

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 242/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 : 23<sup>rd</sup> of August, 2017**

**In the matter of**

Petition under Section 79 (1) (f) of the Electricity Act, 2003 challenging the wrong and unjustified Bill raised towards PoC charges dated 8.11.2016 for the month of October, 2016 by PGCIL.

**And**

**In the matter of**

Udupi Power Corporation Limited  
1<sup>st</sup> Floor, Lotus Towers, No. 34, DevarajaUrs Road  
Bengaluru – 560001

**....Petitioner**

**Vs**

1. Power Grid Corporation of India Limited  
Saudamini, Sector – 29,  
Gurgaon – 122001
2. Southern Region Power Committee  
29, Race Course Cross Road,  
Bengaluru – 560009
3. Power Company of Karnataka Limited  
KPTCL Building, KaveriBhavan  
K.G. Road, Bengaluru – 560009
4. Bangalore Electricity Supply Company Ltd.

K.R.Circle, Bengaluru -560001

5. Mangalore Electricity Supply Company Ltd.  
Paradigm Plaza, AB Shetty Circle  
Mangalore-575001
6. Gulbarga Electricity Supply Company Ltd.  
Station Main Road, Gulbarga-585102
7. Hubli Electricity Supply Company Ltd.  
Corporate Office, Navanayar, PB Road  
Hubli-580 025
8. Chamundeshwari Electricity Supply Company Ltd  
Corporate office, No. 927, LJ Avenue, New Kantaraya  
Urs Road, Sarwathipuram, Mysore-270 009
9. Punjab State Power Corporation Ltd.  
The Mall, Patiala – 147001
10. MPZEZ Utilities Pvt. Ltd.  
Adani House, Navarangpura,  
Ahmedabad – 380009

.....**Respondents**

**Following were present:**

1. Shri M.R. Krishna Rao, UPCL
2. Shri Tanmay Vyas, UPCL
3. Ms. Suparna Srivastava, Advocate, PGCIL
4. Shri AM Pavgi, PGCIL
5. Ms. Jyoti Prasad, PGCIL
6. Ms. Swapna Seshadri, Advocate, PCKL
7. Shri Sandeep Rajpurohit, PCKL
8. Shri Ashwin, PCKL

**ORDER**

The Petitioner, Udupi Power Corporation Limited, has filed the present petition under Section 79 (1) (f) of the Electricity Act, 2003 challenging the bill dated 8.11.2016 raised by Respondent No. 1 Power Grid Corporation of India Ltd. (PGCIL) towards PoC charges for the month of October, 2016. The Petitioner has contended that PGCIL has

wrongly raised PoC Bill 1 for the untied capacity of 18.5 MW by misinterpreting the following direction of the Commission in order dated 30.6.2016 in Petition No. 10/SM/2014.

“41 (e) PSPCL has temporarily surrendered the power to UPCL for period of three years. There is also untied capacity of 18.5 MW at the disposal of UPCL. Therefore, the buyer of the power shall be liable to pay the PoC charges as per Regulation. In case 18.5 MW is not tied up, the PoC charges, as per Regulations, shall be borne by UPCL.”

2. The Petitioner has submitted that it has tied up 90% of the total capacity of 1200 MW with the ESCOMs of Karnataka i.e. upto 1080 MW and 101.5 MW with Punjab State Power Corporation Limited (PSPCL).The Petitioner has submitted that out of the balance capacity of 18.5 MW, 11 MW is being supplied to MPSEZ Utilities Private Limited ("MUPL") since 4.6.2016 and the remaining 7.5 MW is being supplied to Karnataka ESCOMs. The Petitioner has claimed to have supplied entire capacity of the power plant to ESCOMs of Karnataka till commencement of supply to MUPL.

3. The Petitioner has submitted that PGCIL has wrongly interpreted the direction in para 41 (e) of the impugned order and has raised the PoC Bill 1 for the month of October, 2016 for an amount of Rs.46,10,238/-, for the first time on the Petitioner. The Petitioner has argued that the bill is not in compliance of Regulation 8(6) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter “Sharing Regulations”) which is applicable for payment of transmission charges by Long Term Transmission Customers availing supply from Inter State Generating Stations (ISGS).The Petitioner has submitted that it is not a Long Term Customer as no Long term or Medium term Open Access has been taken for the quantum of 18.5 MW. The Petitioner has further submitted that the

quantum of 11 MW is being supplied to MUPL under short term open access by duly paying open access charges to CTU and STUs as per applicable Regulations. The balance capacity of 7.5 MW is claimed to be supplied to Karnataka ESCOMs at the bus bar. The Petitioner has submitted that even if any PoC charge is applicable for remaining 7.5 MW under any Regulation, then liability of Karnataka ESCOMs towards payment of the same is to be ascertained. The Petitioner has further submitted that even if Karnataka ESCOMs decide not to take the balance 7.5 MW and the capacity remains untied, UPCL shall not be liable to pay any charges as per Sharing Regulations corresponding to this capacity if UPCL is not dispatching 7.5 MW.

