

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Miscellaneous Petition No. 126 (MP)/2011

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

Date of Hearing: 21.7.2011

Date of Order: 28.11.2011

In the matter of:

Petition for Short Term Open Access/ Transmission Charges of Uttar Pradesh payable by the Petitioner for utilizing the transmission network of the State of Uttar Pradesh while availing inter-state Short Term Open Access through Bilateral Transactions

And

In the matter of:

M/s NOIDA Power Company Ltd. Noida

.....**Petitioner**

Vs

1. Uttar Pradesh Power Transmission Corporation Ltd., Lucknow
2. Chief Engineer (Power System), Uttar Pradesh Power Transmission Corporation Ltd., Lucknow
3. Chief Engineer (Operations), Uttar Pradesh Power Transmission Corporation Ltd., Lucknow
4. Uttar Pradesh Power Corporation Ltd., Lucknow
5. Northern Regional Load Despatch Centre (NRLDC) New Delhi

... **Respondents**

The following were present:

1. Shri Vishal Gupta, Advocate, Petitioner
2. Shri Ganesh, NPC
3. Shri Rahul Srivastava, Advocate, UPPCL
4. Shri Sunil Kr Jain, UPPCL
5. Shri H.K. Chawla, Respondents



ORDER

The petitioner, who is a deemed distribution licensee under the Electricity Act, 2003 (hereinafter referred to as “the Act”) has filed this petition under Section 79(1)(c) of the Act seeking a direction to Northern Regional Load Despatch Centre(NRLDC) i.e. Respondent No. 5 herein, to charge the short term open access/transmission charge for Uttar Pradesh @ ₹ 50/mWh instead of ₹ 80/mWh from the petitioner for all inter-State open access bilateral transaction and to levy such charges strictly in accordance with the tariff order passed by the Uttar Pradesh State Electricity Regulatory Commission (UPERC). The petitioner has also sought the following reliefs:

- (a) Pass appropriate orders directing Respondents No, 1,2,3 and 4 to correctly intimate the applicable rate of Short Term Open Access/Transmission Charge for Uttar Pradesh i.e. ₹ 50/MWh to Respondent No. 5

- (b) Pass appropriate orders directing the Respondents to refund the excess amount to the tune of ₹ 2,27,97,768/- (Rupees two crores, twenty seven lakh ninety seven thousand, seven hundred and sixty eight only) which has been arbitrarily and unlawfully charged by Respondent No. 5 since 1.10.2009 till 30.4.2011 along with interest @ 18% per annum.

- (c) Impose exemplary fine on the Respondent for the high handed and deliberate action in blatant violation of law;



(d) Pass appropriate Orders directing the Respondents to pay costs of the petition to the petitioner;

2. Briefly, the facts of the case is that the petitioner is a deemed distribution licensee under the Act, distributing electricity in the Greater Noida area of the State of Uttar Pradesh since 15.12.1993. The petitioner has alleged that, Respondent No. 5, viz. Northern Regional Load Despatch Centre (NRLDC) has been wrongly charging the Short Term Open Access (hereinafter referred to as "STOA") charges at the rate of ₹ 80/MWh since 1.10.2009 from the petitioner for utilizing the transmission network of State of Uttar Pradesh, while availing inter-State STOA through Bilateral Transactions, against ₹ 50/MWh approved by the Hon'ble Uttar Pradesh Electricity Regulatory Commission (hereinafter referred to as "the State Commission"). It has been alleged that, in response to a query by the petitioner, NRLDC mentioned that STOA rate of ₹ 80/MWh for Uttar Pradesh was conveyed by the Respondent No. 4, (UPPCL) vide their letter dated 30.9.2009. Accordingly, they are charging this STOA charges w.e.f. 1.10.2009.

