CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 95/MP/2013

Coram:
Shri V S Verma, Member
Shri M Deena Dayalan, Member

Date of Hearing: 11.07.2013
Date of Order: 19.11.2013

In the matter of

Petition under section 79 (1) (c) read with Section 79 (1) (f) of the Electricity Act 2003 seeking a direction from this Commission that no State Transmission Charges and Losses are leviable on the petitioner by the Respondent No. 1 (i.e. State Transmission Utility) for scheduling and evacuation of 150 MW power from the petitioner's plant through inter-State transmission lines of Power Grid Corporation of India Ltd as the intra State Transmission System of Respondents No. 1 shall not be used for such Open Access.

And
In the matter of

Jai Prakash Power Ventures Ltd.
Sector 128, Noida-201 304 **Petitioner**

Vs

1. M. P. Power Transmission Company Ltd
   Naya Gaon, Jabalpur, Madhya Pradesh

2. M. P. State Load Despatch Centre,
   Naya Gaon, Jabalpur, Madhya Pradesh

3. Power Grid Corporation of India Ltd.
   B-9, Qutub Institutional Area, Katwaria Saria,
   New Delhi-110 016 **Respondents**

Parties Present:

Shri Vishal Gupta, Advocate, JPVL
Shri Sanjeev Goel, JVPL
Shri Ansul Garg, JPVL
Shri G.Umapathy, Advocate, MPPTCL

Shri R.C Chakraborty, MPPTCL
Ms. Manju Gupta, CTU
Shri Y.K.Sehgal, CTU
Shri R.A. Sharma, MPSLDC

ORDER

The petitioner, feeling aggrieved by the decision of the State Load Despatch Centre, Madhya Pradesh (SLDC), the second Respondent, to fasten the petitioner with liability to pay the State transmission charges and losses while availing short-term open access for collective transactions through power exchange has filed the present petition with the following prayers, namely -

"(i) Declare and direct that no transmission charges and losses shall be payable by the petitioner to the Respondent No. 1 i.e. STU for scheduling of 150 MW surplus power from its Bina TPP as the transmission system of Respondent No. 1 will not be used for such scheduling; and

(ii) Direct the Respondent No. 2 to give its concurrence and no objection for scheduling of 150 MW surplus power from the petitioner's Bina TPP without levying any State Transmission charges and losses on the petitioner; and

(iii) Such other orders as this Hon'ble Commission may deem fit and proper for doing substantial justice in the matter and to uphold the provisions of the Electricity Act, 2003."

2. The petitioner is a generating company which owns, maintains and operates a 2x250 MW coal-based power plant at Bina in the State of Madhya Pradesh (Bina TPS). The power plant was originally conceived by Bina Power Supply Company Ltd (BPSCL). However, BPSCL is said to have amalgamated with the petitioner pursuant to

the order of Himachal Pradesh High Court dated 25.7.2011 in Company Petition No. 2/2011. Therefore, for the purpose of the present order, the petitioner includes BPSCL.

3. On 23.7.2009, the petitioner had made an application to the Power Grid Corporation of India Ltd (PGCIL), the third Respondent, for grant of long-term open access for transmitting 290 MW power by availing connectivity at 400 kV sub-station of PGCIL at Bina for sale of Merchant Power to the States of Western and Northern Regions. The balance 210 MW power was proposed to be sold on long-term basis to the State of Madhya Pradesh by availing connectivity at Bina sub-station of Madhya Pradesh Power Transmission Company Ltd, the first Respondent which is also discharging the functions of the State Transmission Utility (STU). At the 11th meeting of Western Region constituents held on 10.9.2009 it was agreed that the petitioner be granted long-term access for transfer of 290 MW to Western and Northern Regions. Based on the petitioner's request contained in the letter dated 13.11.2009, the proposed inter-connection scheme was revised to provide that one circuit of the transmission line would terminate at Bina sub-station of PGCIL and other at Bina sub-station of STU since the two sub-stations are located in close vicinity. The petitioner accordingly entered into the Bulk Power Transmission Agreement dated 24.2.2010 (BPTA) with PGCIL.

