

**BEFORE THE HON'BLE MEGHALAYA STATE ELECTRICITY
REGULATORY COMMISSION, SHILLONG**

MSERC Case No. 7 of 2020.

Reliance Jio Infocomm Ltd,
Reliance Jio Infratel Private Limited
Represented by Shri. Saijul Haque, Finance compliance
& Accounts.

...Petitioner

Versus

Meghalaya Power Distribution Company Limited
Integrated Office Complex,
Lum Jingshai, Short Round Road
Shillong-793001

...Respondent

Coram:

P.W.Ingty, IAS (Retd.) Chairman, MSERC

Roland Keishing, District & Sessions Judge
(Retd), Member, MSERC

Counsel for the Petitioner	: AV Mawphlang Advocate
Counsel for the Respondent	: G.A. Dkhar, Law Officer
Date of hearing	: 05/10/2020.
Date of Order	: 12/10/2020.

ORDER

Dated 12th October, 2020.

This is to dispose of a Petition filed by Reliance Jio Infocomm Ltd, Reliance Jio Infratel Private Limited Represented by Shri. Saijul Haque, Finance compliance & Accounts, (hereinafter referred to as the Petitioner) against the Meghalaya State Power Distribution Corporation Ltd. Shillong (hereinafter referred to as the Respondent and or MePDCL in short) requesting for reduction in tariffs and other reliefs in connection with the payment of Electricity Bills for the Telecommunication

Towers/Facilities occupied and used by Reliance Jio Infocomm Ltd./Reliance Jio Infratel Private Limited in the state of Meghalaya owing to the unprecedented situation caused by COVID-19 pandemic.

2. The Ld. Counsel for the Petitioner and also the Ld. Counsel for Respondent are heard at length, perused all the materials on record. The submission of the Petitioner, reply of the Respondent and Commission's views are given below:

Petitioner's Submission;

3. That with the country passing through one of the most debilitating pandemic in the form of Covid19, they have been able to support the subscribers and public at large by ensuring continuous operations of the telecom and internet services in compliance with various orders issued by the central and State governments, as Telecom Services are covered under Essential Services category. The Petitioner also states that Reliance Jio Infocomm Ltd and Reliance Jio Infratel Pvt. Ltd. have about 1102 telecom towers and 59 other facilities operating 24*7 in Meghalaya to provide services to the subscribers.

Respondent's reply;

No comment.

Commission's Views;

It is a matter of enforceable directions from the Government of India and Government of Meghalaya. The licensee has been providing un-interrupted electricity supply to the electricity consumer and public in general as per the Government directions. Covid19 pandemic is a fact.

Petitioner's Submission;

4. That Jio in its capacity has also taken certain initiatives to help subscribers including provision of double data limits across all plans for exiting JioFiber subscribers. Additionally, all Jio users will continue to receive incoming calls post validity of their pre-paid vouchers in recognition of the difficulty being faced in recharging.

Respondent's reply;

No comment.

Commission's Views;

It is the obligation and business of the service provider to the subscribers in which the Licensee (MePDCL) is not a party and has no liability whatsoever.

Petitioner's Submission;

5. That Commission may kindly appreciate that due to the lockdown and restrictions placed by the Ministry of Home Affairs, Government of India (GOI), the Business-as-usual has been negatively impacted. The offline recharge outlets remain closed using which majority of existing subscribers get recharges done and new subscribers are on boarded. This has resulted dip in the current revenue generations and new subscriber additions. Since the cost remains same under all the line items, profit margins are being impacted.

Respondent's reply;

No comment.

Commission's Views;

It is the matter of operational fluctuations and obligation of the service provider to the subscribers in which the Licensee (MePDCL) has no liability.

Petitioner's Submission;

6. That in light of the above situation, Government of India (GOI), various State Governments and State Electricity Regulatory Commission (SERCs) have taken initiatives and declared measures to help industries to cope up with the current situation, viz:

(a) Government of India has already declared the situation as Force Majeure (vide O.M.No.18/4/2020-PPD dated 19th February 2020).

