

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**PETITION No. 134/MP/2011**

**Coram:  
Shri Gireesh B. Pradhan, Chairperson  
Shri M.Deena Dayalan, Member  
Shri A K Singhal, Member**

**Date of Hearing: 01.04.2014**

**Date of Order: 30.10.2014**

**In the matter of**

Petition for clarification on the interpretation of Regulation 5 of the CERC (Unscheduled Interchange Charges and related matters) (Amendment) Regulations, 2010

**And**

**In the matter of**

Bharat Aluminium Company Ltd  
P.O.: Balco Nagar, Korba-495 684  
Chattisgarh

.....**Petitioner**

**Vs**

1. Chhattisgarh State Power Transmission Company Ltd. (CSPTCL)  
Daganiya, P.O.: Sunder Nagar,  
Raipur-492 013

2. Chhattisgarh State Load Despatch Centre  
CS Power Transmission Co. Ltd.  
Daganiya, Raipur

.....**Respondents**

**Present:**

1. Shri Prashanto Chandra Sen, Advocate for the petitioner
2. Ms. Suparna Srivastava, Advocate for the respondents

**ORDER**

The petitioner, Bharat Aluminium Company Ltd, has filed this petition seeking clarification/interpretation of Regulation 5 of the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and other related matters)



Regulations, 2009 as amended vide Central Electricity Regulatory Commission (Unscheduled Interchange Charges and other related matters)(Amendment) Regulations, 2010 (hereinafter “UI Regulations”).

### **Facts of the Case**

2. The UI Regulations were amended by the Commission on 28.4.2010 to be effective from 3.5.2010. Chhattisgarh State Power Transmission Company Limited (CSPTCL), the CSPTCL sent a communication dated 5.6.2010 to the Commission pointing out certain difficulties experienced by it in calculation of UI charges with regard to the scheduling of power under short term open access by the generators/sellers which constitute embedded generation in Chhattisgarh State electricity supply system. CSPTCL in the said letter had submitted that in the State of Chhattisgarh, 34 number of such generators/sellers with total permitted short term open access quantum of 840 MW were allowed to sell power outside the State. CSPTCL noticed that the open access customers among these generators/sellers were often under-injecting against the scheduled power which ranged from 100 to 150 MW in total. According to CSPTCL, the power so scheduled but not injected by generators/sellers was drawn by the buyers which was accounted for against the power pool of Chhattisgarh State Power Distribution Company Limited (CSPDCL) in accordance with Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (hereinafter “the Open Access Regulations”). As a result, CSPDCL was put into unwarranted burden and financial disadvantage, especially when CSPDCL had no surplus power to compensate for the deficit injection by these generators/sellers. CSPTCL highlighted that CSPDCL might have to compensate by overdrawal from the

grid for which it was required to pay upto ₹17.46/kWh if frequency was below 49.2 Hz., whereas the seller's liability to pay for under-injection in similar situation is limited to ₹12.22/kWh. CSPTCL made the following suggestions to be incorporated in the UI Regulations through amendment:

"The limit of over injection has been extended from earlier 105% of the schedule in one time block and 101% over a day to 120% and in excess of 120% also with payment mechanism applied at different rates for ex-bus generation limited to 105% in one block and 101% over a day and in second case ex-bus generation more than given above. This would encourage under declaration of schedule and over-injection above the schedule to get the cap rate upto 120% under the condition when the power market is slowing down trend as far as the cost of power is concerned. Therefore, the over injection of power in excess of the schedule should be permitted only when the frequency is below 49.5 Hz for which cap rate for the power injected should be made payable top the seller upto 120% only and no payment for injection above 120%. For frequency above 49.5Hz over injection by the seller more than 105% in one time block and 101% over a day should not be payable to the generator/seller.

.....  
4. The limit of 120% has been co-related with the installed capacity of the station. In case of CPP (most of the open access customers in Chhatisgarh are CPP), the generation is controlled by the CPP owner looking to the load requirement, where SLDC/Transmission Licensee/Distribution Licensee has no jurisdiction of control. Therefore, the validation about the installed capacity particularly of the smaller generators would be difficult to establish. It is therefore proposed that the power schedule by such generator against open access should be considered the installed capacity of the CPP for the sake of open access into the State grid."

