

# Rajasthan Electricity Regulatory Commission

**Petition No. RERC/1592/19**

Petition filed under Section 86(1)(f) of the Electricity Act, 2003 for adjudication of disputes regarding levy of penalty against excess drawal and under Regulation 14 of RERC (Tariff for sale of power by CPP to Distribution Licensee) Regulations, 2010 for removal of difficulties.

**Coram:**

**Shri Shreemat Pandey, Chairman**  
**Shri S.C. Dinkar, Member**  
**Shri Prithvi Raj, Member**

Petitioner : M/s Shree Cement Ltd.

Respondent : Jodhpur Vidyut Vitran Nigam Ltd.

Date of hearing : 23.07.2020 and 05.08.2020.

Present : 1. Sh. Amarjit Singh, Authorised rep. for Petitioner  
2. Sh. Bipin Gupta , Advocate for Respondent

**Order Date:**

**09.10.2020**

**ORDER**

1. Petitioner, M/s Shree Cement Ltd. has filed this petition on 18.12.2019 under Section 86(1)(f) of the Electricity Act, 2003 for adjudication of disputes regarding levy of penalty against excess drawal and under Regulation 14 of RERC (Tariff for sale of power by CPP to Distribution Licensee) Regulations, 2010 (herein after referred as RERC CPP Regulations, 2010) for non-issuance of NOC for removal of difficulties.

2. Commission issued notice on 20.12.2019 to Respondent to file reply on the petition. Respondent Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL) filed its reply on 24.01.2020. Petitioner filed rejoinder on the reply on 26.07.2020.
3. The matter was finally heard on 05.08.2020. Sh. Amarjit Singh, Authorised representative appeared for Petitioner, Sh. Bipin Gupta, Advocate appeared for Respondent JdVVNL.
4. Petitioner in petition, rejoinder and during hearing submitted as under:
  - 4.1. Petitioner is engaged in the business of cement manufacturing and generation of power and to meet power requirement of its cement operations has set up Captive Generating Plants (CPPs) having capacity of 310 MW at Beawar/Ras.
  - 4.2. Petitioner executes transmission and wheeling agreement with RVPNL and concerned distribution licensees for wheeling power generated by CPPs under Medium Term and Short Term Open Access to its various cement facilities.
  - 4.3. Petitioner, to meet contingencies in terms of power plant outages and start up power requirement, has entered into an agreement dated 25.09.2017 for regular contract demand of 1000 KVA and stand-by and start-up supply of 6250KVA i.e. the total demand contracted by the Petitioner is 7250 KVA.
  - 4.4. On 21.08.2019, all CPPs of the Petitioner went into forced outage and the power supply from these CPPs was interrupted abruptly. Petitioner, as per the requirement of RERC CPP Regulations, 2010 intimated for activation of Stand-by supply to concerned authority through e-mail. However, due to brief time lag on account of uncontrollable reasons, between

interruption of supply and stoppage of auxiliary consumption of the CPPs, drawal from Discom overshoot in few particular time blocks with maximum being recorded at 19763.20 KVA, thereby crossing its total contracted supply of 7250 KVA.

- 4.5. Respondent vide its bill dated 11.09.2019 raised the demand for Rs. 1,12,83,270/- which include charges for energy consumed and penalty for exceeding its demand of 7250 KVA. The excess demand percentage worked out as 172.60%. The bill was duly paid by the Petitioner.
- 4.6. Subsequent to above, the Respondent issued a notice dated 28.11.2019 to debit additional Rs 2,79,59,026/- towards exceeding the contract demand for the Month of August 2019. Now, Respondent has worked out the percentage of excess demand based only on 1000 KVA of regular demand. This has in turn led to manifold increase in excess percentage.
- 4.7. Petitioner, in response to said notice, made a representation enumerating the relevant provisions of applicable law to CPPs and details of provisions as mentioned in the agreement entered into with the Respondent. In its representation Petitioner disputed the amount claimed by the Respondent and requested it to cancel the notice. But Respondent, without taking into consideration submissions of the Petitioner, raised a bill for an amount of Rs 2,79,59,026/-. The due date for payment of the said bill was 30.12.2019.
- 4.8. The existing transmission & wheeling agreements are valid upto 31.12.2019, and Petitioner had already applied for extension of the same under the provisions of RERC (Open Access) Regulations, 2016. The Respondent has denied for its consent for extension of transmission & wheeling agreements on the grounds of outstanding dues.

