

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION  
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

**Case No: HERC / Petition No. 18 of 2022**

**Date of Hearing** : **22.12.2022**  
**Date of Order** : **04.01.2023**

**In the Matters of:**

Application seeking the refund along with interest against the two bank guarantee of Rs 2 Lakh dated 09.01.2019 submitted as an advance security for SLDC and other due payments also along with refund along with interest of application money of Rs 4.72 Lakh deposited to avail interstate open access under captive generation from 1.65 M.W wind turbine generator Commissioned in Maharashtra on 19.11.2018 due to the abnormal delay in issuance NOC applied on 19.11.2018 along with due compensation on account of opportunity loss of low cost captive wind power from 1650 KW WTG.

**Petitioner**

M/s. Kamal Encon Industries Ltd.

**Respondents**

1. Haryana Vidyut Prasaran Nigam Ltd (HVPNL), Panchkula
2. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula
3. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar

**Present**

**On behalf of the Petitioner**

1. Mr. S.K. Gupta, Advocate

**On behalf of the Respondents**

1. Ms. Aerika Singh, Advocate for HVPNL
2. Ms. Sonia Madan, Advocate for UHBVNL

**Quorum**

**Shri R.K. Pachnanda**  
**Shri Naresh Sardana**

**Chairman**  
**Member**

**ORDER**

**Brief Background of the case**

1. The present petition has been filed by M/s. Kamal Encon Industries Ltd. (M/s. KEIL) seeking refund of the application money (Rs. 4.72 lacs) and bank guarantee (Rs 4 Lac), totaling to Rs. 8.72 lac, by the way of setting aside the impugned letter of HVPNL dated 19.01.2022 declining the refund/return of bank guarantee (BG) etc. and compensation for the opportunity cost of cheaper power from captive wind power of 1650 KW as the power was sold @ Rs. 2.52/unit as against the purchase from the Discoms (UBHVNL and DHBVNL) @ Rs. Rs. 7.50/unit.
2. The petitioner has submitted as under: -

- 2.1 That the petitioner has commissioned two wind power projects in the years 2005-2006 with installed active capacity of 1250 KW in Tamil Nadu and 1650 KW in Maharashtra State totaling to 2.9 M.W.
- 2.2 That after the expiry of long-term PPA having its validity from 2006 to 2019 with Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL), the petitioner decided to use power generated from 1650 KW Wind Turbine Generator under captive consumption at its two locations at Faridabad and Yamuna Nagar.
- 2.3 That, applications for the required No Objection Certificates (NOC) from CTU -PGCIL, STU-HVNL- withdrawal point and STU-MSETCL (Maharashtra State Electricity Transmission Co. Ltd.) injecting point for availing open access was moved on 19.11.2018. HVNL, on 19.12.2018, vide its letter dated 19.12.2018, directed the petitioner to pay application fee and BG. All the requisite prescribed fees were paid by the applicant along with due process of installation of SEM/ABT meters etc. costing more than Rs. 25 lacs.
- 2.4 That the ABT Meter installation report metering in Faridabad location under DHBVNL, was sent vide email dated 19.07.2019, as per the HVNL letter dated 17.05.2019.
- 2.5 That due to the abnormal /unwarranted delay in the issuance of NOC, the long-term open access (LTOA) application was withdrawn with request to return BGs and application fee etc. Accordingly, HVNL, vide its letter dated 17.09.2021, sought consent/NOC from both the DISCOMs in respect of withdrawal of LTOA application.
- 2.6 That HVNL (respondent no. 1) vide its letter dated 19.01.2022, declined the refund and return of BGs etc.
- 2.7 That all this resulted in unavoidable financial losses on account of consumption of high cost of power from both the respondents i.e. DHBVNL and UHBVNL. The power from captive wind power of 1650 K.W. was sold @ Rs. 2.52 /unit as against the use of higher rate power from UHBVNL and DHBVNL i.e. @ Rs.7.50 /unit. All this resulted in gross revenue loss of Rs. 5 /-unit and net Rs. 3/ unit during the three calendar years i.e. 2019,2020 and 2021. Wind Turbine Generator (WTG) of 1650 KW capacity, generates 110 lac units resulting in the net opportunity loss of Rs. 330 Lac.
- 2.8 That the compensation may be granted towards the cost of purchase of two SEM/ABT meter and their other ancillary/allied installation expenses.
- 2.9 That clause 6.6 of the guidelines/procedure for grant of short term open access, issued by HVNL, provides as under:-