(b) Various States including Punjab, Uttar Pradesh, Maharashtra, Odisha etc. have already announced relief to electricity consumers under various categories. In Maharashtra, to boost Industrial and Commercial sector in the State, MERC has reduced their tariff by 10 to 12%. Further to mitigate to some extent the difficulties being faced by the Electricity consumers of Maharashtra a moratorium on payment of fixed charges of the electricity bill by the consumers under industrial and Commercial

category was also announced for next three billing cycles beginning from the lockdown date of 25/3/2020. In Maharashtra, to boost Industrial and Commercial sector in the state, MERC has reduced their tariff by 10 to 12%. Further to mitigate to some extent the difficulties being faced by the Electricity consumers of Maharashtra a moratorium on payment of fixed charges of the electricity bill by consumers under Industrial and Commercial category was also announced for next three billing cycles beginning from the lockdown date of 25/3/2020.

(c) To enable us to continue operating our facilities in the State of Meghalaya, thus providing uninterrupted telecom connectivity to the people of Meghalaya in the testing times when it is needed the most, we need support to manage our operations.

Respondent's reply;

No comment.

Commission's Views;

(a) It is a matter of Notification issued by the Government of India which shall be adopted wherever applicable as per the rules.

However, no documents has been filed in the instant petition supporting the Petitioner's plea, thereby indicating that relief has been extended to the Reliance Jio Infocomm Ltd, Reliance Jio Infratel Private Limited in those cited States of Punjab, Uttar Pradesh, Maharashtra, Odisha etc.

The Respondent MePDCL may consider postponement of fixed charges billing for contracted MD as per the supply code Regulations 2018, provided the consumers agree to pay the interest costs for the extended period of raising bills.

(b) It is the obligation of the Service Provider to the subscribers in which the Respondent (MePDCL) is not a party and has no liability.

Petitioner's Submission;

7. That in order to reduce the impact of the ongoing restrictions and its impact on business, the Petitioner seeks support from Meghalaya State Electricity regulatory Commission (MSERC) on the following:

- (i) Waiver of Fixed Charges for next 12 months from April, 2020.
- (ii) Continuation of rebate of 1% for payment made within due date for the bill amount for next 1 (one) years w.e.f April'2020.

- (iii) Waiver of electricity duty for Five years from April 2020.
- (iv) Reduction in existing energy tariff of 10% for a period of 12 months w.e.f April 2020.

Respondent's reply;

The fact remains that the Respondent has not been exempted from making payment to the Power Generation and Transmission Companies during this period of pandemic and therefore it cannot extend the same benefit to its consumers.

The Respondent also narrated the losses incurred in the last five years which is now compounded by the pandemic as normal billing and collection operation of the Discom has reduced by 70% comparing to the previous month prior to the lockdown.

There is also no provision of providing rebate of 1% for payment made within due date for the bill amount for the next one year w.e.f. April'2020 as per the tariff fixed by the Commission and as such the same is not applicable, besides reduction for the Petitioner in the existing energy tariff of 10% for a period of 12 months w.e.f April'2020 will severely hamper the functioning of the Company which will also result in injustice to the other categories of consumers.

Thus, the Respondent submits that waiving fixed charges in the present circumstances will compromise the functioning of the utility and to recover the approved ARR for FY 2020-21 will cause additional burden on the other categories of consumers whose income have also been seriously affected by the lockdown, besides wavier, if allowed may set precedence for commercial (LT, HT & ILT) consumers to claim waiver of fixed charges.

Accordingly, the Respondent suggests that the Petitioner may approach the State Government to subsidize their fixed charges payable during the lockdown period so as to ensure that the consumers and the Discom are not burdened.

The Respondent also submits that, late payment surcharge, has been kept in abeyance during the period of lockdown.

Furthermore, the Respondent also pointed out that the instruction from the Ministry of Power contained in the letter dated 15th May, 2020 along with the corrigendum dated 16th May 2020 from the Ministry of Power in the matter of rebate to Distribution Companies (DISCOM) by Central Generation and Transmission Companies of

Ministry for Power for the Lockdown period on account of Covid19 pandemic is under process.

Hence, the Respondent prays to reject the Petition for waiver of fixed charges; direct the Petitioner to immediately make payment of their dues without any further delay and to pass such order(s) as deem fit.

Commission's Views;

1. The Terms & Conditions of MSERC Supply Code Regulations 2018 does not provide for wavier of fixed charges/demand charges.
2. The Petitioner (Jio) may avail rebate at 1% for prompt/advance payment of power bills as was being allowed by the respondent (MePDCL) during the lockdown period also.
3. The claim for waiver of the electricity duty for 5 years from April 2020 shall not be considered, since the electricity duty is payable to the State Government under the Electricity Act.
4. The Tariff rates were fixed as per the Section 62 (3) of EA 2003 based on the approved ARR for the FY 2020-21. The reduction sought for in existing Energy tariff of 10% for period of 12 months w.e.f April 2020 shall not be considered. Any relief extended in the tariff rates shall have to be compensated to the respondent (MePDCL) by the State govt. to meet the commitment of approved ARR for FY 2020-21 as per Sec 65 of EA 2003.

