

**JOINT ELECTRICITY REGULATORY COMMISSION  
FOR THE STATE OF GOA AND UNION TERRITORIES  
GURUGRAM**

**CORAM**

Ms. Jyoti Prasad, Member (Law)

**Petition No. 73/2021**

**Date of Hearing: 15.03.2022**

**Date of Order: 20.05.2022**

**In the matter of:**

Petition on behalf of the Petitioner under Section 86(1)(f) read with Sections 142 and 146 of the Electricity Act, 2003, for issuance of appropriate directions in terms thereof, against, the Puducherry Electricity Department (“EDP”) for deliberate contravention of the directions passed by this Hon’ble Commission vide its Order dated 21.09.2020 in Petition No. 26 of 2019.

**In the matter of:**

M/s. Waaree PV Technologies Pvt. Ltd.,  
504, Western Edge-I,  
Off. Western Express Highway,  
Borivali (East), Mumbai-400 066.

.....Petitioner

Versus

The Superintending Engineer,  
Electricity Department,  
137, Netaji Subash Chandra Bose,  
Salai (GingeeSalai), Duppuypet,  
Puducherry.

.....Respondent

**Present**

**For the Petitioner**

1. Mr. Mridul Chakravarty, Advocate
2. Ms. Lavanya Panwar, Advocate

**For the Respondent**

Mr. T. Chanemougam – Superintending Engineer cum Head of Department

## ORDER

1. The Petitioner, Waaree PV Technologies Pvt. Ltd., through this Petition has filed a complaint under Section 86 (1) (f), 142 & 146 of the Electricity Act,2003 against Respondent, Electricity Department, Puducherry, wherein it is alleged that there was deliberate contravention of the directions passed by the Commission vide its Order dated 21.09.2020 in Petition No. 26/2020.
  
2. The Commission heard the Petitioner and the Respondent at length. Submissions of the Petitioner in brief are as under:-
  - i. That Respondent has deliberately contravened the directions passed by the Hon'ble Commission vide its Order dated 21.09.2020 in Petition No. 26/2019 by wrongfully imposing and deducting transmission losses from the power wheeled by the Petitioner from its Grid Connected, Ground Mounted 10 MW Solar PV plant for months March to July, 2021.
  
  - ii. That the Hon'ble Commission in its Order dated 21.09.20 rendered the specific directions as under:-

“The Commission has considered the submissions of both the parties and is of the view that had this project been completed before the repeal of Regulation 2015, the Petitioner would have availed all exemptions regarding Open Access Charges etc. The Project is caught in a regulatory cusp due to delay in completion. However, the fact remains that the Petitioner has already sunk substantial

amount of resources and given its commitment in the Project in the form of preliminary expenses land acquisition, signing of PPA, getting sanction for term loans from IREDA and construction activities. While a major part of the responsibility for such delay and corresponding financial implications will have to be shouldered by the Petitioner, considering the merits of green power and also admittedly regulatory uncertainties, concessions need to be provided so the Project does not turn completely unviable. Keeping in mind its mandatory functions under-Section 86 (e) of the Act the Commission has to promote generation of electricity from solar power in Puducherry and feels that all concessions under Clause 5 (c) of Regulations, 2015 may be granted to the Petitioner to make this project workable under the circumstances. The Commission decides this Petition in favour of the Petitioner and directs the ED Puducherry to grant connectivity for the said Solar Power Project to the Petitioner along with all the exemptions pertaining to open access under Clause 5 (c) of the JERC (Solar PV Grid Interactive & Net Metering) Regulations, 2015. The Commission further directs the ED Puducherry to execute the long-term Open Access Agreement with the Petitioner for a period of 25 years.

At the same time, the window for such concession cannot be kept open ended indefinitely and therefore the Commission directs the Petitioner to complete this Project to achieve commercial operation within the current financial year i.e. by 31.03.2021. The Petitioner is also directed to submit the report regarding completion of the Project to the Commission within two weeks from the date of achievement of commercial operation of the Project. ED,

Puducherry is directed to monitor the progress of the Project and grant long term Open Access and Open Access and Grid connectivity subject to the Project meeting the above timeline. Should there be any delay for completing the project beyond the above timeline, all charges payable by the Petitioner to the Respondent in respect of this project shall be governed by the relevant provisions of extant Regulations in force at the time of Project completion.”

- iii. That all the directions given to the Petitioner were duly complied with as the Commissioning of the Solar Power Project including synchronisation with the 110 KV grid at Karaikal, Puducherry was achieved on 24.03.2021 i.e. within the cut off date of 31.03.2021.
- iv. That the Respondent has completely undermined and deliberately contravened the said directions of the Hon'ble Commission by deducting transmission losses for the months commencing from March to September, 2021 from the power wheeled by the Petitioner from its Solar PV Projects through its consumer Chemfab Alkalies Limited.
- v. That there is an apprehension that Respondent may continue to deduct the transmission losses in the upcoming months also and this will result into a loss for the Petitioner as it will recover lower tariff due to such illegal deduction of transmission losses.

