

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No 82/MP/2013**

**Coram:**

**Shri V S Verma, Member**

**Shri M Deena Dayalan, Member**

**Date of Hearing: 23.7.2013**

**Date of Order : 20.1.2014**

**In the matter of**

Levy of Back Up Supply Charges and withholding of UI Charges in Violation of Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008, during the Grant of Inter State Open Access.

**And**

**In the matter of**

Dhruvesh Metasteel Private Limited

Vs

State Load Dispatch Centre, Karnataka

**Petitioner**

**Respondent**

**Parties Present:**

Shri Shridhar Prabhu, Advocate for the petitioner

Shri Anantha Narayana, Advocate for the petitioner

**ORDER**

The petitioner, Dhruvesh Metasteel Private Limited, has filed the present petition seeking direction to the respondent, State Load Despatch Centre, Karnataka to refund the Back Up Supply Charges (BUSC) and the withholding of the UI charges due to the petitioner during the course of grant of inter-State open access for the period from 2.12.2011 to 31.1.2012 and 1.6.2012 to November 2012. According to the petitioner, these charges have been withheld in contravention of the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2009 (UI Regulations) and Central Electricity Regulatory Commission (Open Access in



inter-State Transmission) Regulations, 2008 (Open Access Regulations). The petitioner has made the following prayers, namely -

- A. declare that the withholding of the UI Charges and paying only Rs. 2.85/-unit, Back Up Supply Charges and Fixed Charges thereon levied by the Respondent is illegal and untenable and opposed to law, particularly, the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008;
- B. direct the Respondent to refund the differential UI Charges, Back Up Supply Charges and Fixed Charges thereon along with one percent interest per month, from the date of collection up to the date of payment in full;
- C. direct the Respondent to adhere to the Electricity Act, 2003 and the Regulations specified by this Hon'ble Commission;
- D. direct the Respondent to pay the cost of this Petition; and pass any other orders to meet the ends of justice.”

2. The petitioner owns and operates a 10 MW cogeneration based captive power plant at Hirebaganal village in Koppal Taluk and District in the State of Karnataka. The petitioner claims to sell the surplus generation over and above its captive consumption by availing the short-term inter-State open access under the Open Access Regulations. The petitioner has stated that it availed the short-term inter-State open access from 2.12.2011 to 31.1.2012 and from 1.6.2012 to November, 2012 (the Open Access Period). The petitioner has alleged that during the Open Access Period it has been paid Unscheduled Interchange (UI) charges at the rate of ₹ 2.85 per unit, instead of the charges payable as per the UI vector specified by the Commission and thus the respondent has been withholding a part of the UI Charges legitimately due to the petitioner. The petitioner has further alleged that the respondent levied a charge known as Backup Supply Charges with every Bill issued for the inter-State open access, and

also levied thereon Fixed Charges at the rate of Rs. 210/- HP. According to the petitioner, levy of Backup Supply Charges and Fixed Charges and withholding of the UI Charges (by paying at lower rate of ₹ 2.85/unit specified by the Commission) is illegal and untenable being opposed to the Electricity Act, 2003 and the regulations of the Commission.

3. The petitioner has submitted that the petitioner is a registered consumer of Gulbarga Electricity Supply Company Limited (GESCOM), a distribution company in the State of Karnataka. The petitioner has submitted that it is paying the necessary charges to GESCOM as per the applicable tariff. However, GESCOM is levying the Backup supply charges and withholding the UI charges which is legitimately due to the petitioner, solely for the purposes of discouraging the petitioner from availing the inter-State open access.

4. The petitioner has relied upon the orders of the Commission dated 9.10.2012 in Petition No. 124/MP/2011, dated 19.11.2012 in Petition No. 1/MP/2012 and Petition No. 9.12.2012 in Petition No. 124/MP/2012 in support of its contention and has submitted that the SLDC Karnataka has been illegally withholding the UI charges and collecting the Backup Supply Charges and fixed cost thereon.

5. After hearing the learned counsel of the petitioner on 10.6.2013, the Commission directed to admit the petition and issued notice to the respondent. The respondent was directed to file its response by 28.6.2013 and the petition was listed for hearing on

23.7.2013. The respondent did not file its reply by the date fixed for hearing. On 23.7.2013 none appeared on behalf of the respondent. Therefore, the respondent was afforded another opportunity for filing the reply. It was directed that in case the respondent failed to file its reply by 8.8.2013, the Commission would decide the matter based on available record. The respondent has not filed its reply. We are accordingly proceeding to dispose of the petition.

6. The petitioner is availing short term open access to inter-State transmission to sell power from its captive power plant for which no objection has been granted by the respondent. Over/under injection/drawal by the intra-State entity during the course of short term inter-State open access is governed by the provisions of clauses (5) and (6) of Regulation 20 of the Open Access Regulations. The said provisions are extracted 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.

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

7. Thus, an intra-State entity availing short term inter-State open access is liable to pay the UI charges at the rate as specified by the concerned State Commission. However, where no UI charges have been specified by the State Commission, applicable rates are 105% (for over-drawals or under generation) and 95% (for under-drawals or over generation) of UI rate at the periphery of regional entity. Further, no

charges other than those specified under the Open Access Regulations are payable for availing short-term inter-State open access.

8. Though no reply has been filed by the respondent despite notice, we note that the State Commission of Karnataka has not specified the UI rates as informed by the intra-State entities in a number of cases in the past. Therefore, UI Charges at 105% of the UI rates fixed by this Commission are payable by the petitioner in case of under-generation and the petitioner is entitled to claim for over-generation the UI Charges at 95% of the UI rates specified by this Commission. It is pertinent to mention that this Commission has not specified Backup Supply Charges and Fixed Charges under the Open Access Regulations. Therefore, both these charges cannot be levied on the persons availing short term inter-State open access. This Commission in its order dated 24.12.2012 in Petition No. 124/MP/2012 (Falcon Tyres Ltd Vs Karnataka State Load Despatch Centre) has considered similar issues and has come to the following conclusions:

“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.

15. 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)	xxx	xxx	xxx	xxx
(ii)	xxx	xxx	xxx	xxx
(iii)	xxx	xxx	xxx	xxx
(iv)	xxx	xxx	xxx	xxx
(iv)	xxx	xxx	xxx	xxx
(v)	xxx	xxx	xxx	xxx
(vi)	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
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16. 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.

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."

9. The present case is covered under the principles decided in the order of this Commission as quoted above. Accordingly, the present petition is allowed. While availing the short term inter-State open access, the petitioner is not liable to pay any charges in addition to those specified under the Open Access Regulations. The petitioner is liable to pay the UI charges at 105% of the UI rates fixed by this Commission in case of under-generation and 95% of such rates for over-generation. The charges for drawl of power by the petitioner in the event of outages of its generating

station during the Open Access Period shall be accounted for as the UI Charges and not as Backup Supply Charges. Accordingly, the respondent is directed to refund the excess UI Charges withheld, Backup Supply Charges and Fixed Charges already recovered for the Open Access Period, within a period of two months from the date of this order. In case the respondent fails to implement the order as directed within the stipulated date, the petitioner shall be entitled to claim interest at the rate of 9% per annum from the date of expiry of two months and up to the date of refund.

10. The petition is disposed of with above directions.

**sd/-**  
**(M Deena Dayalan)**  
**Member**

**sd/-**  
**(V S Verma)**  
**Member**