

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 162/MP/2020

Coram:

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of order: 27th June, 2022

In the matter of

Petition under Section 79(1) (f) of the Electricity Act, 2003, read with Regulations 20 and 21 of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 seeking appointment of Sole Arbitrator for adjudication of disputes between the parties herein terms of clause 3.13 (b) of the Agreement dated 31.10.2014.

And

In the matter of

Shree Cement Limited,

Bangur Nagar, Post Box No. 33,
Bewari-305 901 (Rajasthan)

....Petitioner

Vs

1. Vendanta Limited,

1st Floor, 'C' Wing, Unit 103,
Corporate Avenue, ATUL Projects,
Chakala Andheri (East),
Mumbai-400093 (Maharashtra)

2. Southern Power Distribution Company of Telangana Limited,

6-1-50, MINT Compound,
Hyderabad-500 063 (Telangana)

....Respondents

The following were present:

Shri Kumar Mihir, Advocate, SCL

Shri Hemant Singh, Advocate, Vedanta Limited

Shri Lakshyajit Singh Bagdwal, Advocate, Vedanta Limited

Shri Harshit Singh, Advocate, Vedanta Limited

Shri Harsha Peechara, Advocate, TSSPDCL

Shri Amarjit Singh, SCL

Shri Swapnil Mishra, SCL

ORDER

The present Petition has been filed by the Petitioner, Shree Cement Limited, an inter-State trading licensee in terms of trading licence granted by this Commission, under Section 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Regulation 20 and Regulation 21 of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as 'Sharing Regulations') with the following prayer:

“Appoint a sole arbitrator for adjudication or to adjudicate itself of the disputes and difference that have arisen under the Agreement between the Applicant/Petitioner and the Respondent herein.”

Brief Background

2. Brief facts of the case leading to filing of the Petition are as follows:

(a) On 30.7.2014, Southern Power Distribution Company of Telangana Limited ('TSSPDCL') invited bids for purchase of power at Southern Region periphery (delivery point) on behalf of distribution companies of Telangana for the period from 29.5.2015 to 26.5.2016. In respect of the said bid, Respondent No.1, Vedanta Limited (formerly known as Sesa Sterlite Limited) authorised the Petitioner vide its letter dated 14.8.2014 for supply of 300 MW power from 29.5.2015 to 26.5.2016 to TSSPDCL. Accordingly, the Petitioner submitted its bid and was selected as successful bidder. Pursuant to issuance of Letter of Intent ('LOI') by TSSPDCL, the Petitioner entered into a Power Purchase Agreement ('PPA') dated 29.10.2014 with TSSPDCL for supply of power procured from the Respondent No. 1 (hereinafter referred to as 'Vedanta Limited').

(b) As per Clause 3.2 of the PPA dated 29.10.2014 between the Petitioner and TSSPDCL, the generator Point of Connection ('PoC') injection charges and losses upto the delivery point were required to be borne by the Petitioner while withdrawal PoC charges and losses were required to be borne by TSSPDCL.

(c) The Petitioner and Vedanta Limited (Respondent No. 1) entered into a PPA dated 31.10.2014 for supply of 300 MW RTC power from the generating station of Vedanta Limited to TSSPDCL (through Petitioner as a trader) for the period from 29.5.2015 to 26.5.2016. As per Clause 3.2 of the PPA dated 31.10.2014, the generator PoC injection charges and losses upto delivery point were to be borne by Vedanta Limited, whereas Telangana PoC drawal charges and losses, etc. were to be borne by the Petitioner.

(d) As per Clause 3.4 of the PPA dated 29.10.2014, the Petitioner made various applications to CTUIL for grant of Medium Term Open Access ('MTOA')/ Short Term Open Access ('STOA') for the period between May 2015 and April 2016, the power was supplied to TSSPDCL under STOA.

(e) On 4.3.2016, CTUIL informed about operationalization of MTOA. Accordingly, the Petitioner supplied around 62 MW to TSSPDCL for the period from 1.4.2016 to 26.5.2016 under MTOA. Pursuant to supply of power under MTOA for the period from 1.4.2016 to 26.5.2016, PGCIL raised Point of Connection ('PoC') bill of Rs.1,53,94,243/- on the Petitioner in terms of provisions of the 2010 Sharing Regulations.

(f) When it came to reimbursement of the aforesaid PoC charges, TSSPDCL claimed that as per Clause 3.2 of the PPA dated 29.10.2014 executed between the Petitioner and TSSPDCL, it is liable to pay 50% of PoC charges for drawal of power beyond the delivery point leaving the balance 50% charges payable by Vedanta Limited up to delivery point.

