

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 44 of 2011

Dated: 6th September, 2011

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

In the matter of:

**Dakshin Haryana Bijli Vitran Nigam,
C-Block, Vidyut Sadan, Vidyut Nagar,
Hisar-125 005,
Haryana**

... Appellant

Versus

- 1. Haryana Electricity Regularity Commission,
Bays no. 33-36, Sector-4,
Panchkula-134 113,
Haryana.**
- 2. M/s. JSL Stainless Limited,
O.P. Jindal Marg,
Hisar-125005
Haryana**
- 3. Uttar Haryana Bijli Vitran Nigam Limited,
Shakti Bhawan, Sector-6,
Panchkula-134 109,
Haryana.**
- 4. Haryana Vidyut Prasaran Nigam Limited,
Shakti Bhawan, Sector-6,
Panchkula-132 108,
Haryana.**

... Respondents

Counsel for the Appellant(s): Mr. Shivendra Dwivedi
Mr. Apoorva Mishra,
Mr. Aditya Mishra

Counsel for the Respondent(s): Mr. Anand K. Ganesan
Ms. Sneha Venkataramani,
Ms. Ranjitha Ramachandran for R-1
Mr. Rajesh Monga, Law Officer

Ms. Sangeeta Sharma,
Mr. R.K. Jain for R-2

JUDGMENT

HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

This appeal has been filed by Dakshin Haryana Bijli Vitran Nigam challenging the order dated 3.12.2010 passed by the Haryana Electricity Regulatory Commission in a petition filed by M/s. JSL Stainless Ltd., the second respondent herein, regarding non-payment of Unscheduled Interchange (“UI”) charges to the second respondent for mismatch between the scheduled and actual drawal of power purchased through Indian Energy Exchange (“IEX”) under open access.

2. The appellant is a distribution licensee in Southern Distribution Zone of Haryana. The first

respondent is the State Commission. The second respondent is M/s. JSL Stainless Limited which is an industrial consumer of the appellant. The third respondent is Uttar Haryana Bijli Vitran Nigam Ltd., a distribution licensee in Northern Haryana. The fourth respondent is Haryana Vidyut Prasaran Nigam Ltd., the transmission licensee and STU in the State of Haryana. It also operates the State Load Despatch Centre (“SLDC”).

3. The facts of the case are as under:

3.1. M/s. JSL Limited, respondent no. 2 herein, started buying 10 MW power through Indian Energy Exchange (“IEX”) from September, 2009 under short term open access after obtaining necessary concurrence/no objection from the SLDC.

3.2. On 6.4.2010, the second respondent, *inter alia*, sought credits in its bills for underdrawal of energy according to the Inter-State Open Access Regulations of the Central Commission for the period November, 2009 to March, 2010. On 22.5.2010, the second respondent again reminded the appellant. However, the appellant by its letter dated 28.5.2010 advised the second respondent to take up the matter with the SLDC.

3.3. Subsequently, the second respondent filed a petition before the State Commission seeking directions to allow UI payments as per the Central Commission's Short Term Open Access Regulations till such time the State Commission notifies its own intra-state UI accounting mechanism.

3.4. The State Commission on 3.12.2010 passed the impugned order and directed the appellant to compensate the second respondent for mismatch between sanctioned open access load and actual drawal at UI rates as per CERC Regulations or the approved average cost of power purchase of the distribution licensees whichever is lower w.e.from September, 2009.

3.5. Aggrieved by the above order of the State Commission, the appellant has filed this appeal.

4. The appellant has contended that the second respondent is not entitled to UI payment for the following reasons:

4.1. No data has been brought on record to demonstrate that the power underdrawn by the second respondent has only been utilized by the appellant.

There are consumers of respondent no. 3 and other open access consumers who also draw power from the same system, so it is very difficult to determine the actual beneficiaries of the power underdrawn by the second respondent at a point of time.

4.2. Regulation 12 of the Haryana Open Access Regulations provides that in case an open access customer is unable to utilize, full or substantial part of the capacity allotted to him, he may surrender the capacity allotted to him. The second respondent never complied with the Regulation 12 and despite continuously underdrawing for over a period of 4 months, did not inform the SLDC. If the second respondent had informed the concerned authorities in time, necessary revision of schedule could have taken place and excess power, due to underdrawal by the second respondent could have been allocated to other

open access consumers. The underdrawal by the second respondent is as good as the dumped power.

4.3. The Central Commission's Open Access Regulations will be applicable only in the absence of any specification by the State Commission. However, as per Regulation 17 of the State Commission's Open Access Regulations, the rates applicable would be specified by the State Commission.

4.4. In the absence of UI charges for intra-state entities by the State Commission, the second respondent has to stick to the schedule of energy to be drawn and should not underdraw energy.

4.5. When the second respondent was underdrawing, the appellant and the respondent no. 3 were also underdrawing from the grid. Under such condition

they cannot be burdened with the liability of compensating the second respondent.

