

BEFORE THE VIDYUT OMBUDSMAN

::Present::

C.Ramakrishna

Date: 15-05-2014

Appeal No. 81 of 2013

Between

M/s. Andhra Ferro Alloys Limited

Garbham Village, Merakamudidam (M)

Vizianagaram Dt. 535 102

... Appellants

And

1. The Divisional Engineer, Operation, APEPDCL, Vidyut Bhavan, Dasannapeta,
Vizianagaram - 535 002
2. The Senior Accounts Officer, Operation, APEPDCL, Vidyut Bhavan,
Dasannapeta, Vizianagaram - 535 002
3. The Superintending Engineer, Operation, APEPDCL, Vidyut Bhavan,
Dasannapeta, Vizianagaram - 535 002

... Respondents

The above appeal filed on 10-07-2013 has come up for final hearing before the Vidyut Ombudsman on 03-05-2014 at Vizianagaram. The authorized representatives of the appellant, as well as respondents 1 to 3 above were present. Having considered the appeal, the written and oral submissions made by the appellant and the respondents, the Vidyut Ombudsman passed the following:

AWARD

2. The appeal arose out of the grievance of the appellant that the CGRF had dismissed their appeal regarding R&C penalties. On 10-07-2013, the appellant filed the appeal stating that they are engaged in the manufacture of ferro alloys and are a HT 1(B) category consumer; that the CGRF had dismissed their appeal with regard to levy of R&C penal charges of Rs. 13,82,177/-; that for the billing month of 22-03-2013 to 22-04-2013, the respondents have erroneously levied R&C penalties on account of exceeding the PDL (Permitted Demand Limit) for the whole month contrary to the directions of the Hon'ble APERC in their orders dated 01-11-2012; that they have drawn 5,520 kVA on a particular day i.e., 04-04-2013 as against a PDL of 4,650 kVA and that the excess 870 kVA drawn on that day is less than or equal to 5% of that month's PDL of 1,44,150 kVA; that as regards PCL (Permitted Consumption Limit), they have utilised 52,04,604 units as against 51,89,400 units i.e., an excess of 15,204 units; that therefore they have not violated the R&C measures stipulated by the Hon'ble APERC and are not liable to pay penal charges for non-compliance.

3. The appellants sought finally that the orders of the CGRF, APEPDCL, Visakhapatnam be set aside.

4. The respondents were served with a notice for hearing the case on 03-05-2014, directing them to submit their written submissions, if any, duly serving copies of the same on the appellants. The respondent SE submitted his written submission duly marking it to the appellants on 17-04-2014 stating that the service connection was released on 02-07-2013 with a CMD of 15,500 kVA at

132 kV potential under HT 1B Category; that the R&C penal charges of Rs. 13,82,172/- were levied for exceeding the PDL by 870 kVA for the month of April, 2013 based on the MRI data in accordance with the R&C control measures ordered by the Hon'ble APERC; that no consumer can exceed the prescribed PDL during the peak and off peak hours as mandated by the Hon'ble APERC; that the DISCOM shall regulate the supply to consumers like the appellants as per the option exercised by them; that the appellants herein have communicated their preference to exercise Option 1, according to which their PDL during off peak hours shall be 60% of their CMD and during peak hours it shall be 30% of the CMD (i.e., 4,650 kVA being 30% of 15,500 kVA); that on 04-04-2013, the appellants herein have drawn 5,520 kVA during peak hours which has exceeded the PDL by 870 kVA; that the excess demand so drawn by the appellants amounts to 19% over the PDL of 4,650 kVA as against the 5% stipulated by the Hon'ble APERC; and that the penal charges calculated therefor are correct and the appellant is liable to pay the same.

5. Heard the appeal finally at Vizianagaram on 03-05-2014. At the time of hearing, the appellants as well as the respondents have reiterated their written submissions. The appellants further pleaded that their industry is facing lot of other challenges and that hence the burden of heavy R&C penal charges be mitigated for them.