(g) Vedanta Limited, relying upon the 3rd Amendment to the 2010 Sharing Regulations and the Commission's order dated 14.7.2015 determining PoC rates and transmission losses for the period of May and June 2015, took the position that since TSSPDCL was liable to pay 100% of such charges (as PoC injection charges were merged into withdrawal charges), Vedanta Limited refused to pay any such charges.

(h) Since the said charges were not being paid to the Petitioner, the Petitioner approached Telangana State Electricity Regulatory Commission

(‘TSERC’) through Petition being OP No. 8 of 2017. TSERC vide its order 1.11.2018 observed that TSERC has no jurisdiction to implement the terms of PPA dated 31.10.2014 executed between the Petitioner and Respondent No. 1 (the generator) since any dispute under that PPA was triable only in the courts at New Delhi. TSERC had also observed that once the liability to pay remaining 50% of PoC charges was on the generator (Respondent No. 1 herein), it was for the Petitioner herein to pay and collect the same from the generator as per the terms of PPA dated 31.10.2014 and that the liability to pay such charges was definitely not on the distribution company of Telangana. If such is the case, it is the liability of the Petitioner to bear 50% of the injection PoC charges and recover that from the generator as per the terms of PPA dated 31.10.2014.

(i) In terms of afore-mentioned order of TSERC dated 1.11.2018 read with the provisions of Clause 3.2 of the PPA dated 31.10.2014, the Petitioner repeatedly requested Vedanta Limited to comply with its liabilities specified in the PPA dated 31.10.2014. However, Vedanta Limited did not accept its liability to pay the said dues.

(j) Aggrieved by the action of the Respondent No.1 (Vedanta Limited), the Petitioner, in terms of Clause 3.13 of the PPA dated 31.10.2014 issued Notice of Invocation of Arbitration to the Vedanta Limited. In response to Arbitration Notice, Vedanta Limited further denied its liability to pay the dues and stated that the order dated 1.11.2018 passed by TSERC is not applicable to it and that there is no dispute between the parties.

(k) Pursuant to order of TSERC dated 1.11.2018, the Petitioner, on 27.8.2019, filed Petition under Section 11 of the Arbitration and Conciliation Act, 1996 being Arbitration Petition No. 788 of 2019 before the Hon`ble High Court of Delhi seeking appointment of a sole arbitrator to constitute the Arbitral Tribunal for resolving the disputes between the parties. During the hearing of the matter before the Hon`ble High Court, Vedanta Limited raised the objection on maintainability of the Petition and argued that it would be appropriate for the Petitioner to approach the Central Commission for appointment of arbitrator in terms of the judgment of the Hon`ble Supreme Court in the case of Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. [(2008) 4 SCC 755]. Accordingly, the

Petitioner sought permission from the Hon'ble High Court of Delhi to withdraw its Petition to enable the Petitioner to approach the Central Commission for appointment of an arbitrator. Accordingly, the Hon'ble High Court vide its order dated 4.12.2019 allowed the Petitioner to withdraw the Petition and to approach the Central Commission for appointment of sole arbitrator for adjudication of the disputes. Accordingly, the Petitioner has filed the present Petition.

3. The matter was admitted on 7.8.2021 and parties were directed to complete the pleadings on merits. Reply to the Petition has been filed by the Vedanta Limited and TSSPDCL. The Petitioner has filed rejoinder thereof.

Reply of the Respondent, Vedanta Limited

4. On merits, the Respondent No. 1, Vedanta Limited, vide its affidavit dated 24.8.2022 has mainly submitted as under:

(a) Clause 3.2 of the PPA provides that all open access charges viz. wheeling charges, scheduling charges and handling charges indicated are at current applicable rates notified by CERC/ RLDC. However, if any of these charges are revised, then the same shall be applicable from the date of implementation notified by CERC/ RLDC. It is evident that all the open access charges shall be payable, as decided by this Commission.

(b) Clause 3.4 of the PPA provides that the power shall be scheduled and dispatched in accordance with the Sharing Regulations. *Combined* reading of Clauses 3.2 and 3.4 of the PPA, it is evident that the open access charges (i.e. PoC injection charges), which are payable by the Respondent No.1, shall be in accordance with the Commission's Regulations, as amended from time to time.

(c) Subsequent to 3rd amendment to Sharing Regulations, PoC rates for billing towards LTA/MTOA were to be calculated only on withdrawal nodes (as withdrawal charges). In the Statement of Reasons (SoRs) issued by the Commission dated 26.10.2015, it was noted that post 3rd Amendment to the Sharing Regulations, the

PoC injection charges have been merged into PoC withdrawal charges in respect of withdrawal DICs and in respect of the generator with LTA to target region without identified beneficiaries, withdrawal charges have been merged with injection charges.

