



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O. P. No. 38 of 2021

Dated 09.09.2021

Present

Sri T. Sriranga Rao, Chairman
Sri M. D. Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s Sri Ambika Steel Industries,
Sy. No.118, Mogiligidda (V), Farooqnagar Mandal,
Mahabubnagar District – 509 216.

... Petitioner.

AND

1. Southern Power Distribution Company of Telangana Ltd.,
Corporate Office, # 6-1-50, Mint Compound,
Hyderabad – 500 063.
2. Senior Accounts Officer, Operation,
TSSPDCL, Shadnagar, RR District – 501 102.
3. Superintending Engineer, Operation,
Rajendranagar, TSSPDCL, Nanalnagar X Road,
Mehdipatnam, Hyderabad – 500 029.
4. Chief General Manager (Commercial),
TSSPDCL, # 6-1-50, Ground Floor, Corporate Office,
Mint Compound, Hyderabad – 500 063.
5. Superintending Engineer, Operation,
Mahabubnagar, TSSPDCL, Mahabubnagar – 509 001. ... Respondents.

This petition has come up for hearing on 09.11.2020, 11.12.2020 and 07.01.2021. Ms. Nishtha, representative of the petitioner and Sri Mohammad Bande Ali, Law Attaché of TSSPDCL for the respondents appeared virtual hearing through video conference on 09.11.2020, 11.12.2020 and 07.01.2021. This petition having

been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Sri Ambika Steel Industries (petitioner) has filed the petition under Section 142 of the Electricity Act, 2003 (Act, 2003) read with clause 26 (1) of Conduct of Business Regulations of 2015 [Regulation No. 2 of 2015] seeking penal action against Southern Power Distribution Company of Telangana Limited and its officers (respondents) for not giving effect to the orders of the Commission in respect of restriction and control (R&C) measures in proceedings dated 14.09.2012 and consequent withdrawal of the minimum charges. The contentions of the petitioner are as below.

- a) The petitioner is having a HT connection bearing H. T. S. C. No. RJN 871 with contracted maximum demand (CMD) of 650 kVA for supply of electricity from the respondents.
- b) The Act, 2003 (Act, 2003) conferred powers to this Commission to discharge function as prescribed u/s 86 thereof.
- c) Respondent No.4 vide its representation No. CGM (Comml) / SE (C) / DE (C) / ADE (C) / D. No. 1624 / 12 dated 29.08.2012 and No. CGM (Comml) / SE (C) / DE (C) / ADE (C) / D.No.1831 / 12 dated 11.09.2012 approached the Commission to pass an order to declare restriction and control measure (R&C measures) in view of energy deficit situation during the year 2012-13 under section 23 of Act, 2003 and clause 16 of General Terms and Conditions of Supply (GTCS).
- d) The then APERC vide proceeding No.APERC/Secy/14/2012-13 dated 14.09.2012 passed the R&C measures which was in force during the period from 12.09.2012 to 31.08.2013. The direction of the Commission vide specific condition 12(a) of the said proceeding was
“The Billing Demand shall be the maximum recorded demand during the month and para 213.6.(6) of Tariff Order shall not apply during these R & C measures.”
- e) The Commission further vide proceeding Nos. APERC / Secy / 02 / 2012-13 dated 22.01.2013, APERC / Secy / 08 / 2013 dated 17.04.2013, APERC / Secy / 81 (A) / 2013 dated 15.06.2013, APERC / Secy / 99 /

2013 dated 02.07.2013 and APERC / Secy / 13 / 2013 dated 23.07.2013 issued amendments.

- f) As per the direction of the Commission vide specific condition 12 (a) of proceeding No. APERC / Secy / 14 / 2012-13 dated 14.09.2012, the respondents are authorized to claim the billing demand on actual consumption only. However, the service connection of this petitioner was under disconnection from January to August, 2013 billing month, consequently there was no power and demand consumption even though the respondents debited in their account the minimum energy charges on 26000 kWh and demand charges on 520 kVA per month from January, 2013 to August, 2013 billing month during that period R & C measures were in force.
- g) The current consumption (CC) charges bills were not circulated to the petitioner during the said period. The petitioner came to know about this illegal claim when the respondent No. 2 informed through letter No. SE / OP / RJN / SAO / JAO / HT / D. No.141 / 19 dated 17.08.2019 to the petitioner.
- h) The petitioner being aggrieved by the said claim had filed a representation under RTI Act, 2005 through Mr. B. Ravinder Prasad Srivastava before State Asst. Public Information Officer / DE Technical, Operation Rajendranagar, TSSPDCL, Nanalagar x Road, Mehidipatnam, Hyderabad and DE, Electrical, TSSPDCL Mahabubnagar. In response to the said applications the DE, Electrical, Rajendranagar furnished the information vide letter No. SE / OP / Rajendranagar (C) / Tech / F. RTI / D. No. 739 / 19-20 Dt. 12.3.2020. As per the said information the Operation Circle, Rajendranagar have claimed minimum charges on the consumers whose connection was under disconnection during R&C period which is in true spirit and in compliance of specific condition 12 (a) of proceeding No. APERC / Secy. / 14 / 2012-13 dated 14.09.2012. The DE, Mahabubnagar furnished the information vide letter No. DEE / OP / MBNR / Tech / D. No. 3071 / 20 dated 23.03.2020. As per said information the operation circle Mahabubnagar has not claimed any minimum charges on the consumers whose connection was under disconnection during R & C

period which is in true spirit and in compliance of specific condition 12(a) of Proceeding No, APERC / Secy. / 14 / 2012-13 dated 14.09.2012.

- i) In view of the above stated facts, the amounts debited by the respondents in the account of petitioner towards minimum charges from January, 2013 to August, 2013 billing months during which the R & C measures were in force and para 213 (6) of the tariff order of FY 2012-13 was not in force is illegal and in violation of direction of the Commission more specifically when the service connection of the petitioner was under disconnection. Hence the respondents have contravened the directions of the Commission and are liable for punishment as prescribed under section 142 of the Act, 2003.

