

BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Case No. 54/2012

petition objected to the Clause 2(iii) of terms and conditions in the letter of GRIDCO dated 10.2.2011 which reads as follows:-

“2(iii) The rate of power availed from GRIDCO’s pool to meet the Open Access Schedule shall be Rs.1/unit above the respective UI rate (excluding transmission charges of OPTCL).”

GRIDCO further carried out an amendment of Clause 2(iii) mentioned in its Letter of Intent dated 10.2.2011 and communicated the same in its another letter dated 11.5.2011 to M/s NBVL. The said amendment is as follows:-

“The rate of power availed from GRIDCO’s pool to meet the Open Access Schedule shall be Rs.1/KWH above the respective UI rate of each 15 minutes time block or Rs.6.40/U whichever is higher (excluding transmission charges of OPTCL).”

This supersedes the Clause 2(iii) of LOI dated 10.2.2011.

The Petitioner has now prayed to quash Clause 2(iii) of Letter of Intent dated 10.02.2011 and amendment letter dated 11.05.2011 as above, issued by Grid Corporation of Odisha Limited being arbitrary and illegal. The Petitioner has further prayed to direct GRIDCO to collect the UI charges from the Petitioner as fixed by this Commission and the Central Electricity Regulatory Commission (CERC) from time to time and refund the excess amount collected from the Petitioner with interest.

2. The petitioner M/s NBVL has set up two Captive Power Plants of 94 MW (1X30 MW + 1X64 MW) at district Dhenkanal in the state of Odisha. It has been supplying its surplus power to the State Grid (GRIDCO) and also to the outside states through inter-state Open Access. The petitioner has the necessary for selling its surplus power to its Open Access customer through Open Access-granted by SLDC/RLDC. As per the requirement of the open access the Petitioner was submitting its day-ahead schedule with the 15 minutes block injection to the State Grid combining both the State quantum as well as open access quantum outside the state. However, in practice, there was a mismatch between the actual injection and schedule net injection to the state grid making it liable to pay settlement charges.
3. Shri Parija, Sr. Counsel appearing on behalf of the Petitioner submitted that the Commission has framed Odisha Electricity Regulatory Commission (Intra-State ABT) Regulations, 2007, which was published in Odisha Gazette on 14.02.2008. The Regulation 4 (III) (iii) to (vi) of OERC (Intra-State ABT) Regulations, 2007 inter-alia deals with the applicability UI charges which stipulates as follows:-

“(iii) UI for a generating station shall be equal to its actual generation minus its schedule generation.

- (iv) *UI for a user including open access customer shall be equal to its total actual drawl minus its total schedule drawl.*
- (v) *The UI rates and threshold frequencies as determined from time to time by CERC in its tariff Regulations shall apply to the users of the Intra-State grid for each 15 minutes block linked to frequency.*
- (vi) *The existing rates of UI as approved by CERC (and amended from time to time) and shown in the appended schedule shall to Intra-State ABT”*

4 Shri Parija in view of aforesaid regulation submitted that M/s NBVL Ltd. is liable to pay the UI charges for any variation between actual generation & schedule generation as per rate fixed by CERC from time to time. However GRIDCO is not following the aforesaid Regulation of the CERC and issued two Letters of Intent fixing terms and conditions for sale of power to GRIDCO in variance to the rates of UI fixed by CERC. Under the Clause 2(iii) of the letter dated 10.2.2011, GRIDCO has put condition that the rate of power availed from GRIDCO's pool to meet the Open Access Schedule shall be Rs.1/KWH over and above the respective Inter-State UI rate at the State boundary. GRIDCO later amended and superseded the clause 2(iii) of its letter dated 10.02.2011, stating that the rate of power availed from GRIDCO's pool to meet the open access schedule shall be Rs.1/KWH above the respective Inter-State UI rate of each 15 minutes time block or Rs. 6.40 P/u which ever is higher (excluding Transmission Charges of OPTCL) in another letter dated 11.5.2011. The Petitioner submitted that th Letters of Intent issued by GRIDCO fixing such rate is illegal and arbitrary. Further, both the Letters of Intent are contrary to the Regulation framed by the Commission and the CERC and therefore need to quashed.