3. The petitioner has placed reliance on the following provision regarding payment of transmission charges as given in Regulation 16 of the Central Electricity Regulatory Commission (Open Access in inter-State transmission) Regulations, 2008 (hereinafter referred to as "the 2008 regulations"):

16. Transmission Charges:

(1) *In case of bilateral transactions, the transmission charges at the rate specified here under shall be payable by the short-term customer for the energy approved for transmission at the point or points of injection:*

<i>Type of Transaction</i>	<i>Transmission charges (Total) (Rs./MWh)</i>
<i>(a) Bilateral, intra-regional</i>	<i>80</i>
<i>(b) Bilateral, between adjacent regions</i>	<i>160</i>
<i>(c) Bilateral, wheeling through one or more intervening regions</i>	<i>240</i>

(2) *In case of the collective transactions, transmission charges at the rate of Rs. 100/MWh for energy approved for transmission separately for each point of injection and for each point of drawal, shall be payable.*

(3) *The intra-State entities shall pay the transmission charges for use of the State network as fixed by the respective State Commission in addition to the charges specified under clauses (1) and (2):*

Provided that in case the State Commission has not determined the transmission charges, the charges for use of respective State network shall be payable at the rate of Rs.80/MWh for the electricity transmitted:

Provided further that non-fixation of the transmission charges by the State Commission for use of the State network shall not be a ground for refusal of short – term open access:

Provided also that the transmission charges payable for use of the State network shall be conveyed to the Regional Load Despatch Centre concerned who shall display these rates on its web site:

Provided also that the transmission charges payable for use of the State network shall not be revised retrospectively.

4. Facts leading to the present petition as submitted by the petitioner are as under:

(a) Uttar Pradesh State Electricity Regulatory Commission (hereinafter referred to as “the State Commission”) vide its tariff order dated 15.4.2008 in Petitions No. 482 to 486 and 504 to 508 of 2007 determined open access charges / transmission charges of ₹ 50/MWh, for using the transmission network

of the State of Uttar Pradesh for the financial year 2008-09. These charges were made applicable till the issuance of the next tariff order. Accordingly, the rate of ₹ 50/MWh as short-term open access / transmission charges of Uttar Pradesh was applicable till the issuance of next tariff order by the State Commission.

(b) Against the above, STOA / Transmission Charges of Uttar Pradesh was increased by Respondent No. 5 , NRLDC from ₹ 50/MWh to ₹ 80/MWh w.e.f. October, 2009, without any prior notification. The petitioner sought clarification from Respondent No. 5 on the matter in response to which the petitioner was advised that the issue be enquired from the respondent No.1, 2 and 3.

(c) In the mean time the State Commission passed the Tariff Order dated 31.3.2010 for the financial year 2009-10, in which STOA Charge was kept unchanged. In this order also, there was provision that this tariff order would be effective till the issuance of next tariff order by the State Commission.

(d) The petitioner requested Respondent No.2 vide its letter dated 7.4.2010 to intimate Respondent No. 5 to charge ₹ 50/MWh instead of ₹ 80/MWh as STOA Charge of Uttar Pradesh in view of the latest Tariff Order dated 31.3.2010. Since no response was received by the petitioner, it requested Respondent No.5 to levy STOA Charges in accordance with the State Commission's Order. In response to this letter, Respondent No. 5 informed the petitioner that the STOA Charge of Uttar Pradesh at the rate of ₹ 80/MWh was conveyed by Respondent

No. 4 vide their letter dated 30.09.2009 and accordingly, the rate of ₹ 80/MWh was implemented w.e.f. 1.10. 2010.

