

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 224/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: 24th of March, 2017

In the matter of

Levy of Back-Up Supply in violation of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008.

And in the matter of

Dalmia Cements (Bharat) Limited,
Dalmiapuram, District Tiruchirapalli,
Tamil Nadu

...Petitioners

Vs.

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

...Respondent

The following were present:

Shri Shridhar Prabhu, Senior Advocate for DCBL
Shri Anantha Narayana M.G, Advocate for DCBL
Ms. Swapna Seshadri, Advocate for KPTCL

ORDER

The petitioner, Dalmia Cements (Bharat) Limited, has filed the present petition under clause (c) of sub-section (1) of Section 79 of the Electricity Act, 2003 with the following prayers:-

- (a) Declare that the respondent has no authority under law to collect Back-up Power Supply charges and Fixed Charges from it, in an Inter State Open Access Transaction being governed by the provisions of the regulations framed by this



Commission;

- (b) Consequently, direct that bill No. OA/UI/SLDC/5055-62 dated 12th September, 2016 as produced to be illegal, untenable and opposed to the Electricity Act, 2003 and the regulations framed by this Commission;
- (c) Consequently, direct the respondent to refund the amount paid by it towards Back-up Power Supply charges along with 1% per month from the date of payment to the date of refund along with interest, in full;
- (d) Direct the respondent to pay the cost of the instant petition; and
- (e) pass such any other order(s) as the Commission may deem fit.

Facts of the Case

2. The petitioner owns and operates a thermal power plant in the State of Karnataka and supplies power under inter-State open access. The petitioner is a registered consumer of the distribution company of Karnataka, namely Hubli Electricity Supply Company Limited (HESCOM). Since June 2016, the power generated is being exported to the State of Andhra Pradesh by availing inter-State open access under the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (2008 Open Access Regulations) on payment of fees specified thereunder. The petitioner sources its entire power at all time from HESCOM under a Power Supply Agreement entered into between the petitioner and HESCOM.

3. The petitioner for the period from 10.6.2016 to 30.6.2016, thereafter from 1.7.2016 to 10.7.2016 and 17.7.2016 to 31.7.2016 availed Inter-State Open Access under the 2008 Open Access Regulations by complying with all technical and legal requirements and the respondent, SLDC Karnataka granted No Objection Certificate for the above period. The energy delivered during this period was through Joint Meter Reading. As per the PPA, HESCOM billed for the energy sourced by the petitioner for the period from 1st June to 31st July, 2016 and the petitioner made payment for the same.



4. On 12.9.2016, the respondent sent a provisional bill to the petitioner comprising the UI charges, energy charges and Back-UP Supply Charges (BPS Charges) for the period from 6.6.2016 to 31.7.2016 demanding an amount of Rs. 89,44,058/-. Subsequently, SLDC, Kamataka vide its letter dated 16.9.2016, copy to the petitioner, informed HESCOM that SLDC is nominated by CERC as nodal agency for computing UI energy under ABT regime for STOA customer of its jurisdiction. Accordingly, SLDC, Kamataka is computing UI charges to STOA generator situated in Kamataka on monthly basis and BPS Charges for the energy imported by them during open access period as per the KERC Regulations. SLDC, Kamataka requested HESCOM to confirm the payment made by the petitioner towards import energy charges pertaining to open access period for the months of June and July 2016 and transfer the amount of import energy paid at HESCOM immediately to UI pool account maintained at SLDC to process open access application. The petitioner made representations dated 15.9.2016 and 19.9.2016 requesting to correct the anomaly in collecting the payment both at HESCOM and SLDC for the back-up power supply and informed SLDC, Kamataka that it has paid the bill amount under protest due to non-issuance of NOC by SLDC for the period 15.9.2016 to 30.9.2016. The petitioner requested SLDC to refund the excess amount paid under protest or adjust the same in future bills. However, despite several requests the respondent did not refund the BPS Charges to the petitioner.

Grievances:

5. The petitioner has submitted that it has been illegally billed for the UI charges and BPS Charges. As per the petitioner, it is a registered consumer of HESCOM and entered into the PPA for its power requirements. Once the agreement is in force and bills are raised for such amounts agreed upon in the agreement and settled by it with HESCOM, the respondent, a nodal agency is not authorized to collect BPS Charges. The petitioner has relied upon the Commission's orders dated 19.11.2012,



9.10.2012 and 1.5.2013 in Petition No. 1/MP/2012, 124/MP/2012 and 165/MP/2012 respectively. The petitioner has alleged that the actions of the respondent are in gross violation of Regulation 20 (6) of the 2008 Open Access Regulations. The petitioner has further alleged that the respondent besides being the nodal agency under the 2008 Open Access Regulations is SLDC for the State of Karnataka. The petitioner has submitted that since, it has already deposited the billed amounts with HESCOM, the respondent is not entitled to collect the BPS Charges as no such charges are payable under the 2008 Open Access Regulations and the respondent could not have supplied the backup power because such supply amounts to trading in electricity which respondent cannot undertake under the Electricity Act, 2003. The present petition has been filed against the above backdrop.