5. The learned Counsel for the Petitioner also pointed that the provisions of the Electricity Act, 2003 and regulations made there under do not provide or confer power on GRIDCO to fix UI Charges and it can not collect higher UI Charges from the open access customer on the garb of commercial arrangement. The UI charges also can not be linked to the emergency/ back up power supplied by GRIDCO to any other consumer. The provisions of Section. 86 of the Electricity Act, 2003 and regulations made there under conferred power on this Commission to adjudicate the present dispute between the parties herein. Therefore, he prayed before the Commission to quash the clause 2 (iii) of the Letters of Intent dated 10.02.2011 and 11.05.2011 issued by GRIDCO and also to direct GRIDCO to collect UI Charges as fixed by CERC from time to time and refund the excess amount collected from the petitioner company with interest.

6. Shri P K Mohanty, the Learned Counsel appearing on behalf of GRIDCO in its rejoinder stated that since the claim of the applicant pertains to fixation of UI charges for Inter-State Open Access transaction it must be decided first, whether this Commission has original jurisdiction over this matter or not. The Petitioner has been availing short-term/medium term Inter-state Open Access. As per Inter-State Open Access Regulation of CERC the Nodal agency for grant of approval of such Open Access is the corresponding RLDC of the region where power is to be drawn and also SLDC has also given its consent for such transaction. Therefore, scheduling for such transactions is to be looked after by the Nodal Agency and UI accounting at the State periphery is to be done by the corresponding RLDC basing on the schedule provided by SLDC. As the CGP of M/s NBVL is considered to be embedded in the system of Odisha, GRIDCO is liable to pay the corresponding UI charge to the regional UI pool account for any mismatch between its schedule Vrs. actual drawal (including all Open Access adjustment) from Regional Grid in accordance to the UI settlement for the region, including the subject case of M/s NBVL Open Access.
7. He further submitted that GRIDCO has to put in its additional endeavor towards load generation matching in real time basis in respect of generation of other generators as well as Load of four DISCOMs operating in the State. Further, there is an appreciable time gap between the due date of payment of UI bills by GRIDCO to RLDC of a particular month and the date on which the monthly claims of CGPs are settled with GRIDCO. To tide over such situation, GRIDCO has considered levying Rs.1.00 as a commercial arrangement, over and above the respective UI rates fixed by the CERC from time to time, for the quantum of power mismatch resulted due to shortfall in generation as compared with the Open Access Schedule of the generator. In fact M/s JSL Stainless Ltd. has entered into similar agreement with GRIDCO for injection of power through Interstate Open Access which shall be Rs.1/unit above the respective UI rate of each 15 minutes time block or Rs.6.40/unit whichever is higher besides various other commercial terms and conditions required for availing Open Access. Further, at present the Intrastate ABT of the Commission on real time mode with Commercial implication has been confined to the four DISCOMs of the State only. The Petitioner being a Generator is out of its ambit, therefore, can't claim application of UI charges as per CERC norm as the intra state ABT for generators (incl. CGPs) is yet to be implemented.

8. Shri P. K. Dash, Sr. GM (PS), SLDC submitted that under injection by the Open Access customer should be discouraged which may lead to imposition of demand regulation in the State.

