

BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu
Vidyut Ombudsman**

Dated: 18 -03-2010

Appeal No. 26 of 2009

Between

M/s. Amara Raja Batteries Limited.,
The Vice President (REC),
Kakakambadi,
Tirupati.

... Appellant

And

Divisional Electrical Engineer / Operation / APSPDCL / Town / Tirupati
Superintending Engineer / Operation / APSPDCL / Tirupati
Senior Accounts Officer / Operation Circle / APSPDCL / Tirupati
Chief Electrical Engineer / Zone / APSPDCL / Tirupati

....Respondents

The appeal / representation dated 26.05. 2009 received on 28.05.2009 of the appellant has come up for final hearing before the Vidyut Ombudsman on 16.02.2010 in the presence of Sri. Chenchu Reddy, Manager Electrical, Sri N.Ramanathan, Company Secretary and Sri Biju Nair for the appellant and Sri. C.Radha Krishna, SE (Operation), Tirupati present for respondents and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

Aggrieved by the order passed by the Forum in CG No. 59/2008-09 of Tirupati Circle dt.29.04.2009, the appellant filed this appeal dated 26.05.2009 received on 28.05.2009.

2. M/s. Amara Raja Batteries through its Vice-President filed a complaint dated nil registered on 03.03.09 under clause 5(7) of APERC Regulation No. 1 of 2004 r/w section 42(5) of I.E.Act 2005 has stated, that the respondents have asked to pay low voltage surcharge for the period from June 2005 to November 2007, amounting to Rs.25803710/-. The complainant had two HT services with 11 kV potential in the name of M/s. Amar Raja Power Systems (P) Ltd and M/s. Amar Raja Batteries Ltd and these two HT services were merged and released on 17.04.99 under 33 kV potential with a CMD of 1190 kVA plus 2000 kVA from APGPCL. APSPDCL had released additional load for increase in the CMD and the same are shown as hereunder:

- a) Additional load 500 kVA on 28.12.2001 with the existing load (1690 kVA + 2000 kVA = 3690 kVA)
- b) On 14.04.2004, the complainant acquired additional load from APGPCL equivalent to 1000 kVA totaling the CMD was 1690 kVA + 3000 kVA = 4690 kVA)
- c) On 22.12.2004 acquired additional load from the APGPCL for 1500 kVA
- d) 23.04.2006 APSPDCL released additional load 500 kVA.
- e) 02.09.2006 APSPDCL released additional load of 1500 kVA.
- f) On 22.11.2006, APSPDCL released additional load 1000 kVA (totaling 4690 kVA + 4500 kVA = 9190 kVA)

3. While according sanctions additional load, the respondents never indicated about the voltage surcharge. In all the sanctions, respondents have mentioned that the supply fed from the dedicated feeder emanating from 132 kV Renigunta Sub-Station (SS) and 200 kV SS Renigunta. While sanctioning the additional loads by APSPDCL, the feeder of ARBL was considered as dedicated feeder and hence applicability of low voltage surcharge does not arise. During utilisation of supply, ARBL never crossed regulation limits (i.e) (+)6% and -9% at high voltage as per APERC regulation. In view of the above said facts, the complainant stated, that they are not liable to pay low voltage surcharge and requested the Forum to pass necessary orders, restraining APSPDCL from the threatened disconnection, together with withdrawal of demand of low voltage surcharge.

4. The 2nd respondent (Superintending Engineer / Op/Tirupati) furnished his remarks on 31.03.09 and stated that he did not dispute the additional loads sanctioned on the various dates, as explained by the appellant in his complaint. But unable to confirm, that it is an independent feeder and it was finally confirmed by him, that it was a common feeder as 33 kV supply was extended from the Karakambadi SS, hence, a shortfall levied towards low voltage surcharge is collected and the complainant is liable to pay the voltage surcharge.

5. After hearing both sides and after making a personal inspection by the Chairperson and SE/O/TPT on 02.04.2009, the Forum ordered that

“the supply being utilized by the complainant from the common feeder during the above period and liable to pay voltage surcharge if the complainant violates the clause 3.2.2 to 3.2.2.2 of Terms & Conditions of Supply approved by APERC. Since the complainant exceeded the CMD beyond the stipulated load under 33 kV during the above period the action of the respondents in levying the voltage surcharge is correct and complainant is liable to pay.”

6. Aggrieved by the said order, the appellant preferred this appeal, questioning, that the APSPDCL have never indicated to the appellant, that they need to pay low voltage surcharge. In all the said sanctions made to ARBL, it was mentioned, that the supply to them was fed from the dedicated feeder emanating from 132 kV Renigunta SS and 220 kV SS Renigunta. The relevant copy of sanction dt.31.03.06 is also enclosed to this appeal.

(a) It is also the contention of the respondents, as per the above sanctioned tariff orders (2002-03 to 2006-07), ARBL was always considered as dedicated feeder hence, the applicability of low voltage surcharge does not arise. During enhancements, their CMD upto 9190 kVA was never crossed RMD 5000 kVA on an individual basis either from APGPCL or APSPDCL. ARBL entered into an agreement with APSPDCL on 22.06.2007 for an additional CMD of 5000 kVA over and above 9190 kVA totaling to a CMD of 14190 kVA. It was given by APSPDCL at 33 kV potential with liability for low voltage surcharge, if ARBL exceeds 10000 kVA CMD. During utilization of supply, ARBL never crossed regulation limits i.e +6% / -9% at high voltage (as per APERC Regulation No.

7/2004) and the same was confirmed by APSPDCL in every additional CMD sanctions.

(b) In the light of the above said facts, they feel that they are not liable to pay low voltage surcharge as claimed by APSPDCL vide its letter dated 20.07.2008, for the period June 2005 to November 2007. The Forum confirmed orders that the supply to the complainant was being utilized from common feeder and that the complainant is liable to pay the voltage surcharge. In spite of the said orders, they still believe that they are not liable to pay low voltage surcharge as claimed by APSPDCL.

7. The 2nd respondent (SE/O/TPT) herein submitted remarks to this authority on 13.07.2009 in which it is mentioned that AG audit party pointed out that non-levy of voltage surcharge to the appellant though the CMD of service was increased from 450 kVA to 14190 kVA over a period of time up to June, 2007. The consumer was availed supply on a common feeder, which was an existing feeder upto 33/11 kV Karakambadi SS and was extended to Amara Raja Batteries premises by tapping of existing 33/11 kV line. From June, 2005 onwards, the CMD of the service crossed 5000 kVA requiring the consumer either to avail power at higher voltage (132 kV) or to pay voltage surcharge for availing supply at 33 kV. As the consumer availed the supply at a lesser voltage level, the company did not levy voltage surcharge and causing revenue loss to the company to the extent of Rs.2.28crs from June 2005 to October 2007. It is also narrated, as to how, the supply is made and increased from time to time.

(a) It is also the contention of the respondents that, in this case, the 33 kV feeder feeding 33/11 kV Karakambadi SS and 33kV ARBL is called as 33 kV Karakambadi feeder. The total load flowing in this feeder is recorded in the log book of the Sub-station as 33kV Karakambadi feeder. There is no separate 33 kV feeder, existing at 132/33 kV Renigunta SS under the name of 33 kV Amara Raja feeder. It is evident that the feeder by name 33 kV Karakambadi feeder emanating from 132/33 kV Renigunta SS feeding both 33/11 kV

Karakambadi SS as well as M/s. Amar Raja Batteries Ltd, loads is definitely a common feeder.

(b) At 33/11 kV Karakambadi SS, a 33 kV breaker was erected near the 33 kV bus of 33/11 kV substation. The jumpers were connected to this breaker from the 33 kV bus and the 33 kV line was extended from the breaker to M/s. Amara Raja Batteries Ltd.

(c) To give supply from dedicated feeder, the line has to take off from a sub-station where voltage transformation is taking place i.e, from 132 to 33 kV in this subject case.

(d) Energy audit was also not done on 33 kV Amara Raja Batteries feeder, as it is not a dedicated one.

(e) As per the physical condition of 33 kV line and as per the records, the 33 kV feeder feeding M/s. Amara Raja Batteries Ltd, is a common feeder only as it is not originated from 132/33 kV Renigunta SS which is source of 33 kV potential.

8. The personal hearing was taken up on 29.01.2010 and also on 16.02.2010. Sri Chenchu Reddy, Manager Electrical, Sri N.Ramanathan, Company Secretary, Sri Biju Nair, Advocate for appellant present on both the dates on 29.01.2010 and 16.02.2010 and Sri C.Radha Krishna, SE/O/TPT also present and submitted their respective arguments on both the occasions.

9. The representatives, Learned Advocate for the appellant argued that the ARBL is a dedicated feeder and they have got a separate line from Karakambadi SS; and that they got the power to their company exclusively and it cannot be treated as common feeder and the very test reports submitted before the authority have clearly disclosed, that it is exclusive feeder (dedicated) and they cannot be mulcted with the low voltage surcharge, as they do not come into the definition of low voltage surcharge.

