

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

WEST BENGAL

Petition No. OA-245/16-17

Petition No. OA-247/16-17

Petition No. OA-285/18-19

Date of hearing: 13th January, 2020

Time of hearing: 14.30 hours

Coram:

Shri Sutirtha Bhattacharya, Chairperson

Shri Durgadas Goswami, Member

Shri Pulak Kumar Tewari, Member

In the matter of

Application for issue of practice directions to enable consumers to obtain 'No Dues Certificate' from existing licensee prior to switching over / exercising the choice of open access from another parallel licensee / supplier.

And

In the matter of

**India Power Corporation Limited
Plot – X-1, 2 & 3
Block – EP, Sector – V
Salt Lake City
Kolkata 700 091.**

..... Petitioner

And

**West Bengal State Electricity Distribution Company Limited
Vidyut Bhavan
Block DJ, Sector – II
Salt Lake City
Kolkata 700 091.**

..... Respondent



Certified true Copy

And

Eastern Coal Fields Limited
Office of the Chairman-cum-Managing Director
Sanctoria, P.O. Dishergarh 713333
Dist. West Burdwan (West Bengal)

Respondent

Representatives attended:

India Power Corporation Limited (IPICL) [Petitioner]

1. Sri Sanjay Sen, Senior Advocate,
2. Sri Sakya Singha Chaudhuri, Legal Counsel,
3. Sri Nishant Talwar, Legal Counsel,
4. Sri Pramod Kr. Singh, President (Regulatory & Commercial),
5. Sri Karn Pallav, General Manager (Regulatory),

West Bengal State Electricity Distribution Company Limited (WBSEDCL)

[Respondent]

1. Sri Vishrov Mukherjee, Partner, J Sagar Associates,
2. Sri Ameya Vikram Mishra, Associate, J Sagar Associates,
3. Sri Subrata Chowdhury, Sr. Manager (HR&A),
4. Sri Manab Das, SE (E).

Eastern Coal Fields Limited (ECL) [Respondent]

1. Sri Shiv Shankar Banerjee, Advocate
2. Ms Sanchita Barman Roy, Advocate

CASE IN BRIEF

India Power Corporation Limited (IPCL) has submitted a petition praying before the Commission to issue a practice direction upon the existing consumers including Eastern Coalfields Limited (ECL) to obtain "No Dues Certificate" to existing licensee prior to switching over / exercising the choice of open access from another parallel licensee / supplier. The contention of the petition submitted by IPCL is that ECL who are the bulk consumer of IPCL drawing power from 126 points of IPCL is presently migrating to West Bengal State Electricity Distribution Company Limited (WBSEDCL) and that IPCL is unable to recover a huge amount of dues from ECL that may arise out of APR Orders pending for determination by the Commission since 2012 – 2013 till date. WBSEDCL objected to the contention of the petitioner (IPCL) as the same is beyond the purview of



the existing Law, Rules and Regulations. In order to overcome this problem, series of hearing took place, including that on 8th July, 2019 at 14.30 hours at the office of the Commission where the representatives from IPCL and WBSEDCL were present but the representative from ECL was absent. Upon hearing all the parties, the Commission passed an order dated 18th July, 2019 directing, inter-alia, to hold further hearing on 31st July, 2019, which was subsequently postponed to 13th January, 2020 at 14.30 hours.

The hearing was held on 13th January, 2020, as scheduled, at the office of the Commission when the representatives from all the parties, namely IPCL, WBSEDCL and ECL, were present.

As directed by the Commission in its order dated 18th July, 2019, WBSEDCL did not submit any written arguments in the form of affidavit in reply to the additional affidavit submitted by IPCL till the date of hearing, as a result of which no rejoinders from IPCL and ECL have been received. However, in the meantime, ECL has submitted an affidavit to the Commission on 26th July, 2019 in compliance with the direction given by the Commission vide its interim order dated 2nd May, 2019.