3. In its subsequent letter dated 28.6.2010 addressed to the Commission, CSPTCL has stated the following:

"Under clause 5 of the above regulations, it has been mentioned that the changes for the unscheduled interchange for the injection by the seller in excess of 120% of the schedule subject to a limit of ex-bus generation corresponding to 105% of the installed capacity of the station in a time block or 101% of the installed capacity over a day shall not exceed the cap rate as specified in Schedule A (₹4.03 per unit).

Further, the changes for the Unscheduled Interchange for the injection by the seller in excess of ex-bus generation corresponding to 105% of the installed capacity of the station in a time block or 101% of the installed capacity over a day shall not exceed the charges for the unscheduled interchange corresponding to grid frequency interval of 'below 50.02 Hz and not below 50.0 Hz (₹1.55 per unit).

However, the Charges for the Unscheduled Interchange for the excess injection by the seller above the schedule up to 120%, if the ex-bus generation is within 105% in a time block or 101% over a day has not been mentioned in the regulation. Therefore, for the

reasons stated in our letter dated 05-05-2010 and to discourage the tendency of under scheduling and excess injection over the schedule, the UI has to be regulated and controlled.

In view of this, and in absence of clarity on the issue, therefore, the following mode of UI payment (payable to the seller) for excess generation, is followed for the time being:-

- A. Condition I- The generation within 105% of the installed capacity in one time block and 101% over a day-

Excess injection more than the schedule but limited to 120% of the schedule (over a day) – UI Cap rate of ₹4.03/unit.

- B. Condition II- When generation crosses the limit of 105% of installed capacity in one time block and 101% over a day-

Excess injection (total) over the schedule – Cap rate of ₹1.55/unit for all range of over injection from schedule.”

4. After writing these letters to the Commission, CSPTCL vide its letter dated 7.7.2010 addressed to all embedded customers of the State including Bharat Aluminium Company Limited, the petitioner and raised the bills for inter-State Open Access Provisional UI accounts for the period 3.5.2010 to 9.5.2010. The opening para of the said letter read as under:

“The UI mechanism has been as per CERC Notifications and CSTPL’s communication to CERC/CSERC dated 5<sup>th</sup> June 2010 regarding inapplicability on the open access customer of the State and the same is binding for all.”

5. The petitioner is stated to have taken up the matter with CSPTCL vide its letters dated 20.7.2010, 26.7.2010, 11.8.2010, 17.8.2010 and 24.8.2010 for revision of UI bills taking into account the provisions of over-injections in UI Regulations which came into effect from 3.5.2010. In its letter dated 24.8.2010 (Annexure B to the Petition), the petitioner pointed out that CSPTCL had adopted a basis different from the basis given in the UI Regulations, particularly for the charges for injection by the seller up to 120% and in excess of 120% of the schedule which resulted in excess billing of ₹89,76,756/- as on

18.8.2010 and the petitioner made the payment of the said amount under protest. In the said letter, the petitioner had requested CSPTCL to clear its applications for open access and NOC for IEX for the month of October and November 2010. Similarly, the petitioner paid the bill dated 25.8.2010 under protest and requested CSPTCL vide its letter dated 3.9.2010 (Annexure C of the petition) to address the disputed matter in connection with the interpretations of UI Regulations and refund the excess amount paid with applicable surcharges. The petitioner is also stated to have taken up the matter with Chhattisgarh State Electricity Regulatory Commission (CSERC) vide its letter dated 27.9.2010 (Annexure D of the petition) in which the petitioner has sought a directive to CSPTCL to stop the UI calculation based on unilateral decision of CSPTCL/SLDC for excess injection by the petitioner. No document has been placed on record with regard to the disposal of the said letter by CSERC.

### **Submissions of the Petitioner**

6. The petitioner has filed the present petition against the billing by CSPTCL vide letter dated 7.7.2010 based on its interpretation of the UI Regulations as conveyed to the Commission vide its letters dated 5.6.2010 and 28.6.2010. The petitioner has submitted that calculation of UI charges in the letter dated 7.7.2010 is erroneous as the CSPTCL did not adopt and recognise the mechanism of installed capacity as provided in Regulation 5 of the UI Regulations but was guided by para 4 of its letter dated 5.6.2010 to this Commission which read that “it is therefore proposed that the power schedule by such generator against open access should be considered the installed capacity of the CPP for the sake of open access into the State grid”. The petitioner has submitted that the interpretation of the CSPTCL is contrary to the UI Regulations and

the Unscheduled Interchange charges should be calculated based on the following interpretation of Regulation 5 of the UI Regulations as amended vide notification dated 28.4.2010:

