

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

**On this the 28<sup>th</sup> day of May 2015**

**In C.G.No:192/ 2014-15/Vijayawada Circle**

***Present***

***Sri P.Venkateswara Prasad***  
***Sri A.Sreenivasula Reddy***  
***Sri T. Rajeswara Rao***

***Chairperson***  
***Member (Accounts)***  
***Member (Legal)***

***Between***

M/S The KCP limited  
Represented by Sri P.Narasimha Reddy  
Manager F & I  
Mukteswarapuram Village  
Jaggaihpeta Mandal  
Krishna - Dist

Complainant

***And***

1.Chief General Manager/Revenue and Internal Audit/TPT      Respondents  
2.Chief General Manager/P and MM /TPT  
3.Senior Accounts Officer/Vijayawada  
4.Superintending Engineer/Vijayawada

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Sri P.Narasimha Reddy Manager of KCP limited ,Muktyala village, Jaggayyapeta,  
Krishna –Dist, herein called the complainant, in his complaint dt:09-02-2015 filed in the  
Forum on dt:09-02-2015 under clause 5 (7) of APERC regulation 1/2004 read with section  
42 (5) of I.E. Act 2003 has stated that:

1. He is the Manager of KCP Cement, Muktyala village,Jaggayyapeta Mandal,  
Krishna District, Andhra Pradesh.

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2. The present complaint is filed against the respondents on issuing the letter dt.18.11.2014 whereby demanding the complainant Rs.9,27,385/- towards revised surcharge purported to be on late payment of the penalty imposed towards R&C charges as arbitrary ,illegal unauthorized and contrary to the provisions of Electricity Act, 2003.The facts leading to the filing of the present complaint are as follows:
3. He state that the complainant is a company incorporated under the provisions of the Companies Act,1956 interalia engaged in the business of manufacture of the sale of Cement and has set up its manufacturing unit at Muktyala Village, Jaggaiahpet Mandal , Krishna District. The complainant company has set up various manufacturing units at various places of Andhra Pradesh.This unit has commenced the production in the year 2011.
4. It is respectfully submitted that the complainant company requires continuous and uninterrupted power supply to meet its requirement for manufacturing Cement.The complainant company has an existing HT agreement with the APSPDCL with a CMD of 19000KVA. As the DISCOM has been imposing power cuts in order to match the short fall the complainant company has been purchasing the power through other sources. Complainant Company in order to meet its power demands and overcome the power cuts imposed by the DISCOM had entered into Power Purchase Agreement (PPA) dt.26.09.2012 M/s Global Energy Pvt .Ltd,(GEPL) for purchasing 18 MW for purchasing power.
5. It is respectfully submitted that as there is shortage of power supply at the instance of respondents and other distribution licensees APERC passed orders dt.7-9-2012 and later on modified vide orders dt.14.09.2012.1-11-2012.where under imposed restrictions and control on usage of power . By the said

orders,APERC specified that in case of exceeding PDL and PCL on such excess drawal penalty upto 5 times of the regular charges be levied.

6. It is submitted that so far as the demand and energy drawn from open access is concerned the same cannot be added to the demand and energy drawn from the DISCOM for the purpose of applying penalty under R & C orders issued by APERC. That being so the complainant has been issued R & C bills for the period Sep.2012 to Oct,2014 demanding penalty.the complainant addressed a letter to 2<sup>nd</sup> respondent informing that they never exceeded the demand during off-peaks hours & peak hours respectively, and that because of non accounting of open access power the same has been levied, and hence requested to revise the same.
7. It is submitted that as the Respondents were not revising the R&C penalty and threatened with disconnection, complainant filed W.P.No .31739 of 2013 before the Hon'ble High Court.The Hon'ble High Court was pleased to pass interim order that "interim suspension on condition of deposition 1/3<sup>rd</sup> in 2 weeks". Subsequently by order dt.20.11.2013 the Hon'ble High Court extended the time by another 4 weeks within which time complainant has paid the amount as directed by this Hon'ble Court.
8. It is submitted that 1<sup>st</sup> respondent by letter dt.17.6.2014 informed the complainant that the bills were revised duly considering open access final settlement details and accordingly requested the complainant to pay Rs.15,86,004/- as against the previous demand Rs.27,09,160/-. Later on the complainant has represented to 1<sup>st</sup> respondent by letter dt.28.07.2014 that as the demand of R&C penalty itself was revised after considering Open Access settlement,even the surcharge on penalty for Rs.36,42,903/- should be withdrawn. It was also informed that the respondents were allowed to collect

only the penalty as one time measure but not surcharge and that to when the penalty itself was levied and revised after more than a year , they are not justified in demanding surcharge . It is pertinent to mention here that complainant is regular in paying the CC bills and surcharge can be levied only if the payment of CC bills are delayed but cannot be levied on late payment of R&C charges as the same is a once time measure .It is relevant to mention here that the complainant never delayed in payment CC bills due to which surcharge can be levied. In response the 2<sup>nd</sup> respondent informed the complainant by letter dt.22.08.2014 that as the grievances of the complainant regarding the penalties has been settled and once the writ petition is disposed they would also withdraw the surcharge. Immediately complainant took steps to withdraw the said WP and the same has been dismissed as withdrawn by the Hon'ble High Court vide dt.10.12.2014 in W.P.No.31739 of 2013.

9. It is submitted that complainant informed the same to the 1<sup>st</sup> respondent . Thereafter, 1<sup>st</sup> respondent revised the bills of the complainant and issued Lr.No.SE/O/VJA/SAO/JAO/HT/R2/A3/D.No.1988/14,dt.18.11.2014 demanding surcharge of Rs.9,27,385/- purported to be on account of late payment of penalty towards R&C charges. Complainant made representation dt.17.12.2014 stating that as revised late payment charges were imposed against R&C penalties,the same are not applicable as per APERC guidelines and APERC authorized to collect only penalty in case of exceeding demand and consumption beyond R&C limits but not to further collect surcharges on late payment of penalty, complainant is payment of penalty ,complainant is paying CC bills regularly in time and requested to withdraw revised late payment surcharge of Rs 9,27,385/- imposed on R&C penalties. Respondents did not reply to the representation

made by the complainant however.threatened the complainant for disconnection on non-payment of the said revised surcharge on account of late payment penalty.

10. It is submitted that complainant filed W.P.No.40400 of 2014 challenging the LR.NO.SE/O/VJA/SAO/JAO/HT/R2/A3/D.No.1988/14, dt.18.11.2014. Meanwhile 1<sup>st</sup> respondent issued LR.NO.SE/O/VJA/SAO/JAO-HT/R2A3/D.No.2218/14. Dt.26.12.2014 demanding Rs 1020439/- and also stated that if the same is not paid complainant will be ordered for disconnection after expiry of 3 days.W.P.No.40400 of 2014 has come up for admission hearing before the Hon'ble High Court and the Hon'ble High Court was pleased to dispose of the Writ petition observing to file a complaint before this Hon'ble forum and granted stay for a period of 3 weeks.

11. It is humbly submitted that R&C penal charges will be levied as one measure on account of exceeding PDL & PCL . It is further submitted that surcharge cannot be levied on penalty imposed as one time measure. Therefore act of the respondents in demanding surcharge of Rs 9,27,385/- purported to be on account of late payment of penalty towards R&C charges is arbitrary, illegal, and without jurisdiction. It is pertinent to mention here that complainant is prompt in paying the CC bills and surcharge can only be levied on late payment of the CC bills.

12. It is respectfully submitted that the complainant company has maintained good track record in clearing the CC bills so far and there is no instance of default .The manufacturing of cement is an uninterrupted process and for any reason if the power is disconnected , the entire operations would come to stand still.For restarting the unit the complainant company would incur heavy expenditure.

That apart there are 120 employees working on permanent basis about 300 employees working on temporary basis and about 450 families indirectly dependent on the complainant's unit. Any coercive measures would not only affect the complainant company but also the employees and other dependents. The complainant company would suffer irreparable loss on account of disconnection. In fact the respondents 1 and 2 have enough security deposit lying with them equivalent to two months of monthly consumption, therefore, their interest are sufficiently protected if this Hon'ble Forum stay the collection of impunged demand.

13. In the circumstances and for the facts and reasons stated above , it is prayed that this Hon'ble Forum may be pleased to pass an order or orders or direction declaring the action of respondents in demanding surcharge purported to be on account of late payment of penal charges towards R&C measures as arbitrary, illegal and contrary to the provisions of Electricity Act,2003 and consequently set aside Lr.No.SE/O/VJA/SAO/JAO/HT/R2/A3/D.No.1988/14,dt.18.11.2014 and Lr.No.SE/O/VJA/SAO/JAO-HT/R2A3/D.No2218/14,dt.26.12.2014 issued by the 1<sup>st</sup> respondent and pass such other order or orders as this Hon'ble Forum may deems fit and proper in the interest of Justice.

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

**The respondent-IV i.e. the Superintending Engineer /Operation /Vijayawada in his written submission dt:16.02.2015, received in this office on dt:20.02.2015 stated that:**

1. In respect of HT Sc.No.VJA3035 of M/s KCP Cements,Jaggiahpetta the HT bills during R&C period i.e., from 09/12 to 08/13 were issued on provisional basis .The details are herewith enclosed.

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2. Mean while , the consumer approached the High Court vide WP.No.10309/2013 requesting to revise the bills by considering 15 minutes block period as per APERC orders.The Hon'ble High Court has issued orders that "The APSPDCL shall consider the objections raised by the petitioner-Company in its representations taking a reasoned decision in the matter and communicate the same to the petitioner-company.It would there upon be open to the APSPDCL to issue a final bill the petitioner company quantifying the amounts ,if any ,still due from the petitioner-company in respect of the month of February.2013. Pending this exercise the APSPDCL shall not initiate any coercive action against the petitioner-company".
3. In order to honour the High Court Orders this office has addressed a letter to the consumer informing that the bills will be revised in accordance with APERC Regulations(as per the Honourable High Court's decision) soon on receipt of open access final settlement data from the Corporate Office with a request to extend co - operation.But the consumer again approached the Hon'ble High Court vide WP No.37739 of 2013 for non revision of bills then the Hon'ble High Court has issued an order wherein the Hon'ble High Court has issued orders to the consumer to pay the 1/3<sup>rd</sup> of the amount demanded towards penalty within 2 weeks. Accordingly the consumer has paid 1/3<sup>rd</sup> of the penalty amount in addition to regular bills.
4. The Open Access final settlement has been made in accordance with the open access final settlement statements received from the corporate office and the bills were revised accordingly. The revised bills along with calculation sheet were communicated to the consumer vide this office letter dt.10.06.2014 where the consumer accepted the revision of bills pattern and promised to withdraw the

court cases as stated above. As a result of the revision all the dues to APSPDCL were cleared to the end of 05/2014 ledger. The consumer also stated that he has filed the withdrawal petition for the pending court cases.

5. Subsequent to the payments of all the dues to APSPDCL the consumer again raised objections and deducted Rs 36.43 lakhs while paying july'2014 CC bill by stating that the outstanding dues of Rs 36.43 lakhs is not correct and requested for month wise surcharge and other details. The consumer 's request was examined and revised the outstanding to Rs 9.26 lakhs by withdrawing Rs.28 lakhs and all the details were communicated to the consumer. Further, due to nonpayment of dues of Rs.9.26/- lakhs the amount accumulated to the extent Rs10.45 lakhs as per 02/15 ledger.
6. Meanwhile ,the Hon'ble High Court of AP has dismissed the old WP no.31739 of 2013 as per request made by the consumer due to settlement of his accounts as per APERC Regulations.
7. It is also to submit that at the time of payment of the provisional bill the consumer has made his own calculations and paid the provisional bills as per his calculations causing less payment. As a result , surcharge has been levied thereon. Generally , the consumers are supposed to pay open access final settlement amounts as per the notices sent by the APSPDCL during the R&C period and non R & C period. Accordingly ,APSPDCL made all the efforts for open access final settlement amount as per rules in vogue. It is also to submit that the operation circle. Vijayawada has settled all the open access consumer A/cs Up to Nov 2014 as on date and accordingly M/s KCP Cements bearing HT SC.No VJA 3035 accounts were also settled and notices were served for payment even though consumer's court case is pending in the Hon'ble Court with an

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intention to avoid further delay in settlement of accounts .Hence, the consumer was issued notice for payment of above said outstanding amounts.