4. The petitioner executed a Power Purchase Agreement (PPA) with Madhya Pradesh Power Trading Company Ltd on 5.1.2011 whereunder it was agreed that the

petitioner would supply 70% of the installed capacity of Bina TPS, i.e. 350 MW to the State of Madhya Pradesh for a period of 25 years. It was also agreed that for evacuation of power from Bina TPS to STU sub-station, the petitioner would construct 400 kV dedicated transmission line.

5. The petitioner has stated that it has planned to sell the remaining 30% of gross capacity of 500 MW of Bina TPS, that is, 150 MW through power exchange in short-term. Accordingly, the petitioner by its letter dated 19.3.2013 approached SLDC seeking its prior approval for sale through the power exchange up to 68.6 MW. SLDC issued a standing clearance/ NOC under letter dated 26.3.2013 stating that the petitioner would be liable to pay the State transmission charges and losses. The petitioner made efforts to dissuade SLDC from levying the State transmission charges and losses, but to no avail. The present petition has been filed accordingly.

6. The petitioner has submitted that Bina TPS has direct connectivity with the inter-State transmission system of PGCIL at Bina sub-station the sole purpose of which is to schedule the surplus power over and above the contracted capacity under the PPA. The petitioner has stated that the power meant to be sold through power exchange is not required to be routed through STU network and has accordingly contended that in the circumstances there does not exist any justification for levy of the State transmission charges and losses.

7. STU in its reply affidavit dated 28.6.2013 has stated that the petitioner has constructed 13.422 km long 400 kV D/C dedicated transmission line and thereafter the transmission line is bifurcated into 400 kV S/C lines, each of approximate length of 6.5 km and connected to 400 kV Bina sub-stations of STU and PGCIL. Therefore, according to STU, the averment of the petitioner that Bina TPS is directly connected with the transmission network of PGCIL is not correct. It has been stated that since Bina TPS is also directly connected with 400 kV Bina sub-station of STU through a 400 kV line and since the power flow between two transmission lines cannot be segregated for certain definite quantum as the power flow on the transmission lines depends on impedance and is governed by the laws of electricity, the power to be injected in PGCIL's network shall flow through STU network also, along with the share of the State of Madhya Pradesh. STU has submitted that the fact of the petitioner obtaining long-term access through PGCIL network does not entitle the petitioner to use STU network for exchange of power without payment of any charges. STU has pointed out that the BPTA is silent on the issue whether the petitioner is exempted to pay the State transmission charges and losses. In this manner, STU has justified the levy of the State transmission charges and losses from the petitioner for use of STU network.

8. SLDC in its affidavit dated 16.7.2013 has stated that the petition filed by the petitioner proceeds on the assumption that the system of Respondent No. 1 will not be used for scheduling surplus power and in such an event, no transmission charges would be levied by the State Utilities. SLDC has submitted that the short term open

access granted for evacuation of surplus power utilizes the STU network to certain extent and therefore to that extent, the petitioner is bound to pay the transmission charges as per the MPERC Regulations. It has been stated that MPPTCL which carried out load flow study considered Article 4.3.3 of the PPA between MPPTCL and the petitioner and it was revealed from the load flow study that a portion of power scheduled for inter-State transmission utilizes the State transmission lines. Therefore, the petitioner is liable to pay the applicable transmission charges as claimed in the NOC granted to SLDC.

