



ARUNACHAL PRADESH STATE ELECTRICITY REGULATORY COMMISSION
ITANAGAR

In the matter of:

Petition for approval of Power Sale Agreement (PSA) between Department of Power, Government of Arunachal Pradesh and M/s Shree Salasar Industries Private Limited.

Date of Hearing : 13.11.2024.

Date of Order : 26.11.2024.

Petition No : **MP-09 of 2024**

Coram: **Mr. R.K. Joshi Hon'ble Chairperson,**
Mr. Nich Rika Hon'ble Member (Law).

Petitioner: Department of Power, Arunachal Pradesh, Vidyut Bhawan,
Itanagar, Arunachal Pradesh (DOPAP).

Appearance:

1. Er. Duyu Tacho, Chief Engineer (Commercial), Department of Power. Government of Arunachal Pradesh.
2. Advocate Rubu Tani, Counsel for M/s Shree Salasar Industries Private Limited.
3. Mr. Vijay Vyas, Representative M/s Shree Salasar Industries Private Limited.
4. Mr. R Mohan, Representative M/s Shree Salasar Industries Private Limited.

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ORDER

1. This instant Petition is filed by the petitioner, Department of Power, Government of Arunachal Pradesh, acting in its capacity as a Distribution Licensee under Electricity Act, 2003 for approval of Power Sale Agreement (PSA) between the Department of Power, Government of Arunachal Pradesh with M/s Shree Salasar Industries Pvt Ltd having a sanctioned load of 18 MW.
2. The matter has been taken up for further hearing.
3. The Petitioner, being represented by Mr. Duyu Tacho, Chief Engineer (Commercial) The Department of Power, Government of Arunachal Pradesh.
4. Also present, Representative Mr. R Mohan, Mr. Vijay Vyas, and learned counsel Rubu Tani for M/s Shree Salasar Industries Private Limited.

SUBMISSIONS OF THE PETITIONER:

5. The petitioner, Department of Power, Government of Arunachal Pradesh is a distribution licensee and M/s Shree Salasar Industries Private Limited is a firm incorporated under the Companies Act, 2013 which deals with and manufacture of ferro alloys component.
6. The petitioner vide order no. CE(P)/WEZ/SLDC/P-SALE-IX/2009-10/1655-63, dated 22/07/2010 had accorded a load sanction for an electrical load of 18 MW in favour of M/s Shree Salasar Industries Private Limited. As per sanction order, the consumption of power was subjected

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to terms and conditions of the Power Sale Agreement to be executed by the parties, but before the agreement could be executed, M/s Shree Salasar Industries Private Limited, w.e.f 15.11.2010 commences its industrial production and started to consume power from the petitioner.

7. That after a period of 12 years, M/s Shree Salasar Industries Private Limited initiated a letter, dated 04.02.2022 conveying the petitioner to enter into Power Sale Agreement. Since it was over delayed, a copy of load sanction order along with Draft Agreement was placed before the competent authority. The Draft PSA was approved Vide note # 75, dated 12.12.2023. The law department, Government of Arunachal Pradesh vetted the draft agreement of Power Sale Agreement vide e-file No. CE (COM)/P -SALE/26(D)/2022-23 (Computer No.111226) with observations that validity of agreement for a period of 25 years should be counted from the date of drawing power and further to obtain clearance from the Finance Department, Government of Arunachal Pradesh and Arunachal Pradesh State Electricity Regulatory Commission on the Draft Power Sale Agreement. The Finance Department vetted the Draft Power Sale Agreement vide e-file no. CE(COM)/P-SALE/26(D)/2022-23 (Computer No.111226), note #132 dated 09.04.2024.

8. The petitioner seeks the Commission's approval to the Power Sale Agreement between the Department of Power, Government of Arunachal Pradesh and M/s Shree Salasar Industries Private Limited and further address discrepancies in compliance with Security Deposit [S.D] as per the existing Supply Code Regulation.

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9. The petitioner states that prior to establishment of the present Hon'ble Commission and in absence of any Supply Code Regulations, the Department had accepted an amount of Rupees Five Lakhs [Rs. 5,00,000/-] only per Mega Watt. [MW] as Security Deposits [SD] for Power Connection Agreement. Based on the above calculations M/s Shree Salasar Industries Private Limited in the year 2015, had deposited an amount of Rupees Ninety Lakhs [Rs 90,00,000/-] only as Security Deposit.

