

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012**

Present: Shri B.K. Das, Chairperson
Shri K.C. Badu, Member
Shri B.K. Misra, Member

Case No.45/2009

M/s. Nava Bharat Ventures Limited (NBVL)..... Petitioner

Vrs.

OPTCL,SLDC,Respondents

**In the matter of: Determination of Open Access Charges for Short Term Open
Access Customers**

For the Petitioner: Mr Ashok Kumar Parija Sr Advocate, Mr. R. P. Das, Advocate
Mr.S. Mishra, Advocate, Mr P.P. Mohanty, Advocate, & Mr.
Ashok Parida, Chief Residential Manager.

For the Respondents: Mr. N.C. Panigrahi, Sr. Advocate, Mr. L. N. Mohapatra,
Advocate & Mr S.R. Panigrahi, Advocate

Date of Hearing: 17.8.2009

Date of Order: 30.09.2009

ORDER

1. M/s Nav Bharat Ventures Ltd (NBVL in short) had filed a case before the Commission, under OERC (Determination of Open Access Charges) Regulation 2006. The petitioner NBVL has been exporting power from its 94 MW Captive Generating Plant (CGP) at Kharagaprasad, Dist-Dhankanal, in accordance with Open Access Regulations of OERC/CERC, through inter-state transmission, availing Short-Term open access w.e.f April-2008. The petition has been filed as per the provision of Chapter-2 of OERC (Conduct of Business) Regulation, 2004 on 04.04.2009. After scrutinizing the petition, notice had been served to the three respondents namely OPTCL, SLDC, and ERLDC. The case has been admitted for hearing on 05.05.2009. The final hearing on the case was conducted on 17.08.2009 after receipt of written submission of ERLDC.
2. During the hearing on 17.08.2009 Sri A.K. Parija Sr. Counsel for the petitioner submitted that it was suffering heavy loss due to the high transmission charges

deducted by ERLDC towards Open Access Charges, considering M/s NBVL as an Long Term Open Access customer.

3. The Sr. councilor quoted Regulation '5' of OERC(Terms & Condition for Open Access) Regulation,2005,which inter alia states as under

'The persons availing or intending to avail access to the intra-state transmission or distribution system for a period of twenty-five years or more shall be long-term customers:

x x x x x x

The customers other than the long-term customers shall be the short-term customers:

Provided that the maximum duration for which the short-term access allowed at a time shall not exceed one year'

4. The Sr. Counsel submitted that the price on which, NBVL has been billed was not in line with the Regulation. ERLDC should have considered NBVL as an STOA customer and charged at Short Term Open Access rate i.e. 25% of the Long Term Open Access rate.
5. The Sr. Counsel further submitted that despite several requests by the petitioner starting from 21.07.2008 to SGM, SLDC with the copy to ERLDC, ERLDC has been deducting open access charges in line with the unit of measurement MWh mentioned in Central Electricity Regulatory Commission (Open Access in Inter-State transmission) Regulations, 2008 effective from 01.04.2008. .
6. The Sr. Counsel submitted that the charges have been fixed by the Hon'ble Commission in its order dated 20.03.2008 for OPTCL on Open Access Charges in Case No. 62/2007 at para 349 which inter alia stated as under: -

'Transmission Charges worked out to 21.00 paise per unit shall be applicable for Transmission of power at 220 KV/ 132KV over OPTCL's EHT transmission lines and sub-stations and shall be payable by the DISTCOs and CGPs. It will also be applicable for the purpose of transmission of energy from a CGP to its industries located at a separate place(s) within the State.'

7. In this connection the Sr. Counsel for the petitioner submitted that the charges applicable for open access customers as per ARR order of OPTCL dated 20.03.2008 in Case No. 62/2007 at Para 349, was 21 paise per unit as stated above. This when converted in terms of MWh comes to Rs.210/MWh. With short term open access

charges being 25% of the long term open access charges, the charges for short term customer are worked out at Rs.52.5 /MWh. But despite several requests at various levels, ERLDC has been continuously raising bills for transmission charges @ Rs. 210/ MWh for which NBVL has already paid Rs 4.83 crore.