Petitioner's Submission;

8. The petitioner humbly prays that the Hon'ble Commission may:
 - a. Admit this Petition
 - b. Examine the proposal submitted by the Petitioner for a favourable dispensation as detailed above.
 - c. Consider the submissions and approve the proposed waiver/rebate/reduction.
 - d. Condone any inadvertent omissions/errors/shortcomings and permit RJIL/RJIPL to add/modify/after this filing and make further submissions as may be required at a future date.
 - e. Pass such orders as the Hon'ble Commission may deem fit and proper, keeping in view the facts and circumstances of the case.

Respondent's reply;

The Respondent prays to reject the relief(s) prayed by the Petitioner.

Commission's Views;

- a. Petition has been admitted and registered as MSERC Case No.07 of 2020 and an opportunity of being heard is provided to both the parties.
- b. The Tariff has been pronounced as per the Regulations of MSERC Regulations 2014 and Supply Code Regulations 2018 and the tariff once fixed shall not be amended more than once in a year.
- c. Any relief sought for by the petitioner (Jio) shall be considered within the Ambit of Regulations of MSERC Regulations 2014 and MSERC Supply code Regulations 2018.

The Petitioner(Jio) has been enjoying the uninterrupted power supply during the lockdown period and has been engaged in accelerated operations in the communication system following the demand across the State and benefited substantially. Nevertheless the Petitioner (Jio) has realised the proceeds from the accelerated operations.

The claim of the Petitioner for waiver of fixed charges /rebate/reduction appears to be based on:

(a) letter dated 15th May, 2020 along with the corrigendum dated 16th May 2020 from the Ministry of Power in the matter of rebate to Distribution Companies (DISCOM) by Central Generation and Transmission Companies of Ministry for Power for the Lockdown period on account of Covid19 pandemic (Annexure-3);

(b) Letter dated 15/06/2020 Ref:NESH/COMML/N-07/64 of the POWER GRID CORPORATION OF INDIA Ltd., addressed to the Chief Accounts Officer (Rev) MeECL., (Annexure-2) and

(c) Letter dated 12/06/2020 Ref: No.01:CD:459 issued by the NTPC addressed to the Chairman cum Managing Director, MeECL., (Annexure-1) for which the Respondent in its reply at para no. 5 (ix) specifically states that on receipt of further clarity on the matter, the licensee will pass the rebate amount to the end consumers accordingly.

Thus, as per the Respondent averments particularly at para no. 5 (ix) and (x) the matter is under process. Hence, at this point of time the issue does not merit consideration. The Petitioner (Jio) may avail rebate for prompt payment of the power bills from the respondent (MePDCL) as usual.

d. All the References available leading to exemption of fixed charges/Demand charges and reduction in Energy charges are examined and found to have no substance/merits.

e. The Petitioner (Jio) is esteemed consumer/stake holder of the respondent MePDCL availing supply under commercial category of the Tariffs ordered for FY 2020-21 on 25.03.2020 and shall extend support to the respondent (MePDCL) in their operations and serve better and versa.

CONCLUSION;

As per the parties pleadings, the Respondent MePDCL has provided un-Interrupted supply during lockdown period as per the Government of India and State Government orders and facilitated for payment of bills through the collection centers, electronic mode of payment and remittance in e-seva, Billdesk kiosks etc., in the State of Meghalaya.

The operations of the petitioner (Jio) were not interrupted in any way by the Respondent during the lockdown period as such no reliefs shall be considerable under the Regulations of MSERC Regulations 2014 and MSERC Supply Code Regulations 2018.

However, the Respondent MePDCL may consider relief to the extent of late payment surcharge availed from the generators and wheeling charges of Transmission licensee on the power purchase cost and Transmission PGCIL charges for the lockdown period and may allow reduction of substantial amount in the Power Purchase cost and Transmission charges paid to the generators and Transmission licensee during the course of True up exercise for FY 2020-21.

The amount of such relief availed from Generators/Transmission licensee on account of late payment surcharge shall be extended to all the aggrieved consumers in their power bills for the lockdown period.

The Petition accordingly stands disposed off with the above findings and observation.

Sd/-
Member

Sd/-
Chairman