

**BEFORE THE ELECTRICITY OMBUDSMAN**

No.16 C-1, Miller Tank Bed Area (Behind Jain Hospital),  
Vasanthanagar, Bengaluru-560 052

Present: S.S. Pattanashetti

Electricity Ombudsman

**Case No.OMB/B/G-305/2018**

**Dated: 11-02-2019**

M/S. SRS Steel Pvt. Ltd.

Survey No. 43/P16, 102,

Seethanayakanahalli, Lakkur Hobli,

Malur Taluk, Kolar District.

Represented by:

Srinivas & Badri Counsels,

No. 25/3, 2<sup>nd</sup> Floor, Opp: Nitesh Buckingham Gate,

Lavelle Road, Ashok Nagar, Bengaluru -560001

: Appellant

VS

1.Managing Director

BESCOM, Bengaluru -560009.

2.The Assistant Executive Engineer (Ele)

O&M Sub-Division, BESCOM

Malur – 563130

: Respondents

This is an appeal filed under Regulation 21.2 of KERC (CGRF and Ombudsman) Regulations 2004 challenging the Order No. ಅ.ಅ(ಎ)/ಉಲೆನಿ/ಹಿಆಸ/17-18/632-35 dated 07-05-2018, of CGRF Kolar District.

The appellant has filed this appeal before this authority with the following prayer.

1. Quash the order passed by the Hon'ble CGRF vide order dated 07.05.2018.
2. Direct the Respondents to withdraw the bills for the month of March and April, 2017 wherein the charges have been revised retrospectively pursuant to the Circular bearing No.BESCOM/BC-26/BC/BC-22/2411/2009-10/CYS-12 dated 29.05.2017.
3. Direct the Respondents to pay the cost of this Complaint and grant such other and further orders as this Hon'ble Authority deems fit under the circumstances of the case, in the interest of justice and equity.

Notices were issued to the appellant and the respondents bringing to their notice the provision of Regulation 20(1) of KERC (CGRF & Ombudsman) Regulations 2004 for settlement by agreement through conciliation and mediation or passing an award in accordance with the Regulations and directing them to appear before this authority for hearing on 27-11-2018. Both the parties appeared through their representatives on 27-11-2018 and 10-12-2018 and made their oral arguments. On 20-12-2018 they filed their written arguments also.

Brief facts of the case are as under:

The appellant is a Private Limited Company engaged in the manufacturing of steel and other metals and is also a registered consumer of the respondents with RR No. MLRHT267 serviced under HT2A category. The appellant in addition to sourcing power supply from the respondents, is availing power under the Open Access through the Indian Energy Exchange (IEX). KERC, in its Tariff Order dated 11-04-2017 has issued a directive to respondents to bill the Open Access energy under 15 minutes time block period enabling the levy of the UI charges. The respondents, based on the Tariff Order issued by KERC, issued a circular bearing No. BESCOM/BC-26/BC-22/2411/2009-10/Cys-12 dated 29-05-2017. The circular mentions that the energy bills on monthly basis from March 2017 onwards have to be revised based on the computation of energy as per 15 minutes time block period. Thereafter Respondent 2 issued demand notice dated 03-01-2018 asking the appellant to pay bills from the month of April 2017 till December 2017 demanding a sum of Rs. 1,25,75,948/- (Rs. one crore twenty-

five lakhs seventy-five thousand nine hundred and forty-eight only). Aggrieved by the said demand notice the appellant filed writ petition No. 5637/2018 and the Hon'ble High Court of Karnataka directed the respondents not to take any action against the appellant until orders are passed after taking into consideration the representations of the appellant. The Respondent No. 2 passed an order on 13-03-2018 saying that the previous revised bills raised were in compliance with the order dated 24-10-2017 in complaint 5/2017 passed by KERC. Complaint filed by the appellant before the CGRF Bangalore Urban District praying for withdrawal of the demand notice dated 13-03-2018 and bills for the month of March and April 2017 was rejected saying that the demand notice issued by AEE Malur were in order and no mistake has occurred, as per the circular of Bescom dated 29-05-2017. This order of CGRF Bangalore Urban District dated 07-05-2018 has been challenged by the appellant in this case.

