

**JOINT ELECTRICITY REGULATORY COMMISSION FOR
THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Coram*

Shri S.K. Chaturvedi, Chairman

Petition No. 119/2013

Date of Order 04.04.2014

In the matter of

Petition under Sections 86 (1)(c) and 142 of the Electricity Act, 2003 read with JERC (Open Access in Transmission and Distribution) Regulations, 2009.

And in the matter of

Perfect Filaments Ltd. Survey No. 285, Bhimpore, Daman Petitioner

Vs.

Electricity Department of Daman & Diu. Respondent

Argued By:-

1. Sh. Gaurav Nand, Authorized Representative, Perfect Filaments Ltd.-Petitioner
2. Shri M.R. Ingle, Executive Engineer, ED-Daman& Diu- Respondent.

Order

The petitioner - Perfect Filaments Ltd. has filed the present petition under Sections 86 (1)(c) and 142 of the Electricity Act, 2003 read with JERC (Open Access in Transmission and Distribution) Regulations, 2009.

1.0 The petitioner has submitted as under:

(a) Petitioner is a public limited company having an industrial unit located at Bhimpore, Daman connected with 66 kV level at the Dalwada substation involved in the business of manufacturing of yarn.

(b) Petitioner submitted application for grant of open access before the Electricity Department of Daman on 24th July 2013 for the quantum of 3.5 MW with all the required documents and the applicable fee.

(c) Electricity Department of Daman in its letter dated 03.08.2013 to the petitioner rejected the open access application by giving rationale that the existing line is overloaded and the network needs to be augmented to accommodate any new transaction. In this letter Electricity Department mentioned that existing infrastructure does not have extra capacity nor does it have reserved margin to accommodate the demanded transaction and asked the petitioner to give consent for depositing the charges for augmentation of the system.

(d) The contention of the Electricity Department of Daman is totally baseless and illegal on the grounds that petitioner asked for open access for the quantum of 3.5 MW from the already sanctioned contract demand of 5 MW, so, the question of overloading of line and non availability of reserved margin in transmission is totally invalid and illegal. Again the department asked for consent for payment towards augmentation of transmission capacity which reflects the intention of the department that they don't want to allow open access to the consumers and even they are trying to discourage it by raising different demands towards the augmentation of the transmission capacity.

(e) The Petitioner has been sanctioned a contract demand of 5MW out of which only it applied for 3.5MW under open access power requirement. So, the contention of Electricity Department on transmission constraint is totally invalid as the consumer is asking for the power requirement under open access from the already sanctioned contract demand. Demand raised by the Electricity Department of Daman for augmenting transmission capacity is an intentional step towards discouraging the non-discriminatory open access provision prescribed under section 42 of the Electricity Act 2003.

(f) Electricity Department of Daman has violated the JERC (Open Access Transmission and Distribution) Regulations 2009 and the provisions of the Electricity Act 2003. Electricity Department of Daman has violated the Regulation 5 of JERC (Open Access in Transmission and Distribution) Regulations 2009 by denying Open Access to the petitioner who fulfils the eligibility criteria for availing open access as laid down under JERC Regulations.

(g) As per Regulation 5 of the JERC (Open Access in Transmission and Distribution) 2009 Short-term open access shall be granted if transmission margins are available for the flow of power. Petitioner applied for the Open Access from the already sanctioned contract demand which was denied by Electricity Department of Daman which is violation of Regulation 5 of JERC (Open Access in Transmission and Distribution) Regulation 2009.

(h) Denial of Open Access by the Electricity Department of Daman is violation of Section 42 of the Electricity Act 2003 which states that Open Access in the states shall be allowed on payment of charges towards surcharge and wheeling charges determined by the state commission.

(i) This step of Electricity Department of Daman is discriminatory towards the Petitioner as the Electricity Department of Daman allowed open access to another industry namely Wellknown Polyesters Ltd., Daman while they denied open access to the petitioner. Allowing one industry for the open access and denied another on wrongful grounds is just a discriminatory action of the Electricity Department of Daman.

(j) Petitioner submitted the application before Electricity Department of Daman on 24th July 2013 for grant of open access permission, but Electricity Department of Daman replied through its letter dated 3.08.2013 and rejected the Open Access permission to the petitioner. Although the letter was dated 3.08.2013 but it was couriered on 22.8.2013 and delivered to the petitioner on 24.8.2013. The Electricity Department of Daman took 29 days for processing the application which was finally rejected. Time taken in this processing of application was in excess and hence, violated the Regulation 21 of the JERC (Open Access in Transmission and Distribution) Regulation 2009 which stipulated that Open Access application for duration of more than one week shall be processed within 3 days of submitting the application and the petitioner submitted the application for the duration of 1st August 2013 to 31st October 2013.

