

Rajasthan Electricity Regulatory Commission

Petition No. RERC-1548/19

Petition filed under Section 142 of the Act for non-compliance of the order of SLDC and SPC by Discom.

Coram:

Shri Shreemat Pandey, Chairman

Shri S.C. Dinkar, Member

Shri Prithvi Raj, Member

Petitioner : M/s Nitin Spinners Ltd.

Respondent : Ajmer Vidyut Vitran Nigam Ltd.

Date of hearing : 24.12.2019

Present : 1. Sh. A. K. Sharma, Authorised Rep. for Petitioner
2. Sh. Bipin Gupta, Advocate for Respondent

Order Date: 05.02.2020

ORDER

1. Petitioner has filed this petition on 29.08.2019 under Section 142 of Electricity Act 2003 for non-compliance of the order of the State Load Despatch Centre (SLDC) and State Power Committee (SPC).
2. Notice was issued to Respondent on 02.09.2019 for filing reply to the petition. Respondent AVVNL submitted its reply on 05.12.2019.
3. The matter was heard on 24.12.2019. Sh. A. K. Sharma, Authorised representative appeared for Petitioner. Sh. Bipin Gupta, Advocate appeared for Respondent Discom.

4. Petitioner in its petition and during the hearing submitted as under:
 - 4.1. Petitioner is an EHT consumer of AVVNL having contract demand of 25 MVA and also draws power under Open Access.
 - 4.2. Petitioner, during Jan 18, Feb 18 and March 18 had purchased Bagasse based biomass power under Short Term Open Access from M/s Shree Durga Khandan Sugar Mills and Narmada Sugar Private Ltd. (Both located in Madhya Pradesh).
 - 4.3. Thereafter, Discom through electricity bill of corresponding months claim sum of Rs 1,76,15,524/- under the head of cross subsidy charges for Petitioner's Open Access transactions from the aforesaid power plants, which produce Bagasse based biomass power.
 - 4.4. As per the Regulation 50(5) of RERC (Terms and Conditions for Determination of Tariff for Renewable Energy Sources- Biomass, Biogas and Biomass Gasifies Energy) Regulations, 2015 (Biomass Tariff Regulations, 2015) the cross subsidy surcharge as determined by the Commission from time to time shall not be applicable in case of Open Access transactions involving biomass, biogas and biomass gasifies based power plants. In order to avoid disconnection, Petitioner was left with no alternative, but to deposit the claimed bill.
 - 4.5. The above said act of Respondent is arbitrary, capricious and discouraging of Open Access. Being aggrieved with the act of Discoms, Petitioner approached SLDC under provision of Regulation 30(1) of RERC (Terms and Conditions for Open Access) Regulations, 2016 (OA Regulations, 2016) for redressal of its grievances.
 - 4.6. The SLDC, after hearing the parties, vide its order dated 18.09.2018 decided that as per Regulation 50(5) in Part-VII of RERC (Terms and

conditions for Determination of Tariff for Renewable Energy Sources- (Biomass, Biogas and Biomass Gasifier Energy) Regulations 2015, the cross subsidy surcharge levied to Petitioner for the power transacted through Bagasse based Biomass under Short Term Interstate Open Access is not justifiable. Hence, the amount already recovered on the above head is to be refunded or adjusted by the Discom.

4.7. Further, Discom, against the order of SLDC, approached to SPC and SPC vide its order dated 12.03.2019 decided that as per RERC order dated 09.01.2019 Discom cannot approach SPC against order of SLDC, however, as per SLDC order dt. 18.09.2018, the cross subsidy surcharge levied to M/s Nitin Spinners Ltd., Bhilwara for the power transacted through Bagasse based Biomass under Short Term Intrastate Open Access is not justifiable. Hence, the amount already recovered on above head is to be refunded or adjusted by Discom.

4.8. Subsequently, referring the above order of SPC, Petitioner requested Discom for compliance of the order and in response Discoms vide its letter dated 08.05.2019 refused the applicability of the said Regulations.

4.9. In light of the above, it is prayed that-

- a) Pass directions to AVVNL to refund/adjust a sum of Rs 1,76,15,524/- wrongly charged by them as cross subsidy surcharge for the Short Term Open access of Bagasse based biomass power.
- b) Pass direction to AVVNL to pay 12 % simple interest on undue amount charged by them as cross subsidy surcharge on Bagasse based bio mass power from the day it was recovered from Petitioner.
- c) Pass direction to AVVNL to pay rupees 10,000/- as cost of litigation, deposited by us as Application fee to RERC for filing this petition.