- 4.9. The action of Respondent for working out the penalty amount for drawing more than the contracted demand and denying the consent for extension of transmission and wheeling agreement are against the regulatory provisions. Aggrieved by this wrongful action Petitioner is filing this petition.
- 4.10. RERC CPP Regulations, 2010 are silent on the issue of penalty that would be levied in case of drawl beyond the contracted stand-by capacity. As such, no such penalty can be levied till Commission decides on the matter.
- 4.11. Even if there is need for impose any penalty for exceeding the contract demand, the RERC (Supply Code & Connected Matters) Regulations, 2004 nowhere differentiates between regular contract demand and the stand-by demand. Therefore, it should have been worked out based on the total committed demand i.e. 7250 KVA and not just the regular demand of 1000 KVA. The approach adopted by the Respondent is wrong and against the provisions of law.
- 4.12. Note (iv) of schedule V of Part II of "Tariff for supply of Electricity 2018" issued by Respondent provides for penalty for large industrial services in case consumer exceeds the consumption over the contract demand.
- 4.13. Clause 1 of the HT Supply agreement dated 25.09.2017 signed between the Petitioner and the Respondent provides that the Nigam shall give electricity supply to the consumer for the industrial purpose up to contract demand of 1000 KVA and stand-by supply up to stand-by demand of 6250 KVA i.e. total 7250 KVA.
- 4.14. Combined reading of provisions of "Tariff for supply of Electricity 2018" and HT Supply agreement clearly establishes that the Respondent has

agreed to supply up to 7250 KVA of power to the Petitioner and therefore the contract demand should be 7250 KVA and not just 1000 KVA as interpreted by the Respondent.

4.15. Penalty provisions provided under RERC Open Access Regulations, 2016 applicable on a consumer having Open Access for drawal of power. In the present case, since the Petitioner has taken contract demand for stand-by supply under RERC CPP Regulations, 2010, therefore, the said provisions of RERC (Open Access) Regulations are not applicable.

4.16. Further, Respondent had denied the issuance of NOC required by RVPN for its Short/Medium Term applications citing outstanding dues of Rs. 2,79,59,026/-. By denying the issuance of NOC, the Respondent is coercing the Petitioner for deposition of the penalty. Even if it is assumed that the penalty is payable, the Respondent cannot raise penalty till the time penal provisions are provided in CPP Regulations, 2010 and such an action hence clearly demonstrating misuse of their dominant position.

4.17. It is submitted that meters that are installed at interface point are measuring both regular and stand-by supply and there are no separate meters to measure these types of supply separately. As such, through meter reading, assigning of the excess drawl either under regular or stand-by supply is not possible. On that particular day, it would be evident from the messages relayed by the Petitioner to the Respondent that the excess drawl was against stand-by supply and not against regular supply. Such a high demand is recorded only when there are disruptions/outages in CPPs and not otherwise. As would be evident from the HT Bills that only during CPP outages, stand-by supply is availed.

4.18. In CPP Regulation, 2010 no penalty for access drawl over stand-by supply is provided, therefore penalization on the basis of penalty provided in

tariff order is patently illegal. The Hon'ble Supreme Court of India in its judgment passed in the matter of Ajay Singh vs State of U.P. and Ors held that penalty not provided in statute cannot be imposed.

4.19. It is submitted that fixed charges for the day on which stand-by supply was activated was a total fixed charges towards regular supply and stand-by supply and not merely towards regular supply. Therefore, penalties, on excess demand caused over and above drawn entitlement, should be against total entitlement and not merely against regular demand.

4.20. In light of above submissions, it prayed to-

- (i) Provide for an interim relief of staying the recovery of Rs 2,79,59,026/-.
- (ii) Direct the Respondent for issuance of NOC for extension of exiting Medium Term Open Access Agreements, till the time Commission decides on the Petition.
- (iii) Set aside the debit notice issued by the Respondent claiming to recover Rs 2,79,59,026/-.
- (iv) Determine the methodology of payment in case a generating company crosses the stand-by demand under Regulation 14 of RERC CPP Regulations, 2010 for removal of difficulty.

5. Sh. Bipin Gupta, Advocate on behalf of the JdVVNL submitted as under:

5.1. Petitioner's contract demand is only 1000 KVA and it also contract for 6250 KVA as stand-by supply. As per provisions of 'Terms and Conditions of Supply' a consumer shall not cause a demand more than its contract demand. In case, it causes a demand of more than 105% of the

contract demand in a particular month, it shall be required to pay extra charges equal to the same percentage of fixed and energy charges by which percentage the excess demand has actually been caused.

- 5.2. According to above provision, for calculation of excess demand charges base has to be taken as a contract demand and not admissible drawal. Therefore, claim of the Petitioner that the percentage increase should be calculated on the basis of admissible drawal instead of contract demand is contrary to the provisions of tariff and liable to be rejected.
- 5.3. In HT Agreement 1000 KVA has specifically provided as contract demand and 6250 KVA as stand-by demand. Therefore, the calculation as being made by the Respondent is perfectly justified and do not deserve to be interfered with.
- 5.4. In previous year also for the consumption month April, 2014, Petitioner's contract demand was taken as 1000 KVA, startup supply was taken as 4250 KVA and maximum demand was recorded as 8435 KVA. Contract demand percentage increase was calculated on the basis of 1000 KVA as 318.5% and no objection was raised by the Petitioner at that point of time and extra charges were paid by him. In the present disputed month of September, 2019 wrongly amount was calculated by taking base as 7250 KVA instead of 1000 KVA and only 172.596% was initially considered as percentage increase and which was subsequently corrected.
- 5.5. It is submitted that as there is outstanding due against the Petitioner so NOC cannot be granted to the Petitioner until and unless outstanding are paid.

