

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Coram:
Shri V. S. Verma, Member
Shri M. Deena Dayalan, Member**

**Date of Hearing: 16.05.2013
Date of Order: 11 .07.2013**

Petition No. 267/2009

In the matter of:
Petition under Section 79 (1) of the Electricity Act, 2003 .

**And
In the matter of:**

Shree Renuka Sugars Ltd., Bangalore**Petitioner**
Vs

Chief Engineer, State Load Despatch Centre, Karnataka Power Transmission
Corporation Limited, Bangalore **Respondent**

ORDER

The petitioner, Shree Renuka Sugars Ltd being aggrieved by the conditions imposed by the Karnataka SLDC for grant of open access has filed this petition seeking the following directions:

- “i) Set aside the communication dated 3.11.2009 vide letter No. CEE/EE/AEE-3/SLDC774 issued by the respondent vide Annexure A.



li) Direct the respondent to strictly adhere to the provisions of open access regulations viz. Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 framed by this Hon'ble Commission vide Annexure G.

iii) Pass such other or further orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case in the ends of justice.”

2. The facts in brief are that the petitioner is having two sugar factories, one at Athani and the other at Munoli. Both the sugar factories have cogeneration plants. The petitioner claims that the exportable power from Athani and Munoli co-generation plants are 25.76 MW and 32.12 MW respectively. The petitioner is stated to have been availing open access which is being granted by the respondent SLDC in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (hereinafter “2008 Open Access Regulations”). The petitioner filed the following three applications seeking short term open access:

(i) STOA application dated 23.10.2009 for supply of 8.7 MW power from 1.11.2009 to 30.11.2009;

(ii) STOA application dated 23.10.2009 for supply of 12 MW of power for the period 1.11.2009 to 30.11.2009;



(iii) STOA application dated 31.10.2009 for supply of 8 MW power for the period 1.11.2009 to 30.11.2009.

The petitioner has submitted that while open access was granted in respect of application (i) & (ii) subject to submission of an undertaking by the petitioner, open access in respect of the application at (iii) was not granted. The undertaking required from the petitioner contained the following:

- (i) If the power is supplied in excess of the approved schedule, payment shall be made at KERC tariff fixed for co-generation plants as per PPA rates (which has now expired);
- (ii) If the power injected is 5% less than the approved schedule and if this continues for more than three time blocks in a month, the permission granted may be withdrawn.

The petitioner is stated to have submitted the said undertaking under protest in order to avail the open access.

3. The petitioner has submitted that the undertaking sought by the respondent is contrary to law and is not enforceable. The petitioner has submitted that the undertaking is contrary to the provisions of Regulation 20 of the 2008 Open Access Regulations which regulates the mismatch between scheduled and actual injection at the injection points. The petitioner has further submitted that Regulation 9 read with Regulation 15 of 2008 Open Access Regulations provides that curtailment of open access is permitted only in cases

of transmission constraints or to maintain grid security and this Commission has consistently held that open access cannot be denied except for the restrictions mentioned abid. Accordingly, the petitioner has prayed for setting aside the respondent's communication dated 3.11.2009 and direct the respondent to grant open access strictly in accordance with 2008 Open Access Regulations.

4. The respondent, Karnataka SLDC in its reply vide affidavit dated 16.12.2009 has submitted that under section 32 and 33 of the Electricity Act, 2003 (the Act), SLDC the respondent is required to ensure that the grid operations and the power system in the State of Karnataka is operated in an optimum and efficient manner and all stakeholders including the generating companies operate in a manner so as to ensure grid efficiency and security. The respondent has submitted that the conditions prescribed by the respondent to all generators in the State is to ensure that power system in the State is operated in an integrated and optimum manner and in the interest of grid security and operation. The directions issued by the respondent and the undertaking required from the generating companies are only for maintaining their schedule and not to generate electricity in deviation of the schedule which causes grid disturbance and endangers the security of the grid. The respondent has refuted the contention of the petitioner that since the petitioner is paying the requisite Unscheduled Interchange charges for deviation from the schedule, no action can be taken by the respondent against the generating company. The respondent has submitted that the directions issued by the respondent to the generating companies are in



the interest of grid operations and in terms of the statutory provisions and duties of the respondent. The respondent has submitted that its directions in this case are applicable to situations where the generator generates electricity in excess of the schedule given and below the schedule given. The respondent has submitted that the provisions of the Act or the 2008 Open Access Regulations do not prohibit any statutory directions to be given by the generating companies in the interest of grid stability and operations.

