



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17**

No. F. 11(1477)/DERC/2017-18/5731

**Petition No. 14/2017**

In the matter of: **Petition u/s 142 and 42(2) of the Electricity Act, 2003 against the non-compliance of the Distribution Licensees of Delhi and regarding incorrect imposition of wheeling charges and non-adherence of DERC Open Access Orders dated 24.12.2013 and 18.05.2015, read with Regulations 17 and 18 of DERC (Open Access) Regulations, 2005.**

Gaurav Nand,  
Consumer Representative  
T-44 Karampura,  
New Delhi 110015

....Petitioner

Vs.

1. BSES Rajdhani Power Limited  
Through its: **CEO**  
BSES Bhawan, Nehru Place,  
New Delhi-110019
2. Tata Power Delhi Distribution Ltd.  
Through its Managing Director  
Grid Sub Station Building  
Hudson Lines, Kingsway Camp,  
Delhi 110 009
3. BSES Yamuna Power Ltd.  
Through its: **CEO**  
Shakti Kiran Building,  
Karkardooma  
New Delhi – 110092
4. State Load Despatch Centre  
Delhi Transco Limited  
33KV Sub Station Building,  
Minto Road,  
New Delhi 110 002

...Respondents

**Coram: Sh. B.P. Singh, Member**

**Appearance:**

1. Mr Gaurav Nand, Petitioner
2. Mr. Buddy Ranganathan, Advocate, BRPL & BYPL
3. Mr. Raunak Jain, Advocate, TPDDL
4. Mr. Kanishk, BRPL
5. Mr. Abhishek, BRPL
6. Mr. Ravi, BRPL

7. Mr. Mayank, BRPL
8. Mr. Shreyansh, BRPL
9. Mr. Sameer Singh, BYPL
10. Mr. Abhishek Srivastava, BYPL
11. Mr. O.P Singh, TPDDL
12. Mr. Uttam kumar, TPDDL
13. Mr. Kartikey Tripathi, TPDDL

**INTERIM ORDER**

(Date of Hearing: 08.06.2017)

(Date of Order: 12.06.2017)

1. The instant Petition has been filed by Mr. Gaurav Nand against BRPL (Respondent No. 1), TPDDL (Respondent No. 2), BYPL (Respondent No. 3) and SLDC (Respondent No. 4).
2. The Petitioner in person submitted though he has received the copy of reply day before only, he would prefer to argue his submissions rather than filing a rejoinder to the reply filed by the Respondents viz. BRPL and BYPL. The Brief submissions of the Petitioner are:
  - a) That he represents interest of HT Consumers of Delhi and raises related issues in the large public interests of various consumers at various platforms such as DERC, CERC, JERC and the Delhi Government; and to substantiate his claim he produced certain documents/Orders wherein he has represented as a Consumer Representative for the Open Access Consumers of Delhi.
  - b) That the matter is not a billing dispute, it is a clear violation of the Commissions Orders dated 24.12.2013 and 18.05.2015 wherein it is clearly stated the mechanism of wheeling charges on the Open Access consumers should be on the scheduled Open Access quantum cleared by National Load Dispatch Centre (NLDC) only; and the DISCOMs have not been complying with.
  - c) That there is no conflict between the Open Access Regulations and related Orders dated 24.12.2013 and 18.05.2015.
  - d) That there is no stay granted by the APTEL in Appeal no. 164 and 165 of 2015.
  - e) That the Respondents are misinterpreting the Regulation 11(1) of DERC Open Access Regulations, 2005 in regard to the imposition of wheeling charges on the consumer on the basis of reserved capacity. In collective Transactions or Power Exchange market, schedules are reserved through bidding in a day ahead market. Therefore, the reserved capacity as per the above regulation has to be correctly interpreted and imposed on the

day-ahead schedule or the scheduled quantum that has been placed for bidding in a day-ahead market.

