

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 10/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A. K. Singhal, Member

Date of Hearing: 24.07.2014

Date of Order: 29.04.2015

In the matter of:

Petition under Section 79 (1) (c) of the Electricity Act, 2003 and Regulation 26 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 read with Regulation 27 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

And

In the matter of:

Shamanur Sugars Limited
374, 4th Main, P.J. Extension,
Davanagere-577 002, Karnataka

.....**Petitioner**

Vs

State Load Despatch Centre, Karnataka
Ananda Rao Circle,
Palace Road, Bangalore-560 009

.... **Respondent**

Following was present:

Shri Anand K.Ganesan, Advocate for SLDC Karnataka

ORDER

The petitioner owns and operates bagasse based co-generation power plant in the State of Karnataka. The petitioner has submitted that it sells power under inter-State Open Access and has complied with all legal and technical requirements for the grant of inter-State Open Access in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State



transmission) Regulations, 2008, as amended from time to time (hereinafter referred to as 'Open Access Regulations'). The petitioner has submitted that with every bill for the UI charges, the respondent has levied Back up Supply Charges (BPS Charges) and Fixed Charges purportedly at the rate of ₹200/HP from September 2008 till date. The petitioner has placed on record the copies of bills raised by the respondent from September 2008 onwards. The petitioner is stated to have made a number of representations to the respondent to refund the BPS Charges, but without any result. The petitioner has submitted that levy of BPS Charges and Fixed Charges is illegal, untenable and opposed to the objectives of the Electricity Act, 2003 (the Act) and the regulations framed thereunder. The petitioner has submitted that its case is directly covered by the Commission's orders dated 9.10.2012, 19.11.2012 and 1.5.2013 in Petitions No.124/MP/2012, 1/MP/2012 and 165/MP/2013 respectively in which the Commission has held that such illegal withholding of the UI charges, collection of the BPS Charges and Fixed Charges thereon is illegal and *ultra vires* of the Open Access Regulations. The petitioner has alleged that the respondent has no authority to collect Back up Supply Charges in contravention of Regulation 20 (6) of the Open Access Regulations which prohibits collection of any charges other than those specified in these regulations.

2. The petitioner has submitted that without admitting the fact that the petitioner drew power from the State Grid, energy drawl should be accounted for as the UI, which is deviation from the schedule and not by the way of BPS

Charges. The petitioner has submitted that in terms of Commission`s order dated 19.11.2012 in Petition No. 1/MP/2012, energy drawal cannot be billed as per the Karnataka Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulations, 2004, as amended from time to time (Karnataka Open Access Regulations). However, Regulation 11 (viii) of the Karnataka Open Access Regulations does not apply to a generating company exporting power by availing the inter-State open access. The first part of the Karnataka Open Access Regulations can be invoked when there is failure of contracted supply. However, the petitioner has not failed to meet the contracted supply.

3. The petitioner has submitted that the Commission vide order dated 9.10.2012 in Petition No. 124/MP/2011 had adjudicated upon the matter wherein the petitioner had *inter alia* challenged the method of levy of UI charges by the respondent and upheld the contention of the petitioner. Since, the said order dated 9.10.2012 was not complied by the respondent, the petitioner filed petition before this Commission under Section 142 of the Act for non-compliance of the Commission's order. Subsequently, aggrieved by the said order dated 9.10.2012, the respondent filed Writ Petition No. 46495/2013 before the Hon`ble High Court of Karnataka. Hon`ble High Court of Karnataka *pendent lite* vide its interim order dated 25.4.2013 stayed the Commission`s order dated 9.10.2012. The petitioner has submitted that since the levy of Back Up Supply Charges has not been the subject matter of the Petition No. 124/MP/2011 and Writ Petition No. 46495/2013,

the present petition has been filed on different and distinct cause of action. The petitioner has made the following prayers in the petition:

"(a) Declare that the Respondent has no authority under law to collect Back-up Power Supply charges and Fixed Charges from the petitioner as per Annexure-A, in an Inter State Open Access transaction being governed by the provisions of the Regulations framed by this Hon`ble Commission;

(b) Consequently, declare that the Bills issued by the Respondent produced herein and marked as Annexure A as far as Back-up Power Supply Charges are illegal, untenable and opposed to the Electricity Act, 2003, Central Electricity Regulatory Commission (Open Access in Inter-State transmission) Regulations, 2008 and CERC Regulations, 2009 and set aside the same;

(c) Consequently, direct the Respondent to refund the amount paid by the petitioner as per towards Back Up Supply Charges along with 1% per month from the date of payment up to the date of refund along with interest, in full;

(d) Direct the Respondent to pay the cost of this petition; and

(e) Pass any other order/s to meet the ends of justice."