10. The petitioner further submits that on review of the consumption pattern of the Consumer for adequacy of the security deposit from April 2021 to March 2022. The average billed amount raised to the consumer during the period was found to be Rs. 1.66 crores only against the deposit of Rupees Ninety Lakhs [Rs 90,00,000/-] and hence found to be inadequate. The amount of new security deposit being based on Clause 3.21.6 of the Supply Code would stand at Rs. 1.70 crores, to be deposited by the Consumer before the Power Sale Agreement is executed.

11. Accordingly, both the parties duly initiated the Draft Power Sale Agreement and thereby approach the Commission for its approval.

12. Mr. R Mohan, Representative, M/s Shree Salasar Industries Private Limited in its support, has placed before the Commission an acknowledgement letter, dated 15.09.2015 by the petitioner in regard to load security deposit of Rs 90,00,000/- (Rupees Ninety Lakh) only. Also placed for consideration, an electricity bill statement for the month of August 2024 and money receipt of the same. Representative, M/s Shree Salasar Industries Private Limited also pray for consideration of interest

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as to the deposition of the security deposit of Rs. 90,00,000/- only as mandated under Commission's Regulations. A calculation interest chart for the security deposit amount of Rs 90,00,000/- has also been submitted for convenience of the Commission.

13. The Learned Counsel Rubu Tani appearing for M/s Shree Salasar Industries Private Limited submitted that since the firm started to consume power from the year 2010, the outstanding bills have been cleared on timely basis. Though no such agreement was inked in written form, the latter had abided to terms and conditions of the Supply Code. On further submission, the learned counsel prayed to consider the matter as per Clause 3.19(4) of the Arunachal Pradesh State Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2020 which reads as :

3.19 (4) " A copy of the agreement executed shall be given to the consumer/applicant. If there is no separate written agreement between the Distribution Licensee and the Consumer; the latter, after the supply of electricity has commenced, shall be deemed to be bound by terms and conditions of Supply Code. "

COMMISSION OBSERVATION AND ITS FINDINGS:

14. The petition has been submitted along with the requisite fee and relevant documents as mandated under the APERC (Conduct of Business) Regulations, 2011. The petition is admitted as Case No. MP-09 of 2024-25.

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15. Upon scrutiny of the petition, the Commission observed that the subject matter pertains to a Connection Agreement between M/s Salasar Industries Private Limited and the Department of Power, Government of Arunachal Pradesh, rather than a Power Sale Agreement. The term "Power Sale Agreement" is nowhere indicated in Commission's Regulations. The concern before this Commission's is that even if so, there is no written Connection Agreement between the parties, the provisions under Clause 3.19 of the Arunachal Pradesh State Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2024 must be strictly adhere and abided. The Clause 3.19 of the Supply Code 2024 is reads as :

3.19 "Execution of Agreement

(1) The licensee may require the applicant to execute an agreement for obtaining new connection, for change of name, and for enhancement or reduction of sanctioned load before commencement of supply.

(2) The agreement form shall be supplied by the licensee along with application form and shall be available on the licensee's website for download.

(3) The agreement shall include the following:

(a) Name and address of the consumer/applicant;

(b) Address of the premises for which electricity supply has been requisitioned and for which the agreement is being executed;

(c) Sanctioned load/contract demand;

(d) Purpose of usage of electricity;

(e) Declaration by the applicant/consumer.

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(i) To abide by provisions of Act and this Code;

(ii) To pay for the supply of electricity based on the prevailing tariff rates;

(iii) To pay for all other charges payable in accordance with this Code and the Schedule of Miscellaneous Charges of the licensee approved by the Commission from time to time;

(iv) To deposit such security money as the licensee may be entitled to recover from him under the Act and this Code

(4) A copy of the agreement executed shall be given to the consumer/applicant. If there is no separate written agreement between the Distribution Licensee and the Consumer; the latter, after the supply of electricity has commenced, shall be deemed to be bound by terms and conditions of Supply Code."

16. The Commission finds it unusual that, despite the connection being in place since 2010, no written agreement has been executed between the Department of Power, Government of Arunachal Pradesh and M/s Shree Salasar Industries Private Limited until now. It is further noted that, though not inking of the agreement is also covered in concern regulation of 2013, but after a lapse of 14 years, a written agreement is now being formalized. The Commission also refers to the Electricity Supply Code Regulations-2013 i.e the earliest to the time of connection, which has a provision of an agreement for the supply of electricity between a DISCOM and a consumer. However, it also has a proviso mentioning that, in cases where electricity supply is provided prior to the execution of such an agreement, the supply is deemed to be governed by the terms and conditions specified in the Electricity Supply Code. For reference, the relevant clause from the APSERC (Electricity Supply Code) Regulations,

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2013, i.e the earliest regulation to the time of connection, is provided below.

