

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021

**Present: Shri S. C. Mahapatra, Chairperson
Shri G. Mohapatra, Member
Shri S. K. Ray Mohapatra, Member**

Case No. 21/ 2023

M/s. Jindal Stainless Ltd.	Petitioner
Vrs.		
The Chief Load Despatcher, SLDC and others	Respondents

In the matter of: **Application under Section 86 (1) (f) of the Electricity Act, 2003 read with Regulation 1.13 of the Orissa Grid Code (OGC) Regulations, 2006 for determination of demand charges on Open Access quantum.**

For Petitioner: Shri Aditya Das, Advocate along with Shri R. P. Panigrahi, AGM (Legal) of M/s. JSL,

For Respondents: Ms. Malancha Ghose, DGM (RA), TPNODL and Shri P. K. Satpathy, Sr. G.M., SLDC.

ORDER

Date of Hearing: 04.04.2023

Date of Order: 12.04.2023

The Petitioner- M/s. Jindal Stainless Ltd. (in short M/s. JSL) has filed the present petition under Section 86 (1) (f) of the Electricity Act, 2003, read with Regulation 1.13 of the Odisha Grid Code Regulations, 2006 with a prayer to direct Respondent No.2 TPNODL (successor of NESCO Utility) to prepare monthly energy bill for November, 2015 by taking into account the open access drawal schedule of SLDC and revise the maximum demand for billing of demand charges by reducing open access transactions from the total demand recorded in the meter, in the same time block to arrive at the payable demand charges and pending adjudication, direct Respondent No.2 not to disconnect the energy connection and not to pursue further coercive action against the petitioner.

2. The Petitioner M/s. JSL has submitted that it is having an integrated stainless steel plant at Kalinga Nagar Industrial Complex, Duburi and also a Captive Power Plant (CPP) of 250 MW (2x125 MW) in its said plant premises. The plant is connected with 400/220 KV New Duburi Grid Sub-station of OPTCL through 220 KV double circuit line with

Contract Demand (CD) of 12 MVA w.e.f 01.08.2015. In the month of November, 2015, one of its CPP unit with capacity of 125 MW was put to statutory shutdown for which the Petitioner availed power upto 70 MW from IEX through Short Term Open Access (STOA) and the said matter was communicated to Executive Engineer, NESCO Utility (now TPNODL). SLDC had also allowed the petitioner to avail power drawal of 70 MW on RTC basis through STOA for the month of November, 2015.

3. According to the Petitioner-JSL, for the billing cycle 01.11.2015 to 30.11.2015, they received the provisional monthly energy bill on 01.12.2015 from the Respondent No.2- NESCO Utility based on the quantum of energy and maximum demand as recorded in the energy meters. After receipt of the said bill, the Petitioner on 02.12.2015, requested Respondent No.2 for revision of energy bill, because power consumption from IEX through Open Access had not been considered in the said monthly energy bill. Thereafter, Respondent No.2 served the revised bills on 03.12.2015 with the energy reading as zero and the demand charges on the basis of total recorded maximum demand. On 07.12.2015, the Petitioner intimated the Respondent No.2 that the revised energy bill issued is erroneous inasmuch as over drawl penalty has been claimed though there was no consumption of energy and also demand charges has been claimed on the open access drawl. The Petitioner requested the Respondent No.2 again on 09.12.2015 for necessary revision and correction of the energy bill of November, 2015 as the open access drawl from IEX has not been correctly accounted for and has informed that payment has already been made under protest.
4. It may be noted here that under Section 86 (1) (f) of the Electricity Act, 2003 read with Regulation 1.13 of Odisha Grid Code Regulations, 2006, the Commission had passed an order on 08.12.2015 in Case No. 29 of 2015, on the issue pertaining to another captive consumer of the State namely, M/s. Jindal Steel & Power Ltd. The observations of the Commission in the said order are quoted below:

“5. *After hearing the parties and perusal of the case records, we observe that the petitioner M/s. JSPL availing power from NESCO Utility having contract demand of 55556 KVA from 15.07.2010 and at the same time it draws power from its CGP at Angul through Intra-State STOA with effect from July, 2011. NESCO Utility while preparing the energy bill of M/s. JSPL deducts the quantum of energy availed by the petitioner through open access from the total drawal of energy of the petitioner. Hence, there is no dispute regarding billing of energy. NESCO Utility claims demand charges on the contract demand or the maximum demand as per Tariff Order of the Commission as recorded in the energy meters without deducting the demand on the power availed through OA by the petitioner. The issue is raised before the Commission on 14.08.2015.*

