

Rajasthan Electricity Regulatory Commission

Petition No. RERC-1809/2020

Petition filed under Section 86 (1) (f) of the Electricity Act, 2003 for adjudication of disputes seeking proper implementation of Commission's order dated 01.11.2017 passed in petition no. 1125/2017.

Coram:

Shri B. N. Sharma,	Chairman
Shri S. C. Dinkar,	Member
Shri Prithvi Raj,	Member

Petitioner : M/s Dhursar Solar Power Pvt. Ltd.

Respondents : 1. Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL)
2. State Load Despatch Centre (SLDC)

Date of hearings : 15.12.2020, 13.07.2021

Present : 1. Sh. Buddy Ranganadhan Advocate for Petitioners
2. Sh. Bipin Gupta Advocate for JdVVNL
3. Sh. Ribhu Dutta, Advocate for SLDC

Order Date:

03.08.2021

ORDER

1. Petitioner, M/s Dhursar Solar Power Pvt. Ltd. has filed this petition on 10.09.2020 under Section 86 (1) (f) of the Electricity Act, 2003 seeking correct and proper implementation of Commission's order dated 01.11.2017 in petition no. 1125/17 regarding unlawful levy of Reactive energy charges and maximum demand charges (MD charges).
2. Notices were issued to Respondents on 10.09.2020 to file reply to the petition. Respondent Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL) and State

Load Despatch Centre (SLDC) filed their reply on 01.02.2021 and 17.12.2020 respectively. Petitioner filed rejoinder to the replies on 11.06.2021.

3. The matter was heard finally on 13.07.2021. Sh. Buddy Ranganadhan, Advocate appeared for Petitioner, Sh. Bipin Gupta, Advocate appeared for Respondent JdVVNL and Sh. Ribhu Dutta, Advocate appeared for SLDC.
4. Petitioner in petition, rejoinder and during hearing submitted as under:
 - 4.1. Petitioner is a Generating Company and has set up a 40 MW Solar PV Project at Dhursar, Distt. Jaisalmer, Rajasthan. The Petitioner has a long term Energy Purchase Agreement (EPA) of 25 years with the Adani Electricity Mumbai Limited (AEML), which is a Distribution Licensee in suburban areas of Mumbai.
 - 4.2. The Solar Plant is connected to the Rajasthan State Transmission network at Dechu Sub-station through 31 KMs long 220 kV dedicated transmission line. The metering is done at Dechu 220 kV sub-station.
 - 4.3. For evacuating power to meet its obligation under the aforesaid EPA, the Petitioner has signed long term open access (LTOA) agreement with RVPN, which is a State Transmission Utility (STU) and another Long Term Access (LTA) agreement with Power Grid Corporation of India Ltd., (PGCIL) on 30.03.2012 and 23.03.2012 respectively.
 - 4.4. The relevant provisions of the Long Term Open Access agreement dated 30.03.2012 is as follows:

"1.1 The open access shall be governed by the procedure and the terms and conditions specified by RVPN in pursuance to RERC (Terms and Conditions for Open Access) Regulations 2004.

2.4.1 Reactive energy charges in accordance with the scheme applicable to generators and consumers for reactive charge input and drawal respectively as may be determined by the Commission from time to time.

2.4.2 Payment of Un-Scheduled interchange and mismatch not exceeding 5% of the contracted open access power between the schedule and the actual drawal as per the pricing mechanism specified by the Commission for the State from time to time.

7.2 The Open Access Customer would comply CERC regulation and approved procedures made by CTU relating to Long Term Access including procedure approved by CERC for implementing the mechanism of Renewable Regulation Fund (RRF) under 6.1 (d) of CERC (Indian Electricity Grid Code) Regulation, 2010 ("IEGC 2010") and other applicable order."

- 4.5. During the period when solar plant is not generating power, for in house requirement for lighting and air conditioning load power is drawn from the 220 KV network of RVPN to which the Solar Plant is connected.
- 4.6. Earlier the Petitioner had filed a petition bearing Petition No. RERC-1125/17 before the Commission against the Respondents, inter-alia, seeking to declare that no reactive energy charges are payable by the Petitioner for supplying reactive energy to the grid and quash or set aside the demand raised by the Respondents and to direct the Respondent JdVVNL to measure maximum demand at Petitioner's switchyard end of 220 KV dedicated transmission line to calculate maximum demand charges.
- 4.7. In respect of the abovementioned reliefs sought in said petition, Commission in its order dated 01.11.2017, has decided that Petitioner is liable to pay reactive energy charges only on the energy drawn from the grid not on the energy injected and directed Respondent Jodhpur Discom to take MDI recorded in the meters installed at ex-bus at generating end and not at GSS end.