4. The Petitioner has submitted that PGCIL has not mentioned any specific provision/ Regulation of the Sharing Regulations under which the bill has been raised and simply mentioned in the bill that "the bill has been raised as per CERC (Sharing of Inter-State Transmission charges and Losses) Regulations 2010". The Petitioner has submitted that it is not liable to pay PoC charges for 18.5 MW under any Regulation as there is no such enabling Regulation available in any of the Commission`s Regulations. The Petitioner has also referred to the definition of "Merchant Power Plant" to contend that a generating station need not necessarily tie up its full capacity with Long Term Access and it can sell its untied capacity in the open market after taking appropriate open access.

5. The Petitioner has submitted that it had requested PGCIL vide letter dated 11.11.2016 to withdraw the PoC bill 1 dated 8.11.2016 by explaining the current status of untied power of the Petitioner and the context of applicability the Commission`s direction in para 41(e) of the impugned order.

6. Notices were issued to the respondents to file their replies. Power Grid Corporation of India Ltd. (PGCIL), Power Company of Karnataka Ltd. (PCKL) (on behalf of Respondent No. 3 to 8) and Southern Region Power Committee (SRPC) have filed their replies.

7. PGCIL in its reply dated 30.5.2017 has submitted that the arrangement stated in this petition for sale of 18.5 MW is not similar to that which had been placed on record before the Commission in the earlier hearings of 10/SM/2014. PGCIL has stated that it has implemented the impugned order of the Commission by including the said 18.5 MW of the Petitioner in the PoC computations/RTAs and subsequent raising of PoC bills by PGCIL are in line with the procedures of the Sharing Regulations. PGCIL has also submitted that the Petitioner has refused to pay the bill dated 8.11.2016 and the bills raised for the subsequent months. The total dues have claimed to be accumulated to an amount of Rs.1.58 crore (excluding surcharge). PGCIL has also referred to the Commission's order dated 3.2.2014 in Petition No. 78/MP/2013 in the matter pertaining to recovery of dues and non-establishment of letter of credit wherein PGCIL was allowed by the Commission to regulate the power supply as per the applicable Regulations in case of pending dues/non-establishment of letter of credit. PGCIL has prayed to direct the concerned parties to sign LTA agreement, make payment of dues immediately and establish adequate payment security mechanism. PGCIL has also sought liberty to take action on the Petitioner to regulate its power supply in case of non-payment of dues. The Petitioner vide its rejoinder dated 17.6.2017 has denied the contentions made by PGCIL. As regards difference in arrangement for 18.5 MW, the Petitioner has clarified that the aspect of the PPA with MUPL was not deliberated in the

impugned order as the execution of the PPA and commencement of supply of Contracted capacity of 11 MW to MUPL took place after the order in Petition No. 10/SM/2014 was reserved by the Commission on 12.2.2015. The Petitioner has contended that the question of letter of credit for payment security mechanism does not arise as it is not liable to pay any PoC charges for the quantum of 18.5 MW.

8. PCKL in its reply dated 16.3.2017 has submitted that payment of PoC charges by ESCOMs of Karnataka for the untied capacity of 18.5 MW or 7.5 MW does not arise in accordance with the decision of the Commission, in order dated 27.6.2016 in Petition No. 307/MP/2016, that the quantum of 18.5 MW is untied power and PCKL is not liable to pay capacity charges. PCKL has submitted that as per the direction of the Commission in 41(e) of the order dated 30.6.2016, UPCL is liable to pay PoC charges for the untied capacity of 18.5 MW. As regards liability towards payment of PoC charges in accordance with Regulation 8(6) of the Sharing Regulations, PCKL has argued that it is the liability of UPCL to pay such charges under Regulation 8(6) as the Regulation states that the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations. PCKL has submitted that it has filed a review petition 60/RP/2016 against the impugned order and has further stated that UPCL is an embedded generator in the State of Karnataka and Long Term Access (LTA) was required for the quantum of 94 MW tied up with Punjab State Power Corporation Ltd. (PSPCL) not for 1080 MW tied up with ESCOMs of Karnataka. PCKL has also claimed that out of the total quantum of 939 MW, about 424 MW is being evacuated through 2x220 kV UPCL-Kemar transmission line which is owned by the Respondents. It is also