- “1. UI charges for over injection up to 120% scheduled injection are to be considered corresponding to grid frequency interval as specified in Schedule-A of Central Electricity Regulatory Commission (UI charges and related matters) (Amendment) Regulations, 2010 (i.e. no capping and grid frequency linked rate is payable in line with UI charges levied and recovered for under injection by seller).
2. The charges for injection in excess of 120% schedule subject to a limit of ex-bus corresponding to 105% of the installed capacity of the station in a time block or 101% of the installed capacity over a day shall be the same as the charges for the UI corresponding to grid frequency interval of ‘below 49.70 Hz and not below 49.68 Hz’ as specified in the Schedule ‘A’ of this regulation (i.e. maximum cap rate of ₹4.03)
3. Over injection in excess of 105% of the installed capacity in a time block or 101% of the installed capacity over a day shall not exceed the charges for the unscheduled interchange corresponding to grid frequency interval of ‘below 50.02 Hz and not below 50.0 Hz’ as specified in the Schedule ‘A’ of this regulation (i.e. maximum cap rate of ₹1.55)”

The petitioner has submitted that the installed capacity of Bharat Aluminium Company Limited is 810 MW which should be taken into account for the purpose of calculation of UI charges in terms of Regulation 5 of the UI Regulations as amended vide notification dated 28.4.2010. The petitioner has submitted that the difference in interpretation has led to billing difference of about ₹3.67 crore for the period covering 3.5.2010 to 1.5.2011 which was paid by the petitioner under protest and should be refunded by the CSPTCL.

### **Reply of the Respondents**

7. The Respondents in their common reply vide affidavit dated 7.12.2011 have raised a preliminary objection regarding the maintainability of the petition. The respondents have submitted that the petitioner cannot be covered under the definition of

'seller' under UI Regulations as the petitioner is a person who (a) neither has its total actual generation nor its total scheduled generation declared at the bus of the interface point; (b) does not have interface meters to measure at the regional boundaries; (c) is a captive power plant embedded in the State; (d) does not fall under the control area of RLDC; and (e) no UI is prepared for it by Regional Power Committee. The Respondents have submitted that the present petition for clarification on the interpretation of Regulation 5 of the UI Regulations is not maintainable.

8. The Respondents have further submitted that installed capacity is not a parameter to be included for the class of customers (i.e. captive generating plant) to which the petitioner belongs. The Respondents have submitted that the petitioner has never identified the unit intended for open access and has never complied with the provisions of Regulations 5.2(q) and 6.2 of the Grid Code for providing data to SLDC. The petitioner is only confined to the interconnection point with the grid which is solely meant for the purpose as a consumer. As regards the petitioner's contention that its reserved capacity be considered as installed capacity for the purpose of calculation of UI, the Respondents have submitted that as per Regulations 6, 16(1) and 20(1) of Open Access Regulations, it is the schedule only which is relevant and permissible for all calculation of UI rates, and not the installed capacity.

9. The Respondents have submitted that the petitioner has the connectivity with 220 kV network at the power station grid as a consumer and has accordingly executed all agreements. The petitioner has a Connection Agreement as a consumer of the distribution licensee of the area to the tune of 60 MVA with effect from 1.6.2010. The

Respondents have submitted that the petitioner is a direct customer of the State and has to abide by the provisions of the Grid Code and regulations of the State. The Respondents have further submitted that the claim of the petitioner for the excess injection is not correct and after re-examining the provisions of CSERC orders in the matter, the Respondents are of the view that the CGPs like the petitioner should have been paid as per the CSERC orders. The Respondents have submitted that excess payment has been made to the petitioner for its over injection wherein they should have been paid @ Rupee 1 for the over injection and the petitioner is liable to return an amount of ₹1,05,92,507 paid excess for its over injection.

