

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 74/MP/2014

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri Shri A.K Singhal, Member
Shri A.S.Bakshi, Member**

Date of Hearing: 26.02.2015

Date of Order : 02.11.2015

In the matter of

Petition under Section 79 (1) (f) of the Electricity Act, 2003 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009.

And

In the matter of

M/s Bhushan Power & Steel Limited
4th Floor, Tolstoy House
Tolstoy Marg, Connaught Place
New Delhi-110011

....Petitioner

Vs

1. West Bengal State Load Despatch Centre
Andul Road
P.O. DaneshSeikh Lane
Howrah-711 109

2. West Bengal State Transmission Company Limited
VidyutBhawan, Bidhan Nagar
Salt Lake, Block DJ, Sector-11
Kolkata-700 091

3. West Bengal State Electricity Distribution Company Limited
7th Floor, Bidhan Nagar,
DJ Block, Sector-II, Salt Lake City,



Parties present:

For Petitioner: Shri Sanjay Sen, Senior Advocate
Shri Rajiv Yadav, Advocate

For Respondents: Shri Sakya Singha Chaudhuri, Advocate

ORDER

The petitioner, Bhushan Steel and Power Limited has filed this petition under section 79(1)(f) of the Electricity Act, 2003 (Electricity Act) read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009 (Connectivity Regulations) seeking directions to West Bengal State Load Despatch Centre (WBSLDC) and West Bengal State Electricity Transmission Corporation Limited (WESETCL) to grant concurrence for the long term access in terms of its application dated 30.4.20013.

2. The facts of the case as culled out from the petition are capitulated briefly as under:

(a) The petitioner has set up a 506 MW captive power plant at village Thelkoloi, District Sambalpur in the State of Odisha to meet the power consumption requirement of its integrated steel plant located in Sambalpur District of Odisha.

- (b) The petitioner has also set up a steel manufacturing unit at Bangihati in the State of West Bengal which avails power from West Bengal State Distribution Company Limited (WBSEDCL) through a 33 kV dedicated feeder against its contract demand of 14.9 MVA. Sometime in the year 2012, the petitioner decided to source power from its captive power plant (CPP) in Odisha to its manufacturing facility in West Bengal by availing inter-State short term open access.
- (c) The petitioner vide its letter dated 27.7.2012 applied to WBSLDC for short term open access for scheduling 12 MW additional power from its CPP in Odisha from 1.9.2012 to 30.9.2012. WBSLDC vide its letter dated 3.8.2012 informed the petitioner that since power has to be wheeled through the network of the concerned distribution licensee, connection agreement and commercial agreement with the concerned distribution licensee including proper agreement for standby power, incidental power and back-up power as applicable are required to be entered into in terms of Regulation 12 and 12.1.b of West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007 (WBERC OA Regulations). WBSLDC also sought a Letter of Intent (LoI) expressing the willingness of the manufacturing unit in West Bengal (hereinafter “manufacturing facility”) to off-take the power proposed to be scheduled through open access.



- (d) The petitioner vide letter dated 13.8.2012 submitted to WBSLDC a copy of the Connection Agreement and Commercial Agreement 11.12.2000 which was signed by the consumer with WBSEDCL for its contract demand. The petitioner also submitted an undertaking to the effect that on receipt of permission for open access, it would execute a proper agreement with WBSEDCL for standby power, incidental power and back-up power as applicable. The petitioner vide its letter dated 9.8.2012 submitted the willingness of the manufacturing facility to off-take power from the CPP in Odisha. WBSLDC vide its letter dated 1.9.2012 raised certain queries regarding connectivity and commercial terms and conditions of open access quantum and the agreement for standby power, incidental power and back-up power etc. as applicable.
- (e) The petitioner vide its letter dated 16.11.2012 addressed to Chief Engineer (Power Trading and Regulatory), WBSEDCL informed that the petitioner required 10-12 MW power in its manufacturing facility and proposed to meet the same from the CPP in Odisha by wheeling the same through the transmission systems of WBSETCL and WBSEDCL by availing open access. The petitioner requested WBSEDCL for clearance for availing the open access to the distribution system by way of execution of agreement as required under Regulation 12.1(b) of WBERC OA Regulations. The petitioner vide its letter dated



29.11.2012 requested WBSEDCL to expedite the process of issue of technical and commercial clearance to enable the petitioner to execute necessary agreement for applying for concurrence from WBSLDC.

- (f) The petitioner vide its letters dated 8.4.2013 and 12.4.2013 applied for Medium Term Open Access (MTOA) to WBSLDC/WBSETCL for evacuation of 15 MW from the CPP in Odisha to its manufacturing unit for the period 1.10.2013 to 30.9.2016 enclosing the required documents and sought concurrence. The petitioner vide its letter dated 13.4.2013 approached WBSEDCL for permission to avail MTOA for a period of 3 years from 1.10.2013 to 30.9.2016 and requested for execution of agreement indicating commercial terms and conditions to enable WBSLDC to issue NOC.
- (g) The petitioner vide its letter dated 20.4.2013 informed WBSETCL about its intention to avail long term open access for wheeling of power from the CPP in Odisha to its manufacturing unit for a period of 25 years under long term access and requested WBSETCL to treat its application for MTOA dated 12.4.2013 as cancelled. The petitioner vide its letter dated 30.4.2013 intimated WBSETCL that it had decided to wheel 14.9 MVA power from its CPP in Odisha instead of 15 MW which would be the total quantum of power to be availed from the Rishra sub-station of WBSEDCL. The petitioner requested WBSETCL to modify its



proposal for technical clearance and to issue NOC for wheeling 14.9 MVA power on long term basis in order to enable the petitioner to apply to CTU for long term access.