Commission's Observation and Order

9. Commission heard the parties and perused the relevant documents and records of the case. The Commission is of the opinion that, provisions of Section 86(f) of the Electricity Act, 2003 confers power on this Commission to adjudicate upon the disputes between the licensees and generating companies. The present dispute between the Generating Company M/s NBVL and Licensee GRIDCO is well within the purview of the Commission for adjudication.
10. It is observed that the petitioner has availed permission for selling its total surplus power of about 60 MW; out of which 40 MW to out side the State to its customer through Open Access and 20 MW to GRIDCO for use in the State. For such surplus power transaction, the Petitioner being a Generator was submitting the day ahead schedule of its total injected power on the 15 minutes block to the SLDC as per provisions of Odisha Grid Code, 2006 with the Open Access quantum of 40 MW as first charge and the balance 20 MW as supply to GRIDCO. Though the Petitioner was submitting its generation schedule on one day ahead basis to SLDC, but there was mismatch between the actual net injection and schedule net injection to the GRID. Here two scenarios evolved. In one scenario, when the net injection is more than Inter-State Open Access schedule of 40 MW injection of 60MW and the other scenario when net injection is less than the Inter- State Open Access schedule of 40 MW.
11. In the first scenario when the net injection is more than Inter-State Open Access schedule i.e. net injection is more than 40MW, GRIDCO draws surplus power from M/s NBVL and treatment of such power & price has already been fixed by the Commission vide its CGP Pricing Order dt.29.08.2011 in case No.22/2011 in respect of all CGPs supplying its surplus power to the State. The relevant portion of the said Order is reproduced below.

“ 35.1 The Commission in para 31 of the order dated 23.11.2010 in Case No.117 & 118 of 2010 have clarified that in any power injected by CGPs/Co-generation plants to the State Grid at 50.20 Hz and above, determined on the basis of actual meter reading shall be priced at “Zero” cost. It is expected that any captive generator shall back down its generation upto its captive consumption including open access allowed if any at higher frequency at 50.20 Hz and above. Any over injection by CGPs/Co-generating plants beyond 105% of the

schedule but within the operating frequency band is being held as inadvertent power and will be paid at the pooled cost of hydro power as approved for the respective years.

35.2 *Since the Intra-state ABT is yet to be implemented in the state and the Regulation 4(III)(II) of the OERC (Intra-state ABT) Regulations, 2007 is yet to be effected, the CGPs are not being paid as per the frequency linked rate of un-scheduled interchange (UI) principle, and further taking into account the peculiar nature of functioning of the CGP/Co-generating plant which are very limited capacity of injection of surplus of power ranging from 5 to 10 MW in most of the cases; Commission directs that the injection of surplus power by CGP/Co-generation plant below the schedule, (but not lower than 1 MW) below the frequency of 50.2 Hz shall be paid as under:*

- (i) Injection of Surplus power by CGPs/Co-generating Plants between 100% and upto 80% of the schedule would be paid as per the rate approved by the Commission in their order dated 23.11.2010 in Case No.117 & 118 of 2010.*
- (ii) Injection of surplus power by CGPs/Co-generating Plants between 60% and above and upto 80% of the schedule, the rate fixed by the Commission in their order dated 23.11.2010 in Case No.117 & 118 of 2010 will be reduced by 10% subject to the minimum that it should not be below the pooled cost of hydro power of the State approved by the Commission for the respective years.*
- (iii) Injection of surplus power by CGPs/Co-generating Plants below 60% schedule would be paid at the pooled cost of hydro power of the State approved by the Commission for the respective years."*

GRIDCO is to therefore pay the rates approved by the Commission as above, depending on the percentage variation from the Schedule.

12. In second scenario when the net injection is less than Open Access Schedule i.e. net injection is less than 40MW as in the present case, GRIDCO's power is utilized to the extent of shortfall of Open Access quantum to meet its Open Access Schedule of the NBVL. It is expected that in such a scenario the generator (M/s NBVL) should have been vigilant and taken immediate action to revise the Open Access schedule within the allowed time limit of 3 time blocks. But this situation has arisen in which there is either shortfall in generation or even 'Nil' generation and generator is unable to meet its Open Access schedule and at the same time has not taken any action to revise the Open Access schedule for commercial reasons and draws power from GRIDCO to meet its Open Access schedule. In the present case, when M/s NBVL's net injection to the Grid falls below 40 MW (Open Access Schedule), it draws power to the extent of Open Access quantum from GRIDCO to meet its Open Access Schedule to the outside state customers. In the process, it completely upsets the schedule of GRIDCO and consequently is burdened with financial loss putting hindrance on its Commercial activity.