"4.106. A copy of the agreement executed shall be given to the consumer/applicant. If there is no separate written agreement between the Distribution Licensee and the Consumer; the latter, after the supply of electricity has commenced, shall be deemed to be bound by terms and conditions of Supply Code. "

17. Since the agreement in question pertains to a connection agreement between the DISCOM and its consumers, as per relevant Regulation in place particularly clause 3.19 of supply code, the Commission's purview is limited to determine whether the provisions of the Supply Code Regulation, 2024 are being abided and followed in letter and spirit or not. The Commission, having admitted the petition, has entrusted itself to provide necessary observations as derived from the petition and the documents placed before the Commission for consideration.

18. The Commission is not at all convinced by the contentions of the petitioner that M/s Shree Salasar Industries Private Limited had started to draw power of its own before executing the connection agreement. In no case a consumer can connect itself to the grid/transmission system at its own, without the consent/permission of the Distribution licensee. It is duty and the responsibility on the part of distribution licensee to see that the relevant regulation is complied before any connection is made. The negligence is certainly on the part of petitioner, who ultimately decides and give consent for a connection to an applicant.

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19. The Commission observed that Load Sanction Order No. CE(P)/WEZ/SLDC/P-SALE-IX/2009-10/1655-63 dated 22/07/2010, issued by the Department of Power, Government of Arunachal Pradesh, sanctioned an electrical load of 18 MW to M/s Shree Salasar Industries Private Limited at Lekhi Village, Naharlagun, under Papum Pare District. The sanctioned load was intended to meet the energy requirements of a Ferro Alloys Industry, classified as an Industrial Consumer, by reallocating 18 MW from the 25 MW load allotted to M/s SMS Smelters Ltd., a sister concern located within the same complex. It has been noted that initially a total 25 MW load was sanctioned to M/s SMS Smelters Ltd, but it remained underutilised. Though the period of such underutilisation of power is not on records, but it certainly raises a question of allotting excess power to some applicant for unlimited period without prudence check, which refuses other interested parties in between, to apply for allocation because of such artificial shortage of power.

20. The Commission has particularly noted a discrepancy regarding the security deposit amount corresponding to the sanctioned load for M/s Shree Salasar Industries Private Limited. This issue has been further analysed and elaborated in subsequent paragraph of this order.

21. The Commission notes that by Letter No. 25/AP/03-04 dated 27/05/2003 indicates that M/s SMS Smelters Ltd. had initially deposited a security amount of Rs. 50,00,000 (Fifty Lakh) in form of Demand Draft for its unit located at Lekhi Village, NH-52, Naharlagun (near Kongkar Nalah), on the western side of NH-52A.

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22. The security deposit amount received by the Department of Power; Government of Arunachal Pradesh from M/s SMS Smelters Ltd was based on internal calculations existing at the time. This was before the establishment of the Commission or the adoption of any Supply Code Regulations.

23. The Commission has referred to Office Order No. CE(P)/EEZ/SP&C/TARIFF/2012-13/756-905, dated 16/05/2012, issued by the Department of Power, Government of Arunachal Pradesh. This order revised the security deposit rates for consumers, setting it at Rs. 3351/kW for Industrial Consumers. Based on this revised rate, the security deposit for the Petitioner, considering its 18 MW contract load, should have been approximately Rs. 6.03 Crores. However, the Department of Power, Government of Arunachal Pradesh, has not made any efforts to collect required security deposit.

24. Furthermore, Commission noted a Letter No. NESD-II/DEP-79/2015-16/313-14, Nirjuli, dated 13/07/2015, wherein the Department of Power, Government of Arunachal Pradesh, instructed the consumer to revise the security deposit in form of a Bank Guarantee (BG). This instruction was issued as the earlier BG, amounting to Rs. 90,00,000, calculated at Rs. 5,00,000 per MW was set to expire on 26/07/2015. The Commission's having gone through the documents available on record has reread the letter being acknowledgement on receipt of load security deposit, dated 15.09.2015. The letter issued by the Department of Power, Government of Arunachal Pradesh has shown that a sum of Rs 90,00,000/- only being

the load security deposit in terms of 5 MW only. These discrepancies is also overlooked and should have been corrected to depict actual facts of the matter.