8. The Sr. Counsel also submitted that the Commission vide para 350 of order dated 20.03.2009 on ARR of OPTCL for FY 2008-09 has fixed Rs 5040/MW/day as LTOA charges & Rs1260/MW/day as STOA charges for use of OPTCL network for Intra-State Open Access which is reproduced bellow.

‘The Commission has notified the Intra-state Open Access Regulations, 2005 under Section 42 (2) of the Electricity Act, 2003. Consumers availing open access shall be required to pay the transmission charges for use of the transmission lines and substations of OPTCL. The estimated energy for transmission in OPTCL’s system is 17,930 MU with an average demand of 2047 MW. The net transmission cost as indicated in the table above is Rs.376.57 crore. This works out to a sum of Rs.5040.00/MW/day. The long term open access customer availing Open Access under relevant Regulations of OERC shall pay Rs.5040.00/MW/Day towards transmission charges. In accordance with our Regulation, the short term open access customer shall pay at the 25% of the long-term open access charges. Accordingly the Commission approves rate of Rs.1260.00/MW/day. This will be in addition to other charges in accordance with Open Access Regulation.’

In view of the above the petitioner alleges that ERLDC has been claiming transmission charges for OPTCL network at the rate of Rs.210/MWh which relates to Long Term Open Access customers. This is because the transmission charge figure of Rs 210/ MWh, as being billed by ERLDC can only be arrived, if apportioned to per hour basis from Rs.5040/MW/day, which is the figure related to LTOA customers.

9. The Sr. Counsel for the petitioner further stated that the open access charges were computed at regional level by ERLDC, taking into account of both intra & inter state open access charges adopted by STU/CTU respectively. The software designed at Regional Energy Account for preparation of generic bill recognizes an uniform units

of measurement in respect of all CTU & STU. The respective STU uses the extracts from the REA to prepare the intra-state transmission bills for open access.

In view of the submission made in the Sr. Counsel for the petitioner prays to amend the OERC Open Access (Determination of Open Access Charges) Regulation 2006 in line with CERC Open Access Regulation,2008 effective from 1st April 2008.

10. Sri N.C. Panigrahi, Sr.Counselor on behalf of OPTCL & SLDC submitted during the hearing on 17.08.2009 that Since OPTCL was discharging the function of SLDC as per the Transfer scheme notified by Govt. of Orissa during 2005, without affecting the autonomy of SLDC, OPTCL & SLDC had jointly submitted the counter. The salient features of the submission of the Sr Counselor in this respect as under:-

- a. That once a tariff order is passed, the same becomes binding, subject to amendment if any ,by the Commission U/s-62(4) of the Electricity Act, 2003 & subject to appeal U/s-111 of the Act. The Sr. Counsel reproduced the Section-62(4) of the EA, 2003 as under.

'No part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.'

Moreover, the petitioner NBVL has no *locus standi* to file for an amendment of the tariff order, since he was not even an objector in course of hearing of the Tariff Application.

- b. That, the CERC Regulation was published on 25.01.2008, well before commencement of export by the petitioner. Thus the petitioner was well aware of the charges to be paid for the transaction effective from 01.04.2008. Even Hon'ble OERC had pronounced the ARR & transmission tariff order of OPTCL for FY 2008-09 on 20.03.2008 in case no 62/2007 . Hence the petitioner has failed to take appropriate action at appropriate time.
- c. That the relevant extracts of the tariff order 2008-09 (Para 349 to 351)were sent by SLDC to DGM ERLDC , Kolkata vide letter no. SGM (PS)/MIS/6-6/640 dated 28.03.2008.After receipt of letter dated 21.07.2008 from NBVL, objecting to the rate of Rs. 210/MWh charged in respect of STOA transaction for using OPTCL network, OPTCL requested Director (Tariff) , OERC vide letter No.614(2) dated 08.09.2008 seeking clarification on the claim of NBVL regarding transmission charges @ Rs