- d) If Commission find appropriate, pass order for punishment of Managing Director of AVVNL under Section 142 of Electricity Act 2003 for contravening the provisions of this Act and the Rules or Regulations made there under, the Open Access Regulations, 2016 specific to this case.
5. Sh. Bipin Gupta, Advocate on behalf of the AVVNL submitted as under:
- 5.1. Petitioner during the period of January, 2018 to March, 2018, had purchased Bagasse based biomass power under Short Term Open Access from M/s Durga Khandasan Sugar Pvt. Ltd., and Narmada Sugar Private Limited which are located in the State of Madhya Pradesh.
- 5.2. Since the Petitioner had availed the Open Access facility and had purchased the electricity from other than distribution licensee therefore, as per law, Petitioner was charged cross subsidy surcharge on the energy consumed from other than distribution licensee.
- 5.3. Regulation 16 of OA Regulations, 2016 provides that the cross subsidy surcharge in respect of Open Access transaction based on Renewable energy based power station shall be governed as per relevant Regulation in force for determination of tariff of such plants and RERC Net Metering Regulations.
- 5.4. As per Regulation 3 of RERC Biomass Tariff Regulations, 2015, these Regulations are applied only on the plants of which tariff is determined by the State Commission under said Regulations.
- 5.5. Regulation 50(5) of the said Regulations provides that the cross subsidy surcharge as determined by the Commission from time to time shall not be applicable in case of Open Access transaction involving biomass, Biogas and Biomass Gasifier based power stations.

- 5.6. Cogent reading of two Regulations in harmonious manner reaches to conclusion that in respect of Open Access transaction, the only those Renewable energy plants for which tariff is determined by the State Commission, the cross subsidy surcharge shall be exempted.
- 5.7. It is more so for the reason that for the year 2017-18, the tariff determined for such plants was Rs. 5.68/unit which goes to show that energy is costly and therefore, in those cases, only the cross subsidy surcharge was exempted. In the present case, the Petitioner has purchased energy @ Rs. 4.38 per unit and further more energy purchased by the Petitioner from plants located outside State of Rajasthan and thus on those plants, the Regulation of 2015 are not applicable. The SLDC without considering this aspect relying upon the Regulations wrongly passed the order dated 18.9.2018. The order passed by the SLDC is contrary to the rules, law and Regulation and do not deserve to be implemented.
- 5.8. This petition under Section 142 of the Electricity Act is also not maintainable as there is no order of the Commission and it is only order of SLDC and SPC which cannot be implemented under power of Section 142 until and unless the Commission comes to the conclusion by directing the Respondent. Since the order passed by the SLDC and SPC is contrary to the Rules and Regulations as mentioned above therefore, no direction is required to be issued by this Commission, it is also prayed that order of SLDC dated 18.09.2018 as well as order dated 15.03.2019 passed by SPC, being contrary to the Regulations, deserves to be quashed and set aside.

Commission's view

6. Commission has considered the submissions, reply and oral arguments made on behalf of the Petitioner and Respondent.
7. Petitioner submitted that Discom has recovered cross subsidy surcharge

on account of Open Access transactions of renewable power from the Bagasse based biomass power plants situated out of the State of Rajasthan despite the fact that cross subsidy surcharge was not leviable as per the Regulation 50(5) of RERC (Terms and Conditions for determination of tariff for Renewable energy sources- Biomass, Biogas and Biomass Gasifier Energy) Regulations 2015.

8. Per contra Respondent contended that as per Regulation 3 of RERC (Terms and condition for determination of tariff for Renewable Energy Sources- Biomass, Biogas and Biomass Gasifier Energy) Regulations, 2015, these Regulations are applicable only on the plants for which tariff is determined by the State Commission whereas Petitioner has purchased power from the plants situated outside of the State, therefore the Biomass Tariff Regulations, 2015 are not applicable on the Open Access transactions done by the Petitioner.
9. Respondent prayed that since the orders passed by the SLDC and SPC are contrary to the Rules and Regulations, therefore, set aside the said orders and no direction is required to be issued by the Commission.
10. Commission observes that only issue in the petition is applicability of cross subsidy surcharge on Petitioner in light of the Regulation 50(5) of RERC (Terms and Conditions for determination of tariff for Renewable energy sources- Biomass, Biogas and Biomass Gasifier Energy) Regulations 2015.
11. Commission has looked into the relevant provisions of the RERC Biomass Tariff Regulations, 2015 which read as under:

