

**Central Electricity Regulatory Commission
New Delhi**

Petition No.: 1/MP/2012

Coram:

**Dr. Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri M. Deena Dayalan, Member**

Date of Hearing: 14.8.2012

Date of Order: 19.11.2012

In the matter of

Levy of UI charges in violation of Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2009 and back-up supply charges under the Karnataka Electricity Regulatory Commission (Open Access) Regulations, 2004 for an inter-State open access transaction.

And in the matter of

Sadashiva Sugars Ltd. Bangalore

Petitioner

Vs

State Load Despatch Centre, Karnataka, Bangalore

Respondent

Present

Shri G.Joshi, Advocate for Sadashiva Sugars Ltd
Shri Ananathanrayana, Advocate for Sadashiva Sugars Ltd
Shri Anand K.Ganesan, Advocate, for SLDC, Karnataka

ORDER

In this petition, the petitioner has made the following prayers, namely:

“A. Declare that charges levied under

(a) Bill No. OA/UI/SLDC/1116 dated 08th August, 2011 for the period from 01st November 2010 to 28th February, 2011, produced herein and marked as ANNEXURE P-1;

(b) Bill No. OA/UI/SLDC/1420 dated 15th September, 2011 for the period from 01st March, 2011 to 31st March, 2011, produced herein and marked as ANNEXURE P-2;

(c) Bill No. OA/UI/SLDC/2320-21 dated 05th November, 2011 for the period from 01st April, 2011 to 26th April, 2011, produced herein and marked as ANNEXURE P-3;

are illegal, capricious and opposed to the Central Electricity Regulatory Commission (Open Access in Inter State Transmission) Regulations, 2008 and Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009, and consequently

- B. issue order/s direction setting aside the Bills at Annexure P-1, Annexure P-2 and Annexure P-3;
- C. direct the Respondent to refund a sum of ` 1,14,25,463/- (One Crore Fourteen Lakh Twenty Five Thousand Four Hundred and Sixty Three Only), paid by the Petitioner towards the illegal charges levied by the Respondent;
- D. direct the Respondent to refund the excess UI Charges collected from the Petitioner, in violation of Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009, along with an interest rate of one percent (1%) per month, from the date when collected from the Petitioner, up to the date of refunded, in full; and
- E. direct the Respondent to pay the cost of this Petition; and pass any other order/s to meet the ends of justice.”

Facts

2. The petitioner owns and operates a 15.5 MW cogeneration power plant at Nainegalli Village in Bagalkot District in the State of Karnataka and is connected to the State Grid. Tata Power Trading Company Limited executed the Power Purchase Agreement dated 3.3.2008 with the petitioner. The power generated used to be exported outside the State of Karnataka by availing inter-State open access under the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission)

Regulations, 2008 (Central Open Access Regulations) on payment of fees specified thereunder.

Grievances

3. The petitioner has stated that the respondents raised the following bills (the impugned bills), namely:

- (i) Bill No. OA/UI/SLDC/1116 dated 8.8.2011 for the period from 1.11.2010 to 28.2.2011 for ₹ 1,14,25,463/-,
- (ii) Bill No. OA/UI/SLDC/1420 dated 5.9.2011 for the period from 1.3.2011 to 31.3.2011 for ₹ 89,73,139/-, and
- (iii) Bill No. OA/UI/SLDC/2320-21 dated 15.11.2011 for the period from 1.4.2011 to 26.4.2011 for ₹ 25,33,538/-.

4. The petitioner has stated that on receipt of the bills it found that the charges levied under these bills were not in accordance with the Central Open Access Regulations. Accordingly, the petitioner claims to have approached the respondent for the withdrawal of the bills. However, the petitioner has claimed, the respondent threatened to not grant open access in case the bills were not paid. The petitioner has stated that on 31.10.2011 it paid a sum of ₹1,14,25,463/- (Rupees one crore fourteen lakh twenty five thousand four hundred and sixty three only) under protest.