(k) Petitioner applied for the Open Access for the purchase of power through Power Exchange (PX) platform. Open Access purchase of power on Power Exchange is an inter-state open access transaction defined under the procedure for scheduling of Collective Transactions governed by the Central Electricity Regulatory Commission (Open Access in inter-state transmission) Regulations, 2008. Hon'ble Central Electricity Regulatory Commission (CERC) has included the Power Exchange transactions in its inter-state Open Access Regulation of which detailed scheduling has been defined in the procedure of scheduling of Collective Transaction. CERC in its Open access Regulation has clearly defined the eligibility criteria and the time frame within permission to be granted by the state load dispatch centre/nodal agency. Open Access should be granted by the State Load Despatch Centre (SLDC) to the applicant if it possesses necessary time block wisemetering infrastructure and there is surplus transmission availability in the state transmission system. Also in that case the permission shall be granted by the concerned State Load Despatch Centre within 3 working days of the receipt of the application

(l) Electricity Department of Daman has also violated the Regulation of Hon'ble CERC which should be complied by state nodal agency while granting open access to the applicant for inter-state open access transaction for the purchase of power through Power Exchange. All the states have framed the Regulation on Open Access in line with the Regulations framed by the CERC on inter-state open access transaction. Electricity Department of Daman contravened the Regulation by refusing the application of open access despite the petitioner fulfils the eligibility criteria for availing open access and applied for the quantum within its contract demand. Also, Open Access application was processed by Electricity Department after 29 days which is against the prescribed limit of 3 days. Electricity Department of Daman rejected the application only after 29 days of its submission which is another violation of Regulation as any rejection for whatsoever reason shall be communicated within 3 days of submission of the application.

(m) Electricity Department of Daman rejected the application for open access on account of overloading and transmission constraint in the network. Petitioner was sanctioned contract demand of 5MW power which it was purchasing from the Electricity Department and there was no issue in the transmission network of the state but when the same power out of the already sanctioned contract demand was applied for open access Electricity Department of Daman created the issue of transmission constraint and rejected the petitioner's application. This action of the Electricity Department of Daman is wrongful and it should be held guilty and be penalized under section 142 of the Electricity Act 2003.

(n) Petitioner has suffered huge financial loss on account of wrongful action of denial of open access by the Electricity Department of Daman. Petitioner was denied purchase of power from open access which costed it heavily as the petitioner missed the chance to avail cheaper power from the Exchange discovered on its platform. Petitioner applied for the Open Access for duration from 1st August 2013 to 31st October 2013. Petitioner suffered the loss which amounts to Rs.83,45,842/- (around 83 lakhs) from August-September 2013. This financial loss has been calculated by considering only months of August and September 2013 for which the electricity bill raised by Electricity Department, Daman is available. Financial loss has been calculated by comparing the cheaper prices on the Exchange with the Electricity tariff of Daman. This huge financial (figure) loss which petitioner suffered because of the irresponsible and wrongful denial of the open access permission by the Electricity Department of the Daman. Petitioner is requesting the Hon'ble JERC to consider its claim for compensation which it suffered in loss on account of denial of open access permission. Hon'ble JERC is requested to consider its genuine claim which should be recovered from the Electricity Department of Daman. Petitioner's claim is legally maintainable in the present petition on denial of open access as in the case of Aarti Steel Ltd. in petition no. 4/MP/2012 before CERC in which Aarti Steel was denied the Open Access permission by SLDC; CERC accepted the case of Aarti Steel Ltd. and held that compensation demand of Aarti Steel Ltd is maintainable before the CERC through its order dated 09.05.2013. Also, in another same case on denial of open access permission, APTEL (Appellate Tribunal of Electricity) in its judgment for Parys Industries Ltd. considered the compensation demand of the industry.