9. PGCIL in its affidavit dated 26.6.2013 has stated as under:

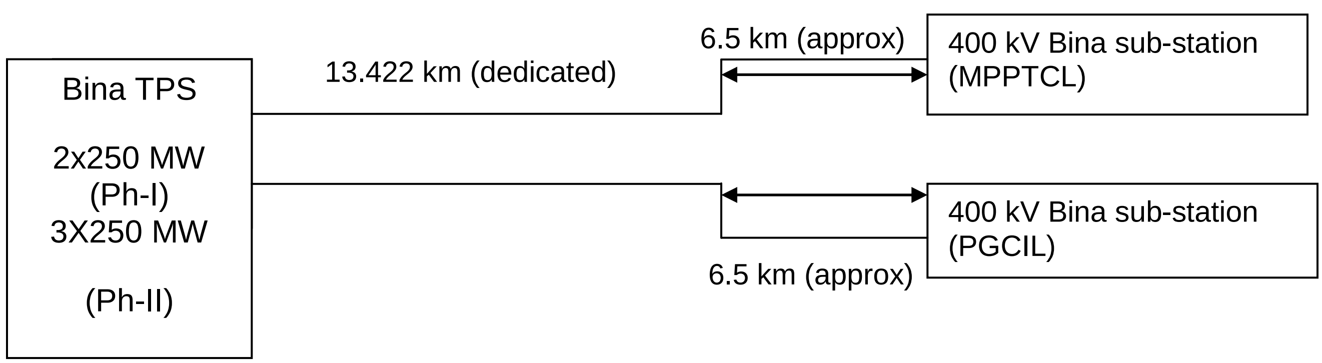
> "(i) M/s Bina Power Supply Company Limited (now M/s Jaiprakash Power Ventures Ltd.) has been granted Long Term Open Access by CTU for transfer of 265.35 MW (WR-132.68 MW): NR-132.67 MW) from their 2x250 MW Bina TPS in M.P. As per their application, balance 210 MW was to be transferred to MPPTCL. For transferring 265.35 MW from Bina TPS, following interconnection scheme as dedicated transmission system was identified.
>
> (a) Bina TPS-Suitable location near Bina (PG)/Bina (MPPTCL) 400 kV D/C (High Capacity conductor)
> (b) Termination of one ckt out of above D/C line to Bina (PG) and other ckt to Bina (MPPTCL) along with associated line bays at above sub-station.
>
> The above system was identified as the dedicated transmission system for Bina TPS project and has been built and is owned, operated and maintained by M/s Bina Power Supply Company Ltd.
>
> (ii) The above system was agreed in the 12th meeting of Western Regional Constituents regarding Connectivity and Open Access Application held in New Delhi on 8th July, 2010 for transfer of 263.35 MW power to target beneficiaries in Western & Northern Regions. It was also agreed that balance 210 MW shall be transferred to MPPTCL sub-station at 400 kV Bina (MPPTCL) substation through Bina TPS-Bina (MPPTCL) line.
>
> (iii) Subsequently, M/s Bina Power Supply Company Ltd informed that as per their renewed agreement with GoMP they have to supply 70% of gross power

directly to MPPTCL instead of earlier agreed 42%. Thus only 150 MW power from Bina TPS shall be available for transfer over ISTS.

(iv) In this regard, it is stated that since the transmission system was identified for transfer of 265.35 MW power to ISTS, the same system is adequate to cater to modified power transfer requirement, both to MPPTCL as well as inter-State.

10. We have heard learned counsel for the petitioner and STU/SLDC as also the representative of PGCIL and have very carefully considered the rival submissions. The genesis of the dispute lies in STU's contention to claim the State transmission charges and losses when the petitioner uses the inter-State transmission system of PGCIL for evacuation of power to be sold through collective transactions at the power exchanges.

11. The petitioner has constructed a 400 kV dedicated D/C transmission line, one circuit of which is connected to STU network and other to PGCIL network. The schematic diagram of the transmission network surrounding Bina TPS, as per the STU's version is depicted below**:**



12. It is observed from the above that one circuit of the dedicated transmission line is connected to Bina sub-station of MPPTCL and the other circuit is connected to Bina sub-station of PGCIL. Since the power flow depends upon the system conditions, the

possibility of a portion of power meant for evacuation through the ISTS flowing on STU system cannot be altogether ruled out. Therefore, the question for consideration is whether under the circumstances, the petitioner becomes liable to pay the State transmission charges and losses for scheduling its power through the ISTS for sale in the power exchange or sale to any inter-State customer.

13. During the hearing on 11.7.2013, the Commission directed SLDC, MP to file an affidavit by 8.8.2013 that the transmission system of STU is being used as an intervening system for the conveyance of electricity.

