

RAJASTHAN ELECTRICITY REGULATORY COMMISSION, JAIPUR

Petition No. RERC/1461-1463/2019, 1465-1468/2019

Petitions filed for adjudication of disputes under 86 (1) (f) of Electricity Act, 2003 regarding levy of wheeling charges.

Coram:

Shri Shreemat Pandey, Chairman
Shri S. C. Dinkar, Member
Shri Prithvi Raj, Member

Petitioners : 1. M/s Goyal Fashions Pvt. Ltd. (1461/2019)
2. M/s Fruitful Buildcon Pvt. Ltd. (1462/2019)
3. M/s Jaies Star Continental Hotels LLP (1463/2019)
4. M/s Triton Hotels & Resorts Pvt. Ltd. (1465/2019)
5. M/s A K Spintex Ltd. (1466/2019)
6. M/s Fashion Suitings Pvt. Ltd. (1467/2019)
7. M/s Mayank Sharma Enterprises Pvt. Ltd. (1468/2019)

Respondents : 1. Jaipur Vidyut Vitran Nigam Ltd.
2. Ajmer Vidyut Vitran Nigam Ltd.
3. Rajasthan Urja Vikas Nigam Ltd.

Date of hearings : 09.04.2019 and 09.05.2019

Presents : 1. Sh. V.K. Gupta, Authorised Rep. for Petitioners
2. Sh. Bipin Gupta Advocate, for Respondent No. 2
3. Sh. Sandeep Singh Advocate for Respondent No. 1
4. Ms. Parineetu Jain Advocate for Respondent No. 1

Order Date : 17.05.2019

ORDER

1. The Generating Companies referred to in the cause title have filed these petitions for adjudication of dispute under Section 86(1)(f) of the Electricity Act, 2003 regarding methodology adopted by Discoms for levy of wheeling charges.
2. Notices were issued to Respondents for filing replies on petitions. The Respondents filed their respective replies to each petition.
3. Since the issue is common in these petitions, all these petitions were clubbed and heard together and are being disposed of by this common order.
4. In all these petitions and rejoinders, the common averments are as under:
 - 4.1. The Petitioners are solar energy generators having set up solar power plants for captive uses. Petitioners entered into a Wheeling and Banking Agreement (WBA) with concerned Discoms in May, 2018 for feeding the power for their captive use.
 - 4.2. Clause 5(A) of WBA provides that the wheeling charges shall be payable in accordance with RERC order dated 24.02.2014. Commission vide its order dated 24.02.2014 has framed RERC (Terms and Conditions of determination of Tariff) Regulations, 2014 (in short 'RERC Tariff Regulations, 2014) and RERC (Terms and Conditions of determination of Tariff for Renewable Sources- Wind & Solar Energy) Regulations, 2014 (in short 'RERC Wind and Solar Regulations, 2014').
 - 4.3. Regulation 38(3) of RERC Wind and Solar Regulations, 2014 provides that the wheeling charges for use of distribution licensee's network, would be applicable as determined by the Commission in respect of open access transactions at respective voltage levels at which electricity is supplied.
 - 4.4. Commission under Regulation 86(3) & 86(4) of the RERC Tariff Regulations, 2014 has determined the wheeling charges. Regulation 86 (4) provides that

while determining wheeling charges for open access customers, the total electricity wheeled on the licensees distribution system shall be taken into account. Thus, from the said Regulation it is clear that the determination of wheeling charges is based on the energy wheeled.