25. The Commission highlights that the Arunachal Pradesh Electricity Supply Code 2013 Regulations came into effect on 12/04/2013, which provides specific provisions for calculating the security deposit for consumers. These provisions, however, were not complied during the revision of the security deposit.

26. The relevant provision for the calculation of security deposit for consumers, as specified in Annexure 11.18 of the Arunachal Pradesh Electricity Supply Code 2013 Regulations, is quoted below for reference:

Annexure 11.18

Determination of Security Deposit amount

Security deposit amount for a consumer = Load x Load Factor of the category in which the consumer falls x (Billing cycle + 30 days) x 24 hours x Current tariff

S.No	Particulars	Load Factor
1.	Domestic	30%
2.	Commercial	50%
3.	LT Industrial	50%
4.	HT/EHT Industrial	
	• Single Shift Industries	50%
	• Double Shift Industries	75%
	• Continuous Industries	100%

5.	Agriculture/Water Supply	33%
6.	Street Lights	40%
7.	Signals & Blinkers	75%
8.	Railway Traction	50%

27. The Commission observed that the revised security deposit has been calculated and deposited using a methodology that deviates from the provisions explicitly outlined in the Arunachal Pradesh Electricity Supply Code 2013 Regulations, despite the said provisions being applicable at the time of revision i.e. on dated 26/07/2015 when the Bank Guarantee was set to be expired.

28. Further, the Commission noted that the Department of Power, Government of Arunachal Pradesh has referred to Clause 3.21.4(2)(a)(ii) and Clause 3.21.6 of the APSERC (Electricity Supply Code) Regulations 2020 for calculating the security deposit and reviewing the deposit at the end of the financial year, based on the consumption pattern of the consumer. The relevant extracts from these clauses are reproduced below for reference:

"3.21.4 Security Deposit

.....

(2) Post Paid Metering

(a) Load Security All consumers shall have to deposit an amount as specified in this Code against his consumption as load security to cover non-payment

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of his monthly energy bill, as per Schedule of Tariff applicable from time to time.

The security deposit amount required to be maintained with the licensee will be computed as follows:

(i) For new consumer:

The new consumers shall pay an initial security deposit based on the estimated consumption as per prevailing tariff applicable to the category of consumer. The norm of computing consumption for the load security is incorporated in Annexure 10.10.

(ii) For existing consumer:

At the beginning of the financial year, the licensee shall review the consumption pattern of the consumer for the adequacy of the security deposit from April to March of the previous year, as per clause 3.21.6

Any excess/deficient amount shall be adjusted within two subsequent bills of the consumer.

If the security deposit is reduced due to adjustment of outstanding dues, the same shall be adjusted within the subsequent two bills of the consumer.

Provided that for a consumer whose electricity connection is less than 1-year-old, the security deposit shall not be revised at the beginning of the first financial year, but from the next financial year."

29. The Commission has further observed that the Department of Power, Government of Arunachal Pradesh, has now reviewed the consumption pattern of the consumer, as per the relevant clause. Based on this review, the security deposit to be paid by M/s Shree Salasar Industries Private Limited is proposed to be revised to Rs. 1.70 Crores.

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30. The Commission noted that in its Recording of Proceeding [ROP], dated 25.10.2024, had directed both petitioner and representative of M/s Shree Salasar Industries Private Limited to bring on records documents pertaining to monthly power consumption bills and receipt of bills payment from 2010 onwards, but it is seen no such documents has been placed. The relevant regulation does not bind a licensee for prior approval of the Commission for Power Connection Agreement, but such Connection Agreement inked or not-inked must not deviate or contradict the laid down provisions of the Commission's relevant Regulations in place. The Commission cannot be a mere silent spectator and overlook the petitioner's wilful negligence in compliance of a regulation. The petitioner has failed to satisfy the Commission for its non-compliance of the regulations in terms of security deposit. The purpose of security deposit is a measure to safe guard the interest of distribution licensee against the consumers to adjust the bills in events of default in bill payment. It is high time that such deliberate acts of negligence must be stopped. As of documents not available before the Commission, it is unable to validate the assessment of the consumption pattern of M/s Shree Salasar Industries Private Limited due to the non-availability of adequate supporting documents, including electricity bills for the last 12-month period.

31. In light of the above, the Commission observed that the security deposit made by M/s Shree Salasar Industries Private Limited is not aligned with the provisions set out in the Arunachal Pradesh Electricity

Supply Code 2013, APERC (Electricity Supply Code) Regulations 2020, and the APERC (Electricity Supply Code) Regulations 2024.

