

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 186/MP/2016

Coram:

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

Date of Order: 29th September, 2017

In the matter of

Petition under Section 79 (1) (c) and 79 (1) (h) read with Regulation 20 and 26 of CERC (Open Access in Inter-State Transmission) Regulations, 2008 further read with Regulation 4 of the RERC (Intra-State ABT) Regulations, 2006 and Regulation 4.2 of the State Grid Code seeking directions for preparation of UI account for under drawl against collective transactions within specified time and for payment of UI charges.

And

In the matter of

M/s National Engineering Industries Limited
Khatipura Road
Jaipur-302006

.....Petitioner

Vs

1. State Load Despatch Centre
Rajasthan Vidyut Prasaran Nigam Limited,
Vidhyut Bhawan, Jyoti Nagar
Jaipur
2. The State Power Committee,
Rajasthan Vidyut Prasaran Nigam Limited,
Vidhyut Bhawan, Jyoti Nagar
Jaipur
3. Jaipur Vidyut Vitran Nigam Limited,
Vidhyut Bhawan, Jyoti Nagar
Jaipur
4. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial State,
Jodhpur-342003
5. Ajmer Vidyut Vitran Nigam Limited,
400 kv GSS building, Ajmer road, Heerapura,
Jaipur- 302024
6. Rajasthan Vidyut Prasaran Nigam Limited
Vidhyut Bhawan, Jyoti Nagar, Jaipur

..... Respondents



Parties present:

Ms. Swapna Seshadri, Advocate, RSC & NEIL
Shri S.K. Agarwal, Advocate, Rajasthan Discoms
Dr. A.P. Sinha, Advocate, Rajasthan Discoms
Shri Manoj Kr. Sharma, Advocate, RVPNL
Shri M.K. Verma, RVPNL

ORDER

The Petitioner, M/s National Engineering Industries Limited (NEIL) has filed this petition seeking the following reliefs:

- a) *Direct the Respondents to compile and provide UI energy accounts of the Petitioner from February, 2012 till date and continue to provide the same on a regular basis in future;*
- b) *Direct the respondents to pay for the under drawals, the UI charges computed based on the energy accounting in terms of the Inter-State Regulations, 2008 of the Commission as applicable to intra-state entities, namely under drawals worked out at the periphery of the Regional entity (interface of RRVPNL with Northern Grid) and intra-state UI rate as per the regulations;*
- c) *Direct that on or after 17.2.2014, frequency linked 'charges for deviation' as per CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014 is to be considered as inter-state UI rate and applied for the payment of under drawals;*
- d) *Direct the Respondents to pay interest at the rate of 15% per annum for delay in payment of UI compensation in terms of the Regulations;*
- e) *Award costs of the present proceedings; and*
- f) *Pass such other further order(s) as the Commission may deem just in the facts of the present case.*

Background of the case

2. The Petitioner is a company in the State of Rajasthan, registered under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and selling bearings. The Petitioner is a consumer of the Respondent No. 3, JVVNL and has a contract demand of 10 MVA at Jaipur plant and 2 MVA at Newai plant, with voltage supply of 33 KV with the respondents for its industrial activities. In addition to this contract demand, the Petitioner also meets electricity requirement through (a) energy traded from Indian Energy Exchange by opting for open access facility in terms of open access regulations and (b) remaining part of



electricity is drawn from the Respondents through large industrial connection of 10000 kVA for Jaipur plant and 2000 kVA for Newai plant contract demand on 33 KV supply voltage.

3. The Petitioner in the Petition has submitted as under:

(a) As per month wise CMRI recording, the under drawal of energy by the Petitioner from February, 2012 till February, 2016 comes to ₹22.23 lakhs (approx.) for Jaipur plant and ₹7.09 lakh for Newai plant and the same has been enclosed as Annexure-A to the Petition.

(b) The Rajasthan Electricity Regulatory Commission has notified the RERC (Terms and Conditions for Open Access) Regulations, 2004 (RERC Open Access Regulations, 2004) which apply to Intra-State open access, namely procurement of electricity on bilateral basis by consumers from the generating or other sources located within the State of Rajasthan. For procurement of electricity from outside the State, namely, Inter-State open access, the Electricity Act vests the regulatory functions and jurisdiction exclusively on the Commission. Even the use of transmission and distribution line of state utilities, which is used incidental to inter-state transmission of electricity is covered by the definition of Inter-State transmission and is subject to the regulatory jurisdiction of the Commission.