- 4.5. Commission vide its order dated 19.09.2006 had determined the wheeling charges as Rs. 0.01/kWh, Rs. 0.11/kWh and Rs. 0.32/kWh for EHV, 33 kV and 11 kV voltage level respectively. Thus, Commission determined the wheeling charges on energy wheeled.
- 4.6. Respondent Rajasthan Urja Vikas Nigam Ltd. (RUVNL), from June, 2018, has levied wheeling charges considering 100% capacity utilization factor (CUF) for a solar plant against the normative CUF of 20% specified by the Commission. The method of calculating the wheeling charges considering 100% CUF is contrary to the terms and conditions of the WBA and RERC Regulations. The levied wheeling charges were five times higher than the charges as per WBA & order dated 26.05.2017 of the Commission.
- 4.7. Levy of excess wheeling charges is also in violation of Section 2 (76) read with Section 62 (1)(c) of the Electricity Act, 2003. Section 62 deals with the determination of tariff by appropriate Commission which also includes determination of wheeling charges. Commission has already determined the wheeling charges which are payable on the basis of the units of the energy wheeled. Any other method adopted by Respondents is in violation of above mentioned provisions of Electricity Act, 2003.
- 4.8. Respondents have calculated the wheeling charges taking into consideration as if the distribution system is being utilized by the Petitioners for wheeling of electricity and their contract demand for 24 hours for all the days of the month. The said basis is erroneous as CUF of the solar plants is 20%. Further, distribution system is not utilized for 24 hours as the electricity by solar plants is generated for limited period in a day and also the

distribution system of Respondents not solely utilized by the Petitioners but it is also utilized by various generators.

- 4.9. The action of the Respondents is in violation of the principles of natural justice as no opportunity of hearing was afforded by the Petitioners before changing the method of levy of wheeling charges.
- 4.10. It is contended by the Respondents that wheeling charges are being levied as per Regulation 15 (1) of RERC OA Regulations, 2016. In this regard, it is submitted that as per preamble of RERC OA Regulations, 2016 it has been issued under Section 42 (2) of the Electricity Act, 2003 hence, it applies on open access consumers only and not on generating stations or captive power plants. Thus, only the provisions of RERC Tariff Regulations, 2014 will apply to the Petitioners' CPP which provides that wheeling charges shall be levied on the energy wheeled.
- 4.11. Thus, the action of Respondents levying wheeling charges on capacity contracted instead of energy wheeled is violation of Regulation 86(3)& 86(4) of RERC Tariff Regulations, 2014.
- 4.12. It is submitted that RERC Tariff Regulations, 2014 cannot be superseded by RERC OA Regulations, 2016. In view of both Regulations being valid, wheeling charges cannot be levied by interpretation of RERC OA Regulations, 2016 only. The provisions of Regulation 86(3)(b) of RERC Tariff Regulations, 2014 and provisions of Regulation 15(1) of RERC Open Access Regulations, 2016 have to be interpreted harmoniously.
- 4.13. Commission vide its order dated 13.12.2016 in the matter of M/s Shree Krishna Rolling Mills Ltd. has held that the total energy based on the contracted capacity or the energy utilized by an open access consumer whichever is higher is the energy on which wheeling charges have to be levied and collected.

4.14. In this regard it is submitted that the total energy based on the contracted capacity is the contracted energy which was agreed by the parties at the time of executing WBA i.e. the energy based on the CUF of the power plant as specified by the Commission. As per Regulation 27 of the RE Tariff Regulations, 2014 CUF is 20% for solar power plant. Accordingly, wheeling charges are payable on energy contracted at CUF of 20% for solar power plant or energy utilized whichever is higher.

4.15. Further, Commission vide its order dated 05.03.2019 issued in the matter of "RERC (Connectivity and Net Metering for Rooftop and Small Solar Grid Interactive Systems (First amendment) Regulations, 2018 has capped generation from solar project at CUF of 20%.

4.16. In light of above submissions, it prayed by Petitioners that

(a) Clarify that the wheeling charges shall be recovered on energy actually wheeled on the distribution system from Petitioners' captive power plants to their premises of use from the date of commissioning of captive solar power plant; and

(b) Direct the Discoms to effect billing accordingly; and

(c) Direct the Discoms to revise the bills already raised and allow due refund.

5. Respondents during the hearing and in their replies submitted as under:

5.1. Petitioners are governed by the RERC Open Access Regulations, 2016 which provides specifically at Regulation 15(1) that wheeling charges would be based on contracted capacity or capacity utilized whichever is higher. Open Access is based on capacity as would be evident from various clauses of Open Access Regulations. Whenever open access is granted to the consumers, it is allocated in capacity and therefore, charges are to be levied according to capacity and not according to per unit as claimed by

the Petitioner. Since Regulations provides for wheeling charges on capacity basis, the Petitioner cannot claim contrary to that.