6. The CGRF noted in its order that there are no merits in the contention of the appellant herein and dismissed their complaint.

7. Having taken due note of the submissions of both sides, it is found that the interpretation of para 18 (b) (1) of the Hon'ble APERC's Proceedings

APERC/Secy/16/2012-13 dated 01-11-2012 is the sole crux of the issue in this appeal. For an appreciation of the whole issue, it is necessary to look at para 18 of the proceedings.

18. Control measures:

(a) No consumer shall exceed the PDL during peak or off peak period. If any consumer exceeds the PDL by a quantum less than or equal to 5% of PDL, the Distribution Licensee shall issue a warning notice for first violation in a month. For any subsequent violation, the service will be disconnected without notice for 24 hours.

If any consumer exceeds the PDL by a quantum exceeding 5% of PDL, the Licensee shall disconnect the service connection for the following time period immediately after detection of violation:

- i) 48 hours disconnection for first violation.
- ii) 7 days disconnection for second time violation.
- iii) 15 days disconnection for third violation.
- iv) 1 month disconnection for fourth violation.

(b) Penal charges for non-compliance of R&C measures:

The Clause 213.6 (8) and Clause 213.3 (4) (iv) of Tariff Order 2012-13, specifies the penal charges to be paid by a consumer for exceeding the contracted demand. In view of the shortage scenario and in order to maintain grid discipline and equitable distribution of available power

among different consumer categories, the following penal charges are approved in place of clause 213.6(8) and Clause 213.3(4) of Tariff Order 2012-13 in addition to the measures mentioned in para (a) above.

I. Demand Charges on excess over Permitted Demand Limit (PDL) shall be billed at the rate of 5 times of normal tariff, if the Demand consumed is less than or equal to 5% of PDL in a month.

II. Demand Charges on excess over Permitted Demand Limit (PDL) shall be billed separately for peak and off-peak at the rate of 6 times of normal tariff for exceeding the PDL beyond 5% of PDL.

III. For HT-II Consumers, energy charges on excess over PCL during off-peak period shall be billed at the rate of 5 times of normal tariff. Energy charges on excess over PCL during peak period shall be billed at the rate of 6 times of normal tariff consumed during that particular peak time period i.e., 18:00 Hrs. to 22:00 Hrs. of that day.

IV. For HT-1 consumers, energy charges on excess over PCL during Off-peak period shall be billed at the rate of 6 times of normal tariff.

V. Consumers opting for 18 days power supply, shall be billed at the rate of 6 times of normal tariff for exceeding PCL during off-peak hours of power holiday period.

VI. For HT-1 consumers, energy charges on excess over PCL during peak period shall be billed at the rate of 7 times of normal tariff consumed during that particular peak time period, i.e., 18:00 Hrs. to 22:00 Hrs. of that day.

8. HT 1B category consumers, to which the appellants herein belong, are given a distinct dispensation under the R&C measures issued by the Hon'ble Commission. The dispensation is that they can exercise one of the two options prescribed therein. The first option is that they can opt for continuous power supply throughout the month but with reduced demand for peak and off peak hours and the second option is that they can utilize their full demand during off peak hours and reduced demand for peak hours for 18 days of the month while taking power holiday for the remaining 12 days. In the second option they are permitted to use 10% of their CMD for maintenance purpose during power holiday period. The appellants herein opted for Option 1. Para 18 extracted above specifies the control measures. There are two components to the control measures. Component (a) is that consumers exceeding the permitted demand limits shall be subjected to power disconnection. Component (b) is that they shall also be subjected to penal charges. These two components are not exclusive of each other. They run concurrently. That is, a consumer found violating R&C norms will be subject to disconnection and also penalties. The violation of R&C norms shall invite disconnection immediately after detection. The said detection might happen immediately after violation or even with a

time gap.