10. The Commission during the hearing of the petition on 8.12.2011 had enquired from the Respondents whether the rates specified in the UI Regulations were approved by CSERC to which the learned counsel for the Respondents replied in the negative. The Commission had directed the Respondents to explain on affidavit as to how they were charging the UI rates without the approval of the State Commission. The Respondents in their affidavit dated 11.1.2012 have explained that Regulation 20 of the Open Access Regulations provide for accounting of Unscheduled Interchange Charges for transactions for State Utilities availing open access under the said regulations. Regulation 20(5) of Open Access Regulations provides that “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 under-injection) of UI rate at the periphery of regional entity.” Moreover, the UI rates at the periphery of the regional entity have been specified by the Commission in the UI Regulations as amended on 28.4.2010. The Respondents have further submitted as under:



“4. That thus, this Hon’ble Commission has itself specified in its above Regulation for the UI rates to be charged for intra-State entities in open access transactions and these rates are to be applicable unless specified by the State Commission. It is submitted that no such UI rates have been specified by the Regulatory Commission in Chhattisgarh. That being so, no question arises of there being any approval by the State Electricity Regulatory Commission for the rates specified by this Hon’ble Commission in the UI Regulations. The present Petitioner being an “intra-State entity” within the meaning of the 2008 Regulations, it is being charged the UI rates as specified by this Hon’ble Commission in the UI Regulations, 2009 as amended by the UI Regulations, 2010 and the bills are raised on it accordingly by the answering Respondents. The said charging does not require the approval of the Chhattisgarh Electricity Regulatory Commission in view of Clause 20(5) of the 2008 Regulations notified by this Hon’ble Commission for inter-State open access.”

### **Rejoinder of the Petitioner**

11. The petitioner in its rejoinder dated 16.2.2012 has submitted that the Respondents in their affidavit dated 11.1.2012 have admitted that the UI Regulations of this Commission are applicable in case of the petitioner. The petitioner has submitted that the UI Regulations do not make any mention of ‘intra-State’ entity, but clearly define the terms ‘seller’, ‘buyer’, ‘generating station’ etc. The petitioner has further submitted that clause 33.4 of the 2011 Intra-State Open Access Regulations of CERC provides that “the mismatch between the scheduled and the actual drawal at drawal point(s) and scheduled and the actual injection at injection point(s) shall be met from the grid and shall be governed by the CERC (UI Charges and related matters) Regulations, 2009 till the notification of CERC (Intra-State ABT, Unscheduled Interchange charges and related matters) Regulations and thereafter it will as per the regulations to be notified and amendments, if any”. The petitioner has submitted that as admittedly no regulation/UI settlement for Chhattisgarh is in place and as a result, billing is done as per the UI Regulations, the contention of the petitioner regarding non-applicability of UI Regulations to the petitioner merits no consideration. In response to the contention of the Respondents that the petitioner is not a seller, the Petitioner has submitted that as per the clear wording of Regulation 2(1) (m) of the UI Regulations, the petitioner is a

seller and it is not permissible under law to read conditions into the definition of seller as being sought to be done by the Respondents. In response to the contention of the Respondents that UI Regulations are not applicable in case of the embedded customers like the petitioner, it has been submitted that permission was granted by Chhattisgarh SLDC for short term open access on the basis of Open Access Regulations and bills were raised by CSPTCL on the basis of UI Regulations albeit on an incorrect interpretation of the regulations and therefore, the Respondents cannot deny applicability of UI Regulations to the petitioner. In response to the contention of the Respondents regarding non-compliance of the Grid Code by the petitioner, it has been stated that the said issues are not germane to the present case. The petitioner has explained that it has the largest Captive Generation Plant which is connected through an independent feeder emanating from a generating sub-station right from the inception in 1970s and the arrangement is now sought to be changed in compliance with CSERC order dated 31.5.2011.

### **Analysis and Decision**

12. The petitioner has filed this petition primarily seeking a clarification regarding the interpretation of Regulation 5 of the UI Regulations as amended vide amendment dated 28.4.2010 against the background that (a) the Respondents vide their letters dated 5.6.2010 and 28.6.2010 addressed to this Commission have read certain conditions into Regulation 5 of UI Regulations and (b) without the formal approval or concurrence of this Commission, the Respondents have raised the UI bills on the petitioner based on the said conditions. The Respondents in their reply have vehemently argued that UI Regulations and Open Access Regulations are not applicable to the petitioner, though

in their affidavit dated 11.1.2012, the Respondents have admitted that UI accounting of the petitioner is being done in accordance with Regulation 20 of Open Access Regulations read with UI Regulations. In the light of the facts of the case and the submission of the parties, the following issues arise for our consideration:

- (a) Whether the petition is maintainable?
- (b) Whether the UI Regulations are applicable to the petitioner?
- (c) What is the correct interpretation of Regulation 5 of UI Regulations?
- (d) Relief, if any, to the petitioner?