(h) WBSETCL convened a meeting on 20.5.2013 to discuss the proposal of the petitioner for long term inter-State open access for a period of 25 years for wheeling of 14.9 MVA surplus power from the CPP in Odisha to its manufacturing facility in West Bengal. It was clarified by WBSETCL that since the petitioner is an existing consumer of WBSEDCL having contractual demand of 14.9 MVA and is connected to the distribution system of WBSEDCL, NOC from WBSEDCL is required and accordingly, the petitioner was advised to take up the matter with WBSEDCL and submit NOC from WBSEDCL for further action at the end of WBSETCL.

(i) The petitioner vide its letter dated 29.5.2013 submitted to WBSEDCL the record notes of discussion dated 20.5.2013 with WBSETCL and requested WBSEDCL to take necessary action to issue NOC or to intimate further course of action to be taken by the petitioner for processing the matter at the end of WBSEDCL. The petitioner vide its letter dated 4.6.2013 submitted certain information as indicated by WBSEDCL in the discussion held on 29.5.2013 and requested WBSEDCL to intimate the terms and conditions regarding the charges



to be paid and the security mechanism required. With reference to the petitioner's letter, WBSEDCL convened a meeting on 8.6.2013 and advised the petitioner to attend the meeting with single line diagram, metering and protection scheme for power drawal for discussion. The petitioner attended the meeting on 8.6.2013. However, the record note of discussion has not been issued by WBSEDCL.

- (j) The petitioner vide its letters dated 22.7.2013, 5.9.2013, 26.10.2013, 14.12.2013 requested WBSEDCL to expedite the matter for issue of NOC to enable the petitioner to apply for long term access to CTU. The petitioner was granted NOC by Odisha Power Transmission Company Limited on 31.12.2013 for wheeling of 15 MW power for a period of 25 years from the CPP in Odisha to the manufacturing facility of the petitioner in West Bengal. The petitioner vide its letter dated 16.1.2014 intimated WBSEDCL about the issue of NOC by OPTCL and requested WBSEDCL to expedite the matter for issue of required NOC. The petitioner also issued a reminder dated 7.2.2014 to WBSEDCL to expedite the matter. Since no response was received from WBSEDCL, the petitioner has filed the present petition before this Commission seeking directions to WBSLDC and WBSETCL to grant concurrence for long term access in terms of its application dated 30.4.2014.



3. The petitioner has submitted that Long Term Access (LTA) application was to be principally governed by the provisions of Connectivity Regulations issued by this Commission. Since necessary infrastructure required for energy metering and time block wise accounting was in place and admittedly no transmission constraints were there in the State network, WBSLDC was required to give its concurrence within ten working days of the receipt of the application in accordance with Regulation 10(2) of the Connectivity Regulations. The petitioner has submitted that WBSLDC by requiring the petitioner to obtain NOC from WBSEDCL imposed extraneous terms and conditions for processing of the open access application and thereby conducted itself manifestly inconsistent with the open access regime introduced by Electricity Act. The petitioner has submitted that the insistence of WBSLDC on the petitioner to obtain an NOC from WBSEDCL and the failure of WBSEDCL to issue the NOC despite repeated requests by the petitioner has resulted in denial of open access for more than 11 months on the date of filing of the application and consequently, the petitioner has not been able to source captive power to its manufacturing facility in West Bengal which has resulted in considerable financial loss to the petitioner as the petitioner has to draw power from WBSEDCL at HT tariff of Rs.6.34/unit.

4. Notices were issued to the respondents to file their replies. WBSLDC, WBSETCL and WBSEDCL have filed their replies to the petition.



5. WBSETCL in its reply filed vide affidavit dated 27.8.2014 has submitted that the petitioner's request for open access was not allowed due to non-availability of requisite transmission capacity. WBSEDCL is off-taking power for its distribution requirement from Rishra sub-station maintained and operated by WBSETCL. The petitioner having a contract demand of 14.9 MVA is currently availing power at 33 kV from 132/33 kV Grid sub-station located at Rishra through 33 kV feeder line operated and maintained by WBSEDCL. Rishra sub-station presently has a capacity of 150 MVA designed to handle a load of about 85 MW (100 MVA) considering N-1 criteria at 33 kV level. Due to gradual increase in demand in the area, Rishra sub-station is handling a load of 110 MW at 33 kV level. The capacity of 220/132 kV sub-station at WBSETCL at Rishra is 3x160 MVA (480 MVA) and the maximum load is 384 MVA. WBSETCL has submitted that N-1 criteria in both sub-stations are not being satisfied and therefore, there is no redundancy in the system to cater for open access. Moreover, WBSEDCL has from time to time requisitioned further load growth of about 10 MVA (8.5 MW) in view of new applicants seeking connection and supply in the area. WBSETCL has submitted that it had advised the petitioner to enter into connection and commercial agreement with WBSEDCL for availing open access as it is a requirement under the WBERC OA Regulations for the consumer connected through the distribution system of the distribution licensee. WBSETCL has further submitted that non-issuance of NOC till date is attributable, in addition to the transmission constraints, to the petitioner in view of its failure to fulfill the requirements prescribed under law



including but not limited to non-installation of ABT compliant metering system and non-execution of the requisite connection and commercial agreements.

6. WBSEDCL in its reply filed vide affidavit dated 25.8.2014 has submitted that the petitioner's request for open access cannot be allowed due to non-availability of requisite transmission capacity and non-availability of necessary metering system. As regards the transmission constraints, WBSEDCL has submitted that WBSEDCL is unable to grant NOC in view of the transmission constraints being faced by it from the WBSETCL network for which it has been unable to provide connection to new applicants. WBSEDCL has submitted that the petitioner, having a contract demand of 14.9 MVA, is currently availing power at 33 kV from 132/33 kV Grid Sub-station located at Rishra and intends to avail open access from its captive power plant situated in Odisha. WBSEDCL has submitted that WBSETCL's 132/33 kV Sub-station at Rishra is presently unable to handle a further load of 10 MVA (8.5 MW) which WBSEDCL has requisitioned in view of the new applicants seeking connection and supply in such area. WBSEDCL has submitted that its distribution network alongwith the transmission network is severely congested and grant of open access for the usage of the distribution network cannot be permitted in such situation unless additional capacity is developed by WBSETCL. WBSEDCL has submitted that it will be difficult to draw any additional distribution line from the Rishra sub-station due to severe ROW problem.



