

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 449/MP/2014

Sub: Petition under section 79 (1) (c) read with Section 60 of the Electricity Act, 2003.

Petitioner : Malana Power Company Limited

Respondents : Himachal Pradesh State Electricity Board Limited and others

Petition No. 167/MP/2015

Sub: Petition under Section 79 (1) (c) read with Section 60 of the Electricity Act, 2003.

Petitioner : Malana Power Company Limited

Respondents : Himachal Pradesh State Electricity Board Limited and others

Date of hearing : 6.8.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Parties present : Ms. Seema Jain, Advocate, MPCL
Shri Dushyant K. Mahant, Advocate, MPCL
Shri Sumit Garg, MPCL
Ms. Kakoli Sengupta, MPCL
Shri Sanjay Kumar Jana, MPCL
Shri Anand K Ganesan, Advocate, HPSEBL
Ms. Swapna Seshadri, Advocate, HPSEBL
Shri Deepak Uppal, HPSEBL
Shri Joginder Singh, HPSEBL

Record of Proceedings

Learned counsel for the petitioner submitted as under:

- (a) The petitioner has set up a 86 MW Malana Hydro Electric generating station (the project) in district Kullu, Himachal Pradesh having a dedicated transmission line upto inter-connection point at Bajaura sub-station of Himachal Pradesh State Electricity Board Ltd. (HPSEBL).

(b) The petitioner has been charging UI charges in excess of the charges prescribed under Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 (UI Regulations), from 1.4.2008 till 31.3.2014. Therefore, excess UI charges needs to be refunded. With effect from 1.4.2014, the charges are being settled as per the UI Regulations. The petitioner has requested the respondent refund the excess amount of UI charges paid from 1.4.2008 to 31.3.2014.

(c) The petitioner has been paying the SLDC charges separately at the rates notified by the Commission from time to time in addition to the handling charges.

(d) As per HPSEBL, levying of handling charges is in lieu of SLDC charges for inter-State sale of power. However, the petitioner has been paying SLDC charges as well as the handling charges. The petitioner has no objection to pay SLDC charges.

(e) MYT orders of HP State Commission are applicable for intra State consumers of the State. The petitioner's project is not a consumer of the State.

(f) A portion of the transmission line i.e. Bajaura to ISTS network being incidental to ISTS, comes under deemed ISTS as per the Electricity Act, 2003. Therefore, the portion of the State network from Bajaura to ISTS Nalagarh is ISTS network and the charges are to be calculated as per the Commission's Regulations.

(g) The earlier MYT order of HPERC dealt with 'customer'. However, MYT order for the period 2014-15 dealt with 'consumer'. Therefore, charges and losses would be applicable to consumers of the distribution network.

(h) While calculating wheeling charges, the petitioner's generation has not been considered by the State Commission.

(i) As per the Commission's Regulations, the Wheeling charges is about 8 Paisa/KWh. However, the petitioner is paying 13 paisa/KWh.

2. Learned counsel for HPSEBL submitted as under:

(a) Learned counsel referred to the judgment of Hon`ble Supreme Court in New Bihar Biri Leaves Co. and others V State of Bihar [(1981) 1 SCC 537] and submitted that it is settled position of law that a party cannot challenge one part of the agreement while still retaining the benefits of the other part. An agreement should be implemented by the parity in totality.

(b) The transmission charges for transfer of power through intra-State system of HP for the period from 1.4.2008 to 25.9.2008 are levied as per the Central

Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, since no separate fixed charges have been specified by the State Commission. For the remaining period, the charges are applicable as per HPERC's MYT orders. Since, the petitioner is using the State network, the charges determined by the State Commission in its MYT Orders are applicable. As per MYT order for the period 2009-11, the transmission charges and wheeling charges are payable @ Rs. 43621/MW and 75 paisa/unit respectively.

(c) Since the petitioner's generating station is connected to the distribution system and the interconnection point is STU, it is liable to pay charges as applicable.

(d) The intra-State customer is required to pay additional charges for the use of State network as determined by the State Commission. The transmission and wheeling charges are determined for the complete system and it is not possible to calculate separately for each individual generator.

(e) The charges collected from open access customers are set off as non-tariff income from ARR.

(f) If the petitioner is not using the State transmission system then it should not pay SLDC charges, UI charges and Wheeling charges, etc.

3. After hearing the learned counsels for the petitioner and the respondent, the Commission directed HPSEBL to file the following clarifications/information on affidavit, on or before 28.8.2015 with an advance copy to the petitioner who may file its response, if any, by 11.9.2015:

(a) A copy of the order of HPERC considering the wheeling of power of the petitioner and similarly placed generators into the Inter-State; and

(b) The wheeling charges are not doubly charged.

4. The Commission directed that due date of filing the clarification and information should be strictly complied with and any of these documents filed after due date shall not be considered while passing orders.

5. Subject to the above, the Commission reserved the order in the petitions.

**By order of the Commission
Sd/-**

**(T. Rout)
Chief (Law)**