

**Before the Jammu & Kashmir State Electricity Regulatory Commission at Jammu.**

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Mr. Paveljeet Singh Ruppal S/o Sh. G.S Ruppal of M/s P&R Engineering Services Pvt. Ltd. incorporated under the Companies Act 1956 having its registered Office at Lok Nayak Apartment, Sector-9, Rohini, Delhi-110085

Petitioner

**Versus**

1. State of Jammu & Kashmir, through Commissioner/Secretary to Government, Power Development Department, Civil Secretariat, Jammu.

Respondent No 1

2. Development Commissioner (Power), Government of Jammu & Kashmir, Civil Secretariat, Jammu.

Respondent No 2

3. Chief Engineer, Commercial and Survey Wing, Power Development Department, Bemina Srinagar.

Respondent No 3

4. Financial Advisor & Chief Accounts Officer, Power Development Department, Civil Secretariat, Jammu.

Respondent No 4

**Petition for adjudication of dispute by the Commission as adjudicator**

**ORDER**

**No. : JKSERC/100 of 2012**

**Dated: -31.12.2012**

I Brief facts giving rise to the present proceedings are that the petitioner company has set up a small Hydel power plant of 7.5 MW (3×2.5 MW) capacity at Brenwar in village Brenwar, District Budgam in the state of J&K for generating and supplying power to third party consumers outside the state.

That in order to transmit the power generated by the Petitioner in the said project to the consumers outside the state through the transmission network system already established by the Respondents, the parties have entered into an agreement known as “Bulk Power Transmission agreement” dated 13<sup>th</sup> October, 2009.

That on 11<sup>th</sup> January, 2010, a letter was sent by FA & CAO, Power Development Department to Development Commissioner, Power, J&K asking the Chief Engineer, Commercial and Survey Wing of J&K PDD to levy 10% of net energy on account of transmission and distribution losses to the network system of the department from another small Hydel Power Generator, M/s Magpie Hydel Construction Operation Industries pvt. Ltd., Srinagar and also to claim wheeling charges from the said generator under Clause 7 of the

agreement for wheeling the generated energy to a third party consumer outside the State. The said directions contained in the letter are being applied in the case of the Petitioner as well and recoveries in the shape of energy generated by Petitioner are being affected by the respondents.

That aggrieved by the said action of the respondents, the Petitioner has moved the present petition before this Commission seeking adjudication in respect of the said dispute of recovery which according to the Petitioner is not as per the rates notified by this Commission from time to time and the Petitioner is not liable to pay 10% of the net energy injected into the transmission system as transmission and distribution losses.

The Petitioner in his petition has taken the following stands -

(i) That a plain reading of the concluded contract makes the obligation of the Petitioner with respect of Wheeling Charges amply clear i.e. the Wheeling Charge would be 10% of the net energy supplied at the inter connection point. The interconnection point has not been defined in the Bulk Power Transmission agreement. However, the Open Access Regulations notified by the Hon'ble Commission dated 25<sup>th</sup> January 2006, No.: 6/JKSERC/2006/Jammu at annexure 1 point number 6(d) & 6(e) makes it obligatory on the beneficiaries of Open Access to specify the details of point wise voltage level of injection of power and drawal of power.

(ii) That additionally, the J&KSERC (Renewable Power Purchase Obligation, its Compliance and REC framework implementation) regulations, 2010 at Regulation 2.1 (j) on the issue of Interconnection provides as under:-

“in relation to mini/micro hydro power, non fossil fuel based co-generation power projects and solar thermal power, the inter-connection point shall be line isolator on outgoing feeder on HV side of generator transformer.”

(iii) Regarding the role of Transmission Licensees:

It has been worded by the petitioner that every Transmission Licensee shall comply with such technical standards of operation and maintenance of transmission lines, in accordance with this Code, Grid Standards, as may be specified by the Central Electricity Authority and the Indian Grid Code as applicable to Intra State Transmission System; it shall be the duty of the transmission licensee.

