



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad – 500 004

ORDER ON THE REPRESENTATION OF M/S. KETHANA ETERNAL PROJECTS (HDC – 003) PURSUANT TO THE ORDER OF THE HON'BLE HIGH COURT PASSED IN WRIT PETITION NO. 9108 OF 2020 – COLLECTION OF MAXIMUM DEMAND CHARGES – DECISION – COMMUNICATED – REG.

Proceedings No. TSERC / L – 81 / A / Secy / 64 / 2020

Dated: 17-07-2020.

- i. W. P. No. 9108 of 2020 filed by M/s Kethana Eternal Projects (HDC – 003) regarding collection of pro rata demand charges.
- ii. Representation of M/s Kethana Eternal Projects (HDC-003), dated 04.07.2020.

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ORDER

Background

Ministry of Home Affairs, Government of India (GoI) vide its order No.40-3 / 2020 - DM (I) (A) dated 24.03.2020 has imposed lockdown with certain exceptions in all parts of the country for a period of 21 days with effect from 25.03.2020 to contain COVID - 19 pandemic in the country. This lockdown was further extended from 15.04.2020 to 03.05.2020 and later also continued but with certain relaxations.

2) Likewise, the Government of Telangana (GoTS) vide G. O. Ms. No. 45, dated 22.03.2020 and G. O. Ms. No. 46 dated 22.03.2020 has notified lockdown in the entire State of Telangana till 31.03.2020 for containment of COVID - 19 epidemic in the State. Subsequently, vide G. O. Ms. No. 54, dated 28.03.2020, G. O. Ms. No. 57, dated 12.04.2020 and G. O. Ms. No. 60, dated 19.04.2020 the lockdown period has been extended upto 07.05.2020. It has been further extended upto 30.06.2020 with certain relaxations. The operations related to electricity supply viz., power generation, transmission and distribution have been exempted under the lockdown to ensure uninterrupted power supply.

3) The GoTS has also considered the issue of payment of electricity charges. The government through department of Industries and Commerce vide G. O. Ms. No. 4 dated 22.04.2020, has issued orders as below.

- “2. Government of Telangana has issued orders for closure of all shops, commercial establishments, offices, factories, workshops, godowns pertaining to non-essential commodities in view of social distancing for containment of the pandemic COVID-19.
3. Industrial Associations, in this regard, have represented to the Government that the industrial units work on a precarious state of finances and any minor disruptions in their regular flow of works will upset their production and cash flows and their overall health is affected. While the loss and difficulties of workers and employees is predictable, it is equally difficult for units and businesses to pay the salaries and wages by taking additional loans while foregoing the production and revenues. The Industrial associations have informed that the Micro, Small, Medium Enterprises (MSME) units with zero/minimum financial reserves may be worst hit by the current prevailing situation and requested for relief measures to save the MSME sector in the state.
4. The requests of the Industry Associations were discussed in the cabinet meeting held on 19.04.2020. After detailed discussions, Government hereby decides to extend the following relief measures to the Industries in Telangana:
“Electricity Bills during the lockdown period will be collected as per actual consumption only and the fixed charges for the same period shall be deferred till 31.05.2020 without any penalty and interest. Further, those industries which pay the bills within due date shall get 1 percent rebate of billed amount.”
5. The Energy Department is requested to take necessary action accordingly.”

The above directions of the government were communicated to the Energy Department by the Industries Department. Thereupon, the Energy Department has issued directions to the Commission under Section 108 of the Electricity Act, 2003.

4. Pursuant to the directions of the GoTS, the Commission had passed order in Suo Moto proceedings in O.P.No.16 of 2020 and observed as below.

“6) The Commission is inclined to accept the directions of the Government of Telangana under section 108 of the Electricity Act, 2003 and is of the view that the TSDISCOMs and the Co-operative Electric Supply Society Ltd., Sircilla (CESS) shall give effect to the orders of the government as suggested in the above mentioned order of the government.

