



Petition No 927 of 2014

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION LUCKNOW

Date of Order : 5.03.2014

PRESENT:

1. Hon'ble Shi Desh Deepak Verma, Chairman
2. Hon'ble Smt. Meenakshi Singh, Member
3. Hon'ble Shi Indu Bhushan Pandey, Member

IN THE MATTER OF: Petition regarding payment of charges for injected infirm power.

Jaiprakash Associates Ltd.
(Unit-Jaypee Churk Industrial Complex)
Through its Dy. General Manager,
Vishnu Sadan, 5 Park Road, Lucknow – 226 001.

-----Petitioner

1. UP Power Corporation Limited, (through its Managing Director), Power Purchase Agreement Directorate, 14th Floor, Shakti Bhawan Extn. 14- Ashok Marg, Lucknow.
2. Purvanchal Vidyut Vitran Nigam Ltd (PVVNL), (through its Managing Director), Purvanchal Vidyut Bhawan, Bhakaripur, Vidyut Nagar, DLW , Varanasi
3. U.P. Power Transmission Corporation Ltd., (through its Chairman & Managing Director), 11th Floor Shakti Bhawan Ext., 14- Ashok Marg, Lucknow
4. State Load Despatch Center, UP (through its Chief Engineer), 5th Floor Shakti Bhawan, 14 – Ashok Marg, Lucknow.

-----Respondents

The following were present:

1. Sri Sunil Mohan Agarwal, S.E., SLDC
2. Sri S.P. Gupta, E.E, SLDC
3. Sri Shailendra Gaur, E.E, UPPTCL
4. Sri Zamir Ahmad, E.E. UPSLDC
5. Sri M.K. Gupta , A.E. SLDC
6. Sri Vaibhav Pandey, Advocate, Jaypee
7. Sri Anil Sharma , Dy. G.M., Jaypee Associate

Order

(Date of Hearing 31.01.2014)

1. Jaiprakash Associates Ltd., the petitioner, has three coal based thermal power generating units having 60 MW capacity of each unit at Churk, Sonebhadra which is connected to 220/132 KV substation Robertsganj of UPPTCL through 220 KV DC line.



The petitioner has submitted that they have injected infirm power to the system which has been utilized by PVVNL but they have not been paid for that infirm power. The petitioner has stated that vide letter dated 18.12.2013, they have been provided permission for withdrawal of startup power as per the applicable tariff and for injection of infirm power but with the condition of no payment in lieu of that. The petitioner has quoted the provisions of UPERC's CNCE Regulations, 2009 clause 18(2) as below:

“The tariff for supply of electricity during the period of synchronization and commissioning of the unit shall be equal to the variable cost.”

The petitioner has also quoted the provisions of CERC's (Grant of Connectivity, Long-term Access and Medium-term Open Access in Inter-State Transmission and related matters) Regulations, 2009 clause 8(7) as below:

“A generating station, including captive generating plant which has been granted connectivity to the grid shall be allowed to undertake testing including full load testing by injecting its infirm power into the grid before being put into commercial operation, even before availing any type of open access, after obtaining permission of the concerned Regional Load Despatch Center, which shall keep grid security in view while granting such permission. This infirm power from a generating station or a unit sources, the tariff of which is determined by the Commission, will be governed by the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009. The power injected into the grid from other generating stations as a result of this testing shall also be charged as UI rates.”

Based on above, the petitioner has stated that for injected infirm power, they should be paid in accordance with the U.I. rates. The petitioner has also mentioned the variable cost of power generated from the captive plant as per the CNCE Regulations, 2009 which is Rs. 1.58/ kwh for the plant commissioned in FY 2013-14.

In view of above, the petitioner has prayed to quash the UPPCL's letter dated 18.12.2013 and to direct them for payment of injected infirm power.

2. In its counter dated 24.1.2014, UPPCL has submitted that they had given counter offer to the firm after due diligence of commercial aspects in relation to injection of infirm power for their specific acceptance. UPPCL has stated that even after knowing counter offer of not providing any payment and also without executing any contract, the petitioner has undergone injection of firm power. UPPCL has further submitted that since they did not have any PPA for supply of power, the payment for infirm power under the CNCE Regulations, 2009 is not applicable. UPPCL has added that the power so injected has been fed to nearby rural areas without any extra revenue from the consumers. It has also been stated that the plant has been installed only for captive use purposes.

3. In its rejoinder, the petitioner has quoted section 70 of the Indian Contract Act as follows:

“Obligation of person enjoying benefit of non gratuitous act:-

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such another person enjoys benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

The petitioner has submitted that even assuming that there is no agreement but in view of above all the conditions of section 70 are satisfied as they have delivered infirm power and UPPCL has enjoyed the benefit thereof. The petitioner has also quoted the Commission’s Order dated 24./25 Dec. 2007 on ABT which has mentioned that the generating stations connected with a grid and having capacity not less than 3 MW and does not have PPA signed or entered into any other contract for supply of power, may inject power into the grid for sale at rate equivalent to UI rates linked to frequency. The petitioner has submitted that as per the afore mentioned direction of the Hon’ble Commission they are entitled to get the payment of injected infirm power even at UI rate whereas, they have requested for only the variable charges as per the CNCE Regulations, 2009.

4. In the earlier hearing, SLDC and UPPTCL were directed to file the details on quantum of supplied infirm power and the rates equivalent to UI rates linked to frequency for such



supply. UPPTCL has filed reply on 5.2.2014 wherein they have stated that they do not have anything to say regarding the settlement of injected power but definitely they have concern with the responsibility of payment of transmission charges for such power. SLDC in its reply dated 13.2.2014 has submitted the details of supplied power which is 90.155 LUs till 7th January, 2014. The frequency linked average rate per unit (Rs./kwh) for the infirm power injected has been provided as Rs. 1.94/kwh.

5. In view of above, it is undisputed that the power has been supplied by the petitioner and the benefit thereof has been taken by UPPCL by supplying that power to the consumers. The interpretation of UPPCL that such power has been utilized for local rural consumers and so did not fetch any additional tariff has no validity as far as supplier is concerned. Supply to rural consumers and other consumers are made through common transmission system and it is not practical to distinguish the use of this supply for rural or other consumers. The issue of not having written agreement also does not absolve the respondents of its obligations as they have accepted the supply and even monetarily benefitted from its distribution. Thus, as per the provisions of the Contract Law quoted by the learned council of the petitioner, the petitioner has reasonable ground for getting his due payments. The petitioner has requested for payment at the rate of Rs. 1.58/kwh as per the UPERC CNCE Regulations, 2009. Based on frequency linked average rate, per unit cost comes as Rs. 1.94/kwh, as informed by SLDC. In light of this, the Commission feels that the ends of justice would be met if the petitioner is paid at the rate of Rs. 1.58/kwh, the rate demanded by them. As far as the issue of transmission charges is concerned, in consonance with the regulations, it shall be paid by the Discom and could be charged in the ARR.

6. The petition is accordingly disposed of.

(Indu Bhushan Pandey)
Member

(Meenakshi Singh)
Member

(Desh Deepak Verma)
Chairman

Place : Lucknow
Dated: 5.03.2014