(d) Thus, it was evident that the PoC charges for LTA/ MTOA (as also contemplated under the PPA dated 31.10.2014), ought to be calculated only at withdrawal nodes, as withdrawal charges. This clearly means that the post 3rd Amendment to the Sharing Regulations, there are no generation end PoC injection charges levied under the Sharing Regulations for the generators with identified beneficiaries. Also, the amended provision made a clear distinction between cases wherein there is an identified beneficiary under an LTOA/ MTOA and in those cases wherein there is no identified beneficiary under an LTA within a target region. Accordingly, generation end POC charges were to be computed based on target region (allocation based);

(e) In the first case, the injection charges are merged with withdrawal charges and the same are to be borne by withdrawing DIC depending upon the participation factor reflecting actual usage of ISTS (Inter State Transmission System) lines. This methodology has already reduced the unnecessary burden of generation end injection PoC charges in the form of fixed power allocation borne by drawee beneficiaries, since generation end charges are not calculated separately, where generators have a contract for long term/ medium term supply to identified beneficiaries. The injection charges of generators who have identified beneficiaries, is not computed for PoC determination. In the latter case, keeping the basic philosophy of PoC computation, that an entity should pay for only those transmission assets which it uses, in computation of the PoC methodology. The injection charges are not be declared for generators having identified beneficiary. However, for generator having LTA for target region, injection charges to the extent of untied capacity are computed and accordingly, injection PoC is levied to such generators. Under the PPA, the Petitioner was the clear identified beneficiary and therefore being a withdrawing DIC, it ought to bear the PoC charges in line with the mandate of the amended law. The above aspect has also been clarified by this Commission vide order dated 14.7.2015 passed in Petition No. L-1/44/2010-CERC.

(f) As per Regulation 14 of the Sharing Regulations, all users of ISTS were required to ensure that all the existing contracts are aligned with the Sharing Regulations, which necessarily includes 3rd Amendment to the Sharing Regulations, which provides for only withdrawal charges, and excludes injection charges. The aforesaid amendment need not to have been executed in the PPA entered into between the Petitioner and Vedanta Limited on account of the fact that Clause 3.4 of the PPA already provided for computation and payment of PoC charges in accordance with the Central Electricity Regulatory Commission (Open Access in inter State transmission) (Amendment) Regulations, 2009. Therefore, *ipso facto*, the words 'as amended from time to time' in clause 3.4 of the PPA envisaged any amendment/(s) to the Sharing Regulations including the 3rd amendment to the Sharing Regulations and the provisions contained therein.

(g) In view of the above, and strictly going by clause 3.2 and clause 3.4 of the PPA, the Petitioner cannot seek payment of PoC charges from Vedanta Limited as the same are required to be borne by the Petitioner themselves (or by Telangana Discom, in terms of the bilateral PPA between the Petitioner and the said Discom), as per the 3rd amendment to the Sharing Regulations.

Petitioner's Rejoinder to the reply of the Respondent No.1 (Vedanta Limited):

5. The Petitioner in its rejoinder dated 10.11.2020, has mainly submitted as under:

(a) In terms of Agreement dated 31.1.2014, the liability to pay the PoC charges upto the delivery point was on Vedanta Limited who has been erroneously contending that in view of the amendment in the Sharing Regulations, which has now merged with the PoC charges, the entire 100% PoC charges have to be borne by the Telangana Discom or by the Petitioner.

(b) Though, 3rd amendment to the Sharing Regulations merged PoC charges into withdrawal charges, such merger is only for the purpose of computation and if concerned PPA provides for sharing of charges upto delivery point by the seller and beyond such delivery point by the buyer, the parties would have to be paid as per such proportion and therefore, TSSPDCL and Vedanta

Limited have to share the charges equally. Reliance has also been placed on the decision of TSERC dated 1.1.2018.

(c) The Petitioner is only a trading licensee who is entitled to a trading margin on back-to-back contract and in no manner can be forced to bear the burden of PoC charges. Both the Respondents have taken a diverse stand and are trying to fasten the burden of PoC charges on one another and the issue as to who has the liability of PoC charges is required to be adjudicated by this Commission.

Reply of Respondent No.2, Southern Power Distribution Company of Telangana Limited (TSSPDCL)

6. The Respondent No.2, TSSPDCL, in its reply dated 21.8.2020, has mainly submitted as under:

(a) The Petitioner in the capacity of an inter-State trader had supplied 300 MW RTC power to the Respondent, TSSPDCL from 29.5.2015 to 26.5.2016 under short term purchase order dated 13.10.2014, by procuring power from the generating source, Vedanta Limited under an agreement dated 31.10.2014 between the Petitioner and Vedanta Limited. To facilitate the booking of the inter-State transmission corridor by the Petitioner, a PPA dated 29.10.2014 was entered into between TSSPDCL and the Petitioner which was expired on 26.5.2019.