- 4.8. After the Commission's order dated 01.11.2017 Respondent Discom raised bills dated 30.11.2018, 21.12.2018, 27.2.2019, 29.3.2019, 26.8.2019, 10.10.2019, 14.11.2019, 26.11.2019, 11.12.2019, 16.01.2020, 13.02.2020, 27.05.2020, 06.07.2020 and 14.08.2020 inter-alia, demanding reactive charges, contrary to the Commission's order dated 01.11.2017 and continued demanding reactive charges by wrongly applying the provisions of clause 22 of the RERC (Terms and Conditions for Open Access) Regulations 2016, even after its applicability to the Petitioner has been set aside by the Commission in its order dated 01.11.2017.
- 4.9. The Petitioner wrote letters dated 11.11.2019, 02.12.2019, 06.02.2020, 16.03.2020 and 25.06.2020 and 10.08.2020, protesting the demand for reactive energy charges claimed by Respondent Discom because as per Commission's said order Petitioner is liable to pay reactive energy charges only on the reactive energy drawn from the Grid and not on the reactive energy injected. The Petitioner is not drawing any reactive power from the Grid, in fact supplying reactive power to the Grid round the clock due to the effect of line capacitance of 220 KV transmission line connecting the Petitioner's plant with 220 KV DECHU Grid Sub Station (GSS) of RVPN. Joint meter reading reports issued monthly since commissioning of the plant also include data of reactive energy drawn by the Petitioner on the basis of which revised demand for reactive energy charges are to be claimed as decided by Commission in its order dated 01.11.2017
- 4.10. Further in the said letter dated 11.11.2019 the Petitioner also made submissions protesting against the claim for maximum demand charges which was required to be based on the average maximum demand recorded after installation of new meters at the Petitioner's end as per Commission's directions in order dated 01.11.2017.

4.11. It is submitted that Petitioner is connected with Dechu substation of RVPN at 220 KV voltage level through approx 31 Kms dedicated 220 KV transmission line. Due to inherent nature of the line charging capacitance of above mentioned dedicated transmission line, power factor recorded at Dechu end switchyard is very poor (0.02 to 0.06) resulting into measurement of high maximum demand (7-8 MVA) at Dechu GSS end ABT meters used for Energy accounting as against actual maximum demand which is less than 0.5 MVA. Hence the high Maximum Demand recorded at 220 KV Dechu GSS end energy meters was fictitious.

4.12. In compliance of the said Commission's order new energy meters were installed at Petitioner's end on 21.09.2018 which were duly inspected and sealed by the Respondent Discom. After that Discom started raising invoices for MD charges from November 2018 on the basis of MD recorded by the new energy meters installed at Petitioner's end, the average MD recorded by new energy meters installed at Petitioner's end is 490 KVA (Average MD for the period from Nov 2018 to May 2020).

4.13. However, the MD charges claimed by Respondent Discom prior to installation of energy meters at Petitioner's end were based on fictitious high MD of (7-8 MVA) recorded at 220 KV Dechu GSS end energy meters. Hence, to comply with Commission's directions, Respondent Discom was requested to recalculate and issue the invoices for revised MD charges from April 2012 onwards till the date of installation of new energy meters at ex-bus generating end i.e. till 21.09.2018, based on the average MD recorded after installation of new meters at Petitioner's end.

4.14. However, despite the protests raised by the Petitioner based on the decisions rendered by this Commission in its aforesaid order dated 01.11.2017, the Respondent Discom wrote letters as well as raised bills claiming reactive energy charges and MDI charges in a manner

contravening the directions of Commission contained in its aforesaid order. Therefore the impugned bills claiming reactive energy charges are liable to be set aside.