6. *In view of arguments placed before us and existing tariff orders, the Commission accepts the prayer of the petitioner M/s. JSPL to allow relief from the demand charges on power availed through open access in excess of 80% of CD from the total maximum demand recorded in the Energy Meter. Since the meter at present has no such facility we have to prescribe a methodology. This, in this case, is as follows:*

SLDC has scheduled the total OA power of the Petitioner during the OA transaction. Therefore, basing upon the scheduled demand reported by SLDC and at unit power factor, NESCO shall calculate the demand in KVA for such OA transaction of the Petitioner. Such demand relating to Open Access shall be reduced from the total maximum demand recorded in the meter to arrive at the payable demand charges. In no case demand charges shall be less than 80% of CD i.e. demand charges shall be claimed on the basis of 80% of CD or MD for power supplied by the licensee whichever is higher. The respondent-SLDC is directed to submit the required information to NESCO Utility for this and NESCO Utility is also directed to prepare the monthly energy bills of the petitioner M/s. JSPL accordingly henceforth. We direct accordingly.”

5. Even after issuance of the above order, the Respondent No.2 re-revised bill for the month of November 2015 on 06.01.2016, wherein energy drawl was corrected as per actual consumption of Respondent No.2, but without rectifying the demand charges. Therefore, on 07.01.2016, the Petitioner again requested the Respondent No.2 to revise the bill for the month of November, 2015 with correct demand charges by calculating the maximum demand in accordance to the Commission's order dated 08.12.2015 passed in Case No. 29 of 2015. According to the Petitioner, for the purpose of calculation of demand charges, maximum demand recorded in the meter ought to have been considered by Respondent No.2, by excluding the open access transaction from IEX. Thus, the action of Respondent No.2 is contrary to the provisions of the Electricity Act, 2003, the Regulations made thereunder, the applicable tariff orders and the order of this Commission dated 08.12.2015 passed in Case No.29 of 2015. Further, as evident from the minutes of the 85th Power System Operational Co-ordination meeting held on 29.04.2015, the Respondent No.2 was aware of the matter and had admitted to correct the billing process of such open access transaction.
6. The Petitioner has submitted that for the month of December, 2015, they have also availed STOA from IEX for 70 MW from 01.12.2015 to 31.12.2015 and additional 30 MW from 03.12.2015 to 31.12.2015. For the said period, the NESCO Utility had issued the provisional bill on 01.01.2016 and subsequently the revised bill on 05.01.2016, in which calculation of energy and demand charges have been done appropriately and correctly factoring the open access quantum. However, thereafter on 06.01.2016, the revised bill for the month of November, 2015 was issued in which only energy charges

was calculated correctly but demand charges was not revised considering the open access quantum.

7. The petitioner has submitted that its contract demand was revised to 22 MVA with effect from 24.08.2017. The petitioner and TPNODL (erstwhile NESCO Utility) had a mutual settlement of long pending dispute vide MoM dated 30.09.2022, which was also accepted by the Commission and on basis of the same, the monthly bill for the month of January, 2023 was received by the petitioner on 03.02.2023 with revision of the arrears. But, the arrears pertaining to the open access drawl for the month of November, 2015 was still there. Hence, the petitioner requested Respondent No.2 on 25.02.2023 for consideration of the resolution of the only dispute in respect of the month of November, 2015 which was left out during the mutual settlement process. However, on 03.03.2023, the Respondent No.2 issued bill for the month of February, 2023 with arrears and the current charges was paid by JSL on 09.03.2023. Subsequently, the Respondent No.2 issued disconnection notice dated 15.03.2023. Hence, the cause of action.
8. The Petitioner has submitted that for the purpose of billing demand charges, the maximum demand ought to have been considered taking into consideration the open access transaction of M/s. JSL. The actions of the NESCO Utility (now TPNODL), is ultra vires to the order of this Commission passed in Case No.29 of 2015 and tariff orders. Hence, the Petitioner was compelled to file the present application inter-alia challenging the aforesaid inaction of NESCO. The Petitioner has also filed an interim application to stay the operation of disconnection notice issued by Respondent No.2 and pending adjudication of the dispute, pass an order with direction to the Respondent No.2, not to disconnect the energy connection and no further coercive action be taken by it pursuant to the Disconnection Notice.
9. During hearing the Learned Counsel of the Petitioner submitted that since no consideration was made by the Commission on its interim application and the Petitioner was under threat of disconnection of power supply, they had approached Hon'ble High Court of Orissa filing a writ petition in WP(C) No.9478 of 2023 and the Hon'ble Court vide their order dated 28.03.2023 have granted interim protection from the threat of disconnection to the Petitioner's establishment by the licensee involved herein at least for a period of two months subject to however depositing at least twenty percent of the demand of Rs.6,87,92,203/- being the total outstanding at least within a period of seven days. The Hon'ble Court have also directed the Commission to arrive at a decision on