5. The petitioner has also pointed out that Respondents No. 1,2,3 and 4 themselves have charged the STOA Charge of Utter Pradesh at a rate of ₹ 50/MWh for all Intra-State Open Access transactions. According to the petitioner, the third proviso to Regulation 16 (3) read with Regulation 27 (f) of the 2008 regulations, casts a duty on the concerned State utility to inform the applicable transmission charges, payable by the STOA customers for utilizing the transmission network of the State , to the Regional Load Despatch Centre. Thus, Respondents No. 1, 2, 3 and 4 are under obligation to inform correct STOA Charges for Utter Pradesh to Respondent No. 5. By intimating the wrong STOA charges to Respondent No. 5, despite repeated requests and reminders by the petitioner, Respondents No. 1, 2, 3&4 have failed in discharging their statutory obligations. Consequently, the petitioner was forced to pay excess amount to the tune of ₹ 2, 27, 97,768/- (Rupees Two crore twenty seven lakh ninety seven thousand seven hundred and sixty eight) during 1.10.2009 to 30.4.2011 by applying the enhanced rate of ₹ 80/MWh instead of ₹ 50/MWh as STOA transmission charges for utilizing State network of Uttar Pradesh, for all STOA transactions on or after 1.10.2009, which is contrary to the 2008 regulations.

6. The petitioner has also submitted that Respondent No. 5 has wrongly and arbitrarily charged the excess STOA charges despite the fact that petitioner intimated the correct rate as determined by the State Commission. The petitioner claims that

through the above act, the respondent has contravened Regulation 16(3) of the 2008 regulations.

7. In response, Respondent No.5, vide affidavit dated 22.6.2011 has submitted that it has acted in accordance with Regulation 16 (3) of the 2008 regulations and implemented the rate of ₹ 80/ MWh as conveyed by Respondent No. 4 (UPPCL) vide letter dated 30.9.2009. Refuting the allegation of malafide and a deliberate attempt to gain unlawfully, Respondent No. 5 has pointed out that since it is collecting the STOA charges and disbursing the same to the concerned States in compliance with the 2008 regulations it gains nothing out of the STOA charges. It was also submitted that vide letter dated 16.5.2011, UPPCL intimated them that the State Commission had not issued tariff orders for transmission charges for 2010-11 and 2011-12 therefore, the transmission charges should be as per the 2008 regulations i.e. ₹ 80/MWh.

8. On behalf of Respondents No. 1 and 3, Chief Engineer (Operations), UPPTCL has submitted reply vide affidavit dated 4.7.2011. The following submissions have inter-alia been made:

a) For the financial year 2009-10, the State Commission vide tariff order dated 31.3.2010 has specified that STOA / transmission charges remain the same as approved in the previous tariff order dated 15.4.2008 i.e. ₹ 0.05/KWh which comes out ₹ 50/MWh, However, the said tariff order was passed on the last date of the financial year 2009-10 i.e. 31.3.2010 and prior to it, there was no charges fixed by the State Commission for the financial year 2009-10. Though in

the previous tariff order dated 15.4.2008 for the financial year 2008-09 State Commission has clarified that the revised rate shall continue to be in force till issuance of the next tariff order, said arrangement was interim/provisional and for financial year 2009-10 State Commission has not determined the transmission charges prior to 31.3.2010. Thus, proviso of the Regulation 16 (3) of the 2008 regulations, was applicable which provides that if State Commission has not determined the transmission charges, the charges for use of the respective State network shall be ₹ 80/MWh.

b) As the State Commission has determined the transmission charges on the last date of financial year 2009-10 i.e. 31.3.2010 as per the last proviso of Regulation 16 (3) of the 2008 Regulations, which says that the Transmission charges payable for the use of State network shall not be revised retrospectively, these charges were inoperative for the period prior to 31.03.2010.

c) For financial year 2010-11 and 2011-12, the State Commission has not issued any tariff order for the determination of STOA Transmission Charges. Hence, the first proviso of Regulation 16(3) of Open Access Regulations, 2008 is applicable and the transmission charges for the use of State network shall be payable at the rate of ₹ 80/MWh for the electricity transmitted.

d) The State Commission issued UPERC (Terms and Conditions for Open Access) (First Amendment) Regulations, 2009 of which Regulation 14.18 says that "An application involving inter-State transaction including Power Exchange

Transaction shall be governed by the Regulations issued by the CERC". Thus, in the matter of inter-State transactions the provision of the 2008 regulations will be final and binding.

e) The answering respondent has rightly conveyed STOA transmission charges at the rate of ₹ 80/MWh which is in conformity with the 2008 regulations.

f) The petitioner has failed in providing SCADA data maintained at the SLDC for control and monitoring of the power drawn by it.

g) Petitioner has never participated in scheduling of 45 MW power purchasing from UPPCL as required by the State Commission order.