4. After hearing the learned counsel for the petitioner on 8.5.2014, the Commission admitted the petition and directed issue of notice to the respondent. The respondent has filed its reply on 7.7.2014.

5. The respondent in its reply dated 1.7.2014 has submitted that BPS Charges are levied as per Regulation 1 (iii) of the Karnataka Open Access Regulations which deals with customers seeking open access for intra-State transmission wherein the intra-State network is used as incidental to inter-State transactions. The respondent has clarified that the BPS Charges are levied on the petitioner for consumption of electricity for the electricity drawn from the Grid for startup and other purposes in terms of the Karnataka Open Access Regulations and Regulations 11 (viii) of the said regulations in particular. The respondent has

contended that the petitioner has failed to generate the contracted amount of power supply to the open access customers and was also drawing power for startup and other activities. The respondent has submitted that unless the BPS Charges are levied, the petitioner cannot draw electricity except in the circumstances of contracting supply with the distribution company of its area of supply since otherwise it would consume electricity free of charge. In support of its contention, the respondent has relied upon the order of this Commission dated 2.11.2012 in Petition No. 117/MP/2012 that the petitioner cannot depend upon UI for startup/commissioning requirements and the same needs to be contracted with the distribution company. The respondent has submitted that start up power is levied on the generators drawing electricity from the grid in every State and there is no State where any generator is allowed to draw electricity free of cost from the grid for its consumption. The respondent has submitted that it raises the bill for BPS Charges on all generators in the State drawing electricity from the grid. The respondent has stated that BPS Charges are independent and unrelated to the UI charges and are levied on the petitioner for under generation or non-generation of electricity in deviation of its schedule given. The respondent has submitted that UI is only a mechanism for grid discipline but cannot overreach the BPS Charges being levied by it.

Analysis and Decision:

6. We have considered the submissions of the petitioner and respondent and perused the documents on record. The grievance of the petitioner is that the

respondent has no authority to collect the BPS Charges and Fixed charges in an open access transactions under the Open Access Regulations. The respondent has submitted that it has been levying the BPS Charges since July 2008 and the petitioner has been paying these charges without any objection at any point of time in this regard. The BPS Charges are levied on the petitioner for drawing electricity from the grid for start-up power and such other purpose when the generating station of the petitioner is under outage.

7. The following issues arise for our consideration:

- (a) Whether the petitioner is liable to pay the BPS Charges and Fixed charges in the open access transactions carried out in accordance with Open Access Regulations?
- (b) Whether the petitioner is entitled for any interest?

Issue No.1: Whether the petitioner is liable to pay the BPS Charges and Fixed charges in the open access transactions carried out in accordance with Open Access Regulations?

8. The petitioner is selling power outside the State by availing inter-State open access. Regulation 16 (1) to (3) provides for the charges leviable on an open access customer availing inter-State open access which are extracted as under:

“16. Transmission Charges

(1) In case of bilateral and collective transactions, transmission charges for the energy approved at the regional periphery for transmission separately for each point of injection and for each point of drawal, shall be payable in accordance with the provisions of Central Electricity Regulatory Commission (Sharing of Inter State

Transmission Charges and Losses) Regulations, 2010 as amended from time to time, (2) The intra-State entities shall pay the transmission charges for use of the State network as fixed by the respective State Commission in addition to the charges specified under clauses (1) of this regulation:

Provided that where the State Commission has not determined the transmission charges for use of the state network in ₹/MWh. The charges for use of respective State network shall be payable at the rate of ₹80/MWh for the energy approved:

Provided further that non-fixation of the transmission charges by the State Commission for use of the State network shall not be a ground for refusal of open access:

Provided also that the transmission charges payable for use of the State network shall be conveyed by State Load Despatch Centre to the concerned Regional Load Despatch Centre. These charges shall be displayed by the concerned State Load Despatch Centre and Regional Load Despatch Centre on their web sites:

Provided also that the transmission charges shall not be revised with retrospective effect.”

