

BEFORE THE FORUM FOR REDRESSAL OF CONSUMER GRIEVANCES
OF SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED
TIRUPATI

This the 29th day of December 2012

C.G.No:118/2012-13/Ongole Circle

Present

Sri K. Paul
Sri A.Venugopal
Sri T.Rajeswara Rao
Sri K. Rajendra Reddy

Chairperson
Member (Accounts)
Member (Legal)
Member (Consumer Affairs)

Between

Sri I.Hemasundara Rao, Laisoning Officer,
M/s East India Brines Limited
Plot No: 9., Gundlapalli Village & Post
Maddipadu Mandal
Prakasam-Dist-523211.

Complainant

And

1. Assistant l Engineer/Operation/Maddipadu
2. Assistant Divisional Engineer/Operation/Rural-1/Ongole
3. Chief General Manager/Finance/SPDCL/Ongole
4. Divisional Engineer/Operation/Ongole
5. Senior Accounts Offcier/Operation/Ongole
6. Superintending Engineer/Operation/Ongole

Respondents

Sri I.Hemasundara Rao, Laisoning Officer of M/s East India Brines Limited, Plot No: 9, Gundlapalli Village & Post, Maddipadu Mandal, Prakasam-Dist-523211 herein called the complainant, in his complaint dt:11-6-2012 filed in the Forum on dt:11-6-2012 under clause 5 (7) of APERC regulation 1/2004 read with section 42 (5) of I.E.Act 2003 had stated that

1. The Superintending Engineer, Operation, APSPDCL, Ongole has accorded load approval and sanction for extension of supply to their units at Gundlapalli Village at 11KV potential under HT category-I for

250KVA with a connected load of 318 HP in the name of Managing partner of their company.

2. In terms of the sanction, they have paid the required service line and development charges and security deposit and submitted DDs to the DE/OPn/APSPDCL, Ongole, on dt: 27-7-2009.
3. Subsequent to this, on 7-12-2009, they addressed to the SE/Opn/APSPDCL, Ongole and have requested for phasing of their requirements as follows:-
 - a. 1st phase – 75 KVA – Immediately
 - b. 2nd phase – 175KVA –May 2010.
4. CMD, SPDCL, Vide Memo No: dt:02-01-2010 has accorded approval for the above phased availment.
5. Accordingly they have entered in to HT agreement with APSPDCL represented by the DE/Opn/Ongole on 05-02-2010 for CMD not exceeding 75KVA for utilizing supply to them 1st phase with CEIG approval for a connected load of 84KW.
6. Subsequently they have requested the SE/Opn/Ongole in their letter dt:26-5-2010 to accord revised sanction for release of 2nd phase of requirement of 175KVA with effect from September 2010 instead of May 2010 as the machinery erection was not ready.
7. The CMD, SPDCL was kind enough to accord revised approval vide Memo dt:11-6-2010 for release of 2nd phase of 175KVA wef September 2010.
8. As they could not commission the full equipment due to various reasons they could not avail 2nd phase of power release wef September to various reasons

9. They have not obtained CEIG approval for the commissioning of additional load as the same was not erected.
10. They submit that they have not entered into the HT agreement for the second phase of load i.e. 175KVA till the date of the complaint
11. However, as they could complete erection works only during March 2012, they have requested Superintending Engineer, Operation, Ongole vide their letter dt:30-3-2012 to release supply to their 2nd phase CMD of 175 KVA immediately.
12. When they are awaiting to get the supply released as per their request, they have received letter dt: 19-5-2012 from the SE/Opn/Ongole requesting them to pay Rs 11,72,920/- within 30 days as a short fall amount, due towards non availing of supply to the 2nd phase CMD of 175 KVA wef September 2010 which is unjust.
13. The HT agreement entered with APSEB on 05-02-2010 guarantees availment of supply to CMD of 75KVA only, which they are continuing to avail till the date of complaint, paying the energy bills regularly.
14. In view of the above and due to non existence of any agreement for availment of 2nd phase CMD of 175 KVA from 9/10 and CEIG approval for additional connected load no reference can be taken for 9/10.
15. As such the demand of SE/Opn/Ongole for payment of Rs 11,72,920/- as shortfall amount is not justified and they cannot be forced to pay on the basis of deemed commitment.
16. Moreover as a small upcoming company, they will not be able to afford any additional payments other than regular.