5. The petitioner has stated that it was billed for the Unscheduled Interchanges (UI) Charges, Backup Power Supply Charges (BPS Charges) and interest on the UI Charges. As per the petitioner, the respondent billed the UI Charges at the prevailing UI

rates but whenever it became entitled to receive UI Charges these were paid at the rate of ₹2.80/kWh. The petitioner has alleged that the respondent has not provided any supporting details, such as meter readings, corresponding frequency, UI Price Vector for the period corresponding to the drawl or injections. The petitioner has alleged that the actions of the respondent are in gross violation of the Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 (UI Charges Regulations). The petitioner has further alleged that the BPS Charges were billed by the respondent in accordance with the Karnataka Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulations, 2004, as amended, (Karnataka Open Access Regulations), as admitted by the respondent in response to a petition (No 44/2011) filed by Falcon Tyres Limited before the Karnataka State Commission. The petitioner has averred that the respondent was not entitled to collect the BPS Charges as it did not supply the backup power and could not do so because such supply amounts to trading in electricity which the respondent cannot undertake in view of Section 31 of the Electricity Act. According to the petitioner, no interest is payable, even if the UI Charges are payable as billed, since there was no delay on its part to make payments of UI Charges; these were not billed in time and that the delay in billing was on the part of the respondent itself. The petitioner has approached this Commission against the above backdrop.

Reply

6. The reply on behalf of the respondent has been filed by Karnataka Power Transmission Corporation Ltd, which operates the respondent even though, the respondent as a statutory body, was expected to file the reply. The reply filed has been

taken on record as the respondent's reply. The respondent has raised a preliminary objection as to the maintainability of the petition. According to the respondent, the petitioner is an intra-State entity, being subject to the scheduling, dispatch and other coordination activities of the respondent and as such the dispute raised falls within the jurisdiction of the Karnataka State Commission. Accordingly, it has been urged that the present petition is liable to be dismissed on the ground that this Commission does not have the jurisdiction to deal with the issues raised.

7. On merits, the respondent has submitted that for the deviation in the generation schedule, the UI Charges are payable/receivable in terms of the regulations of this Commission read with the regulations of the Karnataka State Commission. It has been stated that the UI Charges levied by the respondent are frequency linked and are based on deviation from schedule. The UI Charges collected form part of the State UI pool which in their entirety, and without the respondent retaining any part of it, are disbursed among the various entities in the State of Karnataka. The respondent has urged that the petitioner cannot be permitted to make any grievance in regard to the UI Charges billed for under-generation of electricity. The respondent has urged that the petitioner as an intra-State entity is not governed by the regulations framed by this Commission. The respondent has further submitted that along with the bills, the petitioner was supplied with the details of day-wise, block-wise scheduled energy and actual energy injected with respect to average frequency in a time block along with the rates applicable. In addition, according to the respondent, the petitioner is liable to pay charges for use of intra-State systems of the distribution/transmission licensee which are incidental to the inter-State transmission of electricity when the generating company avails of the open access in accordance with the regulations notified by the Karnataka State Commission.

The respondent has submitted that the BPS Charges are payable by the generating company drawing electricity in terms of the Karnataka Open Access Regulations. The respondent has clarified that the BPS Charges are levied on the petitioner for consumption of electricity by drawing electricity from Grid for startup and other purposes when the generating station of the petitioner is under outage. The respondent has contended that for the electricity drawn by a generating company, including the petitioner and also other similarly placed consumers, the charges as prescribed by the Karnataka State Commission are payable. The respondent has stated that the petitioner is being treated as HT Industrial consumer and is connected with 110 kV transmission line and is charged accordingly. The respondent has claimed that it is following a uniform methodology for payment/collection of UI Charges as well as levy of BPS Charges on the petitioner and other similarly placed consumers in the State. It is further stated that the interest has been charged at the rates specified by this Commission, namely, 0.4% per day of default beyond 12 days of the issue of the UI bills. The respondent has argued that it has been levying the charges consistently since June 2008 when the petitioner started availing open access, but no complaint whatsoever was raised by the petitioner at any point of time. The respondent has clarified that it does not engage in the business supply of electricity but merely collects charges on behalf of the distribution licensees in the State and are accounted for accordingly.