(c) In exercise of powers under the Electricity Act with regard to Inter-State open Access as well as Section 66 of the Electricity Act for market development, the Commission has framed and introduced the concept of power exchanges, which provides a platform for buyers and sellers to transact in purchase and sale of electricity. The transactions over the power exchanges are deemed Inter-State transactions which are within the exclusive jurisdiction of the Commission.

(d) The Commission has notified the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (Inter-State Open Access Regulations, 2008) inter-alia dealing with short term open access. The said regulations provide for the manner in which collective transactions (set of transactions discovered in power exchange through anonymous, simultaneous competitive bidding by buyers and sellers) are to be dealt with, the open access to be granted, the manner of dealing with deviations and schedules etc.

(e) The Commission has also notified the Availability Based Tariff Mechanism (ABT mechanism) to provide for a regulatory mechanism for deviations in schedule and actual injection/ drawal, which is measured at the regional periphery for each state. The ABT mechanism is commercial mechanism of grid management in providing adjustments for unscheduled exchanges at UI rate among Regional entities defined in CERC (Open Access in Inter-State Transmission) Regulations, 2008 and CERC (Indian Electricity Grid Code) Regulations, 2010 as a person whose metering and energy accounting is done at the regional level). The State Commissions are also empowered to implement the ABT mechanism for Intra-State entities, subject to the provisions of the Inter-State Open access Regulations, 2008. For the State of Rajasthan, the State Commission has notified on 24.8.2016 the



RERC (Intra-State ABT) Regulations, 2006, which are applicable to users who are required to give daily schedules to the SLDC.

(f) Regulation 5(3)(i)(III) to (VI) and (IX) of the RERC (Intra-State ABT) Regulations is the segregation of deviations from schedule by the users into Inter-State UI and Intra-State UI and application of Intra-State UI rate in terms of Regulation 4 on Intra-State UI and apparently sharing of Inter-State UI charges as per Inter-State UI.

(g) As specified above, collective transactions are deemed Inter-State open access transactions and subject to the exclusive jurisdiction of the Commission. Regulation 20(4) requires the deviation from the schedule to be determined by the SLDC. While Regulation 20(5) permits the State Commission to determine the Intra-State UI rate, if any, unless so specifically determined, the Intra-State UI rate shall be 105% or 95% of the applicable UI charges at the regional periphery. In terms of the Inter-State Open Access Regulations, 2008, the procedure for dealing with bilateral transactions as against collective transactions are completely different, including the charges payable, the manner in which the open access is to be sought for and obtained, the concurrence to be obtained from SLDC etc.

(h) The concept of collective transactions in open access was introduced for the first time under the Inter-State Open Access Regulations, 2008 and the same was not and could not have been envisaged or provided for in the Intrastate ABT mechanism notified earlier by the State Commission. In the Intra-State ABT Regulations, the State Commission has considered that for Inter-State open access, Inter-State UI account and charges will be determined by NREB (now by NRLDC and NRPC). However, for transactions through Power exchanges, Regulation 20(1) and 20(2) provide for issuing composite account for each regional entity and not carrying out transaction wise (Inter-State UI accounting and UI accounting for Intra-State (participating in collective transactions) at the Regional level. This could not have been envisaged by the State Commission. Even as per the Inter-State Open Access Regulations, 2008 as well as the State Grid Code, it is the obligation of SLDC to determine the mismatch between the schedule and drawal of the Petitioner.

(i) In terms of the Regulation 4 of Inter-State Open Access Regulations, 2008 and the detailed procedure notified there under, the Petitioner has been applying for and has been granted from time to time by the SLDC, the Standing clearance /No objection certificate to procure electricity from the Power Exchange and the Petitioner has been procuring electricity through inter-state open access from the Power Exchange.

(j) In terms of Regulation 20(2) and 20(4) of the Inter-State Open Access Regulations, 2008 and Regulation 4.2 of RERC Regulations, 2008 (Rajasthan Electricity Grid Code) as amended on 10.6.2011, it is the responsibility of the SLDC to undertake and maintain the energy accounts for the intrastate entities. The Petitioner being connected to the network of the State utility and the scheduling and despatch being notified to the SLDC, the responsibility for maintaining proper energy and UI accounts and provide the same to the Petitioner is that of the Respondent No. 1, SLDC.



(k) For the Petitioner, SLDC was required to determine the under drawal and draw of the UI accounts (in terms of energy) based on which accounting the UI charges have to be applied and paid. The entire energy contracted at power exchange and due at delivery point after accounting for Intra state losses has not been considered by Respondents and no details of difference have been supplied or made available to the Members of the Petitioner.

