

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 2/RP/2012
In
Miscellaneous Petition No. 126/MP/2011**

Coram:

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

**Date of Hearing : 31.05.2012
Date of Order : 09.05.2013**

In the matter of:

Review of the order dated 28.11.2011 passed by Central Electricity Regulatory Commission in Miscellaneous Petition No. 126/MP/2011 under Section 94(1)(f) of the Electricity Act, 2003 and Regulation 103 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

And

In the matter of:

M/s Noida Power Company Limited,
Greater Noida (U.P.)

.....Petitioner

Vs

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

.....Respondents

The following were present:

1. Shri M.G. Ramachandran, Advocate for the petitioner
2. Shri Gautam Ghosh, NPCL



3. Shri Sarnath Ganguly, NPCL
4. Shri Mayuri Patel, NPCL
5. Shri Sunil, Advocate for Respondents No.1 to 3
6. Shri Arthendumauli, Advocate for Respondents No.1 to 3
7. Shri Sanjeev Bhasker, UPPTCL
8. Shri B.K. Saxena, UPPTCL
9. Shri Taruna A. Prasad, UPPTCL
10. Shri Jyoti Prasad, POSCO
11. Shri Devender Kumar, NRLDC
12. Shri Mayank Shekhar, NRLDC

ORDER

Noida Power Company Limited (NPCL) filed Petition No.126/MP/2012 seeking a direction to Northern Regional Load Despatch Centre (NRLDC) to charge the Short Term Open Access (STOA) Transmission Charges for Uttar Pradesh @ ₹50/mWH instead of ₹80/MWh from the petitioner for all inter-State open access bilateral transaction and to levy such charges strictly in accordance with the tariff order passed by the Uttar Pradesh State Regulatory Commission (UPERC). The Commission by its order dated 28.11.2011 held that the rates for STOA charges for Uttar Pradesh were specified by the UPERC and the same rate, i.e. @ ₹50/MWh has to be charged instead of rate specified in the Central Electricity Regulatory Commission (Open Access in inter-State transmission) Regulations, 2008 (hereinafter referred to as "the 2008 regulations"), which was to be made applicable only if the State Commission had not specified the rates. The Respondents 1 to 4 (hereinabove) were directed to refund the excess amount charged from the petitioner on account of application of incorrect STOA charges for Uttar Pradesh.



2. Aggrieved by this order, NPCL has filed the instant review petition seeking review of the Commission's order dated 28.11.2011 in Petition No.126/MP/2011. The Review Petitioner has submitted that though the Commission has directed the Respondents 1 to 4 to refund the excess amount charged from the Review Petitioner during 1.10.2009 to 30.4.2011, the Commission has not granted the interest on the excess amount charged, as prayed by the Review Petitioner. The Review Petitioner has made the following prayers:-

- (i) Review the order dated 28.11.2011 passed in Miscellaneous Petition No. 126/MP/2011 titled as Noida Power Company Limited Versus U.P. Power Transmission Corporation Limited (UPPTCL) and others limited to the grant of interest to the Review Petitioner;
- (ii) Direct the Respondent nos. 1 to 4 to refund to the Review Petitioner the excess amount charged by them on account of STOA Charges since 1.10.2009 till 28.11.2011 along with interest @ 18% per annum from the date of excess amount so charged till the date of actual payment; and
- (iii) Direct the Respondent No. 1 to 4 to refund the said excess amount within 15 days of the passing of the order.

3. The Review Petition was admitted by the Commission on 14.2.2011 and the respondents were directed to file their replies. The Respondent Nos.1 to 3 have filed a combined reply on 22.5.2012. Arguments of both the parties were heard on 31.5.2012 and orders were reserved.



4. Having heard the parties and gone through the documents on record, we proceed to dispose of the petition.

5. The Review Petitioner, NPCL has submitted that as per Section 62(6) of the Electricity Act, 2003 (hereinafter referred to as "the Act"), if any licensee recovers a price or charge exceeding the tariff determined under Section 62, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate. Section 62(6) of the Act provides as under:-

"(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this Section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

6. The Review Petitioner has also submitted that the issue of interest has not been dealt in the impugned order dated 28.11.2011, though it was raised by the Review Petitioner. Therefore, there is an error apparent on the face of the record and it requires to be corrected in the interest of justice.

