

**Central Electricity Regulatory Commission
New Delhi**

Petition No. 124/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: 24.12.2012**

In the matter of

Petition under section 79 (1) (c) of the Electricity Act, 2003 and Regulation 26 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 read with Regulation 27 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999

And in the matter of

Falcon Tyres Ltd. Bangalore

Petitioner

Vs

Karnataka State Load Despatch Centre

Respondent

Present

Shri G.Joshi, Advocate for Falcon Tyres Ltd
Shri Ananathanrayana, Advocate for Falcon Tyres Ltd
Shri Anand K.Ganesan, Advocate, for SLDC, Karnataka

ORDER

In this petition filed under clause (c) of sub-section (1) of Section 79 of the Electricity, 2003, the petitioner has made the following prayers, namely:

- "A *Declare that the Respondent has no authority under law to collect Back-up Power Supply charges from the Petitioner under the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) (First Amendment) Regulations, 2006, in an Inter State Open Access Transaction being governed by the provisions of the Regulations framed by this Hon'ble Commission ;*
- B. *Consequently, declare that the Provisional Bill issued by the Respondent vide Bill No. OA/UI/SLDC/257 dated 20th August 2011 produced herein and marked as Annexure A is illegal, untenable and opposed to the*

Electricity Act, 2003, CERC (Open Access in Inter State Transmission) Regulations, 2008 and CERC Regulations, 2009 and set aside the same.

- C. *Consequently, direct the Respondent to refund the amount paid by the Petitioner as per Annexure – G, along with 1% per month from the date of payment up to the date of refund along with interest, in full;*
- D. *Declare that the action of the Respondent in withholding the legitimately payable UI Charges withheld from Petitioner, in gross violation of the regulations framed by this Hon'ble Commission are illegal, untenable and bad in law;*
- E. *Direct the Respondent to refund the excess UI Charges collected and illegal UI Charges withheld from the Petitioner as per Annexure - B in violation of CERC Regulations, 2009, along with an interest rate of one percent (1%) per month, from the date, when it was collected from the Petitioner, up to the date of refund, in full;*
- F. *Direct the Respondent to pay the cost of this Petition; and*
- G. *Pass any other order/s to meet the ends of justice;”*

Facts

2. The petitioner owns and operates a 6 MW Biomass based power generating station in Mysore in the State of Karnataka, which is connected to the State Grid. Since November 2009 the power generated is being 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.

3. On 5.3.2010, the respondent sent a provisional bill to the petitioner comprising the Energy Charges and Fixed Charges for 1600 kWh of power for November 2009 demanding an amount of ₹2,08,257, which roughly corresponds to the rate of ₹130.16/kWh. The petitioner made a representation dated 24.3.2010 requesting that it be charged at a nominal rate of ₹10/kWh. The respondent raised 4

provisional bills, all dated 31.1.2011, pertaining to the months of December 2009 to March 2010 for varying amounts, comprising Energy Charges and Fixed Charges. The respondent also raised another provisional bill dated 31.1.2011 for the Unscheduled Interchanges (UI) Charges for the period November 2009 to March 2010, according to which the petitioner was to pay UI charges for November and December 2009 and was to receive the UI Charges for the months of January to March 2010; a net amount of ₹3,68,676/- was receivable by the petitioner. The petitioner made a fresh representation dated 3.2.2011. In the said representation, the petitioner requested for revision of bills for the months of November 2009 and February 2010 at a nominal rate of ₹10/kWh. The petitioner also claimed interest on the UI Charges for January to March 2010 stating that the payment of the UI Charges for these months was delayed. The representation was, however, rejected by the respondent vide letter dated 7.2.2011. It was stated that the energy bills for the months of November 2009 and February 2010 were raised in accordance with Regulation 11 (viii) of the Karnataka Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulations, 2004, as amended, (Karnataka Open Access Regulations) for backup supply of power at the rate of ₹200/Horse Power as applicable under LT-7 tariff notified by the Karnataka Electricity Regulatory Commission (Karnataka State Commission). The respondent raised another bill dated 18.2.2011 for the UI Charges for the period from 1.4.2010 to 4.4.2010. In this bill, the respondent claimed interest for 181 days on UI bills for November and December 2009. Further, the respondent claimed interest on the energy bills for November 2009 (327 days) to March 2010 (5 days for each month). Thereafter, a consolidated bill dated 22.8.2011 (the impugned bill) was raised by the respondent for the UI Charges for the months of October 2010 to February 2011 and the Backup Power Supply Charges (BPS Charges) for the period October 2010 to

February 2011 for a net amount of ₹23,83,683/-. Against the various bills raised by the respondent, the petitioner made payment of ₹1,10,824/- vide Cheque dated 31.8.2011.

4. The petitioner filed a petition before the Karnataka State Commission against levy of the BPS Charges and non-payment of the UI Charges. In the reply filed, the respondent stated that the BPS Charges were collected as per the Karnataka Open Access Regulations. The petitioner withdrew the petition filed before the Karnataka State Commission submitting that the dispute involved interpretation of the Central Open access Regulations and was within the jurisdiction of this Commission.

