
Case No. 49/2019

The G.M (RT&C), OPTCL & another Respondents

For Respondents: Shri B.K.Das, Sr. G.M(RT&C), OPTCL
Shri L.N. Mohapatra, Advocate, on behalf of OPTCL

Date of Order: 27.09.2022

“11. The Commission observed that the petitioner M/s. Jindal Stainless Limited has availed open access for transmission of electricity from its CGP in Odisha to the plant at Hisar in Haryana and incidentally the transmission system of OPTCL is used in such transaction for which it has obtained clearance/NOC from the SLDC, Odisha. The dispute is on payment of transmission charges to the STU (OPTCL). M/s. Jindal Stainless Limited is paying transmission charges to CTU (PGCIL) at the rate applicable for Medium Term Open Access (MTOA) in accordance with the CERC guidelines. In the open access charges Regulation notified by OERC there is no category of open access called Medium Term Open Access (MTOA) and the same has been merged with Short Term Open Access (STOA). But OPTCL has claimed transmission charges to the petitioner at the rate applicable for Long Term Open Access (LTOA) consumer since SLDC had mentioned this rate while providing NOC for such transaction. Therefore, the petitioner prays the Commission to direct OPTCL to revise the bills of transmission charges for the said open access transaction based on the

rate applicable for Short Term Open Access (STOA) since the period of such open access transaction is for one year or less as per OERC Regulation.

12. Both the petitioner M/s. Jindal Stainless Limited and the respondent OPTCL have referred Para-18.1 of CERC Open Access Regulations, 2009, wherein it is indicated that "The Transmission Charges for use of the inter-state transmission system shall be recovered from the MTOA customers in accordance with terms and conditions of tariff specified by the Commission from time to time and the Regulations. If the State network is also being used in the access, recovery of charges for such State network and terms and conditions thereof, shall be in accordance with the regulation and as may be specified by the State Commission under Section 36 of the Act, if such charges and terms and conditions cannot be mutually agreed." Respondent OPTCL has submitted that since the Open Access Regulations of 2005 & 2006 of this Commission have not been made under Section 36 of the Act, 2003, the aforesaid Clause 18.1 of CERC Open Access Regulations, 2009 cannot be made applicable in the present case.
13. The Commission is of the view that the provision for determining rates, charges and terms & conditions by the appropriate Commission under Section 36 is applicable in case a licensee require utilization of the "intervening transmission facilities" operated by another licensee. But in the present case the petitioner M/s. Jindal Stainless Limited is not a licensee but an open access customer. Hence, the aforesaid Clause 18.1 of CERC Open Access Regulations, 2009 is not applicable in the present case. The Commission in its Open Access Regulations, 2005 and Open Access Charges Regulations, 2006 has determined rates, charges and terms & conditions for use of intra-state transmission and distribution system in the State by an open access customer. In the present case the petitioner M/s. Jindal Stainless Limited is an open access customer and he uses both intra-state transmission system and inter-state transmission system for transmission of electricity from its CGP to its industry in another state. Therefore, he has to pay the transmission charges to the CTU (PGCIL) as per the rate determined in accordance with CERC Regulations and to the STU (OPTCL) as per the rate determined in accordance with OERC Regulations. As per the OERC Regulations, 2005, the open access customers have been categorized as long term customers and short term customers. 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. 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. In the present case the petitioner M/s. Jindal Stainless Limited should be treated as short-term open access customer as he has availed open access in two phases for a period of one year and less. Therefore, it should pay the transmission charges to the STU (OPTCL) at the rate determined by the Commission for short-term open access customers. Accordingly, the respondent OPTCL is directed to revise the open access charges bills of the petitioner M/s. Jindal Stainless Limited as per the above observation of the Commission.
14. With the above directions the case is disposed of."

“Thus, this is a proceeding initiated at the instance of the petitioner for compliance of the order dated 27.01.2016 passed by the Commission in Case No.28/2015. Admittedly an appeal has been preferred as against the aforesaid order before the Hon’ble APTEL in Appeal No.61 of 2016 at the instance of the Respondent-OPTCL.”

2. At this juncture, the Petitioner M/s. Jindal Steel Ltd. has filed a petition seeking for withdrawal of the present case. Simultaneously, he has also sought for liberty to re-approach this Commission again for execution of the aforesaid order when such occasion would arise.
3. Heard both the parties in the matter in virtual mode. The Respondent-OPTCL has no objection to the petition filed by M/s. Jindal Steel Ltd. for withdrawal of the case, but he is averse to the prayer of the petitioner for grant of liberty to again approach this Commission for execution of order under the subject. However the Learned Counsel appearing on behalf of Respondent-OPTCL could not convince the Commission as to how the Respondent-OPTCL will be affected if such liberty is given in favour of the petitioner.
4. In the circumstances indicated above and especially taking note of the fact that the Appeal bearing No.61 of 2016 referred by the Respondent-OPTCL before the Hon’ble APTEL against the order dated 27.01.2016 passed by this Commission, is still subjudice, the Commission is inclined to allow the Petition filed by the Petitioner.
5. Accordingly, the proceeding is disposed of as withdrawn with liberty to the Petitioner to re-approach this Commission for execution of the order dated 27.01.2016 passed by the Commission in Case No.28 of 2015, if such eventuality arises and needless to mention here that the same shall be dealt with in accordance with law.

Sd/-
(S.K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Chairperson (Officiating)