5. Learned counsel for the appellant on the above grounds argued assailing the impugned order. On the other hand, Shri R.K. Jain, representative of the second respondent argued forcefully in support of the finding of the State Commission. He also submitted that despite the order of the State Commission, no payment has been made to them by the appellant whereas the appellant has been benefited by their underdrawal. He also pleaded for payment with interest.

6. Considering the contentions of both the parties, the following questions would arise for our consideration:

- i) Whether the State Commission was right in directing the appellant to compensate the

second respondent for the under drawal of power scheduled under open access by the second respondent when it had not acted in accordance with Regulation 12 of the State Commission's Open Access Regulation?

- ii) Whether the State Commission was right in directing the appellant to compensate the second respondent for the under drawal of power when it is not established that the power underdrawn by the second respondent was drawn by the consumers of the appellant? In other words, whether the second respondent is entitled for UI charges at all and whether the energy under drawn by the second respondent is the 'dumped energy' which need not be paid for?

Both the above issues are inter-connected and, therefore, will be dealt with together.

7. We find that the second respondent, a consumer of the appellant, had obtained clearance/no objection certificate from the fourth respondent for open access for drawl upto 75 MW through the IEX.

8. We shall first examine the Open Access Regulations, 2008 of the Central Commission.

8.1. According to Regulation 2 (h), the intra-state entity is defined as under:

“(h) “intra-State entity” means a person whose metering and energy accounting is done by the State Load Despatch Centre or by any other authorized State utility”.

The second respondent is an intra-state entity.

8.2 Regulation 2(n) defines the ‘regional entity’ as under:

(n)“regional entity” means a person whose metering and energy accounting is done at the regional level”.

The distribution licensees, the Appellant and the respondent no. 3 herein, are the regional entities. The metering and energy accounting for both the distribution licensees is done on composite basis at the Regional Level.

8.3. Regulation 20 of Short Term Open Access Regulation, 2008 deals with the Unscheduled Inter-charge (UI) Charges as under:

“20. Unscheduled Inter-charge (UI) Charges

(1) All transactions for State utilities and for intra-State entities scheduled by the nodal agency under these regulations, shall be accounted for and included in the respective day-ahead net

interchange schedules of the concerned regional entity issued by the Regional Load Despatch Centre.

(2) Based on net metering on the periphery of each regional entity, composite UI accounts shall be issued for each regional entity on a weekly cycle and transaction-wise UI accounting, and UI accounting for intra-State entities shall not be carried out at the regional level.

(3) The State utility designated for the purpose of collection / disbursement of UI charges from / to intra-State entities shall be responsible for timely payment of the State's composite dues to the regional UI pool account.

(4) Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme.

(5) Unless specified otherwise by the concerned State Commission, UI rate for intra-State entity shall be 105% (for over-drawals or under generation) and 95% (for under-drawals or over generation) of UI rate at the periphery of regional entity”.

Thus, the composite Regional UI accounts will be based on the net metering on the periphery of the regional entity. UI accounting for intra-state entities shall not be carried out at the regional level. The mismatch between schedule and actual drawl for intra-state entities shall be covered in the intra-state UI accounting scheme. Unless specified by the State Commission, the UI rate for intra–state entity will be 105% (for overdrawal or under generation) and 95% (for underdrwals or over generation) of UI rate at the periphery of the regional entity.

8.4. According to the scheduling procedure, the schedule of the respondent no. 2 and other open access consumers availing power from the Power Exchange is added to the schedule of the distribution licensees (the appellant and the respondent no.3) and the Regional UI account is made on the basis of the composite schedule and the composite actual drawal of the distribution licensees and open access consumers. Thus the impact of UI of the respondent no. 2 is reflected in the composite UI of the State which is settled at the Regional level by the regional entity of the State.

9. We shall now examine the Open Access Regulations, 2005 of the State Commission as under:

“12. Non-Utilisation of open access capacity

(1) In case an open access customer is unable to utilize, full or substantial part of the capacity

allotted to him, he shall inform the State Transmission Utility and State Load Despatch Centre along with reasons for his inability to utilize the capacity and may surrender the capacity allotted to him by serving a notice of 30 days;

(2) *The SLDC may in accordance with the guidelines framed by the State Transmission Utility and approved by the Commission, cancel or reduce the capacity allocated to an open access customer when such an open access customer frequently under-utilises the allocated capacity or fails to inform the transmission / distribution licensee of his inability to utilize the allocated capacity. However, before doing this, opportunity would be given to the customer to explain his position.*

(3) *The surplus capacity available as a result of its surrender by an open access customer or reduction or cancellation of capacity by SLDC, may be allocated to other open access customer”*

The above Regulation as is evident from sub-clause (2) and (3) is to ensure that an open access consumer

does not unnecessarily block the available transmission capacity depriving other consumers requiring open access, and in case it is found so, the SLDC may cancel or reduce the capacity allocated to the open access consumer frequently under-utilizing the allocated capacity. This is not the case of under-utilization of the transmission capacity by the second respondent. The respondent no. 2 is a consumer served by a dedicated transmission line and it is meeting its full demand, partly from open access and partly from drawal from the distribution licensee, the appellant herein. Thus, Regulation 12 is not relevant to the issue.

