

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

PETITION NO: 109 of 2023

DATE OF ORDER: 20.09.2024

IN THE MATTER OF: Petition under Section 27 of the Energy Conservation Act, 2001 for adjudication of the penalty under Section 26 of the Energy Conservation Act, 2001 by the Adjudicating Officer and for directions to Dadra & Nagar Haveli and Daman & Diu Power Distribution Corporation Ltd. to make payment of penalty as adjudicated by the Adjudicating Officer.

AND IN THE MATTER OF:

The Bureau of Energy Efficiency

.....Petitioner

Versus

DNH and DD Power Corporation Ltd.

.....Respondent

Parties Present:

Petitioner

1. Ms. Namrata Mohapatra, Advocate, Bureau of Energy Efficiency
2. Sh. Rajinder Sharma, Legal Expert, Bureau of Energy Efficiency

Respondent:

1. Mr. Rajni Kant Chaubal, Deputy Engineer, DNHDDPCL

The Petitioner filed a Petition under Section 27 of the Energy Conservation Act, 2001 for adjudication of the penalty under Section 26 of the Energy Conservation Act, 2001 by the Adjudicating Officer and for directions to Dadra & Nagar Haveli and Daman & Diu Power Distribution Corporation Ltd. to make payment of penalty as adjudicated by the Adjudicating Officer.

A. Submissions of the Petitioner

1. The Bureau of Energy Efficiency (“**Petitioner**”) filed a Petition against the DNH and DD Power Corporation Ltd (“**Respondent**”) under Section 27 of the Energy Conservation Act, 2001 for adjudication of the penalty under Section 26 of the Energy Conservation Act, 2001 (“**Petition**”) before the Joint Electricity Regulatory Commission for the State of Goa and Union Territories at Gurugram (“**Commission**”).
2. The Petitioner is a statutory body set up by the Central Government on 01.03.2002 under the provisions of the Energy Conservation Act, 2001 (“**EC Act**”). The Ministry of Power, Government of India, issued Notification S.O 3445 (E) dated 28.09.2020, to

cover all Electricity Distribution Companies (Discoms) under the purview of the Electricity Conservation Act. The Respondent was included within the scope of the Energy Conservation Act through the Ministry of Power (MOP) Notification dated 28.09.2020.

3. That the Petitioner on 07.10.2021, as per the Clause (g) of sub-Section 2 of Section 58 read with Clause (q) of sub-Section 2 of Section 13 of the EC Act, notified the Regulations known as “*The Bureau of Energy Efficiency (Manner and Interval for Conduct of Energy Audit in Electricity Distribution Companies) Regulations, 2021*” (**“hereinafter referred to as “Regulations, 2021”**).
4. The Regulations, 2021 framed by the Petitioner for energy audit in Electricity Distribution Companies (“**DISCOMs**”) provides broad framework for conduct of annual energy audit and quarterly energy accounting with necessary pre-requisite and reporting requirements. The relevant clauses of the Regulations 2021 are given below:

“3. Intervals of time for conduct of annual energy audit. –

(1) Every electricity distribution company shall conduct an annual energy audit for every financial year and submit the annual energy audit report to the Bureau and respective State Designated Agency and also made available on the website of the electricity distribution company within a period of four months from the expiry of the relevant financial year: Provided that on the commencement of these Regulations, the first annual energy audit of every electricity distribution company shall be conducted within six months from the date of such commencement, by taking into account the

energy accounting of electricity distribution company for the financial year immediately preceding the date of the commencement of these Regulations.

(2) Where a new electricity distribution company is established after the commencement of these Regulations, such electricity distribution company shall conduct its first annual energy audit on completion of the first financial year from the date of being notified as designated consumer.

Explanation. — If any entity created as a result of merger, demerger, slump sale, acquisition, change of control or any other corporate restructuring of, or involving, any existing electricity distribution company, such entity shall not be considered as a new electricity distribution company for the purposes of this sub-Regulation.