In the statement of objections filed on 04-12-2018 and written arguments filed on 20-12-2018 by the Respondents the following submissions have been made. "The Appellant has attempted to project a picture, wherein the Respondent appears to have relied exclusively on the KERC Tariff Order dated 11-04-2017 in issuing its circular dated 29-05-2017 to bill the customer under 15 minutes block. However, the same is far from truth, as the Respondent has in clear terms referred to KERC letter dated 11-05-2016 in the impugned order dated 06-03-2018 for billing the customers on 15 Minutes Block. The letter of KERC dated 11-05-2016 has obligated the Respondent to bill the Appellant on 15 Minutes model from thereon, but the same was implemented from March 2017 onwards on account of technical reasons. Wherefore, it is false to suggest that the Respondent erroneously gave retrospect effect to the KERC Tariff Order dated 11-04-2017. The respondent being a licensee of the KERC is bound by its directions and cannot be faulted for implementing the tariff order dated 11-04-2017. The delay in implementing the directions of the KERC letter dated 11-05-2016 is on account of technical reason of non-availability of data prior to March 2017 in the meters. It was not the duty or obligation of the respondents to intimate the appellant about KERC's letter dated 11-05-2016 and the billing based on 15 minutes block as the same is in accordance with Clause 6.3(f) of KEGC and the KERC has time and again merely sought compliance of the said clause and has not introduced any new directive. Reliance on the applicability of KERC order dated 11-04-2017 is misplaced as the respondents had the authority to do such billing for the month of March and April 2017 from clause 6.3(f) of KEGC, 2016 and KERC letter dated 11-05-2016. Ignorance of Clause 6.3 (f) of

KEGC 2016 by the appellant cannot be taken as an excuse. It is prayed that the appeal may please be dismissed in its entirety”.

The representative of the appellant in the written arguments has said that “the issues pertaining to levy of temporary or other charges of power exchanged during the interstate Open Access period is not being raised in this appeal since the same has been decided previously by the KERC and the respondents have in compliance of the said order withdrawn the bills concerning levy of temporary tariff. KERC in its tariff order dated 11-04-2017 had issued a directive to the respondent to bill the Open Access energy under 15 minutes time block period enabling the levy of UI charges. In the said tariff order KERC had directed the respondent to implement the directive *“forthwith and compliance regarding the same shall be submitted monthly from May 2017 onwards, to the Commission regularly”*. The said directive of the KERC does not specify anywhere that the appellant has to be billed the Open Access energy under 15 minutes time block period from a previous date or that the same must be made applicable retrospectively. However, the respondents have misinterpreted the order of KERC and issued the circular dated 29-05-2017 and the subsequent demand notice under challenge. The letter of KERC dated 11-05-2016 is an internal letter directing the respondent BESCO at paragraph 3 to bring to the notice of each EHT/HT Open Access consumer that there was a deviation and only after that at paragraph 4, KERC directed the respondent to prepare the energy bills of the EHT/HT open access consumers on monthly basis. Therefore, as per the directions of KERC, the respondent ought to have issued a notice prior to billing the appellant for the months of March and April 2017. As seen from the KERC tariff order, the 15 minute time block billing can be issued only after 11-04-2017 and not prior to 11-04-2017 ie., the date when the tariff order 2017 was issued by KERC. The arguments of respondents that 15 minute time block was not introduced for the first time vide tariff order dated 11-04-2017, but that clause 6.3(f) of Karnataka Electricity Grid Code (KEGC), 2015 requires the distribution licensees to provide the SLDC on a day head basis its estimated demand for each 15 minute time block does not have any basis since the said clause does not provide for billing the appellant for 15 minute time block. Ever since the promulgation of KEGC 2015, the respondent has not been billing the appellant on 15 minute block, which goes to show that even though in theory the 15 minute block may exist, only upon notification can the same be enforced to consumers. The failure of the Respondents to abide by the directives issued by KERC on previous occasions cannot be transferred to the consumers on a

retrospective basis. Respondents have claimed that on account of technical reasons they were unable to implement the KERC directive in time, however, these technical reasons do not in any manner bar the Respondents from issuing a notification or notice to all the consumers stating that they may be billed for any deviation as per 15 minute time block. The principles of law clearly stipulate that no authority can charge the appellant retrospectively until and unless a specific order has been passed stating that the billing process must be retrospective in nature and such an order must also contain reasoning as to why retrospective billing is necessary. When the KERC order nowhere provides for retrospective billing, the respondents cannot rely on the internal letter dated 11-05-2016 and claim that the bills were raised prospectively and not retrospectively. The act of Respondents are highly arbitrary, illegal, therefore not binding on the appellant. Wherefore, the appeal prayed for may be allowed in the interest of justice and equity.”