10. It is also further argued that, if it is treated as a common feeder they should inform that they should have a dedicated feeder for their exclusive use from 132/33 kV SS at Renigunta but not Karakambadi SS on the ground, that it is exceeding 5000 kVA by giving a notice. Nowhere, it is mentioned that they have to obtain a separate feeder from Renigunta SS, by virtue of increase in the kVA; and that the imposition of low voltage surcharge is against to the principle of natural justice. Further more, had they been informed, they would have taken proper steps to avoid low voltage surcharge and the department itself is directly liable for the latches and also for the deficiency of service and the impugned order passed by the Forum is liable to be set aside.

11. Whereas, the SE/O/TPT who appeared for respondents has mentioned that their service connection exceeded 5000 kVA with effect from 22.12.2004 and they are liable to pay the low voltage surcharge as they have not taken steps in the form of upgrading of voltage supply from 132 kV of Renigunta and they have been taking supply from the Karakambadi SS, which is a common feeder. They cannot take shelter under the guise of no knowledge being a consumer having Industrial HT service connection. As per the records, the 33 kV feeder feeding to M/s. ARBL is a common feeder and the same is not originated from 132/33 kV Renigunta SS their being a big company and big industrial organization, supposed to have knowledge of the tariff orders and stipulations in the voltage surcharge, as well and they cannot escape on the ground of no knowledge.

12. The internal correspondence between SE/O/TPT to the Chief Engineer requesting for sanctioning of additional load is the conclusive proof to show that it is a dedicated feeder, cannot be the basis as it is only a proposal, but not a final order. The consideration for treating a feeder as dedicated is that the feeder should be exclusively emanated as per tariff orders from SS from 2002-03 to 2006-07 and from the Sub-station where transformation to required voltage takes place in 2007-08. There is no difference in the definition of dedicated feeder. In all the tariff orders, it is only an exclusive feeder emanating from a sub-station

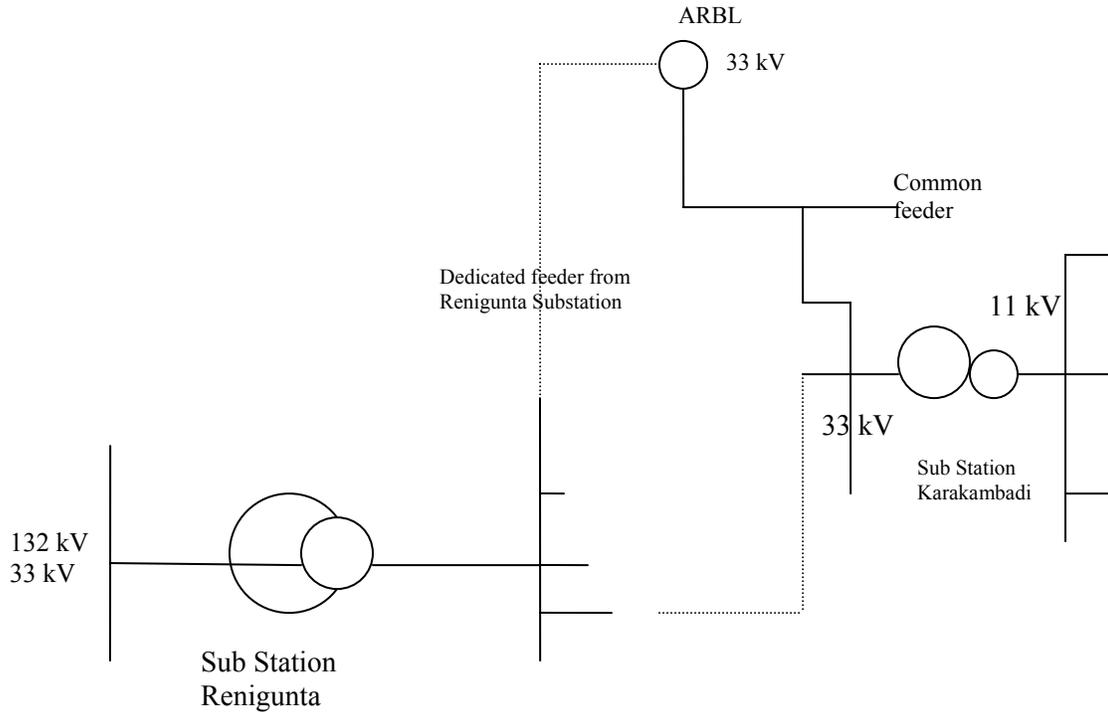
only. In 2007-08, “the words where transformation to the required voltage takes place” are added. The added words in 2007-08 tariff order is only interpretation or explanation of sub-station. Not mentioning it, in earlier tariff orders does not mean sub-station is other than a location where transformation of voltage takes place. The other point is not crossing 5000 kVA, Recorded Maximum Demand is not the criteria but only agreed CMD for arriving of voltage potential at which supply is to be availed is the criteria. To call a feeder as dedicated feeder, the consumer should have a dedicated feeder from Sub-station (where transformation to the required voltage takes place) and cost of it including take off arrangement at sub-station where transformation of voltage takes place to be borne by the consumer. Exclusive means no other load, other than the consumer is fed through the feeder. The appellant has received the supply from 33 kV Karakambadi feeder emanating from 220/132/33 kV SS to a distance of 3.5 KM and then for 0.6 KM from 33/11 kV Karakambadi SS through 33 kV Amaraja feeder. Hence it is not an exclusive feeder as other load i.e, 33/11 kV Karakambadi SS load is also on this feeder. If they want it to be a dedicated feeder, it should emanate independently, from 220/132/33 kV Renigunta SS directly to M/s. ARBL without connecting 33/11 kV Karakambadi SS.