(l) The Open Access Regulations or the ABT Regulations of the State Commission do not provide for or cover the Collective transactions undertaken in terms of the Inter State open access Regulations, 2008 of the Commission. In terms of the above, in the absence of Intra state UI Rate specified by the State Commission, the Intra State entities including members of the Petitioner who undertake collective transactions through the power exchange and under draw are to be paid at the rate of 95% of the UI charges at the periphery of the State of Rajasthan.

(m) Regulation 4 of the ABT Regulations of the State Commission provides for UI charges for frequency step as specified by the Commission for the northern region as adjusted with the Inter State transmission losses. Accordingly, the State Commission has considered in its Intra State ABT Regulations, 2006 the UI Rate as ex- bus ISGS. The State Commission has accounted for Inter State losses to work out UI rate at the periphery of RVPN system and considered it as Intra State UI Rate. Thus, in principle, UI Rate at periphery of the State is Intra State UI rate as per Regulation 4 of Intra State ABT Regulations, 2006. In case, there was a specific provision governing the collective transaction and accordingly, the collective transactions account been made at the regional level, the Petitioner would have got UI charges for under drawal at Inter State UI rate corrected for Inter State losses and UI charges, so worked out, would have been shared among other Inter State entities (mainly the distribution companies).

(n) In terms of the Commission Regulations, the UI rate is to be that at the state periphery and 95% of the same is accounted to the Intra State entities. The Regulations also provide that no other charges shall be applicable than what is provided in the said regulation. As per Intra State UI charges under Regulation 4 of the Intra State ABT Regulations, UI charges for under drawal works out the same as that one would have got had collective transactions account have been made at regional level and thus would provide the proper compensation. Intra State UI rate as per this regulation will be 100% of UI rate at ISGS bus. The Petitioner is entitled to the same. In any event and at the very least are entitled to UI rate as 95% of UI rate (at the periphery of the regional entity) considered by NRPC at state periphery.

(o) Till date, the Respondent No. 1 has not prepared the UI accounts for Members of the Petitioner and other Intra State entities procuring electricity by means of collective transaction through the power exchange. Non- preparation of UI accounts by SLDC is a clear violation of the regulations framed. The Petitioner has made numerous representations and sent communication to the Respondents for the same.

(p) In terms of Regulation 4.5 of the State Grid Code, the Respondent No. 2 i.e. the State Power committee is to look into and examine any problems or issues raised by the users and to resolve such disputes. In the circumstances, the



Petitioner has also taken up the issue with Respondent No. 2 through various letters dated 13.2.2015, 25.3.2015 and 26.5.2015.

(q) Despite the above, the Respondents had not taken any steps to provide the UI accounts for the Petitioner and settle dispute as regards to payment for under drawal of energy during low frequency period. Though the Petitioner had furnished complete details of the under drawal as per CMRI recording, Respondent No.1, SLDC had again asked the Petitioner to submit the same.

(r) In these circumstances, the Petitioner had filed Petition (Petition No 551 of 2015) before the State Commission for settlement of dispute as regards to payment of UI charges for under drawal of energy. In response, the Respondents filed their replies clarifying that they did not have the requisite metering facility installed and therefore it was not possible for them to provide UI accounts and other details. However, the Petitioner realized that State Commission did not have the jurisdiction to decide the said matter and accordingly withdrew the said Petition with the liberty to approach the appropriate forum.

4. In the above background, the Petitioner has submitted that it has been constrained to approach this Commission against the failure of the Respondents to provide UI accounts for the Petitioner. It has also submitted that based on the UI accounts, it will be in a position to calculate and claim the UI charges that it is entitled to for under drawal during low frequency period. Hence, the present petition.

5. The Petition was heard on 15.11.2016 and the learned counsel for the Petitioner made submissions in the matter and requested that this Petition may be listed along with similar Petition (Petition No.15/MP/2016) on the ground that the reliefs sought for were identical. The Commission admitted the Petition and after directing the parties to complete pleadings, ordered the clubbing of this Petition along with Petition No.15/MP/2016 (Rajasthan Steel Chambers v SLDC, Rajasthan & ors).

6. Both the Petitions were heard on 13.7.2017 on the question of 'maintainability' and the Commission after directing the parties to file their written submissions, reserved orders in both the Petitions. None of the respondents have filed their replies and/or written submissions on the issue of maintainability in this Petition.



