

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

No. L-1/44/2010-CERC

Date of Order: 15.6.2011

In the matter of

Approval of Transmission Service Agreement, Revenue Sharing Agreement, Billing, Collection and Disbursement Procedure under Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses), Regulations, 2010.

And

In the matter of

Power Grid Corporation of India Ltd. (PGCIL)

..... Respondent

ORDER

In accordance with the provisions of Chapters 5 and 6 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter "Sharing Regulations"), Power Grid Corporation of India Ltd. (PGCIL) in its capacity as the Central Transmission Utility(CTU) had submitted the draft Transmission Service Agreement, Revenue Sharing Agreement, and Billing, Collection and Disbursement Procedure after taking into consideration the comments received from the stakeholders upto 3.12.2010 vide its letter No. C/01/Tr.Sh dated 31.12.2010. The Commission had accorded approval to these documents vide Order dated 29.04.2011.

2. CTU in its letter dated 1.6.2011 has brought out certain inconsistencies and inadvertent omissions in the Transmission Service Agreement and has sought approval for incorporation of following provisions:

(a) New Clause 3.5 for validity of the TSA

“3.5 This agreement shall deemed to have come into force w.e.f. the date(s) as mentioned at Article 3.1, 3.2 and 3.3. above and shall, without prejudice to the provisions under Article 16, remain operative till the same is renewed/replaced/modified.”

(b) New clause 20 for Indemnification

“20. Indemnification

20.1 Indemnification by the DICs and ISTS Licensees

20.1.1 The DICs and ISTS Licensees agree to indemnify and hold the CTU harmless from and against any and all damages, losses, liabilities, obligations, claims of any kind including any tax liability, interest, cost, fee, or expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Losses"), suffered, incurred or paid, directly, as a result of, in connection with or arising out of exercise of CTU's obligations of billing and collection of transmission charges on behalf of ISTS Licensees pursuant to and in accordance with this Agreement.”

“20.2 Indemnity to Survive Termination

20.2.1 The obligations of the DICs and ISTS Licensees under Clause 20.0 shall survive the termination of this Agreement.”

3. Since these provisions are considered necessary to enable the CTU to discharge the billing, collection and disbursement on behalf of other transmission licensees, we approve incorporation of the above provisions in the Transmission Service Agreement.

4. CTU has further intimated that there is an apparent inconsistency between clause no. 16.4.4 and clause 17.3 on the issue of substitution rights of lenders of DICs. It has been explained that para 17.3 is for substitution rights of lenders of ISTS Licensees only, and not for DICs and the following portion of 16.4.4 which is not relevant needs to be deleted:

“Unless the Lenders of the concerned ISTS Licensee have exercised their rights of substitution as per the provisions of Article 17.3 of this Agreement and the Commission has agreed to such substitution rights of the Lenders or otherwise directed by the Commission.”

5. We find merit in the contention of CTU and accordingly approve the deletion of the above quoted provision.

6. Para 7.3 (b) of the Billing, Collection and Distribution (BCD) Procedure provides as under:

“For STOA, DIC shall have to pay applicable transmission charges to the RLDC/NLDC at the time of application. The payment made for the STOA charges for varying quantum and varying duration with respect to (i) bilateral transactions to the region of LTA granted and (ii) all collective transactions, shall be credited to that DIC in the next month billing subject to the upper limit of the amount paid as LTA charges after accounting for the MTOA charges, if any, as per 7.2 (b) above.”

7. It is observed that under clause 7.3 (b) of BCD Procedure, the transmission charges for collective transactions have been inadvertently included along with charges for short term open access and medium-term open access transactions for offsetting against the POC charges payable by a generator for long term access granted to it for a target region without identified beneficiaries, whereas the Commission in its order dated 4.4.2011, (regarding removal of difficulty) has allowed offsetting of transmission charges only for short term and medium term open access transactions against the POC charges for long term transactions. The rationale behind our decision is that it is difficult to identify the regions in case of collective transactions and, therefore, transmission charges for collective transactions should not be offset against the POC charges payable by a generator for long term access to a target region without identified beneficiaries. Accordingly, para 7.3(b) of the BCD Procedure shall be modified as under:

“For STOA, DIC shall have to pay applicable transmission charges to the RLDC/NLDC at the time of application. The payment made for the STOA charges for the quantum with respect to bilateral transactions upto the LTA for the specific Region of LTA granted without identified beneficiaries,, shall be credited to that DIC in the next month billing after accounting for the MTOA charges, if any, as per 7.2 (b) above.

