

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 124/RC/2015

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S.Bakshi, Member

Dr. M.K.Iyer, Member-

Date of Hearing: 3.9.2015

Date of order: 9.10.2015

In the matter of

An application seeking direction to comply with the order dated 30.10.2014 in Petition No. 123/MP/2011 for the payment of UI bills for the period 3.5.2010 to 31.5.2011 and 1.6.2011 to 30.9.2013 under Section 142 of the Electricity Act, 2003.

And

In the matter of

Bharat Aluminum Company Limited
Balconagar, Korba,
Chhattisgarh

...Petitioner

Vs

1) Chhattisgarh State Power Transmission Company Limited
Daganiya , Raipur-492 013, Chhattisgarh

2) State Load Despatch Centre
Chhattisgarh State Power Transmission Company Limited
Daganiya , Raipur- 492 013
Chhattisgarh

.....Respondents

The following were present:

Shri P.C. Sen, Advocate, BALCO
Ms. Swapna Srivastava, Advocate, CSPTCL

ORDER

The petitioner had filed Petition No. 134/MP/2011 seeking clarification/ interpretation of Regulation 5 of the Central Electricity Regulatory Commission (Unscheduled Interchange Charges and Related Matters) Regulations, 2009 as amended vide Central Electricity Regulatory Commission (Unscheduled Interchange

Charges and Related Matters) (Amended) Regulations, 2010 (UI Regulations). After hearing the parties, the Commission vide order dated 30.10.2014 in Petition No. 134/MP/2011 observed and directed as under:

“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.

22. Relief to the Petitioner. 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.”

2. The petitioner, Bharat Aluminum Company Limited, has filed this petition stating that Respondent No. 1/CSPTCL was required to pay ₹3,15,29,993/- for the period 3.5.2010 till 31.9.2011 in compliance with the directions of the Commission in order dated 30.10.2014 in Petition No.134/MP/2011. The petitioner has submitted that despite representations dated 7.11.2014 and 12.1.2015, the respondent CSPTCL has not paid the said amount. The petitioner has further submitted that CSPTCL is also continuing to violate the Commission's order dated 31.10.2014 by not settling the UI bills of ₹11,88,43,680/- for the period 1.6.2011 to 30.9.2013 despite repeated request and representation by the petitioner. The petitioner has made the following prayers:

“(i) Pass appropriate directions for payment of UI bills for the period from 3.5.2010 till 31.5.2011;

(ii) Pass appropriate directions for payment of UI bills for the period from 1.6.2011 to 30.9.2013;

(iii) Pass appropriate directions for payment of penalty under Section 142 of the Electricity Act, 2003; and

(iv) Pass any such further orders as this Hon`ble Commission may deem fit in the facts and circumstances of the case.”

3. The matter was admitted on 9.6.2015 and the respondents were directed to file their replies.

4. The respondents vide their joint reply dated 2.7.2015 have submitted as under:

(a) The petitioner had filed the Petition No. 134/MP/2011 on 27.5.2011.

During the period from 27.5.2014 to 30.10.2014, UI payments as between the petitioner and the respondents continued in the manner as interpreted by the respondents and the petitioner choose not to agitate the same

before the Commission and claim consequent reliefs from the Commission for the subsequent period. The petitioner's claim in the petition thus continued to be for the period from 3.5.2010 till 31.5.2011 and accordingly, the Commission vide order dated 30.10.2014 directed the respondents to make the UI payment to the petitioner for the said period. Therefore, the petitioner's prayer (b) claiming payment of UI charges from the respondents for the period from 1.6.2011 to 30.9.2013 is not liable to be entertained within the purview of proceedings under Section 142 of the Act.

(b) Aggrieved by the Commission's order dated 30.10.2014, CSPTCL has filed an Appeal before the Hon'ble Appellate Tribunal for Electricity on 5.12.2014 which was registered as DFR No. 3156/2014. In the meantime, the respondents as advised by the counsel are considering to file writ petition to challenge the regulations for appropriate relief.

(c) The respondents vide order dated 21.4.2015 requested the petitioner to submit the block-wise details of calculation for its UI claims and provide copy of the connectivity agreements with the concerned licensees. The petitioner has not submitted the block-wise details of its claims and the calculation made by the respondents as per the Commission's order were not matching with the claims of the petitioner. The respondents have submitted that in the absence of said details, it was not possible to make payments to the petitioner as directed by the Commission. The respondents have further submitted that the petitioner vide its letter dated 26.5.2015 made available the said details along with agreement for

contract demand signed by the petitioner with distribution licensees. Respondents have sought indulgence of the Commission to comply with order dated 30.10.2014 subject to the respondents seeking appropriate relief with regard to the validity of the regulations of the Commission.

(d) The respondents have submitted that in the facts and circumstances of the case, there is no willful or deliberate non-compliance of order dated 30.10.2014.

5. The petitioner in its rejoinder has submitted that in the absence of any stay of the order dated 30.10.2014, there is no justification whatsoever for the respondent for not complying with the said order of the Commission. As regards, the prayer (b) made in the petition, the petitioner has submitted that its prayer is a natural and logical consequence of the interpretation which has been made by the Commission to the UI Regulations.

6. We have considered the submissions of the petitioner and the respondents. The petitioner has sought directions for payment of UI dues for two periods i.e. from 3.5.2010 to 31.5.2011 and from 1.6.2011 to 30.9.2013. It is noticed that the claim of the petitioner for the period 3.5.2010 to 31.5.2011 is covered under the order dated 30.10.2014 in Petition No. 134/MP/2011. Relevant extract of the order is reproduced as under:

“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 in a period of one month from the date of issue of this order.”

However, there is no direction with regard to the payment of UI dues during the period from 1.6.2011 to 30.9.2013. If the respondents are not settling the bills as

per the applicable regulations as interpreted by the Commission in order dated 30.10.2014, this gives rise to a fresh cause of action, and the dispute without being adjudicated, no direction can be issued to the respondents in the proceedings initiated under Section 142 of the Act.

7. As regards the prayer for payment for the period 3.5.2010 to 31.5.2011, the respondents have in their affidavit dated 4.7.2015 sought indulgence of the Commission to comply with the order dated 30.10.2014 subject to their seeking appropriate relief with regard to the validity of the regulation. In our view, while respondents are at liberty to seek appropriate legal remedy against the order dated 30.10.2014, the respondents cannot be permitted to avoid implementation of the directions of the Commission in the absence of any stay of the operation of the said order dated 30.10.2014. We direct the respondents to settle the payment of UI dues for the period from 3.5.2010 till 31.5.2011 with the petitioner within a period of one month.

8. The petitioner has prayed for directions against the respondents for payment of penalty under Section 142 of the Act. In view of our directions in para 7 above, we do not consider it necessary to pass any order or direction under Section 142 of the Act.

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

sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A. S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson