

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
PLOT NO. 4, CHUNOKOLI, SHAILASHREE VIHAR,  
BHUBANESWAR-751021  
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**Case No. 27/2024**

Odisha Power Transmission Corporation Ltd. (OPTCL) ..... Petitioner  
Vrs.  
M/s. Bharat Electronics Ltd. (BEL) & Others ..... Respondents

**In the matter of:**      **Application under Sections 142 & 146 of the Electricity Act, 2003 alleging non-compliance of order dated 16.01.2023 of the Commission passed in Case No.36 of 2022 and Case No.47 of 2022 by M/s. BEL.**

**For Petitioner:**      Shri Sidharth Parida, Learned Advocate along with Shri Shubhashis Samantaray, DGM (Elect.), RT & C, OPTCL.

**For Respondents:**      Shri Vikramaditya Singh, Learned Advocate on behalf of M/s. BEL, Shri B.K. Das, Sr. GM, GRIDCO and Shri K.C. Nanda, GM (RA & Strategy), TPWODL.

**ORDER**

**Date of Hearing: 06.08.2024**

**Date of Order: 27.08.2024**

The Petitioner-OPTCL has filed the present Application under Sections 142 & 146 of the Electricity Act, 2003 alleging non-compliance of the common order dated 16.01.2023 of this Commission passed in Case No.36 of 2022 and Case No.47 of 2022 by the Respondent-M/s. BEL and prayed the Commission to:

- a)      Initiate appropriate action under Sections 142 & 146 of the Electricity Act, 2003 against M/s. BEL, for gross, willful, deliberate and flagrant violation of the order dated 16.01.2023 of the Commission in Case Nos. 36 & 47 of 2022.
- b)      May direct BEL to comply with the order passed by the Commission by letter and spirit.
- c)      May issue direction to M/s. BEL to pay the provisional outstanding transmission charges till date as raised against them as per the order dated 16.01.2023 of the Commission in Case Nos.36 & 47 of 2022 and to resume the payment of current transmission charges.
- d)      May direct BEL to pay transmission charges for FY 2023-24 considering 7.5 MW contracted capacity as per the prevailing TCAA dated 07.08.2018.
- e)      Pass such other order(s) as may be deemed fit and proper in the interest of justice.

2. The contentions/submissions of the Petitioner-OPTCL are as follows:
- a) The Commission, vide its common order dated 16.01.2023 in Case No.36 of 2022 and Case No.47 of 2022, has concluded that after notification of OERC (Terms and Conditions for Open Access) Regulations, 2020, the terms and conditions of Open Access stipulated under this Regulation shall be applicable for the open access transactions between M/s. BEL and OPTCL and as M/s. BEL has intimated OPTCL to consider Contracted Capacity of 1.814 MW for the FY 2022-23, the same also to be considered for the FY 2020-21 & FY 2021-22 for computation of transmission charges for open access transactions by M/s. BEL. Further, it was directed that both parties to finalize the contract capacity for the transmission of power by M/s. BEL utilizing the transmission network of OPTCL for Long Term Access and accordingly makes necessary amendments in the Transmission Capacity Access Agreement (TCAA). Accordingly, OPTCL has revised bills and claimed an amount to Rs.94.95 lakhs on M/s. BEL which includes revised arrear bills from November 2020 to December 2022 and the current bill for January 2023 including charges for over-injection beyond the contracted capacity of 1.814 MW and applicable DPS/LPS on the unpaid amount of transmission charges. The bill was disputed by M/s. BEL vide letter dated 07.03.2023 in regards to levy of transmission charges on over injection and DPS/LPS. Though, M/s. BEL was clarified by OPTCL about the claim of over-injection charges and late payment surcharge, M/s. BEL has preferred not to make payment against the above provisionally revised transmission charges bill, violating the order dated 16.01.2023 of this Commission.
  - b) Further, OPTCL had requested M/s. BEL on 21.04.2023 for taking appropriate steps for finalization of contracted capacity for subsequent years and accordingly revision/amendment of TCAA at the earliest, as directed by the Commission. Since there was no response from M/s. BEL, OPTCL has no option but to raise transmission charges bills on M/s. BEL considering 7.5 MW as the contracted capacity as per the existing TCAA.
  - c) However, OPTCL had filed review petition before this Commission against the aforesaid order dated 16.01.2023 passed in Case No.36 of 2022 and Case No.47 of 2022 in the matter of consideration of contracted capacity as 1.814 MW for the past years, which was rejected by the Commission. Therefore, OPTCL, being aggrieved with the order dated 16.01.2023 passed by the Commission in Case No.36 of 2022 and Case No.47 of 2022, has made an appeal before Hon'ble APTEL in Appeal No.810 of

