

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 29/2011

Sub:- Petition under section electricity Act, 2003 and CERC (Terms and conditions of tariff) Regulations, 2009 and Irrational and unlawful decision of the Western Region Power Committee to saddle Jindal Power Limited with the burden of sharing of transmission charges for the inter-regional links between Western Region and other region on proportional basis.

Date of hearing 12.7.2011

Coram Dr. Pramod Deo, Chairperson
 Shri S Jayaraman, Member
 Shri M. Deena Dayalan, Member

Petitioner Jindal Power Limited, Raigarh

Respondents Gujarat Urja Vikas Nigam, Vadodara
 Madhya Pradesh Power Trading Co. Ltd., Jabalpur
 Chhattisgarh State Power Distribution Co. Ltd. Raipur
 Maharashtra State Electricity Distribution Co.Ltd, Mumbai
 Maharashtra State Electricity Transmission Company, Mumbai
 Gujarat Electricity Transmission Company Limited, Vadodara
 Electricity Deptt., Govt. of Goa, Panjim
 Electricity Deptt., UT of Daman and Diu, Daman
 Electricity Deptt., UI of Dadra and Nagar Haveli
 Power Grid Corporation of India Ltd., Gurgaon
 Western Regional Power Committee, Mumbai

Parties present Shri Jayant Bhushan, Senior Advocate for JPL
 Shri Abhishek Mitra, Advocate, MSETCL
 Shri Shashank Kumar, JPL
 Shri P.J. Jani, GUVNL
 Shri Pramod Chaudhary, MPPTCL
 Shri A.V. Deo, MSETCL
 Shri Rajat Janioal, JPL
 Shri Snehal Kakrania, JPL

Record of Proceedings

The petitioner, Jindal Power Ltd. has challenged the decision of the Western Regional Power Committee(WRPC) taken in the meeting held on 9th April, 2010 with regard to the sharing of transmission charges of inter-regional links between western region and other regions on proportionate basis and sharing of wheeling charges for use of Gujarat Transmission System for conveyance of Central Sector Power to the Union Territory of Daman and Diu and Nagar Haveli and use of Maharashtra State Electricity Transmission Corporation Ltd. (MSETCL) Transmission System for wheeling of Central Power to the State of Goa.

2. The learned senior counsel for the petitioner made the following submissions on sharing of inter-regional charges:

(a) Regulation 33(3) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter “2009 regulations”) refers to the beneficiaries of the inter-regional transfer. Therefore, the beneficiaries of inter-regional transfer will be required to bear the charges. Regulation 33(7) read with Regulation 33(3) means that where there are no identified beneficiaries of inter-regional transfer, then the charges will be borne by the generating station. Therefore, the levy of inter-regional charges which has been imposed by the impugned order of WRPC is contrary to the provisions of Regulation 33(3) of 2009 regulations.

(b) As per the LTOA application, the supply of power from the petitioner’s generating station was to the constituents of the Western Region and therefore, the petitioner should not be subjected to levy of proportional inter-regional charges.

(c) In any case, there cannot be levy of inter-regional charges with retrospective charges, in this case by an order dated 9.4.2010 to levy the charges from 1.4.2009. Assuming that WRPC has the jurisdiction to levy the charges, being a delegated authority it cannot make an order with retrospective effect.

(d) WRPC has no power to impose the inter-regional charges. Section 2(55) of the Electricity Act, 2003 defines Regional Power Committee as “a committee established by resolution by the Central Government for specified region for facilitating the integrated operation of the power system in that region”. Section 29(4) of the Act provides that “Regional Power Committee in the region may, from time to time, agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in the region”. WRPC

has no jurisdiction to levy any charge which can be done by the appropriate commission, in this case the Central Commission. Moreover, the Resolution of the Government of India dated 25.5.2005 constituting the WRPC provides that the Committee shall evolve consensus on all issues related to economy and efficiency in the operation of the power system in the region. If there is no consensus, WRPC has no jurisdiction to pass binding orders as to who will pay the inter-regional charges.

(e) It has been held by the Supreme Court in Ahemedabad Urban Development Authority vs. Sharad Kumar Jayantkumar Passawala and Others {1992(3)SCC 285} that “delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power”. The Act confers power under section 79(1)(d) on the Central Commission to determine tariff for inter-State transmission of electricity which cannot be usurped by WRPC.

(f) Regulation 33 (3) applies to the beneficiaries of the inter-State generating stations. Inter-State generating station has been defined in Regulation 2(pp) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 as a central generating station or other generating station in which two or more States have shares. Since the petitioner is neither a central generating station nor the States have shares in the generating station, this regulation cannot be applied to the petitioner.

3. The learned senior counsel further submitted the following with regard to sharing of wheeling charges for use of the transmission system of Maharashtra and Gujarat for wheeling power to Goa and the Union Territory of Daman and Diu and Nagar Haveli:

(a) Regulation 33 of 2009 regulations applies to regional common transmission system and not to the transmission systems of the States.

