

**IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION
AT RANCHI**

Case No. 26 of 2020

M/s Grasim Industries Ltd.Petitioner

Versus

Jharkhand Bijli Vitran Nigam Ltd.Respondent

**CORAM: HON'BLE MR. JUSTICE AMITAV KUMAR GUPTA, CHAIRPERSON
HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)
HON'BLE MR. ATUL KUMAR, MEMBER (TECH)**

For the Petitioner : Mr. Dhananjay Kumar Pathak, Advocate
For the Respondent : Mr. Mrinal Kanti Roy, Advocate

Date: 16th May, 2023

- A. The Petitioner- M/s Grasim Industries Ltd. has filed the instant petition for clarification w.r.t. the provisions contained under clause 8.12 & 8.13 of JSERC (Utilization of Surplus Capacity of CPP based on Conventional Fuel) Regulations, 2010 which provides for billing of demand charge at two times in case the recorded maximum demand exceeds the standby contract demand.
- B. The Prayers of the Petitioner- M/s Grasim Industries Ltd. are as under:-
- (a) To admit this application and to clarify the manner of calculation of demand charges in terms of clauses 8.12 to 8.13 in case of exceeding the Maximum Demand beyond contracted demand.
 - (b) To pass such other or order(s) as the Hon'ble Commission may deem fit and proper in the interest of justice.

Submissions of the Petitioner

1. Learned Counsel for the Petitioner submitted that the Petitioner is engaged in the business of manufacturing Chlor Alkali and Allied Chemicals and the production process of Chlor Alkali, Chemicals requires an uninterrupted electricity supply, so the Petitioner company has established a Captive Power Plant (CPP) to meet the requirement of electricity.

2. It was submitted that having surplus power from CPP, the Petitioner entered into an agreement dated 31.10.2019 with the Respondent Nigam for the supply of 12 MW power and accordingly executed an agreement for utilization/supply of surplus power of the captive power plant and for connectivity/synchronization for that purpose with the grid system of JUSNL in terms of the provisions contained under JSERC (Utilization of Surplus Capacity of CPP based on conventional fuel) Regulation, 2010.
3. It was submitted that as per the agreement, the Petitioner supplies 12MW surplus power to the respondent Nigam on a continuous basis and from time to time avails the standby support from the respondent in case of planned shutdown for annual maintenance for which the standby contract demand of the Petitioner with the respondent Nigam is of 7.5 MW and the billing of surplus power supply to the respondent is made in terms of the CPP agreement.
4. The petitioner submitted that the clarification of clauses 8.12 & 8.13 of Regulation, 2010 has arisen in the backdrop of the facts mentioned hereunder: -
 - (a) The Petitioner planned the annual shutdown from 29th Dec, 2019 at 7.00 AM for 35 days and accordingly informed the respondent. consequent thereto the export of power to the grid of the respondent from the CPP of the Petitioner stopped from 29th Dec, 2019 and the Petitioner started importing 7.5 MW power from the grid of the respondent.
 - (b) The Petitioner installed two CPP, Plant #1 was under annual maintenance from 29th Dec, 2019 and plant #2 was in operation. However, during the maintenance period of plant #1 there had been unforeseen shutdown of plant #2 on 20.01.2020. As such the Petitioner had written and informed the respondent for increase of emergency power import from 7.5 MW to 10 MW to meet the unforeseen emergency situation for 72 hours from 20.01.2020 at 7.30 am to 23.01.2020 7.30 am.
 - (c) It is stated that during the emergency power import for the aforesaid 3 days, the maximum demand of the petitioner was recorded 13 MVA in the meter and which exceeded the contract demand.
 - (d) The operation of plant #2 was restored within 72 hrs. hence the emergency power was drawn for about 64.75 hours with the aforesaid excess demand. Thereafter the petitioner started drawing power as per the contract demand as was being drawn prior to 20.01.2020.
 - (e) The Petitioner in terms of the C.P.P. agreement, raised energy bill against the power exported to the respondent Nigam and while

billing the petitioner adjusted the value of Fixed charge/Demand charge of any power drawn/ utilized it from the grid of the respondent as per the method/ formula stipulated in the C.P.P agreement.

5. It was submitted that the clauses 5.6 to 5.9 of the agreement which is in *para materia* with clause 8.10 to 8.13 of the Regulation 2010 is reproduced as under: -

“8.10 Wherever an agreement for Stand-by support exists between the Captive User and the Licensee, the Captive User shall be required to pay to the Licensee a fixed charge of Rs. 35 per kVA per month, applied on the capacity contracted under Stand-by support with the Distribution Licensee. Provided that the charges referred to above shall apply uniformly every month, irrespective of whether the Captive User avails Stand-by support or not.