14. SLDC vide its affidavit dated 16.7.2013 has submitted Flow Charts indicating different scenarios of Load flow study carried out by MPPTCL, considering peak load time in April 2013 for evacuating the power sought under the short term open access. While carrying out Load Flow Study, the Clause 4.3.3 of the PPA signed between Petitioner and MPPMCL has also been considered. Article 4.3.3 of the PPA is extracted as under:

> *"If the Procurer does not schedule the whole or part of the Available Capacity for any reason whatsoever, the Company shall be entitled to make available such Available Capacity not scheduled by the Procurer, to any other person without losing the right to receive the Capacity Charges from the Procurer for such unscheduled Available Capacity. During this period, the Company will continue to receive the Capacity Charges from the Procurer. For any such third party sale, all open access charges including losses, as may be applicable, shall not be payable by the Procurer. The Company shall under this maintain accounts and provide all details regarding price of sale etc. to the Procurer in respect of such sales under this Article."*

From a perusal of the same, it reveals that the portion of power utilizes the State Transmission Lines and therefore the Petitioner is liable to pay the applicable transmission charges as claimed in the NOC granted by SLDC.

15. We have considered the submissions of respondent and the power flow chart submitted by Respondent No.2. The two transmission lines connecting the generating station to CTU and STU sub-stations carry almost equal flows. The scenario submitted by the respondent itself establishes the fact that both circuits of this dedicated line are almost equally used. The respondents have also submitted that in the event of tripping of line connected to sub-station of CTU, the entire power flows through the line connected to the sub-station of STU. However, the condition may also get reversed in the event of the line connected to STU sub-station getting tripped. In such a case, the entire power flow would take place through the line connected to sub-station of CTU network. The relative flow on STU and CTU line would depend on real time load generation balance and it cannot be a basis of application of transmission charges and losses.

16. The respondents have relied upon clause 4.3.3 of the PPA in support of their contention. Perusal of Article 4.3.3 of the PPA shows that it applies when the procurer, Madhya Pradesh Power Trading Company Ltd (or its successor company) does not schedule power contracted under the PPA (70% of the gross capacity of Bina TPS). In such a situation, the petitioner has been granted liberty to sell the unscheduled power to a third party for which the procurer is not liable to share the State transmission charges

and losses. Article 4.3.3 of the PPA does not remotely refer to sale of balance 30% power by the petitioner through bilateral transactions by utilizing its direct connectivity to ISTS. Therefore, reliance by SLDC on the provisions of Article 4.3.3. of the PPA is misplaced.

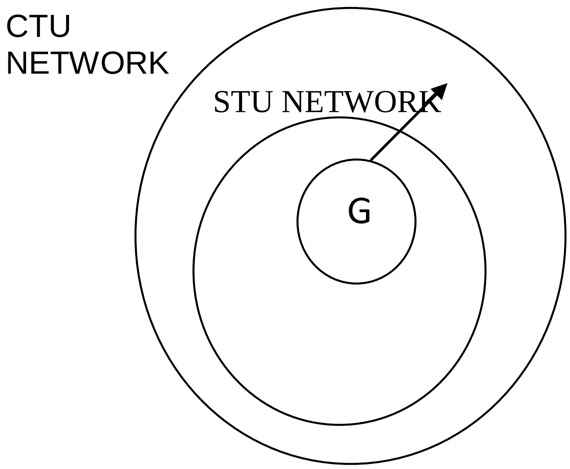
17. The concept of direct customer and embedded customer has not been dealt in the Central Electricity Regulatory Commission (Open Access in Inter-state Transmission) Regulations, 2008. For this rationale we have considered the Central Electricity Regulatory Commission (Open Access in Inter-state Transmission) Regulations, 2004 and it provides definition of direct customer and embedded customer as under:

> *2 (d) "Direct customer" means a person directly connected to the system owned or operated by the Central Transmission Utility.*
>
> *2 (e)"Embedded customer" means a person who is not a direct customer.*