“3.Scope of Regulations and extent of application

(1) These Regulations shall apply in cases where generic tariff for generating plants based on Biomass, Biogas and Biomass Gasifier energy is to be determined by the Commission under Section 62 read with Section 86 of the Act:

(2)-----

Regulation 50 reads as under:

50. Other Charges

(1)-----

(2)-----

(3)Transmission & wheeling charges

In case of third party sale or for captive use both within the State or outside the State, the transmission charges and wheeling charges shall be recovered in cash and transmission losses and wheeling losses shall be recovered in kind as under:

(4)-----

(5) Surcharge

The Cross-subsidy surcharge as determined by the Commission from time to time shall not be applicable in case of open access transactions involving biomass, Biogas and Biomass Gasifier based power stations.

51. Banking

(1)Energy shall be allowed to be banked at consumption end for only captive consumption within the State.

(2)-----“

12. Regulation 3 provides that these Regulations shall apply where generic tariff is to be determined by the Commission for generating plants based on Biomass, Biogas and Biomass Gasifier energy for sale to Discoms. Thus, these Regulations are applicable for tariff determination for sale of power to Discoms by these plants only.

13. It is observed that the Regulation 50 (3) provides the transmission charges and wheeling charges for third party sale or captive use within or outside the State. Regulation 51 provides the Banking provisions for captive consumption within the State.

14. Further, it is observed that Regulation 50 (5) provides that the Cross-subsidy surcharge shall not be applicable in case of Open Access transactions

involving biomass, Biogas and Biomass Gasifier based power stations.

15. Commission observes that as the RERC Biomass Tariff Regulations, 2015 itself provides the transmission & wheeling charges for third party sale/captive use and Banking for captive consumption i.e. for the case where Commission has not determined the tariff. Therefore, we can say that 'Other Charges' and 'Banking' in the Regulations shall be applicable even when Commission not determines the tariff under Section 62 of the Electricity Act, 2003 for sale to Discom.
16. Regarding Scope of these Regulations it may be concluded that only the tariff determination principal/norms specified under these Regulations shall apply while determining the tariff for sale to Discom by the Commission under Section 62.
17. If the views of Discom are accepted than the Regulation 50 for "Other Charges" and Regulation 51 of "Banking" becomes otiose. Because of these Regulations are only applicable while tariff determination for sale to Discom under Section 62 of the Electricity Act than these Regulations cannot be applied on CPP and third party sale by plants situated in the State also. Further, the plants on which these Regulations shall apply for determination of tariff for sale to Discom cannot use Regulation 50 and 51 as these are for third party sale or CPP.
18. Further, Regulation 16 of RERC (Terms and Conditions of Open Access) Regulations, 2016 reads as under:

"16. Cross Subsidy Surcharge

- (1) In addition to transmission charges and wheeling charges, a consumer availing open access to the transmission system and/or distribution system shall pay a cross subsidy surcharge worked out in the manner laid down in the Regulations in force from time to time relating to Terms and Conditions of Tariff of Distribution Licensee.*

Provided that the surcharge shall also be paid by a consumer who avails electricity from a person other than the Distribution Licensee of its area of supply irrespective of whether it uses the transmission and/or distribution system of the licensee or not.

Provided further that cross subsidy surcharge in respect of open access transactions based on renewable energy based power stations shall be governed as per relevant Regulations in force for determination of tariff of such plants and RERC Net Metering Regulations.

Provided further that no surcharge shall be levied in respect of open access power purchase during the period when full power cut restrictions are imposed by the Distribution Licensee."

19. Proviso of above Regulation 16 specifies that cross subsidy charges of Open Access transaction based on RE power station shall be governed as per relevant Regulations for determination of tariff of RE plants i.e. the RERC Biomass Tariff Regulations, 2015. It clearly shows the intent of Commission in this regard. Thus while charging cross subsidy surcharge, the provisions of RERC Biomass Tariff Regulations, 2015 has to be seen.
20. Hence, in Commission's considered view, cross-subsidy surcharge shall not be applicable in case of Open Access transactions involving biomass, Biogas and Biomass Gasifier based power stations.
21. In view of above, Commission find no reason to interfere with the findings of SLDC and SPC and directs Ajmer Discom to comply with the order dt. 18.09.2018 passed by SLDC within one month from today.
22. Petition is disposed of with no order as to cost.

(Prithvi Raj)
Member

(S.C. Dinkar)
Member

(Shreemat Pandey)
Chairman