2. The petitioner has sought the following prayer in the petition:

- a. To implement the specific condition 12(a) of proceeding No. APERC / Secy / 14 / 2012-13 dated 14.09.2012 in true spirit during the period from January, 2013 to August, 2013 billing months and consequently withdraw the minimum charges debited in the petitioner account.*
- b. To pay penalty as prescribed under section 142 of the Act, 2003."*

3. The respondent (TSSPDCL) has filed counter affidavit praying to dismiss the petition as not maintainable and the averments of the respondent as stated in the counter affidavit are briefly stated hereunder.

- a) The petitioner having service connection bearing S. C. No. RJN 871 (old S.C No. MBN 871) is the HT consumer with CMD of 500 kVA which was released on 05.08.2011 under category-I (A). Later at the request of the petitioner additional load for 150 kVA was released over existing 500 kVA to make a total of 650 kVA with effect from 08.10.2012. As per Article 6 of the agreement, the minimum period of agreement is two years.
- b) The petitioner fell in arrears of Rs.43,42,263/- towards CC charges and the same was communicated to the petitioner vide letter No. SE / OP / MBNR / SAO / HT / D. No. 254 / 13 Dated 16.08.2013. The petitioner failed to pay the said amount. As such the service connection of the petitioner was disconnected on 30.11.2012. The Agreement was terminated on 09.10.2014 as per clause 5.9.4.3 of GTCS on expiry of

minimum period of agreement and the same was communicated to the petitioner duly requesting to pay CC dues of Rs. 94,52,046/- after adjustment of available security deposit of Rs. 9,75,000/-, but petitioner failed to pay.

- c) Due to acute power shortage R&C measures were imposed from 12.09.2012 to 31.08.2013. The Commission permitted to impose the R & C measures on usage of power by consumer in order to protect the grid from failures and to maintain discipline among various consumers. The Commission also communicated the billing procedures to be adopted during R & C period under proceeding No. APERC / Secy / 14 / 2012-13 dated 11.09.2012. As per the procedures of billing during the R & C period communicated by the Commission, bills are to be drawn basing on the following parameters of Permitted Demand Limit (PDL) and Permitted Consumption Limit (PCL):

PDL off peak = 60% Contracted Maximum Demand

PDL peak = 10% Contracted Maximum Demand

PCL off peak = $CMD \times 60\% \times 80\% \times 1(PF) \times$ of peak hours in the month

PCL peak = $CMD \times 10\% \times 50\% \times I(PF) \times$ No. of peak hours in the month.

- d) Maximum demand charges use to be arrived taking the above parameters into the consideration. During the R&C period the billing shall be based on maximum recorded demand. Prior to imposition of R & C measures the billing demand for all categories used to be based on maximum recorded demand during the month or 80% of the contracted demand whichever is higher except HT category-VI as per para 213.6.(6) of the tariff order for FY 2012-13.
- e) As per para 213.6 (7) of tariff order for FY 2012-13 every consumer whether he consumes energy or not shall have to pay monthly minimum charges. Billing during the R&C period was required to be done basing on the parameters like PDL off peak, PDL peak, PCL off peak, PCL peak etc. Hence the Commission did not make para 213.6.(6) applicable to the R & C period.

- f) Demand will be recorded in case the service is live. The question of recording demand of energy does not arise if the service is under disconnection. Therefore, the question of application of R&C measures to disconnected service does not arise. Consequently, billing cannot be done during the period of R&C measures by following the parameters and procedure communicated by the Commission to (under disconnected) UDC services.
- g) CC bills were issued to the petitioner up to the date of termination of agreement and the same were sent to the petitioner by post every month, but the petitioner did not pay any amount claimed through the CC bills. Consequently, the agreement was terminated that is 09.10.2014 after two years as per para 5.9.4.3 of GTCS for non-payment of arrears and the same was intimated to the petitioner through Lr. No. SE / OP / MBNR / SAO / HT / D. No. 963 / 14 Dt. 24.11.2014. Later this office issued the following notices in Form A & B to the petitioner under Revenue Recovery Act 1984 as detailed below:
- i) **Form "A"** notice was issued vide letter No. SE / OP / SAO / JAO / HT / D. No. 154 / 2018 dated 18.07.2018 for Rs. 1,60,25,944/- (terminated amount of Rs. 94,54,046/- and late payment surcharge for the period from 10.10.2014 to 31.07.2018 of Rs. 65,73,898/-).
- ii) **Form "B"** notice was issued vide letter No. SE / OP / SAO / JAO / HT / Form B / D. No. 241 (i) / 2018 dated 30.10.2019 Rs. 1,81,85,737/- (terminated amount of Rs. 94,54,046/- and late payment surcharge for the period from 10.10.2014 to 31.10.2019 of Rs. 87,33,691/-).
- iii) The notices in Form "A & B" were served on the petitioner. At request of the petitioner arrears pertaining to the service connection were intimated to it vide Lr. No. SE / OP / RJN / SAO / JAO / HT / D. No. 141 / 19 dated 17.08.2019.
- h) The petitioner filed the complaint before Consumer Grievances Redressal Forum (CGRF) vide C. G. No. 435 / 2019-20 / Rajendranagar circle. The CGRF by order dated 31.10.2019 rejected the complaint filed by the petitioner/consumer after conducting a detailed enquiry.

