

**IN THE JHARKHAND STATE ELECTRICITY
REGULATORY COMMISSION AT RANCHI**

Case No. 13 of 2014

M/s Adhunik Power & Natural Resources Limited (APNRL) Petitioner

Versus

M/s Jharkhand Bijli Vitran Nigam Limited (JBVNL) Respondent

**CORAM: HON'BLE MR. JUSTICE N.N. TIWARI, CHAIRPERSON
HON'BLE MR. R.N. SINGH, MEMBER (TECHNICAL)**

For the Petitioner : Shri Sakya Singha Choudhary and
Shri Prinay Deep Shah, Advocates

For the Respondent: Shri Ajit Kumar, Shri Navin Kumar,
Shri Amit Sinha and Shri Rahul Kumar
Advocates.

ORDER

Date – 21st December 2016

In this case the petitioner has sought a direction on the respondent- Jharkhand Urja Vikash Nigam Limited (JUVNL)/Jharkhand Bijli Vitran Nigam Limited (JBVNL) to make payment of Injection charges as well as corresponding Injection losses. The petitioner, in that term, has prayed for review of the Commission's order dated 26.5.2014 whereby the order was passed on the petitioner's petition for approval of tariff for the control period from FY 2012-13 to FY 2015-16 and approval of Capital cost, Business plan and Multi Year Tariff.

2. According to the petitioner, the Commission has, inter alia, directed that the Injection charges shall be paid by the respondent-JUVNL/JBVNL, but the order does not specifically mention about the payment of corresponding Injection losses. The respondent-JUVNL/JBVNL taking advantage thereof denied to make any payment corresponding to the Injection losses. The petitioner has stated that since the Commission had clearly directed the respondent-JUVNL/JBVNL to pay Transmission charges, the Drawal charges and Drawal losses and Injection charges

and Injection losses being part of the system are payable by the respondent-JUVNL/JBVNL.

3. The respondent-JBVNL has contested the petitioner's claim, mainly, on the following grounds:-

i) JUVNL/JBVNL is paying energy charges as measured at the delivery point. The Delivery point, as per the agreement, is the interconnection point of the power station which is at 400 KV PGCIL sub-station at Ramchandrapur, Jharkhand in Eastern Region from the COD for supply of power from seller to procurer for the interim period of 2 years or till the dedicated transmission system for supply of power to the JSEB (as then was), is developed, whichever is earlier. Thereafter, the delivery point stipulated was the interconnection point of power station at JSEB Ramchandrapur 220 KV sub-station.

ii) JUVNL/JBVNL is paying all the Transmission charges (Injection charges, Drawal charges, ERLDC operating charges and ERLDC application fee) to POSCO ERLDC.

iii) The unit corresponding to the Injection losses are deducted as per Clause 4.9.1 of the Power Purchase Agreement (PPA), which reads thus:-

“Transmission losses from the interconnection point onwards would be borne by the procurer and power lost on account of transmission loss would be to the account of the procurer.”

iv) “Inter-connection point” as defined means the point where the power from the power station switchyard bus of the seller is injected into the 400 KV PGCIL sub-station at Ramchandrapur, Jharkhand in Eastern Region.

v) Clause 4.3.1 (b) of the PPA speaks about the payment of the Transmission charges and not about the Transmission losses i.e. Injection losses and Drawal losses.

vi) Clause 4.9.1 of the PPA stipulates that the Transmission losses from the interconnection point onward is to be borne by the procurer and power lost on account of transmission loss is to be on account of the procurer, meaning thereby that only Drawal losses are on account of procurer.

vii) Sub-clause 3.1(v) of Schedule-3 : Tariff of the Agreement – provides that procurer is liable to pay all Transmission charges and losses for taking the energy from the Delivery Point to any where in procurer's network for initial period of two

years from the date of commencement of supply of power or till the dedicated Transmission system is developed, whichever is earlier. That does not provide for payment of Injection losses by the procurer.

4. In view of the said stipulations and the terms of Power Purchase Agreement, the Injection loss is on the part of the petitioner-M/s APNRL.

5. We heard the parties and examined the record.

6. From the record it is evident that the issue relating to Injection charges had also arisen in course of consideration of the petition for approval of tariff of the petitioner for the control period from FY 2012-13 to FY 2015-16.

7. The Commission after examining the provisions of the PPA and the relevant facts and circumstances had recorded its view on the issue of payment of Transmission charges in the following terms:-

“Commission’s View:-

4.39 *The Commission notes with concern that the construction of the Dedicated Transmission System has not yet started. As per the petitioner, JUVNL is yet to give clearance for certain technical parameters, pending which there shall be a further delay in construction of the Dedicated Transmission System. Pending the construction of the Dedicated Transmission System, power is being supplied to JUVNL through the PGCIL network. The petitioner has informed the Commission during the Public Hearing that JUVNL has disputed the payment of injection charges for use of the PGCIL network.*