52.5/- per MWh .The clarification of the Director (tariff) was sent to ERLDC, Kolkata vide letter no.2087(3) dated 27.11.2008. ERLDC further requested OPTCL vide fax dated 04.12.2009, to specifically mention the STOA charges applicable in case of NBVL. It had made clear that, till a confirmation in this respect was received, the payment schedule should be prepared as per the rate of Rs.210/MWh. Finally, OPTCL vide letter no 104 dated 19.02.2009 had again referred the matter to Director (tariff), OERC along with all previous correspondences, to confirm whether the STOA charges calculated by ERLDC in Rs./MWh shall be applicable to STOA customers for use of OPTCL network. Meanwhile the ARR of OPTCL for FY 2009-10 was approved by the Hon'ble Commission vide Case No.63/2008, where transmission charges approved by the Hon'ble Commission was Rs1230/ - MW/Day for the STOA customers & the same was intimated to ERLDC vide letter no. SGM (PS)/134/2008/497(4) dated 29.03.2009.

- d. That, the conversion of unit of measurement is not within the purview of the respondent. Unless otherwise or till the rates & units are amended the charges are to be scrupulously adopted & for which ERLDC has to devise the necessary software.
 - e. That, OPTCL in its application for approval of ARR for the year 2009-10 had applied for determination of LTOA/ STOA charges in terms of Rs/MW/Day based on existing Regulation, NBVL could have submitted its view on units of measurement for transmission charges & suggested the Commission to amend the Open Access Regulation to be compatible with CERC (Inter-State Open Access Regulations) 2008, which it had failed to do.
 - f. In view of the above, the Sr. Counselor for the respondents submitted that the amendment of existing Intra-State Open Access Regulations to be compatible with Inter-State Open Access Regulations with retrospective effect from 01.04.2008 may not be legally correct to effectuate necessary reason to the monthly bills raised by ERLDC against the petitioner during 2008-09.
11. ERLDC submitted its rejoinder by filing a written submission by Shri P. Mukhopadhyaya Dy. General Manager on 10.07.2009. ERLDC in its written submission stated that being a part of Central Transmission Utility it had to act in line with CERC guidelines. The CERC (Open Access in Inter-State Transmission) Regulation, 2008 has been issued on 25.01.08. Regulation 16(3) states as follows: -

“The Intra-State entities shall additionally pay transmission charges for use of the state network as determined by the respective State Commission:

Provided that in case the State Commission has not determined the transmission charges, the same shall not be the ground for denial of open access & charges for use of the respective State network shall be payable for the energy approved at the rate of Rs. 30/MWH:

Provided further that transmission charges for use of the state network shall be intimated to the Regional Load Dispatch Centre concerned for display in its website:

“Provided also that transmission charges shall not be revised with retrospective effect.”

12. The salient features of ERLDC submissions as a respondent to the Case No. 45 are as follows:-
- a. That ERLDC has time & again asked OPTCL to clarify the amount of transmission charges to be deducted for export of power by NBVL. It was also made clear that in case of non receipt of information, charges payable by STOA customers shall be Rs 30/MWh for use of STU network as per CERC (Open Access inter-State transmission) Regulation 2008 issued on 25.01.2008.
 - b. That OPTCL in its reply vide SGM (PS)/MIS/6-6/640 dated 28.03.2008 informed that the transmission charges & transmission losses for OPTCL network were @ 21 paise per unit & 4.5 % respectively as directed in OERC order against Case No 62/2007 dated 20.03.2008 .Accordingly RLDCs were applying Rs 210/- per MWh as transmission charges for the use of OPTCL network for STOA charges & disbursed to OPTCL based on CERC Regulation & procedure as framed for CTUs.
 - c. That ERLDC received another communication from TPTCL, the Power Trader engaged by M/s NBVL for export of power, vide Lr. No.TPTCL/ERLDC/FY09/KKP/4345 dated 3rd December,2008,requesting for revision of the transmission charges of OPTCL network for STOA customer to Rs. 52.5 per MWh. OPTCL , vide letter no. R&T-1/2004/227 dated 12.01.2009 insisted that the transmission charges for STOA customers for OPTCL network was Rs.1260/- per day which is again not in terms of Rs/ MWh as required by ERLDC as stipulated in the CERC Regulation. As ERLDC did not receive any confirmation from OPTCL