13. In this context, GRIDCO in its submission stated that in the present case, there is a mismatch between the schedule and the actual injection, the consequences of same is to be borne by GRIDCO. Further in case of a huge mismatch, GRIDCO has to put additional efforts towards matching load generation in real time basis. GRIDCO has therefore considered levying Rs.1/unit over and above the respective UI rates as determined by the CERC for the quantum of power arising out of the mismatch resulted due to shortfall in generation as compared with Open Access schedule of the generator (GRIDCO Letter of Intent dated 10.2.2011). Further, in order to avoid discrimination towards other consumers like IMFA & NALCO, for whom the emergency/back-up power rate is being determined by the State Commission, GRIDCO has put a rider in its terms and conditions that the rate of power for such mismatch in Open Access schedule and generation should be at least that for the aforesaid emergency/back up power, as determined by the State Commission from time to time (GRIDCO's amended Letter of Intent dated 11.5.2011).
14. Though, the Intra State ABT Regulation has been framed by the Commission since 2007 but its 1st Phase has been operationalized since April, 2012 confining it to only four DISCOMs of the State. The embedded State Generators and CGPs including the Petitioner shall be covered in the 2nd Phase of implementation of Intra-State ABT Regulation.
15. There is no denying of the fact that though the present transaction is not covered under Intra-State ABT Regulation of OERC but it can be certainly placed under the ambit of CERC / OERC Open Access Regulation. As the Petitioner being a Generator is yet to be included in ABT provision and at the same time have been allowed Inter-State Open Access, therefore, matter shall be dealt with as per the provision of CERC (Open Access in Inter-State Transmission) Regulations, 2008 as well as OERC (Determination of Open Access Charges) Regulations, 2006.
16. The mismatch between the scheduled and the actual drawl/ scheduled and the actual injection at the interface points by the Open Access customer has been guided by the Regulation- 4 (7)(i) at Chapter- II of OERC (Determination of Open Access Charges) Regulations, 2006 which is reproduce below.

“(7) *Unscheduled Interchange Charges (UI Charges)*

- (i) *The mismatch between the scheduled and the actual drawl/ scheduled and the actual injection at the interface points may be met from the grid, which shall be governed by UI pricing mechanism. However the tariff payable by the **open access customers to the licensee may contain a component of incentive to be decided by the Commission.** ”*

17. The regulation clearly indicate that a certain component of incentive should have been given to GRIDCO by the Open access customer for availing power from GRIDCO's Pool to meet the Open Access schedule . Hence, the commission agrees with the views of GRIDCO and directs that the rate of power availed from GRIDCO's pool to meet the Open Access Schedule shall be Rs. 1/KWH above the respective UI rate of each 15 minutes time block or rate of emergency/ back up power supply to CGPs as determined by the State Commission from time to time whichever is lower (excluding Transmission Charges of OPTCL). We therefore are not inclined to accede to the prayer of the Petitioner to quash Clause 2(iii) of Letter of Intent dated 10.2.2011 and 11.5.2011 issued by GRIDCO to the Petitioner for sale of power to GRIDCO which in our opinion are maintainable with certain modification.

18. Accordingly we direct as under:

Scenario-I: When the actual CGP injection is less or more than schedule injection but more than Open Access schedule of outside the State in any 15 minutes time block; the Open Access quantum will be taken up as first charge meaning thereby that there is 'Nil' variation between Open Access Schedule and actual at the State boundary. Accordingly, no inter-state 'UI' charges shall be payable or receivable by M/s NBVL. The total monthly energy supplied by M/s NBVL to GRIDCO shall be governed by the Commission's Order No.22/2011 dt.29.8.2011 towards sale of power of CGPs to the State.

Scenario-II: The scenario-II relates to the situation when the actual CGP injection is less than the Open Access schedule due to low or 'NIL' generation by CGPs and the generator has not taken due care of revision of 'Open Access' schedule within the allowable time block and used GRIDCO's power to meet its Open Access commitment at the State boundary. In such case GRIDCO shall charge the respective 'UI' rate of the relevant time block plus Rs.1/- as incentive or rate of emergency/back-up power supply to CGPs as determined by the Commission in respective year Tariff orders, whichever is lower to the quantum of GRIDCO's power utilized for 'Open Access' transaction.

19. Accordingly, the matter is disposed of.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson