



**ORDER**  
**OF**  
**WEST BENGAL ELECTRICITY REGULATORY COMMISSION**  
**IN THE MATTER OF**  
**CASE NO. B-5/2**

APPLICATION BY GRAPHITE INDIA LIMITED (GIL), SEEKING INTERVENTION OF THE COMMISSION IN THE MATTER OF HIGH RESTRICTIONS ON POWER DRAWAL BY DAMODAR VALLEY CORPORATION (DVC) AND IMPOSITION OF PENAL CHARGES FOR OVER DRAWAL DURING FREQUENT RESTRICTIONS.

**PRESENT:**

**SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON**  
**SRI DURGADAS GOSWAMI, MEMBER**  
**SRI PULAK KUMAR TEWARI, MEMBER**

**DATE: 11.12.2020**

*Certified true Copy*





Applications by Graphite India Limited (GIL) seeking intervention of the Commission in the matter of high restrictions on power drawal by Damodar Valley Corporation (DVC) and imposition of penal charges for over drawal during frequent restrictions.

### FACTS IN BRIEF

- 1.0 Graphite India Limited filed a complaint dated 10<sup>th</sup> December, 2018 alleging unreasonable imposition of load restriction and penal charges by Damodar Valley Corporation (DVC) for drawal of power over the restricted drawal by the consumers during the restriction period.
- 2.0 The complaint of GIL was forwarded to DVC vide letter No. WBERC/B-5/2/3226 dated 19<sup>th</sup> December, 2018 wherein it was alleged that DVC imposed restriction for a period of 219.50 hours, 310 hours and 375 hours during the months of August, September and October 2018 respectively (i.e., about 30% to 52% of a day throughout the month). DVC is alleged to have claimed penal charges of Rs. 210.00 lakh, Rs. 441.00 lakh and Rs. 375.00 lakh for non-compliance of the restriction imposed by DVC on GIL. DVC was directed to justify reasons for imposition of restriction on GIL for such long period during the months of August, September and October, 2018 and furnish the report on load generation balance during the time blocks when restriction of load was imposed to the consumers in the format enclosed therewith for the months of August, September and October, 2018 within 31<sup>st</sup> December, 2018 positively.
- 3.0 Vide letter dated 6<sup>th</sup> February, 2019 DVC sent reply to the Commission's letter no. WBERC/B-5/2/3226 dated 19<sup>th</sup> December, 2018 informing that DVC was compelled to impose load restriction to its retail consumers in Jharkhand and West Bengal for low generation of DVC due to acute coal crisis in the month of August, 2018, September, 2018 and October, 2018 to maintain grid discipline. However, to give relief to the extent possible to the consumers, DVC purchased power from IEX and PXIL platforms even with high price. Un-requisitioned surplus power from CSGS, as available, was also purchased based on real time availability basis to meet up the power demand in valley area. DVC also sent report on day wise load generation balance for the month of August, September and October, 2018, but the same was not as per the format according to which the information was sought for by the







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- Commission. Therefore, DVC was asked vide letter dated 14<sup>th</sup> March, 2019 to send the information as per the format sent through Commission's letter dated 19.12.2018.
- 4.0 In reply to Commission's letter dated 14<sup>th</sup> March, 2019, DVC has submitted details of block wise generation, consumer demand met, deviation and export in MW for the months of August, September and October, 2018.
- 5.0 On perusal of the reports sent by DVC vide their letter 12<sup>th</sup> July, 2019, the Commission finds that the report containing details of block wise generation of power is only a very small part of the report, as was asked from them. In absence of other details, nothing can be made out. In the meantime, another complaint from Damodar Valley Power Consumers Association (DVPCA) was received which is identical in nature. Therefore, a joint hearing of the utility i.e., DVC and the complainants i.e., GIL and DVPCA was felt necessary and accordingly the notice convening the hearing on 11<sup>th</sup> July, 2019 at 14.30 hours at the office of the Commission was issued to DVC, GIL and DVPCA. The hearing was held on 11<sup>th</sup> July, 2019, as scheduled.
- 6.0 In the hearing on 11.07.2019, Sri S. W. Parnerkar, Senior Vice President (Finance), Sri A. K. Dutta, Senior Vice President (Marketing) and Sri T. K. Mitra, Power Consultant, on behalf of GIL, were present with due authorization. Sri Prasun Mukherjee, Advocate, Calcutta High Court, Sri Subodh Kumar Datta, Executive Director (Commercial), Sri Manik Chandra Rakshit, Chief Engineer – I (Commercial), Sri Pratik Biswas, Executive Engineer (Commercial) and Sri Amit Kumar Sil, Deputy Chief Engineer (Commercial) were present on behalf of DVC with due authorization. However, there was no representative on behalf of DVPCA.
- 7.0 Thereafter number of hearings took place between DVC, GIL and DVPCA and interim orders were issued accordingly. However, in the interim order dated 02.12.2019, it was directed that since the complaint of GIL is different in nature than that of DVPCA, the matter will be dealt with separately. Therefore, the final hearing between DVC and GIL only was held on 16<sup>th</sup> December, 2019 at 14.45 hours.