***“6.6 Procedure for Open Access 1) Involving inter-State transmission system:***

*Notwithstanding anything contained in clauses (2) to (3) herein below, procedure for inter-State Open Access shall be as per Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, or its statutory reenactments, as amended from time to time. HVPNL shall convey its consent or otherwise as per CERC (Open Access in inter-State Transmission) Regulations, 2008, or its statutory re-enactments, as amended from time to time. Provided that in respect of a consumer connected to a distribution system seeking inter-State open access, the HVPNL, before giving its consent to the RLDC/ power exchange as required under the CERC regulations, shall obtain the consent of the distribution licensee concerned.*

*The said distribution licensee shall convey its consent or otherwise within three (3) working days of receipt of request of the applicant through HVPNL.”*

2.10 The following prayers have been made:-

- a) Relief of refund of amount paid in two applications Rs.4.72 lac and further amount of two bank guarantees for Rs.4 Lacs; totaling to Rs.8.72 lac, by the way of setting aside of the impugned letter issued by HPVNL dated 19.01.2022.
- b) Compensation be granted for net opportunity loss of Rs. 330 Lac.

3. HVPNL i.e. the respondent no. 1 in the present matter, has filed its reply on an affidavit dated 25.07.2022. HVPNL has submitted as under:-

3.1 That the petitioner vide its letters/emails dated 27.08.2021, 06.09.2021 and 13.09.2021 had on its own withdrew its application and had requested for disconnection of LTOA.

3.2 That because of the withdrawal of the applications by the petitioner, the answering respondent had forfeited the amount towards the application fee and encashed the BGs submitted by the petitioner in terms of the provisions contained in the Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 (hereinafter referred to as 'HERC OA Regulations, 2012', as amended from time to time.) The relevant provisions of the HERC Regulations, 2012 are reproduced below for ready reference:

**“6. Procedure for grant of connectivity. –**

*(2) The application for grant of connectivity to the intra-State transmission system for the purpose of open access shall be accompanied by a **non-refundable fee** of ₹2,00,000/-. The application for grant of connectivity to the distribution system for the*

*purpose of open access shall be accompanied by a non-refundable fee of ₹1,00,000/- The fee shall be in the shape of demand draft drawn in favour of the person as mentioned in the approved detailed procedure.”*

...

**13. Procedure for grant of long term open access involving intra-State transmission system and distribution system. –**

*(3) The application shall be accompanied by a bank guarantee of ₹2,00,000/- besides the specified application fee. The bank guarantee shall be in favour of the nodal agency on the format as per detailed procedure.*

*(4) The bank guarantee shall be kept valid and subsisting till the execution of the long-term open access agreement, when augmentation of transmission system or distribution system is required, and till start of long-term open access, when augmentation of transmission system or distribution system is not required.*

***(5) The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term open access rights are relinquished prior to the start of such rights when augmentation of transmission system or distribution system is not required.”***

*(Emphasis Supplied)*

3.3 That on 11.01.2019, the petitioner submitted the application in the required format. DHBVN (with respect to the point of drawl in Faridabad) vide letter dated 11.06.2019 intimated HVPNL that the load of the petitioner was 470 kVA however, as per Regulation 5 of the HERC Regulations, 2012, a consumer having contract demand of less than 0.5 MVA shall not be entitled for seeking open access. The relevant regulations are reproduced below:-