5. Karnataka Power Transmission Corporation Limited (KPTCL) which operates the SLDC in its affidavit dated 24.4.2010 has submitted as under:

- (a) KPTCL is performing the statutory functions of the state Load Despatch Centre under sections 30, 31, 32 and 33 of the Act and has been vested the power and function to ensure stability, security and integrated operations of the grid within the State of Karnataka;
- (b) KPTCL has also issued various directions to the State utilities and the State sector generating companies to increase their draw/injection to offset the variations in the schedule of the private generators thereby affecting the grid conditions in the State;
- (c) KPTCL has only directed the generators to generate electricity as per the schedule given by them. In case of variation in the actual generation as against the schedule given by the generators, the grid frequency in the State is effected, thereby also affecting the regional grid;

(d) The functioning of KPTCL is being regulated by the State Commission, which has the power to issue such directions to KPTCL from time to time in the performance of its functions. Section 33(2) provides that all generators shall comply with the directions issued by the State Load Despatch Centre. In terms of Section 33 (4) of the Act, any dispute regarding any direction given by the SLDC, it shall be referred to the State Commission for decision. Hon`ble High Court of Karnataka in its judgment dated 26.3.2010 in Writ Petition No. 2703 and 2733 of 2009 has held that all matters relating to the petitioner is within the jurisdiction of the State Commission and not within the jurisdiction of CERC.

6. We have considered the submissions made by the petitioner as well as the respondent.

7. The respondent has submitted that it is under the jurisdiction of the State Commission and not under the Central Commission. The respondent has relied upon section 33 of the Act in this regard which is extracted as under:

“33. (1) The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.

(2) Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the direction issued by the State Load Despatch Centre under sub-section (1).

(3) The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.



(4) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under subsection (1), it shall be referred to the State Commission for decision:

Provided that pending the decision of the State Commission, the directions of the State Load Despatch Centre shall be complied with by the licensee or generating company.

(5) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section(1), he shall be liable to penalty not exceeding rupees five lacs.”

It is evident from the above that the SLDC is empowered to give directions to the generating companies, licensees and any other person connected with the operation of the power system within the State in order to ensure integrated grid operation and for achieving maximum economy and efficiency in the operation of the power system in the State. This power has to be exercised in accordance with law and not in accordance with the whims of the SLDC. Section 32(2)(e) provides that “SLDC shall be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.” Thus any directions to be issued by the SLDC should be in accordance with the State Grid Code or any other regulations issued by the State Commission for economic and efficient operation of the power system within the State. In the present case, it is noticed that the conditions sought to be incorporated in the Standing clearance or No Objection Certificate do not have the backing of the State Grid Code or any other regulations issued by KERC. This Commission is conscious of the jurisdiction of the concerned State Commission in the matter of the integrated

operation of the power system within the State. Accordingly, the Commission has provided in Regulation 20 of 2008 Open Access Regulations that any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme. Regulation 20 of the 2008 Open Access Regulations provides as under:

"20. Unscheduled Inter-change (UI) Charges

(1) All transactions for State utilities and for intra-State entities scheduled by the nodal agency under these regulations, shall be accounted for and included in the respective day-ahead net interchange schedules of the concerned regional entity issued by the Regional Load Despatch Centre.

(2) Based on net metering on the periphery of each regional entity, Composite UI accounts shall be issued for each regional entity on a weekly cycle and transaction-wise UI accounting, and UI accounting for intra-State entities shall not be carried out at the regional level.

