

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION NO. 38/ MP/2012

Coram:

Dr. Pramod Deo, Chairperson

Shri S. Jayaraman, Member

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 31.5.2012

Date of Order : 7.1.2013

In the matter of

Action of Uttar Pradesh State Load Despatch Centre in refusing to give clearance to the petitioner for participation In Power Exchange and purchase/sell power through Power Exchange(s)

And in the matter of

Noida Power Company Limited, Noida

....Petitioner

Vs

1. Uttar Pradesh State Load Despatch Centre, Lucknow
2. U.P. Power Transmission Corporation Limited, Lucknow
3. Chief Engineer (Power System) Uttar Pradesh Power Transmission Corporation Limited, Lucknow
4. Uttar Pradesh Power Corporation Limited, Lucknow
5. Northern Regional Load Despatch Centre, New Delhi
6. Indian Energy Exchange Ltd, New Delhi
7. Power Exchange of India Ltd, New Delhi

.....Respondents

Present:

1. Shri M.G.Ramchandran, Advocate for petitioner
2. Shri Vishal Gupta, Advocate for petitioner
3. Shri S.Ganguly, NPCL
4. Ms Mayuri Patel, NPCL
5. Shri Gautam Ghosh, NPCL
6. Shri Rauhal Srivastava, Advocate for the UPPTCL and SLDC
7. Shri Sunil Kumar Jain, UPPCL
8. Shri Mukesh Kumar Gupta, UP SLDC
9. Shri Chandrakant Shukla, UP SLDC
10. Shri Gaurav Maheshwari, IEX

ORDER

The petition has been filed by Noida Power Company Ltd with the following prayers, namely:

“(a) Direct the Respondents No. 1 to 4 to accord clearance/no objection/prior standing clearance in Format PX-1 to the Petitioner to enable the Petitioner in the Power Exchanges(s) to buy/sell power as may be required for efficient management of power supply in its licensed area with immediate effect;

(b) Initiate action against Respondents 1 to 4 under Section 142 of the Electricity Act, 2003 for acting contrary to the provisions of the Act, Rules and Regulations and Orders of the Hon'ble Commission; and

(c) Pass such orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.”

2. The petitioner is a distribution licensee for Greater Noida area in the State of Uttar Pradesh. The petitioner intended to purchase up to 25 MW of power through the power exchanges. Accordingly, during 2008, 2009 and 2010 the petitioner made several attempts with the State Load Despatch Centre, Uttar Pradesh, (Respondent 1) (SLDC) for obtaining "Concurrence / No Objection / Standing Clearance" for purchase of power by making applications in terms of the Central Electricity regulatory Commission (Open access in Inter-State Transmission) regulations, 2008 (the Open access regulations). However, the petitioner did not receive any response from SLDC.

3. Feeling aggrieved by the attitude of Respondents 1 to 3 (hereinafter collectively referred to as the respondents), the petitioner filed petition No. 118/MP/2011 before this Commission *inter alia* to seek appropriate directions to the respondents to accord Concurrence/No Objection/prior Standing Clearance to enable the petitioner to participate in the power exchanges. The said petition was disposed of by order dated

30.11.2011. This Commission after analysis of the provisions of the Open Access Regulations decided that in absence of any response from SLDC within the specified period, Concurrence / No Objection / Standing Clearance was deemed to have been granted and thereafter the petitioner could approach the nodal agency for grant of open access on the basis of deemed Concurrence / No Objection / Standing Clearance. In the facts and circumstances of the case, further direction to SLDC for grant of Concurrence / No Objection / Standing Clearance was unnecessary and as such no such direction was issued.

4. In the aforesaid petition the petitioner had also made a prayer for initiation of proceedings under Section 142 of the Electricity Act for non-compliance of the Open Access Regulations. In that context this Commission observed that SLDC had statutory responsibility to reply the applications made for Concurrence / No Objection / Standing Clearance and existence of provision for deemed concurrence did not absolve SLDC of discharging its statutory obligations. The respondents were therefore directed to comply with the Open Access Regulations and to reply to the applications made in future, within the time period specified under the Open Access Regulations.