to this effect, it continued to compute Rs. 210/MWh as transmission charges payable by STOA customers using their network.

- d. That ERLDC further submitted that CERC amended the STOA charges for CTU networks to Rs.80/ MWh vide Open Access Inter-State Transmission (Amendment) Regulation, 2009. The Regulation 10 of the CERC Open Access Regulation 2009, states that ***‘in case the transmission charges are not specified by the respective SERC, Rs. 80/- per MWh shall be applied for the use of State Transmission network by STOA customers’***, which has been intimated to OPTCL vide Fax message dated 05.06.2009, with a request to intimate ERLDC about the transmission charges for STOA customers in terms of Rs/ MWh within 14.06.2009. Since ERLDC has not yet received any communication in this regard till date, it is using Rs. 80/ MWh for use of OPTCL network by STOA customers.
- e. That ERLDC has already disbursed all the STOA charges to OPTCL received from the Open access customers in respect of the use of OPTCL network . Hence any revision of transmission charges vis-à-vis settlement for the year 2008-09 shall be between OPTCL and the respective STOA customers only.
- f. That ERLDC further submitted that the matter was brought to the notice of ‘Forum of Regulators’ by POWERGRID in its 8th meeting held at Khazuraho on 26th September 2008 and a resolution has been taken by the FOR (Forum Of Regulators) to this effect as quoted bellow.
‘Power Grid had requested that the transmission charges for open access may be specified by the SERCs only in Rs./MWh in order to facilitate implementation of open access. It was agreed that the SERCs would duly consider the issue raised for taking necessary action.’
- g. In view of the above submission, ERLDC prayed that since OPTCL was yet to intimate the transmission charge for use of their network by STOA customer in Rs/ MWh for the year 2009-10, the Commission may issue appropriate directive to OPTCL to inform ERLDC the transmission charges for the use of OPTCL network by the STOA customer in terms of Rs/ MWh.

Commission's Observations: -

13. The Commission heard the views of all concerned parties at length and observed that the following are the two main issues involved in this case.
 - a) Discrepancy in billing by ERLDC in case of NBVL at Long-Term open access customer rate of state transmission system.
 - b) The difference in unit of measurement for calculation of Open Access Charges between CERC and OERC Open Access Regulations.
14. The petitioner has applied for short term open access for export of power from its CGP in accordance with open access Regulation of OERC/CERC and the application has been duly approved by SLDC, Bhubaneswar and ERLDC, Kolkata. As per OERC Regulation of open access, short term open access charges are 25% of long term open access charges which should have been charged for power transmission within the intra-state (OPTCL) system. The Commission, therefore, directs ERLDC to correct the discrepancy in billing by ERLDC by treating NBVL as Short Term Open Access customer only and charge accordingly.
15. Regulation 4(1) (xii) of OERC (Determination of Open Access Charges) Regulation 2006, stipulates as under:-

'Every transmission licensee shall declare the approved LT_RATE & ST_RATE in Rs /MW/per day calculated in accordance with clause (vii) & (viii) above, which shall remain fixed for a period of one year'