9. The difference of opinion between the appellants and the respondents is with reference to the calculation of excess PDL. Demand for power is mentioned in kVA at any given point in time. It is never mentioned in terms of kVA per day or kVA per month. So, it is incorrect to project demand by taking the demand for a certain integration period like a 15 minute period and multiplying it by the number of such integration periods in a month to arrive at the CMD for the month. CMD is always for any given point in time that can be measured by the supplier. In this case, the DISCOM is measuring demand in integration periods of 15 minutes each. Hence violations by the consumer can be measured/detected every 15 minutes. If the CMD of a given consumer is 5,520 kVA (as in the present case), all the number of times this demand is exceeded in a given 15 minute integration period constitute different violations. But because the DISCOM is measuring demand in integration periods of 15 minutes each, all such violations also constitute only one single violation for that particular 15 minute integration period. When the Hon'ble Commission refers to 30% of the demand in its order, it means 30% of the CMD at any given point in time. The consumer appellant is wrong in taking the PDL of 4,650 kVA and multiplying it by 31 to arrive at the monthly demand.

10. As per his option, the consumer appellant is entitled to 30% of CMD during peak hours. This means that at any given point in time during the peak hours, his demand cannot go beyond 4,650 kVA ($30\% \times 15,500 \text{ kVA}$). As many number of times this is found going beyond the PDL, so many number of times, the violation has occurred. Thus, there is no substance in the consumer appellants' argument that the respondents have erroneously levied R&C

penalties. The interpretation of the consumer appellant regarding calculation of excess PDL/PCL is not correct. They did violate the R&C norms as stipulated by the Hon'ble APERC. It is the appellants' interpretation that is contrary to the Hon'ble Commission's directions.

11. The respondent officers are found wanting on two counts here. The first is that they have not implemented the first component of the control measures. The appellants have exceeded the PDL in peak hours by 870 kVA which is about 19% in excess of the PDL. As this is the first and only violation noticed during the billing cycle, the respondents ought to have disconnected the power supply for 48 hours immediately on detection. They have not done this. Secondly, as the PDL has been exceeded by the consumer appellants herein by close to 19%, the penal charges should have been calculated at 6 times the normal tariff applicable instead of 5 times the normal tariff. Additionally, even the number of days shown in the calculation also need to be corrected as it is not possible for the calendar months of March and April to have 31 days each. For the month of April, only 30 days ought to have been adopted in the calculation. Keeping these observations in mind, the respondents have to recalculate the penal charges.

12. The respondent officers have also not implemented the Hon'ble Commission's order giving 50% waiver of R&C penalties uniformly to all the consumers in the State.

13. The CGRF's order dismissing the complaint of the appellant herein suffers from non-observation of the calculations part of the penal charges. Moreover, by the time the CGRF passed its order, the waiver orders of the

Hon'ble Commission were not yet passed. Hence the order of the CGRF needs to be set aside.

14. Therefore, it is hereby ordered that:

- the respondent officers shall recalculate the penal charges keeping in view the observations made in para 11 above within 15 days from the date of receipt of this order;
- in so recalculating, they shall also implement the 50% waiver ordered by the Hon'ble Commission in its Proceedings No. APERC/Secy/154/2013, dated 08-08-2013; and
- the respondent officers shall communicate their compliance with this order within 30 days from the date of receipt of this order.

15. This order is corrected and signed on this 15th day of May, 2014.

VIDYUT OMBUDSMAN

To

1. M/s. Andhra Ferro Alloys Limited, Garbham Village, Merakamudidam (M), Vizianagaram Dt. 535 102
2. The Divisional Engineer, Operation, APEPDCL, Vidyut Bhavan, Dasannapeta, Vizianagaram - 535 002
3. The Senior Accounts Officer, Operation, APEPDCL, Vidyut Bhavan, Dasannapeta, Vizianagaram - 535 002
4. The Superintending Engineer, Operation, APEPDCL, Vidyut Bhavan,

Dasannapeta, Vizianagaram - 535 002

Copy to:

5. The Chairperson, CGRF, APEPDCL, P & T Colony, Seethammadhara, Near Gurudwara Junction, Visakhapatnam - 530 013.
6. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004.