Notices were served upon the respondents duly enclosing a copy of complaint.

The respondent-4 i.e. the Divisional Engineer/Operation/Ongole in his written submission dt:09-6-2012 received in this office on dt:04-7-2012 stated that:

1. Managing partner of M/s East India Brines Ltd. Gundlapalli (village), Maddipadu section in Ongole division has applied for HT supply with CMD of 250KVA with connected load of 318HP on 10-6-2009 and the estimate was sanctioned by the SE/Opn/Ongole vide sanction No:DE/ONG/HT/08/2009-10 for Rs 2,04,320/- and addressed the Managing Partner to pay the following amounts vide LrNo. SE/O/ONG/CM/DNO:4486/09, Dt:23-6-2009.
 - a. Rs. 1,52,630/- - Service line charges.
 - b. Rs. 3,75,000/- - Development Charges
 - c. Rs. 3,75,000/- - Security deposit charges.

2. As per the zonal manager, APPIIC, Nellore letter, addressed to the managing partner for payment of the following amounts duly deducting 75% development charges.
 - a. Rs. 1,52,630/- - Service line charges.
 - b. Rs. 93,750/- - Balance development charges
 - c. Rs. 3,75,000/- - Security deposit charges.

3. Vide LrNo:DEE/O/ONG/CM/AAE/DNo.2438/09, DT:08-07-2009. The consumer has paid necessary charges and the details are as follows.

Sl.No.	Amount	DDNo. & date	PCB NO. Date	Remarks
1.	2,46,380.00	352152 dt:16-07-09	17053 Dt:29-7-09	S.L.Charges, Terminal & Metering charges and development charges
2.	3,75,000.00	352153 dt:16-7-09	PR.No.18384 Dt:29-7-09	Security deposit

4. On 07-12-2009, the consumer has requested the Superintending Engineer/Operation/Ongole for releasing the total load 250 KVA in two phases, ie; 1st phase for CMD of 75 KVA in January 2010 and balance CMD of 175 KVA in May 2010.
5. As per request of the consumer, the SE/Opn/Ongole has requested for approval from the CGM/Opn/Tirupati Vide LrNo:SE/O/OGL/Comml/AE/DNo:9209/09, dt:30-12-2009.
6. Chairman and Managing Director has accorded approval vide Memo No. CMD/DE/COmml/F.91/DNo:05/10, Dt:02-01-10 for releasing supply in two phases. HT supply was released on 05-02-10 for CMD 75KVA with connected load 56HP + 40KVA + 2KW as 1st phase.
7. The consumer has requested on 20-5-2010 to the SE/Opn/Ongole for releasing supply in September /2010 instead of May/2010 for releasing 2nd phase load 175KVA due to delay in procurement of further production machines.
8. As per consumer request, the SE/Opn/Ongole again requested for further approval from CGM/Opn/Tirupati vide LrNo.SE/O/OGL/AE/C/DNo:4021/10, dt:05-06-10. Chairman and Managing Director has accorded approval vide Memo No:CGM/DE/Coml/ F.91/DNo:876/10, Dt:11-6-10 to release 2nd phase load in September 2010 instead of May 2010.
9. The consumer has again requested the SE/Opn/Ongole on 30-03-12 to release 2nd phase CMD 175KVA in 04/2012 instead of September 2010, due to delay in machinery erection. As per the consumer request Superintending Engineer/Opn/Ongole has requested Chief General

Manager/Opeartion/Tirupati vide LrNo: SE/O/OGL/AE/C/DNo:1685/12 dt:04-04-12 for approval.