7. The petitioner in its rejoinder filed vide affidavit dated 23.9.2014 to the reply of WBSETCL has submitted that the contention of WBSETCL that the petitioner was denied open access on account of transmission constraints is an afterthought as WBSETCL/WBSLDC had never cited transmission constraints as the reasons for their inaction in processing the petitioner's application for open access. The petitioner has submitted that grant of open access to the petitioner would not have resulted in any additional load on WBSETCL's transmission system as the petitioner instead of availing power from WBSEDCL would have sourced the same from its captive power plant in the State of Odisha. The petitioner has submitted that there was no need for WBSETCL to insist on execution of agreements with WBSEDCL as such agreements were required to be executed by the petitioner after grant of open access as evidenced from Regulation 12.1 and 12.2 of WBERC OA Regulations. The petitioner has further submitted that WBSETCL has sought to belatedly raise the issue of capacity augmentation study even though no such requirement was communicated to the petitioner.

8. In reply to the rejoinder of the petitioner to the reply of WBSETCL, WBSLDC and WBSEDCL have filed sur-rejoinders. WBSLDC in its sur-rejoinder has submitted that there is severe transmission constraint in Rishra sub-station to meet the load requirement of WBSETCL and therefore, open access to the petitioner as an alternative to part of that load cannot be granted at this stage until there is system augmentation. WBSLDC has submitted that



in order to support a long term access to the WBSETCL's transmission system, WBSETCL will need a capacity augmentation. WBSEDCL in its sur-rejoinder has denied that system constraint cited by WBSETCL is an afterthought and has submitted that this fact was indicated to the petitioner during the course of discussion. WBSEDCL has further submitted that to address the issue of transmission constraints, WBSETCL is presently considering a scheme for system augmentation for setting up an additional 50 MVA transformer at Rishra sub-station, so that the sub-station can operate at 200 MVA to handle a load of about 120 MW while meeting the N-1 criteria. Therefore, the petitioner cannot be granted open access at this stage until there is system augmentation.

9. During the hearing on 22.1.2015, the Commission had directed the petitioner and respondents to hold a meeting to sort out the matter amicably and report the outcome of the meeting. A meeting was held with all concerned on 20.2.2015 and the minutes of the meeting has been placed on record. The minutes of the meeting is extracted as under:

“Point of discussion:

1. Bhushan Power & Steel Ltd. (BPSL) submitted that they intend to wheel 14.9 MVA power for their steel plant at Rishra from CPP located at Sambalpur at Odisha. At the same time they would continue to be a consumer of WBSEDCL and ready to pay the applicable demand and other charges as per existing agreement.
2. WBSEDCL submitted that at present there happens to be a good number of pending applications and pending connections across the command area of Rishra sub-station, the cumulative demand of which is nearly 14 MVA. If BPSL intends not to draw power except under exigency from WBSEDL, WBSEDL would liquidate these pending applications and connections by way of utilising the same line and



terminal equipment which is presently used for BPSL. They further mentioned that at present it has become very difficult to draw a new line off Rishra Sub-station due to land related problems.

3. WBSETCL submitted that the last summer peak demand at Rishra grid sub-station was 141 MVA at 33 kV tire which is expected to cross the 150 MVA limit, in the forthcoming summer. Presently, Rishra grid sub-station is equipped with 3x50 MVA i.e. 150 MVA transformation capacity at 33 kV tire. Another 50 MVA transformer is planned implementation of which may take few months.

Conclusion:

Under the deliberation of the above points all concerned wished to review the case for arriving at a fruitful outcome.”

10. During the hearing, learned counsel for the petitioner and respondents were heard at length. Learned counsels were directed to file their written submissions. Written submissions have accordingly filed.

11. Learned counsel for WBSEDCL, WBSETCL and WBSEDCLhas submitted the following in the written submissions:

- (a) Supply of electricity availed by a person from the local area distribution licensee and that availed by way of open access from any other source are two distinct and different forms of supply under two different legal regimes. Learned counsel submitted that while supply of electricity to any person/premises from the area distribution licensee is a statutory right vested in a consumer and consequently a statutory obligation mandated upon a distribution licensee, open access has to be implemented to the extent permitted and subject to terms and



conditions as may be specified by the concerned State Commission under section 42 of the Act. Learned counsel further submitted that since section 2(47) requires that open access can be granted in accordance with the regulations specified by the Appropriate Commission, the grant of open access in case of the petitioner which involves open access within the State of West Bengal apart from inter-State open access has to be carried out in accordance with the Connectivity Regulations of this Commission and WBERC OA Regulations.

(b) According to Regulation 10(2) of Connectivity Regulations, open access can be granted where the required transmission capacity in the State network is available. Under WBERC OA Regulations, open access to the transmission lines and associated systems can be granted considering the load flow anticipated on the lines with outage in one of the single or double circuit line, maximum load on such transmission and associated system, appropriate load growth, evacuation network from ongoing projects, network augmented etc. Similarly, for open access under distribution system, maximum load of distribution and associated system, appropriate load growth, anticipated load flow on the network and such other factors that are essential to be considered to ensure safe and economic operation of the systems and safety of the grid are required to be considered.



Therefore, under both Connectivity Regulations and WBERC OA Regulations, availability of network capacity is one of the essential factors to be considered for grant of inter-State open access and no open access can be granted in the absence of availability of network.