Analysis and Decisions

8. We first consider the preliminary issue of jurisdiction. According to the respondent, the petitioner is an intra-State entity. The respondent has submitted that the charges are billed in accordance with the regulations of the Karnataka State Commission. Therefore, the dispute raised by the petitioner falls within the jurisdiction of

the Karnataka State Commission. The petitioner has countered the respondent by urging that as all inter-State open access transactions are governed by the Central Open Access Regulations, this Commission, and not the Karnataka State Commission, has the jurisdiction to entertain the petition. It has been stated that merely because the respondent has charged as per the regulations of the Karnataka State Commission, the jurisdiction of this Commission is not ousted. We have given our due consideration to the preliminary objection raised on behalf of the respondent. It is an admitted fact that the power generated by the petitioner was conveyed outside the State through Tata Power Trading Company Ltd, an inter-state electricity trader, by availing open access on the inter-State transmission system under the Central Open Access Regulations. The respondent has admitted that it had billed the petitioner under the regulations of this Commission read with the regulations framed by the Karnataka State Commission. The relevant extract from the reply is placed below:

“6. It is stated that the charges levied by the Respondent are strictly in terms of the law and as approved by the Hon’ble Commission in its Regulations and also as approved by the Karnataka Commission from time to time.....”

9. It is not in dispute that the power generated at the petitioner’s generating station is conveyed outside the State through inter-State transmission system under the Central Open Access Regulations. It is therefore axiomatic to say that adjudication of any dispute involving the inter-State open access is governed by the provisions of these regulations. The petitioner’s allegation is that while raising bills the respondent has disregarded the regulations of this Commission. Considering the nature of the allegation and the dispute raised, only this Commission has the jurisdiction and authority to adjudicate. Therefore, the preliminary objection is not sustainable and is hereby rejected.

10. In the first instance it is considered appropriate to take note of the relevant provisions of the Central Open Access Regulations. Regulation 16 of the Central Open Access Regulations lays down the transmission charges payable by a short-term open access customer availing the inter-State open access, and is extracted hereunder:

“Transmission Charges

16. (1) In case of bilateral transactions, the transmission charges at the rate specified hereunder 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.”

11. Clause (1) of Regulation 16 specifies the rates of the transmission charges payable by short-term open access customer in the case of bilateral transactions,

whereas clause (2) specifies the rate of transmission charges for collective transactions. Clause (3) of Regulation 16 regulates payment of the transmission charges payable by an intra-State entity availing the inter-State open access for use of the State network in the course of inter-State open access. Under clause (3), in addition to the charges fixed under clause (1) or clause (2), as the case may be, an intra-State entity is mandated to pay the transmission charges fixed by the State Commission and where the State Commission has not fixed the transmission charges for use of the State network such intra-State entity is to pay the transmission charges at the rate of ₹80/MWh of the electricity transmitted. Clause (6) of Regulation 20, extracted hereunder, prohibits collection of any charges other than those specified in the Central Open Access Regulations from the short-term open access customer:

“(6) No charges, other than those specified under these regulations shall be payable by any person granted short-term open access under these regulations.”

12. The other provision considered relevant for the purpose is clause (5) of Regulation 20 of the Central Open Access Regulations which specifies the UI rates applicable in the case of an intra-State entity participating in inter-State open access reads as under:

“(5) Unless specified otherwise by the concerned State Commission, UI rate for intra-State entity shall be 105% (for over-drawals or under generation) and 95% (for under-drawals or over generation) of UI rate at the periphery of regional entity.”