- a) To maintain and operate the transmission systems which are licensed to him in the intra-state transmission system and comply with the directions of RLDC and SLDC.
- b) Provide non-discriminatory open access, in accordance with Open Access regulations to its transmission system for use by any licensee or generating company or other users on payment of the charges as determined by the Commission.

(iv) That in violation of the concluded Bulk Power Transmission Agreement (BPTA), the JKPDD is charging 10% of the banked energy as Wheeling Charge in accordance with the “Banking and Wheeling Agreement” as against transmission loss of 5% determined by the Hon'ble Commission vide its notification No. 1 of 2007 dated 3/10/2007 being the average

energy loss for Open Access users and additionally the JKPDD has also started deducting 10% of the net energy injected into the transmission system as transmission and distribution losses. Thereby the total deduction at the point of injection of power by the petitioner is of the order of 20% which is unjustified and hence liable to be rejected by this Hon'ble Commission. The losses with the augmentation/modernization of the transmission system should have come down as against the benchmark 5% at EHV determined by the Commission in the year 2007.

(v) That it is brought to the notice of the Hon'ble Commission that the power injected by the petitioner generating company is at a voltage of 33 kV and no part of the distribution system below 33 kV is being used for the purpose of transmission/ wheeling of the said power to the point of its drawal. It may be worthwhile to bring to the notice of this Hon'ble Commission that the technical losses at this voltage hardly exceed 10% at the national level and almost all States are allowing not more than 6% normative losses calculating third party transmission charges for the Open Access customers.

(vi) That in addition to the above it is brought to the notice of the Hon'ble Commission that despite stipulations of the IEGC and the regulations framed by the Hon'ble Commission as mentioned above in the instant petition, JKPDD fails to maintain the required voltage of 33000 volts within plus minus 12.5% as generally agreed upon resulting in loss of generation at the petitioners end. As against the voltage level at input point as agreed upon the minimum voltage range required to be maintained by JKPDD works out to 33000 volts to a minimum of 28875 volts. Whereas the average voltage actually maintained by JKPDD ranges between 28000 Volts and 15000 Volts and at times the voltage level specially in winter months goes below 15000 Volts. Such mismatch in voltage at which power is generated by the petitioner and the voltage maintained by JKPDD at its transmission lines leads to frequent tripping at the generators end. To synchronize the voltage level the Generator's bus – bar has to frequently reduce. This as per the established law of Physics and the frequent stop and start process not only leads to loss of generation but also damages the high RPM machines of the petitioner generating company.

(vii) That a simulation of Generation loss at lower voltages is presented at Annexure – A of the petition.

Thus the loss of generation which is attributable to the transmission company i.e. JKPDD is to the tune of 30 to 40% on an annual basis. This coupled with the unreasonable deduction of 20% of power injected by the petitioner, which is liable to be set aside by this Hon'ble Commission, has made the hydro power plant set up by the petitioner at a considerable cost and efforts, unviable.

(viii) Regarding the jurisdiction of the Hon'ble Commission:

It was stated that Section 71(f) of the Jammu & Kashmir Electricity Act, 2010 empowers this Hon'ble Commission to intervene in such matters. The relevant Section of the Act is reproduced below:-

## Functions of the State Commission

71 (f) “adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration”.

(ix) That in the instant case the petitioner is a generating company as defined in the Act and the respondent JKPDD is a transmission licensee/ deemed licensee under the Act. Consequently, the matter falls within the purview of this Hon’ble Commission.

(x) That though the Indian Electricity Act, 2003 is not applicable in the State of Jammu and Kashmir, however, a reference to the Supreme Court Judgment reproduced below lends credence to the fact that the Electricity Act (in this case enacted by the State of Jammu and Kashmir) is a complete code in itself and the power to arbitrate / adjudicate lies in the exclusive domain of the State Electricity Regulatory Commission. The relevant judgment is reproduced below:-

Judgment of the Hon’ble Supreme Court of India in Gujarat Urja Nigam Ltd Versus Essar Power (2008) 4 SCC 755 whereby the Hon’ble Supreme Court has held that:-

“after the coming into force of the Electricity Act 2003, any dispute between a Licensee under the Act and a generation company must first be decided by the State Electricity Regulatory Commission under Section 86(1)(f) of the Act unless the SERC refers it to arbitration”

(xi) That it is relevant to mention in the context of the above judgment that Section 71(f) of the J&K Electricity Act is an exact replica of Section 81(1)(f) of the Indian Electricity Act, 2003 referred to in the above judgment.