- (c) WBSETCL has carried out the system studies wherein it has been observed that the system load presently existing on the Rishra sub-station exceeds the ideal load prescribed under N-1 contingency in the West Bengal Electricity Grid Code. This position has also been confirmed by WBSLDC. In the facts of the present case, the required transmission capacity for grant of open access of 15 MVA to the petitioner is presently not available in the said network at the Rishra sub-station. Accordingly WBSLDC refrained from grant of concurrence for open access using such network.
- (d) Any dispute relating to the availability of capacity for open access is subject to adjudication by WBERC under Regulation 11 of WBERC OA Regulations.
- (e) WBSEDCL's universal supply obligations under section 43 of the Electricity Act supersedes its duty to provide open access to open access consumers. While section 43 is mandatory in as much as it requires WBSEDCL to ensure supply against application made under



section 43 by carrying out necessary augmentation of the system, the duty to provide open access is subject to availability of network capacity. In the event the petitioner chooses to avail open access from WBSEDCL, it will have to stand in the queue as an open access consumer for grant of open access under Section 42(2) and the petitioner's application can be considered only after considering supply obligation of WBSEDCL to its consumers under Section 43 of the Electricity Act and on availability of network capacity after meeting such obligations.

- (f) Under Regulation 6 of WBERC OA Regulations, the priority for allowing open access has been specified where the first priority has to be given to the distribution licensee to the extent of its requirement for its consumers within the State and for supplying power to other licensee. It is only after this that open access applications are to be considered. In the present case where there is a constraint in the network capacity and WBSETCL is in the process of setting up an additional transformer at Rishra substation for meeting increased load, any available capacity within permissible limits available to WBSEDCL under regulation for meeting the requirement for supply to its consumers.

12. Learned counsel for the petitioner has submitted as under in his written submission:

(a) The respondents' contention of transmission constraints for not according NOC is purely an afterthought and has been advanced for the first time in the course of the hearing. In the joint meeting held on 20.5.2013, WBSETCL did not cite any transmission constraints and asked the petitioner to take up the matter with WBSEDCL and submit NOC from WBSEDCL for further action. Since the requisite infrastructure for energy metering and time-block wise accounting as well as adequate transmission capacity were available in terms of Regulation 10(2) of Connectivity Regulations, WBSLDC was mandated to give its concurrence within ten working days of receipt of petitioner's application. Had there been any legitimate grounds for rejecting the open access application, the same should have been communicated by WBSLDC within ten working days from the date of application and since no intimation regarding rejection has been communicated by WBSLDC, an adverse inference is liable to be drawn against the respondents. Since the open access transaction did not entail any additional procurement of power by WBSEDCL which may have resulted in additional load on the existing system, there was no need for capacity augmentation or system strengthening.



(b) There was no provision in the Connectivity Regulations or WBERC OA Regulations whereby the petitioner was required to obtain NOC from the distribution company for an open access transaction. The petitioner faced with the directions of WBSETCL sought NOC from WBSEDCL. However, WBSEDCL neither issued any NOC nor communicated any reason for such non-issuance. Further reliance by the respondents on Regulations 7.1 and 7.2 of WBERC OA Regulations is misplaced as the respondent's transmission/distribution network would not be impacted by grant of open access to the petitioner since the petitioner had sought LTOA for the exact quantum of power which it was drawing from WBSEDCL.

(c) As regards the contention of the petitioner that the present controversy should have been agitated before the State Commission in terms of Regulation 11 of WBERC OA Regulations, learned counsel has submitted that since the present dispute involves a transmission licensee and pertains to non-grant of inter-State open access, the present petition has been rightly filed before the Central Commission.

Analysis and Decision:

13. After consideration of the rival contention of the parties, the following issues emerge for consideration:

(a) Whether the present petition is maintainable before the Commission?



(b) Whether the respondents have dealt with the application of the petitioner in accordance with the provisions of the Act and applicable regulations?

(c) Whether the constraints in transmission network and distribution network are relevant considerations to deny long term access to the petitioner who is an embedded entity of WBSEDCL and is connected to the system of WBSETCL?

(d) Relief to be granted to the petitioner.

Issue No.1: Whether the present petition is maintainable before the Commission?

14. The petitioner has filed the present petition under section 79(1)(f) of the Electricity Act and Regulation 32 of the Connectivity Regulations seeking directions to WBSLDC and WBSETCL to grant concurrence for the proposed long term access in terms of its application dated 30.4.2013. In their replies, none of the respondents have raised any objections to the jurisdiction of the Commission to adjudicate the dispute. However, during the hearing and in the written submissions, the respondents have raised an objection that the present dispute ought to have been agitated before WBERC under Regulation 11 of the WBERC OA Regulations since the dispute relates to availability of capacity for open access in the State system.

15. There is no dispute among the parties that the petitioner made an application for NOC/concurrence to WBSLDC vide letter dated 30.4.2013. The application clearly mentions that the petitioner is seeking long term access in terms of Connectivity Regulations and WBERC OA Regulations for a period of



25 years from 1.10.2013 to 30.9.2038 for wheeling 14.9 MVA (13.41 MW) power from Bhushan Steel and Power Ltd with point of injection as 220/132 kV sub-station, Budhipadar, Odisha to its manufacturing unit in West Bengal with drawal point as 132/33 kV sub-station, Rishra, West Bengal. WBSLDC after receipt of the application advised the petitioner to hold meeting and advised the petitioner to take up the matter with WBSEDCL and submit the NOC of WBSEDCL for further action. The petitioner complied with the requirement and applied to WBSEDCL on 4.6.2013. Though WBSEDCL convened and held a meeting on 8.6.2013, neither the minutes of the meeting were issued nor any decision was conveyed to the petitioner on its application for long term access. Since its repeated reminders went unanswered by WBSEDCL and no decision on its application for long term access was conveyed by WBSLDC, the petitioner has filed the present petition.