- i) The petitioner aggrieved by the order of CGRF in C. G. No. 435 / 2019-20 filed Appeal before the Vidyt Ombudsman in Appeal No.25 of 2019-20. The Ombudsman after hearing both sides and after considering the material on record rejected the appeal by order dated 04.06.2020.
- j) The petitioner sought the details of billing information from Mahabubnagar and Rajendranagar Circle under RTI. On verification of the application submitted by the petitioners before the office of Mahabubnagar circle vide letter No. DEE / OP / MBNR / Tech / D. No. 3071 / 20 dated 23.03.2020, it is seen that the details furnished are in respect of the particulars of meter reading like kWh, kVAh, status, voltage, category, etc. Nothing is mentioned about levying of minimum charges. It is stated that, the HT billing in the same company shall not differ from one circle to other circle, the billing rates are governed by tariff orders and proceedings issued by the Commission from time to time.
- i) The specific condition 12 (a) of proceeding No. APERC / Secy / 14 / 2012-13 dated 11.09.2012 is applicable to the consumers who were using power and the same is not applicable to the services under disconnection for the simple reason that restriction was imposed on the demand and energy consumption during the off-peak period and peak period for the services which consume energy.
- j) As per para 213.6. (7) of the tariff order for FY 2012-13, monthly minimum charges were collected duly following the para 213.7.(1) (i) and (ii) of tariff order for the FY 2012-13. As such levying of the minimum charges in R & C period is perfectly legal and hence cannot be questioned.

4. The petitioner has filed its rejoinder to the counter affidavit of the respondent and stated as below:

- a) The respondents are well aware about the clarification issued by the then APERC vide letter No. APERC / E-223 / DD-Dist / 2009 dated 15.10.2009 in para No.2 clarifying that

"the minimum period liability for the additional load shall commence from the date of commencement of supply for the additional load / demand."

Accordingly, the minimum clause liability will apply only to the extent of 150 kVA additional load and not on 650 kVA totally. Hence, the statement of respondents is not correct and liable to be set aside.

- b) This action of the respondents to ignore the above said clarification deliberately / knowingly is also non-compliance of direction of the then APERC which attract the action under section 142 of Act, 2003.
- c) The respondents vide letter No.141 / 2019 dated 17.08.2019 informed the total due amount of Rs. 94,52,047.52 as on 09.10.2014 which includes the minimum charges on 650 kVA from 08.10.2012 to 09.10.2014 instead of 150 kVA additional load which is not correct and is in violation of clarification issued by the then APERC in letter No.223 dated 15.10.2009 hence, the minimum charges debited in the ledger by the respondents on CMD of 650 kVA without notice of the petitioner more specifically without issue of bills which is also an violation of section 56 (2) of Act, 2003 hence, the statement of the respondents is not correct, illegal and hence is liable to be withdrawn.
- d) The respondents in para 2.3 in third line stated that the "the question of application of R & C measures to disconnect service does not arise. Consequently, billing cannot be done during the R&C measures by following the parameters and procedure communicated by the Commission to (under disconnected) UDC service."
- e) The above statement and admission of the respondents is a denial to implement / comply the procedure/direction issued by the then APERC is a well-established evidence of violation of provision of Act, 2003 and prima facie attract the penal provision as prescribed in section 142 of Act, 2003. It is pertinent to note that the above said direction of the then APERC is implemented/complied by the Mahabubnagar circle officials.
- f) The then APERC passed the tariff order dated 30.03.2012 for the financial year 2012-13 which includes the para 213.6 (6) that is monthly billing demand. This para is applicable to all the HT Consumers as the then Commission did not discriminate about live service or UDC service. Hence, the respondents applied this para to all the HT consumers who are in live or in UDC. The then Commission vide specific condition 12(a)

of proceeding No. APERC / Secy / 14 / 2012-13 dated 14.09.2012 clearly stated that

"The Billing Demand shall be the maximum recorded demand during the month and clause 213.6. (6) of Tariff Order shall not apply during these R & C measures."

Accordingly, the true spirit of the direction of the then Commission is applicable to all the HT consumers irrespective of live service or UDC service. Therefore, the act of the respondents in respect of this clause is in violation of true spirit of the said direction and is the act of self made procedure for which they are not entitled to do so and is a clear establishment of violation of the provisions of proceeding of R&C measures and Act, 2003.

- g) It is also to be noted that as per para 213.6 (7) of tariff order the monthly minimum charges are to be calculated on billing demand. When billing demand is zero as the para 213.6 (6) of the tariff order is not in force during R & C measures as per direction of the then APERC, the monthly minimum charges also will be zero during R & C measures period.
- h) It is pertinent to note that the Hon'ble Supreme Court of India in its judgement dated 16.11.2000 in AIR SC 2001-0-238 held that

"the right, therefore, of the Board to demand the Minimum Guarantee Charges, by the very terms of the language in the Contract as well as the one used in the tariff notification is made enforceable depending upon a correspondent duty, impliedly undertaken to supply electrical energy at least to that extent, and not otherwise."
- i) The statement of respondents is denied by the petitioner as the same is not correct and not based on the facts.
- j) The respondents with effect from date of disconnection that is 30.11.2012 to 17.08.2019 have not issued any CC charges bill to the petitioner and also not submitted any proof of service of the bills before the Commission to establish their stand. The petitioner vide letter dated 07.08.2019 filed before SAO, Rajendranagar with a request to furnish the details of outstanding amount then only SAO, Rajendranagar vide

letter No.SE / OP / RJN / SAO / JAO / HT / D. No. 141 / 19 dated 17.08.2019 furnished the details of outstanding.

- k) The cause of action and relief sought before the CGRF and Vidyut Ombudsman is different and not related to the present petition. Hence, the petitioner prays the Commission to not to consider in the same in the present petition.
- l) The respondent categorically admitted that billing rates are governed by tariff order and proceeding issued by the Commission from time to time. The respondents denied to comply the provision of R & C proceeding issued by the then APERC hence, both the statement are contrary to each other. The respondents are bound to comply the direction of the Commission in its true spirit.
- m) As per information received from operation circle Mahabubnagar they have not raised any minimum charges bill to the HT consumers who are under UDC. Accordingly, they have complied the direction of the then APERC. But in the Rajendranagar circle they have raised the minimum charges bill on the HT service of UDC which is in violation of the direction of the then APERC and attract punishment as prescribed under section 142 of Act, 2003.
- n) The explanation given by respondents may be considered.