10. Chairman and Managing Director has accorded approval vide Memo.NoCGM/DE/Coml/DNo:326/12, dt:24-04-12 for releasing 2nd phase CMD 175 KVA in 04/2012 instead of 09/2010 duly collecting Rs 11,72,920/- as minimum charges for 2nd phase. As per Chairman and Managing Director instructions, Superintending Engineer/Opn/Ongole has requested the consumer to pay Rs. 11,72,920/- towards shortfall amount.

The respondent-3 i.e. the Chief General Manager/Finance/SPDCL/Ongole in his written submission dt:18-6-2012 received in this office on dt:19-6-2012 stated that:

1. On the grievance of the consumer of the HT SCNo: 343 ONG about levy of shortfall without utilization of second CMD, instructions were issued by CGM/Opn/APSPDCL/Tirupati, on 12-4-2012 and 24-4-2012 and the said complaint is to be dealt with and redressed by the CGM/Opn/APSPDCL/Tirupati.
2. The CGM, Finance is no way concerned and not responsible for the said matter

Findings of the Forum:

1. The grievance of the complainant is about billing of the CMD other than that mentioned in the agreement and demanding payment of Rs.11,72,920/- as shortfall without releasing the CMD which is unjust and requested for withdrawal of the above demand.

2. The grievance in terms of Guaranteed Standards of Performance is to be resolved within 7 days from the date of the representation by the consumer.
3. The brief history of the case is that the complainant is availing supply at 11 KV potential under HT-I category with SCNo: ONG 343 for their industry M/s East India Brines Limited, Gullapalli of Maddipadu mandal in Prakasam-Dist for a CMD of 75KVA as the first phase out of total CMD of 250 KVA for which the agreement was concluded with APSPDCL on 05-02-20 10.
4. The second phase of 175KVA is to be availed by the complainant with effect from May 2010 as per the sanction accorded by the APSPDCL in its memo dt: 02-01-2010.
5. But due to the delay in erection of equipment, the consumer requested the SE/Opn/Ongole in his letter dt :26-05-2010 to accord revised sanction for release of 2nd phase of 175 KVA with effect from September 2010 instead of May 2010 as sanctioned originally.
6. Accordingly the Chairman and Managing Director/APSPDCL, in memo dt: 11-06-2010, accorded revised approval to release 2nd phase of 175 KVA with effect from September 2010 instead of May 2010 without mentioning any pre conditions.
7. But the consumer did not turn up even to the revised approved date and finally on 30-3-2012, requested the SE/Opn/Ongole to release the.2nd phase 175 KVA with immediate effect.
8. While the consumer was awaiting for release of the balance CMD, a 30 days demand notice dt: 19-5-2012 was served to him for an amount of Rs 11,72,920/- from the SE/Opn/Ongole towards shortfall against the

2nd phase CMD of 175 KVA with effect from September 2010 though not released and not reflected in the monthly bills from September/2010 onwards.

9. The excuse sought by the complainant for non procurement of CEIG approval for additional connected load is of no validity and hence is not considered.
10. As per clause 2.2.11 of GTCS, “Contracted Demand” or “Contracted Maximum Demand” means the maximum demand the consumer intends to put on the system, as described in clause 2.2.35 and is **so specified in the supply Agreement between the parties.**
11. Also as per clause number 5.9.4.3, *in the case of consumers who were sanctioned phased Contracted Demand and supply released for initial or intermediary phased demands, the consumer may seek deferment or cancellation of such of the phased demands which are scheduled beyond minimum period of Agreement, by giving three Months notice in advance or in lieu thereof pay three months charges towards such deferment or cancellation of such phased demands.*
12. In this case, the date of agreement is 05-02-2010 and minimum period of agreement is 2 years as per clause 5.9.3.2 of General Terms and Conditions of Supply. As such, the agreement is live up to 04-02-2012 and hence the consumer cannot seek deferment before 04-02-2012. The complainant also did not made any advance request for further postponement of 2nd phase explaining his difficulty.
13. T he respondents failed to incorporate the phased demand into in the agreement and there by failed in issuing monthly bills with CMD of

250 KVA vide approval Memo No:CGM/O/DE/Comml/F91/DNo: 05/10 dt:02-01-2010, and no officer shouldered the responsibility. The CGM/Finance reply indicates lack of co-ordination in between commercial and finance wings on vital subjects in resolving the issues vide Lr dt:18-6-2012.