Provided that the STOA is in the direction of the targeted regions mentioned in the LTA granted to the DIC by the CTU. If the STOA is other than the targeted regions mentioned in the LTA, then such STOA, PoC charges shall not be adjusted against the LTA granted by the CTU and a separate applicable PoC charges shall have to be paid by the DIC.

Provided that this adjustment shall not be done for bilateral transactions done through portfolio trader.”

8. Punjab State Transmission Corporation Ltd. (PSTCL) vide its letter dated 6.6.2011 addressed to Power Grid Corporation of India Ltd., with copy to the Commission has submitted that Punjab State Power Corporation Ltd. (PSPCL) being in-charge of generation and distribution, is responsible for any over-drawl and under-drawl in the State of Punjab and has also been paying UI charges for deviation of drawl with respect to the schedule. PSPCL is responsible for intimation of Deviations for Bill No. 4 from the transmission schedule and not PSTCL. Therefore, PSTCL has requested for reconsideration and further clarification in the matter so that Bill No. 4 for deviation is raised to PSPCL instead of PSTCL.

9. We are in agreement with the views of PSTCL. We direct that the State Body responsible for intimation of deviation would continue to be the body which has been performing the function of intimation of deviation due to UI, whether it is STU or any other body.

10. SJVN Limited in its letter dated 7.6.2011 addressed to Power Grid Corporation of India Ltd., with copy to the Commission has submitted that as per the Sharing Regulations, ARR of ISTS Service Providers covered under the regulations are envisaged to be fully and exactly recovered in the first bill and the charges collected through deviation bill are over and above the recovery of ARR. This should be distributed to all DICs. It has been suggested that para 4.2.4(d) of BCD Procedure should be deleted. Paras 4.2.4(d) and (e) are extracted as under:

“4.2.4 (d) This common disbursement fund (CF4) shall then be disbursed to the ISTS Licensees in proportion to their respective Monthly Transmission Charges.

4.2.4 (e) The charges collected towards Deviation Bill shall be reimbursed to paying DICs of First Bill (for the respective applicable month) by the next 30 days of receipt of such payments in the ratio of amount of First Bill in the corresponding month.”

11. It is observed that para 4.2.4(e) already provides for distribution to all the DICs and there is no need for the amounts collected in the deviation account to be disbursed to ISTS licensees and then trued up later, in the next year. The above quoted clause has inadvertently crept in the BCD Procedure. The issue has been settled in our order dated 2.6.2011. The relevant para of the said order is reproduced below:

“It is seen from the above that Bills Nos. 2 and 4 are additional revenue streams, which would depend on the amount of additional medium term open access obtained and excess drawals of power as compared to the schedule respectively by the DICs. CTU’s contention is that since the amounts obtained through Bill Nos. 2 and 4 are unpredictable, it may not be possible to earn a predictable rate of interest or predictable revenue, and therefore no interest should be payable. We are of the view that interest will accrue on the money lying with the CTU till the time of truing up. Since the Regulations do not provide for payment with interest at a fixed rate whatever interest is earned on the money collected through Part 2 and 4 of the Bill shall be adjusted in the next year’s transmission charges. We are also of the view that truing up exercise should be carried out on monthly basis as the beneficiaries of the extra money would by and large remain the same compared to the truing up carried out after one year when the composition of DICs may undergo slight change. Accordingly, we direct that instead of adjustment of the amount collected through Bill Part 2 & 4 in the next Yearly Transmission Charges, it shall be reimbursed to DICs in the following month, in proportion to monthly billing of respective months.”

12. In view of the above, Clause 4.2.4(d) shall be deleted from BCD Procedure.

13. We direct the CTU to carry out the above modifications in the TSA and BCD procedure accordingly. The CTU is further directed to give wide publicity to the modified documents on their website and take necessary action for getting the Transmission Service Agreement and Revenue Sharing Agreement signed by the concerned parties at the earliest.

Sd/-
(M.DEENA DAYALAN)
MEMBER

sd/-
(V.S.VERMA)
MEMBER

sd/-
(S.JAYARAMAN)
MEMBER

sd/-
(Dr. PRAMOD DEO)
CHAIRPERSON