

BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

**Quorum**

Shri Desh Deepak Verma, Chairman  
Smt. Meenakshi Singh, Member  
Shri I. B. Pandey, Member

**In the matter of:**

In the matter of Admissibility of petition no. 987 of 2014 for denial / delay by Uttar Pradesh Power Transmission Corporation Ltd. (UPPTCL) in handing over the physical possession of the 220 kV R. C. Green Substation at Greater Noida to Noida Power Company Ltd. (NPCL)

Noida Power Company Ltd., Commercial Complex, 'H' Block, Alpha II Sector,  
Greater Noida (UP)

Petitioner

Versus

1. Uttar Pradesh State Load Dispatch Centre, Uttar Pradesh Power Transmission Company Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow (UP)
2. Uttar Pradesh Power Transmission Company Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow (UP)
3. Uttar Pradesh Power Corporation Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow (UP)

Respondents

**Present in the Hearing:**

**Respondents**

1. Shri Zahir Ahmad, Executive Engineer, UPSLDC
2. Shri S. P. Gupta, Executive Engineer, UPSLDC
3. Smt. Sangeeta Saxena, Executive Engineer, SLDC
4. Shri Arvind Mittal, Superintending Engineer, SLDC
5. Shri Puneet Chandra, Advocate, UPPTCL
6. Shri Rahul Srivastava, Advocate, Counsel for UPSLDC

**Petitioners**

1. Rajeev Goyal, GM – (Projects & Power Trading), NPCL
2. Alok Sharma, Manager - Legal
3. Shri A. K. Arora, Resident Manager, NPCL.

**ORDER**  
(Hearing on 23.04.2015)

The Noida Power Company Ltd. the Petitioner herein filed this petition no. 987 of 2014 praying the Hon'ble Commission to declare that the Petitioner is entitled to own, operate and maintain the 220kV Substation at R.C. Green, Greater Noida being a distribution licensee and UPPTCL, Respondent No.1 be directed to hand over the physical possession of the 220kV Line from 400kV Greater Noida (Pali) Substation to R.C. Green Substation and 220kV R.C. Green Substation and associated facilities to the Petitioner mainly on the following grounds inter-alia, be also permitted:

- a) that the land on which R.C. Green Substation has been constructed is owned by the Petitioner;
- b) that the Petitioner and GNIDA decided to construct R.C. Green Substation at their own cost;
- c) that based on the representation made by UPPCL (Respondent No. 3), acting as STU at that point of time, GNIDA awarded construction work of R.C. Green Substation to them under "Full Deposit Scheme of GNIDA";
- d) that as per MoU date 09.09.2009 and 17.02.2011 the UPPTCL, Respondent No. 1 has agreed to handover physical possession of 220kV R. C. Green Substation to GNIDA or its Representative and in the meanwhile to operate and maintain the same at the rate of Rs. 5.00 Lacs per month;
- e) that the GNIDA in its 94<sup>th</sup> Board meeting decided to hand over the physical possession and ownership of the 220kV R.C. Green Substation to the Petitioner upon payment of Rs. 67.50 crores to them;
- f) that the Petitioner accordingly paid Rs. 67.50 crores to GNIDA and informed the same to the UPPTCL, Respondent No. 1 with a request to hand over the physical possession of the 220kV R.C. Green Substation to the Petitioner;
- g) that GNIDA also informed the UPPTCL, Respondent No. 1 to hand over the physical possession of 220kV R.C. Green Substation to the Petitioner;
- h) that the ownership of 220kV R.C. Green Substation and associated lines rest with the Petitioner; and

- i) that the full cost of two numbers of 220 kV Bays and one 315MVA ICT at 400 kV Greater Noida (Pali) Substation was paid by the Petitioner for the exclusive benefit of the consumers of Greater Noida area.

During the hearing on 23.03.2015, the Respondent No. 1 has filed its preliminary objection application on the maintainability of the Petition before the Commission on the basis of Section 86 (1) (f). The Section 86 (1) (f) reads as under:

**Section 86. (Functions of State Commission):** --- (1) The State Commission shall discharge the following functions, namely: -

.....

.....

(c) facilitate intra-State transmission and wheeling of electricity;

.....