- vi. That the aforesaid said conduct of Respondent is based on a deliberate and wrong interpretation being given to the express directions issued by the Commission and also rendering a myopic understanding of Regulations 5 (c) JERC Regulations, 2015 which should be read with Table 8 to the Regulation 4.9 appended to the Open Access Regulations, 2017.
  - vii. That necessary punishments as envisaged under Section 142 read with Section 146 of Electricity Act, 2003 be imposed on the Respondent for gross non compliance of the Hon'ble Commission's said Order.
  - viii. That imposition of transmission losses by the Petitioner is in derogation of Regulation 5 (c) of the JERC Regulation, 2015 which specifically and categorically grants exemption to a solar power developer from grid "Open Access Restrictions" and "Associated charges" pertaining to Open Access.
  - ix. That it is beyond any doubt that "Transmission losses" is a part of "Open Access" charges as envisaged in terms of Table 8 appended to Regulation 4.9 of the Open Access Regulations, 2017
3. The Submissions of Respondent in brief are as under:-
- i. That the Petitioner has filed this Petition to seek direction to the Respondent for contravention of the directions passed by the Hon'ble Commission in it's Order dated 21.09.2020 wherein Respondent was directed to grant connectivity for the 10 MW Solar Power Project of the Petitioner along with grid exemption pertaining to Open Access under Clause 5(c) of the JERC (Solar

PV Grid Interactive & Net Metering) Regulations, 2015 subject to the condition that the said project should be completed before 31.03.2021.

- ii. That the Respondent has executed a Long Term Open Access Agreement with the Petitioner on 23.03.2021 for wheeling the power generated from their Solar Power Project to its consumer M/s Chemfab Alkalies Limited, Puducherry.
- iii. That the Petitioner commenced generation from the Solar Power Plant from 24.03.2021 and was permitted to be connected to the 110 KV PPCL – Pillaitheruvasalline of Electricity Department, Puducherry at Karaikal as per the Connectivity Agreement and the solar power generated from the project is subsequently wheeled to the Open Access Consumer, M/s Chemfab Alkalies Limited, at Kalapet, Puducherry in line with the Long Term Open Access Agreement between the Petitioner and Electricity Department, Puducherry.
- iv. That the JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations, 2017 has clearly specified the charges associated with each category of Open Access. Table 8 under Clause 4.9 of the aforesaid Regulations details the applicable Open Access Charges for Long Term Open Access Consumers in respect of the cases where the injection point and the drawal point are located within the same State. As per this, the following are the applicable charges for Open Access.

- Cross Subsidy Surcharge
  - Additional Surcharge
  - Reactive Energy Charges as applicable
  - Scheduling and System Operating Charges as applicable
  - Imbalance Charges if any
- v. That as the Petitioner has commissioned the project before the deadline of 31.03.2021, the Electricity Department has permitted to wheel the generated power under Long Term Open Access (LTOA) to the consumer M/s Chemfab Alkalies Ltd. without levying any Open Access associated charges as per the relevant Open Access Regulations.
- vi. That it is submitted that Table 8 under Clause 4.9 of the JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations, 2017 categorically specified the applicable charges and applicable losses separately. This clearly implies that the Regulation treats the applicable intra-state transmission losses separately and not under the applicable charges category.
- vii. That as per Sub clause 2a(iii) of Clause 6.2 of the JERC (Connectivity and Open Access in Intra State Transmission and Distribution) Regulation, 2017 , in respect of Intra State Open Access, the Open Access consumers connected to the Intra–State Transmission System shall only bear Transmission loss. In this regard, it is also submitted before the Hon’ble Commission that transmission

losses are an inherent feature in electricity transmission and the losses applied on the units generated at one location and wheeled to a distant location of the consumer are those that are lost in the transmission, transformation etc.

- viii. That as per Table 8 of Clause 4.9 and 6.2 (2) (ii) of JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations, 2017 the Electricity Department has only applied the EHT transmission loss of 1.5% approved by the Commission for the relevant voltage category (110 KV) in the Tariff Order for Financial Year 2020-21 and 2021-22 for the Electricity Department, Puducherry to the net units exported. i.e. the net exported units after deducting the applicable loss of 1.5% has been deemed as available at the Open Access user M/s Chemfab Alkalies Ltd.'s point of supply. No other charges that would have been otherwise applicable for a Long Term Open Access consumer has been levied on the Petitioner.
  