5. The respondents have filed their written submissions and stated as below.

- a) Petitioner filed the present petition under section 142 of the Act 2003 read with clause 26 (1) of Regulation No. 2 of 2015 dated 02.05.2015 seeking implementation of specific condition 12 (a) of Proceeding No. APERC / Secy / 14 / 2012-13 dated 14.09.2012 in true spirit during the period from January 2013 to August 2013 billing months and consequently withdraw the minimum charges debited in the petitioner account and to pay penalty as prescribed in section 142 of the Act, 2003 on the ground that the respondents contravened the direction of the Commission by illegally debiting the minimum charges from billing months of January 2013 to August 2013 in the account of the petitioner while the R & C measures were in force and para 213.6. (6)

“The billing demand shall be the maximum demand recorded during the month or 80% of the contracted demand whichever is higher, except HT VI category i.e., Townships & Residential Colonies. For HT VI category the minimum billing condition of 80% of the contracted demand shall not be applicable”

of tariff order of financial year 2012-13 was not in force, more particularly when the service connection of the petitioner was under disconnection.

- b) It is the contention of the petitioner that the respondents are authorized to demand the bill on actual consumption only during the period of R&C measures, during which period para 213.6. (6) of tariff order of financial year 2012-13 is not enforced and that the respondent No. 2 claimed minimum charges while the service connection of the petitioner was under disconnection from January 2013 to August 2013, which period is covered by R & C measures. Hence the petitioner contended that the respondents did not follow specific condition 12 (a) of proceeding No. APERC / Secy / 14 / 2012-13 dated 14.09.2012 in its true spirit and thus violated the said clause.
- c) The petitioner further contended that the service connection of the petitioner was under disconnection during the billing months of January, 2013 to August, 2013; consequently there was no power and demand consumption even though the respondents debited in their account the minimum energy charges on 26000 kWh and demand charges on 520 kVA per month from January, 2013 to August, 2013 billing month during that period the R&C measures were in force.
- d) The case of the respondent is that the petitioner is the HT consumer with CMD of 500 kVA which was released on 05.08.2011 under HT category– I (A). Later at the request of the petitioner additional load for 150 kVA was released over exiting 500 kVA to make a total of 650 kVA with effect from 08.10.2012. As per clause 6 of the agreement, the minimum period of agreement is two years.
- e) The petitioner incurred arrears of Rs.43,42,263/- towards CC charges and the same was communicated to the petitioner vide letter No. SE / OP / MBNR / SAO / HT / D. No. 254 / 13 Dated 16.08.2013. The petitioner failed to pay the said amount. As such the service connection

of the petitioner was disconnected on 30.11.2012. The agreement was terminated on 09.10.2014 as per clause 5.9.4.3 of GTCS on expiry of minimum period of agreement and the same was communicated to the petitioner duly requesting to pay CC dues of Rs. 94,52,046/- after adjustment of available security deposit of Rs. 9,75,000/- but petitioner failed to pay.

- f) Due to acute power shortage R&C measures were imposed from 12.09.2012 to 31.08.2013. The Commission permitted to impose the R & C measure on usage of power by consumer in order to protect the grid from failures and to maintain discipline among various consumers. The Commission also communicated the billing procedures to be adopted during R & C period under proceeding No. APERC / Secy / 14 / 2012-13 dated 11.09.2012. As per the procedures of billing during the R & C period communicated by the Commission, bills are to be drawn basing on the following parameters:

PDL off peak – 60% contracted maximum demand

PDL peak – 10% contracted maximum demand

PCL off peak – $CMD \times 60\% \times 80\% \times 1 (PF) \times$ of peak hours in the month

PCL peak – $CMD \times 10\% \times 50\% \times 1 (PF) \times$ No of peak hours in the month

- g) Maximum demand charges used to be arrived taking the above parameters into the consideration. During the R & C period the billing shall be based on maximum recorded demand. Prior to imposition of R & C measures the billing demand for all categories used to be based on maximum recorded demand during the month or 80% of the contracted demand whichever is higher except HT category-VI as per para 213.6. (6) of the tariff order for FY 2012-13.
- h) As per para 213.6. (7) of tariff order for FY 2012-13 every consumer whether he consumes energy or not shall have to pay monthly minimum charges. Billing during the R & C period was required to be done basing on the parameters like PDL off peak, PDL peak, PCL off peak, PCL peak etc. Hence the Commission did not make para 213.6.(6) applicable to the R & C period.

- i) Whereas in the present case the service of the petitioner was under disconnection and hence the question of recording demand of energy does not arise. Consequently, billing cannot be done during the period of R & C measures by following the parameters and procedure communicated by the Commission to (under disconnected) UDC services. Hence the question of application of R & C measures to disconnected service does not arise. In such view of the matter the contention of the petitioner that the respondents did not follow specific condition 12 (a) of proceeding No. APERC / Secy / 14 / 2012-13 dated 14.09.2012 in its true spirit and thus violated the said clause becomes untenable and hence deserves no consideration.
- j) The specific condition 12(a) of proceeding No. APERC / Secy / 14 / 2012-13 dated 11.09.2012 is applicable to the consumers who were using power and the same is not applicable to the services under disconnection for the simple reason that restriction was imposed on the demand and energy consumption during the off-peak period and peak period for the services which consume energy. Since the service of the petitioner was under disconnection, the applicability of specific condition 12 (a) of proceeding No. APERC / Secy / 14 / 2012-13 dated 11.09.2012 does not arise for the reason that the petitioner was not in a position to consume the energy. Consequently, para 213.6. (7) of the tariff order for FY 2012-13 becomes applicable.
- k) As per para 213.6.(7) of the tariff order for FY 2012-13, monthly minimum charges were collected duly following the para 213.7. (1) (i) and (ii) of tariff order for the FY 2012-13. As such levying of the minimum charges in R & C period is perfectly legal and hence cannot be questioned.
- l) CC bills were issued to the petitioner up to the date of termination of agreement and the same were sent to the petitioner by post every month, but the petitioner did not pay any amount claimed through the CC bills. Consequently, the agreement was terminated that is 09.10.2014 after two years as per clause 5.9.4.3 of GTCS for non-payment of arrears and the same was intimated to the petitioner through Letter No.SE / OP / MBNR / SAO / HT / D. No. 963 / 14 dated