(b) As per PPA dated 29.10.2014, PoC injection charges and losses upto delivery point were required to be borne by the Petitioner/Seller, while the PoC charges beyond delivery point such as PoC withdrawal charges and losses, etc., were required to be borne by Procurer, TSSPDCL.

(c) As per TSERC order dated 1.11.2018, in OP No. 8 of 2017, TSSPDCL has reimbursed 50% of the total PoC charges towards PoC withdrawal charges to the Petitioner in terms of short term purchase order/PPA dated 29.10.2014 as

the Commission vide its 3rd amendment to the Sharing Regulations merged the injection charges and PoC charges for MTOA w.e.f. 1.5.2015.

(d) Since, the PPA dated 20.10.2014 vis-à-vis the Agreement dated 31.10.2014 entered into between the Petitioner and Vedanta Limited are distinct and do not contain identical provisions. Further, the Petitioner having accepted the order of TSERC dated 1.11.2018, which had attained finality and also taking into account the fact that no relief has been sought by the Petitioner against TSSPDCL, the Commission may discharge TSSPDCL from the present proceedings.

7. The matter was heard on 22.2.2022 through video conferencing. During the course of hearing, learned counsel for the Petitioner and learned counsel for the Respondents, Vedanta Limited and TSSPDCL made detailed submissions in the matter by adverting to the averments made in their respective pleadings.

8. The Petitioner was directed to submit the copy of the PPA dated 29.10.2014 executed between the Petitioner and TSSPDCL, details of bills which are under dispute and its claims along with copy of bills raised by CTUIL, and copy of MTOA applications concerned with the instant case and copy of the MTOA grants or rejections by CTUIL. The Petitioner vide its affidavit dated 12.3.2022 has placed on record the information called for. The Petitioner and Respondents, Vedanta Limited & TSSPDCL have filed the written submissions which have been dealt with in succeeding paragraphs.

9. The Petitioner vide its written submissions dated 2.3.2022 has mainly submitted as under:

(a) In terms of Clause 3.2 of the PPA dated 31.10.2014, Vedanta Limited has to bear the generator PoC injection charges and losses (including

STU/CTUIL transmission charges, SLDC/RLDC operating charges and SLDC/RLDC application fee, annual fee, PGCIL application fee and SRLDC Operating Charges, etc.) upto the delivery point. Further, in terms of provisions of the PPA dated 29.10.2014, such charges, beyond the delivery point, have to be borne by TSSPDCL. The Petitioner being only a trading licensee cannot in any manner be forced to bear the burden of PoC charges.

(b) Vedanta Limited while executing the PPA dated 31.10.2014 had already taken its liability to pay PoC injection charges and losses up to the delivery point into consideration and had included the same in the price of electricity being supplied by it. Therefore, refusal of Vedanta Limited to bear its share of PoC injection charges and losses upto delivery point has resulted in unjust enrichment on the part of the Vedanta Limited who after recovering the same is now illegally resiling from its contractual obligation to pay the same.

(c) Vedanta Limited has relied upon the 3rd amendment to Sharing Regulations in particular para 2.8.1.a providing methodology for calculation of PoC rates and billing of PoC charges to deny its liability for payment of PoC charges. However, a bare perusal of the above paragraphs established that the same only provides for a method of calculating the PoC charges and it nowhere mandates the parties to PPA cannot stipulate sharing of the same or that the generator is prohibited from payment of PoC charges and the same is to be borne entirely by the entity withdrawing the power.

(d) The mandate in Regulation 14 of the Sharing Regulations to align all the contracts with the said Regulations is not applicable in the instant case as the PPA dated 31.10.2014 was duly executed keeping in view the said Regulation in mind. There is no provision for any automatic or unilateral alteration in the agreement in case of any amendment in the Sharing Regulations as sought to be done by Vedanta Limited.

(e) The contractual liability of Vedanta Limited to pay the PoC charges till the delivery point has not been changed or done away with by the amendment in the Sharing Regulations which at best can be treated as a change in the method of computation in PoC charges. Accordingly, Vedanta Limited is liable to

pay 50% of the PoC charges till the delivery point as per the PPA dated 31.10.2014.