5.2. According to clause 11 of WBA, wheeling charges would be governed by the tariff determined by the Commission from time to time. After coming into force of Open Access Regulations, 2016, wheeling charges are to be paid on the basis of capacity contracted and therefore, claim of the Petitioner that wheeling charges should be paid on actual energy injected is baseless and contrary to the Regulations of RERC in force.

5.3. Regulation 86(3) & 86(4) of the RERC Tariff Regulations, 2014 is only rate which has been determined by the Commission, which does not mean that the Petitioners will not pay wheeling charges on capacity basis. Commission prescribed the rate of capacity charges in terms of Rs./kWh although capacity is declared in terms of MW.

5.4. Further, in petition no. 1368/2018 on similar issue, Commission has held that the wheeling charges are to be taken on contracted capacity, thus this issue has already been settled by this Commission and therefore the petition is liable to be rejected.

Commission's view

6. Commission has considered the submissions, reply, rejoinder and oral arguments made on behalf of the Petitioners and Respondents.

7. Petitioners' main contention is that WBA provides that the wheeling charges shall be payable in accordance with RERC Tariff Regulations, 2014 and shall be levied on the energy wheeled. Whereas Respondents have levied wheeling charges as per OA Regulations, 2016 which are not applicable on the Petitioners. Wheeling charges, therefore, should be levied on the basis of actual energy wheeled as per RERC Tariff Regulations, 2014.

8. Petitioners further submitted that RERC Tariff Regulations, 2014 cannot be superseded by RERC OA Regulations, 2016. Wheeling charges cannot be levied by interpretation of RERC OA Regulations, 2016 only. The provisions of Regulation 86(3)(b) of RERC Tariff Regulations, 2014 and provisions of Regulation 15(1) of RERC Open Access Regulations, 2016 have to be interpreted harmoniously.
9. Per contra Respondents contended that Petitioners are governed by the RERC OA Regulations, 2016 according to which wheeling charges are to be paid on the basis of capacity contracted and therefore, claim of the Petitioner that wheeling charges should be paid on actual energy injected is contrary to the OA Regulations, 2016.
10. According to the Respondents, Commission vide RERC Tariff Regulations, 2014 has determined only the rate of wheeling charges taking various factors into consideration but wheeling charges are to be recovered as per RERC OA Regulations, 2016.
11. Respondents also contended that as per Clause 11 of WBA, any change consequent to such Act, Policies, Rules, Regulations and regulatory directions shall be binding and will have to be complied with by all the parties. As Commission has notified the RERC OA Regulations, 2016, there is no substance in the Petitioners' arguments that wheeling charges are to be paid on the basis of RERC Tariff Regulations, 2014.
12. Commission observes that this case is almost similar to case of M/s Jai Mangal Infrapowers Pvt. Ltd. & Ors. (petition no. 1375/2018 & Ors.) on facts, question arose and relief claimed. Commission in the case of M/s Jai Mangal Infrapowers Pvt. Ltd. & Ors., vide its order dated 23.04.2019 has passed the following order considering the facts and questions arose therein:-

"12. Commission observes that only issue in the matter is that whether wheeling charges should be levied on capacity contracted on energy wheeled.

13. To resolve the issue, Commission looked into the relevant provisions of Open Access Regulations, 2004/2016 and Performa of Standard Agreement appended.

14. Regulation 14 of OA Regulations, 2004 reads as under:

"14. Charges for open access

(1) The Transmission charges or wheeling charges for use of the transmission system of the Transmission Licensee or the distribution system of a Distribution Licensee shall be regulated as under:

(a) Transmission charges and wheeling charges payable by an open access customer shall be determined by the Commission in terms of the regulations framed by the Commission for determination of tariff.

Provided the transmission charges will be determined on the basis of open access capacity contracted or open access capacity utilized, whichever is higher. However, excess open access capacity utilized, up to 5% of open access capacity allocation, occurring for two time blocks of 15 minutes each during a month will be ignored. (emphasis supplied)

(b) Where a dedicated transmission system or a distribution system used for open access has been constructed for exclusive use of an open access customer, the transmission charges or wheeling charges for such dedicated system shall be worked out in terms of the regulations for determination of tariff and shall be borne entirely by such open access customer till such time the surplus capacity is used for other persons or purposes.