2023, which is now sub-judice. OPTCL had also filed an interim application before Hon'ble APTEL in IA No.1826 of 2023 for direction to M/s. BEL for clearing the arrear transmission charges. Since during the pendency of this interim application, M/s. BEL made a part payment of Rs.76.92 lakhs on 30.12.2023 out of the total outstanding dues of Rs.2.23 crore as on 30.11.2023, Hon'ble APTEL has dismissed the said IA as withdrawn on request of OPTCL, granting liberty to approach the Commission on the matter under Section 142 of the Electricity Act, 2003. The current provisional outstanding transmission charges dues (including LPS) against M/s. BEL as on 29.02.2024 is Rs.1.92 crore. Therefore, OPTCL has filed the present application before the Commission with the prayer to direct M/s. BEL to pay the provisional outstanding transmission charges till date as raised by it.

3. The contentions/submissions of the Respondent-M/s. BEL are as follows:
  - a) The Petitioner-OPTCL, by revising transmission charges from November 2020 to January 2023 with 1.814 as the contracted capacity, has partially complied with the terms of the order dated 16.01.2023 of this Commission. However, M/s. BEL has objection on the levy of over-injection charges and DPS by OPTCL.
  - b) The Petitioner-OPTCL, while engaging with M/s. BEL with the aforesaid revision of transmission charges and deliberating on the terms of the new TCAA, as an afterthought, filed petitions seeking review of the order dated 16.01.2023 of this Commission passed in Case Nos.36 and 47 of 2022. Further, during the pendency of the said review petitions, without obtaining any order from this Commission, the Petitioner, vide its letter dated 25.05.2023, arbitrarily revised the bills and started computing the transmission charges considering the contracted capacity as 7.5 MW.
  - c) The transmission charge bills raised by the Petitioner-OPTCL are not in accordance with the said Order dated 16.01.2023 of this Commission passed in Case No.36 of 2022 and Case No.47 of 2022 and thus, the Petitioner has violated and disregarded the direction of this Commission passed in the said Order dated 16.01.2023.
  - d) The aforesaid Appeal filed by the Petitioner-OPTCL before the Hon'ble APTEL in Appeal No.810 of 2023 against the said order dated 16.01.2023 is still pending and has been included in the 'List of Short matters' to be taken up from there, in its turn.
4. The Respondent-Licensee (TPWODL) has submitted that in the instant case, they have very limited scope to comment. As a distribution licensee, it has to raise the monthly energy bill to M/s. OFBL to the extent of import of energy from the DISCOM source deducting open access power as per the schedule provided by SLDC.

5. Heard the Petitioner-OPTCL and Respondents through virtual mode and considered their written submission and argument during the hearing. We observe that the non-compliance of the Commission's order dated 16.01.2023 passed in Case No. 36 & 47 of 2022 has arisen due to the pendency of the appeal before the Hon'ble APTEL and interpretation of the regulations. Thus, we are of the view that it may not be prudent to adjudicate the matter under Section 142 of the Electricity Act 2003. Therefore, taking note of the nature of the dispute in the present case, we advised the Petitioner-OPTCL and Respondent- M/s. BEL to settle the issues by way of conciliation, which was agreed by both parties. Accordingly, the Commission, vide its Order dated 28.05.2024, had directed them to sit with the Secretary of this Commission for amicable resolution of the disputes by way of conciliation and the Secretary, OERC shall submit a report before this Commission after discussion with the M/s. OPTCL and M/s. BEL on the disputed issues pertaining to the present case within six weeks. A meeting was held on 19.06.2024 at 3.30 PM at OERC in the presence of the Secretary of this Commission for the amicable resolution of the disputes by conciliation between M/s OPTCL and M/s BEL and the Secretary, OERC submitted his report on 24.06.2024. The discussions on aforesaid issues are reproduced below:

**I. Regarding TCAA:**

The Commission vide its order has directed both parties to amend the Transmission Capacity Access Agreement (TCAA) between OPTCL & BEL which is yet to be done. However, both parties have agreed that the amendment of TCAA will be done as per the final order of Hon'ble APTEL which is still pending before the said forum.

