

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.

No. F.11(1771)/DERC/2020-21/6754

Petition No. 14/2020

In the matter of: Petition seeking clarification of Order dated 01.06.2017 in the matter of determination of Open Access and related matters.

Duggar Fiber Pvt. Ltd.

.... Petitioner

Coram:

Hon'ble Shri Justice S. S. Chauhan, Chairperson

Hon'ble Dr. A. K. Ambasht, Member

Appearance:

Mr. Tushar Jain, Adv., Petitioner

FINAL ORDER

(Date of Order: 17.06.2021)

1. The instant petition has been filed by the Petitioner, seeking clarification of order dated 01.06.2017 wherein the Commission has determined the applicable charges for the open access consumers. Vide the said order for promoting the Renewable Energy, the Commission has exempted the Wheeling, Transmission and Additional Surcharge for the open access consumers who are availing power from Renewable sources of Energy located within or outside Delhi. The Petitioner has sought the following relief(s) in the prayer:

a) Clarify that the Principal Order dated 01.06.2017 and first amendment order dated 04.10.2017 passed by the Commission in the matter of determination of open access charges and related matters, inter alia provide that no charge/surcharge except to the limited application of Cross Subsidy Surcharge, is applicable for the open access consumers availing power from the Renewable sources of energy.

2. Brief Facts of the case:

a) Petitioner is the Open Access Consumer of Delhi procuring under short term contracts vide bilateral transaction(s) from the generator

in terms of the DERC (Terms and Conditions for Open Access) Regulations, 2005.

- b) The Petitioner is embedded in the Distribution area of Tata Power Delhi Distribution Limited (TPDDL/Distribution Licensee).
- c) The Petitioner is continuing to procure power under open access since the year 2014. The Petitioner under open access has been sourcing power from exchange, renewable power generators, non-renewable generators with intermittent sourcing of energy under the captive route as well.
- d) The Commission has determined the applicable charges for the open access consumers vide order dated 01.06.2017. Vide the said order for promoting the Renewable Energy, has exempted the Wheeling, Transmission and Additional Surcharge for the open access consumers who are availing power from Renewable Sources of Energy located within or outside Delhi.
- e) The Commission passed first amendment order dated 04.10.2017 wherein the Principal Order was inter alia amended to the extent of introducing Surcharge in place of the Regulatory Assets Surcharge. Further, such new Surcharge as introduced was made applicable to the open access consumers at par with other consumers.
- f) Since the issuance of first amendment order dated 04.10.2017, the Distribution Licensee is raising open access bills on the Petitioner wherein the charges of wheeling and additional surcharge is Zero (0), however, other charges like Surcharge on Energy Charges, Surcharge on Fixed Charges, Reactive Energy Surcharge and others are levied on the bills raised on the Petitioner.

PETITIONER'S SUBMISSION

3. The Petitioner has submitted the following:

- a) The power sourced by it through open access from Renewable Energy Source or otherwise is governed by DERC (Terms and Conditions for Open access) Regulations 2005 read with the Principal Order on open access dated 01.06.2017 issued by the DERC under

the said DERC Regulations along with further amendment(s) order issued by DERC.

- b) The Commission vide the Principal Order dated 01.06.2017 on Open access has categorically exempted the Wheeling Charges, Transmission Charges and Additional Surcharge for the open access consumers procuring through Renewable source of energy. The relevant part of the order is reproduced herein below:

“Quantum of Renewable Purchase Obligation (RPO):

(1) Open Access consumer shall fulfil its RPO as per DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 as amended from time to time.

(2) Wheeling, Transmission and Additional surcharge shall not be applicable on Open Access Consumers availing energy from all renewable energy sources within or outside Delhi. Open Access consumer receiving electricity from renewable energy sources shall be exempted from the cross-subsidy surcharge to the extent of RPO:

Provided that the generators using renewable energy sources shall certify that no REC/RPO claim for this power has been made.

(3) No banking facility shall be provided for supply of electricity from renewable energy sources through Open Access.

.....”

- c) The Commission while issuing the first amendment order dated 04.10.2017 has provided that the open access consumers shall be charged under the head of Surcharge at par with any consumer of the respective distribution company. The relevant part of the order is reproduced herein below:

“4.0 Amendment of Clause 2.5 of Principal Order:

The clause 2.5 of the Principal order on ‘Regulatory Surcharge’ shall be substituted as under:-

2.5 Surcharge as applicable to other consumers:

- 1) The Open Access consumer shall also be liable to pay any other surcharge as applicable to the consumers of the distribution licensee at the rate specified in the applicable Tariff Order:*

Provided that if any surcharge levied on the open access consumer leads to excess recovery due to, (i) imposition of such surcharge and/or (ii) fulfillment of the obligations by the open access consumer at its own under any other Regulations, such open access consumer shall file its claim before the distribution licensee on quarterly basis:

Provided further that such excess recovery, after reconciliation on quarterly basis, shall be adjusted by the distribution licensee in the ensuing bills or refunded through demand draft/ Electronic clearance system, as applicable:

Provided also that if the adjustment/refund on account of such excess recovery is delayed beyond 30 days from the date of reconciliation, an interest at the rate of 1.0% per month shall be payable by the distribution licensee for the period of delay beyond such 30 days' period.

