

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri R.Krishnamoorthy, Member**
- 3. Shri S.Jayaraman, Member**
- 4. Shri V. S. Verma, Member**

**Petition No 151/2009  
(Suo-motu)**

**In the matter of**

Denial of open access in violation of open access regulations.

**And in the matter of**

Delhi Transco Ltd (State Load Despatch Centre) Delhi ...**Respondent**

**The following were present:**

Shri V Venugopal, SLDC, Delhi  
Shri B C Mathur, SLDC, Delhi  
Shri Bharat Sharma, NDPL

**ORDER  
(Date of hearing 17.9.2009)**

It came to notice of the Commission from letter No. F.DTL/207/GM(SLDC)/09-10/F-45/231 dated 15.7.2009 of Delhi Transco Ltd addressed to the Secretary, Delhi Electricity Regulatory Commission with copy among others, to this Commission, that the respondent had curtailed the quantum of power sought by the North Delhi Power Ltd ("NDPL") vide its application dated 20.6.2009 to be exported on 21.6.2009. The details of the quantum of power sought to be exported and the quantum of power for which the respondent had accorded consent for open access are as under:

- a) Quantum of power for which open access was sought:

S.No	Time Period	Quantum
(i)	02:00 - 06:00 hrs	150 MW
(ii)	06:00 – 10:00 hrs	200 MW
(iii)	10:00 – 15:00 hrs	100 MW
(iv)	15:00 – 18:00 hrs	80 MW
(v)	18:00 – 24:00 hrs	75 W

b) Quantum of power for which consent was accorded for open access:

S.No	Time Period	Quantum
(i)	02:00 - 05:00 hrs	NIL
(ii)	05:00 – 06:00 hrs	50 MW
(iii)	06:00 – 10:00 hrs	100 MW
(iv)	10:00 – 14:00 hrs	50 MW
(v)	14:00 – 24:00 hrs	NIL

2. The respondent had endorsed on the application of the NDPL on 20.6.2009 to the effect that curtailment was done so as to meet Delhi's demand as per the meeting taken by Secretary (Power) on 8.5.2009 and as per availability shown by NDPL in day ahead schedule for 20.6.2009.

3. It appeared that the grounds stated by the respondent to justify the curtailment were extraneous to the provisions contained in sub-clauses (b) and (c) of clause (3) of regulation 8 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (hereinafter "the open access regulations") which read thus:

"(b) While processing the application for concurrence or 'no objection' or prior standing clearance, as the case may be, the State Load Despatch Centre shall verify the following, namely-

i) existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, and

(ii) availability of surplus transmission capacity in the State network.

(c) Where existence of necessary infrastructure and availability of surplus transmission capacity in the State network has been established, the State Load Despatch Centre shall convey its concurrence or 'no objection' or prior standing clearance, as the case may be, to the applicant by e-mail or fax, in addition to any other usually recognised mode of communication, within three (3) working days of receipt of the application”

4. Accordingly, the Commission, vide its order dated 10.8.2009, initiated suo motu proceedings and directed the respondent to show cause as to why it should not be held guilty of contravention of the foregoing provisions of the open access regulations and penalty under Section 142 of the Electricity Act, 2003 (the Act) be not imposed on it.

5. The respondent filed its reply on 31.8.2009. We have gone through the reply of the respondent and heard its representative. Accordingly we proceed to dispose of the matter.

6. Gist of the reply by the respondent is as under:

(a) While according approval for reassignment of Power Purchase Agreement to the Distribution Licensees, Delhi Electricity Regulatory Commission (DERC) vide para 16 (iv) of its order dated 31.3.2007 had directed as under:

“(iv) If the allocation results in any excess capacity in the hands of any of the Distribution Companies/Agency at any time, such excess capacity shall be offered to other Distribution Utilities in Delhi at the first instance and only if such spare capacity cannot be absorbed within Delhi, it shall be offered to others. Necessary arrangements for this purpose shall be evolved in the Power Procurement Group constituted by the Government of NCT of Delhi”.

- (b) Pursuant to the above directions of the DERC, Delhi Power Procurement Group and SLDC devised a methodology for inter-Discom transfer of surplus power in the meeting held on 13.10.2007. In the above meeting BYPL raised a query as to whether surplus power held by a utility after bilateral agreement could be traded outside. In response to this query it was specifically clarified that “if one utility is having surplus due to bilateral arrangement and other utilities having shortages, the utilities having surplus may offer first the surplus power to the utilities having shortages at mutually agreed rates failing which the extent of surplus arising out of bilateral arrangements can be traded to any utilities.”
- (c) In a meeting held by the Secretary (Power) on 8.5.2009 it was decided that “the state must give top priority to meet their domestic demand before exporting power to others”. This direction of the Secretary (Power) was construed as directions of the Appropriate Government under Section 37 of the Act.
- (d) The power situation in the State was precarious during the relevant period which attracted severe criticism from many agencies.
- (e) SLDC Delhi had exercised due diligence while dealing with application of NDPL seeking open excess for exporting power on 21.6.2009.

7. Plain reading of the relevant provisions of the open access regulations extracted hereinabove leaves no doubt that curtailment of quantum of power for export under open access is sustainable only on two grounds viz. either the non-existence of necessary infrastructure or non-availability of surplus transmission capacity. Support placed on DERC's order and communications / decisions taken in meeting/s with Secretary (Power), are extraneous to the provisions of the open access regulations. Moreover, the materials placed before us do not indicate that DERC has directed the SLDC to curtail quantum of power for export via open access, by NDPL. Similarly, the decision taken in a meeting cannot be equated with the directions of the Appropriate Government under Section 37 of the Act.. Accordingly, neither of these two grounds offer any justification for the SLDC to act in contravention of the foregoing provisions of the open access regulations, for the simple reason that open access is a statutory right under the Electricity Act, 2003 ("the Act"). Section 2(47) of the Act requires 'Open Access' to be in accordance with the regulations made by the Commission. Denial or curtailment of open access for reasons and considerations other than as expressly laid down by this Commission in its open access regulations cannot be justified. The open access regulations were made after previous publication with opportunity to all concerned to offer objections and suggestions. Now to allow considerations such as bottling up power within the State due to shortage, to seep in, would render the open access regulations illusory. Thus, considerations as made in the reply filed by the respondent which clearly are extraneous to the foregoing unambiguous provisions of the open access regulations, are to be and hereby are rejected. In so far as the SLDC is concerned, it is duty bound

to discharge its statutory responsibilities in accordance with law. However, the respondent has not acted in accordance with and has thus contravened the provisions of sub-clauses (b) and (c) of clause (3) of regulation 8 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008. It is surprising to note that in its reply, there are no averments to even suggest as to why the respondent could not comply with the foregoing provisions of the regulations at the time when it curtailed the quantum of power meant for export under open access.

8. In the circumstances, we order a penalty of Rs. 25,000/= (Rs. Twenty five Thousand only) to be paid by the respondent for contravention of sub-clauses (b) and (c) of clause (3) of regulation 8 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008.

9. The penalty shall be deposited before 15.12.2009.

**[V. S. VERMA] [S. JAYARAMAN] [R. KRISHNAMOORTHY] [DR. PRAMOD DEO]**  
**MEMBER MEMBER MEMBER CHAIRPERSON**

**New Delhi, dated 30<sup>th</sup> November 2009**