

DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017

F.3 (102) Tariff/DERC/2005-06/868

Petition No. 14/2009

In the matter of: Non-Compliance with the Directive regarding Separation of Corporate Offices and employees' common to BRPL and BYPL.

AND

In the matter of:

1. Chief Executive Officer

BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place,
New Delhi - 110 019

2. Chief Executive Officer

BSES Yamuna Power Limited
Shakti Kiran Building,
Karkardooma,
Delhi - 110 092

...Respondents

CORAM: Sh. B.P. Singh, Member

ORDER

(Date of Order: 29.06.2018)

1. The Respondents namely BRPL and BYPL has filed an IA requesting the Commission to dispose of the matter at the earliest as the Respondents has complied with the directives of the Hon'ble Commission regarding separation of corporate offices and employees common to the Respondents to the extent possible; and where it is not possible it has been explained in the affidavit filed before the Hon'ble Commission.
2. The instant case relates to Suo moto cognizance taken by the Commission under Section 142 of the Electricity Act, 2003 against the Respondents namely BRPL and BYPL for non-Compliance of the Directives of the Commission regarding Separation of Corporate Offices of the Respondents viz. M/s BRPL and M/s BYPL which are two separate licensees engaged in distribution business of electricity in two distinct areas. The Commission had observed that even though two separate licenses were issued to two separate legal entities, the Respondents were having common corporate offices and employees, which was against the terms & conditions of license and in violation of the legal

status. It was also observed that even these two separate companies were having common CEO.

3. Vide Tariff Order of FY 2005-06, the Commission issued directions to the Respondents to separate the corporate offices and employees, who are currently common to these two Respondent Discoms within three months and to file the status of compliance on the same to the Commission.
4. The Commission on observing that no compliance to the directives by the Respondents, issued a show cause notice dated 23.09.2009 asking the Respondents to show-cause as to why penalty under Section 142 of the Electricity Act, 2003 should not be imposed for their failure to comply with the following directions of the Commission :-
 - a) to appoint separate CEO; and
 - b) to separate the corporate offices and employees of companies.
5. In response to the Show-cause notice dated 23.09.2009, the Respondents had informed that separate CEO had been appointed for BYPL and BRPL on 14.10.2009. It was also mentioned that now there was complete separation of office and employees. During the course of hearing on 05.11.2009, BRPL stated that since separate CEOs had been appointed, the matter should be treated as closed.
6. To examine the claim of the Respondents, it was decided to constitute a committee of all the three divisional heads, comprising of secretary, DERC as chairperson and other two EDs i.e. ED (Engg) and ED (Law) as Members, who shall determine the period of non-compliance of its directives for separation of corporate offices, appointment of separate CEO, COO and other employees common to the Respondent Discoms.
7. The three members committee of the Commission reported that the Order of the Commission in respect of separation of the offices of the Discoms was not complied with till March 2014. A copy of the report on the status of Separation of Corporate Offices as per the request of the Respondents was provided to the Respondents to file their submissions on the report.
8. During the hearing on 30.07.2015, the counsel for the Respondents submitted that they have filed affidavits on the status of separation of corporate offices and employees common to BRPL and BYPL especially in terms of the report of the Committee constituted by the Commission on the aforesaid issue. The counsel of the Respondents further submitted that the separation of corporate offices and employees common to BRPL and BYPL have already taken place to the extent possible and the places

where it is not possible it has been explained in the affidavit filed before the Commission. The Respondents in the affidavit made following submissions:

A. PROCUREMENT

That the resources for system control corporate communication, procurement, recruitment, account and finance function like working capital and fund management, taxation, statutory audits etc. and policy matters were pooled up to November, 2009 to derive synergies of volumes of optimal utilization of resources and thereafter these resources were separated.