(o) Cases of denial of Open Access have always been dealt sternly by the SERCs (State Electricity Regulatory Commission) and the CERC (central Electricity Regulatory Commission). Regulations on inter-state open access have been prescribed by the Hon'ble CERC which all the states/union territories have to follow and accordingly open access permission shall be given by the State Load Despatch Centre. If any applicant satisfies the eligibility criteria for obtaining open access permission as laid down by CERC Regulations, it shall be granted by SLDC of the state within 3 working days. CERC also in its various judgments has decided in favour of the applicant of open access. Hon'ble CERC in Petition No. 231/2010 (Tata Power Company Ltd Vs Maharashtra State Load Despatch centre) decided through its order dated

1.10.2012 that Open Access shall be granted on the basis of only two factors namely, existence of necessary infrastructure and surplus transmission capacity and directed Maharashtra State Load Despatch Centre (MSLDC) to grant NOC for Open access and held that issue raised by MSLDC regarding transmission constraint is invalid.

(P) Open Access in inter-state transmission should not be denied just on the basis that state has not determined the transmission charges for the use of state network. Regulation of Hon'ble CERC has clearly stated that rejection of NOC for open access shall never be on the grounds of the non-determination of transmission charges by the state. In case of non-determination of transmission charges, charges for the use of state network shall be Rs. 80/Mwh.

(q) Procedure for implementation of Short term open access has been defined by the various State Electricity Regulatory Commissions in line with their notified Regulations on open access transactions. Hon'ble JERC is humbly requested to lay down the procedure for implementation of Open Access transactions in the state of Goa and Union Territories. Other states like Punjab, Gujarat, Haryana etc. have notified the detailed procedures for implementation of short term open access transactions in the state and those states are also having a big no. of open access consumers buying power through Exchange at competitive prices. It is also requested before Hon'ble JERC to implement the same in line with CERC and SERC regulations

(r) In view of the aforesaid, it is most respectfully submitted that this Hon'ble JERC shall exercise its jurisdiction under section 86(1)(c) and Petitioner shall be allowed for open access permission and Electricity Department of Daman should be penalized with the maximum penalty as per the section 142 of the Electricity Act, 2003.

2.0 Petitioner made the following prayer :

(i) Direct the Electricity Department of Daman to grant Open Access permission to the Petitioner.

(ii) Impose maximum penalty on the Electricity Department of Daman for contravening the Regulations of this Hon'ble JERC and violating the provision of section 42 of Electricity Act 2003.

(iii) Consider the claim for compensation for the Petitioner which it suffered as a huge financial loss because of wrongful denial of open access.

(iv) Hon'ble JERC is humbly requested to lay down detailed Procedure for implementation of Short term Open Access and also determine the open access charges to be applicable on open access transactions.

(v) Pass such order or necessary directions which this Hon'ble JERC deems fit in the present circumstances of the Petition.

3.0 The Commission examined the petition and found the petition in line with JERC (Conduct of Business) Regulations, 2009 and JERC (Open Access in Transmission and Distribution) Regulations, 2009. Therefore, the Commission admitted the petition and numbered the petition no. 119/2013.

4.0 The Commission held hearing on 21.01.2014 in the Commission. The Commission also held hearing on 24.01.2014 at Diu. The Commission directed the parties to file written submissions on or before 14.02.2014.

5.0 The parties to the petition have filed their respective written submissions. The Commission has heard representatives of the parties at length and has gone through the petition, written submissions, accompanied documents and relevant provisions of the Electricity Act, 2003 as well as JERC (Open Access in Transmission and Distribution) Regulations, 2009 carefully and thoroughly.

6.0 The petitioner, during the course of hearing, reiterated the contents of the petition. His main argument was that he was already availing sanctioned demand of 5 MW from the respondent

without any constraint in the network capacity. The petitioner further submitted that as per Regulation 5(2) of JERC (Open Access in Transmission and Distribution) Regulations, 2009 Open Access shall be allowed if margin available due to variation in power flows. The case of the petitioner is similar. He has contract demand of 5MW and has applied for Open Access of 3.5MW. He can use only maximum 5 MW of maximum demand at a point of time (3.5MW from Open Access +1.5MW from licensee). Hence there shall be no over- loading at any point of time and flow of electricity at any time shall be within the capacity of the distribution system. Hence the petitioner is entitled for Open Access permission of 3.5 MW on the same distribution system without any need for augmentation.

His application for grant of open access for 3.5 MW was out of his total demand of 5 MW and not in addition to 5 MW. Thus rejection of open access permission was unjustified and illegal warranting action under section 142 of the Electricity Act, 2003. He also submitted that the Commission has powers to impose penalty and grant compensation for contravening the Electricity Act and the Commission's Regulations.