13. Now, the point for consideration is, whether the impugned order passed by the Forum is liable to be set aside? If so, on what grounds?

14. The first contention raised by the appellant is that the APSPDCL has never indicated to them that they have to pay low voltage surcharge. It is clear from the record that the ARBL had two HT service connections at 11 kV potential in the names of M/s. Amar Raja Power Systems (P) Ltd and M/s. Amar Raja Batteries Ltd and these two HT services were merged into one service in the name of M/s. Amara Raja Batteries Ltd with 11 kV in the year 1991 with upgradation of 33 kV potential. Again, it was enhanced to 1190 kVA thereafter from time to time up to 14190 kVA by 22.06.2007. Thereafter upgradation was made on 26.11.2007 from 33 kV to 132 kV potential.

15. It is the contention of the respondent, that the appellant is liable to pay the voltage surcharge soon after exceeding 5000 kVA by 22.12.2004 by which time the appellant is enjoying voltage at 6190 kVA, since it is not a dedicated feeder and it is a common feeder.

16. The appellant claims, that it is a dedicated feeder right from the beginning having its own service line even prior to 16.04.1999 itself where both the service connections are merged into one service connection. Even by this date, it is mentioned in the test report that 33 kV Amara Raja Feeder against the name of the Feeder. The same entry has been continued from the beginning but on the 33 kV breaker was erected near the 33 kV bus of 33/11 kV Sub-station. The jumpers were connected to this breaker from 33 kV bus and the 33 kV line was extended from the breaker to ARBL. As per the GTCS, the estimate is to be prepared for an independent 33 kV feeder with a take off arrangements from the substation i.e, from 132/33 kV SS Renigunta, where the transformation of voltage has taken place from 132 kV to 33 kV. It has been mentioned at every time in the test report as if it is a 33 kV Amara Raja feeder from 33/11 kV SS Karakambadi. The very entry mentioned from the beginning is not correct as there is no need to have an independent feeder at that time. In the beginning itself, the entry is entered as dedicated feeder. If it is so, when the feeder is changed and from which date, it is a dedicated feeder and is working, etc., are not covered in the records. No material is placed by the appellant on those lines. It does not find place either in the records or on ground. The diagram hereunder explains and distinguishes the dedicated feeder with that of a common feeder.



17. In the technical reports, the extended feeder 33 kV feeder is a dedicated feeder, but the same is not correct, since the independent feeder can be originated from 132/33 KV SS but not from the 33/11 kV SS Karakambadi, which was connected with existing 33 kV as shown in the above diagram. The dotted line indicates dedicated feeder, but the supply is not taken from 132/33 kV Renigunta. Moreover, for a dedicated feeder, the input and output details should have been recorded in a meter at M/s. ARBL premises and also at the substation respectively. These details are also not available with the operation circle or from ARBL.

18. It is also clear from the record, that no energy audit was conducted in that jurisdiction in which M/s. ARBL feeder was existing as there were no HT industrial feeders, there in that area. The voltage surcharge would be levied, when the recorded maximum demand exceeding 10000kVA is also not correct. The surcharge has to be levied, basing on the CMD but not on RMD. It is also verified from the records by the Chairman of Forum (personal inspection) and

found that the 11 kV ARBL was not shown in the monthly return of energy audit of dedicated industrial express feeder submitted by SE/O/TPT to the corporate office. The above said discussions clearly disclosed that the 33 kV feeder feeding to ARBL is a common feeder only and it is not originated from 132/33 kV Renigunta SS.