13. Thus, according to Clause (5), the UI rates as specified by the concerned State Commission are applicable for deviation from the schedule by an intra-State entity involved in inter-State open access. However, where the concerned State Commission has not specified the UI rates, the intra-State entity is governed by the UI rates specified by this Commission. In such cases, the intra-State entity is liable to pay the UI Charges for over-drawal and under-generation at the rate of 105% of the UI rate applicable at the

periphery of the regional entity. In case the intra-State entity becomes entitled to receive the UI Charges for under-drawal and over-generation, these charges are receivable at the rate of 95% of the applicable UI rate.

14. The petitioner's first grievance relates to billing of the UI Charges. The petitioner's contention is that the respondent is obligated to raise the bills for the UI Charges in accordance with this Commission's regulations. However, as alleged by the petitioner, it was paid the UI Charges at the rate of ₹2.80/kWh but was charged at the prevailing UI rates. The respondent has not denied the differential treatment as alleged by the petitioner. Neither has the respondent explained the reasons for applying the different rates. The respondent in reply to para 18 wherein the petitioner alleged differential treatment has stated:

"The contents of para 18 of the Petition are wrong and are denied. The Respondent is Levying UI charges only as authorized. The Regulations of the Hon'ble Commission do not mandate or prescribe the charges to be paid by intra-state entities, but only provide for the treatment and levy of charges for intra-state entities if they are not other prescribed in the State. The Respondent has been charging and levying the UI charges and other applicable charges as authorized and in accordance with law."

15. In our considered view, the petitioner's liability to pay and entitlement to receive the UI Charges is to be regulated in term of clause (5) of Regulation 20. The Karnataka State Commission has not specified the UI rates for intra-State entities as ABT has not been implemented in the State. Therefore, the petitioner is liable to pay the UI Charges as 105% of the UI rates applicable at the periphery of Karnataka State and its entitlement to receive these charges is 95% of the UI rates fixed by this Commission. The methodology adopted by the respondent is in clear contravention of clause (5) ibid

and cannot be sustained. Accordingly, the bills for the UI Charges issued by the respondent are set aside.

16. According to the respondent, the petitioner is liable to pay charges for use of intra-State systems of the distribution/transmission licensee which are incidental to the inter-State transmission of electricity when the generating company avails of the open access in accordance with the Karnataka Open Access Regulations. There is merit in the contention of the respondent in this regard. In accordance with clause (3) of Regulation 16, the respondent is entitled to collect on behalf of the transmission and distribution licensees in the State the charges fixed by the Karnataka State Commission. We, however, make it clear that no charges in addition to those charges payable under the Central Open Access Regulations are payable for availing inter-State open access, as already laid down under clause (6) of Regulation 20 of the Central Open Access Regulations.

17. The petitioner's next grievance relates to billing of the BPS Charges. The petitioner has contended that no such charges are payable under the Central Open Access Regulations. The respondent has submitted that the BPS Charges are payable by the petitioner in terms of clause (viii) of Regulation 11 of the Karnataka Open Access Regulations. Clause (viii) of Regulation 11 of the Karnataka Open Access Regulations which is extracted hereunder provides for levy of the open access charges:

“11. Open Access Charges

The charges for the use of the transmission/distribution system by an open access customer shall be regulated as under:

(i) to (vii) xxx xxx xxx xxx

(viii) Charges for arranging backup supply from the grid shall be payable by the open access customer in the event of failure of contracted supply. In case outages of generators supplying to a consumer on open access, standby arrangements should be provided by the licensee on payment tariff for temporary connection to that consumer category as specified by the Commission.