### **Whether the petition is maintainable?**

13. The petitioner has submitted that the petition is maintainable as its interest is affected by the interpretation of the UI Regulations supplied by the Respondents. On the other hand, the Respondents have argued that the petition is not maintainable as the petitioner being an embedded customer of the State of Chhattisgarh is not governed by the UI Regulations and Open Access Regulations of this Commission. In our view, the present petition is maintainable due to following reasons:

- (a) The Respondents have raised the bills for inter-State open access granted to the petitioner about which the petitioner is aggrieved and has approached this Commission. The dispute has arisen in the course of inter-State open access and therefore, in terms of Regulation 26 of Open Access Regulations, “all disputes arising under these regulations shall be decided by the Commission based on an application made by the person aggrieved”. Therefore, the petitioner has correctly approached this Commission as the dispute relates to billing of transactions carried out through inter-State open access.

(b) The bill raised by the Respondents on 7.7.2010 clearly mentions that “the UI mechanism has been as per CERC Notifications and CSTPL’s communication to CERC/CSERC dated 5th June 2010 regarding inapplicability on the open access customer of the State and the same is binding for all.” If it is the understanding of the Respondents that UI Regulations are not applicable to embedded customers within the State, then there was no reason for CSPTCL to write two letters seeking amendment or modification of the UI Regulations. Moreover, the very fact that the Respondents approached this Commission seeking modification or amendment to the UI Regulations in so far as their applicability to CGPs are concerned shows that the Respondents intended to apply UI Regulations in some modified form to the petitioner.

(c) The Open Access Regulations have clear provisions to handle the injection and drawal by the embedded customers of the State in the course of their transaction through inter-State open access. The Respondents in their affidavit dated 11.1.2012 have categorically stated that the UI billing of the petitioner for inter-State open access transactions is being done as per the provisions of UI Regulations and Open Access Regulations of this Commission. That being the case, any dispute with regard to the applicability or interpretation of the said regulations can be maintained before this Commission only.

### **Applicability of UI Regulations to the petitioner**

14. The Respondents have argued that the UI Regulations are not applicable to the category of the customers as the petitioner as they do not qualify as seller in terms of

the said regulation. According to the Respondents, 'person' for the purpose of qualifying as a seller as per the UI Regulations must be connected with the regional grid, must have its total generation and schedules at the point of interface, and must have interface meters at the point of scheduling. Since the petitioner fulfils none of these conditions, the Respondents have argued that the petitioner cannot be covered under the definition of the term 'seller'.

15. Regulation 4 of the UI Regulations enumerates the categories of person to whom the said regulations would be applicable. Regulation 4 reads as under:

"4. **Scope:** These regulations shall be applicable to –

(i) the generating stations and the beneficiaries, and

(ii) sellers and buyers involved in the transaction facilitated through short term open access or medium term open access] or long-term access in inter-State transmission of electricity."

The term 'generating station' has been defined to mean "a generating station whose tariff is determined by the Commission under clause (a) of sub-section (1) of Section 62 of the Act". The term 'seller' has been defined to mean "a person, other than a generating station, supplying electricity, through a transaction scheduled in accordance with the regulations applicable for short term open access, medium term open access and long term access". A conjoint reading of Regulation 4 of UI Regulations with the definition of 'generating station' and 'seller' would reveal that any generating station other than a generating station whose tariff is being determined by this Commission shall be classified as a seller if such generating station is supplying electricity through a transaction scheduled in accordance with the regulations applicable for short term open access, medium term open access and long term open access. It is pertinent to mention that the UI Regulations do not make any distinction between an

inter-State generating station/intra-State generating station and a Captive Generating Plant. If the Captive Generating Plant is supplying power through transactions scheduled in accordance with the regulations applicable to short term, medium term and long term open access, then it fulfils the conditions for being labelled as a seller. In the present case, the Respondents have in para 17 of their reply dated 7.12.2011 admitted to have granted approval to the petitioner to avail short term open access from 20.9.2008 till 30.11.2010 in different spells. Therefore, the petitioner is supplying power by availing short term open access in accordance with the Open Access Regulations of this Commission. That being the case, the petitioner is a 'seller' in accordance with the UI Regulations. We do not find merit in the submission of the Respondents that the generating station must be connected to the regional grid in order to qualify as seller. If the Respondents' submission is accepted, all intra-State generating stations which are connected to the State system and not to the regional grid would be disqualified as seller under the UI Regulations.

