

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Shri Ashok Basu, Chairperson**
- 2. Shri Bhanu Bhushan, Member**

Petition No. 24/2007

In the matter of

Refusal No 131 of 25.1.2007 by the Western Regional Load Despatch Centre of the open access application filed by Tata Power Trading Company Limited for transmission of 27 MW power through Eastern Regional Load Despatch Centre and Orissa State Load Despatch Centre from Nava Bharat Ventures Ltd, on the ground of "No consent from OPTCL".

And in the matter of

1. Nava Bharat Ventures Ltd, Hyderabad
 2. Tata Power Trading Company Ltd, Mumbai
-Petitioners**

V E R S U S

1. Western Regional Load Despatch Centre, Mumbai
 2. Eastern Regional Load Despatch Centre, Kolkata
 3. Orissa Power Transmission Corporation Ltd, Bhubaneswar
 4. Grid Corporation of Orissa Ltd, Bhubaneswar
 5. Eastern Regional Power Committee, Kolkata
-Respondents**

The following were present:

1. Shri G.R.K. Prasad, Advocate, NVBL
2. Shri Sunil Agrawal, TPTCL
3. Shri S.S. Barpanda, ERLDC
4. Shri R.U. Dutta, WRLDC
5. Shri. J.K. Khatre, ERPC

**ORDER
(Date of Hearing: 6.3.2007)**

This petition has been filed jointly by M/s. Nava Bharat Ventures Ltd and Tata Power Trading Company Ltd. for a declaration that Refusal No 131 dated

25.1.2007 by the first respondent, vide which the second petitioner was denied short-term open access for transmission of power on the ground that there was no consent from the third respondent was illegal, unreasonable and contrary to law.

2. The first petitioner has established a coal-based captive power plant with a capacity of 30 MW at Meramundali in the State of Orissa. Orissa Electricity Regulatory Commission vide its order date 11.1.2005 in Case No 133 of 2004 had permitted the first petitioner to trade its surplus energy by way of sale either to the fourth respondent or to some other party on mutually acceptable terms and conditions, after the fourth respondent gave its no objection for sale of surplus power by the first petitioner to a third party. Subsequently, Memorandum of Understanding (MOU) was signed on 27.12.2005 between the third and fourth respondents on the one hand and the first petitioner on the other, for short-term open access to the transmission system of the third respondent. A "short-term open access commercial agreement" between GRIDCO and Nava Bharat Ferro Alloy Ltd was also signed by the two parties on 5.6.2006. It has been averred that open access was being allowed by the third respondent for transmission of surplus power sold by the first petitioner to inter-State traders from time to time.

3. The petitioners are said to have entered into an agreement on 20.12.2006 for sale of 27 MW of surplus power generated by the first petitioner during the period April to June 2007. The second petitioner then filed its application dated 18.1.2007 with the first respondent for grant of inter-State open access for

transmission of 27 MW of electricity from OPTCL periphery to the interconnection between MP and CTU. The open access is, however, stated to have been denied by the first respondent under Refusal note No.131 dated 25.1.2007 citing “NO CONSENT FROM OPTCL”, as the reason. Enclosure to the refusal note contains the following remarks by Orissa State Load Despatch Centre, viz.:

“Commercial clearance from GRIDCO and Technical clearance from OPTCL is awaited. “

4. Thereupon, the petitioners moved Member-Secretary, Eastern Regional Power Committee (ERPC), the fifth respondent, under Regulation 35 of the Central Electricity Regulation Commission (Open Access in inter-State Transmission) Regulations, 2004 (the regulations), with a request to issue appropriate direction to the third respondent to grant open access. Regulation 35 is extracted hereunder:

Redressal Mechanism

35. All complaints regarding unfair practices, delays, discrimination, lack of information, supply of wrong information or any other matter related to open access in inter-state transmission shall be directed to the Member Secretary, Regional Electricity Board or Regional Power Committee, as the case may be, of the region in which the authority against whom the complaint is made, is located. The Member Secretary, Regional Electricity Board or the Regional Power Committee, as the case may be, shall investigate and endeavour to resolve the grievance:

Provided that any matter which the Member Secretary, Regional Electricity Board or the Regional Power Committee, as the case may be, is unable to resolve, shall be reported to the Commission for a decision.

5. Member-Secretary ERPC vide his letter dated 2.2.2007 asked the third respondent to explain the technical constraints in the State grid, if any, for not

allowing open access. Member-Secretary ERPC had also proposed to hold hearing on 8.2.2007 to resolve the issue. The third and fourth respondents were advised by Member-Secretary ERPC to attend the hearing.

6. In reply, to Member-Secretary, ERPC the fourth respondent vide its letter dated 6.2.2007 explained that in view of the anticipated increase in the demand within the State, it had requested all CPPs in the State to sell their surplus power to it. Besides, the fourth respondent also stated that the first petitioner had not installed SCADA facility for real time monitoring of transactions as required under clause 10.5 of the Orissa Grid Code. The third respondent in its fax message dated 7.2.2007, also alleged that the first petitioner had not complied with provision of Chapter 4.11 (Data Communication Facilities) and Chapter 10.5 of the Orissa Grid Code.

7. It has been submitted on behalf of the petitioners that the meeting called by the Member-Secretary ERPC was held as scheduled on 8.2.2007, but was not attended by the third and fourth respondents on the plea of their pre-occupation with the hearing before OERC. The petitioners have alleged that the fifth respondent had failed to resolve the dispute. Accordingly, the present petition has been filed seeking a declaration that the Refusal No 131 dated 25.1.2007 communicated by the first respondent on the application made by the second petitioner, is illegal. In addition, the petitioners have prayed for certain other related reliefs and direction.