(3) The State utility designated for the purpose of collection / disbursement of UI charges from / to intra-State entities shall be responsible for timely payment of the State's composite dues to the regional UI pool account.

(4) Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme.

(5) Unless specified otherwise by the concerned State Commission, UI rate for intra-State entity shall be 105% (for over-drawals or under generation) and 95% (for under-drawals or over generation) of UI rate at the periphery of regional entity.

(6) No changes, other than those specified under these regulations shall be payable any person granted short-term open access under these regulations.

8. Thus, Regulation 20(4) of the 2008 Short Term Open Access Regulations provides for settlement of mismatch between the scheduled and

actual drawal and scheduled and actual injections to be settled in accordance with the intra-State ABT prescribed by the concerned State Commission. Only where there is no intra-State ABT or where the State Commission has not otherwise specified any condition, then the provisions of Regulation 20(5) is applicable according to which UI rates for intra-State entity shall be 105% for over-drawals or under generation and 95% for under-drawals or over generation of UI rate at the periphery of the regional entity. This commercial mechanism has been specified in order to fill up a vacuum arising out of the absence of any mechanism specified by the concerned State Commission. It is evident from the record that the KERC has not prescribed any limit for over-drawals or under generation and under-drawals or over generation by any intra-State entity. That being the case, the SLDC is bound to comply with the 2008 Open Access Regulations of this Commission while issuing Standing Clearance/NOC for open access in the inter-State transmission of electricity. Therefore any deviation from clause (5) of Regulation of 20 of Open Access Regulation is in violation of the said regulations.

9. The respondent has extensively argued that it has power under section 32 and 33 of the Act to issue directions to the generating companies within the State in the interest of grid safety and security. There is absolutely no doubt about it. However, it is to be noted that SLDC being a creature of the Act is bound to abide by the provisions of the Act and the regulations issued thereunder while discharging its responsibilities under the Act including

ensuring safety and security of the State grid. SLDC has not been vested with any legislative functions. It is the Central Commission or the State Commissions which have been vested with the powers to regulate inter-State or intra-State transmission of electricity, to specify the Grid Code or State Grid Code, and to promote inter-State or intra-State open access by specifying regulations, as the case may be. In case of inter-State open access involving an embedded customer of the State such as an intra-State generator, the intra-State transmission used to facilitate the inter-State open access is incidental to the inter-State transmission. In this connection section 2(36) of the Act regarding definition of inter-State transmission system is extracted as under:

- (36) “ inter-State transmission system” includes -
- (i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;
 - (ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter- State transmission of electricity;
 - (iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility.

Therefore, where the inter-State open access is being facilitated partly through the inter-State transmission system, such conveyance of electricity is incidental to the inter-State transmission system. This Commission has been vested with the power to regulate inter-State transmission under section 79(1)(c) of the Act. Therefore, the regulations specified by this Commission shall prevail in so far as the inter-State transmission and inter-State open access is concerned.

10. The respondent has claimed that the undertaking required from the intra-State generators is with the purpose of maintaining safety and security of the grid as the commercial mechanism specified under Regulation 20(4) of 2008 Open Access Regulations is not sufficient to maintain grid discipline. The undertaking required by the respondent has the following conditions:

(a) If the power is supplied in excess of the approved schedule, payment shall be made at KERC tariff fixed for co-generation plants as per PPA rates (which has now expired);

(b) If the power injected is 5% less than the approved schedule and if this continues for more than three time blocks in a month, the permission granted may be withdrawn.

The above conditions are in the form of commercial mechanism and seek to replace the statutory provisions of Regulation 20(5) of the 2008 Open Access Regulations. Regulation 20(5) provides that for over-injection, the generator shall be paid @ 95% of the UI rate at the periphery of regional entity whereas the condition specified by the respondent provides that the payment for over-injection will be made at KERC tariff for co-generation plants which has already expired. SLDC does not have the power to apply a tariff rate which has already expired as it is the State Commission only which can extend the applicability of its tariff. The second condition is that if the power injected is 5% less than the approved schedule and it continues for three time blocks in a month, then permission granted shall be withdrawn. Both conditions are in the nature of

commercial mechanism and not in the nature of real time grid operation. Section 32(2)(e) of the Act provides that the State Load Despatch centre “shall be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and State Grid Code.” In case the generator who has been granted the open access exceeds or falls short of the schedule, SLDC can issue directions in real time to such generators to inject as per the schedule and any non-compliance with the directions of SLDC will make the generator liable for penalty in terms of section 33(5) of the Act.