16. It is pertinent to note that the petitioner is an intra-State entity within the State of Chhattisgarh. Its scheduling and energy accounting are being done by the State Load Despatch Centre. Regulation 20 of the Open Access Regulations deals with the procedure for accounting of transactions by the State Utilities and the intra-State entities and the manner of settlement of deviation in respect of such entities in the course of availing inter-State short term open access. Regulation 20 provides as under:

“20. (1) All transactions for State utilities and for intra-State entities scheduled by the nodal agency under these regulations, shall be accounted for and included in the respective day-ahead net interchange schedules of the concerned regional entity issued by the Regional Load Despatch Centre.

(2) Based on net metering on the periphery of each regional entity, composite UI accounts shall be issued for each regional entity on a weekly cycle and transaction-wise UI accounting, and UI accounting for intra-State entities shall not be carried out at the regional level.

(3) The State utility designated for the purpose of collection / disbursement of UI charges from/to intra-State entities shall be responsible for timely payment of the State's composite dues to the regional UI pool account.

(4) Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme.

(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.”

It is clear from the above that the concerned RLDC shall account for and include all transactions by the State Utilities and intra-State entities in the day-ahead net interchange schedule of concerned regional entity. Based on the net metering at the regional periphery, RPC shall issue a composite UI account to each regional entity on weekly basis and transaction wise UI accounting. Any mismatch between scheduled and actual drawal at drawal point and scheduled and actual injection at injection point for the intra-State entity shall be determined by the SLDC and covered in the intra-State accounting scheme. In the absence of intra-State ABT or any specific scheme by the State Commission to handle such mismatch, Regulation 20(5) shall step in which provides for a default mechanism in the form of UI rate for intra-State entity at 105% for overdrawals or under-injection and 95% for under-drawal or over-injection of the UI rate at the periphery of the regional entity. Since Chhattisgarh did not have intra-State ABT nor the State Commission had specified any regulations or guidelines for dealing with

the mismatch by intra-State entities, SLDC would be required to deal with the mismatch in accordance with Regulation 20(5) of Open Access Regulations.

17. SLDC has written two letters on 5.6.2010 and 28.6.2010 to the Commission to make necessary changes in the UI Regulations to deal with the Captive Generating Plants. It is clarified that this Commission cannot accord approval to such a proposal as it falls within the jurisdiction of the CSERC in terms of Regulation 20(4) of the Open Access Regulations. The petitioner should have approached CSERC for an accounting scheme to deal with the mismatch between scheduled and actual drawal at drawal point and scheduled and actual injection at injection point for the intra-State entities like the petitioner. In para 15 of the counter affidavit dated 7.12.2011, the Respondents have submitted that “till date there is no UI regulation/accounting scheme notified by the State. As such, the SLDC has followed the directives and instructions received from the STU and DISCOM with regard to the applicability of UI rate as per CERC Open Access Regulations clause 20(5)”. In our view, it is only the State Commission which has the jurisdiction either to lay down an accounting procedure or to accept with or without modifications the procedure laid down by this Commission in so far as the intra-State entities are concerned. The STU/DISCOM are not competent to apply the regulations of the Commission in a modified form to suit their requirement.

18. In its rejoinder, the petitioner has referred to the intra-State Open Access Regulations, 2011 of CSERC which came into effect from 1.5.2011. Clause 33.4 of the said regulations provides as under:



“33.4 Unscheduled Interchange Charges:

(a) The mismatch between the scheduled and the actual drawal at drawal point(s) and scheduled and the actual injection at injection point(s) shall be met from the grid and shall be governed by the CERC (UI Charges and related matters) Regulations, 2009 till the notification of CSERC (Intra-State ABT, Unscheduled Interchange charges and related matters) Regulations and thereafter it will as per the regulations to be notified and amendments, if any”.