7. The Respondents Nos. 1 to 3 have submitted that the Review Petitioner is a Distribution Licensee under the Act and like any other Distribution Licensee, it is a long term customer since 1993 and meeting its current and future demand. Accordingly the Review Petitioner should pay for Long Term transmission charges for using the State's transmission network. The Review Petitioner has not sought Long Term Open Access (LTOA) for using the State's transmission network to meet its long term demand in its area of operation. The Review Petitioner has availed STOA from SLDC causing loss to the respondents by avoiding transmission charges specified by UPERC for LTOA. As



such the Review Petitioner is liable to make good the loss caused by it to the respondents.

8. The respondents have further submitted that the Review Petitioner is a LTOA customer of the State network. While undertaking bilateral transactions through STOA in inter-State transmission, the Review Petitioner had been meeting long term demand of consumers of its area of supply from 1.10.2009 to 30.11.2011 by using State network. Thus, the Review Petitioner is liable to pay the LTOA charges as determined by UPERC in tariff orders dated 15.4.2008 and 31.3.2010 for the transactions made by it during 1.10.2009 to 30.11.2011. The amount of transmission charges under recovered from the Review Petitioner is ₹6,83,28,439.40 for the energy transacted by the Review Petitioner since 1.10.2009 to 30.11.2011 on account of long term intra-State transmission charges to be levied @ 126/ MWh as per UPERC rates instead of ₹ 80/MWh for short-term as per 2008 regulations, for use of State network for bilateral transactions through STOA Access in inter-State transmission. The Review Petitioner is liable to pay the interest @ 18% per annum on the amount of transmission charges so under recovered from the Review Petitioner by the respondents. The respondents have also submitted that the Commission has overlooked the fact that the rate of intra-State transmission system is different from the rate of inter-State transmission system and the Commission has not determined the nature of Open Access being availed or should have been availed by the Review Petitioner before deciding the transmission charges.

9. We have considered the submissions of the petitioner and the respondents. The main contention of the Review Petitioner is that it is eligible for interest for the excess amount collected by the respondents for the transactions made by it during 1.10.2009 to



30.11.2011 under section 62(6) of the Act. The respondents have submitted that the prayer of the Review Petitioner should be dismissed and it may be held that the review petition is not entitled to any refund or interest thereon.

10. The respondents have raised the issue that the Review Petitioner should be declared as a long term customer of the UP State network and should accordingly pay for the long term transmission charge for use of the State network. At this point, it is clarified that as per the submissions of the respondents, the Review Petitioner is a long term customer of the State network since 1993 and accordingly, the Review petitioner must be paying the transmission charges for long term access availed by it. However, whenever the Review Petitioner is availing the inter-State short term open access, it will be governed by the provisions of the Open Access Regulations of the Commission. Regulation 16(3) of the 2008 Regulations provides that the intra-State entity shall pay the transmission charges for use of the State network as fixed by the respective State Commission in addition to the charges mentioned in clause (1) and (2) of the said regulation. If the transmission charges are not fixed by the State Commission, the open access customer would be required to pay the charges @ ₹ 80/MWh. In the present case, the respondent had been charging the transmission charges from the Review Petitioner @ ₹ 80/MWh and when it was found that the State Commission has determined the transmission charges of the State network, the Commission directed vide the impugned order to refund the difference between the transmission charges charged and the transmission charges which was actually required to be charged. The Review Petition has been filed against the said order. Therefore, the objection of the respondent are outside the scope of the review petition and are hereby rejected.



11. As regards the petitioner's prayer for refund of the excess amount charged by Respondent Nos.1 to 4 on account of STOA charges alongwith interest @ 18% per annum from the date of excess amount so charged till the actual date of payment, we are of the view that since the respondent was charging the transmission charges over and above what was fixed by the State Commission despite the clear provision in the regulations, the Review Petitioner is entitled to interest during the period. The Commission while issuing the order has not dealt with the prayer for interest. In our view this is an error apparent on the face of record and needs to be rectified. Accordingly, we direct that the Review Petitioner shall be entitled for interest @ 9% p.a. during the period for which the respondent had collected the excess transmission charges.

12. This order disposes of Review Petition No. 2/RP/2012 in Petition No. 126/MP/2011.

sd/-

(M. Deena Dayalan)
Member

sd/-

(V.S. Verma)
Member

sd/-

(S. Jayaraman)
Member

sd/-

(Dr. Pramod Deo)
Chairperson

