

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.163/MP/2012

Subject : Petition towards unpaid unscheduled inter-change charges for the period ranging from 28.8.2005 to 31.12.2006.

Date of hearing : 11.8.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi , Member
Dr. M.K.Iyer, Member

Petitioner : Bhushan Power and Steel Limited

Respondents : GRIDCO Limited and others

Parties present : Shri Sanjay Sen, Senior Advocate, BPSL
Shri Rajiv Yadav, Advocate, BPSL
Shri R.K. Mehta, Advocate, GRIDCO
Shri Abhishek Upadhaya, Advocate, GRIDCO
Ms. Himanshi Ahdley, Advocate, GRIDCO
Shri A. Sethy, GRIDCO
Shri R.B. Sharma, Advocate, Odisha
Shri S.K. Das, SLDC, Odisha

Record of Proceedings

Learned senior counsel for the petitioner submitted as under:

- (a) The present petition has been filed seeking direction to the respondents to pay outstanding UI bills.
- (b) OERC in its order dated 27.2.2014 has recorded that 'GRIDCO stated that it had no objection to the wheeling of power from the captive power plant of Bhusan Ltd by utilizing Gridco`s Transmission System to the captive power plant of the applicant located at Bengihali in West Bengal'.
- (c) An agreement entered between the petitioner and GRIDCO acknowledged the fact that the petitioner had been selling about 64 MW of power through the electricity trader. With regard to UI charges applicable to sale of electricity by the petitioner, the said agreement provides that ABT would be

applicable to the petitioner for short term transactions and guided by CERC Open access Regulations, 2004.

(d) The petitioner and GRIDCO had agreed to be bound by the applicable UI mechanism for commercial settlement of any mismatch between the schedule and actual injection by the petitioner.

(e) None of the respondents had denied the UI claims of the petitioner. However, when the petitioner realized that no progress was being made in the matter, the petitioner obtained a copy of Internal Audit Report under RTI. The report admits that the petitioner has legitimate UI claims.

(f) As per the internal note sheets prepared by the officials of the respondents, the petitioner is entitled to the UI charges being claimed.

2. Learned counsel for the SLDC, Odisha referred to the affidavit dated 4.3.2015 and submitted as under:

(a) The petitioner has set up a captive power plant with a total capacity of 100 MW. When the petitioner's steel plant was to be commissioned, the petitioner had surplus power available with it. The petitioner filed Petition No. 174/2003 before OERC for grant of open access for sale of available surplus power outside the State of Odisha by utilizing the transmission network of GRIDCO. OERC vide its order dated 27.2.2014 permitted the petitioner to sell its surplus power in accordance with electricity Act, 2003.

(b) The petitioner's integrated steel plant could not be commissioned and the petitioner had sufficient surplus power available with it, which it had utilized for undue commercial gain through UI. In this process, the petitioner had not only indulged in unfair gaming but also violated the ethics of ABT.

(c) On 25.8.2005, GRIDCO advised the petitioner to open LC towards payment security mechanism for realization of UI charges. The petitioner opened LC on 24.11.2005 and entered into a Short Term Open Access Agreement with GRIDCO on 5.7.2006.

(d) As per Section 32 of the Act, SLDC is responsible for scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in the State. The contract takes the statutory character when read in conjunction with Section 32 of the Act.

(e) There is no allegation that the scheduling and dispatch of electricity has not been done by the SLDC in accordance with the provisions of Section 32 of the Act. The only allegation is of non-payment of UI and if no provision for UI

exists in the agreement/contract, payment of UI charges by SLDC would be in contravention of Section 32 of the Act. It is a well established principle that the regulations framed by the Commission would not prevail over the provisions of the Act.

(f) The petitioner is a captive generator and governed by the provisions of Section 9 of the Act which provides that every person who has a captive generating plant shall have the right to open access for purposes of carrying electricity from his captive generating plant to the destination of his use. In the present case, OERC granted permission to the petitioner to wheel 12 MW of power from its captive power plant at Odisha to its factory at West Bengal. Therefore, there is clear distinction between the right of open access under Section 9 of the Act and the grant of non-discriminatory open access under the provisions of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2004 and the Commission may clarify this issue.

3. Learned senior counsel for the petitioner submitted that in para 2 and 3 of the Agreement dated 5.7.2006, the entire UI mechanism was agreed to between the petitioner and GRIDCO.
4. Learned counsel for SLDC, Odisha submitted that he will further argue the matter after submission of the learned counsel for GRIDCO.
5. The Commission directed to list the matter on 19.8.2015 at 2.30 P.M.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**