16. Sub-section (2) of Section 9 of the Electricity Act which deals with the open access to captive generating plant reads as under:

“(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.”



As per the above provision, a captive generating plant has a right to open access for the purpose of carrying electricity from his captive generating plant to the destination of his use. The petitioner has a captive 506 MW generating plant at village Theikhloi, District Sambalpur, Odisha. The petitioner has an integrated steel plant at the same location. The petitioner has a manufacturing/processing unit at Bangihati, District Hoogly, West Bengal. The petitioner intended to wheel power from the captive generating plant to its manufacturing facility in West Bengal. WBSEDCL in its reply dated 25.8.2014 has submitted that “the petitioner has also not produced any information with regard to the ownership structure and operating details of its generating plant in Odisha to demonstrate that it is a captive power plant.”

17. We have perused the documents on record. In all its communications to the respondents, the petitioner has presented that it is seeking open access from its captive power plant to be used for its manufacturing facility in West Bengal. At no point of time, the respondents have asked for the ownership structure and operating details. Moreover, in the application dated 30.4.2013, the petitioner has indicated the Injecting Agency and Drawee Agency as Bhushan Power and Steel Limited which shows that Bhushan Power & Steel Limited is the owner of the integrated steel plant alongwith captive power plant in Odisha as well as the manufacturing facility in West Bengal. In the absence of any documentary evidence to the contrary, it can be accepted that the



petitioner's application pertained to long term access for wheeling of power from its captive power plant to the manufacturing facility in West Bengal.

18. Sub-section (2) of Section 9 of the Electricity Act provides that the grant of open access to a captive power plant to the destination of its use shall be subject to adequate transmission facility and adequacy of transmission facility shall be determined by the State Transmission Utility or Central Transmission Utility as the case may be. Any dispute regarding availability of the transmission capacity shall be adjudicated by the Appropriate Commission. In the present case, long term access sought by the petitioner involves the transmission of OPTCL, transmission system of CTU and transmission system of WBSETCL. Therefore, in case of non-availability of the transmission system in the STU network, respective State Commission will have jurisdiction and in respect of the transmission system of CTU, the Central Commission will have jurisdiction. In the present case, the petitioner applied for NOC to OPTCL and WBSEDCL in terms of para 23.3 of the Detailed Procedure which requires that if the open access applicant is an intra-State entity, it shall be required to obtain in advance the concurrence of concerned State Transmission Utilities having injection and drawal points and attach the same with the application. The petitioner applied for NOC to OPTCL under whose jurisdiction injection point is located and WBSETCL under whose jurisdiction the drawal point is located. The petitioner has been granted NOC by OPTCL on 31.12.2012. However, the petitioner did not get any response from WBSETCL. Under Regulation 10(2) of



the Connectivity Regulations, SLDC is required to convey its concurrence within 10 days if the necessary infrastructure required for energy metering and time block-wise accounting already exists and required transmission capacity in the State network is available or may not give concurrence for the reasons to be communicated within ten days. In the present case, the cause of action arose on account of lack of response to the application for inter-State long term access by WBSLDC/WBSETCL which is in violation of provisions of clauses (2) and (3) of Connectivity Regulations. Regulation 32 of Connectivity Regulations provides that all disputes arising out of or under these regulations shall be decided by the Commission on an application made on this behalf by the person aggrieved. Further, section 79(1)(c) of the Electricity Act vests the functions in the Commission to regulate inter-State transmission of electricity and Section 79(1)(f) provides for adjudication of disputes pertaining to Section 79(1)(f) involving generating company or transmission licensee. Since the dispute has arisen on account of non-response of WBSETCL/WBSLDC to the application of the petitioner for inter-State long term access, the dispute falls under the jurisdiction of the Commission. In our view, the petitioner has rightly invoked the jurisdiction of this Commission.

19. The respondents have submitted that the dispute with the petitioner with regard to availability of capacity for open access is subject to jurisdiction of WBERC under Regulation 11 of WBERC OA Regulations. Regulation 11 of the WBERC OA Regulations provides as under:



“11. In case of any dispute regarding availability of transmission system and/or wheeling capacity for open access between the applicant/Open Access Customer and the Licensee or between Licensees or between a Licensee and the STU and/or SLDC, as the case may be, the aggrieved party may file a petition alongwith all necessary documents before the Commission for adjudication/settlement of the dispute within 60 days from the cause of action.”

Thus the above provision provides for adjudication of dispute by WBERC regarding availability of transmission system and/or wheeling capacity between the applicant/Open Access Customer and the licensee. In this case no dispute has been raised regarding availability of transmission capacity for grant of long term access with the petitioner as WBSLDC/WBSETCL have not disposed of the application of the petitioner dated 30.4.2013 on the ground of non-availability of transmission capacity. In the absence of any dispute regarding the availability of transmission capacity in the State system, Regulation 11 of WBERC Regulations is not attracted in this case. It is pertinent to mention that the respondents have now raised the issue of non-availability of transmission capacity in their reply to this petition which has been strongly contested by the petitioner as an afterthought on the part of the respondents. The contentions of the petitioner and respondents in this regard have been dealt with in this order.

Issue No.2: Whether the respondents have dealt with the application of the petitioner in accordance with the provisions of the Act and applicable regulations?

20. The term ‘applicant’ has been defined in Regulation 2(1)(b) of the Connectivity Regulations to include a ‘consumer’ among others for the purpose



of long term access into inter-State transmission of electricity. As already stated, the petitioner applied for inter-State long term open access for a period of 25 years for wheeling 14.9 MW power from its CPP in Odisha to its manufacturing facility in West Bengal. Since the transmission systems of STUs of Odisha and West Bengal were involved, the petitioner applied for concurrence or no objection to the respective SLDCs/STUs in accordance with Para 23.3 of the Detailed Procedure under Connectivity Regulations. Regulation 10 of Connectivity Regulation provides as under:

“(1).....