5. The relevant parts of the order dated 30.11.2011 are extracted hereunder:

"9. The petitioner has requested Respondent Nos. 1 to 3 for concurrence/no objection/standing clearance vide its letters dated 7.11.2008, 12.1.2009, 29.6.2009, 30.10.2009, 30.12.2009, 15.6.2010 and 27.9.2010. It is an admitted fact that the Respondent Nos. 1 to 3 have not responded to these letters. After expiry of the stipulated period, the petitioner has a right to approach the concerned RLDC in terms of clause (4) of Regulation 8 of Open Access Regulations. Obviously, the petitioner has not availed the statutory remedy provided in the Open Access Regulations. The petitioner has not explained the reasons for not approaching the RLDC for open access after expiry of the stipulated period of response by SLDC. In our view, the petitioner has to strictly follow the provisions of the regulations to avail the remedy. It cannot bypass the remedy available to it and approach the

Commission for issue of directions to SLDC. It is pertinent to mention that only under Regulation 26 of the Open Access Regulations, an aggrieved person can approach the Commission for adjudication of dispute. Regulation 26 provides that "all disputes arising out of these regulations shall be decided by the Commission based on an application made by the person aggrieved". The petitioner has not been able to establish existence of any dispute between the petitioner and Respondent Nos. 1 to 3, particularly in view of the submission of the respondents that the petitioner could have availed the open access in terms of Regulation 8(4) of Open Access Regulations.

10. The petitioner has sought appropriate directions to Respondents Nos. 1, 2 and 3 to accord Concurrence/No Objection/prior Standing Clearance in format-PX-1 to the petitioner to participate in Power Exchange (s). This prayer of the petitioner needs to be considered in the light of the fact whether the petitioner was prevented by the Respondent Nos. 1 to 3 from trading at the power exchange. As already discussed in the preceding paragraph, the petitioner in the absence of any response from the Respondent Nos. 1 to 3 has a statutory remedy in the form of deemed clearance or no objection or prior standing clearance for trading at the power exchange(s). The regulations do not provide for issue of directions to SLDCs in such circumstances.

11. The petitioner has also prayed for appropriate action against the Respondents Nos. 1, 2 and 3 under Section 142 of the Electricity Act, 2003 for non-compliance of clause 2.7.3 of the Grid Code and Clauses (3), (3A) and (4) of the Regulation 8 of the Open Access Regulations. Clause 2.7.3 of the Grid Code provides as under:

"In case of inter-State bilateral and collective short term transactions having a state utility or an intra-State entity as a buyer or a seller, SLDC shall accord concurrence or no objections or prior standing clearance, as the case may be, in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 as amended from time to time."

It is apparent from the above that SLDC shall accord concurrence or prior standing clearance or no objection in accordance with Open Access Regulations. We have already discussed the provisions of Regulation 8 of the Open Access Regulations in para 9 of this order and have come to the conclusion that the said regulation contains an in-built remedy in the form of deemed clearance in the event of failure by SLDC to respond to the application of an applicant. From the point of SLDCs, it is its statutory responsibility to reply to the applications of the applicant for open access within the stipulated period. Existence of a provision of deemed no-objection or clearance or concurrence does not absolve the SLDCs from discharging their statutory obligations. In our view, the Respondent Nos. 1 to 3 have failed to comply with the provisions of clauses 3, 3A and 4 of Regulation 8 of Open Access Regulations by not responding to the applications of the petitioner for open access within the stipulated time. Such attitude on the part of SLDC will defeat the purpose of open access. This being a first instance of non-compliance, we do not intend to invoke the penal provision under section 142 of the Act. We direct the Respondent No.1 to 3 to strictly comply with the provisions of clauses 3, 3A and 4 of Regulation 8 of Open Access Regulations and reply to the applications of the applicants for open access within the stipulated time as specified in the regulations. Failure to

comply with the regulations will make the Respondent Nos.1 to 3 liable for action under section 142 of the Act.”

6. After disposal of the petition, the petitioner made a fresh application dated 9.12.2011 for Concurrence / No Objection / Standing Clearance. In reply to this application SLDC vide letter dated 14.12.2011 declined to grant Concurrence / No Objection / Standing Clearance. The reason given for rejection of the application was lack of necessary infrastructure as corroborated by the extracts from the letter dated 14.12.2011 placed below:

"With reference to your letter No. 90A/176 dated 9.12.2011 it is to inform you that UPPTCL does not have necessary infrastructure as required by Energy/Power Exchanges for time block wise accounting, import-Export transfer capability of power, SLDC web site, software etc. as per Grid Code. Therefore, your application for Concurrence/No objection Certificate/ Prior Standing Clearance from UP State Load Despatch Centre (UPSLDC) for participating in the Power Exchange (s) cannot be processed.

Although it has already been informed you verbally during different meetings with you representatives and UPPTCL higher officers.

UPPTCL is trying to develop required infrastructure – scheduling, metering, billing, energy accounting, settlement, website etc at earliest possible, we will inform you accordingly.”