7) The Commission at the same time is also conscious of the loss that is occasioned to the TSDiscoms and CESS due to the reliefs given above. The TSDiscoms and CESS are permitted to raise the necessary funds for working capital required to give effect to the above stated reliefs during the period for which the relief is extended. They are required to place the details of the total expenditure incurred towards raising the additional working capital along with the loss sustained by them before the Commission after expiry of the lockdown period. The same will be examined by the Commission at a later date.

8) Accordingly, the Commission hereby directs the TSDISCOMs and CESS in the state of Telangana to give effect to the directions of the Government of Telangana as referred to in main paragraphs (3) and (4) above. With these observations, this petition is disposed of.”

Action of the licensees and consumers along with directions of the Hon’ble High Court.

5. In terms of the above orders, the licensees have undertaken the billing of the industrial consumers and raised bills in terms of the tariff order applicable and duly following the General Terms and Conditions of Supply. The levy and collection of demand charges has been questioned by the above named industry in the W. P. No. 9108 of 2020 on the file of the Hon’ble High Court. The Hon’ble High Court, while issuing show cause notice, had passed an interim order on 29.06.2020 directing the government and the Commission as below.

“In view of the said submissions, the petitioner shall make a similar representation to the 1st and 5th respondents raising all its contentions within one week from the date of receipt of a copy of this order. On receipt of the said representation, the 1st and 5th respondents shall consider the said

representation and dispose of the same by considering the entire material including the principle held by the Apex Court in the referred judgments in accordance with law within two weeks thereafter. Respondents 2 to 4 are directed not to disconnect the power supply to the petitioner's property till consideration and disposal of the said representation by the 1st 2nd and 5th respondents for a period of 10 days from the date of service of a copy of the order to be passed by respondents 1, 2 and 5 on the representation of the petitioner.

The 1st and 5th respondents shall consider soft copy of this order, if the petitioner is unable to furnish hard copy of the same in view of the present lockdown situation due to COVID-19.”

Representation of the consumer and DISCOM:

6. In obedience to the directions of the Hon’ble High Court, the petitioner before the Hon’ble High Court has made a representation to the Commission seeking the following prayer.

“We submit that as no decision was taken by the Government, TSSPDCL and TSERC, we approached the Hon’ble High Court by way of filing WP No.7130 / 2020. The Hon’ble High Court heard the matter and passed order dated 26.05.2020 directing us to make a representation to you raising all the contentions within one week from the date of receipt of the order copy. Accordingly, this representation is submitted for your kind consideration. As stated above, the levy of maximum demand charges have to be restricted to the working period and for non–working period on account of COVID–19 restrictions, the same shall have to be waived.”

7. The TSSPDCL on the other hand has sent a letter dated 04.06.2020 stating as below.

“In this regard, if the GoTS intends to order for levying the demand charges on pro–rata basis to HT industries as requested by the petitioner, the revenue loss due to the above relaxation in billing procedure has to be compensated to the DISCOMs.”

Discussion on the representation:

8. The Commission, while examining the rival submissions, had considered appropriate to address a letter to the government to ascertain its views on the subject matter. In their reply to the Commission by letter dated 17.06.2020 had stated as below.

- “ I am to invite your attention to the reference 4th cited and inform that as per the Hon’ble High Court orders Dt:26.05.2020 in W.P.No.7130/2020, in the reference 1st cited and batch cases, representations have been received by the 1st respondent i.e. Special Chief Secretary to Government from certain firms vide reference 2nd cited. The TSSPDCL has also submitted report explaining the factual position in the reference 3rd cited.
2. In pursuance to the directions of the Hon’ble High Court, Government have examined the representations and issued speaking orders rejecting the request of the firms for waiving of maximum demand charges during non- working days in view of Covid-19 in the reference 5th cited.”

In its detailed order, it has observed as below.

- “.....
20. In view of the circumstances as discussed above the request of the petitioner to waive the maximum demand charges during non-working days in view of COVID-19 is hereby rejected consequently the respondents 2 to 4 cannot be directed to collect the maximum demand charges for the month of April 2020 on pro-rata basis i.e., working and non-working periods (closure days).
21. In the result the request of the petitioner made through the representation is hereby rejected.”