(b) It is not equitable to saddle the liability of usage of the transmission lines of Maharashtra and Gujarat which are not being used by the petitioner but by the concerned States, the State of Goa and Union Territory of Daman & Diu.

(c) WRPC has relied on the orders of the Commission dated 3.2.2009 in Petition No. 64/2008 and order dated 31.7.2009 in Petition No. 67/2008 to levy the wheeling charges. The order dated 3.2.2009 was issued by agreement of the parties. Since the petitioner was not a party in the said petition, the petitioner is not bound by the said order. Though the order dated 31.7.2009 is an adjudicatory order, no reason has been given as to why the beneficiaries of the inter-state transmission lines shall

share the charges of these intra-State lines. It would have been appropriate if the beneficiaries of those lines are made to share the transmission charges.

4. The representative of MPPTCL submitted that Regulation 3 of 2009 regulations begins with “unless the context otherwise requires” and therefore, the term ‘beneficiary’ occurring in Regulation 33(3) should be given a contextual interpretation and it should refer to the beneficiaries of the inter-State transmission system. Moreover, the long term transmission charges of the western region include inter-regional charges also. Both intra-regional charges and inter-regional charges are collectively known as western region transmission charges and they cannot be differentiated. In response to the petitioner’s argument regarding not using the inter-regional link, he submitted that since the western, northern, eastern regions are synchronously connected, power from the generating station of the petitioner may flow to the other region also in situation other than normal. The petitioner being a long term open access customer is also a member of the UI mechanism. Since the operationalisation of the long term open access, the petitioner has received UI charges on account of over-injection into the grid. The power injected by the petitioner over and above the schedule does not have any restriction of flow within the western region only, but depending on the system conditions, it has flowed to the neighbouring states also utilizing the inter-regional links. The petitioner cannot claim that it has not utilized the inter-regional links. As regards the retrospective application, he submitted that the transmission charges is an existing liability under the 2009 Regulations which came into force with effect from 1.4.2009

5. In reply to a query of the Commission as to whether the inter-regional link is a support system to the intra-regional system and how the flow of power from the generating station to the other regions can be identified, the representative of MPPTCL submitted that it has been substantiated in the report of WRLDC that payment for UI has been made by the northern region constituents. Therefore, the inter-regional links have been utilized by the petitioner.

6. The representative of GUVNL referring to the BPTA dated 19.3.2008 signed by the petitioner with PGCIL submitted that the petitioner has agreed to pay the inter-regional transmission charges. Therefore, the present petition is an after-thought on the part of petitioner. He further submitted that the generating station of the petitioner is an ISGS as per the Grid Code since it is required under the LTOA granted to it to supply power to more than one state, in this case the target beneficiaries of Gujarat and Chhatisgarh. Since the generating station has not signed the agreement with the target

beneficiaries, the generating station has to pay the transmission charges. As regards the role of WRPC, the representative of GUVNL submitted that Regulation 32(3) of 2009 regulations requires the Member-Secretary of the Regional Power Committee to issue the monthly energy account specifying the ratio in which transmission charges for the month are to be shared by the transmission users in accordance with Regulation 33. Since WRPC had not prepared the accounts in accordance with Regulation 33, GUVNL raised an objection and the mistake was rectified by making proper application of the regulations. In reply to a query of the Commission as to whether WRPC has the jurisdiction to pass order where there is no consensus, the representative of GUVNL admitted that WRPC has no power of adjudication but clarified that the impugned order of WRPC is not in the nature of adjudication. As regards the wheeling charges for the lines of Maharashtra and Gujarat, the representative submitted that the Commission in its order dated 3.2.2009 came to the conclusion that these lines were identical to PGCIL lines and accordingly the charges were to be shared as per the 2004 tariff regulations. He further submitted that the Commission in its order dated 31.7.2009 had allowed the sharing of transmission charges retrospectively with effect from 1.4.2004.

7. The learned counsel for Maharashtra State Electricity Transmission Company Ltd. (MSETCL) submitted that he was adopting the submissions of the representative of GUVNL. However, on the question of retrospective application of the impugned order, the learned counsel submitted that regulations under which the transmission charges were determined were effective from 1.4.2009 onwards. The implementation during the period of the validity of the regulations is always permissible from the date of regulations. This is analogous to an existing liability and the determination of the existing liability has been made under the regulations. It would have been irrecoverable only if the period of limitation had expired.

8. The Commission after hearing the parties observed that main point of consideration is the meaning of "beneficiary" in Regulation 33(3) of 2009 regulations. Learned counsel for the petitioner sought a date for making rejoinder submissions. However, the Commission directed the petitioner and the respondents to file their written submissions by 10.8.2011 after serving copies on the opposite parties. The petitioner was granted liberty to seek further hearing of the petition if any contentious issue remained to be argued.

9. Subject to the above, order in the petition was reserved.

**Sd/-
(T. Rout)
Jt. Chief (Law)
2.8.2011**