8. We have heard the counsel for the first petitioner and the representative of the second petitioner. However, none appeared on behalf of the third and fourth respondents. We also heard the representatives of the other respondents present.

9. At the hearing before us, the representative of the second petitioner produced a copy of Member-Secretary ERPC's letter No.ERPC/SE(C)/OA-NBVL/3994-4000 dated 5.3.2007. It is seen from this letter that Member-Secretary ERPC has examined the issue in detail based, inter alia, on the submissions made by the third and fourth respondents through their letters dated 7.2.2007 and 6.2.2007 respectively. Since they did not attend the hearing on 8.2.2007, the Member-Secretary again sought their views on petitioner's submissions through his letter of 12.2.2007, and has duly considered the reply received from the fourth respondent on 2.3.2007. Member-Secretary, ERPC has not found the contentions of the third and fourth respondents worthy of acceptance to deny short-term open access to the petitioners as in the view of Member-Secretary, ERPC their contentions are not in conformity with the spirit of the Electricity Act, 2003. Member-Secretary, ERPC has accordingly concluded that the third and fourth respondents should allow short-term open access to the petitioners on the transmission system owned by the third respondent, immediately. We endorse the same.

10. As Member-Secretary, ERPC has already resolved the dispute in accordance with the procedure prescribed under the regulations, the parties shall

take further steps in consonance with the decision of the Member-Secretary, ERPC in accordance with law. We would also like to impress upon all those associated with the power sector of the need to contribute for the growth of the sector and to help in overcoming the power shortages by facilitating conveyance of surplus power to the utilities who are deficit in power, to the extent technically feasible.

11. Before parting, we would like to place on record our observation on certain issues which have come to light during the hearing of this petition.

- (a) The letter dated 6.2.2007 from the fourth respondent to Member-Secretary, ERPC clearly reflects an attempt to force the first petitioner to sell its surplus power to the State Utilities only. This is not proper, particularly when the Orissa Electricity Regulatory Commission, in its order dated 11.1.2005 in Case No.133 of 2004, had allowed the first petitioner the freedom to sell its surplus power to other parties. What is most important, more so in the present scenario of extensive load shedding in many States, is that all available surplus power is allowed to come into the grid, whoever may be the purchaser.
- (b) As per Section 32(1) of the Electricity Act, 2003, each State Load Despatch Centre has been assigned the status of the apex body to ensure integrated operation of the power system in the State. It implies jurisdictional independence and impartial

functioning of the State Load Despatch Centres. The SLDCs should not operate as subordinate offices of State utilities, even if they are a part of the SEB/State Transmission Utility.

- (c) In case an inter-State open access involves buying/selling power from/to an entity embedded in the State grid, the concerned RLDC must obtain the prior consent of the concerned SLDC, since the open access transaction has to be duly accounted for in the net drawal schedule of that State. If prior consent is not on record, there could be intractable disputes regarding scheduling, etc. later on.
- (d) Regulation 18 (i) of the regulations specifies that the mismatches between the scheduled and actual drawal/injection shall be met from the grid and shall be governed by UI pricing mechanism applicable to inter-State transactions. We have noted with concern certain provisions in the MOU dated 27.12.2005 which contravene the regulations. When this was pointed out during the hearing on 6.3.2007, the first petitioner averred that the provisions were forced on them by the third and fourth respondents. This makes the matter even more serious. It also reflects a lack of understanding of how an interconnected power system operates. We would, therefore, endeavour to clarify the position as under:

Suppose, an inter-State open access customer (the supplier) embedded in a State grid is scheduled to supply 20 MW. Suppose again, the intra-State transmission loss on account of this open access transaction has been estimated as 1.0 MW. The net drawal schedule of the State would then be reduced by 19 MW, on account of the resulting export. Now suppose, the above open access customer is supplying only 18 MW at a particular time. For 2 MW of under-supply, he should be required to pay UI charges into the State UI pool account. Other things being the same, this under-supply would result in an over-drawal of 2 MW by the State from the regional grid. The UI charge payment by the open access customer would enable to the State to pay to the regional UI pool account for 2 MW over-drawal from the regional grid. The mechanism would thus work on a back-to-back basis, with financial immunity for State utilities in case the open access regulations are fully implemented.

- (e) We have also noted references to ABT, injection limit of 105% and disallowance of UI under certain conditions in the “Short-term open access commercial agreement” dated 5.6.2006 referred to in para 2 above. We must point out that the limits of 105% and 101% have been specified by the Commission in the context of gaming in availability declaration where the

beneficiaries have long-term lien over the power plant capacity. These limits have no relevance where no availability linked capacity charges are being paid, and the State utilities only provide open access.

- (f) Regulation 25 of the regulations requires the concerned STU to install the Special Energy Meters for and at the cost of the embedded open access customers.
- (g) Since any mismatch between the scheduled and actual drawal/injection by an open access customer shall be accounted through the UI mechanism as clarified above, and the State utilities would be unaffected operationally and financially, there is no need for on-line monitoring of actual injection/drawal, and consequently no real need for SCADA and PLCC. The absence of SCADA and PLCC, therefore, cannot be accepted as a reason for not allowing open access.

12. We direct that this order be also brought to the notice of all State Electricity Regulatory Commissions, SLDCs, State Utilities, RPCs, RLDCs and the CTU for their information and guidance.

13. With this Petition No 24/2007 stands disposed of.

Sd/-
(Bhanu Bhushan)
Member
New Delhi dated the 7th March, 2007

Sd/-
(Ashok Basu)
Chairperson