4. Intervals of time for conduct of periodic energy accounting. —

(1) Every electricity distribution company shall —

(a) ensure that all feeder wise, circle wise and division wise periodic energy accounting shall be conducted by the energy manager of the electricity distribution company for each quarter of the financial year; and

(b) submit the periodic energy accounting report to the Bureau and respective State Designated Agency and also made available on the website of electricity distribution company within forty-five days from the date of the periodic energy accounting.

(2) After the commencement of these Regulations, every electricity distribution company shall, notwithstanding anything in sub-Regulations (1)-

(a) conduct its first periodic energy accounting, for the last quarter of the financial year immediately preceding the date of such commencement; and

(b) conduct its subsequent periodic energy accounting for each quarter of the financial year for a period of two financial years from the date of such commencement and submit the periodic energy accounting report within sixty days from the date of periodic energy accounting.”

5. According to the above-mentioned provisions of the BEE Regulations 2021, the Respondent is mandated to conduct periodic energy accounting by in-house energy manager and similarly annual energy audit by an accredited energy auditor (by engaging a third-party agency). The Regulations also makes it mandatory for the Respondent to create a centralized energy accounting and audit cell with sufficiently qualified personnel.
6. The Petitioner to create awareness and facilitating the compliance of the Regulations 2021 organized region-wise webinars/workshops for DISCOMs. The Petitioner sent the invitation by email dated 15.11.2021 to the DISCOMs including the Respondent to join these webinars/workshops.
7. The Petitioner issued a letter dated 18.11.2021 addressed to the Respondent informing that as per Clause 5(g) of the Regulations, 2021, the DISCOMs shall create a centralized energy accounting and audit cell comprising of a Nodal Officer, an Energy Manager etc. The Nodal Officer will be the point of contact for all communication/ activities related

to the compliance of the Regulations, 2021. The Petitioner requested to provide the details of Energy Audit Cell in a prescribed format as mentioned in the letter.

8. The Petitioner sent two letters dated 09.12.2021 and 28.01.2022 to the Respondent requesting the submission of the 1st annual energy audit report and periodic Energy Accounting Reports. It was also informed to the Respondent that non-compliance of the Regulations, 2021 will attract penal provisions under the Energy Conservation Act.
9. The Petitioner vide its E-mail dated 23.02.2022 circulated a letter dated 22.02.2022 that the 2nd periodic Energy Accounting Reports for Q3 of FY-2021-22 (period 01.10.2021 to 31.12.2021) must be submitted on or before 01.03.2022. The Respondent was also reminded about the non-submission of the 2nd Energy Accounting Report and the non-compliance of Regulations, 2021 would attract the penal provision under the Energy Conservation Act.
10. However, the Respondent did not submit the 1st Energy Accounting Report, therefore, the Petitioner issued a Show Cause Notice dated 04.03.2022 to the Respondent for non-compliance of the provisions of the Regulations, 2021 and directed the Respondent to explain the reasons for non-submission of 1st Energy Accounting Report.
11. The Petitioner vide letter dated 23.05.2022 informed the Respondent that 1st and 2nd Energy Accounting Report for Q2 and Q3 of FY 2020-21 has not been submitted to the Petitioner with a copy to state designated agency which was to be submitted by 06.12.2021 and 01.03.2022 respectively as per Regulations 2021. The Petitioner also directed the Respondent to submit their response and reasons for non – submission of the

report along with a copy of 1st & 2nd Energy Accounting Report on or before 31.05.2022 failing which penal action would be initiated as provisions under the EC Act.