2) *For the purpose of computation of Surcharge, the distribution licensee shall compute the Surcharge treating the total power consumption of the Open Access Consumer as if taken from the distribution licensee."*

{Explanation: For the purpose of this clause, surcharge as applicable to the other consumers shall mean as applicable to the consumers of distribution licensee. For example, at present as per Tariff Schedule applicable w.e.f. 1/9/2017, surcharge of 8% towards recovery of past accumulated deficit and 3.70% towards recovery of pension trust charges of erstwhile DVB employees/pensioners shall also be payable by open access consumers.}

....."

d) The Petitioner submits that when the base charge of Wheeling and Additional Surcharge is exempted on a certain category of consumer, any other charge in the nature of Fixed Charges or Energy Charges could not be made applicable on the said category of

consumer. Further, when actual charges like wheeling, transmission additional surcharge are already exempted, the surcharges levied on these charges or otherwise are ought to be automatically exempted. It is settled principal of law, that a charge which cannot be charged directly cannot be charged indirectly.

- e) The Petitioner further submits that when the wheeling charges itself was made Zero (0) by this Commission for the Open access consumers consuming power from the Renewable source of energy, any other charge in the nature of wheeling shall not be applicable on the Petitioner when it is sourcing energy from the Renewable source of energy.
- f) Further, Additional Surcharge on open access consumers availing power from Renewable source of energy is also exempted. This means that the fixed costs of the Distribution Licensee are also not required to be paid by the open access consumers when it is sourcing power from a renewable source of energy. The said exemptions were granted by the Commission for encouragement of Renewable energy, which is also mandated under the National Tariff Policy and the Electricity Act, 2003.
- g) The Petitioner submits that Section 42(2) of the Electricity Act, 2003 provides for the non-discriminatory open access subject to payment of Wheeling Charges, Cross-subsidy Surcharge and Additional Surcharge only. The Petitioner submits that if the Wheeling and Additional Surcharge are made non-applicable for a certain category of consumer, there cannot be any other charge in the nature of Surcharge which can be levied on such category. Such Surcharge if any, would be bad in terms of the Section 42 of the Electricity Act, 2003 and also in terms of the relevant Regulations of DERC read with the Principal Order dated 01.06.2017 of this Commission.
- h) Since the open access consumer does not consume the power of the DISCOM, the question of charging Surcharge on the energy charges does not arise. Further, all fixed costs are covered under the

wheeling charges and additional surcharge. These all charges when are made non applicable on the open access consumer sourcing power from the renewable sources of energy, surcharge on fixed charges or on energy charges have no legal backing and are out of place.

COMMISSION ANALYSIS

4. The Present Petition is filed seeking the clarification on the Open Access Orders dated 01.06.2017 and 04.10.2017 passed by the Commission that no other charge or Surcharge except to the limited applicability of the cross-subsidy surcharge shall be applicable.
5. The Commission vide its First Amendment Open Access order dated 04.10.2017 has made the applicability of Surcharge as under:

2.5 Surcharge as applicable to other consumers:

- 1) *The Open Access consumer shall also be liable to pay any other surcharge as applicable to the consumers of the distribution licensee at the rate specified in the applicable Tariff Order:*

Provided that if any surcharge levied on the open access consumer leads to excess recovery due to, (i) imposition of such surcharge and/or (ii) fulfilment of the obligations by the open access consumer at its own under any other Regulations, such open access consumer shall file its claim before the distribution licensee on quarterly basis:

Provided further that such excess recovery, after reconciliation on quarterly basis, shall be adjusted by the distribution licensee in the ensuing bills or refunded through demand draft/ Electronic clearance system, as applicable:

Provided also that if the adjustment/refund on account of such excess recovery is delayed beyond 30 days from the date of reconciliation, an interest at the rate of 1.0% per month shall be payable by the distribution licensee for the period of delay beyond such 30 days' period.

- 2) *For the purpose of computation of Surcharge, the distribution licensee shall compute the Surcharge treating the total power*

consumption of the Open Access Consumer as if taken from the distribution licensee.”

{Explanation: For the purpose of this clause, surcharge as applicable to the other consumers shall mean as applicable to the consumers of distribution licensee. For example, at present as per Tariff Schedule applicable w.e.f. 1/9/2017, **surcharge of 8% towards recovery of past accumulated deficit and 3.70% towards recovery of pension trust charges of erstwhile DVB employees/pensioners shall also be payable by open access consumers.**}

6. The Commission in order to promote renewable energy sources has categorically specified the charges to be exempted from renewable energy sources. As per clause 6 of Open Access order dated 01.06.2017, the exemption of various charges to Renewable Purchase Obligation (RPO) are as under:

“.....

(2) *Wheeling, Transmission and Additional surcharge shall not be applicable on Open Access Consumers availing energy from all renewable energy sources within or outside Delhi. Open Access consumer receiving electricity from renewable energy sources shall be exempted from the cross-subsidy surcharge to the extent of RPO:*

Provided that the generators using renewable energy sources shall certify that no REC/RPO claim for this power has been made.

.....”

7. The Petitioner has submitted that since fixed charges are exempted from payment of wheeling and additional surcharges vide clause 6 of Open Access Order dated 01.06.2017, there is no question of levying any surcharge in the nature of fixed charges or energy charges. In this regard, it may be noted that charges such as wheeling charges & additional surcharge and the surcharges mentioned at clause 2.5 of the Order are different.
8. With regard to the prayer of the Petitioner seeking clarification related to various charges/ surcharges applicable on Open Access consumers sourcing power from Renewable Energy Sources, it is clarified that Clause 4

of the Order dated 04.10.2017 (*Open Access Charges and related matters (First Amendment) Order, 2017*) specifies that the Open Access consumers are liable to pay any other Surcharge as applicable to the consumers/distribution licensee at the rates specified in the applicable Tariff Order and therefore, such surcharges are not exempt. The relevant extract from the order is stated in para 5 of this Order.

9. In view of the above, the petition is dismissed.

10. Ordered Accordingly.

Sd/-
(Dr. A.K. Ambasht)
Member

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