

Background

On analysis of the petition filed by CPT, the following are noted.

1. CPT was drawing electricity from Kataribagh sub-station at 11 kV with a contract demand of 6500 kVA till 26-11-08.
2. From 26-11-08, Licensee is drawing power at 110 kV from their own sub-station.
3. For giving power at 110 kV, KSEB has demanded from CPT the following amounts.
 - a. Rs 1,06,06,284/- as cash and Rs 118,41,700/- as Bank Guarantee towards Security Deposit.
 - b. Rs 201.5 lakh in cash towards 1/3rd construction cost of Kataribagh sub-station.
 - c. Rs 26,32,500/- towards service connection charges for effecting 110 kV supply.
4. CPT remitted the Security Deposit as demanded by KSEB. Service connection charges was also remitted under protest so that the sub-station could be energized before the commencement of the Volvo Ocean Race.
5. CPT had remitted application fee of Rs 15000/-, Rs. 63,51,000/- towards cost of bay expansion at Kataribagh sub-station, Rs. 12,35,416/- towards security deposit at the time of power allocation.

Hearing of the matter by the Commission

The petition was posted for hearing on 30th May 2009 but was later postponed to 24th June 2009 and was heard on that date. Petitioner while presenting the case argued that Section 46 of the Electricity Act 2003 stipulates that the State Commission may by regulation, authorize the Distribution Licensee to charge from a person requiring supply of electricity in pursuance of Section 43, any expense reasonably incurred by the Licensee in providing electrical line or electrical plant used for the purpose of giving that supply. KSERC did not authorize KSEB to collect service connection charges from any consumer as per the above clause.

Also Section 7 of Supply Code 2007 issued by KSERC authorizes any licensee to recover from the owner or occupier of any premises requiring supply, only the expenses reasonably incurred by the licensee for providing any electric lines or electric plants specifically for the purpose of giving supply. Further sub-section 3 states that the expenditure charged by the licensee shall be based on the schedule of rates approved by the Commission. Thus after publication of Supply Code 2005, the licensee can collect only the expenses reasonably incurred at the rates approved by the Commission and cannot collect any other amount. CPT has already remitted the estimated amount as per the Supply Code 2005. In the order against the appeal from M/s. Durocoat Paints Pvt. Ltd, the Electricity Ombudsman has concluded that the demand of service connection charge from the consumer was not correct and should be withdrawn.

Respondent stated that CPT requested for power allocation for 8.5 MVA in 110 kV supply on 02-04-2003. Later CPT intimated that they require only 6.5 MVA. CPT had remitted the cost of bay expansion on 30-03-2005. KSEB had demanded vide letter dated 15-09-2003 for payment of Rs 201.5 lakh towards 1/3rd cost of the substation. But CPT did not remit this amount and intimated that the amount shall be remitted subject to the approval of the Commission. Respondent has further stated that as CPT has not so far taken up the issue with KSERC, and hence necessary steps will have to be taken for realization of the amount from CPT.

Respondent stated that the "Terms and Conditions of Supply of Electrical Energy for KSEB" came into force from 24-08-2005. Respondent stated that the approach of CPT is to remit the cost of works as per the rates /cost data prevailing during 2003 for the work agreed upon in 2003-04 and to avail the benefit of Supply Code 2005 which came into force later. It is obligatory from the part of the petitioner to make all the items of payments as prevailed at the time of acceptance of the project where Service Connection Charges was also an integral part.

Respondent stated that Commission has vide order dated 10-08-2005 permitted KSEB to levy charges for all pending connections in accordance with the terms and conditions of supply which were in force at the time of submitting applications.

Respondent further stated that Service Connection Charge was introduced enabling KSEB to recover a portion of the cost incurred by it in its back end systems for giving a service connection. Also KSEB needs to invest a huge amount to strengthen its generation, transmission and distribution networks. Hence a consumer applying for power allocation has to bear a part of the cost incurred by the licensee for developing /increasing the capacity of transmission/ distribution system.

The order of Ombudsman dated 20-02-2007 is not applicable in this case because petitioner is not a consumer but a Licensee. Section 7 of Supply Code 2005 is applicable in the case of consumer only. The "Terms and Conditions of Supply" approved is not applicable in the case of a Licensee.

