

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 196/2011

Coram:

**Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member**

Date of Hearing: 22.12.2011

Date of Order : 01.05.2013

In the matter of

Application under Regulation 20 "Power to Relax" read with Regulation 21 (2) of CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 read with Regulation 111 of the CERC (Conduct of Business) Regulations, 1999 in the matter of Billing, Collection and Disbursement of transmission charges activity entrusted to the applicant.

And

In the matter of:

Power Grid Corporation of India Limited, Gurgaon

....Petitioner

Vs

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Calcutta
3. Grid Corporation of Orissa Ltd., Bhubanewshwar
4. Damodar Valley Corporation, Calcutta
5. Power Department., Govt. of Sikkim, Gangtok
6. Jharkhand State Electricity Board, Ranchi
7. Assam State Electricity Board, Guwahati
8. Meghalaya State Electricity Board, Shillong
9. Government of Arunachal Pradesh, Itanagar
10. Power & Electricity Department., Govt. of Mizoram, Aizwal
11. Electricity Department, Govt. of Manipur, Imphal
12. Department of Power, Govt. of Nagaland, Kohima
13. Tripura State Electricity Corporation Ltd., Agartala
14. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
15. Ajmer Vidyut Vitran Nigam Ltd, Ajmer
16. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
17. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
18. Himachal Pradesh State Electricity Board, Shimla
19. Punjab State Electricity Board, Patiala
20. Haryana Power Purchase Centre, Panchkula
21. Power Development Department Govt. of Jammu & Kashmir, Jammu
22. Uttar Pradesh Power Corporation Ltd., Lucknow
23. Delhi Transco Ltd., New Delhi
24. Chandigarh Administration, Chandigarh
25. Uttarakhand Power Corporation Ltd, Dehradun
26. BSES Yamuna Power Ltd., New Delhi
27. BSES Rajdhani Power Ltd., New Delhi
28. North Delhi Power Ltd, New Delhi
29. NDMC, New Delhi
30. North Central Railway, Allahabad
31. Karnataka Power Transmission Corporation Ltd, Bangalore
32. Bangalore Electricity Supply Company Ltd. Bangalore



33. Gulbarga Electricity Supply Company Ltd., Gulbarga
34. Hubli Electricity Supply Company Ltd., Hubli
35. Mangalore Electricity Supply Company Ltd. Mangalore
36. Chamundeswari Electricity Supply Corporation Ltd, Mysore
37. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
38. Eastern Power Distribution Company of Andhra Pradesh Ltd., Visakhapatnam,
39. Southern Power Distribution Company of Andhra Pradesh Ltd., Tirupati
40. Central Power Distribution Company of Andhra Pradesh Ltd., Hyderabad
41. Northern Power Distribution Company of Andhra Pradesh Ltd., Warangal
42. Kerala State Electricity Board, Thiruvananthapuram
43. Tamil Nadu Electricity Board, Chennai
44. Electricity Department, Govt. of Pondicherry, Pondicherry
45. Electricity Department, Govt. of Goa, Panaji, Goa
46. Madhya Pradesh Trade Co., Jabalpur
47. Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd., Indore
48. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
49. Gujarat Urja Vikas Nigam Ltd., Baroda
50. Electricity Department, Administration of Daman & Diu, Daman
51. Electricity Department, Administration of Dadra Nagar Haveli, Silvassa
52. Chhattisgarh State Electricity Board, Raipur,
53. Powerlinks Transmission Ltd., New Delhi
54. Jaypee Power Grid Ltd., New Delhi
55. Reliance Power Transmission Ltd., Gurgaon
56. Lanco Kondapali Power Ltd., Hyderabad
57. M/s Torrent Power Generation Ltd. Surat
58. PTC India Ltd, Bhikaji Cama Palace, New Delhi
59. M/s Jindal Power Ltd., Gurgaon
60. M/s Heavy Water Board, Mumbai
61. M/s Adani Power Ltd., Ahmedabad
62. AD Hydro, Noida
63. Lanco Anpara Power Private Ltd., Gurgaon
64. Everest Power Private Ltd., New Delhi
65. Tamil Nadu Generation & Distribution Co, Chennai

.....Respondents

Parties Present:

Shri S.B.Upadhya, Senior Advocate, PGCIL
 Ms Anisha Upadhya, Advocate, PGCIL
 Shri Rakesh Prasad, PGCIL
 Shri S.S.Raju, PGCIL
 Shri Sakya Singh Chaudhuri, Advocate, WBSEDCL
 Shri P.Shiva Ram, Lanco

ORDER

This petition has been filed by Power Grid Corporation of India Limited (PGCIL) seeking directions to (a) All Designated inter-State Transmission System Customers (DICs) to sign Transmission Service Agreement (TSA) within a fortnight, (b) All DICs to open Letter of Credit of the required value, (c) All DICs to make payments as per Point of Connection (PoC) regime, pending resolution of their issues. The petitioner has also sought appropriate directions and orders to remove difficulties by invoking Regulations 20 and 21 (2) of the Central Electricity Regulatory Commission (Sharing of



Inter-State Transmission Charges and Losses) Regulations, 2010 to ensure billing, collection and disbursement of transmission charges.

