

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Shri Bhanu Bhushan, Member**
- 2. Shri R. Krishnamoorthy, Member**

Petition No. 82/2007

In the matter of

Issuing direction to NRLDC to refund the sum of Rs. 50,91,511/= along with interest to PTC India Ltd.

And in the matter of

PTC India Ltd, New Delhi

....Petitioner

Vs

Northern Regional Load Despatch Centre **.....Respondent**

The following were present:

1. Shri S. K. Singh, Advocate, PTC
2. Shri Ashish Dholakia, Advocete, PTC
3. Shri R. C. Chaudhry , PTC
4. Shri P. K. Agarwal NRLDC
5. Shri Jasbir Singh, NRLDC
6. Shri Shri VV Sharma, POWERGRID
7. Shri Sunil Agarwal, POWERGRID
8. Shri S. K. Soonee, POWERGRID
9. Shri T.S.P. Rao, POWERGRID
10. Shri R.P. Padi, POWERGRID
11. Shri T.P.S. Bawa, PSEB

ORDER

(Date of hearing: 21.8.2007)

The petitioner has made this application under Regulation 35 of the Central Electricity Regulatory Commission (Open Access in inter-State transmission) Regulations, 2004 (hereinafter referred to as "the open access regulations") seeking direction to the respondent to refund an amount of Rs.

50,91,511/= recovered by the respondent as short-term open access (STOA) charges for the months of April to July 2005, allegedly in excess of the charges due.

2. Briefly, the case of the petitioner is as under:

(a) PSEB agreed to purchase off-peak power for 18 hours from Department of Power, Govt. of Tripura through the petitioner, who applied to the respondent for grant of STOA on 24.3.2005. The relevant clauses of STOA application are reproduced as under:

“ 9. Name of trader, if any: PTC India Ltd.

a) Open Access capacity requested (MW) :
01.04.2005 to 30.04.2005 : 35 MW
01.05.2005 to 30.06.2005 : 50 MW

b) Daily period of transaction: 0000 hours to 1700 hours
2300 hours to 2400 hours”

(b) The petitioner paid a sum of Rs. 55,25,046/= towards STOA charges in advance for 31 days as per the reservation procedure laid down by the respondent.

(c) In response to the petitioner's application dated 24.3.2005, the respondent granted STOA on 30.3.2005 for April 2005 with a note

that the petitioner could apply afresh for capacity reservation for May 2005 onwards as per the revised procedure laid down by the respondent for reservation of STOA transactions.

- (d) On 21.2.2005, the Commission issued the amended open access regulations whereby, STOA charges were to be applied on block basis with effect from 1.4.2005. The relevant extract of the amended open access regulations is as under:

“Regulation-16(iii)

Transmission charges payable by a short-term customer in case of un-congested transmission corridor shall be levied as under, namely:

- (a) up to 6 hours in a day in one block: 1/4th of ST_RATE*
(b) more than 6 hours and up to 12 hours in a day in one block: ½ of ST_RATE
(c) more than 12 hours and up to 24 hours in a day in one block: equal to ST_RATE”

ST_RATE is the rate for short-term customer in Rs/MW/day

- (e) As STOA charges for the month of April 2005 had already been paid by the petitioner at the time of making of the application, the respondent issued schedule of STOA payments for the period May 2005 to July 2005 initially on 25.4.2005, which was revised on 1.9.2005. In the revised payment schedule, the respondent considered 0000-1700 hours as 24 hours (being more than 12 hours) i.e. one day rate and 2300-2400 hours (up to 0600 hours) at 1/4th of the day's rate. STOA charges computed by the respondent on the

above basis worked out to 30 hours in a day against 18 hours use of transmission capacity by the petitioner.

(f) As per the agreement between the petitioner and the buyer of electricity, PSEB, STOA charges were reimbursable by the buyer. As PSEB protested the calculation of revised STOA charges by the respondent, the petitioner took up the matter with the respondent on 27.9.2005, who turned down the petitioner's request vide its letter dated 7.10.2005.

