

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 12/RP/2017
in
Petition Nos. 449/MP/2014 and 167/MP/2015**

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

Date of Order: 18th of September, 2017

In the matter of

Review of order dated 10.3.2017 in Petition Nos. 449/MP/2014 and 167/MP/2015.

And

In the matter of

Malana Power Company Limited
Bhilwara Towers
A 12, Sector 1,
Noida – 201 301

....Petitioner

Vs

1. Himachal Pradesh State Electricity Board Limited
Kumar House, Vidyut Bhawan,
Shimla – 171 004

2. Himachal Pradesh Load Despatch Society
SLDC Complex,
Tutu, Shimla

... ..Respondents

And

In the matter of

Himachal Pradesh State Electricity Board Limited
Kumar House, Vidyut Bhawan,
Shimla – 171 004

.....Petitioner

Vs

M/s Malana Power Company Limited
Bhilwara Towers
A 12, Sector 1,
Noida – 201 301

.....Respondent



Parties Present

Ms. Seema Jain, Advocate, MPCL
Shri Dushyant K. Mahant, Advocate, MPCL
Shri Sumit Garg, MPCL
Shri Kakuli Sengupta, MPCL
Ms. Swapna Seshadri, Advocate, HPSEBL

ORDER

The Review Petitioner, Malana Power Company Limited, has filed this review petition seeking review of the Commission's order dated 10.3.2017 in Petition Nos. 449/MP/2014 and 167/MP/2015 (Impugned order) on the ground of errors apparent on the face of the record.

2. The Review Petitioner has submitted that the impugned order suffers from errors on the following grounds:

(a) The Commission in para 64 (b) of the Impugned order dated 10.3.2017 has stated that the difference of UI charges collected with effect from 1.4.2008 shall be refunded or adjusted by the Respondent, Himachal Pradesh State Electricity Board Ltd. within 3 months from the date of the issue of the order. However, the Commission did not allow the interest thereon. The Review Petitioner has further submitted that the Commission has not given any reason for disallowing the interest claimed by the petitioner. However, the Commission, in para 64 (c) of the Impugned order has allowed simple interest of 9% on the refund of handling charges collected by HPSEBL from the Review Petitioner. The Review Petitioner has submitted that it is a settled position of law that interest runs with the principal amount and the person liable to pay the principal amount is liable to pay the interest also. The Review Petitioner has submitted



that no reason for disallowing the interest on refund of UI charges collected in excess from the Petitioner by the respondent has been stated.

(b) The Review Petitioner has submitted that the Commission in Para 65 (c) of the Impugned order has directed that the difference between the transmission charges and losses paid by MPCL and the transmission charges and losses worked out based on the decision of HPERC shall be payable as arrears in three instalments by MPCL to HPSEBL. However, the default transmission charges and losses as per the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (hereinafter referred to as 'Open Access Regulations, 2008') in as much as the losses would be payable at the rates estimated by NRLDC.

(c) The Review Petitioner has submitted that the Commission in Para 25 of the Impugned order has not included the single line network diagram submitted by the Review Petitioner in Petition No.167/MP/2015 indicating usage HP system for evacuation of Malana HEP Power by HPSEBL which is necessary for determination of Wheeling Charges by HPERC.

3. Against the above background, the Review Petitioner has filed the present Review Petition with the following prayers:

“(a) Admit the review petition against the Commission’s order dated 10.3.2017;

(b) Direct the respondent in Petition No. 449/MP/2014 to pay simple interest @ 9% on refund or adjustment of UI charges collected in excess from the petitioner and direct the respondent to adjust the refund only against the UI charges payable for any period under dispute;

(c) Include the Flow Diagram submitted by the petitioner vide affidavit dated 25.8.2015 in Petition No. 167/MP/2015 in para 25 of the said order;



(d) Pass any other order(s) as the Commission may deem fit.”

4. The matter was heard on 9.5.2017. Learned counsel for the review petitioner reiterated the submissions made in the review petition and sought relief as prayed in the petition.

Analysis and Decision

5. We have decided to dispose of the present petition at the admission stage. The issues raised in the petition are being dealt with in the proceedings paragraphs.

Issue No. 1: Rectification of error in the Impugned order dated 10.3.2017 regarding disallowing the interest on refund of UI charges collected in excess from the MPCL by HPSEBL.

6. As regards the first ground of review i.e. disallowance of interest on excess UI charges, the Commission in Para 64 (b) and (c) of the Impugned order had directed the following:

“64(b) MPCL has sought a direction to HPSEBL to refund the excess UI charges and handling charges alongwith interest at the rate of 18%. We direct that the difference between UI charges collected with effect from 1.4.2008 as per the letter dated 20.4.2009 and Agreements dated 24.8.2011, 22.2.2012, 20.3.2013, 29.3.2014 or any subsequent agreement and the UI/DSM charges calculated as per the Open Access Regulations, 2008 read with the UI Regulations, 2009/DSM regulations, 2014 shall be refunded or adjusted by HPSEBL in a period of three months from the date of issue of this order. However, the interest is not allowed.

(c) MPCL has sought a direction to HPSEBL to discontinue the collection of handling charges. It is directed that HPSEBL is not entitled for handling charges as it is getting the operating charges reimbursed through NRLDC and Power Exchanges. HPSEBL is directed to refund the handling charges collected from MPCL from 1.4.2008 till the issue of this order, MPCL shall be entitled for a simple interest of 9%.