8. It is further to submit that the consumer without any further representation approached the Hon'ble High Court (WP No.40400 of 2014) on the above pending amounts and the Hon'ble High Court issued orders advising the consumer to approach respective Hon'ble CGRF of APSPDCL.
9. As per the APERC guidelines(code of practice on payment of bills by the consumers-copy enclosed)the amounts paid initially is to be adjusted towards arrears(principal and interest arrears) and the balance paid towards current month principal & interest amounts. As a result ,as per the APERC guidelines the payment allocation towards principal and interest has been reexamined and the final balance payable by the consumer as per Feb'15 ledger has been arrived as follows:

Particulars	Principal(Rs)	Interest/surcharge(Rs)	Total payable (Principal & surcharge)
Closing balance as per feb.15 ledger	1168541.25	12269.68	1180810.93

The detailed calculation of the above data is herewith enclosed.

10. Hence, the difference amount of Rs.1.36 lakhs (Rs.11.81 – Rs 10.45(ledger balance) will be raised if the Hon'ble CGRF grants approval.

11. Further , it is to submit that in the provisional bills issued during R&C period (Sept.2012 to Aug.2013)it was clearly mentioned in the bills that  
 “Note. The Open Access adjustment given in the bill is provisional. The bill will be revised & shortfall if any will be recovered in due course. Limitation of liability of 2 years as per E.A.Act2003 will not apply”.
12. The final settlement notice was served to the consumer on 10.06.2014 which is within the limitation period Moreover, limitation Act is not applicable as it was intimated to the consumer while issuing bills during the R&C period itself.
13. In the light of the above,it is to submit that the consumer is liable for payment of Rs.11.81 lakhs as on date.

**Further The respondent-I i.e. the Chief General Manager /R & I.A., in his written submission dt:31.03.2015, received in this office on dt:31.03.2015 stated that:**

1. During the financial year 2012-13,Hon’ble APERC issued R&C guidelines on 07-09-2012 and extended the same for the financial year 2013-14 partly i.e.R&C orders are in force upto 31.07.2013. the details are as under.

Tariff year	Period covered under R&C	Months/Days	Period not covered under R&C	Months/Days
2012-13	12-09-2012 to 31.03.2013	6 Months 19 days	01-04-2012 to 11.09.2012	5 Months 11days
2013-14	01-04-2013 to 31.07.2013	4 Months	01.08.2013 to 31.03.2014	8 Months

The above consumer M/s.KCP ltd,HT Sc.no.VJA3035 has procured power through open access during the R&C period.The settlement of energy is to be done as per regulation of 2 of 2006 issued by the APERC.The process of settlement of energy is as follows:

The Consumers purchase the energy through IEX/other open access generators by giving day ahead schedules in 15 minutes time blocks to the SLDC/APTRANSCO. The final settlement of energy is to be done as follows:-

- a. Recorded consumption of the consumer in 15 minutes time blocks as per MRI data is to be obtained.
- b. Day ahead schedules given to SLDC/APTRANSCO for purchase of power through open access from a specified source in 15 minutes time blocks to be obtained.
- c. If the purchase of power is through a intra state generator, the generation data in 15 minutes time blocks is to be obtained through MRI.
- d. The recorded consumption of the consumer and the energy purchased through open access are to be compared.
- e. If there is no consumption from the consumer side or less consumption than the schedule given in the time block in which the energy is purchased, then it is to be treated as in advertent power.
- f. This process is to be done for all the blocks existing in the month and total energy to be adjusted is to be arrived.

As various steps are involved and due to non availability of required software, the final settlements are being delayed.