Grievances

5. The petitioner has stated that it has been illegally billed for the UI Charges, the BPS Charges and interest on the UI Charges. As per the petitioner, the respondent billed the UI Charges at the higher UI rates as compared to the rates at which it was paid these charges. 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 further 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 Karnataka Open Access Regulations, as admitted by the respondent. The petitioner has averred that the respondent is not entitled to collect the BPS Charges as no such charges are payable under the

Central Open Access Regulations and that the respondent could not have supplied the backup power 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, since these were not billed in time and that the delay was on the part of the respondent itself. The petitioner has averred that the respondent has illegally withheld the UI Charges of ₹6,12,558 due to the petitioner. The present petition has been filed 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 (SLDC Karnataka) 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 denied any delay in issuing bills for the UI Charges. It has been stated that the interest on delayed payment of the UI Charges has been billed at the rates specified by this Commission, namely, 0.4% per day of default beyond 12 days of the issue of the UI bills as there was delay on payment of the UI Charges by the petitioner. 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. As regards the levy of the BPS Charges, the respondent has submitted that the petitioner does not have the contracted load but is required by the regulations of the Karnataka State Commission to pay charges for drawing electricity at the temporary rates as per the tariff schedule notified by the Karnataka State Commission. The respondent has submitted that LT-7 tariff in the schedule is applicable to the petitioner for drawl of electricity during open access period in terms of Regulation 11 (viii) of the Karnataka Open Access Regulations, which is the only provision enabling the generating company to draw electricity from the Grid under the outage conditions. The respondent has further 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 placed on record the details of electricity drawn by the petitioner for the period of open access. 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 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. The respondent has averred that in case the energy bills are not paid within 10 days, the petitioner becomes liable to pay interest for the delay in payment. The respondent has argued that it has been levying the charges consistently since November 2009 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 is 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 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:

“7. 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 lower rates as compared to the rates levied on it when it becomes liable to pay the UI Charges. 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. 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 of Central Open Access Regulations. 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 @ 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.

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.

17. The respondent has further clarified 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 during the open access period. It is agreed that in case the petitioner is drawing power from the State Grid for any purpose, it cannot repudiate its liability liable 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. The respondent has submitted that the petitioner does not have the contracted load but is required by the regulations of the Karnataka State Commission to pay charges for drawl of energy

at the temporary rates as per the tariff schedule issued by the Karnataka State Commission, according to which LT-7 tariff is applicable in the case of the petitioner. The respondent has not placed anything, the regulation or order of the Karnataka State Commission on record to show that LT-7 tariff applies to the petitioner for consumption of electricity by drawing electricity from the Grid while availing inter-State open access. Therefore, we proceed on the basis that the LT-7 tariff does not apply in the case of the petitioner. Accordingly, it is not possible to accept the respondent's contention for billing of the BPS Charges based on LT-7 tariff. Under these circumstances, energy drawl by the petitioner 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 for supply of power through the inter-State open access, but because of outage of the generating station, it was forced to draw 0.5 MW of power from the Grid during the corresponding time block. 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 contention we have already repelled. Therefore, the billing of the BPS Charges as per the impugned bill cannot be upheld.

18. The last grievance of the petitioner is that the respondent has added interest on the UI bills raised after a long delay. The respondent has firstly stated that there was no delay in raising the bills for the UI Charges. The respondent has sought to justify the interest billed by stating that interest has been charged at the rates specified by this Commission under the UI Charges Regulations. Regulation 10 of the UI Charges Regulations prescribes the schedule for payment of the UI Charges. The relevant clause of Regulation 10 is reproduced below:

“10. Schedule of Payment of Unscheduled Interchange Charges and Payment Security

(2) If payments against the Unscheduled Interchange charges including Additional Unscheduled Interchange charges are delayed by more than two days, i.e., beyond twelve (12) days from the date of issue of the statement by the Secretariat of the respective Regional Power Committee, the defaulting constituent shall have to pay simple interest @ 0.04% for each day of delay.”

19. Clause (2) of Regulation 10 of the UI Charges Regulations lays down that if payments against the UI Charges are delayed beyond 12 days from the date of issue of the statement of the UI Charges by the Secretariat of the respective Regional Power Committee, the defaulting constituent shall pay simple interest @ 0.04% for each day of delay. In the present case, the period of 12 days may be counted from the date of the billing by the respondent because the Secretariat of the Regional power Committee has not issued any statement. There is no merit in the respondent's contention that the bills for the UI Charges were not delayed. The bills for the UI Charges for the period November 2009 to March 2010 were raised on 31.1.2011. The respondent raised another bill dated 18.2.2011 for the UI Charges for the period from 1.4.2010 to 4.4.2010 and yet another bill on 22.8.2011 pertaining to the period from October 2010 to February 2011. These are certainly the instances of delay in raising the bills. Coming to levy of interest for late payment of the UI Charges, the matter is to be viewed in the light of clause (2) of Regulation 10 of the UI Charges regulations. The respondent has billed the petitioner after a protracted delay which does not justify levy of interest for the past periods. 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

20. 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.

21. In the light of the above findings, we allow the petition and set aside the impugned bill. We direct the respondent to issue the revised bills in the light of the above decisions. The petitioner has sought refund the sum paid to the respondent towards the impugned bill 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 (31.8.2011) of such excess up to the date of refund.

21. There shall be no order as to costs.

**Sd-
(M DEENA DAYALAN)
MEMBER**

**sd/-
(S. JAYARAMAN)
MEMBER**

**sd/-
(DR.PRAMOD DEO)
CHAIRPERSON**