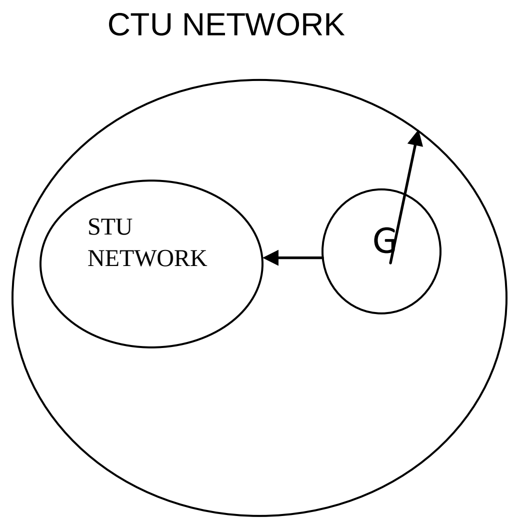
Further, Commission vide order dated 30.6.2011 has approved procedure of Data Collection along with formats, Procedure for Computation of Point of Connection (PoC) Transmission Charges and Procedure for Sharing of Losses under Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses), Regulations, 2010. Regulation 1.4 of Annexure-III for said Procedures provides as under:

> "1.4 The ISTS losses as arrived as per this procedure shall be applied on all the Regional Entities in line with Regulation 7 (1) (r) and 7 (1) (s) of Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010. The entities embedded within the State jurisdiction shall have to share additional losses for using intra-State system as applicable in the respective control area."

18. In view of the above, the petitioner is a direct customer and not an embedded customer of State Transmission Unit (STU) network. The difference between these two entities can be shown below, with following diagrams:



Embedded Customer



Direct Customer

Where the customer is not an embedded customer, the contract path through intervening system of STU network cannot be identified i.e. the transmission system of STU doesn't act as intervening system in the present case.

19. A similar issue as raised by the petitioner in the present petition was considered by the Commission in Petition No. 189/MP/2012 involving Lanco Anpara Power Limited and the State Transmission Utility. The Commission in its order dated 8.6.2013 in the said petition decided the issue as under:

> "22. In the present case, it is also evident from the study conducted by CTU that majority of power of Anpara-C is consumed in the State of Uttar Pradesh itself .The

transmission system of STU does not act as intervening system in the present case as State transmission network is not used in the access as a part of inter-State transmission system for the conveyance of electricity, i.e. power is not conveyed to ISTS through STU network and a contract path cannot be identified. Therefore, in terms of provisions of Central Electricity Regulatory Commission (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 as per Intervening Transmission Facilities Regulations, 2010, the charges are not applicable in the present case.

23. The petitioner in its submission dated 22.3.2013 has stated that if the contentions of respondent are taken correct then in that event all the Central Generating Stations connected to ISTS will have to pay STU charges as the power from the above generating station can flow into intra-state system more than what has been allocated to the state. It is noted that transmission charges and losses are applicable on schedule of energy and not on actual energy flow. In PoC mechanism as well, for computing the rates only actual flows are considered. Once rates are determined, they are applied on scheduled energy. The actual energy flows are different from scheduled flow and sometimes power from State generating stations flows on ISTS and sometimes ISGS power flows on state transmission network. However, such phenomenon cannot be the basis for claim of the STU charges. Also, for same energy, two charges cannot be applied, when the entity is connected to both STU/ CTU network. The transmission charges and losses are applied on the basis of Scheduled power not on actual flow of power which depends on system condition. Therefore, the intra-State transmission charges or losses as per Central Electricity Regulatory Commission (Open Access in Interstate transmission) Regulation, 2008 are not applicable."

20. The case of the petitioner is decided in light of our decision quoted above. We hold that the petitioner is not liable to share the State transmission charges and losses for sale of power for the collective transactions through the power exchange by utilizing the inter-State transmission network of PGCIL or sale to any inter-State customer.

21. The petition is disposed of in terms of the above.

Sd/-	**sd/-**
(M. Deena Dayalan)	**(V.S.Verma)**
Member	**Member**