- ix. That the deduction of the transmission losses is done only as per the relevant clause in the JERC (Connectivity and Open Access Regulations) 2017, and shall not in any way be taken as deliberate and wrong interpretation on the part of the Respondent to circumvent the directives in the order passed by the Commission.
  
- x. That applicability of the transmission losses on the solar power generated by M/s Waaree PV Technologies Pvt. Ltd. and wheeled to the Open Access

Consumer M/s Chemfab Alkalies Ltd. is based on the Commission's Order dated 21.09.2020 read with the JERC (Connectivity and Open Access) Regulations, 2017 and as such there is no non-compliance on the part of the Respondent.

- xi. That the request of the Petitioner to the Commission to direct Electricity Department, Puducherry to stop applying the transmission losses under the Intra-State Open Access category of the JERC (Connectivity and Open Access) Regulations, 2017 is therefore not maintainable and should be rejected..
  
4. The Commission has considered in depth the submissions of the Petitioner as well as the Respondent. It has also examined the Petition placed before it along with reply of the Respondent and Rejoinder of the Petitioner along with specific and relevant provisions of the Electricity Act, 2003 i.e. Section 86(1)(f) , Sections 142 and 146, Regulation 5(c) of JERC (Solar PV Grid Interactive & Net Metering) Regulations, 2015 and JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations, 2017.
  
5. Section 86 (1) (f) provides as under:-  
Functions of State Commission: --- (1) The State Commission shall discharge the following functions, namely: -  
“(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration”

6. Section 142 provides as under:-

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 thereunder, 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 direction.”

7. Section 146 provides as under:-

Punishment for non-compliance of orders or directions:

“Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both

in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:

1[Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.]”

8. Regulation 4.9 of JERC (Connectivity and Open Access in Intra-State Transmission and Distribution) Regulations, 2017 provides as under:-

4.9 Applicability of Open Access Charges

Table 8. Applicability of charges for Long-Term Open Access Consumers

SL. NO	INTER-SE LOCATION OF INJECTION & DRAWAL POINT	APPLICABLE CHARGES	APPLICABLE LOSSES
1.	Both within the same State (in Intra-State Transmission Network)	<ul style="list-style-type: none"> <li>• Intra – State Transmission Charges</li> <li>• Cross Subsidy Surcharge</li> <li>• Additional Surcharge</li> <li>• Reactive Energy Charges, as applicable</li> <li>• Scheduling and System Operation Charges as applicable</li> <li>• Imbalance Charges, if any</li> </ul>	Intra-State Transmission Loss in kind

9. Regulation 5( c) of JERC (Solar PV Grid Interactive & Net Metering) Regulations, 2015 provides as under:-

“ 5. Third party owned Solar Project

In the third party owned Solar Power Project, the following will apply:

“The Solar Power Units generated will be allowed Open access, as per JERC-9/2009 “Open Access in Transmission and Distribution Regulations, 2009” or as amended and in force. Such third party owned project may normally result in an open access transaction with implications of wheeling charges and surcharge relating to cross subsidy. However, to encourage green energy, such Solar Projects set up under these regulations would be exempted from open access restrictions and associated charges for sale / purchase within the jurisdiction of the same licensee.”

10. The Commission has noted that the Petitioner has alledged that the Respondent has contravened the specific directions given by the Commission in its Order dated 21.09.2020. The Respondent has totally violated the Commission’s directions and has deducted transmission losses for the months commencing from March, 2021 till September, 2021 for the power wheeled by it from its Solar Project through its consumers M/sChemfab Alkalies Limited. Further, the Respondent has failed to understand that Regulation 5 (c) of the JERC (Solar Power – Grid Connected Ground Mounted and Solar Rooftop & Metering) Regulations, 2015, should be read with Table 8 under the Regulation 4.9 of the JERC (Connectivity & Open Access in Intra-State Transmission & Distribution) Regulations, 2017.
11. The Commission has further noted that the Respondent has opposed the contentions of the Petitioner. The Respondent has contended that they have executed a Long

Term Open Access Agreement with the Petitioner on 23.03.2021 for wheeling the power generated from their Solar Power Project through its consumer, M/s Chemfab Alkalies Limited without any Open Access associated charges as per the relevant Open Access Regulations.

12. Further the Respondent has contended that Table 8 under Clause 4.9 of the JERC (Connectivity & Open Access in Intra-State Transmission & Distribution) Regulations, 2017 categorically specifies the applicable charges and applicable losses. It is crystal clear that the said Regulations treats the applicable Intra-State Transmission losses separately and not under the applicable charges category. Further sub Clause 2 (a) (iii) of Clause 6.2 of the JERC (Connectivity & Open Access in Intra-State Transmission & Distribution) Regulations, 2017 in respect of Intra-State Open Access connected to the Intra –State Transmission System shall only bear transmission losses. The transmission losses are an inherent feature in electricity transmission and losses applied on the units generated at one location and wheeled to a distant location of the consumer are those that are lost in transmission, transformation etc.
13. Thus the Respondent has only applied the EHT transmission losses of 1.5% duly approved by the Commission for the relevant voltage category (110KV) in the Tariff Order of FY 2020-21 and 2021-22 for the Electricity Department, Puducherry to the net units exported i.e. the net exported units after deducting the applicable loss of 1.5% has been deemed as available at the Open Access user M/s Chemfab Alkalies Limited point of supply. The deduction of transmission losses is done only as per the

relevant Clause in the JERC (Connectivity & Open Access in Intra-State Transmission & Distribution) Regulations, 2017.