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### SUBMISSIONS OF THE PARTIES DURING THE HEARING

- 7.1 (a) Sri T. K. Mitra, the representative of GIL, submitted, inter-alia, that DVC is not allowing any rebate to GIL for improving power factor by installation of power factor controller / capacitor as per regulation 3.8.5 of West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended (in short, the 'Tariff Regulations, 2011');
- (b) GIL has lost a rebate of Rs. 80.00 lakh on an average for improving power factor above 99%;
- (c) As per the provisions under regulation 4.4 of the Tariff Regulations, DVC punished GIL at a rate three times the energy charge for over drawal of energy during the periods of August, September and October, 2018 which were under restriction;
- (d) DVC was informed several times about the inability of GIL to reduce the temperature of the loaded furnaces by reducing the current because GIL not only suffers production loss but also suffers loss in quality;
- (e) GIL is compelled to strictly adhere to the production schedule and maintain the quality of the product due to stiff international market competition;
- (f) Restriction of current leads to cooling down of furnaces. Once the furnaces are cooled down due to restricted electricity supply, to bring back the furnaces to its earlier temperature the same amount of power will be required to be consumed which constitutes double consumption of electricity by GIL;
- (g) If DVC fails to meet the drawal at any point of time, they should import power from the grid and charge its average cost of import during the month. In fact, GIL suffers for frequent restrictions by DVC for its failure to meet the contractual obligation, but unfortunately, DVC is being rewarded for its failure. Three times energy charge for any drawal over the restricted load means an average of Rs.







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13.00 per kWh whereas the average cost of import by DVC is only Rs. 5.00 per kWh. If this is allowed, DVC may earn much more by restricting supply to a consumer instead of meeting the demand from its own source;

- (h) For the month of August, 2018, GIL had to pay penal charge of Rs. 210.00 lakh to DVC for over drawal during the month when restrictions were imposed for 219.50 hours. Similarly, for the months of September and October, 2018 GIL had to pay penal charge of Rs. 441.00 lakh and Rs. 375.00 lakh respectively for imposition of restriction for 310.00 hours and 394.50 hours during the respective month;
- (i) For the DVC consumers in Jharkhand State there is no new penal charge for over drawal during restrictions;
- (j) Moreover, while on the one hand DVC is imposing restriction to its consumers in the State of West Bengal due to shortage in supply of power in the grid, on the other hand they are exporting power, which is very much contradictory;
- (k) As per the direction given by the Commission in its last order dated 22.07.2019, GIL tried to come to a mutually agreed solutions with DVC, but failed to do so.
- (l) GIL, in their rejoinder to the written statement made by DVC vide their letter dated 29.08.2019, has submitted that as per the clause 4 of the power purchase agreement dated 20.11.2012 entered into by and between DVC and GIL, DVC can impose restrictions under the conditions of force majeure which includes, strike, lock-out, fire, accident, cyclone or any other act of God beyond the control of DVC. DVC has been asked several times through letters to confirm force majeure condition in DVC for such frequent restrictions imposed by DVC on GIL in the year 2018 – 2019. But, DVC did not reply.





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- (m) DVC is duty bound to ensure supply of uninterrupted power to its consumers who have agreements with DVC even by purchasing power in the event of shortage of power.
- (n) Although DVC submitted that power generation fell substantially in all the regional grids due to failure in supply of sufficient coal by the Coal India Limited but they did not submit any document in support of their effort to streamline the situation.
- (o) If coal supply affected all the regional grids then how could any system supplied the extra drawal of DVC through the grid from its running units or hot spinning reserves after meeting its own consumers' demand. After all no power system in any grid would put restrictions on its own consumers to meet the consumers' demand on any other system.
- (p) From the statement showing the coal receipts for the months of August, September and October for four successive years starting with 2015 – 2016, it appears that for August it was close to normal. Only in September and October 2018 – 2019 there was a drop in coal receipt, but the opening stock in the power plants are not mentioned. Therefore, it is difficult to access the depth of the crisis in those months. It was also not known whether DVC has tried to purchase auction coal, if available, when there was a shortfall in coal stock.
- (q) DVC has also given a statement showing region wise shortfall in power generation. The picture is not clear if percentage drop is not shown. It is seen that the drop in generation is by far the largest in northern grid. It requires to be assessed if the drop is due to drop in demand as the demand in northern grid largely vary with lift irrigation load and also extra load in harvesting season. Also, out of 774 MU drop in generation in the eastern grid, it is not known how much it was in DVC system and how much was in other systems.
- (r) It is always expected that DVC will do equal justice to all, unless otherwise compelled and keep up its reputation as a Class-I Public Sector Undertaking. It