Provided also that if an intra-State entity is applying for long-term access or medium-term open access, concurrence of the State Load Despatch Centre shall be obtained in advance and submitted along with the application to the nodal agency. The concurrence of the State Load Despatch Centre shall be in such form as may be provided in the detailed procedure.

(2) Where necessary infrastructure required for energy metering and time-block-wise accounting already exists and required transmission capacity in the State network is available, the State Load Despatch Centre shall convey its concurrence to the applicant within ten working days of receipt of the application.

(3) In case SLDC decides not to give concurrence, the same shall be communicated to the applicant in writing, giving the reason for refusal within the above stipulated period."

21. In accordance with the above provisions, SLDCs are mandated to convey their concurrence within 10 days if two conditions are fulfilled i.e. necessary infrastructure for energy metering and time block wise accounting exist and required capacity in the State network is available. If these conditions are not satisfied, then SLDCs are required to communicate in writing with



reasons within 10 days. The purpose of laying down the timeline is to ensure that the LTA applicant is made aware about the outcome of its application within a reasonable period so that it can pursue appropriate remedy as available to it under law. In case of the petitioner, OPTCL has issued NOC. The petitioner applied to WBSETCL on 30.4.2013 for NOC for applying for long term access for wheeling 14.9 MVA power from its CPP in Odisha to its manufacturing unit in West Bengal. However, WBSETCL held a meeting with the petitioner and advised the petitioner to take NOC from WBSEDCL. The petitioner approached WBSEDCL vide its letter dated 29.5.2013 who advised the petitioner to attend the meeting with single line diagram, metering and protection scheme for power drawal at the manufacturing facility for discussion. The petitioner participated in the discussion with WBSEDCL held on 8.6.2013. However, note of discussion of the said meeting has neither been issued nor the petitioner has been given any reply to its letter dated 29.5.2013. The petitioner vide its letters dated 22.7.2013, 5.9.2013, 26.10.2013 and 14.12.2013 has requested the petitioner to issue NOC to enable the petitioner to apply for LTA to CTU. However, WBSEDCL has not replied to any of these letters. Neither WBSLDC nor WBSETCL nor WBSEDCL have indicated about any constraints in the transmission capacity as the reason for not granting the concurrence for long term access.

22. Under WBERC OA Regulations, Nodal Agency for processing the applications for long term access has been defined as under:



9.1 The Nodal Agency for arranging the Long Term Open Access within the State shall be the STU if its system is used. Otherwise, the Nodal Agency shall be the Transmission or the Distribution Licensee in whose system the point of drawal of electricity is located;”

Thus nodal agency for arranging long term open access is the STU if its system is used. In other cases, the nodal agency is the distribution licensee or transmission licensee in whose system the point of drawl for electricity is located. Regulation 10.3 of WBERC OA Regulations deal with the procedure for grant of long term open access which is extracted as under:

“10.3 Long Term Open Access:

- a) The Nodal Agency shall, in consultation with the SLDC, the Transmission Licensee(s) and/or the Distribution Licensee(s) concerned, and based on system studies of the Licensee(s) concerned, if required, assess the capacity available and communicate the decision, either in Format – 2 or in Format – 2A, to the applicant within 30 days from the date of receipt of the application.
- b) In case open access can be provided without any further system strengthening, the Nodal Agency shall give consent in the Format – 2 for Long Term Open Access to the applicant within 30 days from the date of receipt of the application.
- c) If in the opinion of the Transmission Licensee(s) and / or the Distribution Licensee(s) further system strengthening is essential before providing Long Term Open Access, the applicant may request the Transmission Licensee(s) and / or the Distribution Licensee(s) concerned, as the case may be, to carry out system studies and preliminary investigation for the purpose of arriving at cost estimates and completion schedule for system strengthening plan. The Transmission Licensee(s) and / or the Distribution Licensee(s) concerned shall, on receipt of such request, intimate estimated expenditure for carrying out such study within thirty days from the date of receipt of such request from the applicant.
- d) The Transmission Licensee(s) and / or the Distribution Licensee(s), as the case may be, shall carry out the studies as mentioned in clause (c) immediately on deposit of estimated expenditure by the applicant and intimate the results of the studies to the Nodal Agency, SLDC (if different from Nodal Agency), applicant, STU (if different from Nodal Agency) and Commission within 90 days from the date of deposit of amount of the estimated expenditure by the applicant.
- e) The applicant shall bear the actual expenditure incurred by the Transmission Licensee(s) and / or the Distribution Licensee(s), as the case



may be, in this respect within the limit of cost estimate intimated by the Licensee concerned. Actual expenditure shall be subject to the scrutiny of the Commission. Adjustments, if any, will be made accordingly within the ceiling of 105% of the cost estimate.

- f) In case the system requires strengthening, subject to approval of such strengthening by the SLDC (if different from Nodal Agency) and the STU (if different from Nodal Agency), the cost for such strengthening shall initially be paid by the applicant to the concerned Licensee(s) as an advance, if it is for exclusive use of the applicant, and the advance shall be refunded by the Licensee(s) concerned to the Open Access Customer in seventy two equal monthly instalments. Any such extension or augmentation of the network will become the property of the Licensee(s).
- g) In case any strengthening is required in inter-State transmission system to absorb / evacuate power beyond intra-State transmission system, the applicant shall co-ordinate with the STU and CTU concerned as deemed necessary.”

As per the above provisions, the nodal agency in consultation with SLDC or distribution licensee or the transmission licensee shall carry out a system study and convey its decision either in Format 2 or Format 2A within 30 days of receipt of the application. While Format 2 pertains to the intimation of consent by the Nodal Agency/SLDC, Format 2A pertains to the intimation of decision where permission cannot be immediately granted. Para 6 of the format clearly indicates that the reasons for not granting the open access has to be indicated by the Nodal Agency/SLDC. As per Regulation 10.3 (c), if the system strengthening is required, then the applicant shall request the transmission licensee and/or distribution licensee to carry out the study and preliminary investigation for the purpose of arriving at the cost estimates and time schedule for system strengthening plan and intimate the same within 30 days the estimated expenditure within 30 days from the date of receipt of such request.



