

**Central Electricity Regulatory Commission
New Delhi**

Petition No.: 165/MP/2012

Coram:

Dr. Pramod Deo, Chairperson

Shri S. Jayaraman, Member

Shri V. S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 11.12.2012

Date of Order : 1.5.2013

In the matter of

Illegal levy of UI charges and back up energy supply charges under inter State Open Access in violation of the Central Electricity Regulatory Commission's Regulations.

And in the matter of

Memorandum 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 the Central Electricity Regulatory Commission (Conduct Of Business) Regulations, 1999

And in the matter of

BMM Ispat Limited

Petitioner

Vs

State Load Despatch Centre, Karnataka

Respondent

Present:

Shri Anantha Narayana, Advocate for the petitioner

Ms Swapna Seshadri, Advocate for the SLDC, Karnataka

ORDER

The petitioner has made the following prayers in the amended petition dated 3.11.2012, namely:

- "A. Declare that the Respondent has no authority under law to collect Back-up Power Supply charges for 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 claims raised by the Respondent by its letter bearing No. CEE/SLDC/KPTCL/CA/DCAIAOII288-89 dated 27th June, 2012 at Annexure A is illegal, untenable and opposed to the Electricity Act, 2003, Central Electricity Regulatory Commission (Open Access in Inter State Transmission) Regulations, 2008 and CERC Regulations, 2009 and set aside the same.*
- C. 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, is illegal, untenable and bad in law;*
- D. 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;*
- D1. Direct the Respondent to grant the Inter State Open Access to the Petitioner without insisting upon the payment of Charges that are not contemplated under the applicable Regulation of this Hon'ble Commission;*
- D2 Declare that illegal and untenable denial of Open Access by the Respondent to the Petitioner is illegal, untenable and opposed to law;*
- D3. Consequently direct the Respondent to refund the illegal and untenable charges collected for the so called Back up supply vide Annexure AG with penal interest of 2% per month from the date of payment upto the dated of realization by the Petitioner in full.”*
- (e) Award cost of this Petition; and*
- (f) Pass any other orders, to meet the ends of justice.”*

Facts of the case

2. The petitioner owns two co-generation based power projects situated within the territorial jurisdiction of the Gulbarga Electricity Supply Company Limited (GESCOM) in the State of Karnataka and proposed to export surplus power. The petitioner executed the Power Supply Agreement dated 13.1.2006 with GESCOM and is thus its registered consumer. By letter dated 2.8.2010, the petitioner was granted evacuation approval by Karnataka Power Transmission Corporation Ltd (KPTCL) through a 220 kV

transmission line and was further granted the Regular Interconnection Approval for interconnecting its project with the intra-State transmission system owned by KPTCL *vide* letter dated 9.1.2012. The interconnection approval grant was independent of the distribution system of GESCOM. The petitioner has stated that it has from time to time paid for all applicable charges including the consumption and fixed charges to GESCOM for the supply received as its consumer.

Grievances of the petitioner

3. The petitioner is said to have sold power after availing open access under the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (the Central Open Access Regulations) on payment of the specified charges. The petitioner has stated that the respondent suddenly started raising bills towards UI Charges for the inter-State open access availed and Back-up Power Supply (BPS) Charges and interest for the alleged non-payment/delayed payment. The details of these bills and the action by the petitioner in relation to these bills given in the petition are as under:

Date	Letter No	Amount (₹)	Period of Bill	Action by petitioner
3.2.2011	CEE/SLDCICA/DCA/AO/2947	43,08,656	October 2009	The petitioner protested <i>vide</i> letter dated 13.4.2011 that the power trading was done for 5 days in September 2009 and no import during trading period was done.
31.3.2011	CEE/SLDCICA/DCA/AO/3539	3, 24,5151 + interest of ₹54,648	September 2009	
16.8.2011	OA/UI/SLDC/I190	Amount and period not mentioned		The petitioner remitted the amounts under protest by its letter dated 13.9.2011
25.8.2011	OA/UI/SLDCI1365			

28.10.2011	OA/UI/SLDC/2205	53,01,2051	April 2011	The petitioner by its letter dated 12.11.2011 made payment of ₹1.01,535 after deducting the maximum demand charges already paid to GESCOM.
14.12.2011		2,75,99,333		The petitioner paid the amounts under protest by its letters dated 31.1.2012 and 19.1.2012.
21.12.2011		3,25,79,426		
15.3.2012	CEE/SLDC/KPTCL/CA/DCA/AO/4133	1,56,70,703		The petitioner by its letter dated 9.7.2012 clarified that total amount due to the respondent was ₹26,09,661/- and further provided details showing the remittance of the same by RTGS.
18.6.2012	CEE/SLDC/KPTCL/CA/DCA/AO/999	81,70,703		
27.6.2012		81,70,703	July 2012	
29.8.2012	OA/UI/SLDC/1988	Amount not indicated by the petitioner.	June 2012	
24.12.2012	OA/UI/SLDC/2264	2,40,66,869	Period not indicated by the petitioner	
8.10.2012	CEE/SLDC/KPTCL/CA/DCA/AO/2539	Amount not indicated by the petitioner	Period not indicated by the petitioner	