24.11.2014. Later this office issued the following notices in Form A & B to the petitioner under Revenue Recovery Act 1984 as detailed below:

- i) **Form "A"** notice was issued vide letter No. SE / OP / SAO / JAO / HT / D. No. 154 / 2018 dated 18.07.2018 for Rs. 1,60,25,944/- (terminated amount of Rs. 94,54,046/- and late payment surcharge for the period from 10.10.2014 to 31.07.2018 of Rs. 65,73,898/-
 - ii) **Form "B"** notice was issued vide Lr. No. SE / OP / SAO / JAO / HT / Form-B / D. No. 241 (i) / dated 30.10.2019 Rs. 1,81,85,737/- (terminated amount of Rs. 94,54,046/- and late payment surcharge for the period from 10.10.2014 to 31.10.2019 of Rs. 87,33,691/-.
- m) The notices in Form "A and B" were served on the petitioner. At request of the petitioner arrears pertaining to the service connection were intimated to it vide letter No. SE / OP / RJN / SAO / JAO / HT / D. No. 141 / 19 dated 17.08.2019.
 - n) The petitioner filed the complaint before Consumer Grievances Redressal Forum (CGRF) vide C. G. No. 435 / 2019-20 / Rajendranagar circle. The CGRF by order dated 31.10.2019 rejected the complaint filed by the petitioner / consumer after conducting a detailed enquiry.
 - o) The petitioner aggrieved by the order of CGRF in C. G. No. 435 / 2019-20 which was dismissed. The appeal filed by the petitioner before the Vidyut Ombudsman in Appeal No. 25 of 2019-20 was rejected by the Ombudsman after hearing both sides and after considering the material on record by an order dated 04.06.2020.
 - p) The petitioner sought the details of billing information from Mahabubnagar and Rajendranagar Circle under RTI. On verification of the application submitted by the petitioners before the office of Mahabubnagar circle vide letter No. DEE / OP / MBNR / Tech / D. No. 3071 / 20 dated 23.03.2020, it is seen that the details furnished are in respect of the particulars of meter reading like kWh, kVAh, status, voltage, category, etc. Nothing is mentioned about levying of minimum charges. Therefore, the petitioner cannot take aid of the aforementioned letter. It is stated that, the HT billing in the same company shall not differ

from one circle to other circle, the billing rates are governed by tariff orders and proceedings issued by the Commission from time to time.

- q) As per Order VIII Rule 9 of Civil Procedure Code no pleading subsequent to the written statement (counter in the present case) of a defendant (respondent in the present case) other than by way of defence to set-off or counter-claim shall be presented except by the leave of the court and upon such terms as the court thinks fit. However, the petitioner filed rejoinder. As a matter of fact, there was absolutely no necessity for the petitioner to file rejoinder since the respondents did not raise any new plea in their defence.
- r) Petitioner in its rejoinder put forth a new case on the pretext of replying the contentions raised by the respondents in their counter, which the petitioner is not supposed to do.
- s) Petitioner at the first instance contended that the clause of minimum liability apply to the extent of additional load of 150 kVA but not to the total load of 650 kVA. The petitioner would further contend that the respondents violated the clarification issued by the then APERC in letter No. 223 dated 15.10.2009 and hence the minimum charges claimed by the respondents on 650 kVA from 08.10.2012 to 09.10.2014 is incorrect.
- t) A perusal of letter No.223 dated 15.10.2009 of the then APERC indicates that EPDCL sought the following clarifications regarding deration of contracted demand:

- i. If additional load is availed, whether the two years minimum period of agreement is applicable to entire contracted demand or the minimum period liability is limited to the extent of additional load.*

The APERC as it then was clarified the above query raised by EPDCL, referring clause 5.9.3.2 of GTCS in the following manner:

"De-ration of contracted demand in case of amended agreement or revised agreement:

With reference to the query (i) for de-ration of contracted demand, irrespective of whether the agreement is amended or a revised agreement is executed pursuant to sanction of an additional demand, the minimum two years period liability is limited to the extent to additional

demand only and shall coming from the date of commencement of supply for the additional demand. Each part of additional demand sanction shall be viewed as a separate part. The demand part which was released prior to release of additional demand, if meets the two year minimum agreement period, shall be eligible for deration from that part".

- u) It thus become very much clear that the above clarification was in respect of the minimum agreement period for the eligibility to seek deration, but not related to termination of agreement. Therefore, the indirect contention of the petitioner that the agreement for 500 kVA entered on 05.08.2011 should have been terminated after completion of two years that is on 06.08.2013 and the agreement for 150 kVA which was entered on 08.10.2012 should have been terminated after completion of two years that is 09.10.2014.
- v) Admittedly a revised agreement was entered into between the parties on 08.10.2012 when the petitioner enhanced the contracted demand from 500 kVA to 650 kVA by adding additional load of 150 kVA to the existing load of 500 kVA. In this view of the matter the agreement dated 05.08.2011 between the parties stood replaced by the revised agreement. In other words the agreement dated 05.08.2011 became useless and redundant. As submitted in the counter as per clause 6 of the agreement dated 08.10.2012 the minimum period of agreement is two years and hence the contention of the petitioner that the clause of minimum liability apply to the extent of additional load of 150 kVA but not to the total load of 650 kVA holds no water and hence deserves no consideration being untenable.
- w) The contention of the petitioner raised in reply that the non-application of R & C measures to the disconnected service is a denial to implement / comply the procedure/direction issued by the APERC as it then was, is a well establish evidence of violation of section 142 of the Act 2003 is false, baseless and incorrect in view of the submissions made supra.
- x) The proceedings related to R & C measure issued by the Commission is in respect of live services only and nothing is said in the said proceedings about the service under disconnection (UDC) for the simple reason that R & C measures were related to live services only. Consequently, para

213.6. (6) of tariff order dated 30.03.2012 for FY 2012-13 remain in force in respect of service under disconnection (UDC) during the period covered by R & C measures.