(xii) That having stated as above the petitioner hastens to add that the conduct of JKPDD establishes the fact that by issuing the impugned circular no. PDD/11/AC/57/2009 dated 11/01/2010 they have attempted to usurp the powers vested in the Commission by the Act of determining fees and charges to be recovered from Open Access customers.

(xiii) That additionally, the respondent is also in violation of the concluded contract i.e. BPTA which has formed the part of the petitioner’s cost planning process upsetting the very basis of setting up a power plant for third party sale through Open Access and thereby causing huge financial losses to the Petitioner.

The Petitioner has finally sought the following relief:-

1. To set aside the circular of JKPDD dated 11.01.2010 authorizing the Chief Engineer Commercial for levying 10% net energy on account of transmission and distribution losses by declaring the same as null and void.
2. To issue directions to the respondents to desist from issuing instructions having financial impact on the stakeholders without prior approval of the Hon’ble Commission with exemplary costs.
3. To issue directions to JKPDD to honor the contractual agreement under Bulk Power Transmission Agreement signed with the petitioner.
4. To make good the financial losses suffered by the petitioner by not maintaining the requisite transmission voltage.

5. To issue any other order/direction in the instant matter as considered appropriate by the Hon'ble Commission.
6. To make good the financial losses suffered by the petitioner against deduction of 10% extra net energy on account of transmission losses @ RS. 2.47 per unit (average sale of power) with interest from the date of making 10% deductions for all the units deducted so far as per terms of circular dated 11.01.2010.

**II** The Petition has been opposed by the respondents and they have filed their objections refuting the claim of the Petitioner and has averred as under –

(i) That declaration has been made by the applicant in the petition thereby claiming to have authorization of the petitioner Company. However, there is nothing on record to substantiate this claim.

(ii) That in fact there is no issue as such that may require adjudication by the Hon'ble Commission. The issue sought to be raised by the petitioner in fact is merely concoction of facts and based on surmises and conjectures. The only endeavor of the petitioner is to seek what he is not entitled to under the contract agreement and the law. He is not entitled to what he is seeking in the present petition. Copy of agreement dated 13<sup>th</sup> of October 2009 along with Annexure A executed by the petitioner with the respondent is marked as Annexure R-1. Petitioner is trying to wriggle out of his lawful contractual obligations by misquoting the correct facts and the record. State can't be deprived of its legitimate dues. Present petition is utterly misconceived and is liable to be rejected in limine.

On facts, the Respondents have pleaded as under:-

(i) That the Petitioner is un-necessarily trying to raise confusion regarding interconnection point. Admittedly the interconnection point in the present case of the 7.5 MW Small Hydel electric project is 33/11 KV Receiving station Brenwar and the Petitioner IPP is well aware of it.

(ii) That it may further be stated that the IPP has connected the 33 kV HV side of its generator transformer to this interconnection point through a 4 Km long 33 kV feeder and has placed its energy metering equipment at this interconnection for monthly energy recording. It may not be out of place to mention here that the information like power evacuation facilities, interconnection point and the voltage levels are necessarily specified in project information in their pre-feasibility reports and detailed project reports; therefore in this case the contention of the petitioner is merely an afterthought.

(iii) That a perusal of Para 9 of notification no.1 of 2007 dated 3-10 2007 issued by J & K SERC copy of which is enclosed as Annexure R-2, reproduced hereunder:

Energy Loss;  
The average technical loss allocable and to be considered for open access users during FY 2007-08 shall be as under

Transmission Losses (EHV) 5%.  
Distribution Losses (HV) 5%.  
(Excluding LV & MV).