2. The petitioner has submitted that the Commission has notified the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as 'the Sharing Regulations') on 15.6.2010. As per the Sharing Regulations, PGCIL is responsible for raising the bills and collection of PoC charges on behalf of all the ISTS licensees and thereafter disbursement of the collected transmission charges amongst the eligible ISTS licensees (BCD activity).

3. The petitioner has submitted that the Commission vide its order dated 29.4.2011 had approved the Billing, Collection and Disbursement (BCD) procedure along with Transmission Service Agreement (TSA) and Revenue Sharing Agreement (RSA), which are required to be signed for the implementation of Sharing Regulations. The Commission vide said order dated 29.4.2011 had directed the CTU to take necessary action for signing TSA and RSA with the concerned parties at the earliest. In compliance with said directions, capacity building workshops and interactive meetings were conducted with all the stakeholders to explain the PoC mechanism. In addition, meetings were held with almost all the stakeholders, region wise to explain and clarify issues and signing the TSA and RSA. However, despite continuous follow-up, TSA is yet to be signed by the Designated inter-State Transmission System Customers (DICs) of Eastern Region and North Eastern Region and Gujarat and Maharashtra.

4. The petitioner has highlighted the concerns of various DICs as under:
- (a) Eastern Region and North Eastern Region constituents feel that PoC rates are significantly higher than pre-PoC;
 - (b) Maharashtra and Gujarat in Western Region want direct billing to embedded customers in their network as they have not implemented intra-State ABT;
 - (c) GRIDCO wants a relook of PoC mechanism by Government of India;



(d) Maharashtra opined that (a) PoC charges should have been determined as per seasonal and peak/off peak variations and data given by DICs and not as per CEA data, (b) clubbing of old assets with the new assets (cross subsidy) is not acceptable to them.

5. The petitioner has expressed its difficulties on account of aforesaid concerns as under:

- (a) Payments from ER and NER are sluggish;
- (b) Maharashtra, Gujarat and constituents of ER and NER are not signing TSA;
- (c) TDS related issues under BCD mechanism may impact revenues.
- (d) Payment security mechanism i.e. operating LC or denial of LTA in case of default.

6. The petitioner has requested the Commission to issue suitable directions to the DICs for implementation of security mechanism through opening of LCs of required value. If such sluggish trend of payments persists, the petitioner shall be constrained to invoke payment security mechanisms including action under CERC (Regulation of Power Supply) Regulations, 2010 and denial of LTA/MTOA to recover dues considering huge revenue requirements to meet investment obligations.

7. Reply to the petition has been filed by Bihar State Electricity Board, GRIDCO, West Bengal State Electricity Distribution Company Limited, Uttar Pradesh Power Corporation Limited and BSES Yamuna Power Limited.

8. Bihar State Electricity Board in its reply has submitted that number of DICs in Region are apprehensive of the efficacy of Sharing Regulations and it has been consistently voicing its objection to the Sharing Regulations being contrary to the National Electricity Policy and Tariff Policy apart from the regulation being very complex, non-transparent and unconstitutional. The refusal to sign TSA by 26 major DICs, out of total 61 is a testimony to this assertion. As the Sharing Regulations

consider the distance, directional sensitivity, BSEB should pay less than the previous charges as the entire allocation to BSEB is from Central Generating Stations located in ER. PoC charges now determined by the Commission are not sensitive to distance, direction and related to quantum of flow. The prayer of petitioner to sign the TSA within a fortnight is misleading, misconceived and in utter disregard to the provisions of Indian Contract Act, 1872. If BSEB is forced to enter into such TSA, the same would not be borne out of free consent.

9. GRIDCO in its reply has submitted that Odisha have allocation of 1084 MW at present, out of which 518 MW is drawn from TSTPS- I and II located inside the State of Odisha. Considering the distance, directional sensitivity, Odisha should pay less than the previous charge. However, results are otherwise and not as per National Electricity Policy. Odisha demand is mostly met through OPTCL 400 kV and 220 kV lines. Since, CTU lines i.e. Talcher-Rourkela, Talcher-Rengali, Rengali-Indravati, Indravati-Jeypore do mainly transfer power outside the State of Odisha, it is being indiscriminately charged at higher cost due to inherent contradiction in the PoC method of charging. GRIDCO has further submitted that there are problems like multiple deduction of tax at source under the Income Tax Act as CTU is collecting payment on behalf of ISTS licensees and the Sharing Regulations should be suspended till these problems are resolved.