19. No doubt, no notice is served by the department to the appellant directing the appellant to take steps for conversion of the feeder from 33/11 kV Karakambadi SS to 132/33 kV Renigunta SS. If they have issued any notice, for changing the same and if they have not made any effort to change the same, no doubt fault would be with the consumer. The voltage surcharge, if shown in the regular bills, it would be treated as a constructive notice. Whereas, the record shows that ARBL have filed all the tariff orders and the particulars of the common feeder and dedicated feeder and voltage surcharge mentioned therein clearly revealed that they had the knowledge about the same. The duty cast upon the officials for their failure to give notice is not discharged, but the appellant has got knowledge about the same and they have not made any effort to change the same as upgradation was made subsequent to 25.11.2007. It is curious to note at this point of time, that the appellant has upgraded the power consumption by 25.11.2007, even prior to the notice issued for low voltage surcharge. So, it is evident that the appellant has got the knowledge about the availment of power from higher transmission. If it is a case of no knowledge, they would not have upgraded the voltage level from 32 kV to 132 kV potential. If really, they have no knowledge, they would have made efforts only after the notice 28.07.2008 under which voltage surcharge was demanded. Even for this demand, they issued a reply dated 08.08.2008 to the effect that they are not liable for voltage surcharge but paid only monthly consumption charges and refused to pay the voltage surcharge, though included in the bill itself. Immediately after receiving the notice, they have not made any effort to file a petition before the Forum but filed the same in the month of March 2009 ie., 8 months after levying the surcharge. Under those circumstances, no doubt, the entire blame cannot be thrown on the

department for their failure to issue notice with a direction to upgrade the voltage level. The amount of obligation by the appellant towards respondent is more than the respondents towards appellant as they wanted to avail the power under low voltage under the guise of no knowledge, though they have got knowledge about the upgradation of voltage level from 33 kV to 132 kV potential. The very upgradation made on 25.11.2007 goes to show that the feeder under which they availed power supply was only common feeder but not dedicated feeder.

20. So, the plea urged by the appellant that the sanctions made by APSPDCL to the ARBL were fed from dedicated feeder emanating from 132 kV Renigunta SS and 220 kV Renigunta SS is only an internal correspondence, from SE to CE. The said copy is neither marked to the appellant nor supplied to the appellant. In fact the upgradation is not made on the said correspondence, as it is part of the material supplied to the CE as a ground for sanctioning. But in all the test reports it is clearly mentioned, that the supply is being made from 33/11 kV Karakambadi SS, which is also signed by the consumer.

21. The above said discussion clearly reveals that if ARBL is a common feeder and not dedicated feeder, the only words added in 2007-08 where transformation to the required voltage takes place. It is only interpretation or explanation of substation, the only mentioning in the earlier tariff orders does not mean that substation is other than a location where transformation of voltage takes place.

22. It is the contract load that is required to take, but not the recorded maximum demand. The criteria of CMD has to be taken into which, the supply is to be availed.

23. The other point urged that the low voltage surcharge is to be levied, if ARBL exceeds 10000 kVA is not correct, as it is not mentioned in the agreement nor in the sanctioned estimate. The point urged by the SE that the ARBL is liable to pay surcharge and interest upto March 2009 to a tune of Rs2.67 Crs is not

correct, since the statement discloses that the upgradation was done on 25.11.2007.

24. In the light of the above said discussion, I am of the opinion that the respondents have also contributed to some extent by not issuing notice for upgradation soon after exceeding 5000 kVA. At the same time pleading ignorance with full knowledge by the appellant has contributed more and the same has to be calculated by looking into the equities as per Sub clause (2) Clause 10 of Regulation No. 1 of 2004.

25. In the light of the above said discussion and while working out the equities, I am of the opinion that the latches on the part of the appellant is fixed at 70% and latches on the part of the respondents is fixed at 30%. At the same time, the respondents are also directed to initiate action against the concerned officials, who were responsible for their latches in not issuing notice when the KVA exceeded 5000. The respondents further directed to calculate and workout the liability of the appellant on the above said 70% out of the total amount of low voltage surcharge claimed. The appellant is permitted to pay the same on four equal installments within a period of 8 months. Every installment has to be paid once in two months.

26. The compliance of the departmental action against erring officials may be intimated to this authority within a month from the date of receipt of this order.

27. In the result, the appeal is partly allowed fixing the liability of 70% on the appellant and 30% on the respondents as stated above, but no order as to costs.

This order is corrected and signed on this day of 18th March 2010.

VIDYUT OMBUDSMAN