Even though the Review Petitioner had sought a direction for refund of excess UI charges and handling charges with interest at the rate of 18%, the Commission has not allowed interest on the UI charges and allowed interest @9% in case of handling



charges. It is a conscious decision taken by the Commission not to allow the interest on the excess UI charges payable to the Review Petitioner. Non-recording of reasons for disallowance of interest is not an error apparent on the face of the record. If the Review Petitioner is aggrieved, then the proper recourse is to agitate the issue in appeal.

Issue No. 2: Review of the Impugned order directing MPCL to pay default charges till the matter is finally decided by HPERC:

7. The Commission in Para 65 (b) and (c) of the Impugned order has directed as under:

“65 (b) There is dispute between the parties as to whether the transmission charges and losses determined by HPERC shall be applicable in case of the wheeling charges and losses payable by MPCL for using State network fall under the jurisdiction of HPERC, we direct the parties to approach the learned HPERC for suitable directions in this regard. Till the matter is decided by the HPERC, the default transmission charges and losses as per the Open Access Regulations, 2008 shall be payable. Accordingly, wheeling charges and losses shall be worked out by MPCL and HPSEBL.”

(c) HPSEBL has sought a direction to MPCL to pay the difference between the amounts already paid and to be paid in line with the charges and losses mentioned as per Annexure A & B to the affidavit dated 27.4.2015. It is directed that the difference between the transmission charges and losses paid by MPCL and the transmission charges and losses worked out based on the decision of HPERC shall be payable as arrears in three instalments by MPCL to HPSEBL.

8. The Review Petitioner has sought review of the above direction and has sought direction to HPSEBL to pay the transmission losses at the rates estimated by NRLDC in accordance with the Open Access Regulations, 2008 till the matter is decided by the HPERC. The Commission in the above quoted paras has directed that till the matter is decided by HPERC, the default transmission charges and losses as per the Open Access Regulations, 2008 shall be payable. Regulation 16 (3) of the Open Access Regulations, 2008 prescribed the transmission charges for use of State network which is extracted as under:



“ (3) 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) and (2):

Provided that in case the State Commission has not determined the transmission charges, the charges for use of respective State network shall be payable at the rate of Rs. 80/MWh for the electricity transmitted.”

Regulation 23 (1) of the Open Access Regulations, 2008, which is extracted as under, provides for transmission losses:

“ 23 (1) The buyers and sellers of the electricity shall absorb apportioned energy losses in the transmission system as may be determined in accordance with Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time and applied in accordance with the Detailed Procedure issued under the said regulations.”

9. Therefore, in accordance with the direction in Para 65 (b), the transmission charges and losses as per the Open Access Regulations, 2008 shall be payable. There is no requirement of any further direction in this regard. Review of the Petitioner on this ground is rejected.

Issue No. 3: Include in Para 25 of the Impugned order the Flow Diagram submitted by the Review Petitioner vide affidavit dated 25.8.2015 in Petition No. 167/MP/2015.

10. The Review Petitioner has submitted that HPSEBL filed the affidavit dated 25.8.2015 in Petition No. 167/MP/2015 stating that MPCL is injecting the power from 132 kV sub-station Bajora (Injection point) of HPSEBL and selling power outside the State in an integrated mode after using intra-State system upto HP Periphery i.e Discom system as well as STU system through various routes along with Flow Diagram for evacuation of power. The Review Petitioner has submitted that in the impugned order, flow diagram has not been mentioned and reference to the flow diagram is necessary for determination of wheeling charges by HPERC. The Review



Petitioner has sought review of the impugned order to include reference to the flow diagram submitted by HPSEBL vide its affidavit dated 25.8.2017.

11. In Para 25 of the Impugned order, the following was recorded:

“25. HPSEBL in its affidavit dated 26.8.2015 has submitted that the STU system comprises of transmission system connecting HPSEBL (DISCOM) periphery with HP State periphery and are restricted to certain specified EHV lines in the State of Himachal Pradesh and the distribution system of HPSEBL (DISCOM) consists of lines and associated equipment at various voltage levels of EHV, HV and LV connected with the generating station, HPPTCL (STU) system and consumers of HPSEBL. Further, MPCL is injecting power at 132 kV Sub Station Bajoura (injection point) of HPSEBL and selling power outside the State in an integrated mode after using intra-State system up to HP periphery i.e. DISCOM system as well as STU system through various routes. HPSEBL has submitted that MPCL has also admitted during the hearing for having used the system of HPSEBL and also HPPTC Limited for transfer of power outside the State of Himachal Pradesh...”

12. It is noted that the affidavit dated 25.8.2015 filed by HPSEBL has been recorded in para 25 of the impugned order, though no reference has been made to the flow diagram submitted by HPSEBL. The flow diagram is relevant to the aspect of utilization of the State Transmission System which will be decided by HPERC. The Review Petitioner is at liberty to place the affidavit of HPSEBL dated 25.8.2015 before learned HPERC in connection with determination of wheeling charges. In our view, absence of reference to flow diagram in the impugned order is not an error apparent on the face of record as it has no impact on findings of the Commission. Therefore, we do not find merit in the submissions of the Review Petitioner to include the single line network diagram submitted by HPSEBL. Accordingly, review on this aspect is rejected.

13. The Review 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