SUBMISSION DURING HEARING

Ld. Advocate of IPCL submitted that –

- a) ECL was consuming around 63% of the total sale of power of IPCL from 126 points of IPCL in 2012 – 2013;
- b) From 2016-17 onwards, ECL has started migrating and presently ECL is drawing around 18% of total volume of sale of power from 25 points of IPCL;
- c) WBSEDCL adopted unfair practices for luring away ECL at the cost of the consumers of the IPCL;
- d) WBSEDCL's creation of additional distribution network shall put IPCL's existing network to remain underutilized and this will dampen the spirit of competitiveness;



- e) Cited an order dated 1.2.19 of this Commission in regard to open access issues related to Indian Railways and said that IPCL will be subjected to similar adverse consequences pointed out therein;
- f) WBSEDCL notified a special and significantly discounted set of rates for industrial consumers with 50 KVA and above and taking supply at 11 KV specifically for the Asansol-Ranigunj area, which does not carry any reference order of the Commission;
- g) The concessional tariff that has been introduced in Asansol – Ranigunj area is significantly lower than tariff fixed by the Commission for such consumers throughout the State of West Bengal, but the same concessional tariff has not been introduced for the similarly placed consumers in other parts of West Bengal. This was deliberately done to attract ECL, a single biggest industrial consumer in Asansol-Ranigunj area;
- h) WBSEDCL, who opted for differential tariff, does not satisfy the differentiating factors as that of what has been specified in section 62(3) of the Electricity Act, 2003;
- i) The Commission had sought for certain information with regard to nature of special concession process that were being proposed in Asansol-Ranigunj area, but, the required information was not submitted by WBSEDCL to the Commission. IPCL craves leave to have a copy of the submission of WBSEDCL in reply to letter, in question, of the Commission;
- j) It is not appropriate for WBSEDCL, as a Government company, to introduce differential tariff for consumers of a specific area within its licensed area as this will lead to violation of the principles of equality;
- k) WBSEDCL has entered into a contract with ECL for a period of 25 years with provision of extension for a block of 5 years at a time and can be terminated only by giving 6 months' notice in advance. In case of termination before initial 25 years, ECL shall be liable to pay demand charge for balance period of the initial period of the agreement. This leads to deterring ECL as a consumer from exploring any



alternate supply from the petitioner or any other source for the entire period of the agreement;

- l) WBSEDCL has entered into a contract with ECL in such a manner that it would foreclose any chance for the petitioner to be able to render service to ECL for the next 25 years. This is completely a restrictive contract which is against the Supply Code Regulations of the Commission;
- m) ECL has not followed fair business practices just to avoid the burden of recovery of pending APR dues of the petitioner whenever it is approved by the Commission;
- n) ECL is currently purchasing power from WBSEDCL at an average rate of 667.00 paise per unit as against the power supplied by the IPCL to ECL at an average rate of 634.00 paise per unit;
- o) Since WBSEDCL has not replied to the interim applications of the IPCL, it is deemed to have been accepted by WBSEDCL.

In view of above, IPCL has prayed before the Commission to –

- a) Stay of migration of ECL from the IPCL to WBSEDCL pending final adjudication of the present set of petitions;
- b) Stay of any work or further work towards expansion, development or augmentation of network by WBSEDCL / ECL towards obtaining supply of power from WBSEDCL pending final adjudication of the present set of petitions;
- c) Ad interim stay in terms of prayers (a) and (b) above; and
- d) Pass such other and further orders / directions as may be deemed appropriate for providing adequate relief in the facts of the present case.

Ld. Advocate of WBSEDCL stated inter-alia that –

- a) WBSEDCL's reply to the affidavit of IPCL is ready and will be submitted by 16th of January, 2020;
- b) WBSEDCL has obtained permission from Commission for introduction of differential tariff;
- c) WBSEDCL already has network in that area for a quite long time and it serves the consumers in general whereas IPCL resorts to cherry picking and supplies power



to bulk and big consumers and do not cater to the need of domestic consumers in terms of provisions of USO;

- d) The cost of the additional network building for supply of electricity to ECL is being borne by ECL and therefore, not being passed on to other consumers;
- e) The differential tariff introduced in Asansol-Raniganj area is in accordance with the Regulations framed by the Commission;
- f) The contract entered into by and between WBSEDCL and ECL is an internal matter of the parties concerned and IPCL has nothing to do with the same;
- g) WBSEDCL has right to execute any contract with an intending consumer as per the terms and conditions as thought best for the organization;
- h) It is apparent from the submission made by IPCL that IPCL is well aware of the terms and conditions of the agreement entered into by and between WBSEDCL and ECL. If so, then IPCL could have produced the said agreement before the Commission instead of asking WBSEDCL to produce the same;

WBSEDCL prayed before the Commission to decide as to whether or not non-reply by WBSEDCL to the stay application filed by IPCL means that it is accepted by WBSEDCL, as claimed by IPCL and by that can the area of adjudication be extended in an interim application?