4. The petitioner has submitted that it made payments of total amount of ₹1,80,44,053/- to the respondent under protest with respect to the series of bills raised though at the same time it continued to represent against the bills. The petitioner has alleged that the respondent has not considered the representations made and on the contrary, has withheld the UI Charges amounting to ₹2,56.08,719/- due to the petitioner, computed in accordance with the UI Vector specified by this Commission under the Central electricity Regulatory Commission (Unscheduled Interchange Charges) Regulations, 2009 (the UI Charges Regulations). The petitioner has stated that it was

billed for the BPS Charges, the UI Charges and interest on the UI Charges. According to the petitioner, it was levied the UI Charges at the UI rates specified by this Commission but whenever it became entitled to receive these charges it was 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 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). The petitioner has averred that the respondent was not entitled to collect the BPS Charges as it did not supply the backup power since the backup power was drawn from the distribution system of GESCOM to whom it had made payments for the billed amounts from time to times. The petitioner has alleged that billing of the BPS Charges by the respondent amounts to trading in electricity by the respondent prohibited under Section 31 of the Electricity Act, 2003. 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. Thus, firstly the grievances of the petitioner are three fold, levy of BPS Charges, levy/disbursement of the UI Charges at differential rates and levy of interest on the UI Charges, in the course of availing inter-State open access. In the amended petition the petitioner has projected another grievance. The petitioner has alleged that it had by its application dated 18.9.2012 applied to the respondent for No Objection/Standing Clearance for inter-State open access for 45 MW of power during the month of October 2012, but its application

was not considered and it was not given any reply. Therefore, it filed an affidavit for grant of open access but still open access was not granted. The petitioner is further aggrieved by billing of Electricity Tax by the respondent. According to the petitioner, levy of Electricity Tax is illegal and in support of its contention the petitioner has relied upon the judgment of the Hon'ble Supreme Court in State of Andhra Pradesh Vs National Thermal Power Corporation Ltd and others (AIR 2002 SC 1895). The petitioner has approached this Commission against the above backdrop.

Reply of the Respondent

5. It is noted that 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. We are not able to understand the reason for not filing the reply by the respondent. The reply filed has, however, been taken on record as the respondent's reply as an exception to the general principle that pleadings should be filed by the parties themselves or their authorized representatives.

6. The respondent has clarified that the BPS Charges are levied on the petitioner for consumption of electricity for the electricity drawn from Grid for startup and other purposes in terms of the Karnataka Open Access Regulations, Regulation 11 (viii) in particular. The respondent has contended that the petitioner failed to generate the contracted amount of power supply to the open access customers and was also drawing power for startup and other activities. The respondent has stated that unless the BPS Charges are levied, the petitioner cannot draw electricity except in the

circumstance of contracting supply with the distribution company of its area of supply since otherwise it would amount to consumption of electricity free of charge. The respondent has relied upon the order of this Commission dated 2.11.2012 in Petition No 117/MP/2012 to support its contention that the petitioner cannot depend upon UI for startup/commissioning requirements and the same needs to be contracted with the distribution company. On the question of levy of the UI Charges, the respondent has submitted that for the deviation in the generation schedule, the UI Charges are payable/receivable in terms of the regulations of the Karnataka State Commission and this Commission and these charges are being levied since 2009. It has been submitted that interest is levied at the rate of 0.4% per day of default beyond 12 days of the issue of the UI bills in accordance with the regulations of this Commission. The respondent has alleged that the petitioner defaulted in making payments of the bills and was therefore levied interest for which all the details were provided to the petitioner. On the question of refusal of open access for the month of October 2012, the respondent has alleged that the allegations by the petitioner are bald and without any supporting evidence since the copies of the requisite documents have not been filed with the amended petition. It has been stated that once the affidavit was filed it was for RLDC to take a view on the application and the respondent was out of picture. The respondent has averred that the petitioner could not seek open access as a matter of right while making defaults in the payment of dues. On the petitioner's grievance of collection of Electricity Tax, the respondent has averred that the issue raised is outside the jurisdiction of this Commission.

Analysis and Decisions

7. First we consider the petitioner's grievance relating 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

8. 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 provisions covers the cases where a person, whether a consumer for its demand or a generating company for its startup power as an open access customer is being supplied power under a contract but is unable to get the contracted supply due to outage of generators supplying to open

access customer. 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. 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.

9. In the present case, it is an undisputed fact that the petitioner is a consumer of GESCOM and is connected to its distribution network for drawl of power for all purposes, which should include startup power as well. The petitioner has averred that it has been paying the Demand Charges to GESCOM as and when billed. Therefore, there is no justification for the respondent to bill the BPS Charges as it would amount to double recovery for the same quantum of power consumed by the petitioner for startup and other purposes.