10. The Respondent No. 1, Vedanta Limited in its written submissions dated 7.3.2022 has mainly submitted as under:

(a) In terms of Clause 3.2 of the PPA, injection transmission charges/losses (i.e upto the delivery point) are to be borne by the Vedanta Limited, with transmission charges/losses of Telangana (withdrawal charges) are to be borne by the Petitioner and all open access charges shall be payable as, decided by the Commission;

(b) As per Clause 3.4 of the PPA, at the time of entering into the PPA, the intention of the parties and the broad understanding was that the injecting entity will be the Vedanta Limited and the withdrawal/drawee entity will be the Petitioner, meaning thereby that the injection transmission charges will be borne by the Vedanta Limited and withdraw transmission charges to be borne by the Petitioner.

(c) As per 3rd Amendment of the Sharing Regulations, PoC charges for LTAMTOA, ought to be calculated only at withdrawal nodes, as withdrawal charges, and that there would be no injection charges.

(d) It is a settled principal of law that Agreements are to be construed, keeping in mind the intentions of the parties. In this regard, reliance has been placed on the judgments of Hon`ble Supreme Court in the case of Mangala Waman Karnadikar Vs. Prakash Damodar Ranade [(2021) 6 SCC] and Bharat Aluminum Co. v. Kaiser Aliminium Technical Services Inc., [(2016) 4 SCC 126].

(e) All existing contract are aligned with the Sharing Regulations. In support, reliance has been placed on the judgment of Hon`ble Supreme Court in the case of Orrisa State Financial Corporation V. Narsingh Ch. Nayak [(2003) 10 SCC 261] and New Indian Assurance Co. Ltd. V. Zuari Industries Ltd [(2009) 9 SCC 70]

11. The Respondent, TSSPDCL in its written submissions dated 9.3.2022 has submitted that Vedanta Limited has accepted the order of TSERC dated 1.11.2018 wherein it has been held that 'TSSPDCL has already paid the amount and the Petitioner has to pay the amount towards its 50% liability under Article 3.2 of the PPA dated 29.10.2014 with a liberty to collect the amount from the generator (Vedanta/erstwhile Seas Sterlite Ltd.). The Respondent No. 2, TSSPDCL has no liability to pay this amount.' Since Vedanta Limited has not preferred any appeal before APTEL against the order of TSERC dated 1.11.2018, order of State Commission has attained finality. Therefore, Vedanta Limited now cannot make any contentions to the contrary otherwise.

Analysis and Decision

12. We have considered the submissions of the Petitioner and the Respondents and perused documents on record. The only issue for our consideration is in the present case whether the Petitioner, who is an inter-State trading licensee, is liable to pay PoC charges or not.

13. On 30.7.2014, Southern Power Distribution Company of Telangana Limited (TSSPDCL) invited bids for purchase of power on behalf of Telangana Discoms for the period from 20.5.2015 to 30.5.2016. The power was required to be procured at the

SR Periphery (delivery point) and the rates were to be quoted on that basis. In the said tender, the Petitioner, who is an inter-State trader, was authorized for supply of 300 MW power from 29.5.2015 to 26.5.2016 to TSSPDCL. Based on the above, the Petitioner submitted its bid and was declared successful bidder and Letter of Intent was issued accordingly. On 29.10.2014, the PPA dated 29.10.2014 was entered into between the Petitioner and TSSPDCL for supply of power procured from the generator, Vedanta Limited to TSSPDCL.

14. On 29.10.2014, the Petitioner made an application to Central Transmission Utility, now Central Transmission Utility of India Limited (CTUIL) for grant of MTOA for supply of power from TSSPDCL. CTUIL granted MTOA for the period from 29.5.2015 to various dates with varying capacities. On 4.3.2016, CTUIL informed the Petitioner regarding operationalization of MTOA for 62 MW to be supplied for the period from 1.4.2016 to 26.5.2016 to TSSPDCL from Vedanta Limited. Accordingly, PGCIL raised PoC bills of Rs. 1,53,94,243 on the Petitioner.

15. The Petitioner has submitted that though 3rd amendment to the Sharing Regulations merged PoC charges into withdrawal charges, such merger is only for the purpose of computation and if concerned PPA provides for sharing of charges up to delivery point by the seller and beyond such delivery point by the buyer, the parties would have to be paid as per such proportion and therefore, the Respondents, TSSPDCL and Vedanta Limited have to share the charges equally. In terms of the PPA, the Petitioner is liable to bear 50% of the injection charges after recovery of the same from the generator.

16. The Respondent, TSSPDCL has admitted that it is liable to pay only 50% of PoC charges for withdrawal of power beyond the delivery point leaving balance 50% charges payable by the Respondent, Vedanta Limited up to delivery point.