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is submitted that GIL never accused DVC of any partiality for the same of any commercial interest such as extra revenue earnings.

- (s) GIL has consistently stressed upon the issue of earning by importing power from the grid and supplying to its consumers. No logic and technicality can justify an energy charge of Rs. 13/14 per kWh to a consumer for drawing power within its contractual demand against a normal charge of Rs. 4.50 per kWh. The amount of energy received and / or exported to the grid by each participating power system may be calculated by EREB and the price for imports / exports may be fixed at the highest fuel cost per kWh amongst the participants, so that the system with the lowest fuel cost will gain most and the higher fuel cost system will also not lose. GIL restricted their contention to the excessive charge being imposed by DVC on GIL. It should always be seen that a consumer is not penalized for importing power by any agency to supply to the consumer up to its contractual load.
- (t) As per the direction of the Commission, GIL once again sat with DVC to amicably settle the issue of power tariff, but DVC expressed their inability to accede to the request of GIL.
- (u) GIL reiterated that a consumer is punished for the failure of the licensee to meet its contractual obligation for months and meet its supply by importing from the surplus grid conditions. The operation of taking power from the surplus grid condition and supplying to consumers is in practice for decades since the concept and formation of regional grid and then national grid. At no time tariff to any consumer has come into consideration. The regulation no. 4.4 of the Tariff Regulations, 2011 is not framed to punish a consumer for drawal within contract demand when a licensee has arranged such supply by importing power from the surplus grid condition.
- (v) GIL submitted that as per the bill for the month of June, 2019 when there was no restriction imposed by DVC, the overall rate of energy excluding the electricity





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duty but including the demand charge comes to Rs. 4.34 per kWh. After deducting the demand charge of Rs. 0.619 per kWh from the overall energy rate of Rs. 4.34 per kWh, the actual rate of energy comes to Rs. 3.721 per kWh. GIL has submitted that they are ready to even pay Rs. 4.664 per kWh (considering the import of energy at Rs. 4.24 per kWh plus 10%) instead of Rs. 3.721 per kWh for the excess energy drawn under restriction but within contract demand.

- (w) GIL has suggested to add the following paragraph to the existing regulation 4.4 to avoid disputes between the suppliers and the consumers.

"In case of shortfall of a licensee is made up by drawing power from surplus situation condition of the grid, the penal charge for drawal of a consumer over the restriction should be average cost of such import of power plus 10% as service charge."

- (x) In view of above, GIL prayed that –

- i) DVC should be barred from applying regulation 4.4 of the Tariff Regulations since DVC did not take steps as per regulation 3.8.5 of the Tariff Regulations which specifies rebate for improvement of power factor. DVC may be directed to refund the amount realized under regulation 4.4 of the Tariff Regulations; and
- ii) DVC should not get more than its average cost of import from the grid plus 10% towards engineering charges.

7.2 The representative of DVC stated that -

- (a) The amount of power they export is tied with PPA and for supplying power to his existing consumers, they had to draw extra power from the grid by paying UI charges and that is why such restrictions were imposed.







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- (b) DVC supplies power to its consumers based on the availability of the power as per the agreement entered into by and between the consumers and DVC.
- (c) Due to coal crisis during the period, DVC faced a huge demand supply gap. Thus, to ensure grid security, DVC imposed restrictions to its consumers.
- (d) During the restriction period, DVC charged the 'contract demand charge' payable by the consumer up to restricted demand, leading to huge loss to DVC.
- (e) During the period of shortage of power, DVC also restricted supply of power to the consumers under long term PPA and also restricted their export of the power in the same ratio.
- (f) All the actions taken by DVC are under exceptional circumstances, i.e., during the period of non-availability of coal resulting into lower production of electricity to ensure larger public interest to avoid collapse of national grid and to adhere grid discipline. The steps taken by DVC are within the frame work of the regulation formulated by this Commission in order to deal with the aforesaid eventualities.
- (g) DVC do not agree to the formula as proposed by GIL in regard to energy charge for the over drawal during the period of restriction imposed on them by DVC.
- (h) DVC is ready to abide by the rate of energy charge as determined by the Commission for over drawal of energy by the consumers during the period of restriction imposed on them by DVC.

