

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: 31st August, 2021

Time of hearing: 14.30 hours

Quorum:

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



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And

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

Representatives attended:

India Power Corporation Limited (IPCL) [Petitioner]

1. Sri Anirban Bhattacharya, Advocate,
2. Sri Karn Pallav, General Manager (Regulatory),

West Bengal State Electricity Distribution Company Limited (WBSEDCL)
[Respondent]

1. Sri Vishrov Mukherjee, Advocate,
2. Janmali Manikala, Advocate,

Eastern Coal Fields Limited (ECL) [Respondent]

1. Sri Shiv Shankar Banerjee, Advocate
2. Sri Tapas Datta, GM (E&M), ECL

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" from the 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 is the bulk consumer of IPCL used to draw power from 126 points of IPCL and is presently migrating to West Bengal State Electricity Distribution Company Limited (WBSEDCL) and that IPCL may likely to be 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, a 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



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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.

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

- a) IPCL shall send copies of 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

Since then, on several occasions, the hearings were postponed and rescheduled on the basis of requests for postponement from both the parties, especially from the petitioner. Ultimately, e-hearing was rescheduled on 31st August, 2021 at 14.30 hours. The e-hearing was held as scheduled and the representatives from all the parties were present.

However, in the meantime, on the evening of the last working day before the date of e-hearing i.e., on 27th August, 2021, the petitioner submitted a further petition in the form of affidavit praying before the Commission to allow the petitioner to withdraw their original petition in case no. OA-245/16-17 with liberty to file afresh on the issue of practice directions for consumers desirous of switching over to a parallel distribution licensee or to decide the present petition only confined to prayer 2.2 of the original petition i.e., issuance of practice directions for consumers desirous of switching over to a parallel distribution licensee.



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SUBMISSION DURING HEARING

Ld. Advocate of IPCL submitted that –

- a) IPCL is withdrawing the petition in case no. OA-245/16-17 confined to the prayer in regard to interim direction on realization of huge outstanding amounts which are due from such consumers who have exited the system in an unlawful manner and to pass interim direction for realization of huge outstanding amounts and also to pass appropriate orders on APR petitions for the years 2012, 2013, 2014 and 2015, on the ground that the said contention in the petition has become infructuous after the order on APR for 2012-13, 2013-14 & 2014-15 (to be checked) were issued and thus merit no further consideration;
- b) To allow IPCL to submit petition afresh confined to prayer no. 2.2 of the original petition, i.e., issue practice directions for consumers desirous of switching over to a parallel distribution licensee;
- c) IPCL is withdrawing the petition in case no. OA-247/16-17 with liberty to file afresh on the issue of 'Claim other than APR dues';
- d) IPICL is withdrawing the petition in case no. OA-285/18-19 as the relief sought for in the said petition has become infructuous and merit no further consideration of the Commission.

Ld. Advocate of WBSEDCL stated that –

- a) WBSEDCL has not received any copy of the withdrawal petition submitted by IPCL to the Commission;
- b) The issue of practice direction as sought for by IPCL is a matter that needs to be decided by the Commission, but under no circumstances, the said issue should come under the purview of section 86 (1) (f) of the Electricity Act, 2003 which entails adjudication upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;



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- c) In case there is no submission against WBSEDCL in the withdrawal petition of IPCL, WBSEDCL has no objection in granting permission by the Commission for withdrawal of the petition;
- d) In regard to the contention of the petitioner towards issue of practice direction by the Commission, it is submitted that this issue involves all the parallel licensees viz. WBSEDCL, DVC, Railways being a deemed licensee, etc. and therefore requires public consultation before taking any such decision for issuance of practice direction.

The Ld. Advocate of ECL submitted that –

- a) It is the discretion of IPCL as to whether they will withdraw their petition or not, but they cannot urge for granting liberty to submit petition afresh. If the extant law allows IPCL to submit fresh petition for issuance of practice direction by the Commission, in that eventuality the liberty, as asked for, is not required.

OBSERVATIONS OF THE COMMISSION

The Commission observes that the matter has been dragged for quite a long time due to adjournment of the hearing for more than 8 occasions based on the requests from the parties involved, especially from the petitioner for some reasons or the other. It is also observed that the petitioner has submitted the withdrawal petition on the fag end of the last working day before the date of the hearing, in question, which is not done normally. Moreover, the Commission fails to understand as to why the copy of the withdrawal petition was not served upon the respondents by the petitioner, which is mandatory as per the provisions of the extant law. Such act from the petitioner is not expected as those who are advocating on behalf of the parties, are well conversant with the law.

The Commission also observes that the petitioner has prayed before the Commission through the petition to allow the petitioner to partly withdraw the original petition in the subject cases, which is not acceptable to the Commission. The petitioner may either withdraw the original petition in cases no. OA-245/16-17, OA-247/16-17 and OA-285/18-19 in entirety or continue the same as it is. Because, the grounds based on which the withdrawal petitions have been submitted, seem not to have ceased to exist.



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ORDER

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

- a) IPCL shall send the copies of the withdrawal petitions in cases no. OA-245/16-17, OA-247/16-17 and OA-285/18-19 to WBSEDCL and ECL immediately;
- b) WBSEDCL and ECL shall send their comments, if any, on the withdrawal petition to the Commission within two weeks;
- c) The Commission reserves the order in cases no. OA-245/16-17, OA-247/16-17 and OA-285/18-19.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(DURGADAS GOSWAMI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 10.09.2021

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SECRETARY