17. The Respondent, Vedanta Limited has claimed that as per 3rd amendment to the Sharing Regulations, billing of PoC charges towards LTA/MTOA shall be as per the withdrawal charges and that injection charges were done away with. It has been further submitted that pursuant to 3rd amendment of Sharing Regulations, POC charges for LTOA ought to be calculated only at withdrawal nodes, as withdrawal charges and that there would be no injection charges.

18. We have considered the submissions of the Petitioner and the Respondents. Let us examine the PPAs and the provisions of regulations. Relevant portion of the PPA dated 29.10.2014 entered into between the Petitioner and the Respondent No.2, TSSPDCL is extracted as under:

“3.2 Transmission Charges and Losses:

SCL/SSL shall book the Transmission Corridor after making advance payment to the Nodal RLDC/PGCIL towards PoC charges as per CERC Regulations for STO/MTOA

The Generator PoC injection charges and losses (including STU/CTU transmission charges, SLDC/RLDC operating charges and SLDC/RLDC application fee, annual fee, PGCIL Application fee, SRLDC Application fee and SRLDC Operating charges, etc.) upto the delivery point will be borne by SCL. Telangana withdrawal charges and losses, Telangana SLDC application fee, operating charges, annual fee and TSTRANSCO transmission charges are to the account of TS Discoms.

All the Open Access Charges Viz, wheeling charges, scheduling charges and handling charges indicated are at current applicable rates notified by CERC/RLDC. However, if any of these charges are revised, then the same shall be applicable from the date of implementation notified by CERC/RLDC.

However, Open Access charges beyond delivery point also have to be paid by SCL and TSSPDCL/TSDICOMs will reimburse all such charges on submission

of Open Access bill. The due date for payment would be 7th day after the date of receipt of fax/email bill subject to receipt of original invoice within due date.

3.4 Open Access and Power Scheduling:

SCL shall apply for Corridor Booking under Medium Terms Open Access (MTOA/Short Term Open Access (STOA) in accordance with the CERC regulations. For the purpose of corridor booking, SCL shall be the applicant for MTOA.

SCL shall schedule the power in full except in case of force majeure, scheduling and dispatch of the power shall be coordinated with respective RLDC(s) as per the relevant provisions of IEGC and framework of ABT and the decision of RLDCs and RPCs....”

As per above provision, generator is required to bear PoC/injection charges and losses (including STU/CTUIL transmission charges, SLDC/RLDC operating charges and SLDC/RLDC application fees, annual fees, PGCIL application fee and SRLDC operating charges etc.) upto delivery point. Whereas, the Telangana withdrawal charges and losses beyond along with Telangana SLDC application fee, operating charges, annual fee and TSTRANSCO transmission charges beyond the delivery point are to the account of TSSPDCL.

19. Further, the PPA dated 31.10.2014 entered into between the Petitioner and the generator, Vedanta Limited (Erstwhile Sesa Sterlite Limited) provides as under:

“3.1 Delivery Point:

The Delivery Point for supply of power from SSL to TSSPDCL through SCL, shall be at Southern Regional Periphery.

3.2 Transmission Charges and Losses:

SCL/SSL shall book the Transmission Corridor after making advance payment to the Nodal RLDC/PGCIL towards PoC charges as per CERC Regulations for STOA/MTOA

The Generator PoC injection charges and losses (including STU/CTU transmission charges, SLDC/RLDC operating charges and SLDC/RLDC application fee, annual fee, PGCIL Application fee, SRLDC Application fee and

SRLDC Operating charges, etc.) upto the delivery point are to the account of SSL. Telangana POC withdrawal charges and losses, TSSLDC application fee, operating charges, Annual fee and TSTRANSCO transmission charges shall be borne by SCL.

All the Open Access Charges Viz, wheeling charges, scheduling charges and handling charges indicated are at current applicable rates notified by CERC/RLDC. However, if any of these charges are revised, then the same shall be applicable from the date of implementation notified by CERC/RLDC.

However, Open Access charges upto delivery point also have to be paid by SCL/SSL and SSL/SCL will reimburse all such charges on submission of Open Access bill. The due date for payment would be 7th day after the date of receipt of fax/email bill subject to receipt of original invoice within due date.

The Open Access charges, if any, received back by SSCL/SSL from SRLDC due to curtailment, congestion, Force Majeure etc. are to be returned to SCL/SSL accordingly.”