**II. Contracted Capacity:**

It was agreed by both parties that the Contracted Capacity for BEL will be taken as 1.814 MW for FY 2020-21, 2021-22 & 2022-23 as per the direction of the Commission vide its order dated 16.01.2023 in Case No.36 of 2022 and Case No.47 of 2022. The Contracted Capacity for FY 2023-24, will be decided as per the final order of Hon'ble APTEL. However, from FY 2023-24 onwards, OPTCL will raise the bill on the Contracted capacity of 7.5 MW and BEL will pay provisionally the transmission charges on the contracted capacity of 1.814 MW under protest till the final order from the Hon'ble APTEL.

**III. Over-injection charges:**

The over-injection charges will be levied as per the Regulations of the Commission.

#### **IV. Late Payment Surcharges (LPS)**

The Late Payment Surcharges (LPS) will be levied as per the Regulations of the Commission.

6. From the above outcome of the conciliation meeting between Petitioner-OPTCL and Respondent- M/s. BEL, the Commission observed that there are four disputed issues which need to be addressed. In this connection, additional submissions of M/s. OPTCL (Petitioner) & M/s. BEL (Respondent) pertaining to the present case have been considered and the said issues are discussed in the following paragraphs:

##### **I. Transmission Capacity Access Agreement (TCAA):**

It is observed that the Commission, vide its order dated 16.01.2023 passed in Case No. 36 of 2022 & 47 of 2022, had directed to amend the Transmission Capacity Access Agreement (TCAA) executed between M/s. OPTCL & M/s. BEL which has not yet been carried out by the parties. However, in the conciliation meeting dated 19.06.2024, both the parties agreed for the amendment of TCAA as per the final order of the Hon'ble APTEL in Appeal No.810 of 2023, which is under sub-judice. We also concur with the agreement reached between M/s. OPTCL & M/s. BEL regarding amendment of TCAA based on the order of the Hon'ble APTEL.

##### **II. Contracted Capacity:**

As per the direction of the Commission, vide its order dated 16.01.2023 passed in Case No. 36 of 2022 & 47 of 2022, the Contracted Capacity for M/s. BEL will be taken as 1.814 MW for FY 2020-21, 2021-22 & 2022-23 and for the subsequent year, the contracted capacity shall be finalized through an amendment in the TCAA executed between them. In the conciliation meeting dated 19.06.2024, both parties have agreed to consider 1.814 MW as the Contracted Capacity of M/s. BEL for the period from FY 2020-21 to FY 2022-23. The Contracted Capacity from FY 2023-24 onwards shall be decided as per the order of the Hon'ble APTEL to be passed in Appeal No.810 of 2023. However, OPTCL will raise the bill on M/s. BEL considering the Contracted Capacity of 7.5 MW and M/s. BEL will pay the transmission charges provisionally based on the Contracted Capacity of 1.814 MW from FY 2023-24 onwards. M/s. BEL has already paid the transmission charges considering 1.814 MW as the Contracted Capacity till the effective date i.e. 10.01.2024.

We agree to the above decision made between M/s. OPTCL & M/s. BEL in the conciliation meeting dated 19.06.2024. However, we are of the view that as the matter of Contracted Capacity is under sub-judice before the Hon'ble APTEL in Appeal No.810 of 2023, the outcome of judgement/order of the Hon'ble APTEL in said Appeal will be binding on both.

### **III. Over-injection charges:**

#### **Views of OPTCL:**

As per the Order dated 16.01.2023 of the Commission, the Contracted Capacity would be considered as 1.814 MW for the FY 2020-21 to FY 2022-23. However, M/s. BEL has scheduled their injections for FY-2020-21 to 2022-23 beyond 1.814 MW and the same is also maintained thereafter. Such scheduled power has already been consumed by Ordnance Factory Badmal (OFBL) and OPTCL has raised the bills for transmission charges on DISCOM (TPWODL) for FY 2020-21 to 2023-24 by deducting the scheduled Open Access quantum of Power of M/s. BEL to OFBL. Accordingly, OPTCL has raised the transmission charges bills on M/s. BEL for FY 2020-21 to 2023-24 considering the Contracted Capacity of 1.814 MW along with transmission charges for the additional/over injection of power, if any, over & above the allowed 1.814 MW in any 15-minute block.

According to the submissions of OPTCL, the over-injection charges are nothing but usage charges for the utilization of transmission corridors which calls for payment of the transmission charges on the scheduled injection of power/energy over and above the Contracted capacity of 1.814 MW at the rate as approved by the Commission for respective years which should not be considered as penalty.