Regulation 17 provides for UI charges as under:

“17. Unscheduled Interchange Charges:

The payment for mismatch before the schedule/actual injection in the grid and the actual drawl shall be governed by the pricing mechanism

as specified by the Commission for the State from time to time”.

Admittedly, the State Commission had not specified any pricing mechanism for the intra-state system and, therefore, the Central Commissions Regulation 20 (5) would be applicable for UI rate for the second respondent and other intra-state entities.

10. According to the appellant, no data has been brought on record to demonstrate that power underdrawn by the second respondent was only utilized by the appellant. In our opinion, it is not necessary to establish that the power underdrawn by the second respondent has been utilized only by the consumers of the appellant. All transactions for the two distribution licensees of Haryana and for intra-state entity including respondent no. 2 are accounted for in the net interchange schedule and the net drawal of the State in the Regional Account.

The difference between net schedule and net drawal is accounted for in the Regional UI charges account issued by the Regional Load Despatch Centre. Thus, the UI charges for the net UI of the State are received and paid by the two distribution licensees. In this manner, the UI charges for underdrawal by the second respondent is accounted for in the UI payment received by the two distribution licensees against the Regional UI account.

11. According to the learned counsel for the appellant, the second respondent should inform the concerned authorities about its surrender of the capacity allotted to him in accordance with the Regulation 12 of the State Commission's Open Access Regulations. In our opinion, this argument is without any substance. Regulation 12, as pointed out above, is not intended for Unscheduled Interchanges. Unscheduled

Interchanges of the intra-state entity may take place due to normal variation in load. It may not be possible to totally eliminate Unscheduled Interchange. It is for this reason that the Unscheduled Interchange mechanism has been implemented.

12. The learned counsel for the appellant has further argued that in the absence of UI charges for intra-state entity notified by the State Commission, the second respondent has to restrict to the schedule and should not have underdrawn energy. This argument is without any basis and proper understanding of the prevailing Unscheduled Interchange mechanism. As already indicated, the underdrawal by the second respondent is already accounted for in the Regional UI account of the Northern Regional Load Despatch Centre, the beneficiary of which are the two distribution utilities (the appellant and the third

respondent). When the distribution licensees have received payment on account of UI caused by underdrawal by the second respondent at the UI rate prevailing in the Northern Regional Grid there should not be any hesitation in passing on 95% of the same to the second respondent according to the Central Commission's Open Access Regulations.

13. The learned counsel for the appellant has further argued that when the second respondent was underdrawing the appellant and the respondent no. 3 were also underdrawing from the Grid and under such conditions they cannot be burdened with the liability of compensating the second respondent. In our opinion, there is no substance in this argument. Even when the two distribution licensees are underdrawing, the underdrawl of the second respondent is added in the net drawal accounted for in

the Regional UI Account and paid at the prevailing Regional UI rate.

14. The learned counsel for the appellant has further pointed out that the credit for the regional UI charges is shared by the two distribution licensees i.e. the appellant and the respondent no.3. We are of the opinion that since the second respondent is a consumer of the appellant, the UI charges payable to the second respondent should be settled by the appellant. Adjustment, if any, for the UI charges paid to the second respondent by the appellant may be made mutually by the appellant and the third respondent, according to the present system of sharing of the net UI charges received from or paid to the Regional UI Account.

15. In view of the above, we hold that the second respondent has to be compensated for by the appellant for the energy underdrawn by the second respondent. Though we feel that the compensation should be according to the Regulation 20(5) of the Central Commission Open Access Regulations as the State Commission has not notified the intra-state UI rate, the second respondent has accepted the compensation decided by the State Commission i.e. as per CERC Regulations or the approved average cost of power purchase of the distribution licensees whichever is lower. In view of the contention of the second respondent, we do not want to interfere with the decision of the State Commission.

16. The representative of the second respondent has stated that UI charges have not been paid by the appellant inspite of the order of the State Commission

dated 3.12.2010 and verbally requested during the argument that the same should be paid with interest. We are not in a position to grant any interest to the second respondent for the past period as he has neither prayed for payment of interest before the State Commission nor filed any petition for the same before us. However, we feel that the appellant has unnecessarily withheld the UI charges for which the second respondent was entitled to despite the order of the State Commission and considering the fact that it was the beneficiary of the UI charges for the energy underdrawn by the respondent from the regional UI account. In view of this, we impose a cost of Rs. 50,000/- on the appellant to be paid to the second respondent.

17. Accordingly, we direct the first appellant to pay the UI charges to the second respondent in terms of

the order dated 3.12.2010 of the State Commission within a period of 30 days from the date of this order. The delay beyond 30 days will attract a simple interest of 12% on the amount due to the second respondent.

18. In view of above, the Appeal is dismissed, being devoid of any merit, with cost.

19. Pronounced in the open court on this **6th day of September, 2011.**

(Justice P.S. Datta)
Judicial Member

(Rakesh Nath)
Technical Member

REPORTABLE / NON-REPORTABLE

vs