8.11 In addition to the charges mentioned in clause 8.10 of these regulations, the Captive User shall also be required to bear energy charges and demand charges for the power consumed during period of Stand-by support as under:

Particulars	Applicable charges
<i>Stand-by support availed for 1008 hours (42 days) in a financial year</i>	<i>Pro-rated HT Industrial Consumer Contract Demand tariff at corresponding voltage and demand (or as per the order of the Commission as specified from time to time) for Stand-by Demand contracted. The pro-rata shall be done on the basis of the usage. 1.5 times of the HT Industrial consumer Energy charges at corresponding voltage and demand (or as per the order of the Commission as specified from time to time) for energy equivalent to Stand-by Demand.</i>
<i>Stand-by support availed for greater than 1008 hours (42 days) in a financial year</i>	Upto 1008 hours: <i>Pro-rated HT Industrial consumer Contract Demand tariff at corresponding voltage and demand (or as per the order of the Commission as specified from time to time) for Stand-by Demand contracted. The pro-rata shall be done on the basis of the usage. 1.5 times of the HT Industrial consumer Energy charges at corresponding voltage and demand (or as per the order of the Commission as specified from time to time) for energy equivalent to Stand-by Demand.</i> Beyond 1008 hours:

Particulars	Applicable charges
	Tariff approved by the Commission for temporary HT consumers at corresponding voltage and demand (or as per the order of the Commission as specified from time to time) in the Licensee's area of supply on power consumed beyond 1008 hours.

8.12 The demand charges shall be applied on the maximum demand at any 15 minutes time block covered under Stand-by period subject to minimum of 90% of the contract demand. The Stand-by period for this purpose shall be reckoned maximum up to 1008 hours (42 days) in any financial year. The energy charges shall be applied on the total energy consumed across all time-blocks covered under the Stand-by period.

8.13 In case the recorded maximum demand at the CPP premises exceeds the stand-by contract demand, the excess demand recorded shall be billed for at 2 times the demand charges arrived at from clause 8.12 of these regulations.”

6. It is argued that the billing of demand charges has to be made on pro-rata basis which is to be calculated on the basis of usage. In case the recorded maximum demand exceeds the stand-by contract demand, the excess demand recorded shall be billed 2 times the demand charges arrived at as per clause 5.8 of the agreement.
7. It was submitted that on previous occasions and at no point of time such situation arose that during maintenance of plant #1, the other plant #2 developed snag resulting in unforeseen shutdown causing the petitioner to demand surplus power higher than the contracted demand. Accordingly, there had been no occasion for billing against the exceeded maximum demand.
8. It is contended that the maximum demand exceeded the contract demand for approx 64.75 hours from 20.01.2020 to 23.01.2020, therefore, in terms of the Regulation 2010, the demand charge needs to be calculated on pro-rata based upon the usage and the excess demand so recorded needs to be calculated twice for those 64.75 hours. It is submitted that the provisions made in the agreement or in the Regulation, 2010 is not very much specific regarding the mode/manner of calculation of demand charge exceeding the contract demand. Due to which the said charges have been calculated and assessed by the Nigam for the entire shutdown period where as in terms of the regulation it needs to be calculated on pro rata basis as per usage.

9. Learned Counsel for the petitioner submitted that the petitioner while interpreting the relevant terms of the agreement/ provisions of regulation, 2010 has calculated the demand charge in following manner: -

Calculation in terms of Regulation, 2010/ Agreement					
	Max Demand	Rate	Hrs	Month Hrs	Value Rs.
Maximum Demand Charge	7500	350	716.50	744	2452135
Exceeded Demand Charge	5500	700	64.75	744	325012
Total			781.25		2777147

10. However, Respondent is of the view that the maximum demand charge is to be calculated in the following manner for the entire period of standby support: -

Calculation as per JBVNL					
	Max Demand	Rate	Hrs	Month Hrs	Value Rs.
Maximum Demand Charge	7500	350	716.50	744	2452135
Exceeded Demand Charge	5500	700	716.50	744	3596464
Total			1433.00		6048599

11. Learned Counsel submitted that formula being applied for calculating the Demand Charge by the JBVNL as well as the petitioner is the same and there is no dispute in the manner of calculation and the petitioner does not have any grievance in paying the demand charges twice for the period it has exceeded the contract demand but there is no justification to charge the penalty for exceeding the contract demand for the entire shutdown period i.e. 716.50 hours considering the fact that excess power was utilized only for 64.75 hours.

12. The Petitioner submitted that there is a difference of Rs. 32,71,452/- in the manner of calculation of demand charge by the petitioner and the respondent-Nigam as elucidated in the table at para 9 and 10.
13. Learned Counsel for the petitioner submitted that while auditing/reconciling payment received as well as the account maintained with respondent it has surfaced that prior to filing of the instant application, the respondent Nigam had on earlier occasion raised and realized the demand charges wrongfully in cases of exceeding contract demand by charging the demand charges twice for the whole period instead of period of usage of higher demand. It is stated that during the pendency of the instant application the respondent JBVNL has raised and realized demand charges for availing the load exceeding the contracted demand for the month of Feb, 2021.
14. Learned counsel submitted that the petitioner has prepared the details of the excess demand charges raised and realized for different periods on account of exceeding the contract demand for few hours by charging twice for the whole period of standby support.
15. It is submitted that due to wrong method of calculation of demand charge huge money of the petitioner has been blocked by the respondent. It is argued that the petitioner is apprehensive that in future the petitioner might suffer due to wrong interpretation of the aforementioned provisions of 2010 Regulation. Thus, the petitioner has prayed for clarification w.r.t charging of demand charge in terms of the clause 8.11, 8.12 & 8.13 of the Regulation, 2010 and a direction to the respondent to recalculate the demand charges strictly in the terms of the regulation and refund the excess amount realized as demand charges.