As per OPTCL, a dedicated corridor is reserved for the transmission of scheduled power of M/s. BEL and OPTCL is mandated by the following Regulatory stipulations to collect the transmission charges on the scheduled injection of power/energy over and above the Contracted capacity of 1.814 MW.

As per Regulation-2(z) of the OERC (Term and condition for determination of Transmission Tariff) Regulations, 2014, *“Long-Term Transmission Customer means a person having a long-term transmission service agreement with the transmission licensee including the deemed transmission licensee for use of intra-state transmission system by paying transmission charges”*.

As per Regulation-2.3(d), Chapter-2 of the Odisha Grid Code Regulations, 2015, the function of STU is, *"To provide non-discriminatory Open Access to its Transmission System for use by-*

- i. Any licensee or generating Company on payment of the transmission charges; or*
- ii. Any consumer as and when such Open Access is provided by the Commission under sub-section (2) of Section- 42 of the Act, on payment of the transmission charges and a surcharge thereon, as may be specified by the Commission".*

Further, as per Regulation-20(2) of the OERC (Term and condition of Intra State open access) Regulations, 2020, *an open access customer shall pay Transmission Charges to STU/ transmission licensee for use of intra-State transmission system.*

**Views of M/s. BEL:**

According to the submission of M/s. BEL, OPTCL has unilaterally revised the bills and levied over-injection charges, which is illegal and contravention to the Commission's order dated 16.01.2023 wherein Contracted Capacity has been affirmed as 1.814 MW. The imposition of over-injection charges is making them unviable. There should be a tolerance level in contracted capacity and actual energy.

**Commission's Observations:**

It is observed that M/s. BEL has scheduled their injections beyond 1.814 MW for FY-2020-21 to 2023-24 and such excess power has been transmitted through the OPTCL network and consumed by OFBL. In the conciliation meeting dated 19.06.2024, it was agreed by both parties that the Over-Injection charges would be levied as per the relevant Regulations. Considering the Regulatory provisions submitted by OPTCL, we are of the view that M/s. BEL is liable to pay the transmission charges for the power transmitted through its network beyond the Contracted Capacity of 1.814 MW which has been scheduled by the M/s. BEL. Accordingly, both M/s. OPTCL and M/s. BEL are directed to reconcile the dues. However, the decision in this regard is subject to the final order of the Hon'ble APTEL in Appeal No.810 of 2023 which is under sub-judice.

**IV. Late Payment Surcharges (LPS)**

**Views of OPTCL:**

Levy of Delay Payment Surcharge (DPS) / Late Payment Surcharge (LPS) is having statutory implication provision as per Regulation 33 of the OERC (Terms & Conditions of intra-state Open Access) Regulations, 2020, therefore binding in nature. According

to OPTCL, as M/s. BEL has not paid transmission charges within the due dates and shall have to pay the Late Payment Surcharge (LPS), as per the above Regulation, which stipulates *“In case the payment of any bill for charges payable under these regulations is delayed by an open access customer beyond the due date, without prejudice to any action under the Act or any other regulation thereunder, a late payment surcharge at the rate of 1.25% per month shall be levied”*.

**Views of M/s. BEL:**

According to M/s. BEL, it has paid or intends to pay all the dues towards transmission charges based on scheduled injection as agreed by both the parties and contracted capacity of 1.814 MW which has been affirmed by this Commission vide its impugned order dated 16.01.2023. Further, the levy of late payment surcharge for the term spent before this Commission on these contested bills exacerbates its financial burden.

**Commission’s Observations:**

In the conciliation meeting dated 19.06.2024, it was agreed by M/s. OPTCL & M/s. BEL that the Late Payment Surcharges (LPS) would be levied as per the provision of relevant Regulations. It is observed that though M/s. BEL has paid the transmission charges based on scheduled injection / contracted capacity of 1.814 MW and such payment has not been made within the due dates. Thus, considering provisions regarding Late Payment Surcharges (LPS) in Regulation-33 of the OERC (Term and Condition of Intra-State open access) Regulation, 2020, M/s BEL is liable to pay the Late Payment Surcharges (LPS) on the unpaid amount of monthly bills beyond the due date. The decision in this regard is subject to the final order of the Hon’ble APTEL in Appeal No.810 of 2023 which is under sub-judice.

7. With the above observations and directions, the Case is disposed of.

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

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