2. In this connection, it is to submit that, due to non-finalization of final settlements by the time of billing, open access energy was adjusted to the above consumer provisionally.
3. In order to relieve the consumers from the burden of payment of total bill amount due to non-settlement of open access energy, APSPDCL has taken a decision to adjust total open access energy from the Recorded energy of the consumers based on the day ahead schedules and to issue bills excluding open access energy provisionally. Accordingly, the bills were issued to the consumer. But the consumer has made less payment as per his own calculations instead of the amount mentioned on the bill.
4. Further, on the receipt of Final Energy settlement reports from EBC/APTRANSCO/Hyd, the provisional adjusted units & BMD and final adjusted units & BMD to the OA consumers have been compared and communicated to the concerned circles to issue Final Bills to the consumer duly revising the provisional adjusted units & BMD bills if provisional & final adjusted energy/demand differs, as per the final settlement reports duly verifying already issued CC charges bills. In the present case, the consumer has not arranged full payment as per the provisional bill issued.
5. Initially, the SE/O/Vijayawada revised the bills and not withdrawn the proportionate surcharge and demanded the balance payment due as per records.
6. Subsequently on consumer representation the details of revised bill amounts and revised late payment charges levied as per tariff order and amount due is intimated to the consumer by the SE/O/Vijayawada for arranging payment duly withdrawing the proportionate surcharge also. In this regard, it is to inform that, as per regulations of APERC, the consumer is supposed to arrange the payment

of bill amount as per the bill issued and if any dispute is existing the same is to be brought to the notice of the bill issuing authority for revision. Then, if any discrepancy is observed , the same will be rectified and excess amount paid, if any will be adjusted in the next bill.

7. In View of the above facts, and as such there is no material strength in the grievances of the consumer and the same is not maintainable under any Regulation/Clause of General Terms and Condition of Supply notified by APERC and it is requested to dismiss and disallow the claim of the consumer.

**Findings of the Forum:**

1. The authorised representative of the complainant, Sri P.Narasimha Reddy, Manager F & I has personally attended to the Forum on 19.05.2015 at 4.00Pm and enquired about the outcome of the case. He has also requested the Forum to settle the grievance early since his Management is insisting for the same.

In order to bring the facts into light ,the Forum felt it will be just and reasonable to have a personal hearing on the pending subject .Accordingly directed the Representatives of the Respondents Sri Sathyanarayana AO/R and Sri Madhu ADE/EBC who are well versed with the billing and open access settlements to appear before the Forum to clarify the apprehensions and doubts of the complainant on billing ,adjustments and open Access settlements etc.,.

A personal hearing has been conducted in the Forums office from 4.15 PM to 6.30PM on the same day i.e., 19.05.2015.

**Issues raised by Complainant during Personal Hearing:**

The Complainant has stated that had the electricity bills been issued correctly duly taking the open access final settlements on monthly basis promptly , They would have paid

the full amounts in favour of Respondents and thus payment of surcharge would not have arisen.

To this query it is pertinent to point that the contention of the Complainant is Superfluous. since the Respondent 1 in his submission has elucidated in detail about the procedure to be followed for final adjustment of open Access Settlement.

Further since the complainant has arranged payments on monthly on his own assumptions and calculations without any scientific approach and hence violated the clause 4.7 of Electricity supply code Regulation 5/2004 of APERC, wherein it was clearly stated that , the consumer shall make the full payment of electricity bills amount in case of erroneous/dispute bills. But contrary to the rule position , the complainant has arranged the payments as per his own calculations.

Owing to non-payment of full demanded amounts by the Complainant, an amount of Rs 9.26 lakhs has been accumulated as arrears. In accordance with the tariff orders, the Complainant is supposed to pay the belated payment surcharge on this amount till he clears the dues .The Respondent No 4 in his submissions has clearly presented the details in separate annexures for the benefit of Complainant.

In the light of the above the following order is issued.

**ORDER**

The Complainant is advised to clear the final unsettled balance of Rs 9.26 lakhs along with the surcharge as per rules since the claim of the Respondents are just and in accordance with rules and regulations in force.

If aggrieved by this order, the complainant may represent to the **Vidyut Ombudsman, Andhra Pradesh ,Flat No:401 ,4<sup>th</sup> Floor, Ashoka Chambers, Opposite to MLA Quarters ,Adarsh Nagar,Hyderabad-500063**, within 30 days from the date of receipt of this order.

Signed on this, the 28<sup>th</sup> day of May 2015.

Sd/-  
**Member(Legal)**

Sd/-  
**Member(Accounts)**

Sd/-  
**Chairperson**

**True Copy**

**Chairperson**

To  
The Complainant

The Respondents

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