- y) In reply to the other contention of the petitioner that as per para 213.6. (7) of tariff order monthly minimum charges are to be calculated on billing demand, it is stated that para 213.6.(7) of tariff order is not applicable to the service under disconnection (UDC) in view of cause 10 of the Agreement dated 08.10.2012 between the parties whereby the petitioner agreed to pay minimum charges every month as prescribed in tariff and the GTCS even if no electricity actually consumed are less than the minimum charges; the minimum charges shall also be payable by the petitioner even if electricity is not consumed because supply has been disconnected by the company because of non-payment of electricity charges. Therefore, this contention of the petitioner also holds no water and hence cannot be considered.
- z) The judgement of Hon'ble Supreme Court of India in *Reymonds Ltd vs Madhya Pradesh Electricity Board* dated 16.11.2000, reported in AIR SC 2001-0-238 is not applicable to the facts and circumstances of the present case. In the cited decision, the licensee, Madhya Pradesh Electricity Board was not in a position to supply the 40% of the contracted load and contracted supply had fallen short of 40% of the contracted load factor but levied minimum charges for 40% of the contracted load. Therefore, the Hon'ble Supreme Court held that whenever the contracted supply falls short of 40% of the contracted load, in such cases, the licensee shall be entitled to charge only for the actual energy supplied and not for the 40% of the contracted load as minimum charges.
- aa) In the present case the respondent company / TSSPDCL was very much prepared to supply the contracted load of energy that is, 650 kVA and that the respondent company did not commit breach of any clause of agreement more particularly the clause of supply of power and the maximum contracted load.

6. The Commission heard the submission of the representatives of the parties and also perused the material available on record. The relevant submissions are extracted below:

Record of proceedings dated on 07.01.2021

“The representative of the petitioner stated that the issue is with regard to levy of penalties during the restriction and control measures for the period from 2012 to 2013 and collection of minimum charges. The representative of the petitioner stated that R&C measures were imposed, as the licensee was unable to supply power. She relied on the decision in the matter of M/s Raymond Limited Vs. Madhya Pradesh State Electricity Board.

The representative of the respondents while reiterating the contents of the counter affidavit about the applicability of R&C measures stated that the same are not applicable to the consumer in this case, as the service was not live at the relevant time. R&C measures were applicable only to live services. The judgment relied upon by the consumer is not applicable to the present facts and circumstances. Since the consumer was not a live service and as according to GTCS the consumer has to pay a minimum charges, the same are being demanded now in terms of the agreement for the supply. The claim of the consumer that the demand is raised after a lapse of time is neither relevant nor appropriate. Moreover, the demand charges are applicable to the live services in terms of R&C measures, which gave exemption to the tariff order of FY 2021-13. As the consumer was not in live service during the said period, it is bound to pay the demand charges in terms of the tariff order for FY 2012-13.

The representative of the petitioner stated that R&C were in fact imposed at the relevant time as the power supply was not made to the consumer and the licensee was not in a position to do so. Now turning round and claiming the demand charges in terms of the tariff order contrary to the exemption granted in the proceedings issued for effecting R&C measures and claiming the arrears belatedly is uncalled for and contrary to law. Thus, the petitioner is seeking action against the licensee under section 142 of the Act, 2003 for violation of the orders of the Commission as also GTCS.”

7. Based on the perusal of the submissions of the parties, the following issues arise for consideration:

Issue No.1: Whether the Respondent has not implemented the condition 12(a) of the Proceeding No.APERC / Secy / 14/2012-13 dated 14.09.2012 in true spirit during the period from January 2013 to August 2013 billing months.

Issue No.2: If the answer to issue no.1 is in the affirmative, whether the Petitioner's request to impose penalty on the Respondent under Section 142 of the Electricity Act, 2003 can be accepted.

Issue No.1:

8. The Petitioner situated at Mogiligidda Village, Farooqnagar Mandal, Rangareddy district (being re-organised from Mahabubnagar district to Rangareddy district) is HT-I category consumer of TSSPDCL bearing HT SC. No. RJN-871 (old HT SC No. MBN-871) with CMD 500 kVA, availing supply of electricity from 05.08.2011 onwards. Later at the request of the Petitioner additional load of 150 kVA was released totalling to 650 kVA with effect from 08.10.2012 and to that extent an Agreement for supply of electricity at High Tension was executed by the Petitioner on 08.10.2012. The relevant clauses in the Agreement are as given below:

“5. Date of coming into force of the Agreement:

I / We shall begin/take electrical energy from the Company under the conditions of this Agreement within three months, from the date of issue of intimation in writing to me / us the Designated Officer of the Company that supply of electrical energy is available. The provision of this Agreement shall be deemed to come into force from the date of commencement of supply to energy or the date of expiry of three months notice above referred to whichever if earlier.

1. Period of Agreement:

I/We undertake to avail supply for a minimum period of 2 years from the date this Agreement comes into force.

7. Determination of Agreement:

I / We shall be at liberty to determine the Agreement by giving in writing three months notice expressing such intention at any time after the period of two years. If for any reason, I / We choose the three months to derate/terminate the Agreement before the expiry of the minimum two years period of the Agreement, the deration/termination will be done with effect from the date of expiry of the three months notice period of expiry of the initial two years period

whichever is later. I / We agree that the Company may terminate this Agreement at any time giving three months notice, If I/We violate the terms of this Agreement or the General Terms and Conditions of Supply notified by the Company with the approval of the Commission from time to time or the provision of any law touching this Agreement including the Electricity Act, 2003 the Rules and Regulations framed thereunder. This Agreement shall remain in force until it is terminated as above indicated. In computing the periods of 2 years referred to above the period or periods for which the annual minimum guarantee has or have been waived or reduced shall be excluded.

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, and 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.”