In accordance with the above Regulation, OERC approved the Open Access Charges in the ARR of OPTCL each Financial Year in terms of Rs/MW/day. Accordingly, the ARR of OPTCL for FY 2008-09 & 2009-10 has been approved. The transmission tariff for using OPTCL network has been fixed vide para 350 and para 311 of the ARR orders for OPTCL for FY 2008-09 and FY 2009-10 respectively.
16. We have taken note that Para 349 & 350 of ARR order of OPTCL for FY 2008-09 and para 310 & 311 of the ARR order of OPTCL for FY 2009-10 have been misread by ERLDC. The transmission charges of 21 paise /unit and 20.50 paise/unit fixed for 2008-09 and 2009-10 respectively are meant for DISCOMs & CGPs only who are using OPTCL network. For the purpose of billing for Open Access customers both Long Term & Short Term, the Commission's directive in Para 350 of the Tariff order

for FY 2008-09 and Para 311 of the Tariff order for FY 2009-10 which are to be followed. The extract of the relevant para are reproduced before:

a) Para 350 of FY 2008-09: x x x

The long term open access customer availing Open Access under relevant Regulations of OERC shall pay Rs.5040.00/MW/Day towards transmission charges. In accordance with our Regulation, the short term open access customer shall pay at the 25% of the long-term open access charges. Accordingly the Commission approves rate of Rs.1260.00/MW/day.

b) Para 311 of FY 2009-10: x x x

“Accordingly, the Commission approves a rate of Rs.4919/MW/day and Rs.1230/MW/day as LTOA and STOA charges respectively for FY 2009-10.”

17. While addressing the substantial issue as above, the decision regarding unit of measurement and rate of Short Term Open Access charges that are to be charged by ERLDC to NBVL also need to be addressed. The Commission feels that the difference in unit of measurement for open access charges between the OERC and CERC Open Access Regulations is not a major operational problem; rather it is a minor computational problem. Keeping in view of the Section 62(4) of the Electricity Act, 2003, we feel that the mismatching of unit of measurement is not a sufficient ground for review of the above ARR Orders of OPTCL. A mere request made by Power Grid (not by ERLDC or NLDC) before the Forum of Regulators is not necessarily a valid ground to change the unit of measurement. As per Regulation 10 of the CERC Open Access Regulation, 2009 - in case the transmission charges are not specified by the respective SERC, then Rs.80 per MWH shall be applied for the use of State transmission network by STOA consumers. But in this particular case OERC has already specified transmission charges and hence only the charges specified OERC should be applied. The charge of Rs.80 per MWH for use of OPTCL network by ERLDC is therefore not correct and need to be revised.
18. In view of the above, we direct that ERLDC should modify the billing procedure in accordance with the ARR orders of OPTCL for FY 2008-09 and FY 2009-10 issued by the Commission. As per Regulation ‘5’ of OERC (Terms & Conditions for Open Access) Regulation 2005, NBVL is a STOA customer and hence the charge levied by

ERLDC on export of power by NBVL is not in line with the orders of the Commission where the Open Access charges applicable for STOA customers is Rs. 1260/ MW/day for the FY 2008-09 and Rs.1230/MW /day for FY 2009-10.

19. We have noted from the submission of ERLDC that it has disbursed the entire amount received from NBVL to OPTCL @ Rs 210/-per MWhr in the FY-2008-09, and @ Rs 80/MWh for FY2009-10 till date in accordance with the CERC open access charges for STUs whose Intra-state open access has not been defined. We direct ERLDC to prepare the revised bills chargeable for STOA customers with respect to NBVL in accordance to the direction of the Commission in ARR of OPTCL for FY 2008-09 and 2009-10 i.e @Rs.1260/MW/day and @Rs.1230/MW/day respectively.
20. ERLDC should correct the disputed bills of NBVL now placed before us in this case and would continue to bill NBVL as per our direction stated above. We also direct OPTCL to return or adjust the excess amount received from ERLDC towards STOA charges of NBVL without interest with immediate effect.
21. Accordingly, the Case is disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K. C. Badu)
Member

Sd/-
(B.K. Das)
Chairperson