7. In view of rejection of the petitioner’s fresh request by SLDC the present petition has been filed questioning the ground of non-availability of infrastructure for rejection of the application.

8. The petitioner has categorically pleaded that the infrastructure for energy metering and accounting was available. In order to support its contention, the petitioner has stated that UPERC introduced intra-State ABT with effect from 1.12.2007 after the respondents confirmed availability of necessary infrastructure and installation of ABT

compliant energy meters. The petitioner has pointed out that in the past it procured power through bilateral transactions after availing of open access, and these bilateral transactions were duly accounted for. Therefore, according to the petitioner, there could be no reason to reject the application for grant of Concurrence/No Objection/Prior Standing Clearance for collective transactions through the power exchanges. Thus, the ground of lack of infrastructure for denial of Concurrence/No Objection/Prior Standing Clearance has been disputed by the petitioner. The petitioner has submitted that the total quantum of electricity purchased by it is measured at the interconnection point of its system with UPPTCL system. The petitioner is supplied 45 MW of power by UPPCL and therefore, according to the petitioner, the quantum purchased through bilateral trading or the power exchanges, as the case may be, may be arrived at through the difference between the total quantum supplied as per the meter readings at the point of interconnection with UPPTCL and the quantum of 45 MW supplied by UPPCL plus the admissible losses. Accordingly, the petitioner has thus discounted possibility of any difficulty in accounting for the energy purchased through the power exchanges. The petitioner has further averred that the respondents owe the responsibility for creating such infrastructure and therefore, they cannot plead their inability on the grounds of non-availability of facilities to deny Concurrence/No Objection/Prior Standing Clearance for open access.

9. A common reply dated 18.5.2012 has been filed by Respondents 1 and 2 (the answering respondents). The other respondents have not filed any reply. Respondents

1 and 2 have not specifically replied to the various averments/allegations of the petitioner the reply filed is a general reply.

10. The answering respondents have stated that ABT could not be implemented on all entities in the State and presently energy accounting and UI accounting at the points of injection of certain generating stations only is carried out. The answering respondents have denied that the petitioner is governed under the intra-State ABT for want of proper energy accounting infrastructure. The answering respondents have clarified that as present energy accounting of the petitioner is being done on the basis of monthly MRI received from ABT meters installed at Surajpur and Palli sub-stations. They have further stated that in accordance with sub-clause (b) of clause (3) of Regulation 8 of the Open Access Regulations read with the detailed procedure laid down by National Load Despatch Centre it is necessary that the required infrastructure for energy metering and time block-wise accounting is in place and that drawl schedule of the intra-State entity is conveyed to SLDC so that it can determine the mismatch between the scheduled and actual drawl as required under the detailed procedure laid down by NLDC. The answering respondents have alleged that the petitioner in the past did not give its schedule for 45 MW of power supplied to it by UPPCL and always showed inability to participate in scheduling of power received from UPPCL. The answering respondents have next alleged that the petitioner has failed to provide data on the SCADA maintained by SLDC for control and monitoring of power drawn by the petitioner, despite repeated directions. The answering respondents In this connection, have relied upon the provisions of the UP Electricity Grid Code, UPERC (Grant of Connectivity to

Intra State Transmission System) Regulations and CEA (Technical Standards for Connectivity to the Grid) Regulations, which according them, mandate installation of voice and data communication facilities and transfer of on-line operational data. They have stated that web-based energy accounting software is under trial run and the energy accounting of the petitioner could be done after it supplies data for SCADA and gives schedule for 45 MW of power being supplied by UPPCL.

11. We have heard learned counsel for the parties. We have also perused the records of the case.

12. In accordance with sub-clause (b) of clause (3) of Regulation 8 of the Open Access Regulations, while processing the application for Concurrence/ No Objection/ Prior Standing Clearance, SLDC is required to verify (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. SLDC may refuse to give Concurrence/ No Objection/ Prior Standing Clearance on the grounds of non-existence of necessary infrastructure or unavailability of surplus transmission capacity. In the present case the petitioner's request for Concurrence/No Objection/Prior Standing Clearance was turned down by SLDC on the first ground, that is, non-availability of infrastructure for energy accounting. It is to be examined whether the application was validly rejected.