10. The petitioner in its rejoinders has submitted that bills are raised in accordance with PoC charges computed by Implementing Agency and approved by the CERC. In terms of Regulation 13 (1) of the Sharing Regulations, DICs are required to sign the TSA. Since, BSEB and GRIDCO have not signed the TSA so far, the petitioner has approached CERC for suitable direction in this regard.

11. West Bengal State Electricity Distribution Company Limited (WBSEDCL) in its reply has submitted that WBSEDCL was earlier paying a transmission charges of Rs. 11.69 crore per month under the regional postage stamp method and same has been

increased to the extent of 67.66% to Rs. 19.60 crore per month under the new Sharing Regulations. Such high tariff has been caused due to introduction of slab rates, which is contrary to the provisions of the Sharing Regulations. The Commission vide its removal of difficulties orders dated 4.4.2011 and 22.6.2011 had allowed the implementing agency to work out PoC charges slab wise and obtain approval of the CERC. As per said direction, implementing agency had approached the CERC proposing a slab rate and CERC, vide its order dated 29.6.2011, had accepted the said proposals. If said orders are considered as a part of Sharing Regulations as amendment, why previous publication under Section 178 (3) of the Electricity Act, 2003 is not done and powers to remove difficulty cannot be used to substantially amend the provisions of the Sharing Regulations. It has been further submitted that WBSEDCL has filed a writ petition No.17956 (W) of 2011 before Calcutta High Court and Hon`ble High Court vide its order dated 9.11.2011 has passed an interim order of injunction restraining PGCIL from disconnecting/regulating electricity supplied to the petitioner company or from curtailing the same on the ground of non-payment in terms of the notification dated 15.6.2010 and the orders dated 4.4.2011, 22.6.2011 and 29.6.2011.

12. UPPCL in its reply has requested the petitioner to supply information regarding configuration of approved basic network and relevant participation factors for U.P. Power system network inter-connection points and figures derived in terms of Regulation 7 (i), (j) and 7 (o) (p) of the Sharing Regulations. UPPCL has requested to clarify the quantum and percentage of total line losses in NR, participation factor for the U.P. system and details of procedure for application of losses to various DICs as prepared by NLDC in terms of Regulation 7 (r) and (s) of Sharing Regulations. UPPCL has further requested to decide the issue of income tax so that the beneficiaries are not subject to multiple imposition of Income tax.

13. BSES Yamuna Power Ltd in its reply has submitted that in regard to signing of the TSA it has certain reservations which had been conveyed to the petitioner and it

should be given an opportunity to negotiate the terms of the amended TSA and be not forced into signing the TSA.

14. During the course of hearing, learned senior counsel for the petitioner submitted that Sharing Regulations has been framed by the Commission pursuant to the provisions of Section 178 read with Section 79 of Electricity Act, 2003 after following the due procedure prescribed therefor. All the contesting respondents were heard and their concerns were addressed before framing the Sharing Regulations. The regulation is thus statutory and has the force of law. He further submitted that in the Transfer Petition (Civil) No. 1325-1327 of 2011, PGCIL vs GRIDCO, Hon`ble Supreme Court has, while issuing notice to the respondents, stayed further proceedings in various High Courts where the validity of Sharing Regulations has been challenged. Hon`ble Delhi High Court, in Writ Petition No. 7017/2011, MSEDCL vs CERC, has directed the beneficiary to continue paying the charges as per PoC regime and excess payment, if any, shall be adjusted in future at such rate as may be directed by the Court, if the writ succeeds.

15. We have considered the submissions of the petitioner and the respondents. After notification of the Sharing Regulations, the petitioner has been entrusted with the responsibility of raising the bills and collection of PoC charges on behalf of all the ISTS Licensees and distribution of the collected transmission charges amongst the eligible ISTS licensees. The petitioner raised the first bills for the month of July 2011 in August 2011 and the bills for the months of August and September, 2011 have been raised in the subsequent months as per the methodology specified in the Sharing Regulations. Despite best efforts by the petitioner, some DICs have not signed the TSA and dues have not been liquidated by some of the beneficiaries/DICs. This is resulting in cash flow problem to the petitioner. To discourage the incidence of non-payment of transmission charges and directions to all DICs to sign the TSA, the petitioner has sought approval of the Commission to invocation of Regulation 20 of the Sharing Regulations. Regulation 13 (5) of the Sharing Regulations provides as under:

"The notified Model Transmission Service Agreement shall be the default transmission agreement and shall mandatorily apply to all Designated ISTS Customers."