7. Petition No.15/MP/2016 has been filed by Rajasthan Steel Chambers and the said Petitioner Association has sought reliefs against SLDC, Rajasthan (Respondent No.1) which are identical to those prayed for by the Petitioner in para 1 above. Also, the issue of jurisdiction of this Commission to deal with issues emerging out of inter-state open access availed for collective transactions through Power Exchange has been raised by SLDC, Rajasthan in these Petitions.

8. Petition No. 15/MP/2016 has been disposed of by this Commission by order dated 29.9.2017. In the said order, the Commission has dealt with the issue of jurisdiction and has held that this Commission has the jurisdiction to deal with the issues emerging out of the Inter-state Short term open access availed by the Petitioner Association for collective transaction for Power exchange. The relevant portion of the said order is extracted as under:

“20. In terms of the Section 2(36) of the Electricity Act, conveyance of electricity across the territory of a State and conveyance of electricity within the State which is incidental to inter-State transmission of electricity is covered under the definition of ISTS. Therefore, where a transaction involves conveyance of electricity within the State which is incidental to inter-State transmission of electricity shall be covered under the definition of ISTS and by virtue of the power vested in the Commission under section 79(1)(c) of the Electricity Act,2003 read with section 79(1)(f), any dispute concerning regulation of inter-State transmission of electricity shall fall within the jurisdiction of the Central Commission.....

21..... This Commission has specified the Open Access Regulations for Short Term Open Access to ISTS which caters to both bilateral transactions and collective transactions at the Power Exchanges. Therefore, any instance of violation or non-compliance with the provisions of Open Access Regulations shall be subject to adjudication in terms of Section 79(1)(c) and (f) of the Electricity Act.....

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27. As per the above judgment, any dispute due to non-issuance of NOC by SLDC for use of intra-State transmission system and distribution system including when such system is used in conjunction with inter-State transmission system would be adjudicated by the concerned State Commission. Except for the disputes with regard to intra-State transmission system and distribution system used for inter-State open access, this Commission will have jurisdiction in all aspects of inter-State open access.

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32. *It is clear from Regulation 20 of the Open Access Regulations 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. According to Regulation 20(4), any mismatch between the scheduled and actual drawal at drawal point and scheduled and actual injection at injection point for the Intra-State entity shall be determined by 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 the mismatch, Regulation 20(5) shall step in, which provides for default mechanism in the form of UI rate for Intra-state entity at 105% for over drawals or under injection and 95% for under drawal or over injection of the UI rate at the periphery of the regional entity.*

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35. *CERC (Inter State Open Access) Regulations, 2004 has been repealed by Open Access Regulations. Therefore, SLDC, Rajasthan is required to deal with the mismatch in accordance with Regulation 20(5) of the Open Access Regulations. Admittedly, SLDC has not complied with the Regulation 20(4) and (5) of the Inter-State Open Access Regulations, 2008, for which the Petition shall lie before this Commission.*

36. *Further Regulation 26 of the Open Access Regulations provides for the dispute settlement mechanism as under:*

“26. All disputes arising under these Regulations shall be decided by the Commission based on application made by the person aggrieved.”

37. *As we have in this order decided that collective transactions on Power Exchange are Inter-State transactions, dispute with regard to non-settlement of the UI accounts of the members of the Petitioner Association in accordance with the provisions of Regulations 20 (4) and (5) of the Open Access Regulations shall be maintainable before this Commission in terms of Regulation 26 of the Open Access Regulations.*

38. *In view of above discussions, we hold that the Central Commission has the jurisdiction to deal with the issue in the present Petition.”*

9. Also, on merits, the Commission in the order dated 29.9.2017 has directed as under:

“40. SLDC has submitted that the data received in excel sheet from all the three discoms is being examined to ascertain whether these data and the energy account provided could be utilized to finalize the UI account or not. The SLDC has also submitted that it is not practically possible for SLDC to finalize UI accounts of 41 consumers for the period March, 2012 to 25.2.2016 in a short period of time. It has further stated that it is poised to put all efforts to implement the direction of the Central Commission in minimum possible time. In this background, we direct that SLDC shall finalize and settle the UI accounts of the members of the Petitioner association within 3 months from the date of this order.”



10. In line with the above decision, the prayer of the Petitioner in the present petition is disposed of. Accordingly, SLDC, Rajasthan is directed to finalize and settle the UI accounts of the Petitioner within 3 months from the date of this order.

11. Petition No. 186/MP/2016 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