7.0 As per written submission dated 19.02.2014 of the respondent their case is that the petitioner has a contract demand of 5 MW with the respondent. For that purpose, the respondent has reserved capacity of 5 MW on the transmission and distribution system to enable supply of electricity to the petitioner. The planning and studies undertaken, capacity reserved etc. are on the capacity of 5 MW, irrespective of the actual number of units drawn. Charges for the distribution system created by the respondent, transmission charges paid by the respondent etc. are also calculated only in capacity terms in the revenue requirements of the respondent and recovered in the retail supply tariff of the consumers. When the petitioner requires open access for the capacity of 3.5 MW, the criteria and requirement that is to be considered is whether the transmission and distribution system has a spare capacity of 3.5 MW, after deducting the capacity already booked in the system. There is a system constraint with regard to the capacity for supply to the petitioner and it is only in these circumstances that the open access for the quantum of 3.5 MW is not possible to be given. There is an existing contract demand of 5MW by the petitioner. The petitioner has not required any reduction whatsoever in the contract demand of 5 MW. Therefore, any request for open access has necessarily to be in accordance with the Regulations of the Commission and is required to be ascertained based on any spare capacity available after considering the capacity of 5 MW booked for contract demand. The system planning and booking has to be done based on the capacity contract for 5 MW and further request for 3.5 MW. There is no prohibition whatsoever for the petitioner to seek a reduction in the contract demand of 5 MW and then seek the open access for 3.5 MW. However, the petitioner does not seek any reduction in the contract demand with the respondent and further requires open access capacity of 3.5 MW, for which there is a system constraint.

8.0 Let the Commission now examine the procedure for submitting application for short term open access provided under Regulation 13 of JERC (Open Access in Transmission and Distribution) Regulations, 2009 which reads as under:-

Quote

Procedure for Short-term Open Access

- i. *A short term open access user shall submit an application for transmission/distribution access to the State Load Dispatch Centre.*
- ii. *The application shall contain the details such as capacity needed, point(s) of injection, point(s) of drawl, duration of availing open access, peak load, average load and such other additional information that may be specified by the State Load Dispatch Center;*
- iii. *The application shall be accompanied by a non- refundable application fee of Rupees five Thousand payable in the name and in the manner to be decided by the State Load Dispatch Centre;*
- iv. *The reserved capacity shall not be transferred by a short-term open access user to any other person.*

Unquote

The criteria for short term open access is provided under Regulation 5 (II) of JERC (Open Access in Transmission and Distribution) Regulations, 2009 which runs as under:-

Quote

Criteria for Short-term Open Access:-

- (ii) Short –Term open access shall be allowed, if the request for open access can be accommodated by utilizing:-*
- a) *Inherent design margins*
 - b) *Margins available due to variation in power flows; and*
 - c) *Margins available due to in- built spare transmission capacity created to cater to future load growth.*

Unquote

9.0 Findings with Reasons:-

- (A)** After having heard both the parties at length, going through the petition, submissions filed by them and relevant provisions of Electricity Act, 2003 and JERC Regulations, specifically Regulation 5(II) of JERC (Open Access in Transmission and Distribution) Regulations, 2009 the Commission is of the opinion that the stand taken by the respondent is not as per the Electricity Act, 2003 and JERC Regulations. The stand of the respondent that (i) there is a system constraint with regard to the capacity for supply to the petitioner and it is only in these circumstances that the open access for the quantum of 3.5 MW is not possible to be given as there is an existing contract demand of 5 MW by the petitioner(ii) the petitioner has not required any reduction whatsoever in the contract demand of 5MW, therefore, request for open access has necessarily to be in accordance with the Regulations of the Commission and is required to be ascertained based on any spare capacity available after considering the capacity of 5MW booked for contract demand and (iii) the system planning and booking has to be done based on the capacity contract for 5MW and further request for 3.5MW; is not in accordance with the provisions of the regulations.

From bare reading of Regulations 5(II) (b) of JERC (Open Access in Transmission and Distribution) Regulations, 2009 it is clear that open access shall be allowed if margins are available due to variation in power flows. The petitioner had contract demand of 5 MW and had applied for 3.5 MW electricity by open access. The total demand of the petitioner at any given point of time would be within 5 MW only. He did not require more than 5 MW of electricity through the

transmission and distribution system. Thus there was no system constraint with regard to the capacity for supply to the petitioner.