**“Regulation 8. Eligibility and other conditions for open access.**

*(1) Subject to the provisions of these regulations, any licensee, generating company, captive generating plant or a person other than consumer of the distribution licensee, connected at 11 KV or above and who has a capacity/maximum demand of 1 MW and above, shall be entitled for availing open access to the intra-State transmission system of STU and/or of any transmission licensee other than STU and/or distribution system of the distribution licensee on payment of various charges as per chapter VI of these regulations.*

*Provided that in case of generating plants based on non-conventional / renewable energy sources there will be no capacity restriction for availing open access for wheeling of power.*

(2) Any consumer of a distribution licensee having a contract demand of 0.5 MVA or above and connected to the distribution system of the licensee or to the transmission system of STU or of a transmission licensee other than STU at 11 kV or above, shall be entitled for seeking open access provided he is connected through an independent feeder emanating from a grid sub-station. In case of more than one consumer on such independent feeder, the conditions as in (3) below shall apply.”

- 3.4 That the petitioner vide email dated 26.08.2019, intimated the revised breakup of power to be drawn by the firms at Yamuna Nagar and Faridabad separately as under:-

| Name of the consumer  | Generation Capacity (MW) for each consumer | Demand at consumer end (in MW / MVA) |
|---|--|--------------------------------------|
| M/s Kamal Encon Industries Ltd., E-24/75, Industrial Estate Yamuna Nagar. | 0.90                                       | 0.660 / 0.600                        |
| M/s Kamal Encon Industries Ltd., 917 IMT Faridabad.                       | 0.750                                      | 0.550 / 0.530                        |

The consent of UHBVN was received on 18.11.2019.

- 3.5 That the petitioner was requested to supply the ABT meter test report, after installation of ABT meter at Yamuna Nagar & Faridabad vide letters/emails dated 29.11.2019, 16.12.2019, 27.01.2020, 18.02.2020, 02.03.2020 and 20.03.2020, as required under regulation 6.5 of Haryana Grid Code, 2009 read with clause 8 of the ‘*Procedure for Intra-State Medium Term Open Access and Long-Term Open Access*’. The consent of DHBVNL was also received vide memo dated 22.01.2020.
- 3.6 That the petitioner withdrew the application on 13.09.2021. The petitioner had taken a decision of using solar power system for energy saving and had decided not to avail open access. Meaning thereby, the application has been withdrawn due to a change of decision by the management for switching to solar power.
- 3.7 That on the date of submission of the request for withdrawal of application, the status of ABT meter was as follows:
- For Yamuna Nagar: The ABT Meter was yet to be installed.
  - For Faridabad: ABT Meter was installed by the Petitioner on 15.07.2019, however, till date the ABT meter data has not been supplied to the answering respondent by the petitioner.
- 3.8 That the petitioner has not yet been granted NOC by the Maharashtra State Electricity Transmission Co. Ltd. (MSETCL) and Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL). Maharashtra Electricity Regulatory Commission, vide order dated 02.08.2020 (73 of 2020), has dismissed the petition filed by the petitioner seeking

grant of proper NOC from MSETCL and MSEDCL (injection point). The appeal against the same is pending before the Hon'ble APTEL.