The Commission is inclined to and is required to consider the representations independent of the government decision.

9. The Commission has examined the contentions in the representation as also the observations made by the government while disposing of the representation as per the directions of the Hon’ble High Court.

10. Reliance is placed on the judgments of the Hon'ble Supreme Court in the matter of M/s Northern India Iron and Steel Company and others Vs. State of Haryana reported in 1976 (2) SCC 877 and Orissa State Electricity Board and another Vs. M/s. IPI Steel Ltd. etc. reported in AIR 1995 SC 1553. In both the judgments, the Hon'ble Supreme Court was considering the payment of maximum demand charges. In the present case, though the subject is same, but the petitioners plea is to collect the maximum demand charges in proportion to the working and non – working days limiting to the actual consumption of MD.

11. The Hon'ble Supreme Court held that the demand charges are liable to be paid as demanded by the distribution company (Board). In neither of the cases, the Hon'ble Supreme Court gave complete relief of proportionate payment of demand charges. In respect of Northern Iron case, concession was made by the parties for payment of proportionate demand charges. Hence, it is not a binding precedent. As regards OSEB case, it has to be stated that the Hon'ble Supreme Court clearly decided against the contentions of the petitioner therein. It has been held by the Hon'ble Supreme Court in the said matter as below.

“.....

34. We must, therefore, say that no arbitrariness or unreasonableness is involved in Regulation 46 or its proviso. It only provides for collecting demand charges for the actual maximum demand availed by such consumers during the period of restricted supply. The consumer cannot legitimately complain of this course nor can it characterise it as confiscatory. We must also say that none of the decisions relied upon by the learned counsel for the respondent lays down any principle which can be said to suggest that such a rule is arbitrary and unreasonable. Once we understand the system of two-part levy and the rationale behind it, as also the compulsions arising from an order under Section 22-B of the Electricity Act, 1910, there would be no room or ground for impugning the validity of Regulation 46 of its proviso. Difficulties are no doubt there difficulties of the consumer and difficulties of the Board. They are essentially the problems of shortages, perhaps endemic to a developing economy. As rightly emphasised by Sri Hegde, the respondent would have faced the same

problems if he had installed his own plant for generating electricity to meet his needs. While the respondent says that it has suffered on account of these cuts, the Board says that by reducing the demand charges during such periods, it is also suffering. The consumer accuse Board of several failings and the Board has its own explanations.”

The present situation according to the consumer arising out of COVID – 19 appears to be that of rationing of power supply is involved, but it is not so as it is complete shutdown as effected by the government. The principle can be applied to the case of the writ petitioners consumers, only if the licensee had imposed restriction on consumption of power. However, to the contrary, the licensee had completely provided supply without any restrictions or controls. If the consumers are not able to avail the supply it is only because of the lockdown imposed by the government. In that view of the matter the writ petitioners consumers are bound to pay the demand charges, even though they might not have availed power supply completely due to lock down as the licensee had supplied as per the contracted capacity. There is no case made out for pro rata consumption and billing in the above scenario. Therefore, both the judgments are not relevant to the case of the consumers. Thus, the request and the relief sought by the writ petitioners before the Commission cannot be considered.

12. The Commission is also conscious of the fact that the Electricity Act, 2003 mandates adjudication of the issues between licensees and generators and nowhere provided that individual consumers grievances be entertained by it, but had provided for separate mechanism for the said purpose, which can be accessed by the consumers. Also, the Commission is of the view that the individual representations are to be entertained with due respect for the directions of the Hon'ble High Court which otherwise is not provided for in the Act, 2003.

13. The Commission is also of the view that allowing the request of the consumers to bill them on prorata basis would constitute an amendment to the tariff fixed by the Commission which is subsisting at present, which may be impermissible under law without amending the original tariff order and conditions thereof.

14. It is pertinent to notice the GTCS and the agreement referred to by the consumer. As stated by the consumer at clause 2.2.35 of the GTCS, the same is emphatic and clear. It is extracted below.