12. The Petitioner sent another letter dated 23.08.2022 to the Respondent requesting submission of its periodic Energy Accounting Report of FY 2021-22 and 1st & 2nd annual Energy Audit Reports for FY 2020-21 & FY 2021-22, duly providing reasons for non-submission of the report.
13. The Petitioner issued a Show Cause Notice dated 19.01.2023 to the Respondent in continuation to the previous notices and directed for submission of the response to the Show Cause Notice stating the reasons for non-compliance of the Regulations, 2021 and non-submission of the reports along with a copy of Periodic Energy Accounting Report and Annual Energy Audit Report within a period of 7 days.
14. The Petitioner submitted that the Respondent has not complied with the requisite compliance under the Regulations, 2021. No documents have been placed on record by the Respondent to show that the Respondent has complied with the directions.
15. The Petitioner submits that the reports mentioned and submitted by the Respondent are different from the reports as required under Regulations, 2021. The Respondent has submitted ARR petitions to this Hon'ble Commission which is not the proper compliance under the Regulations, 2021. As per the Regulations, 2021, it is mandatory for every DISCOM of this country including the Respondent to submit Periodic Accounting Reports and Annual Energy Audit Reports on time to the Bureau as per the timeline prescribed in the Regulations, 2021. The Respondent has only submitted the Annual Audit Report for the FY 2020-21 & 2021-22.

16. The Petitioner submits that the submission of the Reports as prescribed under the Regulations, 2021 cannot be exempted under any condition. The inability of the Respondent to submit the Reports due to their internal process of privatisation cannot be a ground for exemption from filing the Reports as required under the Regulations, 2021.
17. The Petitioner submitted that during the meeting held at Silvassa, the Respondent was not granted any kind of an exemption by the Petitioner and that the Respondent was provided with clarifications on timeline of submission of reports along with support material for compliance as per the Regulations, 2021.
18. The Petitioner has filed the present Petition in accordance to the S.O.6027(E) dated 23.12.2022 wherein the Petitioner has been empowered to file Petition before the Competent Authority for Non-Compliance of the Regulation.
19. The Petitioner has submitted that there are no documents on record to show that the respondent was unable to carry out the compliances under the Regulations, 2021 and that it is the duty of the Respondent to appoint an auditor to carry out the Annual Energy Audit.

B. Submissions of the Respondent

20. The Respondent is the licensee for transmission and distribution of electricity in the Union Territory of Daman & Diu and Dadra & Nagar Haveli.
21. The distribution business of the Respondent was under the process of privatization when the Regulations, 2021 was notified.

22. The Respondent had submitted the Energy Audit Reports for FY 2020-21 and FY 2021-22 along with the ARR Petitions to the Hon'ble Commission which were verified and accepted by the Hon'ble Commission before issuance of the Tariff Order for the respective years.
23. The Respondent held meeting with a representative of the Petitioner at Silvassa wherein it was communicated to the Petitioner that because of the privatization of distribution business of the Respondent, the Energy Audit requirements of the Petitioners were different than the already submitted Energy Audit Reports, the Respondent was not able to start the process of repeating the Energy Audit.
24. The Respondent had conveyed its inability of carrying out Energy Audit to the Petitioner. The Petitioner had also agreed to appoint Energy Auditors for carrying out the Respondent's Energy Audit for the FY 2020-21 and 2021-22. The Respondent submits that they had provided all necessary support and data to the auditors appointed by the Petitioner for carrying out the Energy Audit.
25. The Respondent therefore submitted that they had carried out the Energy Audit for the FY 2020-2021 & FY 2021-22 and submitted to the Hon'ble Commission. The non-submission of the Energy Audit to the Petitioners was not intentional and was primarily due to the ongoing privatization process of the Respondent's.

C. Analysis and Findings

26. Heard the Petitioner and the Respondent at length.
27. I have examined the entire record placed before me along with the relevant provisions of the Energy Conservation Act 2001, the Energy Conservation (Amendment) Act 2022, The

Bureau of Energy Efficiency (Manner and Intervals for Conduct of Energy Audit in Electricity Distribution Companies) Regulations, 2021 (BEE Regulations, 2021) and the MoP Notification dated 23.12.2022 (hereafter referred to as MoP Notification, 2022).