23. None of the provisions of the WBERC OA Regulations has been complied with by WBSLDC or WBSETCL or WBSEDCL. Even these entities which are required to discharge their statutory duties in compliance with the Connectivity Regulations and WBERC OA Regulations have not communicated their decision on the application of the petitioner in clear violation of the statutory requirements. WBSEDCL in the written submission has explained the reasons for non-communication of decision on the application of the petitioner as under:

“5. While WBSEDCL had informally discussed these issues with BPSL and the Respondents, even in the event of any absence of formal communication by WBSEDCL to the Open Access application of BPSL, grant of Open Access cannot be allowed for want of necessary network capacity. The non-communication of the rejection of the application is a procedural infirmity and cannot override and/or obliterate the substantive requirement for grant of Open Access under CERC and WBERC Regulations.”

In the written submission filed by WBSLDC and WBSETCL, the following averments have been made:

“L. The non-communication of the rejection of the application is a procedural infirmity and cannot override and/or obliterate the substantive requirement for grant of Open Access under CERC and WBERC Regulations.”

In our view, such attempt by the respondents to justify their non-compliance with the statutory regulations needs to be viewed seriously. The statutory authorities and regulated entities are under statutory obligations to act strictly in accordance with the regulations, in this case the Connectivity Regulations and WBERC OA Regulations.



Issue No.3: Whether the constraints in transmission network and distribution network are relevant considerations to deny long term access to the petitioner who is an embedded entity of WBSEDCL and is connected to the system of WBSETCL?

24. WBSETCL in its reply has submitted the following reasons for not allowing the request of the petitioner for open access:

“2. It is submitted that the Petitioner’s request for open access has not been allowed due to non-availability of requisite transmission capacity. Respondent No.3 is off-taking power for its distribution requirement from Rishra sub-station maintained and operated by the answering Respondent. The petitioner, having a contract demand of 14.9 MVA, is currently availing power at 33 kV from 132/33 kV Grid sub-station located at Rishra through 33 kV feeder line operated and maintained by Respondent No.3. Rishra sub-station presently has a capacity of 150 MVA designed to handle a load of about 85 MW (100 MVA) considering (N-1) criteria at 33 kV level. Due to gradual increase in demand in the area, Rishra sub-station is handling a load of 110 MW at 33 kV level. The capacity of 220/132 kV sub-station at WBSETCL at Rishra is 3x160 MVA (480 MVA) and the maximum load is 384 MVA. The N-1 criteria, therefore in both sub-stations is not being satisfied and therefore, there is no redundancy in the system to cater for open access. Moreover, Respondent No.3 from time to time has requisitioned further load growth of about 10 MVA (8.5 MW) in view of new applicants seeking connection and supply in the area.”

Similarly, WBSEDCL in its reply has attributed transmission constraints as the main reason for denial of open access as under:

“Respondent No.3 is unable to grant NOC in view of the transmission constraints being faced by it from Respondent No.2’s existing network for which it has been unable to provide connection to new applicants. It is submitted that the Petitioner, having a contract demand of 14.9 MVA, is currently availing power at 33 kV from 132/33 kV Grid Sub-station located at Rishra and intends to avail open access from its captive power plant situated in Odisha. Rishra Sub-station presently has three transformers, having capacity of 50 MVA each. The sub-station is designed to handle a load of 85 MW (100 MVA). However, the sub-station is presently handling an excess load of 110 MW without meeting the N-1 contingency criteria. Respondent No.2’s 132/33 kV Sub-station at Rishra is presently unable to handle a further load of 10 MVE (8.5



MW) which the Respondent No.3 has requisitioned in view of the new applicants seeking connection and supply in such area. In view of the afore-said, it is submitted that the distribution network of Respondent No.3 alongwith the transmission network is severely congested and grant of open access for the usage of the distribution network cannot be permitted in such situation unless additional capacity is developed by Respondent No.2. It is at the same time pertinent to point out that it will be difficult to draw any additional distribution line from the Rishra sub-station due to severe way leave constraint.”

25. From the above submission of the respondents, the following facts emerge:

(a) 132/33 kV grid sub-station located at Rishra is maintained and operated by WBSETCL which is the State Transmission Utility in West Bengal. Rishra sub-station has a capacity of 150 MVA designed to handle a load of 85 MW (100 MVA) considering N-1 criteria at 33 kV level. Due to increase in demand in the area, Rishra sub-station is handling a load of 110 MW at 33 kV level.

(b) The petitioner having a contract demand of 14.9 MVA is currently availing power at 33 kV from 132/33 kV Grid sub-station of WBSETCL located at Rishra through 33 kV feeder line operated and maintained by WBSEDCL.

(c) WBSETCL has also a 220/132 kV sub-station at Rishra which has a capacity of 3x160 MVA (480 MVA) and the maximum load catered is 384 MVA.

(d) WBSEDCL has requisitioned further load growth of about 10 MVA(8.5 MW) in view of new applicants seeking connection and supply in the area.



(e) Therefore, there is no redundancy in the transmission system to cater for open access.

(f) It will be difficult to draw any additional distribution lines from the Rishra sub-station due to way leave constraint.