(g) Thereupon the petitioner approached Member-Secretary, NREB/NRPC on 8.11.2005 under Regulation 35 of the open access regulations for dispute resolution. Member-Secretary, NREB/NRPC discussed the issue with the parties on 6.1.2006 and 7.4.2006 and issued an award on 17.7.2006 by concluding that the respondent had wrongly overcharged and should refund the excess charged amount to the petitioner. Extract of the conclusion is given below:

"9.I conclude that the revised short term transmission charges determined by NRLDC in September, 2005 in the instant case are not correct and they are on the higher side. The rate of shorter term transmission charges for the period of 0000-1700 hrs being full day rate already covers the entire 24 hrs duration, which includes, 2300-2400 hrs period as well, particularly in view of requirement of same transmission capacity during the two periods. The procedure lapse of not mentioning 'Nil' requisition during the intervening period 1700-2300 hrs in the application is minor

in nature and condoned. The short term transmission charges based on this principle, work out the same as those determined by NRLDC originally on 30.3.2005 for 35 MW transaction for the month of April, 2005 and on 25th April, 2005 for transaction of 50 MW for the period May to July, 2005. Therefore, the entire amount charged over and above the original bill need to be refunded by NRLDC to PTC. “

(h) The respondent, however, disagreed with the award made by Member-Secretary, NREB/NRPC and contended that as per clause 35 of the open access regulations, the matter must be referred to the Commission, as unresolved.

(i) NRPC vide its letter dated 1.8.2006 informed the respondent that as per Regulation 35 of the open access regulations, any party not satisfied with the decision of Member-Secretary, could refer the matter to the Commission for a final decision. The respondent, accordingly, took up the matter with the Commission vide its letter dated 9.8.2006.

3. The petitioner has filed the instant petition against the above background.

4. The petitioner contends that the transaction between 0000-1700 hours and 2300-2400 hours was between the same parties and since STOA charges for 0000-1700 hours are for the complete day, STOA charges for 2300-2400 hours get automatically paid. It is urged that any additional charging is tantamount to levy of double charges and in this case these are 1.25 times the short-term day rate. According to the petitioner, the computation made by the

respondent makes electricity costlier and is against National Electricity Policy, which states that open access in transmission should lead to availability of cheaper power. The petitioner further contends that its omission to mention 'NIL' requisition during intervening period 1700-2300 hours, should not lead to such a heavy penalty. The petitioner has suggested that while the revised STOA charges effective from 1.4.2005 may remain the same as earlier, but in no case these should exceed the charges calculated based on the provisions applicable prior to 1.4.2005 and accordingly has sought refund of the excess amount of Rs. 50,91,511/= together with interest.

5. The respondent in its reply has contended that the petitioner has gone into the total number of transaction hours across different time blocks. As per the open access regulations, short-term day rate is basic unit of STOA charges and to give relief for shorter duration transactions, half day and quarter day charges have been allowed for continuous blocks of up to 12 hours and 6 hours respectively. Thus, number of actual hours in a block is not relevant. The respondent has further submitted that the amended open access regulations stipulate that STOA charges are to be levied on a continuous block and not for broken periods. It has been stated that the Commission has not stipulated that STOA charges for a day cannot exceed short-term day rate, which means capping in terms of hours on short-term rate has not been mandated by the open access regulations.

6. The respondent, in support of its stand, has relied on paras 30 and 31 of the Commission's order dated 10.2.2005 which are extracted hereunder:

“Minimum charges applicable for short term customers

30. As per the regulations, the transmission charges payable for short-term customers, shall be for one day and in multiple numbers of whole day. In the draft regulations, it was proposed to apply charges in term of Rs./MW/hour. POWERGRID has explained that it will be extremely onerous and complex task to apply the concept of Rs./MW/hour and nowhere in the world, transmission charges are levied on hourly basis. Most of the stakeholders on the other hand have suggested that the applicable rate should be in terms of Rs./MW/day. They have argued that application of per day rate for part-day transactions makes such transactions costlier and thereby affects viability of such transactions. After taking into account all the factors, the Commission has come to the conclusion that the charges for short-term customers shall continue to be declared in terms of Rs./MW/day.

31. We find merit in the argument for making the transmission charge rate on per hour basis but at the same time we are concerned with the practicability of applying per hour rate in short-term. We would like to take cautious steps in this direction rather than to take a big leap in haste, which may adversely affect most important function of RLDCs, namely system operation. We, therefore, direct that rate of transmission charges for transactions involving power transfer on each day of continuous duration up to 6 hours, 12 hours and 24 hours shall be as below:-

- (a) Up to 6 hours in a day in one block - 1/4th of per day rate,
- (b) More than 6 hours and up to 12 hours in a day in one block - 1/2 of per day rate,
- (c) More than 12 hours and up to 24 hours in a day in one block - per day rate.

These rates are applicable only if there is no congestion. In case of congestion, the floor rate for bidding shall be the full-day rate.”

7. The respondent has also stated that in accordance with clause 4(ix) of the amended open access regulations, the Central Transmission Utility had finalized

a detailed procedure (as per the Commission's letter dated 22.3.2005) for reservation of transmission capacity to STOA customers. Para 5.4 of the detailed procedure, reproduced below, shows its application:

“The duration of reservation in a day/block shall be continuous based on which the short-term transmission charges shall be applicable. For example in the application of reservation for the time period 08:00 hrs to 10:00 hrs and 17:00 hrs to 21:00 hrs of the day, the reservation of the capacity shall be from 08:00 hrs to 10:00 hrs in one block and 17:00 hrs to 21:00 hrs in another block and short term charges shall be payable accordingly.”

8. As regards the interim procedure, the respondent has contended that the detailed procedure in accordance with the amended open access regulations was approved on 22.3.2005, three days after the applications for advance reservation for the transmission capacity for the month of April 2005 were to be received by RLDCs. Accordingly, an interim procedure for the month of April 2005, was issued by the CTU on 23.3.2005, after obtaining approval of the Commission, wherein it was made clear that the payment for the month of April 2005 would be as per the amended open access regulations.

9. The respondent has also submitted that in order to have uniform approach in understanding of the open access regulations and applying them for calculating STOA charges, a few sample cases were prepared and forwarded to the RLDCs for reference. A copy of the same was forwarded to the Commission in July 2005 by the CTU. The methodology and approach similar to that considered in the case of the petitioner was adopted by all RLDCs in calculating

the STOA charges. According to the respondent, more than 10000 transactions for short-term open access were approved by RLDCs since April 2005 and transmission charges were levied on the same basis in all these cases. The respondent has thus concluded that the petitioner, therefore, should have no cause for grievance.

10. The respondent has also brought to the notice that in a similar transaction involving UP Power Corporation Limited, the petitioner had paid about Rs. 70 lakh due to revision of STOA charges. The instant petition has arisen only because PSEB had objected to reimbursement of STOA payment.

11. The respondent has also alleged that NREB/NRPC overlooked its submissions and made the award unilaterally directing to refund the amount claimed by the petitioner. According to the respondent, the above action is not in conformity with the spirit of the Commission's orders.

12. We have gone through the pleadings and heard the parties.

13. The open access regulations as originally notified, prescribed the following charges:

- (a) Non-refundable application fee of Rs 5000/- against each application.

(b) Scheduling charges and system operation charges @ Rs 3000/- (for each RLDC/SLDC involved) for each day or part of the day.

(c) Transmission charges @ Rs per MW/per day irrespective of quantum and duration of MW in each day.

(d) Handling and service charges @ 2% of the billed amount

14. Based on practical experience and the issues raised by the stakeholders, the charges were modified by amending the open access regulations on 21.2.2005, applicable with effect from 1.4.2005. Accordingly the following charges are payable thereafter:

(a) Non-refundable application fee of Rs 5000/- against each application.

(b) Composite operating charges (for scheduling, system operation, revisions etc) @ Rs 3000/- (for RLDC) and Rs 1000/- (for SLDC) for each day of open access transactions.

(c) Transmission charges were reduced from per day basis to block basis in order to make short-term open access charges more economic.

15. It is significant that the above amendment, apart from revising the basis of levy of STAO charges from day basis to block basis, also reduces SDLC charges from Rs. 3000/= per day to Rs. 1000/= per day and removes handling and services charges @ 2% of the billed amount.