28. The Petitioner in its Petition has relied upon Section 26 of Energy Conservation Act, 2001 which has since been amended vide Energy Conservation (Amendment) Act, 2022 and is quoted below:

“26. (1) If any person fails to comply with the provisions of clause (h) or clause (i) or clause (k) or clause (l) of section 14 or clause (h) of section 15, he shall be liable to a penalty which shall not exceed ten lakh rupees:

Provided that in the case of continuing failures, the person shall be liable to an additional penalty which may extend to ten thousand rupees for every day during which such failures continue.

(2) Notwithstanding anything contained in this Act or any other Act for the time being in force, if any person fails to comply with the provisions of clauses (c) and (d) of Section 14, he shall in addition to the penalty of ten lakh rupees, be also liable to pay additional penalty which shall not exceed five thousand rupees per appliance or equipment in relation to which the non-compliance has occurred, but shall not be lower than two thousand rupees:

Provided that where such non-compliance relates to any industrial unit or vessel, he shall also be liable to an additional penalty which shall not exceed twice the price of every metric ton of oil equivalent consumed in excess of the prescribed norms:

Provided further that if the manufacturer of a vehicle fails to comply with the fuel consumption norms, he shall also be liable to pay an additional penalty per unit of vehicles sold in the corresponding year, as follows, namely: —

- i. twenty-five thousand rupees per vehicle for non-compliance of norms up to 0.2 litres per 100 kms;*
- ii. fifty thousand rupees per vehicle for non-compliance of norms above 0.2 litres per 100 kms.*

(3) If any person fails to comply with the directions issued under clauses (n) and (x) of section 14, he shall be liable to a penalty which shall not exceed ten lakh rupees for each such failure:

Provided that he shall also be liable to an additional penalty which shall not exceed twice the price of every metric ton of oil equivalent prescribed under this Act, which is in excess of the prescribed norms.

(4) If a person fails to comply with the provisions of sub-section (1) of section 13A or fails to provide any information under section 52, he shall be liable to a penalty which may extend to fifty thousand rupees on first such non-compliance or failure: Provided that for every subsequent non-compliance or failure, he shall be liable to pay an additional penalty which shall not exceed ten thousand rupees per day of such non-compliance or failure:

Provided that for every subsequent non-compliance or failure, he shall be liable to pay an additional penalty which shall not exceed ten thousand rupees per day of such non-compliance or failure.

(5) Any amount payable under this section, if not paid, may be recovered as if it were an arrear of land revenue.”

29. The Petitioner has prayed the following:

- a. Direct the Adjudicating officer for holding an enquiry for the purpose of adjudging the penalty under section 26 of the Energy Conservation Act, 2001 for non-compliance of the Regulation by the Respondent.
- b. Direct the Respondent to make payment of penalty as adjudicated by the Adjudicating Officer.
- c. Direct the Respondent to comply with the Regulation notified by the Petitioner and submit the requisite form for Energy Audit as provided in the Regulation.
- d. Pass any such other and further orders as are deemed to fit and proper in facts and circumstances of the case.

30. The main grievance of the Petitioner is that the Respondent has not complied with the provisions of the BEE Regulations, 2021 as it has failed to submit the energy accounting report and audit report. For the FY 2020-21 and 2021-22.

31. Clause 3 of the BEE Regulations, 2021 provides for the periodic accounting and audit of the distribution licensees as under:

1. Every electricity distribution company shall conduct an annual energy audit for every financial year and submit the annual energy audit report to the Bureau and respective State Designated Agency and also made available on the website of the electricity distribution company within a period of four months from the expiry of the relevant financial year: Provided that on the commencement of these regulations, the first annual energy audit of every electricity distribution company shall be conducted within six months from the date of such commencement, by taking into account the energy accounting of electricity distribution company for the financial year immediately preceding the date of the commencement of these Regulations.

2. When a new electricity distribution company is established after the commencement of these Regulations, such electricity distribution company shall conduct its first annual energy audit on completion of the first financial year from the date of being notified as designated consumer.

Explanation, ---- if any entity created as a result of merger, demerger, slump sale, acquisition, change of control or any other corporate restructuring of, or involving, any existing electricity distribution company, such entity shall not be considered as a new electricity distribution company for the purposes of this sub-regulations.