(iv) That, therefore, the levy of 10 percent losses in transmission and distribution system is in conformity with the power exercised by J&K SERC under open access regulation notification No.6/JKSERC/2006 Jammu dated January 25, 2006. This notification was in existence when the petitioner executed the aforesaid agreement dated 13-10-2007. The petitioner is bound by the terms of the agreement, rules, regulations and the notifications referred herein above. The petitioner is estopped from challenging the validity, etc of the agreement which was voluntarily executed by him.

(v) That the J&K PDD operates and maintains an efficient and well coordinated transmission system in accordance with the Indian electricity grid code, J&K state electricity code and grid code and grid standards formulated by Central Electricity Authority of India. The J&K State Power System operates in synchronization with northern regional grid and has an overall responsibility of the integrated operation of the northern regional power system. In the event of any grid disturbances and grid contingencies in the northern regional grid, the state transmission system shall not be liable to maintain the system parameters within the normal range of voltage and frequency. However, on its part the state load dispatch centre takes all necessary steps to maintain the system frequency and voltage within the prescribed limits as specified by IEGC and the SLDC strictly adheres to the instructions of the NRLDC and the state transmission system maintains grid discipline to its best possible and has never threatened any grid security. A large number of state and central mega generating stations operate in synchronization with the state transmission system and efficiently dispatch their energies over it. The J&K PDD is further strengthening its transmission system under PMRP and the system is becoming one of the best in the region.

(vi) That the J&K PDD is providing its best possible infrastructure facilities to the petitioner IPP located in a very remote location and at the tail end of the PDD systems. The facilities both at the HV and EHV levels are being provided to the IPP in conformity with the state Hydel policy, bulk power transmission agreement and the non-discriminatory open access provisions. From the date of its commercial operation, the IPP has been banking its energy with the J&KPDD's HV systems without any problem and has banked in 388.463 LUs ending October 2011. The IPP has successfully banked out 309.187 LUs over EHV transmission systems ending October, 2011 for sale to the consumers outside the State through PTC and power exchanges. The State load dispatch centre provides all the assistance and necessary clearances to the IPP in this regard as and when required by the IPP.

(vii) That the J&K PDD is charging 10% of the net energy as wheeling charges in complete conformity with clause 7 of the Banking and wheeling agreement which is consistent with clause 7 of the state Hydel policy 2003. The 7.5 MW project Brenwar was bid 2 years prior to the formulation of the regulations by JKSERC and IPP is selling its energy to consumers outside the State through PTC and power exchanges and hence 10 percent of net energy as wheeling charges straightway applies.

(viii) That any deviation shall be a violation of the agreement signed by the parties and is in disregard to State Hydel Policy.

- (ix) That further the J&K PDD is deducting 10% energy on account of loss sharing as per clause A-3 of the Annexure to the agreement and in accordance with the JKSERC's regulations on losses, issued vide notification 1 of 2007 dated 3/10/2007.
- (x) That the State of J&K merely gets 10 percent of energy against wheeling for the usage of its resources and infrastructure. Losses in transmission and distribution are technical losses which practically occur in the system as specified in notification no. 1 of 2007 dated 3-10-2007, referred herein above.
- (xi) That since the petitioner IPP is delivering its power at the HV systems (33 kV level) of the J&K PDD system and through EHV transmission system is banking out its energy for sale to the consumers outside the state, through PTC and power exchanges, thus the loss sharing on HV and EHV systems works out to be 10% as described above.
- (xii) That the contention of the petitioner that the answering respondents are not maintaining the transmission system properly is merely an attempt to deprive the State of its legitimate dues. It may be specifically stated that there is no omission of any nature by the Department as alleged or otherwise.
- (xiii) That the IPP is generating at its maximum rated capacity during the peak months of the water discharge and the IPP does not face any problem on account of the J&K PDD's system parameters during peak season of the generation.
- (xiv) That the distribution voltage during the winter months in the valley may drop considerably at the tail ends of the PDD systems due to demand supply gap and heavy loading on the distribution system, but the generation losses of the IPP cannot be attributed to this voltage drop as there is hardly any water discharge available for any generation during these lean months. Thus the low generation or no generation during the lean months is due to non availability of sufficient water discharge and not due to J&K PDD system parameters. The generation from run of river scheme is mostly dependent on the hydrology rather than any other parameter. However, if the IPP is able to generate any power during the lean season, it can easily be absorbed by the J&K PDD system if the IPP operates in isolation mode. The IPP has the option of selling its energy to the J&K PDD as per the State Hydel policy.
- (xv) That the micro and small hydro electric projects should always be able to run in islanding mode because of their locations and basic concept behind the development of such projects. It may not be out of place to mention here that the J&K PDD is constantly taking all necessary measures to upgrade its systems and a number of new grid stations, receiving stations and transmission lines are coming up under various programmes which shall further improve the voltage profile of the system and distribution voltage within permissible limits shall be available even at the tail ends of the PDD systems. The IPP is also required to improve its own system by properly designing their electrical equipments like AVR's, transformer tap changers etc. and should inject sufficient reactive power into the system. Such measures on the part of the IPP can take care of voltage variations to certain extent.