14. Though there were approvals for the said phased manner of release of CMD, the respondents neither served a notice asking the consumer about the conclusion of revised agreement in accordance with the sanction given for release of 2nd phase CMD of 175KVA with effect from September 2010, but simply raised the demand of shortfall at a later date ie after a period of about 18 months for Rs. 11,72,920/- with retrospective effect that too when the consumer approached for release of 2nd phase load vide their letter dt:30-03-2012 without actually releasing the CMD and concluding an agreement to that effect is felt unjust.
15. Since the consumer approached the respondents in the month of March 2012 i.e. on 30-3-2012 for release of the said second phase additional load of 175 KVA, the consumer shall conclude a fresh agreement with the respondents for a total load of 250 KVA with effect from 30-03-2012 and the consumer is liable to pay the fixed charges accordingly.
16. The penalties if any levied on or after 30-03-2012 in respect of the service in connection with exceeding CMD i.e. 75 KVA shall be withdrawn and the accounts adjusted accordingly.
17. The licensee on one hand in their letter dated 24-04-2012 (CGM/ Operation) stating that the additional demand will be released subject

to the condition that the consumer pays the demanded amount of Rs. 11,72,920/-, on the other hand in the same letter stated that the said additional CMD is deemed to have been released with effect from Sept 2010 itself which is quiet contra.

18. The said word "DEEMED" is no where specified in the GTCS or the Electricity Act 2003 and hence carries no specific weight and hence is of no validity.
19. More over, the respondents/licensee accorded approval for postponement of the release of 2nd phase CMD of 175 KVA, from May 2010 to September 2010, which period falls within the minimum agreement period of 2 years, and is violation of Clauses 2.2.11, 5.9.3 and 5.9.4 of GTCS.
20. The consumer/complainant though aware of the fact that the second phase CMD of 175 KVA is due for release with effect from 9/2010, did not approach the respondents for postponement of the said CMD for the second time, but simply continued exceeding the CMD and paying the penal charges to that effect upto March 2012 . On the other hand the licensee here in the respondents also kept quite for a considerably long period until the consumer approached for the release said second phase demand.
21. In view of the above facts it is felt by the Forum that it is more appropriate that the consumer approaches the licensee seeking grant of extension for release of the second phase CMD from September 2010 to 30-03-2012 as was not done so earlier in his request dt:30-03-2012

In view of the above, the Forum passed the following order.

ORDER

The respondents are directed that

1. They shall bill the service at 250 KVA CMD from the date of request of the complainant to release 2nd phase load of 175 KVA subject to final decision on items 20 and 21 of the findings above.
2. The consumer is directed to approach with written application seeking grant of time extension for the disputed period to APSPDCL authorities regarding disputed amount of Rs.11,72,920/- back billed for the period from September 2010 to March 2012.
3. The licensee shall consider his application and pass appropriate orders duly quoting the rule position thereof within a period of 30 days from the date of this order on merits of the case with ref. to General Terms and Conditions of Supply, Tariff Order and Electricity Act 2003 or any other commission approved manual procedures and rules.

Accordingly the case is allowed and disposed off

If aggrieved by this order, the complainant may represent to the Vidyut Ombudsman, O/o the APERC, 5th floor, Singarenibhavan, Redhills, Hyderabad-500004, within 30 days from the date of receipt of this order.

Signed on the 29th day of December 2012

Sd/-
Member (Legal)

Sd/-
Member (C.A)

Sd/-
Member (Accounts)

Sd/-
Chairperson

Forwarded by Orders

Secretary to the Forum

To

The Complainant

The Respondents

Copy submitted to the Honourable Ombudsman, APERC, 5th floor, Singarenibhavan, Redhills, Hyderabad-500004.

Copy to the General Manager/CSC/Corporate office/Tirupati for pursuance in this matter.