32. Clause 4 of the BEE Regulations, 2021 provides as under:

1. Every electricity distribution company shall---

- a. *Ensure that all feeder wise, circle wise and division wise periodic energy accounting shall be conducted by the energy manager of the electricity distribution company for each quarter of the financial year; and*
 - b. *Submit the periodic energy accounting report to the Bureau and respective State Designated Agency and also made available on the website of electricity distribution company within forty-five days from the date of the periodic energy accounting.*
2. *After the commencement of these Regulations, every electricity distribution company shall, notwithstanding anything in sub-regulations (1)-*
- a. *Conduct its first periodic energy accounting, for the last quarter of the financial year immediately preceding the date of such commencement; and*
 - b. *Conduct its subsequent periodic energy accounting for each quarter of the financial year for a period of two financial years from the date of such commencement and submit the periodic energy accounting report within sixty days from the date of periodic energy accounting.*

33. Clause 5 of the BEE Regulations, 2021 provides as under:

Pre-requisites for annual energy audit and periodic energy accounting-

Save as otherwise provided, every electricity distribution company shall undertake all actions as may be required for the annual energy audit and periodic energy accounting before the start of the relevant financial year, including the following actions, namely:

- a. *The identification and mapping of all of the electrical network assets;*
- b. *The identification and mapping of high tension and low-tension consumers;*

c. *The development and implementation of information technology enabled energy accounting and audit system, including associated software;*

d. *The electricity distribution company shall ensure the installation of functional meters for all consumers, transformers and feeders:*

Provided that meter installation may be done in a phased manner within a period of three financial years from the date of the commencement of these regulations in accordance with the trajectory set-out in the First Schedule:

e. *All distribution transformer (other than high voltage distribution System upto 25kVA and other distribution system below 25kVA shall be metered with communicable meters. And existing non-communicable distribution transformer meters shall be replaced with communicable meters and integrated with advanced metering infrastructure:*

f. *the electricity distribution company shall establish an information technology enabled system to create energy accounting reports without any manual interference:*

Provided that such system may be established-

i. *within a period of three years from the date of the commencement of these regulations in case of urban and priority area consumers; and*

ii. *within five years from the date of the commencement of these regulations in case of rural consumers:*

g. *the electricity distribution company shall create a centralized energy accounting and audit cell comprising of-*

- i. a nodal officer, an energy manager, and an information technology manager, having professional experience of not less than five years; and*
 - ii. a financial manager having professional experience of not less than five years.*
- h. any other requisite that Bureau may direct for energy audit and accounting purpose.*

34. Regulation 3 of BEE Regulations, 2021 deals with the periodicity for carrying out energy audit and the submission of audit reports to BEE. Similarly, Regulation 4 deals with the periodicity for carrying out energy accounting and the submission of accounting reports to BEE. Regulation 5 deals with the pre-requisites to be arranged by the distribution companies for the purpose of energy audit and energy accounting.

35. The MoP Notification, 2022 issued on 23rd Dec, 2022 provides as under:

S.O 6027 (E)--- In exercise of the power conferred by clauses (l), (k) and (1) of sections 14, 26 and 52 of the Energy Conservation Act, 2001 (52 of 2001), the Central Government, in consultation with the Bureau of Energy Efficiency (BEE) hereby direct: -

- a. that every Electricity Distribution Company shall designate or appoint energy manager and accredited energy auditor and get periodic energy accounting conducted by the appointed energy manger and annual energy audit conducted by the appointed accredited energy auditor and furnish reports to the State Designated Agency (SDA) and Bureau in accordance with the Bureau of Energy Efficiency (Manner and Intervals for Conduct of Energy Audit in*

electricity distribution companies) Regulations, 2021 as amended from time to time.

That in case of non-compliance of these directions or and non-submission of periodic energy accounting reports of annual energy audit reports or such other reports or such other reports as required submission of incorrect data or misrepresentation of facts, the State Designated Agency or Bureau or any person as designated by the Central Government shall file Petition for non-compliance to the respective State Electricity Regulatory Commission or Joint Electricity Regulatory Commission.