9. The other provision considered relevant for of the purpose is Clause (5) of Regulation 20 of Open Access Regulations which specifies the UI rates applicable in the case of an intra-State entity participating in inter-State open access. The said provision reads 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 underdrawals or over generation) of UI rate at the periphery of regional entity.”

10. Clause (6) of Regulation 20 of Open Access Regulations prohibits charging of any charges from the open access customer availing inter-State open access other than those specified in Open Access Regulations which is extracted as under:

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

Thus, according to Clause (5), the UI rates as specified by the concerned State Commission are applicable for deviation from the schedule by an intra-State entity involved in inter-State open access. However, where the concerned State Commission has not specified the UI rates, the intra-State entity is governed by the UI rates specified by this Commission. In such cases, the intra-State entity is liable to pay the UI Charges for over-drawal and under-generation at the rate of 105% of the UI rate applicable at the periphery of the regional entity. In case the intra-State entity becomes entitled to receive the UI Charges for under-drawal and over-generation, these charges are receivable at the rate of 95% of the applicable UI rate.

11. Now we consider the petitioner's grievance relating to billing of the BPS Charges and Fixed Charges. The petitioner has submitted that no such charges are payable under the 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 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) to (vii) *****

(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 of outages generators supplying to a consumer on open access, stand by arrangements should be provided by the licensee on payment tariff for temporary connection to that consumer category as specified by the Commission.

(ix) *****"

Clause (viii) of the Karnataka Open Access Regulations provides that the charges for arranging back up supply from the grid are payable by the open access customer in the event of failure of contracted supply. "Open Access Customer" has been defined in the Karnataka Open Access Regulations as a "consumer permitted by the Commission to receive supply of electricity from a person other than the distribution licensee of his area of supply and the expression includes a generating company and licensee who have availed of or intends to avail of open access". It appears that the provision of Regulation 11 (viii) covers the cases where a person, whether a consumer for its demand or a generating company for its start-up power as an open access customer is being supplied power under a contract but is unable to get the contracted supply due to outage of generators supplying to open access customer. 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) do not apply to a generating company exporting power by availing the inter-State open access. Therefore, the 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 Open Access Regulations cannot be justified.

12. The case of the petitioner is similar to the cases of the co-generation plants, namely, Sadashiva Sugars Ltd, Falcon Tyres Ltd. and BMM Ispat Limited.

Therefore, the petitioner is covered by the orders of the Commission dated 19.11.2012 in Petition No. 1/MP/2012 and 124/MP/2014 filed by Sadashiva Sugars Ltd and Falcon Tyres Ltd. respectively and dated 1.5.2013 in Petition No. 165/MP/2012 filed by BMM Ispat Limited.

Issue No. 2: Whether the petitioner is entitled for any interest?

13. The petitioner has prayed for interest @1% month from the date the excess UI charges were withheld by the respondent. The respondent has submitted that it has been levying the charges consistently from July, 2008 and the petitioner is paying these charges without any objection. It is noted that the petitioner has not agitated the issue before SLDC, Karnataka and was regularly paying these charges. In our view, the respondent is liable to refund the excess UI charges, if any, retained by it which is legitimately due to the petitioner from the date of filing of the present petition in accordance with the Open Access Regulations.

14. In view of the above discussion, the prayers of the petitioner are allowed as under:

(a) While availing the inter-State open access, the petitioner is not liable to pay any charges except those specified under the Open Access Regulations.

(b) The petitioner shall be billed for the UI Charges in accordance with clause (5) of Regulation 20 of Open Access Regulations specified by the Commission since intra-State ABT is not in place in the State of Karnataka.

(c) The petitioner shall be entitled for interest @ 9% per annum on the UI charges, if any withheld, by the respondent from the date of filing of the petition.

(e) The charges for drawal of power in the event of outages during the open access period shall be accounted for as the UI charges.

15. The petition is disposed of in terms of above.

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson