

DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017

F.11 (1481)/DERC/2017-18

Petition No. 25/2017

Under section 142 of the Electricity Act, 2003

In the matter of: Petition seeking directions against the non-compliance of the Open Access Order dated 24.12.2013 and 18.05.2015 for wrongly charging bills towards wheeling charges.

Batra Hospital & Medical Research Centre
(Through Shri Kamlesh Kamal, G.M. Engg.)
1, Tughlakabad Institutional Area,
Mehrauli Badarpur Road,
New Delhi – 110062

....Petitioner

VERSUS

BSES Rajdhani Power Ltd.
Through its: **CEO**
BSES Bhawan
Nehru Place
New Delhi-110019

....Respondent

Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson

Appearance:

1. Shri V.K. Goel, Advocate of the Petitioner;
2. Shri Hasan Murtaza ,Advocate for Respondent;

ORDER

(Date of Order: 03.04.2019)

1. The instant petition has been filed under Section 142 of the Electricity Act, 2003 against the Discom, BSES Rajdhani Power Ltd., for non-compliance of the Open Access Order dated 24.12.2013 and 18.05.2015 by wrongly charging bills towards wheeling charges. Following prayers have been made in the petition:
 - (i) that the Respondent may kindly be penalized in terms of Section 142 of the Electricity Act, 2003 as the action of the Respondent is in clear violation of the order dated 24.12.2013 and 18.05.2015 passed by DERC; &

- (ii) that the Respondent may also be directed to pay suitable compensation to the complainant.

2. The petitioner has made the following submission:

- a) the Petitioner has started its Open Access Transactions in FY 2016-17 as encouraged by DERC Order dated 24.12.2013, where it specifically emphasized to encourage Open Access to promote competition and efficiency in the electricity sector;
- b) the Commission exercising its powers under Regulation 18 of the DERC (Terms and Conditions for Determination of Transmission Tariff) Regulations 2011, has clarified some doubts vide its Order dated 24.12.2013 and 18.05.2015. As per clause 11 A of Annexure A of the Order dated 24.12.2013, the Commission had clarified that the wheeling charges are to be "levied on the quantum of MWH cleared by the concerned SLDC..." this stand was reiterated in the Commission's Order dated 18.05.2013 (Clause 4 (v)).
- c) the Respondent continued to raise the Open Access Bill on full capacity basis and not on the cleared quantum by NLDC as mentioned in Para 11 of Annexure – A of the Order dated 24.12.2013.
- d) the action of the Respondent has made the Open Access unviable. This clearly reflects the sentiments made in the National Tariff Policy.

3. Per contra, the Respondent has made the following submissions:

- i. the present complaint/petition ought to be dismissed *in-limine* in view of the Order of the Commission dated 1.06.2017 in "the matter of determination of Open access Charges and related matters". In terms of Clause 2.1 (3) of the said Order, ".....the Transmission charges, wheeling charges shall be levied on the maximum open access quantum approved by the nodal agency in its conditional consent form ST-5B..."

Clause 11(2) of the same order also records, inter alia, that:-

"....Notwithstanding such repeal, anything done or purported to have been done under the repealed Order

Shall be deemed to have been done or purported to be done under this Order...."

- ii. the charging of wheeling charges by the licensee was and is completely in accordance with the 2005 open access regulation of this commission. (Clause 11 of the regulation); the regulations are clear that the short-term access consumers shall bear the full transmission and/or wheeling charges based on the original reserved capacity. The licensees have billed the short-term open access consumers like the petitioner herein on the basis of originally reserved capacity. It is therefore submitted that as such no fault can be laid at the hands of the licensee;

- iii. In a similar Petition filed by another open access consumer against BYPL (**Petition No. 6 of 2017**) titled as **Avdhut Swamy Metal works vs. BYPL & anr.**, which is the sister concern of the sole Respondent, and also distribution licensee operating in Delhi, the Commission has clearly stated that in case of a conflict between Regulations and orders of the Commission, the Regulations shall always prevail to the extent of such conflict;
4. The matter was heard on 28.03.2019, wherein the Counsel for the Petitioner submitted that the Respondent have raised the bill for wheeling charges as per the approved quantum and not as per the actual schedule of power, whereas as per DERC Open Access Order dated 24.12.2013, the wheeling charges should be on scheduled quantum of Open Access and not on full contract demand.
5. On the issue of wheeling charges on Open Access, this Commission in a similar Petition "**Avdhut Swamy Metal works vs. BYPL & anr, - Petition No. 6 of 2017**" has held that in case of conflict between the Open Access Orders and Regulations, the provision of Regulation shall prevail. The relevant portion of the Order dated 03.11.2017 is as follows:-

"6. The relevant portion of the Orders dated 24.12.2013 and 18.05.2015 vis-à-vis the Regulation 11(1) of the DERC Open Access Regulations, 2005 are reproduced as under:

Para 11A of DERC Order dated 24.12.2013

"Transmission and Wheeling charges shall be levied as determined by DERC. The charges will be levied on the quantum in MWH cleared by the concerned SLDC for bilateral transactions and National Load Despatch Centre (NLDC) in case of collective transactions.

Clause 4, DERC Order dated 18.05.2015

"The transmission charges, Wheeling charges, Additional Surcharge and Cross Subsidy Surcharge shall be levied on open access quantum cleared by nodal agency."

Regulation 11(1) of the DERC Open Access Regulations, 2005

*"11(1) Non-Utilization of open access capacity: In the event of inability of the short term open access customer to utilize, continuously for more than four hours, on any day, full or substantial part of the capacity allocated to him, such a short term open access customer shall inform the respective state load dispatch centre of his inability to utilize the capacity allocated to him. **However, such short term open access customer shall bear full transmission and/or wheeling charges based on the original capacity is allocated to the customer.**"*

7. It is relevant to mention that the Orders on Open Access should be read in conjunction with the relevant Regulation and if there is some conflict between the provisions of the Regulations and the provisions of the Orders made thereunder, the law is very clear on the supremacy of the Regulations over the Orders. Therefore, the Regulations will prevail to the extent of such conflict."

6. The instant case is also decided accordingly that the provision of Open Access Regulations will prevail over the Orders and thus wheeling Charges have to be levied on the original capacity allocated and not on the quantum cleared.
7. No case of violation of provisions of Regulation etc. is established to invoke the provision of Section 142 of the Electricity Act, 2003 and accordingly the case is dismissed.

**Sd/-
(Justice S S Chauhan)
Chairperson**