After careful consideration of documents and submissions made by the parties to this proceeding the following points emerge for consideration.

- 1) Whether the circular dated 29-05-2017 issued by BESCO is as per the directive issued by KERC in the Tariff order 2017 dated 11-04-2017?
- 2) Whether the Respondents BESCO is justified in issuing demand notice for the months of March and April 2017 based on the KERC Tariff Order 2017 dated 11-04-2017?

My answer to the above points are:

- 1) Negative.
- 2) Negative.

I proceed to analyse the replies.

- 1) KERC has issued Tariff Order 2017 on 11-04-2017. In this order the following new directive has been issued.

**“Directive on Preparation of energy bills on monthly basis by considering 15 minutes time block period in respect of EHT/HT consumers importing power through power exchange under Open Access.**

The Commission has noticed that, year on year, there has been a substantial increase in the number of EHT and HT consumers of the distribution licensees opting for open access resulting in substantial volume of energy being procured through Power Exchanges, which imposes a burden on the SLDC, in grid management.

Further, in accordance with the stipulations in Clause 6.3(f) of the Karnataka Electricity Grid Code (KEGC), 2015, under the chapter on Operation Planning, in order to facilitate demand estimation for operational purpose, the distribution licensee (ESCOM) is required to provide to the SLDC, on a day ahead basis, at 09.00 hours each day, its estimated demand for each 15 minute block, for the ensuing day. The distribution licensee is also, required to provide to the SLDC, the estimates of loads that may be shed, when required, in discrete blocks, with the details of arrangements of such load shedding. Consequent to such stipulation the ESCOMs are required to prepare monthly energy bills in respect of EHT/HT consumers importing power through power exchange under Open Access, by considering 15 minutes time block. However, it is observed that except in rare cases this billing requirement is not being complied with the ESCOMs.

**In view of this, the Commission directs the BESCO to ensure preparation of energy bills on monthly basis by considering the 15 minutes time block period in respect of EHT/HT consumers importing power through power exchange under Open Access. The BESCO shall implement the directive forthwith and the compliance regarding the same shall be submitted monthly from May 2017 onwards, to the Commission regularly”.**

Based on the above direction of the KERC, BESCO issued a circular dated 29-05-2017. In this circular it is mentioned that “Energy bills on monthly basis from March 2017 onwards needs to be revised based on the computation of energy as per 15 minutes time block period immediately in the first instance. Bills for the earlier period shall be revised thereafter as per the provisions of relevant Notification/Order under reference”.

A perusal of the directive of KERC in the Tariff Order 2017 regarding preparation of energy bills on monthly basis by considering 15 minutes time block period in respect of EHT/HT consumers importing power through power exchange under open access, clearly establishes the fact that it does not mention anywhere the date from which energy bills have to be revised. It only says that BESCO shall implement the directive forthwith and compliance regarding the same shall be submitted monthly from May 2017 onwards, to the Commission regularly. A reading of the circular of BESCO leaves a doubt regarding the reasoning/logic behind the directive of BESCO in its circular asking the energy bills to be revised from March 2017 onwards. In the written arguments filed by the Respondents they have drawn reference to the letter of KERC to BESCO dated 11-05-2016 wherein BESCO has been instructed to bill the open access

customers on the 15 minutes time block. It is the contention of BESCO that “in the tariff order dated 11-04-2017, KERC, has not per se introduced the model of 15 minutes time block for the first time in the said order, but merely sought compliance for the directive. The letter of KERC dated 11-05-2016 has obligated BESCO to bill on 15 minutes model from thereon, but the same was implemented from March 2017 onwards on account of technical reasons. Therefore, it is wrong to suggest that BESCO erroneously gave retrospective effect to the KERC order dated 11-04-2017. It was not the duty or obligation of BESCO to intimate the Appellant about the billing based on 15 minutes time block as the same is in accordance with clause 6.3(f) of KEGC.”