32. The Commission notes with concern the failure of the Department of Power, Government of Arunachal Pradesh to collect the security deposit as per the relevant APERC Electricity Supply Code Regulations. However, considering that the connection to M/s Shree Salasar Industries private Limited was provided prior to the commencement of the Supply Code Regulations and the establishment of the Commission, the methodology followed by the Department at that time is deemed acceptable. Nonetheless, the Commission emphasizes that post-implementation of the Supply Code Regulations, the security deposit should have been reviewed and corrected in accordance with the regulatory framework to ensure uniformity and compliance among consumers.

DECISIONS:

33. The Commission in its observation have made it clear that approval of the commission on any specific Power Connection Agreement, to be executed between the parties is not within its domain for consideration, and this squarely applies to the proposed agreement between petitioner and M/s Shree Salasar Industries. But any such agreement if inked between the parties, should be strictly in accordance with the relevant regulation in place.

34. We have only raised concern to the strict applicability to the provisions of Clause 3.19 of the Arunachal Pradesh State Electricity

Regulatory Commission (Electricity Supply Code) Regulation, 2024 . The Security Deposit amount so considered must be strictly in adherence to provisions of the supply code regulations.

35. We are of the view that security deposits of other similar consumers must also be reviewed and corrected as per the relevant regulatory provisions. **As such , The petitioner i.e The Department of Power, Government of Arunachal Pradesh is therefore directed to submit a compliance report, accompanied by an affidavit, confirming that the security deposits charged from consumers is in compliance with the applicable provisions of the Supply Code Regulations. Compliance report along with affidavit must be submitted to the Commission within 3 [three] months from date of issue of Order.**

36. Further, such non-compliance of the Supply Code Regulations, putting the recovery of the electricity charges at risk as not covered with required security needs to be stopped immediately. However, if the non-compliance continues, it will be nothing, but a wilful non-compliance and as such will warrant strict actions against the defaulter in accordance to the provisions of Electricity Act, 2003.

37. The Commission with very limited resources and materials placed by the parties for consideration, has not gone into the merit of the claims of M/s Shree Salasar Industries Private Limited regarding interest applicable on the Security Deposit amount. Accordingly, the parties are at liberty to

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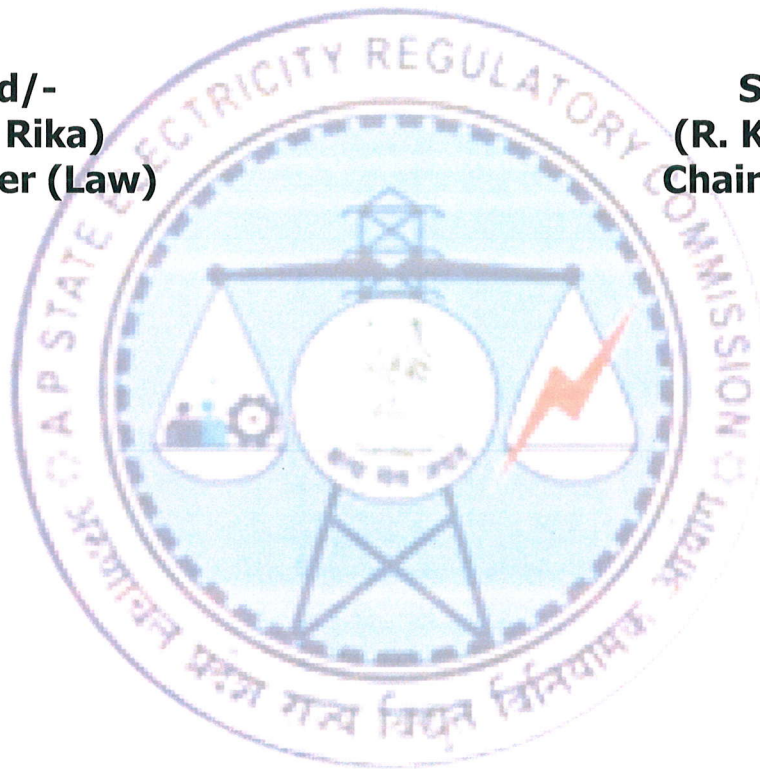
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seek redressal of its grievances and may approach the Commission if so, by satisfying the provisions of the Act.

38. The Petition stands disposed of with above observations.

Sd/-
(Nich Rika)
Member (Law)



Sd/-
(R. K Joshi)
Chairperson

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