- 3.9 That an appeal bearing DFR No. 356 of 2020/ APL No. 31 of 2022, filed by Kaman Encon against MSETCL and MSEDCL is also pending adjudication before the Hon'ble APTEL. Therefore, even if the answering respondent would have granted the consent at an earlier stage and the ABT meters would have been installed in due time, the petitioner could not have received the electricity from its generating plant in view of the pendency of the dispute between the petitioner and MSETCL and MSEDCL. Therefore, no loss can be stated to have been caused to the petitioner.
4. The petitioner has filed its rejoinder dated 30.07.2022 to the reply of HVPNL i.e. the respondent no. 1 in the present matter. The petitioner has primarily submitted that preference of an appeal before the Hon'ble APTEL is not relevant in the matter. Further, Regulation 8 (6) of HERC OA Regulations is applicable in the instant matter instead of Regulation 8 (5). Thus, entitlement for open access, for captive power producer, was on the procurement of power of 250 KW, irrespective of contract/maximum demand.
5. UHBVNL i.e. the respondent no. 2 in the present matter, has filed its reply on an affidavit dated 21.09.2022. UHBVNL has submitted as under:-
  - 5.1 That NOC could not have been granted without the compliance w.r.t. ABT meter at the end of the petitioner, as such, the allegations with respect to delay are without any unsustainable, unsubstantiated and liable to be dismissed. The requisite documents were submitted by the petitioner in November 2019 and consent was accorded by UHBVNL on 18.11.2019 itself.
  - 5.2 That as per Section 86(1)(f) of the Electricity Act 2003, a State Electricity Regulatory Commission is empowered to adjudicate upon disputes between licensees and generating companies, and inter-se between the licensees and generating companies. As per the provisions of Section 86(1), sub clauses (a) to (e) and (g) to (k) relate to regulatory and administrative powers of the State Electricity Regulatory Commission. It is only the sub clause (f) which deals with the adjudicatory powers of a regulatory commission. The alleged dispute raised by the petitioner regarding wrongful imposition of charges is apparently a "dispute between a consumer and a licensee" which falls under the jurisdiction of the Consumer Grievance Redressal Forum (CGRF) created under Section 42 (5) of the Electricity Act, 2003. Admittedly, petitioner has no generating plant in the State of Haryana. Further, the petitioner has not specified any

provisions of the Electricity Act, 2003 under which the present petition has been filed. Therefore, the present petition is untenable as there exists an alternative remedy for the petitioner. UHBVNL has further submitted that in the alternative, for any dispute concerning inter-state supply of electricity, the appropriate commission for adjudication is the Central Electricity Regulatory Commission.

- 5.3 That the issue with respect to the grant of NOC from the Maharashtra State Electricity Transmission Co. Ltd. (MSETCL) and Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) is admittedly pending adjudication before the Hon'ble APTEL. The Hon'ble Maharashtra Electricity Regulatory Commission vide order dated 02.08.2020 passed in Case No. 73 of 2020 has dismissed the petition filed by the petitioner seeking grant of proper NOC from MSETCL and MSEDCL (injection point) on the ground that unless requirement of separate feeder is complied, scheduling cannot happen as per the Regulations therefore, the LTOA, even if granted, cannot be operationalized. Therefore, even if the consent was granted at an earlier stage, the petitioner could not have received the electricity from its generating plant. Moreover, the reason for withdrawal of the application seeking NOC for Long Term Open Access was because the petitioner had taken a decision of using Solar power system for energy saving and had decided not to avail open access. The application was withdrawn due to a change of decision by the management for switching to Solar Power. Therefore, the claim made in the instant petition for opportunity loss is clearly an afterthought and a notional loss which has no value in the eye of law.

#### **Proceedings in the Case**

6. The case was heard on 22.12.2022, as scheduled, in the court room of the Commission.
7. Shri S.K. Gupta, Ms. Aerika Singh and Smt. Sonia Madan, the learned counsels for the M/s. KEIL, HVPNL and UHBVNL, respectively, mainly reiterated the contents of their respective written submissions, which for the sake of brevity have not been reproduced. Additionally, Shri Gupta, pointed out that the respondents have wrongly processed the application under HERC OA Regulations, 2012, as amended from time to time, whereas it was governed by the provisions of the CERC Regulations for grant of Intra-State connectivity.