16. There cannot be two opinions that application of transmission charges on block basis has made STOA charges more economical because for a transaction of less than 6 hours and 12 hours durations the charges as per amended open access regulations are $\frac{1}{4}$ and $\frac{1}{2}$ of short-term rate against full day short-term rate applicable prior to 1.4.2005. The short-term rate is already $\frac{1}{4}$ of the normal transmission charges for a day. Further, 25% of the charges collected from STOA customer for use of intra-regional transmission system and 12.5% of the charges collected from STOA customer for use of inter-regional transmission system are retained by the transmission utility and remaining part of these charges is adjusted towards the reduction in transmission charges payable by the long-term customers. In effect, 75% or 87.5% of STOA charges collected are returned to the beneficiaries.

17. In the instant case, the petitioner had applied for STOA for two blocks namely 0000 hours to 1700 hours and 2300 hours to 2400 hours on daily basis. In both time blocks, buyer, seller and the volume requisitioned remained same. It is common ground that the petitioner had not mentioned "nil" transaction between

1700 hours to 2300 hours. Based on the information furnished by the petitioner in the application, the respondent calculated STOA charges as per the amended open access regulations. Under the above circumstances, the question that arises for determination is whether the respondent, on its own should have considered "nil" transaction during intervening period. During hearing, the respondent clarified that utilities ask for a variety of STOA reservation for economic consideration and 70-80 transactions are to be finalized by 2300 hours daily. Analysis of each application and modification thereof by the respondent so as to make them more economical to an applicant would result in subjectivity and may lead to more disputes. We also notice that in the present case if the requisitioned capacity in the second time block were 500 MW then consideration of two time blocks as non-continuous period could be more economical to the petitioner. We, therefore, have no hesitation to hold that it is the duty of applicant to fill the application properly and the respondent cannot be entrusted with the responsibility to analyse each application from point of view of the applicant because the primary function of the RLDCs is grid operation.

18. It is also pertinent that the petitioner had applied for STOA on 24.3.2005, after the detailed reservation procedure was issued by the CTU on 23.3.2005. The petitioner was, therefore, expected to be aware of the impact of the amended open access regulations issued on 21.2.2005 and exercise necessary prudence and caution while making the application. The contention that the petitioner could not take care of all aspects because it was a transition period

does not hold because the respondent approved STOA on 30.3.2005 for only April 2005 with a note that the petitioner could apply afresh for May 2005 onwards in view of amended open access regulations. In view of this, the petitioner had sufficient time to further weigh pros and cons of the amended open access regulations and suitably modify its application. But this was not done and the petitioner applied for 50 MW requisition for three months i.e. May to July 2005 again in two time blocks. Therefore, the petitioner is to bear the consequences of its actions.

19. Apart from the absence of legal merit, the petition, if allowed, will also lead to practical difficulties. Allowing the prayer of the petitioner will result in the RLDCs re-examining thousands of STOA transactions and reopening of the settled accounts of STOA charges in all those cases. By now, STOA charges due to the State utilities would have been credited to their account. Collecting these charges would be a herculean task. Besides, although the petitioner contends that it has paid charges for 30 hours, STOA charges would still be only 31.25 % of the normal transmission charges.

20. The Commission had issued the amended open access regulations, effective from 1.4.2005, on 21.2.2005 and asked CTU to put up a detailed procedure for reservation of transmission capacity for short-term customers, for approval. The detailed procedure of CTU was approved by the Commission on 23.3.2005. Para-5.4 of the procedure elaborates the methodology to be applied

for calculation of transmission charges for short-term customers in different blocks in a day. As per this methodology, there cannot be a limit of 24 hours on calculation of transmission charges in a day. Therefore, in light of laid down procedure, the contention of the petitioner regarding levying transmission charges for 30 hours against use of 18 hours has no merit.

21. In the light of the foregoing, we have no doubt that the respondent has calculated the STOA charges in accordance with the laid down procedure. Under these circumstances, we do not find any merit in the present application. The petition is, therefore, dismissed.

Sd/=

(R. KRISHNAMOORTHY)
MEMBER

Sd/=

(BHANU BHUSHAN)
MEMBER

New Delhi dated the 12th October, 2007