“2.2.35: “Maximum Demand” means twice the maximum number of kilo volt-ampere hours (kVAH) delivered at the point of supply to the consumer during any consecutive 30 minutes during the month in respect of consumer having contracted demand of less than 4000 kVA. However, for the consumer having contracted demand of 4000 kVA and above the maximum demand means four times the maximum number of kilo volt ampere hours (kVAH) delivered at the point of supply to the consumer during any consecutive 15 minutes during the month”.

Also the clause in the agreement entered by the consumer with the DISCOM is extracted below.

“8. Obligation of Consumer to pay all charges levied by Company:
From the date this Agreement comes into force I/We shall be bound by and shall pay the Company Maximum Demand charges, energy charges, surcharges, meter rents and other charges, if any, in accordance with the tariffs applicable and the General Terms and Conditions of Supply prescribed by the Company from time to time for the particular class of Consumers to which I/we belong.

.....

10. Monthly Minimum Charges:
I/We shall pay minimum charges every month as prescribed in tariff, and the General Terms and Conditions of Supply even if no electricity is consumed for any reason whatsoever and also if the charges for electricity actually consumed are less than the minimum charges. The minimum charges shall also be payable by me/us even if electricity is not consumed because supply has been disconnected by the Company because of non-payment of electricity charges, Theft of Electricity or Unauthorised Use of Electricity or for any other valid reason.”

It has to be stated that the provisions in the General Terms and Conditions of Supply and the clauses in the agreement make emphatically clear that the consumers have to follow the same and they are bound to pay all the charges and tariff as levied by

the licensee. Moreover, its a contract between the parties that the licensee and the consumers and the Commission is not a party to the same, therefore, it is for the parties to hammer out a solution in the given set of circumstances in accordance with law. The Commission has neither imposed the lock down nor directed the licensee to restrict the supply as such also the relief sought by writ petitioner consumers cannot be acceded to by the Commission.

15. The Commission considers it worth mentioning that on the representations raised by the industries associations, it having regard to the prevailing situation at that point of time had considered the request of the consumers and ordered as extracted below.

- i) A consumer, if it so desires to avail deration of the contracted load may apply to the licensee and is permitted to exercise clause 5.9.4.2 of GTCS irrespective of the criteria of completion of minimum period of the agreement as stipulated in GTCS.
- ii) The distribution licensee shall upon such request by the consumers, give effect to the request of the consumer, who has exercised clause 5.9.4.2 of GTCS, within five (5) days on receipt of the application from such consumer.
- iii) The above relaxations shall be applicable only during the lockdown period.
- iv) The above relaxations shall not applicable for the period after lifting the lockdown and the conditions in the GTCS and SOP would continue to be applicable normally as before.
- v) The consumers are at liberty to seek restoration of the load post lifting of the lockdown.
- vi) In case the deration of the load happens in between the billing cycle in terms of the request of the consumer as per the relaxation given above, the distribution licensee shall endeavour to bill the consumer duly giving effect to the deration, that is billing as per the tariff order upto the date of deration and post deration of the load on the basis of the de-rated load only. The demand charges shall be levied accordingly on proportionate basis.”

This is with reference to the order dated 29.04.2020 in O.P.No.17 of 2020. Nothing prevented the consumer form availing the facility extended by the Commission.

16. The Commission also notices that certain consumers have relied on the decisions of other Commissions. The decisions of the said Commissions being based on the relevant rules and regulations of the particular state, cannot aid the case of the consumers. The principle may be of persuasive value only as this Commission is bound by its own rules and regulations on the subject of collection of demand charges. Thus the contention is not acceptable.

Conclusion:

17. In that view of the matter and for the reasons explained in the foregoing paragraphs along with analysis made of the judgments relied upon by the consumer, the Commission finds no merits in the request made through this representation. As such, it rejects the representation made by the consumer.

BY ORDER OF THE COMMISSION

Sd/-
COMMISSION SECRETARY (FAC)