9. It is admitted fact that for non-payment of CC Charges, the service connection of the Petitioner was disconnected on 30.11.2012 and is continued under disconnection (UDC) also during the period of imposition of R&C measures by the Commission.

10. It is also an admitted fact that due to acute power shortage prevailing at that time, by considering the representation from the Respondent No. 4 the then Commission in exercise of power conferred by Section 23 and Section 86 (1) (k) of the Electricity Act, 2003 read with clause 16 of GTCS has imposed Restrictions and Control (R & C) measures on usage of power by consumers in order to protect the Grid, to maintain discipline among various consumers, for maintaining efficient supply and securing equitable distribution of electricity originally from 07.09.2012 and were thereafter amended from time to time depending on the need/necessity, keeping in view the availability of electricity. The following Clause 12 (a) is one of the specific condition specified in the R & C measures proceedings dated 14.09.2012:

“12(a) The Billing Demand shall be the maximum recorded demand during the month and para 213.6(6) of Tariff Order shall not apply during these R&C measures.”

11. The Petitioner contention is that during the period from January, 2013 to August, 2013 when R & C measures were in force, in accordance with specific condition 12 (a) of the proceedings No. APERC / Secy / 14 / 2012-13 dated 14.09.2012 and specifically when para 213.6. (6) (i.e., **Billing Demand** *The billing demand shall be the maximum demand recorded during the month or 80% of the contracted demand whichever is higher, except HT VI category i.e., Townships & Residential Colonies. For HT VI category the minimum billing condition of 80% of the contracted demand shall not be applicable*) of Tariff Order for FY 2012-13 was not in force the Respondents were supposed to claim the billing demand on actual maximum recorded demand only (i.e., Nil, since their service connection was under disconnection). Also, as per para 213.6 (7) (i.e., **Monthly Minimum Charges**: *Every consumer whether he consumes energy or not shall pay monthly minimum charges calculated on the billing demand plus energy charges specified for each category in this part to cover the cost of a part of the fixed charges of the Licensee*) of Tariff Order the monthly minimum charges are to be calculated on billing demand. When billing demand it itself is Nil or zero and as the para 213.6 (6) of Tariff Order is not in force during R & C measures as per directions of the then Commission, the monthly minimum charges also will be zero during R & C measures period. Whereas, the respondents raised CC charges on monthly minimum charges basis [as per para 213.6. (7) of tariff order for FY 2012-13] @ 520 kVA demand charges [80% of 650 kVA] and @ 26000 kVAh energy charges [50 kVAh x 520]. The respondents raising such minimum charges bill on the HT service under disconnection for the period when R & C measures were in force is illegal and in violation of direction of the Commission and sought to implement the specific condition 12(a) of proceedings No. APERC / Secy / 14 / 2012-13 dated 14.09.2012 in true spirit during the period from January, 2013 to August, 2013 billing months and consequently withdraw the minimum charges debited in the petitioner account and to pay penalty as prescribed under section 142 of the Electricity Act, 2003. The petitioner also contended that the CC charges bills were not issued to the Petitioner and also not submitted any proof of service of the bills, but were debited in their account.

12. The Respondents contested that the Commission has also communicated the billing procedures to be adopted during R & C period in proceedings No. APERC / Secy / 14 / 2012-13 dated 11.09.2012 based on the PDL and PCL parameters. Billing during the R & C period was required to be done based on the parameters like PDL off peak, PDL peak, PCL off peak and PCL peak. Demand will be recorded in case the service is Live. In case of service under disconnection the recording demand of energy does not arise. The specific condition 12 (a) of proceedings No. APERC / Secy / 14 / 20-12-13 dated 11.09.2012 is applicable to the consumers who were using power and the same is not applicable to the services under disconnection for the simple reason that restriction was imposed on the demand and energy consumption during the off-peak period and peak period for the services which consume energy. Since the service of the petitioner was under disconnection, the applicability of specific condition 12 (a) of proceedings No. APERC / Secy / 14 / 2012-13 dated 11.09.2012 does not arise for the reason that the petitioner was not in a position to consume the energy. Consequently, para 213.6 (7) of the tariff order for FY 2012-13 becomes applicable. As per para 213.6 (7) of tariff order for FY 2012-13 every consumer whether he consumes energy or not shall have to pay monthly minimum charges. As per para 213.7 (1) (i) & (ii) of Tariff Order for FY 2012-13 and levying the minimum charges in R & C period is perfectly legal and the contentions of the petitioner becomes untenable and hence deserves no consideration. The Respondents further contested that the CC bills were issued to the Petitioner upto the date of termination of Agreement and the same were sent to the petitioner by post every month, but the petitioner did not pay any amount claimed through the CC bills.

13. The Petitioner is now raising a complaint about the non-implementation of the order of the Commission in the year 2012 consequent upon CC bills raised during the period from January, 2013 to August, 2013. The Commission perceives that issue primarily seems to be with regard to billing for a specific period when R&C measures are in force and when the service is under disconnection. In that view of the matter the petition cannot be entertained by the Commission as it is a consumer complaint in simple terms. It is also noticed that the Petitioner has already approached and filed a complaint before the Consumer Grievances Redressal Forum (CGRF) of TSSPDCL (Greater Hyderabad Area) vide C. G. No. 435 / 2019-20 / Rajendranagar circle. The CGRF vide order dated 31.10.2019 rejected the complaint after conducting a detailed

enquiry. Aggrieved by the Order of CGRF the Petitioner filed an Appeal before the Vidyut Ombudsman in Appeal No. 25 of 2019-20 and the same was rejected by the Ombudsman after hearing both sides and after considering the material on record by an order dated 19.12.2019. Further, the Petitioner preferred CMP No. 01 of 2020-21 before the Vidyut Ombudsman against the Vidyut Ombudsman order dated 19.12.2019 and Vidyut Ombudsman vide its order dated 04.06.2020 rejected the Review Petition. The Petitioner has filed the present petition by saying the respondents have not followed the specific condition 12 (a) of the proceedings in its true spirit, therefore they are liable for punishment for non-compliance of directions by the Commission under section 142 of the Electricity Act, 2003. Since the cause of action and relief sought before the CGRF, Vidyut Ombudsman is under different provisions and not related to this petition. The order suffered by the petitioner before the Vidyut Ombudsman has no bearing on the proceedings before this Commission.