The Appellant in their written argument have said that,

“KERC in its Tariff Order dated 11-04-2017 had issued a directive to the Respondent to bill the Open Access energy under 15 minute time block period enabling the levy of UI charges. In the said Tariff Order the Hon’ble KERC had directed the Respondent to implement the directive *“forthwith and the compliance regarding the same shall be submitted monthly from May 2017 onwards, to the Commission, regularly”*. The said directive of the Hon’ble KERC does not specify anywhere that the Appellant has to be billed the open access energy under 15 minute time block period from a previous date or that the same must be made applicable retrospectively. However, the Respondents has misinterpreted the Order of the Hon’ble KERC and had issued the demand notice under challenge.

It is submitted that the Respondent had produced Annexure R along with their Statement of Objections where the Hon’ble KERC vide an internal letter dated 11-05-2016 directed the Respondent at paragraph 3 to bring to the notice of each EHT/HT open access consumer that there was a deviation and only after that at paragraph No.4 the Hon’ble KERC had directed the Respondent to prepare the energy bills of the EHT/HT open access consumers on monthly basis. Therefore, as per the directions of the Hon’ble KERC, the Respondent ought to have issued a notice prior to billing the Appellant for the months of March and April 2017. It is further submitted that, the Hon’ble KERC had sought for compliance of the directive by the Respondent by 15.06.2016, however the Respondent had failed to abide by the said direction issued by the Hon’ble KERC. It is also submitted that, the direction issued by the Hon’ble KERC vide its letter dated 11-05-2016 is an internal letter between the Respondent and the Hon’ble KERC and the Appellant was never notified about billing of 15 minute time block.

It is submitted that, as seen from the Tariff Order, the 15 minute time block billing can be issued only after 11-04-2017 and not prior to 11-04-2017, i.e., the date when the Tariff Order, 2017 was issued by the Hon'ble KERC. It is submitted that the Respondent could start the billing process for the 15 minute time block only after 15 days from the date of Tariff Order, 2017 and not any time before that."

In the appeal the appellants are not challenging the 15 minutes time block billing by the Respondent BESCO as per the direction of KERC. What is challenged is the date of implementation of the KERC Tariff Order. The KERC Tariff Order clearly mentions that **"BESCO shall implement the directive forthwith and the compliance regarding the same shall be submitted monthly from May 2017 onwards, to the Commission, regularly"**. In the circular dated 29-05-2017 issued by BESCO had it made a mention about the letter of KERC dated 11-05-2016 about the implementation of 15 minutes time block, and justification for implementing it from March 2017 onwards because of technical reasons, they could have justified their decision. The KERC Tariff Order 11-04-2017 also says that its directive shall be implemented forthwith and not from March 2017, and compliance be reported from May 2017 onwards. The letter of KERC to BESCO dated 11-05-2016 is an internal communication of a regulator to a licensee. The consumers cannot be expected to know the instructions given in the letter. BESCO has also failed to implement the instructions of KERC in the letter dated 11-05-2016 where **in it was mandated that the deviation shall be brought to the notice of each EHT/HT open access consumers** and BESCO shall prepare the energy bills of EHT/HT open access consumers on monthly basis by duly considering 15 minutes time block period. Hence the Respondents BESCO is not justified in issuing demand notice for the month of March and April 2017 based on the KERC Tariff order 2017 dated 11-04-2017. For the aforesaid reasons the following order.

### **ORDER**

**Case No. OMB/B/G-305/2018/D-1198**

**Date : 11-02-2019**

1. Order No. ಅ.ಅ(ವಿ)/ಉಲೆನಿ/ಹಿಆಸ/17-18/632-35 dated 07-05-2018, of CGRF Kolar District is quashed.



2. Respondents to withdraw the bills of the appellant for the month of March and April 2017.
3. No order as to costs.

Sd/-  
(S.S.Pattanashetti)  
Electricity Ombudsman

1. M/S. SRS Steel Pvt. Ltd.  
Survey No. 43/P16, 102,  
Seethanayakanahalli, Lakkur Hobli,  
Malur Taluk, Kolar District.
2. Srinivas & Badri Counsels,  
No. 25/3, 2<sup>nd</sup> Floor, Opp: Nitesh Buckingham Gate,  
Lavelle Road, Ashok Nagar, Bengaluru -560001
3. Managing Director  
BESCOM, Bengaluru -560009.
4. The Assistant Executive Engineer (Ele)  
O&M Sub-Division, BESCOM  
Malur – 563130
5. PS to Hon'ble Chairman, KERC
6. PS to Hon'ble Member (A), KERC
7. PS to Hon'ble Member (M), KERC
8. PS to Hon'ble Secretary, KERC