As per the above provisions, PoC injection charges and losses (including STU/CTU transmission charges, SLDC/ RLDC operating charges and SLDC / RLDC application fee, annual fee, PGCIL Application fee and SRLDC operating charges, etc.) upto delivery point are required to be borne by the generator i.e. Vedanta Limited. It is further observed that ‘delivery point’ has been provided as ‘Southern region periphery’ implying thereby that transmission and other charges to wheel power from generator injection point till Southern region periphery was to be borne by the generator, Vedanta Limited. Thus, based on the combined reading of provisions of both the PPAs, it is clear that while initially it is the Petitioner who is required to pay the PoC injection charges and losses upto the delivery point in terms of the PPA dated 29.10.2014, ultimately such charges are to the account the Respondent No.1 in terms of PPA dated 31.10.2014 and therefore, the Respondent No.1 required to reimburse such charges to the Petitioner, if any, paid by it under the PPA dated 29.10.2014. Further, as per the PPA dated 29.10.2014, the PoC withdrawal charges were to be

borne by TSSPDCL i.e. transmission charges to wheel power from Southern region periphery till drawal point of Telangana was to be borne by TSSPDCL.

20. Third amendment to the Sharing Regulations, which appears to be the bone of contention between the parties and basis which the Respondent No.1 has refuted its liability to the pay the PoC charges, provides as under:

“2.8.1.a. Methodology for calculation of PoC rates and billing of POC charges:

(i) PoC rates for billing towards LTA/MTOA shall be calculated only on Withdrawal nodes (as Withdrawal charges) and for generators who have Long Term Access to target region (as injection charges) corresponding to untied power. PoC rates shall not be calculated for ISGS with identified long term customers/beneficiaries with whom PPA have been signed. Example for billing a Generator who have LTA to target region:

Suppose a Generator "A" has LTA of 900 MW to target region (WR-500 MW, NR-400 MW). He ties up 150 MW of power with U.P through PPA. "A" shall be billed for $500+250=750$ MW as its LTA to target region.

(ii) If any generator has contractual liability to pay the Withdrawal Charges of drawee entity, then drawee DIC shall inform CTU and bill shall be raised by the CTU to generator directly. In such a case, only withdrawal charges shall be payable by generator for corresponding quantum of power.

(iii) For balance injection i.e. difference between Approved Injection and Quantum of withdrawal, generator shall pay Injection Charges only.

(iv) For the purpose of STOA, collective transactions and computation of transmission deviation charges, POC injection rate / withdrawal rate for all DICs shall be determined separately and shall be declared in paise/kWh

(v) The injection and withdrawal rates in paise/kWh as at (iv) above shall be computed before transferring injection charges of ISGS having long term customers on withdrawal DICs”

21. The Statement of Reasons to 3rd amendment to the Sharing Regulations provided rationale of merging injection PoC charges and Withdrawal PoC charges as follows:

“33.8 First let us consider whether the transmission charges are to be allocated to Generators. If however it is decided that transmission charges are to be allocated to generators as well, it is necessary to understand how they will

further allocate it to users. In Web Net software based on Hybrid methodology, about 50% charges are allocated to generator and 50% to load. If generator allocates it to their beneficiaries based on allocation (contract) in the particular generating station, then it will be a deviation from basic principle of PoC mechanism as half of that i.e. withdrawal charges are based on usage and 50 % injection charges which were calculated based on usage of a particular generator are allocated to beneficiary based on "Contract" rather than their actual usage. This results in a situation that a particular DIC is paying for one set of transmission line for its withdrawal of power and another set of transmission lines for power injected by generator in which it has allocation. As both these sets have different subsets of lines, so in addition to common lines in these sets, payment for additional lines are incident on load. Hence while deciding to allocate charges on generator, this aspect needs to be seen whether they will pass on to consumers /loads or they would pay the charges themselves.

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33.19 *We have considered suggestions of Bihar and GRIDCO. The National Electricity Policy specifies that the transmission charges should be reflective of distance, direction and quantum of usage. However due to billing of generation end transmission charges to beneficiaries based on their share of power in such generating stations, the final charges loaded to beneficiaries become non reflective of distance, direction and quantum of usage. We have therefore decided that charges shall not be calculated separately for generation end where generators have a contract for long term supply to identified beneficiaries. The charges shall rather be calculated only at the Withdrawal nodes so that charges reflect usage of lines by a particular Withdrawal node/zone.*

....
33.35 *However, if in a particular contract, the Generator has itself taken the responsibility for paying transmission charges upto load end, it will pay the transmission charges to the extent of contracted capacity. For example, if a generator X is selling 400 MW to TANGEDCO, then out of total withdrawal charges of TANGEDCO, this generator will pay withdrawal charges for 400 MW. Either TANGEDCO will be billed for total withdrawal charges and then it can take payment from Generator or it can inform billing agency that Generator will pay these charges."*

As per above, 50% charges were allocated as generator injection charges and 50% as withdrawal charges. However, there were certain issues coming up for cases where generator allocates such injection charges to its buyers based on allocation of power. Therefore, it was decided that such charges shall not be calculated separately for generation end where generators have a contract for long term/medium term supply to identified beneficiaries and shall be calculated only at the withdrawal nodes.