interim application either on 04.04.2023 or at least within a period of three weeks from the date of communication of the order of the Hon'ble Court.

10. On the contrary, the Respondent-TPNODL (erstwhile NESCO Utility) has submitted that the Petitioner-M/s. JSL is a consumer of its area of supply and was having contract demand of 12 MVA during the disputed period. Since, the issue raised by the Petitioner is regarding the billing for the month of November, 2015, the submissions made by TPNODL, replying to the contentions of the petitioner, is based on the available records. The submissions of TPNODL in brief are as follows:

- a) Prior to December, 2015, the consumers availing power through open access were billed by the erstwhile NESCO Utility by deducting the open access quantum of energy from their total energy consumption only. The 1st bill for the month of November, 2015 was raised to the Petitioner based on the recorded units and MD of the meter. After the requests of the Petitioner, the bill was finally revised and raised on the Petitioner considering the consumption of energy through open access, but demand charges on the recorded MD as per the prevailing practice followed during that period.
- b) M/s. Jindal Steel and Power Ltd. (M/s. JSPL), Barbil is another consumer of the licensee who was availing power through open access since July, 2011. M/s. JSPL had filed the petition before this Commission in Case No.29 of 2015, for necessary direction to determine the MD after taking into account the MD of the power received through open access basing on monthly drawl schedule of SLDC. In that case, the erstwhile NESCO Utility had submitted the following facts during the proceeding of the matter.
 - i) As per Regulation 14(2) of the OERC (Terms and Conditions for Open Access) Regulations, 2005, SLDC should prepare invoice to the STOA customers.
 - ii) SLDC is not providing KVA drawl schedule or actual KVA demand on account of OA for deriving the demand component.
 - iii) In absence of any guideline for segregation of demand against OA, the utility has served bills taking reading of the summation meters and subsequently revised bills after receipt of data from SLDC regarding injection of energy in Open Access deducting 3.75% towards transmission loss.

- c) After hearing all the parties, the Commission, vide its order dated 08.12.2015 passed in Case No.29 of 2015, had directed to calculate the demand in KVA for such OA basing upon the scheduled demand reported by SLDC and at unit power factor. But in no case, the demand charges shall be less than 80% of the CD. Though M/s. JSPL was availing power through open access since 2011, in the said order, the Commission had directed for segregation of MD on account of OA and accordingly to do the billing of M/s. JSPL henceforth.
- d) Since the Commission had directed for giving effect of the segregation of MD on account of open access prospectively, all the bills raised, to all such consumers including the present petitioner, for the month of November, 2015 was based on the prevalent prior process. However, from the month of December, 2015 onwards, the bills were raised to all such consumers as per the order passed by the Commission on 08.12.2015 in Case No.29 of 2015.
- e) Since the issue raised by the petitioner is impacting all the consumers who have availed power through Short Term Open Access prior to December, 2015, the bill for the month of November, 2015 in respect of the Petitioner, even though revised at a later date, was done as per the practice adopted for all other consumers during that period i.e. prior to date of Commission's order.
- f) The Petitioner has filed the present petition under Section 86(1)(f) of the Electricity Act, 2003, which envisages the function of the State Commission to adjudicate the disputes between the licensee and the generating companies. The present petitioner is a consumer of the licensee as far as the commercial terms between the licensee and the petitioner are concerned. As a generator, no commercial term exist between the petitioner and the present Respondent-Licensee so as to attract Section 86A(1)(f) of the Electricity Act, 2003 for adjudication by this Commission.
- g) The mutual settlement between the petitioner and TPNODL was done for the disputes which was sub-judice before this Commission in Case No.16 of 2022, which were pertaining to the period from July, 2012 to July, 2015. The present matter was neither relevant to those issues nor to that period. The present issue is a common matter applicable for all consumers availing power through open access and has been done in compliance to the order of the Commission. Therefore, the amount due from the Petitioner is appearing as arrears in the bill

and for non-payment of the same, disconnection notice has been issued to the petitioner under the provisions of Supply Code.

- h) After receiving the notice for hearing of the matter before the Commission, TPNODL had called the petitioner for discussing the issue on 28.03.2023 and clarified the modalities of the billing prior to and after the direction of the Commission in Case No.29 of 2015. In view of the above submissions, TPNODL has prayed the Commission to dismiss the present application filed by M/s. JSL.
11. No submission has been made by the Respondent-SLDC.
12. Heard the parties through hybrid mode (physical and virtual) and their written notes of submission are perused.
13. Regarding maintainability of the present petition, we cannot accept the averment of Respondent-TPNODL that the instant case is not falling strictly under the provision of Section 86 (1) (f) of the Electricity Act 2003 and hence can't be adjudicated in the present proceeding. We found that there is "reasonable nexus" between the present case and our order in Case No.29/2015. Plainly speaking, the petitioner only wants settlement of the bill, raised for open access transaction it had undertaken in the month of November 2015, as per procedure laid down by the order of this Commission in Case No.29/2015. The respondent has raised the revised bill for November 2015 on 06.01.2016 in deviation to the principles fixed by the Commission in its order 08.12.2015 passed in Case No.29/2015. The procedure of billing during open access transaction as mentioned in Case No. 29/2015 and the present transaction undertaken by the Petitioner in November 2015 being similar in nature, we proceed to adjudicate in this matter.
14. We observe that the Petitioner-M/s. Jindal Stainless Ltd. (M/s. JSL), having a captive power plant of 250 MW (2x125 MW), was availing power from TPNODL (erstwhile NESCO Utility) w.e.f. 01.08.2015 with contract demand of 12 MVA and due to statutory shutdown of one unit of its captive power plant, M/s. JSL has availed 70 MW power from IEX through STOA on RTC basis with prior permission of SLDC for the entire month of November, 2015. The erstwhile NESCO Utility has raised the final revised bill for the month of November, 2015 to the Petitioner on 06.01.2016. In that bill NESCO Utility had deducted the quantum of energy availed by the Petitioner through open access from the total recorded energy consumption of the Petitioner when

it has computed demand charges basing on the recorded demand in the energy meter. The Petitioner has no dispute on the billing of energy charges for the month of November, 2015. But the Petitioner has claimed that while computing the demand charges, the demand of power availed by it through open access should have been deducted from the maximum demand recorded in the energy meter, as per the Commission's order dated 08.12.2015 passed in Case No.29 of 2015.

15. We observe that the Commission has passed an order on 08.12.2015 in Case No.29 of 2015 in the similar matter pertaining to another consumer of TPNODL, namely M/s. Jindal Steel and Power Ltd. (M/s. JSPL), Barbil. The observations and directions of the Commission in the said order are reproduced as follows:

“5. After hearing the parties and perusal of the case records, we observe that the petitioner M/s. JSPL availing power from NESCO Utility having contract demand of 55556 KVA from 15.07.2010 and at the same time it draws power from its CGP at Angul through Intra-State STOA with effect from July, 2011. NESCO Utility while preparing the energy bill of M/s. JSPL deducts the quantum of energy availed by the petitioner through open access from the total drawal of energy of the petitioner. Hence, there is no dispute regarding billing of energy. NESCO Utility claims demand charges on the contract demand or the maximum demand as per Tariff Order of the Commission as recorded in the energy meters without deducting the demand on the power availed through OA by the petitioner. The issue is raised before the Commission on 14.08.2015.