16. The Commission vide, its order dated 29.4.2011, had approved the TSA, RSA and BCD under the Sharing Regulations and directed CTU as under:

"3. The CTU is directed to give wide publicity to these documents on their website. CTU is further directed to take necessary action for getting the Transmission Service Agreement and Revenue Sharing Agreement signed by the concerned parties at the earliest."

17. The above provisions of the Sharing Regulations clearly provide that TSA is to be signed pursuant to the mandate of the Sharing Regulations which was framed after considering the objections of all the stakeholder including the contesting respondents. The purpose of introducing the provisions of Regulation 13 (3) has been explained in the Statement of Reasons extracted as under:

"At present the transmission investment are faced with an uncertainty in generation and also the cumbersome process of getting, the bulk power transmission agreement signed by all the expected beneficiaries of the transmission system. Under the new proposed mechanism all the designated ISTS customers are default signatories to the transmission service agreement which also requires these DICs to pay the point of connection charge which covers the revenue of transmission licensee. The commercial arrangement would also facilitate financial closure of transmission investments."

It is clear from the above that notified Model Transmission Service Agreement shall be the default transmission agreement and shall be mandatorily applied to all designated ISTS customers. The Model Transmission Service Agreement has been prepared after considering the concerns of all the stakeholders. Therefore, once the TSA is notified by the Commission after due consultative process, there should not be any objection from the DICs to signing the TSA. The principle of 'free consent' or 'coercion', etc., which normally applies in a private contract between the two entities, shall not apply in case of the contract involving TSA of the present nature which has come into existence by following the due procedure of law governing such agreement under the Sharing Regulations. Under Regulation 13 of the Sharing Regulations, the Commission has prescribed a framework/formula for sharing of transmission charges and losses which the Commission had done in exercise of the statutory functions under

Section 79 (1) (c) and (d) of the Electricity Act, 2003 and to this extent the Transmission Service Agreement providing for implementing the tariff as per PoC regime has become statutory in character and binding upon all stakeholders, unlike a private contract where there must be a meeting of minds of the contracting parties. Hon`ble Supreme Court in ***Indian Thermal Power Ltd. Vs. State of M.P. [2000 (3) SCC 379]*** has held that " if entering into a contract containing the prescribed terms and conditions is a must under, the statute then that contract becomes a statutory contract. If a contract incorporates certain terms and conditions in it which are statutory, then the said contract to that extent is statutory. A contract may contain certain other terms and conditions which may not be of a statutory character and which have been incorporated therein as a result of mutual agreement between the parties. Therefore, the PPAs can be regarded as statutory only to the extent that they contain provisions regarding determination of tariff and other statutory requirements of Section 43-A (2)." The determination of sharing of inter-State transmission charges and losses as per tariff norms fixed by the Commission under section 79 (1) (c) and (d) of the Act is mandatory and the stakeholders are required to enter into the contract/TSA. The terms of the TSA are statutory in nature and cannot be invalidated on the consideration of 'free consent or coercion' as pleaded by the respondents BSEB and GRIDCO .

18. DICs like BSEB, GRIDCO, WBSEDCL and MSEDCL have challenged the Sharing Regulations before the Delhi High Court. JSEB has challenged the Sharing Regulations before the Jharkhand High Court. At the instance of the petitioner, the application for transfer of the petition to Delhi High Court is presently under consideration of Hon`ble Supreme Court. It is noted that there is no stay on any of the provision of the Sharing Regulations. Therefore, all DICs are bound to comply with the provisions of the Sharing Regulations including signing of the TSAs and LCs.

19. It is noted that the petitioner had conducted various workshops and meetings to explain the new transmission charge sharing mechanism. Despite repeated efforts, all DICs have not signed the TSA. Clause 2.1.1 of the TSA provides as under:

"2.1.1 The DICs and ISTS licensees shall enter into this Agreement and bind



themselves to the terms of this Agreement as on the date of Sharing Regulations coming into force.

2.1.2 In the event of any conflict between the existing Bulk Power Transmission Agreements (BPTA) or Transmission Service Agreement (TSA) and this Agreement, the terms of this Agreement shall supersede, as far as the sharing of transmission charges are concerned."

20. We had directed the DICs in our order dated 25.1.2012 in Petition No. 213/MP/2011 to sign the TSA in terms of Regulation 13 (5) of the Sharing Regulations and till the TSAs are signed by the DICs, they will be bound by the model TSA. Despite our directions, some of the DICs have not signed the TSA. Therefore, we direct all DICs, who have not signed TSA, to sign TSA within one month from issue of order.

21. We further direct all the DICs who have not opened the LCs or who have opened the LCs for insufficient amount, to open the LCs for the requisite amount within one month from the date of issue of this order.

22. Petition No. 196/MP/2011 is disposed of with above directions.

Sd/-

(V.S. Verma)
Member

sd/-

(S. Jayaraman)
Member

sd/-

(Dr. Pramod Deo)
Chairperson