4.15. It is submitted that the Petitioner has also filed an appeal No.186 of 2018 before the Hon'ble APTEL raising the issue of levy of Unscheduled Interchange (UI) charges only to the extent its prayer was not allowed by this Commission's orders dated 01.11.2017 and 27.02.2018. However, the issues of Reactive Energy charges and Maximum Demand charges decided by this Commission in petition no. 1125 /2017 are not challenged before APTEL by the Petitioner or the Respondents and hence the order of this Commission to that extent is final.

4.16. It is further submitted that the Respondent is raising demand towards reactive energy charges as per Regulation 22 of RERC (Terms and Conditions of Open Access) 2016.

"22. Reactive Energy Charges

(1) Open access consumer shall pay/ receive for the reactive energy charges as follows:

- Open access consumer pays for VAR drawal when voltage at the metering point is below 97%*
 - Open access consumer gets paid for VAR return when voltage is below 97%*
 - Open access consumer gets paid for VAR drawal when voltage is above 103%*
 - Open access consumer pays for VAR return when voltage is above 103%*
- (2) Rate of VAR charges shall be as specified by CERC from time to time.*

4.17. As per above said Regulation, Respondent Discom demanded reactive energy drawl charges when voltage at metering point is below 97% and reactive energy supplied when voltage at metering point is above 103%, but Respondent did not pay for the VAR return to the grid when the voltage is below 97%. Respondent Discom did not apply above said Regulations in totality.

4.18. Further it is submitted that the provisions of the Civil Procedure Code (CPC) have no applicability to proceedings before this Commission. Without prejudice to the aforesaid it is denied that the claims of the Petitioner in regard to refund of MDI charges is either time barred or hit in any manner by the provisions of Order 2 Rule 2 of the CPC. Hon'ble APTEL in appeal no. 51/2014 (M/s Salasar Steel & Power Ltd v. Chhatisgarh State Load Despatch Centre and Anr) held that the Electricity Act by itself is a complete Code under which the disputes are resolved between the parties. Even though there are some provisions in the Electricity Act by which Civil Court powers have been conferred on the State Commission to deal with some aspects under some sections of the Electricity Act, it is not mandatory for the State Commission to follow all the procedures contained in various provisions of the CPC. Therefore the procedure contemplated in the CPC is not binding on the State Commission while exercising powers under the Electricity Act.

4.19. It is submitted that under the garb of limitation, the Respondent Discom cannot be permitted to unjustly enrich itself by illegally recovering maximum demand charges from the Petitioner without any basis.

4.20. For retrospective application of order the Salmond principles have widely been accepted by the courts. In case of Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Limited (2008) 14 SCC 171) the Supreme Court held that:

“35. In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a “new rule” but to maintain and expound the “old one”. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the

court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

36. *Salmond in his well known work states:*

"[T]he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicatae or accounts that have been settled in the meantime."

37. *It is no doubt true that after a historic decision in Golak Nath v. State of Punjab 1967 2 SCR 762 this Court has accepted the doctrine of "prospective overruling". It is based on the philosophy:*

"The past cannot always be erased by a new judicial declaration."

It may, however, be stated that this is an exception to the general rule of the doctrine of precedent.

38. *Rectification of an order stems from the fundamental principle that justice is above all. It is exercised to remove the error and to disturb the finality."*

4.21. An order based upon an interpretation or application of law which is ultimately found to be wrong in the light of judicial pronouncements rendered subsequently, discloses a mistake apparent from the record. When the court decides a matter, it does not make the law in any sense but all it does is, that it interprets the law and states what the law has always been and must be understood to have been. Where an order is made by an authority, on the basis of a particular decision, the reversal of

such decision in further proceedings will justify a rectification of the order based on that decision.

4.22. The Petitioner is aggrieved by the action of the Respondent Discom to claim Reactive Energy charges and to measure the maximum demand of the Petitioner in a manner contrary to the Regulations and Commission's order dated 01.11.2017. The Respondent being in a dominant position, the Petitioner was compelled to pay the bills under threat of Regulation and the Petitioner has already paid approximately Rs 8.01 Crore towards maximum demand charges and Rs. 0.89 Crore towards reactive energy charges for the bills from April 2012 to June 2020.