The Ld. Advocate of ECL submitted that –

- a) Interim applications filed by IPCL have not been served upon ECL. Upon receipt of the same, the reply in the form of affidavit will be submitted;
- b) It is now settled that NOC from the existing licensee is not required for migrating to another parallel licensee as per the order dated 02.05.2019 of the Commission;
- c) As regards the recovery of dues from ECL arising out of finalization of APR petition of IPCL, ECL has the right to exercise the provision of Open Access provided in Electricity Act, 2003 and ECL has complied with the procedure laid down in regulations framed under the said Act for open access;
- d) As per the regulation no. 4.4.1 of Electricity Supply Code Regulations of the Commission, ECL had issued disconnection notice well before 48 hours to the IPCL and crave leave to put all such documents / receipt before the Commission.



ECL further submitted that they paid all dues complying with the provisions of the regulation 4.4.1 of the Electricity Supply Code Regulations while seeking disconnection. However, after scrutiny, if any amount is found required to be paid by them as per the provision of the regulation, they undertook to pay that amount;

- e) ECL had no outstanding dues towards bills raised by the IPCL at any relevant point / time of disconnection / migration as per tariff order / APR order / FPPCA order passed by the Commission at any relevant point of migration. ECL had paid electricity bills within due date without fail and enjoyed the timely payment rebate always;
- f) IPCL had unilaterally claimed arrear and duty arrear charge @ 75 paise per kWh and 11.25 paise per kWh respectively on the plea of recovering pending APR dues. ECL filed a grievance before the Grievance Redressal Officer (in short 'GRO'), IPCL. The Ld. GRO, IPCL's impugned order was challenged before the Ld. Ombudsman of the Commission, who disposed off the order passed by Ld. GRO, IPCL vide its order dated 19.03.2019 stating that the claims of IPCL towards arrear and duty arrear do not have any regulatory support. The Ld. Ombudsman directed IPCL to set aside the disputed energy bills and to raise the fresh bills strictly as per regulatory provision;
- g) There is no law, statute, rules or regulation vide which either the APR outstanding (after being approved by the Commission) of already migrated consumers can be levied on such migrated consumer by a licensee nor such outstanding can be transferred to the new licensee for recovery from the migrated consumer;
- h) It is the discretion of the consumers to opt for healthy and cheaper power. The choice of consumer does not fall under the purview of the Commission;
- i) Under no circumstances, ECL's interest can be prejudiced by the acts of IPCL and WBSEDCL,
- j) The Commission should not pass any interim stay order as prayed for by the IPCL.

OBSERVATIONS OF THE COMMISSION

Primarily, the dispute apparently relates to a) recovery of outstanding amount arising out of finalization of APR orders for the pending periods, b) role of WBSEDCL in realizing the arrear dues in case the amount becomes due from ECL, c) restrictive contract as alleged



to have been entered into by and between WBSEDCL and ECL, d) reply of WBSEDCL to the interim applications of ECL, e) prayer for stay order for further migration of ECL and f) protection of the interest of ECL.

The Commission observes that although a considerable amount of time has elapsed, WBSEDCL has not yet submitted their reply as directed by the Commission in its last order dated 18th July, 2019, which is a gross violation of direction on the part of WBSEDCL. However, WBSEDCL may be given one more opportunity to submit their reply immediately, failing which the matter would be taken seriously as a matter of deliberate ignoring of Commission's direction.

ORDER

Upon hearing the parties present and based on the observations made by the Commission, the Commission directs the following:

- a) IPCL shall send all the interim applications to ECL immediately;
- b) ECL shall submit their reply to the interim applications of IPCL to the Commission positively within 24th January, 2020 with copy to WBSEDCL and IPCL;
- c) WBSEDCL shall submit their reply within 17th January, 2020 with copy to ECL and IPCL;
- d) Both IPCL and ECL shall submit their reply, if any, to the reply to be submitted by WBSEDCL to the Commission by 24th January, 2020 with copy to WBSEDCL;
- e) Next date of hearing is fixed on 27th February, 2020 at 15.00 hours.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(DURGADAS GOSWAMI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 07.02.2020

Certified true Copy

(T. K. MUKHERJEE)
SECRETARY