### **Commission's view**

6. Commission has considered all the submissions made on behalf of the

Petitioner and Respondent.

7. It is the case of the Petitioner that it has entered into HT agreement dated 25.09.2017 with Respondent for regular contract demand of 1000 KVA and stand-by and start-up supply of 6250 KVA. On 21.08.2019, when Petitioner CPPs went into forced outage, power was drawn by it from Respondent for particular time blocks and it's with maximum demand was recorded as 19763.20 KVA. Respondent for the month of August, 2018 raised the demand on account of excess demand charges considering the contract demand 1000 kVA.
8. According to the Petitioner, excess drawl on dated 21.08.2019 was against the stand-by supply and not against regular supply, therefore penalty for exceeding the contract demand should be calculated based on total contract demand that is 7250 KVA for that day.
9. Petitioner submitted that the RERC CPP Regulations, 2010 are silent on the issue of penalty that would be levied in case of drawl beyond the contracted stand-by capacity. Therefore, no such penalty can be levied. Further, it has taken contract demand for stand-by supply under RERC CPP Regulations, 2010, therefore, the provisions of RERC (Open Access) Regulations are also not applicable for recovery of excess demand charges.
10. Petitioner further submitted that Respondent has worked out the excess demand charges on the basis of provisions made under TCOS whereas in CPP Regulation, 2010 no penalty for access drawl over stand-by supply is provided, therefore penalization on the basis of provisions provided in TCOS is patently illegal.
11. Per contra Respondent contended that as per provisions of TCOS, excess

demand charges has to be calculated on the basis of contract demand and not admissible drawal. Therefore, claim of the Petitioner that the percentage increase should be calculated on the basis of admissible drawal is contrary to the provisions of Terms and Conditions of Supply. Petitioner's contract demand is only 1000 KVA and 6250 KVA is stand-by and start up supply cannot be equated as contract demand.

12. Further Respondent submitted that in April, 2014, while Petitioner's maximum demand exceeds start-up supply limit then also penalty for exceeding the contract demand was calculated on the basis of 1000 KVA i.e. contract demand and Petitioner did not raise any objection at that point of time and paid the extra charges, because the same was in accordance with relevant provisions.
13. Commission observes that the issue relates with stand-by and start-up supply to Captive Power Plants specified in RERC CPP Regulations, 2010. Therefore we first look into the relevant provision of CPP Regulations, 2010 which read as under:

*"7. Other Charges*

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(4) Charges for Stand by and start-up supply (Optional for CPP)*

- (a) Stand by supply and start up supply shall be effected at the request of CPP or as per agreement with CPP by the distribution licensee. These will be available only during outages for annual planned maintenance, other maintenance and forced outage. Annual planned maintenance schedule will be given by 15th November, to be finalized by SLDC/NRLDC. Other planned maintenance shall be effected with 2 days advance notice, except in unforeseen circumstances such intimation may be sent within 30 minutes of unit outage.*
- (b) Stand by and start up supply during a month shall be billed at temporary supply tariff on daily basis as per tariff for supply of*

*electricity notified by the distribution licensee with the approval of the Commission as applicable to HT large industrial supply service. Contracted stand by start up supplies shall be subject to minimum annual drawl for 42 days in a financial year.*

*(c) In case CPP does not contract for stand by or start-up supply, it can apply for temporary supply as and when break down occurs as per prevailing terms & conditions of supply of the distribution licensee."*

14. As per above provision, CPP consumer have option to get stand-by and start up supply by signing an agreement with the distribution licensee. These facilities will available only during outages for annual planned maintenance, other maintenance and forced outage.
15. It is observed that Petitioner entered into an agreement dated 25.09.2017 with Respondent Discom for regular contract demand of 1000 kVA and stand-by supply upto 6250 kVA. Hence, the Petitioner has availed the facility of stand-by and start up supply to get electricity upto 6250 kVA during outages for annual planned maintenance, other maintenance and forced outage.
16. It is observed that on 21.08.2019, Petitioner's CPPs went into forced outage therefore power was drawn by it from Discom beyond the maximum demand allowed for stand-by supply i.e. upto 6250 kVA.
17. In Commission considered view, during the outage of generating station, the drawal by CPP will be first considered under the HT power supply upto contract demand and beyond that it will be the stand-by supply and thereafter, excess drawal will be considered as per HT power supply agreement.
18. In the present case, as Petitioner's demand reached beyond the stand-by supply then excess drawal will be considered as per HT supply agreement. As per HT supply agreement, Petitioner's regular contract

demand is 1000 kVA, therefore, excess charges shall be calculated on the basis of 1000 kVA only.

19. Therefore, in Commission's considered view, demand raised by Respondent Discom is valid and legal.
20. Commission directs Respondent to issue NOC on the application of Petitioner for Short/Medium Term Open Access after paying the excess demand charges, if due any.
21. This petition is disposed of accordingly.

(Prithvi Raj)  
Member

(S.C. Dinkar)  
Member

(Shreemat Pandey)  
Chairman