14. The Commission has revisited its Order dated 21.09.2020. The relevant portion of the said Order is extracted as under:-

The Commission has considered the submissions of both the parties and is of the view that had this project been completed before the repeal of Regulation 2015, the Petitioner would have availed all exemptions regarding Open Access charges etc. The Project is caught in a regulatory cusp due to delay in completion. However, the fact remains that the Petitioner has already sunk substantial amount of resources and given its commitment in the Project in the form of preliminary expenses, land acquisition, signing of PPA, getting sanction for term loans from IREDA and construction activities. While a major part of the responsibility for such delay and corresponding financial implications will have to be shouldered by the Petitioner, considering the merits of green power and also admittedly regulatory uncertainties, concessions need to be provided so the Project does not turn completely unviable. Keeping in mind its mandatory functions under Section 86(e) of the Act the Commission intends to promote generation of electricity from solar power in Puducherry and feels that all concessions under Clause 5 (c) of regulations 2015 may be granted to the Petitioner to make this project workable under the circumstances. The Commission decides this Petition in favour of the Petitioner and directs the ED Puducherry to grant connectivity for the said solar power project of the Petitioner along with all the exemptions pertaining to open access under Clause 5 (c) of the JERC

(Solar PV Grid Interactive & Net metering Regulations) 2015. The Commission further directs the ED Puducherry to execute the long-term open access agreement with the Petitioner for a period of 25 years. At the same time, the window for such concession cannot be kept open ended indefinitely and therefore the Commission directs the Petitioner to complete this Project to achieve commercial operation within the current financial year i.e. by 31st March, 2021. The Petitioner is also directed to submit the report regarding completion of the Project to the Commission within two weeks from the date of achievement of commercial operation of the project. ED, Puducherry is directed to monitor the progress of the Project and grant long term Open Access and Grid connectivity subject to the Project meeting the above timeline. Should there be any delay for completing the project beyond the above timeline, all charges payable by the Petitioner to the Respondent in respect of this project shall be governed by the relevant provisions of extant Regulations in force at the time of project completion.

15. Thus it is crystal clear that the Commission has only granted all the exemptions pertaining to Open Access under Clause 5 (c) of the JERC (Solar Power Grid Connected Ground Mounted and Solar Rooftop & Metering) Regulations, 2015. There was not even a whisper about Table 8 under Regulation 4.9 of the JERC (Connectivity & Open Access in Intra-State Transmission & Distribution) Regulations, 2017. Further, no exemption was granted regarding transmission losses.

16. Therefore, the Commission is of the view that the Petitioner has not been able to make out a clear case of violation of the Commission's Order dated 21.09.2020 and the allegations made against the Respondent are not legally sustainable. Since the

Petitioner has failed to make out its case under Section 142 and 146 of the Electricity Act, 2003, the Commission is not inclined to accept the submissions of the Petitioner. At the same time, the Commission is convinced with the contentions of the Respondent based on the JERC (Solar Power Grid Connected Ground Mounted and Solar Rooftop & Metering) Regulations, 2015 and JERC (Connectivity & Open Access in Intra-State Transmission & Distribution) Regulations, 2017 and the Commission's Tariff Order for FY 2020-21 & FY 2021-22.

17. Keeping the above in mind the Commission is of the considered view that in its order dated 21.09.2020 it is clearly mentioned that all concessions under Clause 5 (c) of JERC (Solar Power Grid Connected Ground Mounted and Solar Rooftop & Metering) Regulations, 2015 only be granted to the Petitioner to make this project workable. No other exemptions pertaining to transmission losses etc. were granted to the Petitioner. Thus, it is crystal clear that there is no contravention of any of the directions given by the Commission in its Order dated 21.09.2020 by the Respondent. The Respondent is correctly charging the transmission losses as per the Commission's Tariff Orders for FY 2020-21 & FY 2021-22.

18. In view of the above, the Commission dismisses the said Petition/complaint filed by the Petitioner.

19. Ordered accordingly.

**Sd/-**  
**(Jyoti Prasad)**  
**Member (Law)**

**(Certified Copy)**



**(Rakesh Kumar)**  
**Secretary, JERC**