4.23. In view of above submissions, Petitioners prayed that-

- (a) Quash and set aside the letters and bills by Respondent Discom insofar as it claims reactive energy charges.
- (b) Direct Respondent Discom to recalculate the amounts raised in the impugned bills for revised MD charges from April 2012 onwards till the time of installation of new energy meters at the Petitioner's end based on the average MD recorded after installation of new meters at the Petitioner's end.
- (c) Direct Respondent Discom to refund the excess amount collected from the Petitioner on account of reactive energy charges and maximum demand charges along with its carrying cost as may be deemed appropriate.

5. Respondent Jodhpur Discom in its reply submitted that:

5.1. Present petition has been filed by the Petitioner praying to quash and set aside the impugned bills and letters issued by the Respondent Discom for reactive charges. It is submitted that the this prayer is not maintainable as already in earlier petition no. 1125/2017 this Commission has decided that the reactive charges are payable on energy drawn and the claim of

charges of JdVVNL of reactive charges is only on drawl of energy therefore as already the issue has been decided and now is barred by Res-judicta and the petition is liable to be rejected.

5.2. Further Petitioner prayed to recalculate the MD charges from April 2012 onwards till the time of installation of new energy meters at the Petitioner's end and to calculate it on average basis after installation of meter at Petitioner's end. In this regards it is submitted that this prayer is time barred and does not fall within the limitation period and therefore petition deserves to be rejected. The Petitioner had filed an appeal No. 186 of 2018 before the Hon'ble APTEL challenging the validity of the levy of UI charges, levy of incorrect MDI, levy of incorrect reactive charges said appeal is pending for decision. In the said appeal, the Petitioner could have claimed refund of MDI charges but was not claimed and even otherwise the Commission had directed to levy MDI charges on the basis of meter to be installed at the Petitioner's end. The meter was installed at the Petitioner's end on 21.09.2018 and thereafter the MDI is taken on that basis. There was no order to refund as being claimed in the present petition and therefore in view of provisions of order 2 Rule 2 CPC which is as under:-.

"2. Suit to include the whole claim. –

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim. - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs. - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation. - For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

The Petitioner is not entitled to claim the relief which was available to the Petitioner at the time of filing the earlier petition and therefore on sole this count, the present petition seeking recalculation of MDI since 2012 is liable to be rejected.

- 5.3. The prayer of the Petitioner to refund the excess amount collected from the Petitioner on account of Reactive charges and MDI with carrying cost is not maintainable for the reasons mentioned above and the petition is liable to be rejected.
- 5.4. It is therefore humbly prayed that reply to the petition may kindly be taken on record and petition filed by the Petitioner being time barred as well as hit by the provisions of Order 2 Rule 2 CPC may kindly be rejected.
6. SLDC in its reply has submitted that:
 - 6.1. Present petition has been filed by the Petitioner for compliance of the order dated 01.11.2017 passed by the Commission in the Petition No. RERC-1125/2017. As in the Petition No. RERC -1125/ 2017, in the present petition also no relief has been sought by the Petitioner from SLDC nor any direction was passed by the Commission against the SLDC in order dated 01.11.2017. Petitioner has sought relief from only Jodhpur Discom.
 - 6.2. Further it is submitted that M/s DSPPL entered into an agreement for Long Term Open Access with the answering Respondent on 30.03.2012. As per the said agreement the answering Respondent levy charges as per Clause 2 of the agreement, which are transmission charges (levied by RVPN) and scheduling and system operation charges (levied by SLDC). Apart from

these no other charges are levied by the answering Respondent and there is no dispute regarding the said charges in the present petition.

- 6.3. It is, therefore, most humbly prayed that this reply may be taken on record and the petition may be dismissed qua the answering Respondent and the name of the answering Respondent may be deleted from the array of Respondents, with costs throughout.

Commission's view

7. Commission has considered the submissions, reply, rejoinder and oral arguments made on behalf of the Petitioner and Respondents.
8. Commission observes that there are two main prayers of the Petitioner. First is to quash and set aside the bills raised by Discom claiming reactive energy charges. Since as per commission's directions in order dated 01.11.2017 in petition no 1125/2017 Petitioner is liable to pay reactive energy charges only on the energy drawn from the grid not on the energy injected. Petitioner is not drawing any reactive power from the Grid, in fact supplying reactive power to the Grid round the clock due to the effect of line capacitance of 220 KV transmission line connecting the Petitioner's plant with 220 KV Dechu GSS of RVPN.
9. Second one is that maximum demand charges should be recalculated from April 2012 to September, 2018, based on the average maximum demand recorded by new meters installed at Generating end as per commission's directions in order dated 01.11.2017. As the high Maximum Demand recorded at 220 KV Dechu GSS end was fictitious because the average MD recorded by the new meters installed at Petitioner's end is 490 KVA (Average MD for the period from Nov 2018 to May 2020).