9. The petitioner has filed rejoinder dated 8.7.2011 to the reply of Respondent No.5, wherein it has submitted that in spite of intimation to Respondent No.5, by the petitioner about the approved tariff order dated 15.4.2008 and 31.3.2010 passed by the State Commission, prescribing the transmission charges @ ₹ 50/MWh, it gave credence to the false information provided by Respondent No.4. Thus, Respondent No.5 deliberately chose to ignore the tariff orders dated 15.4.2008 and 31.3.2010 passed by the State Commission, despite being brought to its notice.

10. In response to reply filed on behalf of Respondents 1 and 3, the petitioner submitted its rejoinder dated 18.7.2011. It is mentioned that Respondent No. 1 and 3 while admitting that they have given the information to Respondent No. 5 to charge

₹ 80/MWh, have given a skewed interpretation to the tariff orders dated 15.4.2008 and 31.3.2010 of the State Commission as well as Regulation 16 of the CERC Open Access Regulations, 2008.

11. Regarding the statement by respondents No. 1 and 3 that the order dated 15.4.2008 providing to keep the charges determined in the said tariff order in force till the next tariff order was an interim or provisional arrangement, the petitioner has submitted that this defense is completely misconceived as it was the duty of the respondents to comply with the directions of the State Commission, even if it is in the nature of interim or provisional arrangement.

12. As regards the contention of Respondents No. 1 and 3 that the tariff order was passed on the last day of the financial year, the petitioner has submitted that this contention has no relevance as the transmission charges in the said order were not revised and were kept the same as were fixed vide order dated 15.4.2008 for the financial year 2008-09. Therefore, there is no scope for applicability of last proviso of Regulation 16 (3) of the 2008 regulations.

13. Regarding the transmission charges for the financial year 2010-11 and 2011-12, it has been urged that Respondents No. 1 and 3 have deliberately chosen to suppress the part of the tariff order dated 31.3.2010 where the State Commission in the opening para at page VI and in para 12.1 thereof has directed that the tariff notified would continue till the issuance of next tariff order. Thus, Respondents No. 1 and 3 are still

deliberately continuing to take a stand contrary to the specific and clear directions in the subject tariff orders.

14. Regarding the issues of scheduling and communication facilities raised by Respondents No. 1 and 3, the petitioner has contended that these are irrelevant being not germane to the issues raised in the present petition.

15. The petitioner has made a written submission on 2.8.2011, in which it has reiterated its earlier argument that in accordance with direction by the State Commission for continuance of tariff till next tariff order, there was State Commission order regarding STOA Charges for the financial year 2009-10 as the tariff order dated 15.4.2008 for the financial year 2008-09 was applicable till the issuance of next tariff order dated 31.3.2010. Similarly, there is order of State Commission for STOA charges for the financial year 2010-11 and 2011-12 in accordance with the direction by the State Commission in its order dated 31.3.2010 that tariff notified vide this order shall continue to be in force till the issuance of the next tariff order.

16. Having heard the representatives of the parties and examined the material on record, we proceed to dispose of the matter.

17. We observe that the State Commission in para 12.2 of its tariff order dated 15.4.2008, for the financial year 2008-09, had clearly directed that “the revised rates shall continue to be in force till issuance of the next tariff order”.

18. The State Commission in the opening para of its order dated 31.3.2010 has directed that tariff thus notified shall, unless amended or revoked, continue to be in force till issuance of the next Tariff Order”. Further in para 12.1 of this order the State Commission directed that “the tariffs so published shall become the notified tariffs applicable in the areas of supply and shall come into force with effect from 15th April, 2010, and shall, unless amended or revoked, continue to be in force till issuance of the next Tariff Order.”