(ix) xxx

xxx

xxx

xxx"

18. The BPS Charges billed by the respondent can be related to the first part of clause (viii) of Regulation 11 ibid as the second part applies in case where the generating company supplies power to a consumer under the open access, which is not the present case. The first part of clause (viii) lays down that the charges for arranging backup supply from the grid are payable by the open access customer in the event of failure of contracted supply. In our opinion this provision covers the cases where a person, whether a consumer or a generating company or a licensee (the open access customer), is being supplied power under a contract but is unable to get the contracted supply. In such an event, the arrangement is to be made for backup supply from the Grid to meet the demand and under these circumstances the person concerned becomes liable to pay the charges for making arrangement for backup supply. The charges payable under clause (viii) of Regulation 11 of the Karnataka Open Access Regulations do not apply to a generating company exporting power by availing the inter-State open access. Further, the first part can be invoked when there is failure of contracted supply. In the present case there is no allegation that the petitioner failed to meet the contracted supply. Therefore, levy of the BPS Charges on the petitioner in terms of clause (viii) of Regulation 11 of the Karnataka Open Access Regulations read with clause (3) of Regulation 16 of the Central Open Access Regulations cannot be justified.

19. The respondent has argued that the BPS Charges as prescribed by the Karnataka State Commission are billed on the petitioner for consumption of electricity by drawing electricity from the Grid for startup and other purposes when its generating station is under outage. It is agreed that in case the petitioner is drawing power from the State Grid for any purpose it cannot repudiate its liability to pay the charges for the power consumed. However, the charges have to be billed and collected in accordance with the regulations or orders of the Appropriate Commission.

20. This Commission at the hearing on 26.4.2012 had directed the respondent to file *inter alia* the quantum and duration of electricity consumed and drawn by the petitioner when its generation was under shut-down during the period of open access. The respondent filed its affidavit to place on record certain information. The respondent has, however, not filed any details of power consumption by the petitioner. The petitioner has denied that it ever availed of the backup supply from the Grid. Therefore, there is no basis for the respondent's claim that the petitioner has drawn power from the State Grid. Accordingly, billing of the BPS Charges is not in order. Even if it is accepted that the petitioner drew power from the State Grid, energy drawl should be accounted for as the UI, that is, deviation from the schedule. To explain this, let us presume that the petitioner had given generation schedule of 1.5 MW of for supply through the inter-State open access but because of outage of the generating station, it was forced to draw 0.5 MW from the Grid. In such a situation it would be accounted for as negative UI of 2 MW and the petitioner shall be liable to pay the UI Charges for 2 MW. It is pertinent to reiterate that the respondent has sought to justify billing of the BPS Charges primarily under clause (viii) of Regulation 11 of the Karnataka Open Access Regulations which

regulations. The respondent has billed the petitioner after a protracted delay which does not justify levy of interest for the past periods. The respondent was directed to explain the reasons for delay in raising the bills for the UI Charges on affidavit, which the respondent has failed to do. Therefore, the respondent's claim on this count fails. In any case, we have not upheld the billing for the UI Charges and the BPS Charges. For this reason also, the question of levy of interest also does not survive.

Conclusion

23. We sum up our decisions as under:

- (a) While availing the inter-State open access, the petitioner is not liable to pay any charges except those specified under the Central Open Access Regulations.
- (b) The petitioner shall be billed for the UI Charges in accordance with clause (5) of Regulation 20 of the Central Open Access Regulations.
- (c) The charges for drawl of power in the event of outages during the open access period shall be accounted for as the UI Charges.
- (d) The petitioner does not have the liability to pay interest except for the period beyond 12 days of issue of UI statement by the State Agency for intra-State entities or raising of bills.

24. In the light of the above findings, we allow the petition and set aside the impugned bills. We direct the respondent to issue the revised bills in the light of the above decisions. The petitioner has sought refund a sum of ₹1,14,25,463/- paid to the respondent towards the impugned bills with interest at the rate of 1% per month. We direct that after the issue of the revised bills, the excess amount, if any, shall be refunded to the petitioner with interest at the rate of 9% per annum from the date of deposit (31.10.2011) of such excess up to the date of refund.

23. There shall be no order as to costs.

Sd/-
(M Deena Dayalan)
Member

sd/-
(S. Jayaraman)
Member

sd/-
(Dr. Pramod Deo)
Chairperson