10. Per contra Respondent contended that reactive energy charges are levied only on drawl of energy as per Commission's directions, therefore, the petition is liable to be rejected on this count.
11. Further Petitioner's demand to recalculate the MD charges from April 2012 onwards till the time of installation of new meters at the Petitioner's end is time barred and does not fall within the limitation period. In view of provisions of order 2 Rule 2 of CPC, Petitioner is not entitled to claim the relief which was available to the Petitioner at the time of filing the earlier petition. In the earlier petition, the Petitioner could have claimed refund of MDI charges. Otherwise also the Commission had directed to levy MDI charges on the basis of meter to be installed at the Petitioner's end. The meter was installed at the Petitioner's end on 21.09.2018 and thereafter the MDI is taken on that basis. There was no order to refund as being claimed in the present petition.
12. Commission looked into the provisions of order 2 Rule 2 of CPC which is as under:-.

"2. Suit to include the whole claim. –

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim. - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs. - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation. - For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

13. Commission observes that as per provisions of the Civil Procedure Code, a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted. This is general law and in proceedings before Commission should have been followed.

14. In present case earlier Petitioner has filed petition no. 1125/17 containing prayers as under:-

“(a) Declare that no UI charges/charges for deviation are payable/receivable by the Petitioner’s solar plant for under/over injection;

(b) Set aside the demands raised by JdVVNL towards provisional UI charges and the notice of termination of the long-term access vide letter dated 21.3.2017 of the RVPN;

(c) In the alternative and without prejudice to prayer clauses (a) and (b) above, determine the rate for under injection/over injection by the Petitioner’s solar plant;

(d) Declare that no reactive energy charges are payable by the Petitioner for supplying reactive energy to the grid and quash or set aside the demand raised by the Respondents;

(e) Direct the JdVVNL to measure maximum demand at Petitioner’s switchyard end of 220 KV dedicated transmission line to calculate maximum demand charges.” (emphasis added)

15. Commission disposed of the said petition by order dated 01.11.2017 stating as under:

“56. For the foregoing discussion this petition is partly allowed. (i) It is held that Petitioner is liable to pay/receive UI charges. Further, Petitioner is directed to pay remaining UI/mismatch charges after accounting for what has already been paid by it as per the interim order within a period

of one month from the date of this order. (ii) It is held that Petitioner is liable to pay reactive energy charges only on the energy drawn from the grid not on the energy injected. (iii) Respondent Jodhpur Discom is directed to take MDI recorded in the meters installed at ex-bus at generating end and not at GSS end." (emphasis added)

16. From the above, it is observed that the Petitioner in its earlier prayer has requested to direct Respondent to record maximum demand at Petitioner's end and Commission directed for the same. Respondent Discom thereafter levied MDI charges on the basis of MDI recorded in the meter installed at ex-bus at generating end. Now the Petitioner has come with demand to recalculate the MDI charges from April 2012 till the date of installation of energy meters at ex-bus generating end, based on the average maximum demand recorded by new meters installed.
17. In the Commission's view the Petitioner is not entitled to claim the relief which was available to the Petitioner at the time of filing the earlier petition no. 1125/2017, therefore, the prayers of the Petitioner cannot be granted.
18. Further, as far as reactive energy charges are concerned, Petitioner is liable to pay reactive energy charges only on the energy drawn from the grid not on the energy injected in the grid. Respondent Discom has submitted that it has charged the reactive energy charges only on energy drawal, Discom is directed to refund the reactive energy charges recovered from Petitioner, if any, on the energy injected into the grid.
19. This petition is disposed of accordingly.

(Prithvi Raj)
Member

(S. C. Dinkar)
Member

(Dr. B.N. Sharma)
Chairman