4.40 *With regard to construction of the Dedicated Transmission System (DTS), the Commission notes that the proposed dedicated transmission line is to be constructed because JUVNL has insisted upon this. The cost of this line will, necessarily, have to be passed on to the consumer. The Commission, therefore, believes that the rationale for construction of the DTS from the power station to JSEB’s Ramchandrapur 220 KV substation should be a net reduction in the cost of power purchase to the consumers. The Commission directs JUVNL to carry out a cost benefit analysis of routing the power from the power station through the Dedicated Transmission System vis-a-vis routing the power through the CTU as is being done currently and submit a report regarding the same to the Commission within two months of issuance of this Order. The Commission considers this exercise necessary in interest of minimizing the cost of the consumer.*

4.41 *With regards to the non-payment of injection charges by JUVNL, the Commission notes that as per the prevalent practice in the industry, transmission charges for procurement of power under the long term contract are to be borne by the*

procurer. The Commission directs that the injection charges must be paid by JUVNL (“emphasis added”)

4.42 *The Commission directs the petitioner and JUVNL to constitute a joint committee to resolve all the issues regarding the transmission of power from the power station to JUVNL. The committee should look into the need for the proposed Dedicated Transmission System, the technical configuration of the proposed line and the sharing of costs of the transmission line. The petitioner and JUVNL should, after mutual discussions and agreement, arrive at a way forward vis-a-vis the issue of the Dedicated Transmission System and should submit a status report regarding the same to the Commission within two months of issuance of this Order.*

4.43 *The Commission believes that both the parties should work towards resolution of issues and ensure that the end consumer is not harmed. The costs attributable to delay in construction of the Dedicated Transmission System shall not be passed onto the consumers.” (Emphasis Added).*

8. According to the petitioner, though there is clear direction of the Commission to the JUVNL to pay the injection charges, the injection losses is not being paid by the JUVNL on the ground that the Commission has not directed for payment of corresponding injection losses.

9. Both the parties made elaborate submissions contesting the issue of payment of injection losses as a part of Transmission charges.

10. In course of hearing Mr. Ajit Kumar, learned counsel who led the team of Advocates on behalf of the JUVNL/JBVNL, submitted that there is no dispute that the Transmission charges are to be paid by the JUVNL/JBVNL from delivery point and since the delivery point is well defined in the PPA, there is no confusion to that regard. The only point of difference is regarding payment of injection losses. JUVNL/JBVNL has been making payment of Drawal losses which according to them is component of Transmission charges.

11. In view of the above, the point of difference gives rise to the issue: “Whether the Transmission charges include Drawal losses as well as Injection losses and whether the Injection losses are also payable by the respondents from the delivery point.

12. Since the said issue relates to the Power Purchase Agreement (PPA) between the parties, we meticulously scrutinized the relevant terms of the said PPA.

13. Article-1 of the Power Purchase Agreement dated 28.9.2012 is devoted to the definitions and interpretations of the terms used in the Agreement. It defines "Delivery Point" as thus:-

"Delivery Point" shall mean the Interconnection Point of the power station which is at 400 KV "PGCIL Sub-station at Ramchandrapur, Jharkhand" in Eastern Region from the CoD for supply of power from Seller to Procurer for the interim period of 2 years or till the Dedicated Transmission System for supply of power to JSEB is developed whichever is earlier and thereafter the Delivery Point shall mean the interconnection point of the power station of JSEB Ramchandrapur 220 KV sub-station."

14. **Further, "Dedicated Transmission System" defined to mean "the Transmission system to be developed by Seller within two years from CoD including 400 KV Transmission line from Power Station Bus Bar upto the JSEB's Ramchandrapur 220 KV sub-station. For development of Dedicated Transmission System, the Capital Cost to be incurred at Seller's sub-station (including cost of additional bay, transformer, etc) and 400 kV transmission line till the JSEB's Ramchandrapur 220 kV sub-station shall be borne by the Seller and the Capital Cost to be incurred at Procurer's sub-station (including cost of additional bay, transformer etc) shall be borne by the Procurer."**

15. From plain reading of the said terms of the Agreement it is evident that the evacuation arrangement, considering interconnection point with PGCIL, was temporary in nature and the same was an interim arrangement for a period of two years or till the Dedicated Transmission System is developed, whichever is earlier.

16. It is clear that the development of the Dedicated Transmission System was time bound and the maximum prescribed period was 2 years.

17. According to the terms of the Agreement, the petitioner-APNRL was obligated to develop Dedicated Transmission System within the said period of two years from the CoD and for a period of two years or till the Dedicated Transmission System is developed, the wheeling or Transmission charges incurred by the Seller-APNRL were to be reimbursed by the Procurer - the then JSEB.

18. In this context it is also relevant to refer the Procurer's obligations specified in clause 4.3.1 (b) of the PPA. It has been agreed that the Procurer shall be

responsible for the payment of Transmission charges from the power sub-station Bus-bar onward and applicable RLDC/SLDC charges, limited to the charges applicable to the contracted capacity of the Procurer. The Procurer shall be also liable to reimburse any of the charges to be paid by the Seller for the interim period of two years or till the Dedicated Transmission system from power station Bus-bar to the JSEB's Ramchandrapur 220 kV sub-station is developed for the supply of power to the Procurer, whichever is earlier.

