failed to comply with DERC (RPO & REC) Regulations, 2012 as well DERC Open Access orders dated 24.12.2013 and 01.06.2017.

**5. Submissions of Respondent No. 2/SLDC:**

- (a) That pursuant to the letter dated 01.08.2017 the answering Respondent held discussions with BRPL i.e. Respondent No. 1. Moreover, vide letter dated 26.09.2017, BRPL i.e. Respondent No. 1 had clarified to the consumers regarding Cross Subsidy Surcharges (CSS) that consumers shall ensure compliance of DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 and shall provide the certification from the State Nodal Agency i.e. Energy Efficiency and Renewable Energy Management Centre (EE & REM Centre) with copy of BRPL i.e. Respondent No. 1, to which no objection was raised and NOC for the transaction was given. The Petitioner did not comply with the aforesaid directions as required vide the aforesaid letter dated 26.09.2017 and did not approach the State Nodal Agency.
- (b) Without complying with the aforesaid Regulations and without approaching the State Nodal Agency, after about a year, the Petitioner approached the answering Respondent again vide letter dated 03.08.2018. Accordingly, it

was not possible to do the needful in the absence of necessary certification from the State Nodal Agency.

## **6. Commission Analysis**

- A. As per clause 6(2) of the Commission's Order dated 01.06.2017, the benefit of Transmission Charges, Wheeling Charges, Additional Surcharge had to be provided to Open Access Consumers on entire quantum of renewable energy being procured by them, exemption of Cross Subsidy Surcharge had been capped to the extent of RPO.
- B. The Respondent No. 1, stated that under clause 8(2) of the DERC (RPO & REC Framework Implementation), Regulations 2012, any Open Access consumer who shall purchase Renewable Energy or Renewable Certificates or shall generate Renewable Energy (RE) for its own consumption shall be considered for RPO purposes only after the said consumer shall submit certification from the State Nodal Agency and in the present case the Petitioner has failed to submit certification from the State Nodal Agency. The Respondent No. 1 vide letter dated 12.09.2017 sought from the Petitioner to provide details of total energy consumed by the Petitioner which included (Open Access Units Scheduled; Open Access Units Consumed) during each month and also all RPO obligation for the period as notified by the Commission which included the certification from State Nodal Agency along with supporting documents so that the same could be verified by the Respondent No. 1. But the Petitioner has not provided any details as requested by the Respondent No. 1. The Respondent No. 1 once again vide letter dated 10.08.2018 requested the Petitioner to provide certificate for RPO purposes from the Energy Efficiency & Renewable Energy Management Centre (EE & REM Centre), the State Nodal Agency. The contention of Respondent no.1 is that the Petitioner has not provided any certificate from the State Agency that the Open Access Consumer is receiving electricity from RE sources to the extent of RPO for which the Petitioner claims exemption from Cross Subsidy Surcharge.
- C. Respondent No. 2, SLDC affirms the stand of the Respondent no.1, BRPL in its submission made before the Commission that the Petitioner did not comply with the directions as required and did not approach the State Nodal Agency. The Respondent No. 1 further stated that a sincere effort was made to resolve the grievance but the Petitioner did not comply with the aforesaid Regulations. Accordingly, it was not possible to do the needful in the absence of necessary certification from the State Nodal Agency.
- D. The Commission perused the pleadings and submission of Petitioner and Respondents as well as relevant provisions of Regulations. On 12.07.2022, during the hearing the Commission had raised a query to the Petitioner as to "*whether the requirement of a certificate of RPO compliance has been submitted before the opposite parties and a mention has been made in the Petition or not?*" In compliance of the Commissions' Interim order dated 12.07.2022, the Petitioner has stated that it submitted a Copy of letter of Certification from the State Agency. However, on perusal of the document which has been annexed with the Rejoinder as Annexure 1, purportedly to be the RPO certificate *prima facie* does not appear to be so. The Letter of certification dated 11.07.2017 is from the State Agency, Directorate of Energy, Shimla (State in which the Generator is located) which mentions....."Baner

*Sangam 5MW SHP located at VPO-Jalari, Tehsil & District Kangra, Himachal Pradesh has not been accredited by the State Agency as a RE Generator under REC mechanism as per record available in this office up to the date of issuing of this letter."*

- E. With regard to the relief sought by the Petitioner seeking refund/settlement of Cross Subsidy Surcharge to the extent of RPO percentage, it is clarified that clause 8(2) of the DERC (RPO & REC Framework Implementation), Regulations 2012 mandated that an Open Access Consumer who shall purchase RE and/or REC or generate RE for its own consumption, shall be considered for RPO purposes only after certificate from the State Nodal Agency. This Commission on 18.11.2011 designated the Energy Efficiency & Renewable Energy Management Centre (EE & REM Centre) to act as the 'State agency' for accreditation and recommending the renewable energy projects for registration. In the present case, the Petitioner has failed to submit any such certification thus invalidating his claim for refund/settlement of Cross Subsidy Surcharge.
- F. In view of the above, it is concluded that the Petitioner has failed to obtain Certificate as envisaged in Regulation 8(2) of DERC (Renewable Purchase Obligations and Renewable Energy Certificates Framework Implementation) Regulations, 2012, from the State Nodal Agency i.e. Energy Efficiency & Renewable Energy Management Centre (EE & REM Centre). Therefore, there is no contravention under Section 142 of the Electricity Act, 2003 of RPO Regulations, Orders etc., issued by the Commission.

7. Accordingly, the Petition is dismissed.

**Sd/-**  
**(Dr. A.K. Ambasht)**  
**Member**

**Sd/-**  
**(Justice Shabihul Hasnain 'Shastri')**  
**Chairperson**