#### OBSERVATIONS OF THE COMMISSION

- a) The Commission has noted that the application submitted by GIL for intervention of the Commission against imposition of undue high restrictions ranging from 30% to 52% during the periods from August, 2018 to October, 2018 by DVC and exorbitant penal charges imposed by DVC on GIL for over drawal by GIL during the restricted period has merit.





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- b) The Commission also noted that the main grievance of GIL is limited only to the matter of energy charges of Rs. 13.00 to Rs. 14.00 per unit claimed by DVC for over drawal during the restricted period as against the average purchase cost of energy at the rate of Rs. 4.24 per unit. It is pertinent to note that DVC has never refuted the contention of GIL in regard to the high rate of energy charges imposed by DVC on GIL during the restricted period.
- c) The Commission further noted that DVC has agreed to abide by the rate of energy charge to be determined by the Commission for over drawal during the restricted period.
- d) The Commission observes that the proposal of GIL as to the amendment of the regulation 4.4 of the Tariff Regulations, 2011 has no merit as amendment of regulation is a legislative process and cannot be done by passing an order on the basis of any application by any stake holder(s).
- e) The Commission also observes that DVC has not applied their mind in right spirit while imposing drawal restrictions on GIL in the State of West Bengal during the periods from August, 2018 to October, 2018.
- f) It also clearly shows that DVC has failed to comply with the contractual obligation as a result of which the consumers of DVC in the area of West Bengal has suffered to a great extent;
- g) The contention of DVC as to imposition of drawal restriction in order to maintain the grid discipline has no merit as there was no significant shortage of power generation nationally during the periods of August, 2018 to October, 2018, as is evident from the monthly statements produced by DVC along with their petition. It is also evident from the fact that had there been any shortage of power supply in the grid, then even after violation of restrictions, the grid discipline could have been failed.
- h) The Commission also observes that on one hand DVC imposed restriction to the consumers to the tune of 30% and above of the contract demand for a period ranging from 214 hours to 375 hours in a month and on the other hand allowed consumers







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to draw power during the restriction period, which does not prove the contention of DVC that the restriction was imposed to maintain grid discipline. However, DVC by virtue of the provision of regulation 4.4 of the Tariff Regulations, 2011 imposed penalty to the consumers for over-drawal during the restriction period.

- i) The Commission observes that since DVC could not establish their claim that restriction was imposed to maintain grid discipline and restriction was imposed equally to all consumers, imposition of penalty as per regulation 4.4 of the Tariff Regulations, 2011 is not applicable in this case.

### ORDER

14. On the basis of the observations as elucidated above and keeping in mind the penal energy charges imposed by DVC during the restricted period, the Commission orders that –
- a) DVC shall claim the energy charge rate as per the tariff order for the quantity of energy consumed by GIL as over drawal during the restricted periods of August, 2018 to October, 2018;
- b) DVC shall make necessary amendments in the bill raised / to be raised on GIL as per the direction given in (a) above and submit the same to GIL for payment;
- c) If GIL has already made any payment towards the energy charge at a rate above the rate directed by the Commission in (a) above for over drawal during the restricted period, the excess payment made by GIL shall be adjusted by DVC with the future bills to be raised by DVC on GIL.
- d) In the event of shortage of power, it is the contractual obligation of DVC to provide energy to its members even by purchasing energy from other sources available in the grid.
- e) DVC should be very careful in future while imposing restriction of drawal of power on the consumers in the State of West Bengal and shall adopt such methodology so





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that the consumers of DVC in the State of West Bengal do not suffer for closure of their plants and / or do not become coerced to seek over drawal. If DVC do not follow the direction as given above, DVC shall be liable to be penalized in future.

15. Thus, the petition of GIL is disposed off.
16. Let a copy of the order be served upon GIL and DVC.

Sd/-

(PULAK KUMAR TEWARI)  
MEMBER

Sd/-

(DURGADAS GOSWAMI)  
MEMBER

Sd//-

(SUTIRTHA BHATTACHARYA)  
CHAIRPERSON

DATED: 11.12.2020

  
(T. K. MUKHERJEE)  
SECRETARY



West Bengal Electricity Regulatory Commission

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