6. In view of arguments placed before us and existing tariff orders, the Commission accepts the prayer of the petitioner M/s. JSPL to allow relief from the demand charges on power availed through open access in excess of 80% of CD from the total maximum demand recorded in the Energy Meter. Since the meter at present has no such facility we have to prescribe a methodology. This, in this case, is as follows:

SLDC has scheduled the total OA power of the Petitioner during the OA transaction. Therefore, basing upon the scheduled demand reported by SLDC and at unit power factor, NESCO shall calculate the demand in KVA for such OA transaction of the Petitioner. Such demand relating to Open Access shall be reduced from the total maximum demand recorded in the meter to arrive at the payable demand charges. In no case demand charges shall be less than 80% of CD i.e. demand charges shall be claimed on the basis of 80% of CD or MD for power supplied by the licensee whichever is higher. The respondent-SLDC is directed to submit the required information to NESCO Utility for this and NESCO Utility is also directed to prepare the monthly energy bills of the petitioner M/s. JSPL accordingly henceforth. We direct accordingly.”

16. We do hold that as the present case is similar to the matter raised in Case No.29 of 2015, the principles decided and directions issued in the order dated 08.12.2015 in the aforesaid case can be reasonably adopted in the instant case.

17. As per the Respondent-TPNODL, in the said order, the Commission has directed to segregate the MD and accordingly prepare the energy bills of M/s. JSPL henceforth. Since the order was issued on 08.12.2015 in Case No.29 of 2015, the erstwhile NESCO Utility has followed the direction of the Commission prospectively for all such consumers availing power through open access. But we observe that the instant case should not be viewed as a case of general in nature, because of the following reasons:
- (i) Though the Commission, vide its order dated 08.12.2015 passed in Case No.29 of 2015, has determined the principle of billing to a consumer who is availing power through short term open access having CD, but in deviation of the same NESCO Utility has prepared the final bill of the present consumer for the month of November, 2015 on 06.01.2016.
 - (ii) From the very beginning, the petitioner has been disputing the bill raised by the erstwhile NESCO Utility for the month of November, 2015 and as per the letter dated 09.12.2015 of the Petitioner, the payment has been made against the energy bill for the month of November, 2015 under protest.
 - (iii) From the available records with us, it is found that the erstwhile NESCO Utility has not issued disconnection notice to the petitioner earlier in respect of the instant issue. Further, in the mutual settlement of long pending disputes, vide MoM dated 30.09.2022, the instant issue was not raised by both the petitioner as well as the Respondent-TPNODL. However, TPNODL has issued disconnection notice to the petitioner on 15.03.2023 on the outstanding dues pertaining to the energy bill of the month of November, 2015.
18. In view of the above cited reasons, the present issue may be considered as an exceptional case and we find that the claim of the Petitioner for getting relief in terms of demand charges for the power availed through STOA from IEX during the month of November, 2015 only has force in it. However, this shall not be read as a binding precedent for such other customers, to avail such relief prior to the month of December, 2015.
19. In view of the above observations, we direct TPNODL to revise the monthly energy bill of the Petitioner for the month of November, 2015 in accordance with the principles decided by the Commission in its order dated 08.12.2015 passed in Case No.29 of 2015 wherein it has been prescribed that *“SLDC has scheduled the total OA power of the Petitioner during the OA transaction. Therefore, basing upon the scheduled demand*

reported by SLDC and at unit power factor, NESCO shall calculate the demand in KVA for such OA transaction of the Petitioner. Such demand relating to Open Access shall be reduced from the total maximum demand recorded in the meter to arrive at the payable demand charges.”. For this purpose, TPNODL may collect the STOA schedule of the Petitioner for the month of November, 2015 from SLDC. The SLDC is also directed to furnish the relevant data pertaining to the present case, if required by TPNODL.

20. We further direct that TPNODL shall revise the said bill of November, 2015 within a period of one week from the date of this order and serve the same on the Petitioner. Any payment made by the Petitioner as per the direction of the Hon’ble High Court vide their order dated 28.03.2023 in W.P.(C). No. 9478 of 2023 shall be adjusted in the revised bill / against the outstanding dues of the Petitioner. Further, after revision of the bill, TPNODL shall not charge DPS on the excess amount it has claimed in the present bill for the month of November, 2015. The Petitioner is directed to make payment of the outstanding dues, if any, after revision of the bill, within a period of three weeks on receipt of the revised bill from TPNODL and the power supply to the Petitioner shall not be disconnected by TPNODL till such time, if the current bills are being paid by the Petitioner in time.
21. With the above observations and directions, the present Petition along with the Interim Application is disposed of.

Sd/-
(S. K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. C. Mahapatra)
Chairperson