

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 4/MP/2012 with I.A.No. 3/2012

Sub: Petition under Sections 79 (1) (c), 79(1) (f) and 142 of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008.

Date of hearing : 3.4.2012

Coram : Dr Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Petitioner : Aarti Steels Limited, Cuttack

Respondents : Orissa State Load Despatch Centre , Bhubaneswar
GRIDCO Limited, Bhubaneswar
Indian Energy Exchange, New Delhi
National Load Despatch Centre, New Delhi

Parties present : Shri Rajiv Yadav, Advocate for the petitioner
Miss Surbhi Sharma, Advocate for the petitioner
Shri R.K.Mehta, Advocate for SLDC, Orissa
Shri David Advocate for SLDC, Orissa
Shri R.B.Sharma, Advocate, GRIDCO

Record of Proceedings

Learned counsel for SLDC, Odisha submitted that in accordance with the proceedings of the meeting held on 19.1.2010 under the chairmanship of Hon'ble Minister of Energy, Government of Odisha, the petitioner had agreed to give entire 50 MW power to the State. The copy of the said minutes has been forwarded to the petitioner vide letter dated 4.2.2012. The learned counsel submitted that the petitioner has not disputed the said MoM. On the other hand, the MoM-cum-Compliance Report between Arti Steel Limited, OPTCL and CESU regarding the synchronization of 50 MW IPP dated 5.3.2010, the petitioner has agreed to supply 50 MW power to State grid and to abide by the terms and

conditions of the PPA made with GRIDCO on 24.10.2009. Learned counsel submitted that the petitioner in its rejoinder has not disputed or objected to the MoM nor has filed any documentary evidence to establish that it did not agree to the said minutes.

2. Learned counsel submitted that it is a settled principle of law that the provisions of the regulations have to be in conformity with provisions of the parent Act and in case of conflict, the provisions of the Act will prevail. Learned counsel submitted that even though Open Access Regulations do not require the SLDC to verify the contracts while scheduling, under Section 32 (2) of the Act, SLDC is responsible for optimum scheduling and despatch of electricity within the State in accordance with the contracts entered into with the licensees or the generating companies operating in the State. Learned counsel submitted that the SLDC would be failing in its duty under section 32(2)(a) if it does not take into account contracts while granting open access. He submitted that GRIDCO as State designated entity has entered into PPA with the petitioner and as per the MoM, the petitioner is required to supply entire 50 MW power to the State. Therefore, SLDC bonafidely enquired from GRIDCO whether it was buying power from the petitioner before granting open access. Wherever GRIDCO confirmed that it was purchasing power from the petitioner, open access has not been granted and wherever GRIDCO has declined to purchase power, open access has been granted. Learned counsel submitted that wherever no response was given by SLDC, deemed clearance as per the Open Access Regulations came into force and petitioner could have taken advantage of the deeming provision. Learned counsel submitted that SLDC Odisha has granted medium term open access to the petitioner which is in force.

3. Learned counsel for the petitioner submitted that the petitioner vide its letter dated 22.10.2011 applied for NOC for sale of power through IEX during November 2011. Since back to back UI mechanism is not in place due to non-existence of State UI pool at present, any under injection by the petitioner's IPP would lead to payment of UI charges by the State designated entity (GRIDCO) to the Regional UI pool. Accordingly, SLDC wrote to GRIDCO to intimate whether suitable compensatory mechanism was in place with the petitioner for recovery of under injection. After the petitioner executed the agreement for compensatory mechanism, SLDC granted NOC from 10.11.2011 to 30.11.2011 and the petitioner has exported 13.33702 MU power through IEX during that period. Learned counsel for the petitioner confirmed that open access was granted from 10.11.2011 to 30.11.2011.

4. Learned counsel for SLDC submitted that SLDC Odisha has acted in bonafide and good faith and protection is available to it under section 168 of the Act. He further submitted that no case has been made out by the petitioner for action under section 142 of the Act against SLDC Odisha.

5. Learned counsel for SLDC, Odisha submitted that the petition has been filed under Section 79(1)(c) and (f) of the Act seeking compensation of ₹ 3,05,80,846/- from SLDC Odisha. Section 79(1)(f) of the Act provides for adjudication of disputes involving transmission licensee or generating company. The dictionary meaning of the word 'involve' is 'to encompass' or 'to take within its fold'. The learned counsel submitted that the word 'or' in section 79(1)(f) should be read as 'and' to give a purposive interpretation to the provision of the said clause. Otherwise, even a money claim of a private party with the generating company or transmission licensee would be covered within the scope of section 79(1)(f). Learned counsel submitted that since SLDC is neither a generating company nor a transmission licensee, the provisions of section 79(1)(c) and (f) would not be applicable in its case. Regulation 26 of the open access regulations provides for redressal mechanism in case of disputes. Dispute in legal parlance presupposes assertion of a claim and rebuttal of the claim by other party. It is a settled principle of law that claim for damages should be based on evidence. In the present case, the petitioner has merely filed a statement without any evidence.

6. Learned counsel for GRIDCO submitted that the petition is not maintainable since the exact status of the petitioner whether it is an Independent Power Producer or captive generating plant needs to be determined first. Learned counsel submitted that in para 15 of its order dated 13.9.2011 in Case No. 28 of 2010, OERC has observed that "the exact status of the said 50 MW generating unit is yet to be determined". Learned counsel submitted that the petition has been filed under section 79(1)(c) and (f) and section 142 of the Act and Regulation 26 of the Open Access Regulations. However, the petition is not maintainable under any of the provisions. Learned counsel for GRIDCO further submitted that it is the duty of the generating company to establish, operate and maintain its dedicated transmission system. This statutory requirement has been incorporated in the MoU between the Govt of Odisha and the petitioner in which it is clearly provided that the petitioner may set up its own transmission facility for evacuation of power to the point of off-take by the buyer(s). The petitioner has failed to carry out its statutory responsibility to build the dedicated transmission line and intends to utilize temporary arrangement made by CESU for selling its power outside the State of Odisha.

7. Learned counsel for Indian Energy Exchange(IEX) submitted that in response to the directions of the Commission in the hearing dated 22.3.2011 regarding the steps taken by the exchange in the matter, IEX has filed an affidavit dated 2.4.2012 in which it has been clarified that the Exchange received a communication dated 8.12.2011 from SLDC, Odisha with a request not to consider the sell bid of the petitioner and the Exchange took note of the

same in accordance with para 2.2 of the "Procedure for Scheduling of Collective Transactions".

8. The learned counsel for the SLDC, Odisha requested for one week's time to file its reply to the rejoinder and additional affidavit dated 31.3.2012 filed by the petitioner which was allowed.

9. The petition shall be listed for hearing on 7.6.2012.

By order of the Commission

**-sd/-
(T. Rout)
Joint Chief (Law)**