19. It has been admitted by the parties that the Dedicated Transmission System has not been developed till date. As has been stated above, the Commission had also expressed its concern, in the provisional Tariff Order dated 26.5.2014, for the delay in constructing Transmission system. The petitioner had taken the plea that the construction of the Dedicated Transmission System could not be started as JUVNL/JBVNL has not given clearance of certain technical parameters. The Commission had considered the facts and circumstances and had directed the JUVNL to submit a report on the cost benefit analysis of routing the power through Dedicated Transmission System vis-a-vis routing the power through PGCIL system, within two months of issuance of the order dated 26.5.2014. It is admitted position that JUVNL/JBVNL has not complied with the direction of the Commission and has not submitted the cost benefit analysis report to the Commission till date.

20. **Both the parties are engaged in playing blame game finding fault in one another, but neither of them has performed their respective part. The arrangement which was envisaged only for two years in the PPA is still continuing. The parties thereby have diluted the said term and are mutually carrying on the same arrangement which was meant for a maximum period of two years.**

21. In view thereof shifting of Delivery Point, as provided in the terms of the Agreement, has been mutually stalled by conduct of the parties. The respondents have clearly admitted that they have been paying Transmission charges to the petitioner from the Delivery Point i.e. the 400 KV PGCIL sub-station at Ramchandrapur, Jharkhand in Eastern Region.

22. Learned counsel appearing on behalf of the respondents fairly submitted that there is no dispute regarding payment of the Transmission charges which includes the Drawal charges and Injection charges as well as Drawal losses.

He submitted that Injection losses are not the part of Transmission charges and they are not liable to pay Injection losses.

23. Learned counsel appearing on behalf of the petitioner, on the other hand, submitted that the Injection losses do not relate to pre interconnection Transmission system but are adjustable as part of loss in the PGCIL system when the power is injected into Transmission system. The same is evident from the CERC (Sharing of inter-State Transmission Charges and Losses) Regulations 2010 which clearly provides that the Injection loss is a part of System losses of PGCIL/ISTS (Inter-State Transmission System), adjusted at the Interconnection Point when the power is injected into Inter-State Transmission System (ISTS) and accountable at the Interconnection Point post injection.

24. Learned counsel submitted that in Schedule-3 of the PPA it has been also clearly mentioned that the Procurer is liable to pay all the Transmission charges and losses from the Delivery Point to anywhere in the Procurer's network for initial period of two years from CoD or till the Dedicated system is developed for supply of power whichever is earlier.

25. He urged that though the parties have entered into a Long Term PPA, it is an admitted position that the petitioner-APNRL has taken Short Term Open Access from 400 KV PGCIL sub-station at Ramchandrapur, Jharkhand in Eastern Region for supply of power to JUVNL/JBVNL, which envisages the Delivery Point of the Procurer in the 400 KV PGCIL sub-station at Ramchandrapur, Jharkhand in Eastern Region, for the interim period. As noticed above all the losses which include Injection loss for the interim period, from the Delivery Point of the Procurer's network, are to be borne by the Procurer – which is included in the Transmission loss in the power supply transaction from the Delivery Point i.e. 400 KV PGCIL sub-station at Ramchandrapur, Jharkhand in Eastern Region. Learned counsel referred to Regulation 6 (Mechanism of sharing of ISTS losses) and other provisions of the said CERC Regulations 2010 to buttress his point.

26. Having heard learned counsel for the parties and considered the facts and material on record, we find that though the respondents have admitted the liability of paying Transmission charges, they have not brought anything on record to substantiate that the Transmission charges have no component of Injection losses. On the other hand, the petitioners have referred to the provisions of the CERC

Regulation framed under the provisions of Electricity Act 2003 as well as stipulations of the PPA which go to support that the Injection losses are part of Transmission charges and is payable by the Procurer from the Delivery Point which is admittedly 400 kV PGCIL sub-station at Ramchandrapur, Jharkhand in Eastern Region, till date.

View of the Commission

27. We, therefore, hold that the Transmission loss including the Injection loss which is a component of Transmission process as per the Schedule given to ERLDC from the Injection Point onward, which for the present is 400 KV PGCIL sub-station at Ramchandrapur, Jharkhand in Eastern Region, is to be borne by the respondent JUVNL/JBVNL.

28. Since the PPA clearly provided for construction of Dedicated Transmission system within two years of CoD, and the same has not been fulfilled by the petitioner-APNRL till date, one more opportunity is being given to the parties to fulfil the obligations/directions of the Commission dated 26.5.2014. The JUVNL/JBVNL are allowed further time till 31.1.2017 for submitting a report on cost benefit analysis to the Commission.

29. The respondents who are paying Transmission losses from the Delivery point which is 400 KV PGCIL sub-station at Ramchandrapur, Jharkhand in Eastern Region, under short term arrangement, shall go on paying the same including the Transmission losses i.e. Drawal losses and the Injection losses till any order is passed by the Commission, after submission of report of the respondents on cost benefit analysis.

30. This petition is, accordingly, disposed of in the above terms.

Sd/-
(R.N. Singh)
Member (Technical)

Sd/-
(N.N. Tiwari, J)
Chairperson