Petitioner stated that the amount of Rs 63,51,000/- estimated by the respondent includes anticipated excess @ 50% . Petitioner pointed out that the actual cost borne by respondent is much less than the estimate. Moreover petitioner is not responsible for the delay caused by respondent. Petitioner further stated that after the commissioning of the new substation there is no change in contract demand which remains the same at 6500 kVA. Petitioner reiterated that the agreement was executed only because of the urgency in connection with the Volvo Ocean Race. Service connection charge was paid under protest. Also in the PPA there is no provision for collection of service connection charges.

Petitioner informed that the infrastructure developed for drawing power from Perumanoor substation for which an amount of Rs. 1.73 crore was paid, in the year 1996, is now being utilized by the respondent for giving power to other consumers. This has resulted in substantial gain for respondent.

Petitioner has stated that as per letter dated 25th May 2004 from Chief engineer Transmission (South), KSEB, for changeover to 110 kV with the same connected load, no additional payment whatsoever is necessary except SD and that the SD to be paid shall be arrived at as prevailing at the time of execution of agreement. Also there is no change in the source of supply.

The issue of payment of 1/3rd cost of Kataribagh substation was discussed and deliberated at various levels with KSEB officials for the last 15 years and they have finally agreed for the waiver of this amount. Petitioner admits that they agreed to remit the amount of Rs 201.5 lakh vide letter dated 17th December 2003 on the ground that the contract demand would be more than 6500 kVA. But respondent has clarified in letter dated 25th May 2004 that petitioner need not pay any additional amount if the contract demand is only 6500 kVA.

Analysis by the Commission

Petitioner's claim is that after the publication of supply Code 2005, respondent cannot claim any charge that is not allowed by the Supply Code. Petitioner has cited an order of the Ombudsman in this regard.

Respondent has taken contradicting stands. Respondent has stated that the estimate of the work was sanctioned in 2003 but the Terms and Conditions of Supply was approved by Commission in 10-08-2005 only. Hence CPT is bound to pay Service Connection charge.

But respondent while replying to the reference to the order of Ombudsman has clearly stated that CPT is not a consumer but a Licensee and hence the order of Ombudsman is not relevant.

These two statements are contradictory. In one place respondent refers to Terms and Conditions of Supply which is applicable for consumers. Then the order of the Ombudsman will be binding on respondent. If the order of Ombudsman is not binding on CPT because CPT is a Licensee how can Terms and Conditions of Supply be binding on CPT? Thus there is no consistency in the stand taken by respondent and the stands are contradictory and not acceptable.

Further respondent has stated that Service Connection charge was introduced enabling KSEB to recover a portion of the cost incurred by KSEB in its back end systems for giving a service connection. Also KSEB needs to invest in generation and transmission.

Changeover from 11 kV to 110 KV by the petitioner is without any change in contract demand and the source is the same sub-station. Petitioner has paid the cost involved for additional investment in the sub-station. As the contract demand remains the same there is no new upfront cost involved. Thus respondent has no right to claim any upfront cost in this regard. Whether the petitioner is a consumer or licensee is not relevant as there is no change in contract demand. Commission would like to point out that respondent has not only claimed an amount which has no justification but also has tried to confuse with the issue of consumer/ licensee status. Commission summarily dismisses the claim on service charge from the petitioner.

Coming to the issue of 1/3rd cost of Kataribagh substation, it is noted that respondent could not produce any documentary proof to show that there was any attempt to collect the cost before the commencement of works. How the substation was commissioned without collecting the cost from CPT is not made clear. Thus Commission concludes that the argument of petitioner that respondent in letter dated 25th May 2004 has not insisted on the cost of Kataribagh substation as a proof to reinforce his argument is accepted.

Order of the Commission

The claim of service connection charge amounting to Rs. 26,32,500/- from CPT is not correct and the same has to be refunded to CPT within two months from the date of this order. This can be done by way of adjustment of monthly electricity charge due from CPT.

Sd/-

M.P. Aiyappan
Member (Finance)

Sd/-

C. Abdulla
Member (Engg).

Approved for issue

Secretary-in-Charge