In view of the aforesaid, the Commission is of the view that decision of the respondent to refuse grant of short term open access to the petitioner was against the provisions of the JERC regulations and was unjustified. The petitioner was entitled for short term open access permission for the period applied for.

The respondent is directed to correctly interpret the JERC Regulation 5(II) (b) of JERC (Open Access in Transmission and Distribution) Regulations, 2009 as explained above in future and make sincere efforts to implement the Electricity Act, 2003 and Regulations framed there under by the JERC in letter and spirit.

(B) Now let the Commission examine in detail the petitioner's request for award of compensation for financial loss suffered by the petitioner on account of wrongful denial of open access and imposing penalty on the respondent for contravening JERC Regulations under Section 142 of the Electricity Act.

The petitioner has quoted the judgement dated 27.09.2012 in Appeal No. 140/2012 in Parys Sugar Industries Limited Vs Karnataka Electricity Regulatory Commission delivered by the Hon'ble Appellate Tribunal for Electricity in support of its contention for grant of compensation for huge financial loss suffered by it because of alleged wrongful denial of open access. The Commission has gone through the judgement and found that the facts of that case were entirely different and cannot be applied in the present case. In the case of Parys Sugar Industries Limited, compensation was allowed for the energy actually injected by Parys Sugar in the grid during the period of non-grant of open access. This means that the generator was allowed to recover his cost without anyway linking with the opportunity cost. Moreover the amount of compensation was to be decided by the Regulator keeping in view the cost of generation of Parys Sugar. The present case is entirely different as no energy was actually transacted through the open access route.

The petitioner submitted that in the case of Aarti Steel Ltd. in petition no. 4/MP/2012, CERC accepted the case of Aarti Steel Limited through Order dated 9.5.2013 and held that compensation demand of Aarti Steel is maintainable. The Commission does not find any such order on the CERC website. However CERC issued Record of Proceedings and rescheduled the date of hearing to 15/10/2013. Further, CERC through the Order dated 31.10.2013 in the said petition has recorded withdrawal of the claim by Aarti Steel Limited. Question of awarding any compensation by CERC to the Petitioner namely Aarti Steel does not arise in view of withdrawal of claim by the said petitioner. Keeping in view the above findings of Hon'ble APTEL and CERC, the Commission is of the view that the petitioner has failed to make out a case for grant of compensation.

As regards imposition of penalty u/s 142 of the Act, the Commission has concluded in the foregoing paras that refusal was against the provisions of the JERC Regulations. However, from the submissions made by the respondent it appears that they misinterpreted the Regulations and arrived at wrong conclusion. It however cannot be said that the misinterpretation was wilful with certain element of malice towards the petitioner. In view of this, the Commission does not view this as a fit case for imposition of penalty u/s 142 of Electricity Act, 2003, as requested by the Petitioner. The Commission has already advised the respondent to properly interpret the provisions

of the Act and the Regulations, in letter and spirit in future. The Commission also expresses its strong displeasure in taking abnormally long time in conveying its decision to the Petitioner. It is the duty and responsibility of the respondent to ensure that its decision reaches the applicant within the time frame prescribed in the regulations.

The petitioner had applied for short term open access permission from 1st August, 2013 to 31st October, 2013. The petitioner has not prayed for short term open access permission beyond this period. The period applied for short term Open Access has already lapsed. Hence the petition for direction to the respondent to grant the petitioner permission for short term open access from 1st August, 2013 to 31st October, 2013 has become infructuous.

In the light of above discussion and observations the petition stands disposed of with direction to the respondent to strictly comply the provisions of Electricity Act, 2003 and Regulations framed there under in letter and spirit in future and also interpret Regulation 5(II) (b) of JERC (Open Access in Transmission and Distribution) Regulations, 2009 in the manner stated above.

Sd/-

(S.K.Chaturvedi)

Chairperson

- * As per Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 “Coram is two”. Whereas as per proviso of Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 if Chairperson or the Member is prevented from attending hearing of which he has been given notice the Member or the Chairman as the case may be attending the meeting shall validly constitute the Coram. Post of the Member is vacant. According to provisions of Section 93 of the Electricity Act, 2003 no act or proceedings of the appropriate Commission shall be questioned or invalidated merely on the ground of existence of any vacancy or defect in the Constitution of the appropriate Commission. So the Chairperson only constitute a valid Coram.

Certified copy

(Rajeev Amit)

Secretary