For procurement there are few orders subsequent to November, 2009 which have been issued from Licensees and thereafter Licensees recovered 40% cost from each other. These orders were in the pipeline as the process of tendering/procurement had commenced and was at an advanced stage at the time of separation. Hence, it would have been prejudicial to wind up the tender at the time of separation. Thus, the Licensees continued with the tender to ensure efficiency and economy of scale. Therefore, the orders were placed to get economy of scale because the very nature of items was such that it was not feasible/economical to place different orders, it would have required incurring the cost of procurement afresh for the company as well as not guarantee the price obtained in the orders on account of the economy of scales. There has been a distinct procurement process followed by the company since 01.04.2011

B. SCADA

That common SCADA centre expenditure at the cost of Rs. 162.12 crores was approved by the Commission vide letter dated 10.11.2008 on the account of optimizing the cost.

That the Respondents have a fully functional separate SCADA system. All the grid stations pertaining to the Respondents are being controlled from there. The operational cost like AMC, manpower support etc. are being shared by respective companies. This is as per the letter of the Hon'ble Commission dated February 26, 2010, wherein while the Hon'ble Commission did not approve the establishment for separate SCADA control centre, it directed that the costs should be optimized as indicated in its 'in principle' approval. The said approval has permitted such sharing costs.

C. IT SYSTEM

That some of physical assets like billing server and associated equipments are common to both, all the employees of IT have been distinctly identified on the roles of the particular company. Further M/s BRPL and M/s BYPL stated that a lot of business process development activities take place which are common for which the cost is shared between Respondents.

The Respondents have recovered many expenses of Information technology also which in financial year 2013-14 were recovered from each other @ 40% and SAP IDC charges in Financial Year 2012-13. The sharing has ensured optimization of assets and ensured efficiency in operations, which benefits the consumers. The same is a consequential effect of the process of cost optimization required to be followed by the Respondents to comply with the terms, the Hon'ble Commission 'in principle' approves and letter dated February 26, 2010.

9. The Commission directed the ED (Engg.) and Advisor (Finance) to examine the submissions made by the Respondents and submit a report.
10. The ED (Engg.) and Advisor (Finance) had since submitted the report, which contains following observations:-
 - (i) There are separate CEOs for BRPL and BYPL since 14.10.2009.
 - (ii) With regards to the directives related to separation of Procurement is concerned, it has been separated between BRPL & BYPL from November, 2009.
 - (iii) BYPL have commissioned the SCADA centre at Shankar Road on 01.04.2014. BRPL has its separate SCADA centre at Balaji Estates, Kalkaji. Scheme for upgradation of SCADA centre of BRPL has also been approved by the Commission. After upgradation of SCADA centre of BRPL, both SCADA centres shall act as back-up to each other.
 - (iv) All the IT services other than SAP infrastructure, such as network, field support, GIS, are fully segregated between BRPL & BYPL. Implementation of SAP was approved by the Commission vide its order dated 29.09.2008 in 60:40 ratio and hence the SAP infrastructure is common for both companies but separate orders for maintenance are issued for each company for their part.
11. On the basis of the statements made by the Respondents and the report of the ED (Engg.) and Advisor Finance, it is evident that the directions of

the Commission regarding separation of corporate offices of the Respondents have taken place to the extent possible. The explanation given by the Respondents that any order to optimize the expenditure in certain cases such as common SAP infrastructure and SCADA control system etc. is acceptable keeping in view, the interest of consumers because any additional expenditure is borne by the consumers. However, it is also noted that there was initially inhibition by the Respondent in complying the directions of the Commission for separation of their corporate offices as it is evident from the fact that till 14.10.2009, the CEOs of both the companies was common.

12. From the above it is established that till 14.10.2009, the Respondents were in complete violation of the directions of the Commission regarding separation of the corporate offices. On the above findings that the direction of the Commission were violated by the Respondents, a penalty of Rs. 1 lakh is imposed on each of the Respondent which is to be paid within 60 days from the date of order.

13. The petition is disposed of and ordered accordingly.

Sd/-
(B. P. Singh)
Member