6. The petition was admitted and notice was issued to the respondent. However, no reply has been filed by the respondent despite notice.

Analysis and Decision:

7. We have considered the submissions of the petitioner and perused the documents on record. The petitioner has submitted that the respondent is not entitled to collect the BPS Charges as no such charges are payable under the 2008 Open Access Regulations. The power generated by the petitioner was conveyed outside the State by availing open access on the inter-State transmission system under the 2008 Open Access Regulations. In the first instance it is considered appropriate to take note of the relevant provisions of the 2008 Open Access Regulations. Regulation 16 of the 2008 Open Access Regulations lays down the transmission charges payable by a short term open access customer availing the inter-State open access, and is extracted as under:



“Transmission Charges

16. (1) *In case of bilateral transactions, the transmission charges at the rate specified hereunder shall be payable by the short-term customer for the energy approved for transmission at the point or points of injection:*

Type of Transaction Transmission charges (Total)(Rs./MWh)

(a) Bilateral, intra-regional 80

(b) Bilateral, between adjacent regions 160

(c) Bilateral, wheeling through one or more intervening regions 240

(2) In case of the collective transactions, transmission charges at the rate of Rs. 100/MWh for energy approved for transmission separately for each point of injection and for each point of drawal, shall be payable.

(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:

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 short –term open access:

Provided also that the transmission charges payable for use of the State network shall be conveyed to the Regional Load Despatch Centre concerned who shall display these rates on its web site:

Provided also that the transmission charges payable for use of the State network shall not be revised retrospectively.”

Clause (1) of Regulation 16 specifies the rates of the transmission charges payable by short-term open access customer in the case of bilateral transactions, whereas clause (2) specifies the rate of transmission charges for collective transactions. Clause (3) of Regulation 16 regulates payment of the transmission charges payable by an intra-State entity availing the inter-State open access for use of the State network in the course of inter-State open access. Under clause (3), in addition to the charges fixed under clause (1) or clause (2), as the case may be, an intra-State entity is mandated to pay the transmission charges fixed by the State Commission and where the State Commission has not fixed the transmission charges for use of the State network, such intra-State entity



is to pay the transmission charges at the rate of Rs. 80/MWh of the electricity transmitted. Clause (6) of Regulation 20, extracted hereunder, prohibits collection of any charges other than those specified in the 2008 Open Access Regulations from the short-term open access customer:

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

8. The other provision considered relevant for the purpose is clause (5) of Regulation 20 of the 2008 Open Access Regulations which specifies the UI rates applicable in the case of an intra-State entity participating in inter-State open access 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 under-drawals or over generation) of UI rate at the periphery of regional entity.”

9. 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.

10. The petitioner's first grievance relates to billing of the BPS Charges. The petitioner has contended that no such charges are payable under the 2008 Open Access Regulations. The respondent vide its letter dated 16.9.2016 informed the HESCOM that the BPS Charges are payable by the petitioner in terms of the Karnataka Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulations, 2004 (Karnataka Open Access Regulations).



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) xxx xxx xxx xxx

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

11. The BPS Charges billed by the respondent can be related to the first part of clause (viii) of Regulation 11 as the second part applies in case where the generating company supplies power to a consumer under the open access, which is not the present case. The first part of clause (viii) lays down that the charges for arranging backup supply from the grid are payable by the open access customer in the event of failure of contracted supply. In our opinion, this provision covers the cases where a person, whether a consumer or a generating company or a licensee (the open access customer), is being supplied power under a contract but is unable to get the contracted supply. 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) of Regulation 11 of the Karnataka Open Access Regulations do not apply to a generating company exporting power by availing the inter-State open access. Further, the first part can be invoked when there is failure of contracted supply. In the present case, there is no allegation that the petitioner failed to meet the contracted supply. Therefore, 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 Central Open Access Regulations cannot be justified. Therefore, the billing of the BPS Charges as per the impugned bill cannot be upheld.



12. The petitioner has sought refund of the sum paid to the respondent towards the impugned bill with interest at the rate of 1% per month. We direct that after the issuance of the revised bills, the excess amount, if any, shall be refunded to the petitioner with interest at the rate of 9% per annum from the date of deposit of such excess amount up to the date of refund.

13. There shall be no order as to costs. Accordingly, the petition is disposed of.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