- f) That the Respondent licensees statement that it has been charging cross subsidy surcharge and additional surcharge only on contracted quantum of power and not on the scheduled quantum is incorrect since they are charging on scheduled quantum and not on contracted quantum.
  - g) That under the Universal Service Obligation, the DISCOMs are obligated to supply Electricity and the wheeling charges imposition is based on the reserved capacity and not on the contract demand.
3. On the submissions of the Petitioner the Counsel for the Respondents BRPL and BYPL submitted that all statements and facts produced before the Commission by the Petitioner should be given on affidavit, with a copy to the Respondents. Further, preliminary objections were raised on the maintainability of the present petition on two grounds:
- a) That the Petitioner does not have any Locus standii to prefer the present Petition since the Petitioner is not an 'authorized consumer representative' under Section 94 (3) of the Electricity Act 2003. The Petition as framed suggests that Petition is preferred on behalf of certain unnamed and undisclosed consumers and none of those consumers are petitioner in the cause.
  - b) Secondly, the petitioner Mr. Gaurav Nand is not an Open Access consumer and there is no lis between the petitioner and licensees nor does the petition disclose any such lis. The petition only discloses the facts of one consumer "Avdhut Swami Metal Works" and Avdhut Swami itself has preferred its own petition under Section 142 against BYPL which is the DISCOM to whom such consumer is connected. Hence, the present Petitioner is preferring his own petition in his independent and individual capacity in guise of a "consumer representative" and espousing the cause of only Avdhut Swami in the petition.
4. The Counsel for the Respondents BRPL and BYPL further submitted:
- a) That in both the Commissions Orders dated 24.12.2013 and 18.05.2015 the transmission and wheeling charges are to be levied on the quantum cleared by the Nodal Agency and not on the quantum drawn by the Open Access Consumers.

- b) That the Commission has agreed in the Meeting held on 23.06.2015 that the Cross Subsidy Surcharges and Additional Surcharges have to be levied on the approved quantum of power and not on the actual consumption.
  - c) That the petitioner has contended the billing by the licensee on the basis of the original reserved capacity as erroneous relying on the Orders of the Commission dated 18.05.2015 and 24.12.2013. Such reliance is ex-facie erroneous and fallacious since under the law the Regulations of the Commission framed under Section 181 of the Electricity Act, 2003 would supersede and override the Orders passed by the Commission. Further, as per the PTC Vs CERC Judgment the Commission is bound to follow its Regulations. The licensees are fully in accordance with the Regulations of this Commission and there is no question of any violation under Section 142 of the Electricity Act, 2003.
  - d) That there is a "deeming fiction" contained in the Order dated 01.06.2017. Therefore, if under the old Orders dated 24.12.2013 and 08.05.2015, the licensee had been charging transmission and wheeling charges on the maximum quantity approved by SLDC and not on the actual drawl, such billing is "deemed to have been done under this Order." Hence, by virtue of the said deeming fiction, all such actions taken earlier, but in accord with the current dispensation have been ratified retrospectively by the Order dated 01.06.2017.
5. The Petitioner controverted the arguments of the Respondents stating that the Orders dated 24.12.2013 and 18.05.2015 are applicable in the present Petition since it was filed in the month of May 2017 before the Commission before the notification of the present Order dated 01.06.2017 was not commenced. Further, on the question of maintainability of the Petition it was submitted by the Petitioner that any person can file a complaint under Section 142 of the Electricity Act, 2003 and vide this Petition he is requesting the Commission to Penalizing the Respondents under Section 142 for Non-compliance of the Commissions Orders.
6. The Counsel for the Respondent No. 2 TPDDL filed its Vakalatnama and requested some time to file Reply in the matter.
7. On the question of maintainability the Commission observed that Section 142 of the Electricity Act, 2003 states as follows:

**Section 142. (Punishment for non-compliance of directions by Appropriate Commission):** In case any complaint is filed before the Appropriate

Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made there under, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

Any person as defined in the Electricity Act, 2003 which includes any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person can file a complaint u/s 142 of the Electricity Act, 2003 for non-compliance of directions by the Commission.

8. In view of the position aforesaid, the Petitioner who claims to be a representative of Open Access Consumers of Delhi can file a complaint U/s 142 of the Electricity Act, 2003 whether in an individual capacity or as a representative of Open Access Consumers of Delhi. Therefore, the Petition is maintainable and is admitted.
9. The Commission heard both the parties at length on the merits of the case and reserved the Judgment. The parties are directed to file Written Submissions within two weeks.
10. Ordered Accordingly.

**Sd/-**  
(B.P. Singh)  
Member