It is apparent from the above that CSERC has adopted the UI Regulations of this Commission without any condition or modification for handling the mismatch between the scheduled and the actual drawal at drawal point(s) and scheduled and the actual injection at injection point(s). The period under dispute is partially covered under the above regulations of CSERC. Prior to that, there was no regulation of CSERC and therefore, by virtue of Regulation 20(5) of the Open Access Regulations, the UI Regulations were applicable to the petitioner. Therefore, for the entire period under dispute, the mismatch between scheduled injection and actual injection by the petitioner has to be governed by the UI Regulations.

**Interpretation of Regulation 5 of UI Regulations**

19. The provisions of Regulation 5 of the UI Regulations in so far as they pertain to seller are extracted as under:

**“5. Unscheduled Interchange (UI) Charges:**

(1) The charges for the Unscheduled Interchanges for all the time blocks shall be payable for over drawal by the buyer or the beneficiary and under-injection by the generating station or the seller and receivable for under-drawal by the buyer or the beneficiary and over-injection by the generating station or the seller and shall be worked out on the average frequency of a time-block at the rates specified in the Schedule A of these regulations as per the methodology specified in clause(2) of this regulation.

.....

Provided also that the charges for the Unscheduled Interchange for the injection by the seller in excess of 120% of the schedule subject to a limit of ex-bus generation corresponding to 105% of the Installed Capacity of the station in a time block or 101% of the Installed Capacity over a day shall not exceed the Cap Rate as specified in the



Schedule A of these regulations as per the methodology specified in clause (5) of this regulation.

Provided also that the Charges for the Unscheduled Interchange for the injection by the seller in excess of ex-bus generation corresponding to 105% of the Installed Capacity of the station in a time block or 101% of the Installed Capacity over a day shall not exceed the charges for the Unscheduled Interchange corresponding to grid frequency interval of 'below 50.02 Hz and not below 50.0 Hz'.

(5) The Cap Rate for the Unscheduled Interchange for the injection by the seller in excess of 120% of the schedule subject to a limit of exbus generation corresponding to 105% of the Installed Capacity of the station in a time block or 101% of the Installed Capacity over a day shall be the same as the charges for the Unscheduled Interchange corresponding to grid frequency interval of 'below 49.70 Hz and not below 49.68 Hz' as specified in Schedule "A" of these Regulation."

Further Para 2 of Schedule A of UI Regulations provides as under:

**"2. Unscheduled Interchange Cap Rates**

(a) In terms of clauses (1) and (3) of Regulations 5, the UI Cap Rate shall be 403.0 Paise/kWh for all generating stations using coal or lignite or gas supplied under Administered Price Mechanism (APM) as the fuel, in case when actual generation is higher or lower than the scheduled generation."

20. The CSPTCL had sought to substitute the word 'schedule' in place of 'installed capacity' in the above regulations in so far as their applicability to the CGPs is concerned. As already held in this order, the Respondents cannot apply the regulations of the Commission with conditions or modifications. The regulations have to be applied as notified by the Commission. A plain reading of the above regulations will reveal the following:

(a) There shall be no cap rate for over-injection upto 120% of the schedule if the injection is below 105% of the installed capacity of the station in a time block or 101% of the installed capacity over a day. The seller shall be paid at the rate of the frequency linked UI rates for over-injection upto 120% of the schedule in such a case.

(b) There shall be cap rate of ₹4.03/kWh for injection by the seller in excess of 120% of schedule upto ex-bus generation of 105% of the installed capacity of the station in a time block or 101% of the installed capacity over a day.

(c) There shall be a cap rate of ₹1.55/kWh for injection beyond 105% of the installed capacity over a day.

21. In so far as the petitioner is concerned, its installed capacity as a Captive Generating Plant shall be reckoned as 810 MW for the purpose of Regulation 5 of UI Regulations. Accordingly, the UI rate of the petitioner in respect of the transactions executed through short term open access to inter-State transmission shall be determined strictly in accordance with Regulation 5 of the UI Regulations as applicable in case of a seller.

### **Relief to the Petitioner**

22. In view of the above, we direct CSPTCL to take necessary steps to settle the UI dues of the petitioner for the period 3.5.2010 till 31.5.2011 in the light of our observations made in this order within a period of one month from the date of issue of this order.

23. The petition is disposed of in terms of the above.

**(A K Singhal)**  
**Member**

**(M Deena Dayalan)**  
**Member**

**(Gireesh B. Pradhan)**  
**Chairperson**