13. The petitioner has placed sufficient material on record to disprove the contention of the answering respondents in this regard. From the material available it is seen that

in the context of implementation of intra-State ABT, the respondents from time to time informed UPERC that the necessary infrastructure for energy accounting was in place. In its order dated 24/25.9.2007 in *suo motu* proceedings on preparation and implementation of Availability Based Tariff (ABT) in the State, UPERC recorded the following information given to the Commission by Chief Engineer, Power System, the Respondent 3 herein:

“2.0 Record of suo motto proceedings

.....
5) Chief Engineer, Power System has informed, vide letter no. 09/CEPS/EE-2/UPERC dt. 4.1.07 that:

(i) 0.2 class accuracy ABT meters have been installed at almost all power stations,

(ii) Procurement of MRI equipments, computers has been undertaken,

(iii) Software are under test, and

(iv) Consultant has been asked to conduct a training on scheduling, revision of schedule and related aspects of ABT.”

14. Taking note of the above submission, among others, UPERC thereafter decided to implement ABT in the State with effect from 1.12.2007 by making the following observations:

“In light of written and oral submissions as above, SLDC and STU are found in the state of implementation of ABT in phases as metering at generating stations and transmission-distribution interface is complete. We hope that the software could be firmed up by the time first phase starts. Procurement of MRI instruments is being undertaken and training of personnel should be concluded during the time available before successive phasings come in operation. Similarly, generating stations and distribution licensees, who have not established controls, shall utilize this time for preparation and ensure that they are ready (as per guidelines of STU already conveyed to them) when they are required so prepared by phasing specified hereunder by the Commission. As a matter of fact, each generating station of UPRVUNL & UPJVNL already have communication links established with SLDC situated at Shakti Bhawan, and the same can be used for setting up controls. There are Area Load Despatch Centres (ALDC), which have function to enforce the

instructions of Central Control. These ALDCs shall continue to function under the commands of the Central Control (i.e. SLDC).

The Commission directed UPPCL to approach the State Govt. for establishment of SLDC under section 31 of the Act.

After discussion, the Commission decided to bring Anpara A&B TPS, UPPCL, consolidated entity of all Government Discoms, NPCL (Noida Power Corporation Ltd), Open Access customers, co-generation plants, captive plants, traders and all future generating stations under all provisions of ABT after four months of date of the hearing followed by Paricha TPS after next four months. UPPCL, for that matter, may represent its four subsidiary distribution companies & KESCO, as a single entity.”

15. A petition, being Petition No 577/2008 was filed before UPERC by Uttar Pradesh Power Corporation Ltd, Respondent 4 (UPPCL), for extension of time for implementation of ABT for Anapara TPS and Parichha TPS in the State. In those proceedings before UPERC, UPPCL informed that there was no problem on implementation of ABT in respect of the petitioner, NPCL as observed from order of UPERC dated 28.5.2008 as under:

“5.It is further informed by UPPCL that they have no problem in implementation of ABT for NPCL (Noida Power Corporation Ltd), Open Access customers, Cogenerating plants, Captive plants, Traders. Regarding preparedness at the level of Distribution licensees, it is stated that they have not established control rooms for load management due to lack of infrastructure.....”

16. Taking note of the above submission of UPPCL, UPERC concluded as under:

“7. In light of the decision taken in the preceding Para, the operation of ABT is rescheduled as below:

(a) 1st phase w.e.f. 1.12.07:

I. all generating stations of UPRVUNL and UPJVNL. On operation, actual generation shall be considered as actual schedule,

II. UPPCL as consolidated entity of all Government Distribution Companies,

III. NPCL (Noida Power Corporation Ltd),

IV. Open Access customers,

V. Co-gen plants including all other non-conventional sources of energy. On operation, actual generation shall be considered as actual schedule,

VI. Captive plants,

VII. Any other transaction between a distribution licensee and generating company or any other licensee.”

17. Again in its order dated 1.9.2008 in the Tariff Petitions No 451/2007 and 497/2007 filed by the present petitioner, UPERC took note of the fact that ABT compliant meters had already been installed at the points of interconnection between UPPTCL (Respondent 2) and NPCL (petitioner) and therefore, it should not be difficult for SLDC to prepare an energy account statement for every 15 minute time block. The observation of UPERC in this regard is extracted below:

“4.5.21 As the Commission has already notified the implementation of the Intra-State ABT within the State of Uttar Pradesh and ABT compliant meters have been installed at all the TD interface points between UPPTCL and NPCL, it should not be difficult for the SLDC/UPPTCL to prepare an energy account statement for every the 15 minute time block in the relevant period and allocate the cost of UI on account of over drawal by NPCL on a regular basis. The Commission directs NPCL to prepare a procedure for settlement of cost on account of UI transactions on a weekly basis in consultation with the SLDC/UPPTCL and submit the same for approval of the Commission within one month from the date of issue of this order.”