#### **Commission's Analysis and Order**

8. The Commission has heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties. The Commission has not

gone into the details of delay in the grant of connectivity to the petitioner, since the petitioner has already withdrawn the application for the same and prima-facie the petitioner as well as the respondents seem to be responsible for the delay. Further, the petitioner was otherwise also constrained to draw wind power in Haryana due to non-compliance of the conditions precedent for injection of wind power in the State of Maharashtra. The only question remains to be answered is that whether the petitioner is entitled to the refund of amount of Rs. 4.72 lacs paid as application fee and Rs. 4 lacs paid towards bank guarantees; totaling to Rs.8.72 lac.

In order to examine the same, the Commission has carefully examined the following provisions of the Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 (hereinafter referred to as 'HERC OA Regulations, 2012', as amended from time to time.) The relevant provisions of the HERC Regulations, 2012, provides as under:-

***"2. Scope and extent of application. – These regulations shall apply where an application has been made for grant of connectivity for the purpose of open access to the intra-state transmission and or distribution system and or where an application has been made for long term open access, medium term open access or short term open access for use of the intra- State transmission and or distribution system including when such system is used in conjunction with inter-State transmission system.***

*(Emphasis supplied)*

***"6. Procedure for grant of connectivity. - (1) Nodal agency for grant of connectivity shall be the STU and application for grant of connectivity shall be submitted to the nodal agency in the form and manner prescribed in the detailed procedure.***

*Provided that till such time the detailed procedure prepared by the coordination committee is approved by the Commission, the application for grant of connectivity shall be processed by the nodal agency in accordance with the existing procedure.*

*(2) The application for grant of connectivity to the intra-State transmission system for the purpose of open access shall be accompanied by a non-refundable fee of Rs. 2,00,000/-. The application for grant of connectivity to the distribution system for the purpose of open access shall be accompanied by a non-refundable fee of Rs. 1,00,000/-. The fee shall be in the shape of demand draft drawn in favour of the person as mentioned in the approved detailed procedure.*

*(Emphasis supplied)*



**13. Procedure for grant of long term open access involving intra-State transmission system and distribution system.** – (1) *The application for grant of long term open access shall contain details such as name of the entity or entities from whom power is proposed to be procured along with the quantum of power, point of injection into the grid and point of drawl from the grid and such other details as may be laid down by the STU in the detailed procedure:*

*Provided that in cases where there is any material change in location of the applicant or change by more than 10 percent in the quantum of power to be interchanged using the intra-State transmission system or distribution system, a fresh application shall be made, which shall be considered in accordance with the provisions of these regulations.*

*(3) The application shall be accompanied by a bank guarantee of Rs. 2,00,000/- besides the specified application fee. The bank guarantee shall be in favour of the nodal agency on the format as per detailed procedure.*

*(4) The bank guarantee shall be kept valid and subsisting till the execution of the long-term open access agreement, when augmentation of transmission system or distribution system is required, and till start of long-term open access, when augmentation of transmission system or distribution system is not required.*

*(5) The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term open access rights are relinquished prior to the start of such rights when augmentation of transmission system or distribution system is not required.*

*(Emphasis supplied)*

9. The Commission observes that the bare reading of the abovementioned provisions of the HERC OA Regulations, 2012, which is sacrosanct and binding on the Commission, makes it abundantly clear that these regulations are applicable even where an application has been made for long term open access for use of intra- State transmission and/or distribution system in conjunction with inter-State transmission system. Therefore, the averments of the petitioner that the HERC OA Regulations, 2012 are not applicable, falls flat on the factual matrix.
10. Further, the regulations 6 (2) and 13 (5) of the HERC OA Regulations, 2012, reproduced supra expressly provides that application fee as well as the bank guarantees deposited along with the application for grant of long-term open access, are non-refundable. Therefore, the Commission upholds the impugned letter of HVPNL dated 19.01.2022 declining the refund/return of application fee/BGs.

11. In terms of the above order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 04.01.2023.

Date: 04.01.2023  
Place: Panchkula

(Naresh Sardana)  
Member

(R.K. Pachnanda)  
Chairman

HERC