

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.128/MP/2021

Coram:

Shri P. K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 27th October, 2021

In the matter of:

Petitioner under Section 79(1)(c) and (d) of the Electricity Act, 2003 read with Regulations 11, 27, and 28 of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2020 for clarification and directions in regards to the computation and levy of transmission charges for collection transactions.

And

In the matter of

Indian Energy Exchange Limited,

Plot No. C-001/A/1, 9th Floor, Max Towers,
Sector 16 B, Noida, Gautam Buddha Nagar,
Uttar Pradesh – 201301

....Petitioner

Vs.

Power System Operation Corporation Limited,

B-9 (1st Floor), Qutab Institutional Area, Katwaria Sarai,
New Delhi 110016

.... Respondent

Parties Present:

Shri M.G.Ramachandran, Senior Advocate for the Petitioner

Ms. Poorva Saigal, Advocate for the Petitioner

Shri Shubham Arya, Advocate for the Petitioner

Shri Srishti Khindaria, Advocate for the Petitioner

Shri Jogendra Behra, Petitioner

Shri Gaurav Maheshwari, Petitioner

ORDER

The Petitioner, Indian Energy Exchange Ltd. (IEX), has sought clarification and directions in regard to the computation and levy of transmission charges for collective transactions implemented under the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges) Regulations, 2020 (hereinafter referred to as 'the Sharing Regulations'). The Petitioner has made the following prayers:

“(a) Admit the present Petition:

(b) Clarify that the collective transactions shall not be differentially treated as compared to bilateral transactions under Sharing Regulations, 2020 providing a level playing field in the short term market; and

(c) Direct Respondents to compute the transmission charges treated collective transactions similar to bilateral transactions.”

Submission of the Petitioner

2. The Petitioner has mainly submitted the following:

(a) Regulation 11(1) of the Sharing Regulations provides for incidence of transmission charges payable for Short Term Open Access (STOA) at the STOA rate (in paise/KWh) published by the Implementing Agency. Regulations 11(2) to 11(6) of the Sharing Regulations provides for different implications of the incidence of transmission charges payable for STOA by the generating stations and embedded entities located in the State.

(b) Bare reading of Regulation 11 of the Sharing Regulations reveals that there is no categorization of the transaction being bilateral or collective and, therefore, both such transactions are treated alike without any differentiation.

(c) In all respects, the treatment of STOA applied for by the generator/ Discoms, which has already been subjected to pay transmission charges for LTA/MTOA, remain the same whether it is bilateral or collective.

(d) The objective under Regulation 11 of the Sharing Regulations, as a whole, is to avoid double transmission charges for generators/ Discoms. As per the Regulations, generators having untied LTA capacity shall get offset in their LTA charges for the transmission charges paid towards availing STOA. Similarly, Discoms already having LTA/MTOA are not required to incur any charges for STOA. Regulation 11 has also provides for reimbursement of transmission charges, to DICs, collected towards STOA after carrying out the necessary adjustments.

(e) While Regulation 11 of the Sharing Regulations has laid down the principles appropriately the discrepancies have crept during the implementation of the Sharing Regulations which has taken place as per the illustrations provided in the Statement of Objects and Reasons (SoR) to the Sharing Regulations. As per the illustrations V(b) and VIII(c) provided under paragraph 43.3.21 of SoR, a generator selling power to a Discom/ embedded entity under short-term bilateral contract shall not be liable to pay any transmission charges if Discoms/ embedded entity apply for STOA. These exemptions which are considered for avoiding the double charging of transmission charges have not been extended to the collective transactions during the implementation of Sharing Regulations. This has made the collective transactions relatively costlier than the bilateral transactions and created unnecessary distortions in the market.

(f) Implementation of the Sharing Regulations on the basis of illustrations provided in SoR has created discrepancies in the market. Opening part of paragraph 43.3.21 of the Statement of Reasons to the Sharing Regulations (SOR) states “A few illustrations are provided below for clarify”. Therefore, it has been expressly stated that the illustrations given are not comprehensive or

exhaustive or otherwise to be read as restricted circumstances for application of the benefits under Regulation 11(2) to 11(6) of the Sharing Regulations applicable to DICs/ embedded entities. If the intention had been so, then Regulation 11 itself would have qualified the provision by stating either 'notwithstanding anything contained, the above provisions shall apply only to bilateral transactions and not to collective transactions.'

(g) The Sharing Regulations as such has not made any differentiation with regard to collective transactions and bilateral transactions and that the entire provisions of the Sharing Regulations have been applied equally to both types of transactions. This is particularly, when the Central Electricity Regulatory Commission (Grant of Open Access) Regulations, 2008 provides for non-discriminatory open access in inter-State transmission and defines both bilateral transactions and collective transactions in Regulation 2(b) and Regulation 2(c) respectively.

(h) Therefore, it is inappropriate to apply the illustrations given under paragraph 43.3.2 of SOR as it is substantive provision limiting the application of Regulation 11 to bilateral transactions only by referring to an indicative illustration V(a) and V(b). Reliance has been placed on the judgment of the Hon`ble Supreme Court dealing with illustrations in the cases of BN Railway Vs. Ruttanji Ramji, Lalit Mohar Pandey Vs. Pooran Siingh, Shambu Nath Vs. State of Ajmer, Commissioner of Commercial Tax Vs. Bajaj Auto Limited and Anirudha Vs. Administrator General of Bengal.

(i) The Petitioner is seeking interpretation and construction of SOR, particularly Regulation 11, in the light of well-settled principles of interpretation of Statutes.

Hearing dated 22.10.2021

3. The matter was heard on 22.10.2021 through video conferencing. During the course of the hearing, the learned senior counsel for the Petitioner circulated the note on arguments and reiterated the submissions as mentioned above, which are not repeated for sake of brevity.

4. We have considered the submissions of the Petitioner. It has been contended by the Petitioner that paragraph 43.1.21 of SOR expressly stated that illustration v(a) and illustration v(b) are not comprehensive or exhaustive or otherwise to be read as restricted circumstances for application of the benefits under Regulations 11(2) and 11(6) of the Sharing Regulations applicable to DICs/ embedded entities. Therefore, the Petitioner is seeking clarification with regard to the scope of Regulation 11 of the Sharing Regulations.

5. It is noticed that the various utilities, namely, Faridabad Industries Association, Raajco Spinners Private Limited, Tamil Nadu Spinning Mills Association, Tamil Nadu Generation and Distribution Corporation Limited, Kerala State Electricity Board Limited and Sembcorp Energy India Limited have approached Hon`ble High Court of Punjab and Haryana, Hon`ble High Court of Judicature at Madras, Hon`ble High Court of Kerala and Hon`ble High Court of Delhi, respectively and have challenged, *inter alia*, the interpretation of Regulation 11 of the Sharing Regulations and illustration v(a) and v(b) given in SOR through Writ Petitions.

6. The Commission has approached the Hon`ble Supreme Court through Transfer Petition to transfer all the above Writ Petitions filed before various High Courts to the Hon`ble High Court of Delhi for hearing and disposal, which is listed for hearing in the month of November, 2021.

7. Since the very issue of interpretation of Regulation 11 read with illustration v(a) and illustration v(b) is *sub judice* before various High Courts, we are not inclined to take up the matter for hearing.

8. The Petition No. 128/MP/2021 is accordingly disposed of at the admission stage.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson