

## STATE ELECTRICITY OMBUDSMAN

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### REPRESENTATION No: P 93/09

*Appellant* : M/s Travancore Cochin Chemicals Ltd  
PB No 4 Udyogamandal (PO)  
Kochi 683501

*Respondent*: Kerala State Electricity Board

*Represented by*  
The Special Officer (Revenue)  
KSEB VaidyuthiBhavanam  
Pattom Thiruvananthapuram 695004

### ORDER

M/s Travancore Cochin Chemicals Ltd, Udyogamandal , submitted a representation on 8.9.2009 seeking the following relief :  
*Set aside the Order dated 3.8.2009 of the CGRF Ernakulam*  
*Approve the reduction of Rs 1,23,17,130/- in the demand charges as per the agreement terms during the months of machinery failure (April 2007 to August 2007)*

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 23.12.2009 and 17.02.2010. The Appellant submitted argument notes on 15.1.2010 and 24.2.2010 and the Respondent submitted an explanatory note on 17.02.2010.

The Appellant is an EHT consumer with Contract Demand 24000KVA. One rectifier transformer of their plant failed on 7.4.2007 . They gave timely intimation to KSEB and informed their inability to draw normal power .The period of failure was 8.4.2007 to 17.08.2007. In spite of their request KSEB did not allow reduction in demand charges for the period as per the terms of the agreement. After failing to get relief from the KSEB they approached the CGRF. The CGRF ordered that the consumer shall be eligible for rebate as per Board order dated 21.05.2005 on the matter .The consumer was not satisfied with the order of the CGRF.

The representation with the pleas noted above is submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the representation, argument notes and during the hearing are summarized below:

As per the Clause 16(b) and 17 of the power supply agreement the Appellant is eligible for reduction in MD charges during machinery failure.

During the financial year 2007-08 a total sum of Rs 41.12 Crores had been remitted towards current charges .Hence the condition that annual minimum guaranteed amount of Rs 5.29 crores had to paid by the consumer for becoming eligible for the reduction has been met.

The CGRF had ordered that the Appellant shall be eligible for reductions as per the BO dated 21.9.2005. But this Order is not applicable to the Appellant as it had not been approved by the KSERC.

Since there is no express provision for relaxation of demand charges in clause 16(b) the complainant can pursue for reliefs/relaxation provided in clause 17. These clauses are not mutually exclusive and are to be read together in appropriate cases if the facts and circumstances warrant so. Clause 16(b) deals with the obligation of the consumer to pay the minimum annual revenue guaranteed irrespective of whether any energy has been consumed or not. Clause 17 provides for relief to a consumer in the case of contingencies enumerated there in. Hence the consumer is eligible for reliefs enumerated in clause 17 even in the case of situations enumerated in clause 16.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

The contract demand of the consumer is 24000KVA. During the periods of breakdown the consumer was billed for 75% of the Contract demand as the recorded demand was much less.

The Chief Engineer Transmission South who is the agreement authority had informed that the consumer is eligible for reduction of demand charges as per clause 16(b).The reduction shall be worked out as per the BO dated 21.05.2005.

The total annual minimum revenue guaranteed by the consumer is Rs 5,29,20,000/- (75% of CD\*Demand rate\*12 months). Total realization in FY 06-07 towards Demand charges was Rs 5,64,84,750/- . Hence the eligible rebate shall be the difference Rs 35,64,750/-

The Appellant, being a Government company, has huge outstanding arrears towards current charges .Discussions are going on for settling the dues at various levels. Hence it is not fair to allow rebates to such a consumer.

The Appellant has asked for rebate consequent to failure of the rectifier transformer which is a very critical unit in such plants. The unit had failed due to the lack of proper upkeep and maintenance and hence this can not be classified as force majeure situation. As such the request for reduction in demand charges as per clause 16(b) and 17 can not be admitted.

#### Discussion and Findings:

The issues to be decided in this case are:

1. Whether the Appellant is eligible for any reduction in demand charges consequent to failure of machinery as per the agreement?
2. If yes, what shall be the methodology for calculation of the same?

The events narrated in clause 16(b) of the agreement leading to 'non-consumption of energy' include 'major break down of machinery or plant' as a distinct item from 'other force majeure over which the consumer has no control'. The Licensee has to be satisfied whether the event had actually lead to non consumption of energy. The clause does not provide scope for investigation to the cause of the event. As such the argument of the Respondent that lack of proper upkeep and maintenance had resulted in the failure of the machinery and hence this can not be classified as force majeure situation is irrelevant. Clause 16(b) shall definitely applicable here.

The Clause 16(b) provides for timely intimation of the event to the Licensee. This has been done by the Appellant.

This clause also insists that the consumer has to pay the minimum annual revenue guaranteed in the agreement. But the clause is silent on the modality of calculating Demand charges when all the above conditions are met.

The clause 17 provides for reduction of demand charges when the consumer is prevented from consuming energy consequent to strike, riots etc . The clause also specifies the modality of calculating Demand charges in such situations.

The Appellant claims that the reduction in demand charges envisaged in clause 17 should be made applicable to situations covered by clause 16(b) also. It appears that KSEB is also of the same view as explained in the BO dated 21.05.2005. The above Board Order states that '*in the agreement executed by HT/EHT consumers of the Board , clause 16 and 17 provide for rebate on Demand charges during force majeure conditions*'. Since both Appellant and Respondent apparently agree on this interpretation of the clauses, I do not intend to enter into the merits of the issue further. Hence the Appellant shall be eligible for reduction of demand charges in the instant case.

So the calculation of demand charges shall be done as provided in the clause 17 of the agreement. The BO dated 21.05.2005 is only a clarification on the methodology to be adopted for calculating the same, dealing with the periods for computing the annual revenue return, billing demand computation etc. Hence the Respondent can take recourse to the above BO dated 21.05.2005 for any clarifications.

The Appellant has argued that the above BO dated 21.5.2005 is not applicable to them as it had not been approved by the KSERC. This order, as noted earlier, narrates the methodology and principles to be adopted for calculating rebates/reductions in demand charges provided in the clause 17 of the agreement. It has nothing to do with Tariff nor had it to be approved by KSERC. As such the argument of the Appellant on the matter is devoid of any merit and hence dismissed.

The contention of the Respondent that since the Appellant owes large amounts as arrears of current charges it is not fair to allow rebates to them at this stage is noted. The Respondent shall be free to affect the refund/adjustments as part of the package for settling the dues as and when the arrears are settled. .

#### Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The plea of the Appellant to set aside the Order dated 3.8.2009 of the CGRF Ernakulam is devoid of merits and hence dismissed.*
2. *The Respondent shall allow reduction in demand charges from 8.4.2007 to 17.08.2007 and the calculation of demand charges shall be done as provided in the clause 17 of the agreement and Board Order dated 21.05.2005*
3. *No order on costs.*

Dated this the 25th day of February 2010 ,

P.PARAMESWARAN  
Electricity Ombudsman

No P 93 / 09/ 508 / dated 03.03.2010

- Forwarded to;
1. M/s Travancore Cochin Chemicals Ltd  
PB No 4 Udyogamandal (PO)  
Kochi 683501
  2. The Special Officer (Revenue)  
KSEB VaidyuthiBhavanam  
Pattom Thiruvananthapuram 695004

Copy to :

1. The Secretary,  
Kerala State Electricity Regulatory Commission  
KPFC Bhavanam, Vellayambalam,  
Thiruvananthapuram 695010
2. The Secretary ,KSE Board,  
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,  
Power House , ERNAKULAM