However, neither the 3rd Amendment to the Sharing Regulations nor the SoR issued along with it exempts the generating company from liability of PoC charges, if any, under the contractual arrangements. On the contrary, 3rd amendment itself proceeds to recognize the contractual liability by providing for treatment in the cases wherein the generating company has contractual liability to pay the withdrawal charges of drawee entity. In the present case, in terms of the contractual arrangement, as noted above, the liability of the generating station was to the extent of injection charges and whereas, the withdrawal charges were to be borne by the distribution company.

22. It is noted that the Vedanta Limited while executing the PPA dated 31.10.2014 had already taken its liability to pay the PoC injection charges and losses (including STU/ CTUIL transmission charges, SLDC/ RLDC operating charges and SLDC / RLDC application fee, annual fee, PGCIL Application fee and SRLDC Operating charges etc.) upto the delivery point into consideration and had included the same in the price of electricity being supplied by it. Further, the said charges included in the generation tariff has already been recovered by the Vedanta Limited. The PPA also provides that in case any open access and other charges are revised by CERC, the same shall also be payable by the generator. Therefore, refusal of the Vedanta Limited to bear its share of the PoC injection charges and losses (including STU/ CTUIL transmission charges, SLDC/ RLDC operating charges and SLDC / RLDC application fee, annual fee, PGCIL Application fee and SRLDC Operating charges etc.) upto the delivery point has resulted in unjust enrichment on the part of the Vedanta Limited who after recovering the same is now illegally resiling from its contractual obligation to pay the same to the Petitioner.

23. Third amendment to the Sharing Regulations provides for a method of calculating the PoC charges and it nowhere mandates that the parties to a PPA cannot stipulate sharing of the same or that the generator is automatically prohibited from payment of PoC charges and the same is to be borne entirely by the entity withdrawing the power *de hors* the contractual obligations. Since post the 3rd amendment to the Sharing Regulations, injection PoC charges and withdrawal PoC charges were merged, there is a need to segregate them for the purpose of the PPA entered into between Vedanta Limited and between the Petitioner and Petitioner and TSSPDCL. We observe that Statement of Reasons to 3rd amendment to the Sharing Regulations has noted that 50% are injection PoC charges and 50% are withdrawal PoC charges before the third amendment and accordingly, we direct that out of the merged withdrawal charges for Telangana, 50% shall be treated as injection PoC charges and 50% as withdrawal PoC charges for the purpose of instant dispute. We observe that generator has been recovering such injection PoC charges, before 3rd amendment to the Sharing Regulations, inbuilt into its energy charges. There is nothing on record to prove that generator reduced such energy charges post 3rd amendment to the Sharing Regulations to take away the considered injection PoC charges which implies it is still recovering such transmission charges as a part of its energy charges. Hence, generator shall be liable to pay 50% of withdrawal PoC charges for the Telangana for the quantum under the instant contract.

24. It is stated that neither the Statement of Objects and reasons of the third amendment to the Sharing Regulations nor the Order dated 14.07.2015 merging PoC injection and PoC withdrawal charges passed by this Commission exempt the generator from its contractual obligations to share the PoC charges and thus, the same are not relevant in the instant case.

25. Further, the mandate in Regulation 14 in the Sharing Regulations, 2010 to align all the contracts with the said Regulations is not applicable in the instant case as the PPA dated 31.10.2014 was duly executed keeping the said prevalent regulations in mind.

26. The Petitioner is only inter-State trading licensee and is entitled to trading margin in a back to back contract and in no manner can be forced to bear the burden of the PoC charges. Trader is only a facilitator for supply of electricity by a generator to a licensee or a consumer. In this case, generating company authorized the inter - State trading licensee for supply of 300 MW to a distribution licensee, namely, TSSPDCL which has back to back agreement for re-sale of power to a distribution licensee.

27. In light of the above discussion, we find that the contractual liability of the Vedanta Limited to pay the PoC charges till the delivery point has not been changed or done away with by the amendment in the Sharing Regulations, which at the best may be treated as a change in the method of computation in the POC charges. Accordingly, we find and hold that the Respondent No. 1, Vedanta Limited is liable to pay 50% of the PoC charges towards injection of power and upto the delivery point in terms of PPA dated 31.10.2014.

28. The Petition No. 162/MP/2020 is disposed of in terms of the above.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member