claimed that effective power being transmitted through 400 kV D/c Hassan-Mysore line is only 515 MW and therefore, the share of Karnataka ESCOMs works out to 421 MW after deducting 94 MW of PSPCL. The Petitioner in its rejoinder dated 31.3.2017 has submitted that the LTA application was submitted by UPCL for evacuation of the then entire capacity of 1015 MW as directed by Karnataka Power Transmission Corporation Ltd. (KPTCL) vide letter dated 19.10.2006. The Petitioner has further submitted that PGCIL vide letter dated 15.6.2005 had informed that the evacuation of entire capacity of 1015 MW from the generating station shall be treated as inter-State transfer of power as it will flow through 400/220 kV sub-station at Hassan constructed by PGCIL which is a part of the inter-State Transmission System (ISTS) of Southern Region. The Petitioner claimed to have communicated to KPTCL vide letter dated 18.7.2007 regarding the approval granted for long term access by CTU on 18.6.2007 along with the minutes of the Standing Committee meeting from CEA and PGCIL. As regards contention of PCKL that generator is liable to pay PoC charges as per Regulation 8(6) of the Sharing Regulations, the Petitioner has submitted that Regulation 8(6) is applicable for Long term customers and the Petitioner does not fit into the definition of Long term customers as no long term access has been granted for 18.5 MW.

9. SRPC in its reply dated 22.12.2016 has submitted, *inter-alia*, that as per the details of LTA/MTOA furnished by NLDC (IA), 18.5 MW of UPCL is not tied up. SRPC has also submitted the details regarding scheduling of power by UPCL to MUPL through short term open access in the month of October 2016. The Petitioner in its rejoinder dated 9.1.2017 has submitted that SRPC has corroborated UPCL's submission that the quantum of 18.5 MW is not tied up either in LTA or MTOA.

10. The matter was heard on 17.1.2017 and 6.7.2017. During the hearing held on 17.1.2017, PGCIL agreed not to take any coercive measure during pendency of the petition.

### **Analysis and Decision**

11. The dispute raised in the present petition has arisen on account of the POC Bill1 raised by the CTU stating it to be in compliance with the direction in para 41 (e) of the order dated 8.11.2016. Para 41 (e) of the said order is extracted as under:

“41(e) PSPCL has temporarily surrendered the power to UPCL for period of three years. There is also untied capacity of 18.5 MW at the disposal of UPCL. Therefore, the buyer of the power shall be liable to pay the PoC charges as per Regulation. In case 18.5 MW is not tied up, the PoC charges, as per Regulations, shall be borne by UPCL.”

12. CTU has stated that in view of the direction of the Commission in the impugned order that ‘in case 18.5 MW is not tied up, the PoC charges, as per Regulations, shall be borne by UPCL’, CTU has implemented the same by including the said 18.5 MW in the PoC computations/RTAs and subsequently raised PoC bills to the Petitioner.

13. The Petitioner has submitted that the capacity of 18.5 MW is available at its disposal as untied capacity for which the Petitioner had neither applied nor had been granted LTA. The Petitioner has submitted that at present, the Petitioner is supplying 11 MW to MUPL under short term open access for which the Petitioner is paying the short term open access charges. The balance capacity of 7.5 MW is being supplied to Karnataka ESCOMs at bus bar. SRPC has confirmed that a quantum of 18.5 MW has been tied up neither under LTA nor under MTOA.



14. In para 30 of order dated 30.6.2016 in Petition No.10/SM/2014, the Commission had observed as under:

“30. We have considered the submissions of the respondents. Since, KPTCL and PSPCL have signed PPA with UPCL, they are the Long Term Customers of the inter-State generating station of UPCL. It is noted that UPCL has applied to CTU for grant of LTA for 1015 MW with 90% share of Karnataka and 10% share of Punjab. CTU granted LTA to UPCL for 939 MW in the month of June, 2007. However, PSPCL is not availing this power. UPCL has also entered into the PPA with KSEB for supply of 18.5 MW on short term basis on 9.4.2004 for the period from 1.6.2014 to 31.5.2015. In our view, Karnataka as a long term customer has availed more than 90% power from UPCL. On the other hand, Punjab is not availing power from UPCL. Therefore, Karnataka is liable to pay the transmission charges for long term supply from UPCL’s generating station towards LTA of entire 939 MW in terms of Regulation 8 (6) of the Sharing Regulations.”

15. In the above quoted para, the Commission had observed that Karnataka is liable to pay the transmission charges for 939 MW as the UPCL had been granted LTA for only 939 MW. The Commission had also acknowledged that 18.5 MW of untied capacity is with the Petitioner. However, we had directed that in case 18.5 MW capacity is not tied up, UPCL would be liable to pay PoC charges as per the regulations. On consideration of the provisions of the Sharing Regulations, we find that the said direction needs to be modified as the PoC Bill 1 can be raised if the capacity is tied up under LTA or MTOA. It is clarified that since the capacity of 18.5 MW has not been tied up either under LTA or MTOA, PoC charges for the said capacity shall not be payable by the Petitioner.

16. In view of the above, CTU is directed not to include 18.5 MW untied capacity in the PoC charges. As and when the Petitioner avails LTA or MTOA for the said capacity it shall included in the PoC calculation.

17. 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**