.....

(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;

The Contention of the Respondent No. 1 is that:

- a. That the provision of section 86 (1) (c) of the Electricity Act 2003 is ex parte and not applicable at all to the present dispute.
- b. That provision of section 86 (1) (f) of the Electricity Act 2003 empowers the Hon'ble Commission to adjudicate upon dispute between licensees and generating companies and to refer to any dispute to arbitration.
- c. That the petitioner is admittedly a distribution licensees as defined under Section 2 (17) of the Electricity Act 2003 and according his own admission in para 2 of the present petition is as deemed distribution licensee in the terms of the first proviso appended to section 14 of the Electricity Act 2003.
- d. That none of the respondents are Generating Companies, the respondent no. 1 is a State Transmission Utility and functioning under the provisions of section 39 of the Electricity Act 2003. On the basis of own admission of the petitioner (para 2 of the petition), the respondent 2 is a part of the respondent 1 and he is discharging its functions as per section 32 of the Electricity Act 2003.

- e. That further as per petitioner's own admission, (Para 2 of the petition) the respondent no. 3, the U.P. Power Corporation Ltd. was looking after the work related to transmission in the state prior to the incorporation of the U.P. Power Transmission Corporation on 18.7.2007. Further the petitioner has itself stated that the respondent no. 3 undertakes bulk purchase and bulk sale of electricity for its Subsidiary Discoms in the State.
- f. That from the perusal of the aforesaid facts, it is clearly that the dispute which has been raised by the petitioner by means of the present petition is not referable to section 86 (1) (f) of the Electricity Act 2003, the same is not maintainable therefore the present petition is liable to be rejected.

The Petitioner vehemently contested and argued on the issue of maintainability raised by the Respondent No.1 and placed its arguments based on the legal authorities. As per Petitioner's arguments, the Commission has the proper and appropriate jurisdiction to hear the disputes between two licensees. In the present matter the Petitioner is a Distribution Licensee and the Respondent No. 1 is a Transmission Licensee.

The Commission directs the Petitioner to file its reply to the objections on maintainability application filed by the Respondent No. 1 within 10 days. The Respondent No. 2 has filed their reply to the petition and is taken on record. The Respondent No. 1 and 3 are directed to file their Counter Affidavits within 15 days and the Petitioner can file its rejoinder affidavit, if any, within one week thereafter.

During the hearing the petitioner submitted that they have filed the objections on the maintainability application filed by the respondent no. 1 and they have provided the copies to the respondent. He further submitted that the objections raised by the respondent no. 1 that the Hon'ble Commission has no jurisdiction under section 86 (1)(f) to adjudicate between the two licensees, but can adjudicate disputes only between generating companies and licensees, is an erroneous interpretation of section 86 (1)(f). It is an admitted fact that the petitioner is a distribution licensee under the Electricity Act 2003 whereas respondent no. 1 is State Transmission Utility

During the hearing on 23.4.2015 Shri Rajeev Goyal appearing on behalf of NPCL submitted that the reply on the maintainability issues raised by UPPTCL has been submitted and a copy has been provided to the respondent. Shri Puneet Chandra, Advocate appearing on behalf of UPPTCL requested the Commission to decide whether the petition is maintainable before it or not.

The Commission observed that the issue of maintainability and merits of the petition shall be decided simultaneously. Shri Puneet Chandra submitted that one month time may be provided to file the objection to the main petition.

The Commission enquired why one month time is required to file the objections. UPPTCL replied that some information is to be collected from the field so time is needed. He further submitted that Greater Noida Authority should be included in the case as the contract clause is between UPPTCL and Greater Noida Authority.

The Commission enquired from the petitioner as to what they have to say on this issue. NPCL submitted that they will reply on the issue before 1<sup>st</sup> May, 2015. Shri Rahul Srivastava, Advocate appearing on behalf of SLDC said that they have nothing to say in this matter.

The Commission directed one month time can not be granted and this is the last opportunity to file the reply. List on 14.5.2014 at 15:00 hrs.

(I. B. Pandey)  
Member

(Meenakshi Singh)  
Member

(Desh Deepak Verma)  
Chairman

Dated: 11.05.2015