



ORDER

OF

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF

CASE NO. OA-245/16-17, OA-247/16-17 AND OA-285/18-19

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.

PRESENT:

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

DATE: 01.08.2022



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.

CASE IN BRIEF

- 1.1 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 is 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 31st August, 2021 at 14.30 hours at the office of the Commission where the representatives from IPCL, WBSEDCL and ECL were present.
- 1.2 The petitioner (IPCL) submitted a further petition in the form of affidavit on the evening of 27th August, 2021, the last working day before the date of e-hearing on 31st August, 2021 (28th and 29th August being weekly holidays and 30th August being holidays on account of Janmastami), 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.
-



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.

SUBMISSION DURING THE HEARING HELD ON 31.08.2021

- 2.1 The Ld. Advocate on behalf of IPCL, during the hearing confirmed withdrawal of IPCL 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 were issued and thus merit no further consideration. However, IPCL prayed before the Commission to allow them 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. IPCL also withdrew the petition in case no. OA-285/18-19 on the same ground as has been stated in case no. OA-245/16-17. The case no. OA-247/16-17 has also been withdrawn by IPCL with liberty to file afresh on the issue of "Claim other than APR dues".
- 2.2 The Ld. Advocate submitted on behalf of WBSEDCL that 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. It is also submitted that 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. WBSEDCL further submitted that the contention of the petitioner towards issue of practice direction by the Commission 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.
- 2.3 The Ld. Advocate submitted on behalf of ECL that IPCL has liberty to withdraw their petition, but they cannot urge for granting liberty to submit petition afresh. If
-



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.

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.

2.4 Upon hearing the parties, the Commission directed that –

- 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; and
- c) The Commission reserves the order in cases no. OA-245/16-17, OA-247/16-17 and OA-285/18-19.

2.5 Accordingly, ECL, upon receipt of the withdrawal petitions in cases no. OA-245/16-17, OA-247/16-17 and OA-285/18-19 from IPCL, has submitted their comments along with postal receipt of servicing the copy on the other side, which, inter-alia, stated that –

- a) The submission made by the petitioner during the hearing held on 31.08.2021 is a nature of partial consideration which is prohibited in law. The existing Regulations of the Commission is well framed which direct a consumer to clear dues, if any, as per existing tariff rate and thus there needs no additional practice direction by the Commission to the consumer of a licensee to take any no dues certificate. ECL, therefore, prayed before the Commission not to allow the petitioner to partially withdraw their petition in case no. OA-245/16-17 or to file petition afresh with the issue of practice direction.
 - b) As far as the withdrawal of petition in case no. OA-247/16-17 on the issue of "Claim other than APR dues" is concerned, the petitioner should not be allowed to file petition afresh, as sought for, since the same is not tenable in eye of law.
 - c) It is also submitted that, as per the prevalent Regulations of the Commission, a consumer can at any point of time migrate to any parallel licensee after clearing the existing admissible dues, if any, and any due comes forward at any later date is eventually adjusted in the subsequent order.
-



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.

- 2.6 WBSEDCL has not submitted any comment on the withdrawal petitions of IPCL as referred hereinabove.

OBSERVATIONS OF THE COMMISSION

- 2.1 The Commission observes that the prayer of the petitioner before the Commission as to allow the petitioner to withdraw the petitions only partly in cases OA-245/16-17, OA-247/16-17 and OA-285/18-19 and to give liberty to file petitions afresh is not permissible as per the extant law, provisions of the Electricity Act, 2003 and the Regulations of the Commission made thereunder.

ORDER

- 3.1 Based on the above observations, the Commission directs that the petitions in cases no. OA-245/16-17, OA-247/16-17 and OA-285/18-19 stand withdrawn by the Petitioner. The Commission also does not allow the petitioner to file any petition afresh on the issues related to cases no. OA-245/16-17, OA-247/16-17 and OA-285/18-19.
- 3.2 With the above direction, the petitions of IPCL in cases no. OA-245/16-17, OA-247/16-17 and OA-285/18-19 are, thus, disposed off.
- 3.3 Let a copy of this order be served upon IPCL, WBSEDCL and ECL.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 01.08.2022

Sd/-
SECRETARY