14. The petitioner sought to rely on the judgment of the Hon'ble Supreme Court in the matter of Raymond Limited vs Madhya Pradesh Electricity Board as reported in AIR 2001 (SC) 238. From the factual matrix of the said case, it can be safely deciphered that the ruling made by the Hon'ble Supreme Court cannot be the basis of the case of the petitioner, for the reason that the supply agreement provided therein had specific quantum of energy and amount specified therein, such is not case of the petitioner. The facts and circumstances in that case neither suit the present circumstances available in the instant case nor do they satisfy with conditions that are attracted by the petitioner and licensee in this case. Therefore, the reasoning set out therein is of no value and not required to be considered in this case.

15. The Commission has perused the Judgment of the Hon'ble High Court Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh dated 28.10.2014 in W P No. 25687 of 2013 (Patancheru Steels Pvt. Ltd. Vs APCPDL), which is relevant to the issue at hand. The relevant excerpts of the stated Judgment is reproduced below:

“The petitioner is a consumer under HT Category-1 of respondent No.1 with a Contracted Maximum Demand (CMD) of 850 kVA. Respondent No.1 has issued Restriction and Control (R & C) order on 07.09.2012 w.e.f., 12.09.2012

whereunder it has imposed restrictions on the consumption of electricity by its consumers. Sub-clause (a) of Clause 12 of the said order reads as under:

“The Billing Demand shall be the maximum recorded demand during the month and clause 213.6 (6) of Tariff Order shall not apply during these R&C measures.”

It is the pleaded case of the petitioner that despite the R & C order dated 07.09.2012, the respondents have raised bills from September 2012 to December 2012 at 80% of the CMD towards minimum charges and that for non-payment of the C.C. charges, the supply was disconnected. According to the petitioner, the supply was disconnected on 19.01.2013 while it is the case of the respondents that the supply was disconnected on 13.12.2012. However, nothing much turns out on this dispute. After the disconnection of power supply, the respondents continued to levy minimum charges till July 2013. On 20.04.2013, the respondents terminated the supply agreement of the petitioner for non-payment of C.C. charges.

A counter affidavit is filed wherein the respondents have admitted that under a mistake of fact, bills were raised at 80% of the contracted CMD towards minimum charges and that R & C order exempts consumers from payment of the minimum charges. However, the respondents have pleaded that on account of the said mistake, the minimum charges levied for the period from September 2012 to December 2012 were withdrawn. It is also averred that in view of termination of the petitioner's agreement w.e.f. 20.04.2013, bills raised from April 2013 to July 2013 were also withdrawn. The respondents, however, sought to justify the imposition of minimum charges from January 2013 till the date of termination of agreement on the ground that the consumers whose services are under disconnection are liable to pay minimum charges.

In view of the withdrawal of minimum charges for the period between September and December 2012 and withdrawal of bills from April to July 2013, the only dispute that remains to be considered is whether the petitioner is liable to pay the minimum charges for the period from January 2013 till 20.04.2013 i.e., the date on which the agreement was terminated.

In the counter-affidavit the respondents have averred that due to non-payment of C.C. charges, FSA charges to the extent of Rs. 21,13,916/- power supply

was disconnected. The learned Counsel for the petitioner seriously disputed the claim of the respondents that the power supply was disconnected not only for non-payment of electricity charges but also FSA charges. This Court however feels that it is not necessary to deal with this controversy for the reason that even assuming that the supply was disconnected for non-payment of the FSA charges, the respondents are not entitled to demand minimum charges as the service is under disconnection under R & C period. Though the counter-affidavit placed reliance on condition No.213.6 of Tariff Order for 2012-13 to justify imposition of minimum charges, the said condition does not envisage payment of minimum charges even during R & C period in respect of disconnected service connections. When a general order was passed by respondent No.1 that charges are payable only on recorded maximum demand, such order is applicable to all the consumers including those whose services are under disconnection. The concept of imposition of minimum charges pre-supposes that the licensee is in a state of readiness to supply power to its consumers. When respondent No.1 has itself expressed its inability to supply power to the extent of contracted demand of the consumers, it is wholly unreasonable for respondent No. 1 to claim minimum charges from the consumers whose services are under disconnection during the R & C period. The R & C order dated 07.09.2012 does not contain exemption from payment of minimum charges on the CMD in respect of the disconnected units.

For the above mentioned reasons, I do not find any justification to levy minimum charges on the petitioner from January 2013 till the date of termination of the agreement i.e., 20.04.2013. The Writ Petition is accordingly allowed.” (Emphasis provided)

16. The case at hand is squarely covered by the above Judgment. The Respondent in the present case was carved out from the erstwhile APCPDCL, which was the Respondent in the W P No. 25687 of 2013. What flows from the above Judgment is that the consumers under disconnection are not liable to pay minimum charges for the period covered under the R & C period. The Commission deems it fit to apply the same corollary for the present case. Therefore, the answer to issue no.1 shall be in the affirmative.

17. As a consequence, the Petitioner is directed to represent to the Respondent for consequential relief. The Respondent is directed to grant relief based on the representation of the Petitioner and report the same to the Commission, within 15 days of receiving the representation from the Petitioner.

Issue No.2:

18. The Commission shall decide on the issue No.2 after taking cognizance of the compliance to the directions issued under issue No.1.

19. Office to number the petition and communicate the same.

This order is corrected and signed on this the 9th day of September, 2021.

Sd/- (BANDARU KRISHNAIAH) MEMBER	Sd/- (M.D.MANO HAR RAJU) MEMBER	Sd/- (T.SRIRANGA RAO) CHAIRMAN
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