11. Regulation 20(5) of the Open Access Regulations provides that the provisions of the said regulations will be applicable only when there is no intra-State ABT or nothing otherwise has been prescribed by the State Commission. However, it is noticed that respondent has not placed any material on record which proves that both these conditions are supported by any of the regulations of the State Commission nor are approved by the State Commission. Therefore, it would have been proper for the respondent to approach the State Commission for approval of the conditions that it intends to impose on the open access customers in the interest of safety and security of the grid as it is the State Commission which has been vested with the power under section 86(1)(c) to facilitate intra-State transmission and wheeling of electricity. In our view, the conditions prescribed by the respondent have no basis either in the regulations

or any of the orders issued by the State Commission and therefore, such conditions cannot be imposed while granting no objections or standing clearance for inter-State open access.

12. The respondent has further argued that the Hon'ble High Court of Karnataka in its order dated 26.3.2010 in Writ Petition Nos.2703 and 2733 of 2009 has issued the following directions in respect of the powers of KPTCL with regard to the matters relating to the petitioner, M/s Renuka Sugars Limited:

“8. *****. The Appropriate Government and the Appropriate Commission in the matters connected with the generating station of respondent No.2 Renuka Sugars Limited is the State Government and the State Commission of Karnataka and not the Central Commission.”

Hon'ble High Court has issued the above directions in the context of the order of the State Government issued under section 11 of the Act. It is pertinent to mention that this Commission has challenged the above judgement of the Hon'ble High Court in the Hon'ble Supreme Court of India. In the absence of any stay, this Commission shall be guided by the above directions of the Hon'ble High Court. Even though the order under section 11 of the Act is not involved in the present case, in view of the specific direction of the Hon'ble High Court with regard to the petitioner's generating station, we exercise our restraint to issue any directions in this matter and direct the petitioner to approach the State Commission for appropriate directions with regard to the legality of the conditions imposed by the respondent.



13. It is pertinent to observe that KPTCL/Karnataka SLDC have been imposing conditions while issuing No Objection Certificates/Standing Clearance to the inter-State Open Access Customers in purported exercise of the powers under section 32 and 33 of the Act. The inter-State Open Access Customers are approaching this Commission as such conditions are contrary to the 2008 Open Access Regulations. As already discussed, the provisions of Regulation 20(5) of the 2008 Open Access Regulations are applicable only in those cases where intra-State ABT is absent or where the State Commission have not specified anything with regard to the UI accounting scheme. Moreover, Karnataka SLDC is also rejecting the application for no objection on the ground that the PPA of the concerned generator is subsisting with a particular distribution company. SLDC is required to facilitate non-discriminatory open access and not to decide the disputes between the generator and the distribution companies with regard to the subsistence or otherwise of the PPA. Clear-cut guidelines are required to be issued for guidance of the SLDC with regard to handling the cases of disputed PPAs while processing the applications for No Objections or Standing Clearance for inter-State open access. Therefore, a number of litigations with regard to inter-State open access could be avoided if the State Commission issues appropriate guidelines in this regard either in the form of regulations or in the form of order for the guidance of all concerned. We request the Karnataka Electricity Regulatory Commission to take up the matter and issue appropriate guidelines to be



followed by the State Load Despatch Centre while granting the No Objections/
Standing Clearances for inter-State open access.

14. We direct that a copy of this order shall be endorsed to the Secretary of
the Karnataka Electricity Regulatory Commission.

15. The petition is disposed of in terms of the above.

sd/-
(M. Deena Dayalan)
Member

sd/-
(V. S. Verma)
Member