After the replies were filed by the respondent, counter reply was filed by the Petitioner in the shape of objections taking almost the same stand as taken by the Petitioner in the main Petition.

**III** The counter field by the Petitioner to the replies given by the Power Development Department Jammu are:-

1. That in principle wheeling charge comprises of cost of network, over which the energy is to be wheeled and losses. Therefore nothing further remains for which the carrier (J&K Power Development Department) who owns the network has to be compensated for. Moreover, the SLDC which facilitates scheduling of such power is compensated by a way of separate charge over and above the same wheeling charge.
2. That the open access was introduced in the power sector in order to encourage both the generator as well as the consumer, thereby introducing competition in so far monopolistic sector. Thus the consumer would have a choice either to procure power from the state distribution companies or buy directly from generator located anywhere in the country. The generators also had a choice to set up a power house wherever justified by techno-economic consideration and take the power out by paying open access charge. In addition to this, in order to promote renewable generation at viable locations the Central Commission introduced REC mechanism. Thereby a state which did not have potential for renewable energy, such as, availability of biomass, solar radiation or micro Hydel potentials can also meet their RPO obligation by buying REC from power exchanges. Hence, if states which have the renewable potential start restricting by way of introducing additional charges, then it would be difficult to meet the national agenda and RPO obligation of other states.
3. That it is the responsibility of the transmission and distribution company to maintain the required voltage at all points of network by installing appropriate transformers of appropriate rating and keeping the line length within a reasonable limit. Non maintenance of appropriate voltage will not only lead to additional losses for Generating Company but also have adverse impact on the connected consumers.

**IV** The Learned Counsel for the parties were heard. The Commission has also gone through the records of the case and considered the written arguments submitted by the Learned Counsel for the parties.

The main grievance of the Petitioner is that financial loss has been suffered by him by the deduction of 10% extra net energy on account of transmission and distribution losses in terms of the circular dated 11-01-2010 issued by the Respondents.

The issues that emerge from the submissions made by the Learned Counsel for the parties before the Commission for adjudication are:

- i) Whether the Respondents are justified in levying from the Applicant 10% of net energy as transmission and distribution losses for using the network system of the Respondents.
- ii) Whether the Petitioner has a right to claim compensation from the respondents. If so, what is the amount of compensation.

With regard to the first issue it was argued by the Learned Counsel for the petitioner that the Petitioner is liable to bear only 5% transmission losses as determined by the J&K State Electricity Regulatory Commission.

On the other hand, the Learned Counsel for the Respondents submitted that the Petitioner has been using both the transmission and distribution systems of the respondents for transmitting the energy from his generating station to outside the State.