(2) In case intra state transmission system or distribution system is used by an open access customer in addition to inter-state transmission system, transmission charges and wheeling charges shall be payable for use of intra-state system in addition to payment of transmission charges for inter-state transmission."

15. Clause 29 of Short Term Open Access Agreement in case of distribution system & for HT supply reads as under:

"29. Billing

(1) _____ (distribution licensee) shall raise the bills at the end of the month for the use of distribution system for wheeling of open access power, as also for regular and standby supply. The bills shall be for :

(a) Wheeling charges for the contracted open access power on distribution system as determined by the Commission from time to time." (emphasis supplied)

16. If Regulation 14 of Open Access Regulations, 2004 is read with Clause 29 of the standard agreement for open access, it is clear that billing for wheeling

charges shall be done on the "contracted" open access power on distribution system and not on the energy actually received by the open access consumer at his end. It can also be established by drawing analogy from Transmission Charges.

17. OA Regulations, 2004 also provide that the transmission charges shall be charged on the basis of open access capacity contracted or open access capacity utilized, whichever is higher.

18. Regulation 15 of Open Access Regulations, 2016, which reads as under:

" 15. Charges for Open Access

(1) The open access customer shall pay the transmission charges and wheeling charges as determined from time to time.

Provided that the transmission and wheeling charges shall be payable on the basis of open access capacity contracted or open access capacity utilized whichever is higher. The excess open access capacity utilized up to 5% of open access capacity allocation occurring to the extent of two time blocks of 15 minutes each during a month shall be exempted."(emphasis supplied)

19. Standard Agreement for Long Term/Short Term Open Access in case of distribution system & for HT supply for open access consumers as provided under OA Regulations, 2016 also provides as under:

"29. Billing

(1) _____ (distribution licensee) shall raise the bills at the end of the month for the use of distribution system for wheeling of open access power, as also for regular and standby supply. The bills shall be for :
Wheeling charges shall be payable on the basis of open access capacity contracted or open access capacity utilized whichever is higher. (emphasis supplied)

20. Thus, Open Access Regulations, 2004, Open Access Regulations, 2016 and standard agreement for open access consumers provide that the transmission/wheeling charges shall be payable as per RERC Open Access Regulations which in turn are on the basis of open access capacity contracted or open access capacity utilized whichever is higher.

21. There is no dispute that at the time of signing the WBA, Petitioners were governed by OA Regulations, 2004/2016. Regulations, 2004 is now replaced by OA Regulations, 2016, therefore, Petitioners shall be governed by OA Regulations, 2016 and has to avail Open Access on the terms and conditions laid down under these Regulations.

22. *The relevant Regulations referred to above clearly mention "capacity contracted or open access capacity utilized whichever is higher" which means that for the purpose of wheeling charges, what shall be considered is the capacity contracted or the energy actually drawn whichever is higher*

23. *As regards the contention of the Petitioner that wheeling charges shall be payable in accordance with RERC Tariff Regulations, 2014, Commission is of the view that wheeling charges are determined for the whole of the State on the basis of overall network utilization as per provisions of the relevant Tariff Regulations. When individually charged, the same has to be based on the provisions of the relevant Open Access Regulations.*

24. *Accordingly, the Commission holds that the total energy based on the contracted capacity or the energy utilized by an open access consumer, whichever is higher, is the energy on which wheeling charges have to be levied and collected and not on any other basis.*

25. *In view of the above, these petitions stand dismissed."*

13. Considering facts and the relief claimed in the present cases which is similar to that of M/s Jai Mangal Infrapowers Pvt. Ltd. & Ors. cases referred to above, the judgment rendered in the above cases squarely applies to these cases also. For the reasons stated in petition no. 1375/18 & Ors., these petitions is liable to be dismissed and accordingly dismissed.

(Prithvi Raj)
Member

(S.C. Dinkar)
Member

(Shreemat Pandey)
Chairman