36. Thus, MoP Notification 2022 issued the directions to the Distribution Companies to designate or appoint energy managers to carry out energy accounting and accredited energy auditors to carry out energy audit. In my view, the Respondent could give effect to the BEE Regulations, 2021 after issue of the MoP Notification 2022.

37. I have noted that the Petitioner has submitted the following specific timeline for the compliance of the BEE Regulations, 2021 as under:

Report	Whom to be submitted	Type of report/ audit	Period	Due date for submission
Periodic Energy Accounting by	Bureau of Energy Efficiency and	First Periodic Energy accounting (Quarter- II)	01.07.2021 To 30.09.2021	06.12.2021

Energy Manager (EM)	State Designated Agency	Subsequent Periodic Energy accounting (Quarter- III)	01.10.2021 To 31.12.2021	01.03.2022
		Subsequent Periodic Energy accounting (Quarter- IV)	01.01.2022 To 31.03.2022	30.05.2022
Annual Energy Audit by an Accredited Energy Auditor (AEA)	Bureau of Energy Efficiency and State Designated Agency	First Annual Energy Audit	FY 2020-21	06.04.2022
		Subsequent Annual Energy Audit	FY 2021-22	31.07.2022

38. The above timeline does not take into account the fact that directions for appointment of energy manager and accredited energy auditor was issued through MoP Notification 2022 only on 23.12.2022. In my view, the Petitioner should have issued the following timeline for submission of the reports after the issue of MoP Notification:

- (a) Audit Report for 2020-21: 22.06.2023
- (b) Audit Report for 2021-22: 22.06.2023
- (c) Audit Report for 2022-23: 31.07.2023

39. The Respondent has submitted that after it expressed its inability to carry out the energy audit on account of difficulties in appointing the energy auditors, the Petitioner appointed the energy auditors in order to enable the respondent to carry out energy audit for the FY 2020-21 and 2021-22. The Respondent got the energy audit carried out for the FY 2020- 2021 & FY 2021-22 and submitted the audit report to the Commission along with its true up petitions. As regards the reasons for non-submission of audit report to the Petitioner. the Respondent has attributed the same to the ongoing privatization process of the Respondent. I observe that the audit reports submitted along with the true-up petitions are in terms of the requirements laid down in the MYT Regulations of the Commission. If the audit reports met the requirements of the BEE Regulations, there is no reason why the same could not have been submitted to the Petitioner. The Respondent has not submitted the audit reports for the FY 2020-21 and 2021-22 to the Petitioner in time.

40. I observe that even though BEE Regulations, 2021 provides for a time line for generation and submission of energy accounting report and audit report, the Respondent could not have complied with the said Regulation prior to 23.12.2022 when the MoP Notification for appointment of energy manager and accredited energy auditor was issued. As noted in para 38 above, the audit report for FY 2020-21 and 2021-22 should have been sought by 22.06.2023 and audit report for 2022-23 should have been sought by 31.07.2023. Thus, it is clear that only last quarter report for FY 2022-23, would be due only after 4 months as per Clause 3 of the BEE Regulations, 2021 i.e. on 31st July, 2023. In case of failure by the Respondent to submit the audit report by the said due date, the Petitioner

could have approached the Commission for adjudication and imposition of suitable penalty. However, it is noted that the petitioner has filed the said petition Under Section 27 of the Energy Conservation Act, 2001 on 27.02.2023 for the period FY 2020-21& 2021-22 which is not in accordance with Clause 3 of the BEE Regulations, 2021 read with MoP Notification, 2022. Based on the facts and circumstances mentioned above, I am of the considered view that the said petition is premature. Accordingly, I consider it appropriate not to proceed with the enquiry for the purpose of imposition of penalty. Hence the said petition is dismissed.

Sd/-

(Jyoti Prasad)

Member (Law), JERC

Adjudicating Officer