Submission of the Respondent

16. Learned Counsel for the Respondent submitted that it is not disputed that the respondent (JBVNL) entered into an agreement dated 31.10.2019 with the Petitioner (Grasim Industries Limited) for supply of 12 MW power (out of which 1 MW power for banking purpose and rest 11 MW power for selling purpose) under JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulation, 2010 and the agreement dated- 31.10.2019 was valid till

30th September 2021. It is submitted that new agreement was also signed between same parties on 17th August 2022 effective from 1st October, 2021 till 31 March, 2024.

17. Learned counsel argued that as per clause 1.1.19 of the agreement "Stand-by support" shall mean the contractual arrangement between the Captive user and the Licensee to provide power in case of planned or forced outage of the CPP and the standby contract demand or Standby Support of the Petitioner with the respondent (JBVNL) is 7.5 MW.
18. It is submitted that Clause 5.8 of the agreement lays down the manner of billing process of demand charges applicable in case of power consumption by Captive user as reproduced below:

“The demand charges shall be applied on the maximum demand at any 15 minutes time block covered under Stand-by period subject to minimum of 90% of the Contract demand. The Stand-by period for this purpose shall be reckoned maximum upto 1008 hours (42 days) in any financial year. The energy charges shall be applied on the total energy consumed across all time-blocks covered under the Stand-by period.”

It is stated that Clause 5.9 of the agreement mentioned about the billing process of demand charges applicable in case of power consumption which exceeds the stand-by contract demand by Captive user as extracted hereunder:

“In case the recorded maximum demand at the CPP premises exceeds the stand by contract demand, the excess demand recorded shall be billed for at 2 times the demand charges arrived at from clause 5.8 of this agreement.”

19. It is contended that the respondent raised the demand charges in terms of clause 5.8 & 5.9 of the agreement which is in consonance with clause 8.23 (8.12) & clause 8.24 (8.13) of JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulation, 2010.

Commission’s observation and findings

- 20. The Commission has heard and considered the submissions of the parties and the materials available on records.
- 21. It is pertinent to note that under Section 86(1)(f) and 86 (1)(k) of the Electricity Act, 2003, the State Commission is empowered and has the responsibility to adjudicate the disputes. The relevant provisions of Sections 86 of the Electricity Act, 2003 reads as under: -

“Section 86 Function of State Commission: -

(1) The state Commission shall discharge the following functions, namely: -
(a).....
(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;
.....
(k) discharge such other functions as may be assigned to it under this Act

- 22. At the very outset before entering into the merit of the case it is necessary to clarify the definition of usage of the word pro rata which means “proportionally” or “per the rate” and is most often used when there is need to reimburse a specific amount proportionate to their engagement in a certain type of business. In the JSERC (Utilization of Surplus Capacity of Captive Power Plants Based on Conventional Fuel) Regulations, 2010 the word pro-rata is inserted with the object to calculate proportionately, the demand charges on the basis of usage for the power consumed during the period of stand-by support.
- 23. In this context it will be relevant to state that clauses 8.10 to 8.13 of the JSERC (Utilization of Surplus Capacity of Captive Power Plants Based on Conventional Fuel) Regulations, 2010 stipulates that the demand charges for the power consumed during period of stand-by support availed for a period of 1008 hours (42 days) in a financial year shall be the calculated on a pro-rata basis, and such pro-rata shall be done according the usage of power.
- 24. As would be evident, from the facts of the instant case, that the respondent while raising the bill against the petitioner has not calculated or assessed the demand charges on pro-rata basis on the basis of usage as provided under JSERC (Utilization of Surplus Capacity of Captive Power Plants Based on Conventional Fuel)

Regulations, 2010, this is not disputed by the parties as per the agreement dated 31st October 2019.

25. In the backdrop of the provisions of regulation and the materials on record, it is hereby ordered,

ORDER

26. In the facts and circumstances of the case, the prayer of the petitioner is allowed. It is, hereby, clarified that the calculation of demand charges in terms of Clause 8.12 and 8.13 of JSERC (Utilization of Surplus Capacity of Captive Power Plants Based on Conventional Fuel) Regulations, 2010 in case exceeding the maximum demand beyond the contracted demand, shall be billed for at 2 times on pro-rata basis as per the actual hours of usage.
27. The Respondent shall recalculate the demand charge of the petitioner, for the period whereby the petitioner exceeded the maximum demand beyond the contracted demand in view of the observation and discussion made hereinabove.
28. With the aforesaid direction the petition stands disposed off.

Sd/-
Member (T)

Sd/-
Member (L)

Sd/-
Chairperson