18. From the above narration it is obvious that ABT compliant meters with facility of recording reading for 15-minutes time blocks were already installed by 2008 at the point of interconnection between UPPTCL and the petitioner. The answering respondents themselves have admitted about installation of ABT meters at Surajpur and Palli sub-stations and have stated that monthly MRI received from these ABT meters form the basis for energy accounting of the petitioner. Therefore, there was no valid ground for

rejection of the petitioner's application for Concurrence/No Objection/Prior standing Clearance on the ground of unavailability of necessary infrastructure.

19. The petitioner has pointed out that in the past it purchased power through bilateral trading and thus energy accounting was not any issue. The answering respondents have not denied this averment of the petitioner. They have sought to distinguish between the requirements for bilateral transactions and the transactions through the power exchanges. The answering respondents have stated that communication of drawal schedule of the intra-State entity, like the petitioner to SLDC is mandatory so that it could determine the mismatch between the schedule and actual drawal as required under the detailed procedure laid down by NLDC. The answering respondents have alleged that the petitioner in the past never gave the drawal schedule for 45 MW of power supplied to it by UPPCL and as such it was not possible to work out mismatch between the drawal schedule and the actual drawal. This is an additional ground taken by the answering respondents in their reply though rejection of the petitioner's application was not on any such ground. The additional ground now taken is extraneous to the conditions laid down under Regulation 8 of the Open Access Regulations. The requirements for bilateral transactions and the collective transactions through the power exchanges are identical. The mismatch between the schedule and actual drawal has to be worked out in cases of bilateral transactions too and over-drawal/under-drawal is accounted for as UI. As the answering respondents have not encountered any difficulty in accounting of bilateral transactions, there could be no difficulty in accounting of the collective transactions. Coming specifically to the issue of

scheduling it is seen that the petitioner has firm allocation of 45 MW of power from UPPCL. Therefore, when the petitioner does not indicate any specific drawal schedule to SLDC, its drawal schedule has to be taken as 45 MW. Any drawal by the petitioner in excess of or short of 45 MW has to be accounted for as UI and the petitioner will become entitled to or liable for UI charges as per the rates fixed by UPERC. Accordingly, the petitioner cannot be denied Concurrence/No Objection/Prior Standing Clearance on the ground that it has not been giving its drawal schedule for firm supply of 45 MW of power from UPPCL. It is for the SLDC to enforce the conditions prescribed in the detailed procedure laid down by NLDC.

20. The answering respondents have pointed to the failure of the petitioner to install voice and data communication facilities and transfer of on-line operational data on the SCADA maintained by SLDC for control and monitoring of power drawn by the petitioner, mandated by UP Electricity Grid Code, Grant of Connectivity to Intra State Transmission System Regulations and CEA (Technical Standards for Connectivity to the Grid) Regulations. Accordingly, they have sought appropriate directions to the petitioner. We take this opportunity to direct the petitioner to co-operate with the respondents with reference to installation of voice and data communication facilities and supply data on the SCADA. The arrangement is considered to be essential for efficient management of control and monitoring by SLDC. In case the petitioner is guilty of non-compliance with any mandatory regulations/directions of UPERC, the respondent may approach UPERC for appropriate action to seek compliance with the regulations/directions.

21. From the above discussions, it is construed that the SLDC has not taken appropriate steps to enforce discipline as per codes and regulations and denied Concurrence/ No Objection/ Prior Standing Clearance in violation of sub clause (b) of clause (3) of Regulation 8 of Open Access Regulations. We direct the respondents that the application for Concurrence/No Objection/Prior Standing Clearance made by the petitioner or any other person in future shall be considered in the light of the above observations. In view of these directions, the first prayer of the petitioner stands granted. Under the second prayer, the petitioner has sought initiation of proceedings under Section 142 of the Electricity Act, 2003 against the respondents. We feel that in the facts and circumstances of the case, the ends of justice will be met by giving directions with warning to the respondents for their failure to follow the Open Access Regulations in letter and spirit. We also direct the petitioner to comply with the necessary directions/ regulations of the Grid Code to avail the inter-State open access. We order accordingly.

22. With the above directions, the petition stands disposed of.

sd/-
(M DEENA DAYALAN)
MEMBER

sd/-
(V.S.VERMA)
MEMBER

sd/-
(S. JAYARAMAN)
MEMBER

sd/-
(DR.PRAMOD DEO)
CHAIRPERSON