19. In view of above, it is evident that there was a tariff order of the State Commission regarding STOA Charges in the State of Uttar Pradesh for the period 2008-2009 as well as for the subsequent period. Thus, the statement of Respondents No. 1 and 3 that there was only a provisional order during the financial year 2009-10 is not correct. .

20. The contention of respondents No. 1 and 3 that the State Commission order was passed on the last date of financial year 2009-10 and hence there was no order for the period 2009-10, is not correct. Since as per order dated 15.4.2008 the STOA Transmission Charges were specified by the State Commission which were applicable till the issuance of the next tariff order i.e. 31.3.2010, there is no reason for applying the first proviso of Regulation 16(3) of the 2008 regulations and apply transmission charges @ ₹ 80/MWh. Similarly there is no justification for applying the last proviso regarding non-revision of transmission charges retrospectively.

21. On the basis of submissions by the petitioner and the respondents and the documents placed on record, it is established that the rates for STOA Transmission Charges for Uttar Pradesh were specified by the State Commission, and the same rates i.e. ₹ 50/MWh should have been made applicable instead of the rate specified in the 2008 regulations i.e. ₹ 80/MWh, which was to be applicable only if, the State Commission had not specified the rates which is not the case here.

22. The responsibility of STU regarding conveyance of STOA Transmission Charges for the use of State network to the RLDCs is clearly mentioned in the detailed procedure under the 2008 regulations. The relevant para is as under:

13.1.4. The transmission charges for the use of the State network shall be in Rs./MWh, as determined by the respective State Commission and the same shall be intimated to RLDCs by concerned STU. Provided that in case the State Commission has not determined the Transmission charges, the charges for use of the respective State network shall be payable at the rate of ` 80/MWh for the energy approved.

23. From the above extracted provision, it is clear that respondent No. 4 has obligation to convey correctly the transmission charges for the use of the State network specified by the State Commission to Respondent No. 5. We notice that respondent No. 4 has failed to fulfill this statutory obligation. It is observed that the STOA Charges conveyed by Respondent No. 4 were not correct, leading to Respondent No. 5 implementing the STOA charges of the State @ ₹ 80/MWh. Thus due to the action of Respondent No. 4, the petitioner had to bear higher transmission charges i.e. ₹ 80/MWh instead of that specified by the State Commission i.e. ₹ 50/MWh. Since Respondent No. 5 has implemented the rates communicated to it by Respondent No. 4, it has acted in accordance with the 2008 regulations.

24. Accordingly we hold Respondent No.4 responsible for conveying wrong information to Respondent No, 5 and direct it to convey the correct STOA Transmission Charges to Respondent No. 5, in accordance with Regulation 16(3) of the 2008 regulations failing which it will be liable for action for non-compliance of these Regulations.

25. Respondent No. 5 is directed to implement the rates specified by the State Commission i.e. ₹ 50/MWh for the period 2009-10 and for the subsequent period till the rates are revised by the State Commission.

26. Respondents 1 to 4 are directed to refund the excess amount charged from the petitioner on account of application of incorrect STOA Charges for Uttar Pradesh @ ₹ 80/MWh w.e.f. 1.10. 2009.

27. Regarding the issues of lack of metering infrastructure and scheduling etc. raised by the respondent UPPTCL, it is observed that these issues are not relevant for the instant case and Respondents 1 &3 may take suitable recourse under the law for any non-compliance of the regulations by the petitioner.

28. Miscellaneous Petition is disposed of in terms of the above.

Sd/-
(M.Deena Dayalan)
Member

Sd/-
(V.S.Verma)
Member

Sd/-
(S.Jayaraman)
Member

Sd/-
(Dr. Pramod Deo)
Chairperson