With regard to this issue, the position is that in accordance with the State Hydel Policy of 2003, the Petitioner is responsible for laying lines for connectivity to the nearest Grid sub-station at the appropriate voltage which will normally be 132 kV or 33 kV depending on the capacity of the station and the distance from the power station to the Grid station. In accordance with the Bulk Power Transmission agreement, for injecting the power generated by the power house of the Petitioner, the nearest Grid Sub-station is the Grid Sub-station at Rawalpora. On the contrary, the Petitioner, with the consent of the Respondents, is injecting power generated at his power house at the interconnection point at 33/11 kV Receiving Station, Brenwar which is a distribution network of the Respondents. Had the Petitioner taken the inter-connection point for injection of the generated power at the transmission network system of Respondents at Rawalpora Grid Sub-station as per the state Hydel Policy, 2003, the Petitioner was to pay to the Respondents only transmission loss to the extent of 5%, since no section of the distribution system of the respondents would have been used by the Petitioner. That would also be in accordance with the State Bulk Power Transmission Agreement between the Petitioner and Respondents. However, the Petitioner is also using the Distribution system of the Respondents to transmit power generated at his power house.

The Distribution system has been defined under the J&K State Electricity Regulatory Commission (Open Access in Intra-State Transmission and Distribution) Regulations, 2006 as “the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumer.” In J&K, a distribution line at HV includes 33 kV as well as 11 kV. Though the Petitioner is not distributing energy within the State, since he is using the Distribution network system of the Respondents at 33 kV level, which is in deviation of the State Hydel Policy and the Bulk Power Transmission agreement, he is liable to pay for the distribution losses as well. As per the notification 13 of 18<sup>th</sup> December, 2009 issued under Regulations 12, 13, 15 and 16 of the J&K State Electricity Regulatory Commission (Open Access in Intra-state Transmission and Distribution) Regulation, 2006, energy losses allocable and to be considered for Open Access Users is

Transmission Losses (EHV)	5%
Distribution Losses (HV)	5%

Since the Petitioner is using the 33 kV Distribution network and also the transmission network of the Respondents, the Petitioner is liable to pay on account of transmission and distribution losses. The Commission finds that the Respondents have correctly enforced levy of transmission and distribution losses at a total of 10% (distribution loss 5% and transmission loss 5%).

Regarding the second issue it was submitted by the Learned Counsel for the Petitioner that JKPDD was responsible to maintain and operate the transmission systems in accordance with the Indian Electricity Grid Code, State Grid Code and the Grid Standards set by the Central Electricity Authority. However, the Respondents have failed to maintain the requisite voltage at 33000 volts. Instead, the average voltage maintained by the respondents ranged from 2800 volts to 15000 volts and at times, especially during winter months, the voltage had fallen even below 15000 volts resulting in loss of generation at the Petitioners end. The Petitioner has pleaded that this loss may be compensated by the Respondents.

The Learned Counsel for the Respondents has stated that the Petitioner is generating at its maximum rated capacity during the peak months of the water discharge and the Petitioner does not face any problem on account of Respondents' system parameters. The low generation of power during the lean months is due to non-availability of sufficient water discharge and not due to Respondents' system parameters.

On this issue, the Commission holds that it is the statutory duty of the transmission licensee to build, maintain and operate an efficient, co-ordinated and economical Intra-State-Transmission System so that Generators in the State are provided an enabling environment for the smooth and uninterrupted transmission of the power generated in their power houses. In the instant case, the petitioner has not adduced any evidence to prove that he suffered losses due to low generation of power due to non-maintenance of the transmission system of the Respondents in accordance with the Grid standards.

Otherwise also, as per clause 11.2 of the Bulk Power Transmission Agreement, the Commission is mandated to adjudicate disputes relating to transmission of energy and tariff and not disputes relating to compensation for low generation of power, for which other relevant provisions of the Agreement will have to be resorted to.

The dispute is settled accordingly.

**Sd/-**  
**(G.M.Khan)**  
**Member**

**Sd/-**  
**(D.S.Pawar)**  
**Member**

**Sd/-**  
**(S.M.Desalphine)**  
**Chairperson**