

**CENTRAL ELECTRICITY REGULATORY COMMISSION**

**NEW DELHI**

**Petition No. 263/MP/2022**

- Subject** : Petition under Section 79 of the Electricity Act, 2003 for direction to Odisha Power Transmission Co. Ltd (OPTCL) to refund the excess paid wheeling charges & short term open access charges along with interest in respect of its transmission system of 220 kV D/C Rourkela-Tarkera-Budhipadar-Korba (Budhipadar-Korba Circuit 2 & 3-Odisha portion) line and associated sub-station bays to MPPMCL.
- Date of Hearing** : 21.2.2023
- Coram** : Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner** : M.P. Power Management Company Limited (MPPMCL)
- Respondents** : Odisha Power Transmission Co. Limited (OPTCL) & 7 others
- Parties present** : Shri G. Umaphathy, Sr. Advocate, MPPMCL  
Shri Aditya Singh, Advocate, MPPMCL  
Shri Anuj Jain, Advocate, MSEDCL

**Record of Proceedings**

The instant petition is filed by M.P. Power Management Company Limited (MPPMCL) under Section 79 of the Electricity Act, 2003 for direction to Odisha Power Transmission Company Limited (OPTCL) to refund the excess wheeling charges & short term open access charges paid to OPTCL by MPPMCL along with interest, in respect of transmission system of 220 kV D/C Rourkela-Tarkera-Budhipadar-Korba (Budhipadar-Korba Circuit 2 & 3-Odisha portion) line and associated sub-station bays.

2. The learned senior counsel for the Petitioner submitted as follows:

- a) CEA, vide letter dated 27.5.1997 addressed to GRIDCO, confirmed that the wheeling charges for inter-regional transfer of power from ER to WR is decided at 10 Paise/Kwh net to be paid to GRIDCO. The Commission, vide order dated 23.10.2000 in Petition No. 10/2000, upheld the CEA's decision for payment of wheeling charges @ 10 Paise/Kwh to OPTCL, w.e.f. 1.1.1998. Aggrieved with the aforesaid order of the Commission, OPTCL filed MA No. 927/2000 before High Court of Orissa. The High Court of Orissa passed an order dated 16.3.2001 granting interim stay on the operation of Commission's order. The High Court further issued certain orders for payment of wheeling charges by the Petitioner to OPTCL, which the Petitioner has complied.



- b) The Petitioner filed an application on 18.4.2007 before the High Court praying to vacate the stay order dated 16.3.2001 on the ground that the Wheeling Charges for the subsequent period commencing from 1.4.2001 were decided by the Commission vide order dated 23.3.2007 in Petition No.06/2004 was much lower and, therefore, the Petitioner is required to recover huge amount from OPTCL. The High Court of Orissa vide order dated 6.12.2007 remitted the matter to the Commission for adjudication on the issue whether Wheeling charges shall be confined to 10 Paise/Kwh or it will be enhanced for a price up to 17.50 Paise/Kwh for the period from 1.1.1998 to 31.3.2001.
- c) The Commission re-examined the issue and vide order dated 30.9.2008 upheld the earlier decision, i.e., Wheeling Charges @ 10 Paise/Kwh as decided by CEA for the period from 1.1.1998 to 31.3.2001. The Commission further directed OPTCL to refund the excess amount recovered in six equal monthly instalments commencing from October, 2008. Against this order, OPTCL filed an FAO No.536 of 2008 before High Court of Orissa. The High Court vide order dated 27.3.2009 granted interim injunction against Commission's order dated 30.9.2008.
- d) The Petitioner filed Petition No. 09/2009 before the Commission stating that GRIDCO/ OPTCL has not complied with the Commission's orders, retained excess paid Wheeling Charges and continues to bill the Petitioner @ 17.50 Paise/Kwh instead of the rates decided by the Commission. The Petitioner also prayed for direction to OPTCL to refund excess amount plus interest thereon. After hearing the parties and taking into consideration the pendency of the Writ Petition in the High Court of Orissa and review application in the Appellate Tribunal, the Commission, vide RoP dtd 22.12.2009, decided to keep the petition pending till further orders. The parties were given liberty to revive the petition after the orders/directions of the High Court of Orissa/APTEL.
- e) OPTCL filed Appeal No. 85/2007 and thereafter R.P. No. 07/2009 in Appeal No. 85/2007 before APTEL to set aside this Commission order dated 23.3.2007 in Petition No. 06/2004 for determination of Wheeling Charges for the period 2001-04. The APTEL vide judgements dated 8.7.2009 and 19.11.2011 dismissed the same. Further, the Supreme Court of India, vide judgement dated 30.1.2012, also dismissed the Civil Appeal No. 4738/2011 filed by OPTCL against the APTEL's judgement dated 8.7.2009 in Appeal No. 85/2007 and 19.1.2011 in R.P. No 07/2009 in Appeal No. 85/2007.
- f) OPTCL filed a Memo on 21.10.2016 in FAO No 536 of 2008 before the High Court of Orissa stating therein that they are not interested to pursue the case further as the matter has been settled out of the Court. During hearing on 8.2.2017 before High Court of Orissa, the Petitioner submitted that actually no settlement has been made, but Petitioner has no objection if the FAO is allowed to be withdrawn. The High Court of Orissa, vide order dated 8.2.2017 in FAO No. 536/2008, allowed OPTCL to withdraw FAO and also vacated the stay granted earlier.



3. After hearing the learned senior counsel for the Petitioner, the Commission observed that there is considerable delay in filing the petition.

4. The Commission directed the Petitioner to submit the details of the year wise wheeling charges due as well the wheeling charges paid for the disputed period i.e. 1.1.1998 to June 2011, as per the following table, on affidavit by 20.3.2023, with an advance copy to the Respondents.

Sl. No.	Period	Due amount of wheeling charges as per Commission's order	Actual amount paid towards wheeling charges

5. The Commission further directed the Respondents to file their reply both on admissibility/limitation as well as on merits by 10.4.2023 with an advance copy to the Petitioner, who may file its rejoinder, if any, by 30.4.2023. The Commission also directed the parties to comply with the directions within the specified timeline and observed that no extension of time will be granted.

6. The Petition shall be listed for further hearing on 11.5.2023.

**By order of the Commission**

sd/-

(V. Sreenivas)  
Joint Chief (Law)