10. The respondent has relied upon the order dated 2.11.2012 of this Commission in Petition No 117/MP/2012 in support of its contention that the petitioner cannot depend upon UI for startup/commissioning requirements and the same needs to be contracted with the distribution company. The respondent in its reply has stated that “.....the Petitioner is not entitled to any electricity from the grid without having the contractual

supply with the distribution licensee in the area.” The relevant part of the order dated 2.11.2012 in Petition No.117/MP/2012 is extracted below:

“..... Moreover, UI by its very nature is deviation from schedule and cannot be conferred the status of scheduled power for the purpose of commissioning and testing. Since these events are planned in advance, the generators should arrange for power for this purpose through some form of access. In that view of the matter, we had directed the petitioner in the Record of Proceedings dated 26.4.2012 to make arrangement for start-up power through some form of access.”

11. In our opinion, reliance by the respondent on the Commission`s order dated 2.11.2012 is misplaced. A bare perusal of the above order reveals that this Commission had not favoured drawal of power for commissioning/testing from the Grid on payment of the UI Charges. This Commission observed that UI mechanism could not be invoked for commissioning and testing of the generating station as these activities are known in advance. Therefore, for commissioning and testing of the generating station, the generating company has to arrange for power from other sources. However, considering the situation in case of some generators who were in the advance stage of commissioning and where arrangement of power through some access would adversely affect the commissioning schedule, the Commission in order dated 7.12.2012 in Petition No.259/MP/2012 has, as an interim measure, directed the RLDCs to permit the generating companies to draw power from the grid under UI for testing and commissioning subject to fulfillment of requirement of grid security and compliance of directions of concerned RLDC. Thus it follows that this Commission is not averse to the arrangement with the distribution company for supply of power for startup/commissioning/testing or for drawal of power under UI for the purpose subject to fulfillment of the requirement of grid security. In the present case, the petitioner has already made an arrangement for alternative source of power supply, GESCOM, the

distribution company of its area of supply which is in accordance with the observation of the Commission in order dated 2.11.2012 *ibid*.

12. Next we consider the petitioner's grievance relating to differential treatment in collection and payment of the UI Charges. For this purpose we consider it appropriate to take note of the relevant provisions of the Central Open Access Regulations. Clause (5) of Regulation 20 of the Central Open Access Regulations specifies the UI rates applicable in the case of an intra-State entity participating in inter-State open access and 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 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 ₹2.85/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 differential rates but has pleaded that it is levying UI charges only as authorized under the regulations of this Commission and the Karnataka State Commission. In our view, the petitioner's liability to pay and its entitlement to receive the UI Charges in the course of inter-State open access 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 is 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. The respondent is directed to recalculate the entitlement/liability of the petitioner for the UI Charges in accordance with clause (5) of Regulation 20 of the Central Open Access Regulations.

15. The next grievance of the petitioner is that the respondent has added interest on the UI bills raised after a long delay. The respondent has sought to justify that the interest has been charged at the rates specified by this Commission under the UI Charges Regulations alleging delay on the part of the petitioner. 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

(1) xxx

xxx

xxx

xxx

(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.”

16. 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, there is nothing on record that the petitioner was billed on the basis of billing by the Secretariat of the Regional Power Committee. The period of 12 days may count 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 when the matter is 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.

17. The next grievance of the petitioner is denial of open access for the month of October 2012 as aired in the amended petition. We agree with the contention of the respondent that the petitioner has not placed on record the necessary details to enable us to take a view of the grievance. The petitioner has not filed the application for open access and the affidavit said to have been filed on 9.10.2012 because the alleged non-

consideration of its application by the respondent. In the amended petition, the petitioner has not even mentioned the point of drawl of power or the authority before which the affidavit was filed. The copies of certain documents said to have been annexed have not been annexed. Because of the scanty information, the petitioner has not been able to persuade us to examine its grievance of alleged denial of open access. As such, the petitioner's grievance in this regard is dismissed for want of necessary details.

18. The last grievance of the petitioner arises out of the billing of Electricity Tax. Adjudication of the grievance is beyond powers of this Commission as it does not arise out of the statutory functions assigned to this Commission under clauses (a) to (d) of sub-section (1) of Section 79 of the Electricity Act.

Conclusion

19. We sum up our decisions as under:

- (a) The petitioner is not liable to pay the BPS Charges for availing start-up power in the course of inter-State open access as these charges are levied and collected by GESCO, the distribution licensee.
- (b) While availing the inter-State open access, the petitioner shall be billed for the UI Charges in accordance with clause (5) of Regulation 20 of the Central Open Access Regulations.

20. In the light of the above findings, we partly 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 within a period of one month from the date of this order. We further 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 filing of the petition on 25.7.2012 up to the date of refund within a further period of one month.

21. There shall be no order as to costs.

sd/- (M DEENA DAYALAN) MEMBER	Sd/- (V. S. VERMA) MEMBER	sd/- (S. JAYARAMAN) MEMBER	sd/- (DR.PRAMOD DEO) CHAIRPERSON
--	--	---	---