26. It appears to us that the respondents while processing the application of the petitioner for long term open access have assumed that this is a new demand and can be catered for only when there is expansion of the transmission capacity and distribution lines in future. The respondents have conveniently overlooked the fact that the petitioner is presently connected to Rishra sub-station of WBSETCL through the 33 kV feeder line of WBSEDCL. In other words, the petitioner's requirement of 14.9 MVA has been catered for through the existing sub-station of WBSETCL at Rishra and 33 kV feeder line of WBSEDCL. The petitioner in its application dated 30.4.2013 has clarified that "the total power presently availing from WBSEDCL for a contract demand of 14.9 MVA will be the wheeled power from our Odisha plant." In other words, the petitioner's long term open access is merely substituting the 14.9 MVA availed from WBSEDCL with the 14.9 MVA power to be availed from its captive power plant in Odisha. There is no new capacity contracted by the petitioner and therefore, the transmission system of WBSETCL and distribution system of WBSEDCL already contracted will be used for wheeling of power from the petitioner's CPP in Odisha. In the minutes of the meeting held on 20.2.2015, the submission of the petitioner has been recorded as under:



“Bhushan Power & Steel Ltd. (BPSL) submitted that they intend to wheel 14.9 MVA power for their steel plant at Rishra from the CPP located at Sambalpur at Odisha. At the same time they would continue to be consumer of WBSEDCL and ready to pay the applicable demand and other charges as per existing agreement.”

Therefore, even though the petitioner is allowed to avail long term open access, the petitioner continues to be a consumer of WBSEDCL and is liable to pay all charges except the energy charges as it will avail power from its CPP in Odisha.

27. The respondents have submitted that WBSEDCL’s universal supply obligations under section 43 of the Act supersede its duty to provide open access to open access customers. The respondents have further submitted that while section 43 of the Electricity Act is mandatory in as much as it requires supply against application made under section 43 by carrying out necessary augmentation of the system, the duty to provide open access is subject to availability of network capacity. In our view, the universal supply obligations of a distribution licensee under section 43 do not prevent it from granting open access to a consumer in accordance with sub-sections (3) and (4) of the Section 42 of the Electricity Act. Sub-sections (3) and (4) of section 42 is extracted as under:

“(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the

distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.”

The above provisions provide that a consumer of a distribution licensee can avail supply of electricity from a generating company or any licensee other than the distribution licensee in whose area of supply it is located and the distribution licensee is duty bound to grant non-discriminatory open access to such consumer who has the liability to pay the wheeling charges and additional charges thereon as may be fixed by the State Commission to meet the fixed cost of such distribution licensee arising out its obligations to supply. In other words, a consumer of a distribution licensee availing open access to take supply of electricity from alternative sources is also required to pay the cost of distribution licensee for its obligation to supply. Therefore, the distribution licensee cannot discriminate between two classes of its consumers, namely, those which take supply from the distribution licensee itself and those who take supply from alternative sources by availing the distribution system of the distribution licensee.

28. In our view, when a consumer of a distribution licensee avails power from alternative source(s) under sub-sections (3) and (4) of section 42, it cannot be denied inter-State open access on the ground that the capacity in



the intra-State transmission system or distribution system is not available. It is pertinent to mention that the said consumer has contracted the capacity equivalent to its sanctioned load in the transmission system of State Transmission Utility or any other transmission licensee and distribution system of concerned distribution licensee. In the Minutes of the Meeting dated 20.2.2015, the views of WBSEDCL on the request of the petitioner have been recorded as under:

“If BSPL intends not to draw power except under exigency from WBSEDCL, WBSEDCL would liquidate these pending applications and connections by way of utilizing the same line and terminal equipment which is presently used for BPSL.”

Such a position of WBSEDCL will completely defeat the intent and spirit of open access as enshrined in sub-section (3) and (4) of section 42 and other provisions relating to non-discriminatory open access of the Electricity Act.

29. The respondents have submitted that as per Regulation 6 of WBERC OA Regulations, the first priority has to be given to the distribution licensee to the extent of the requirements for its consumer within the State and for supplying power to other licensee and it is only after meeting this requirement, open access applications are to be considered. It appears that according to WBSEDCL, a consumer who avails power from alternative source through open access other than the concerned distribution licensee ceases to be a consumer of the said distribution licensee and becomes an open access customer. Such an interpretation cannot be sustained as sub-section (4) of section 42 clearly provides that a consumer of a distribution licensee can



source power from other sources by paying wheeling charges and additional surcharge as determined by the State Commission. In other words, the consumer continues to be the consumer of the distribution licensee even after sourcing power from other sources by availing open access.

30. In view of the above discussion, we conclude that considering the status of the petitioner as a consumer of WBSEDCL with a sanctioned load of 14.9 MVA which is connected to the 132/33 kV Rishra sub-station of WBSETCL through the 33 kV feeder line of WBSEDCL, the petitioner's application for open access for 14.9 MVA power cannot be rejected by the respondents on the ground of transmission constraints as the petitioner's requirement is accommodated within the existing transmission and distribution capacity of WBSETCL and WBSEDCL respectively.

Issue No. 5: Relief to be granted to the petitioner

31. In the light of our analysis and decisions on various issues as discussed above, we are of the view that the respondents have not acted as per the provisions of the Electricity Act, Connectivity Regulations and WBERC OA Regulations while dealing with the application of the petitioner dated 30.4.2013. The petitioner was entitled for a decision on its application within the stipulated period. Further, the transmission constraints cannot be cited as a ground for denying open to the petitioner since the petitioner is already connected to the systems of WBSETCL and WBSEDCL for an equal quantum of load. The petitioner is entitled to grant of concurrence subject to fulfillment of the other



requirements of Regulation 10(2) of Connectivity Regulations namely, necessary infrastructure required for energy metering and time block wise accounting. Accordingly, we direct the respondents to grant concurrence to the petitioner for 14.9 MVA after satisfying themselves regarding fulfillment of the requirements as noted above to enable the petitioner to apply for long term access. Our directions shall be complied with within a period of 15 days from the date of issue of this order.

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

Sd/-

**(A.S.Bakshi)
Member**

sd/-

**(A. K. Singhal)
Member**

sd/-

**(Gireesh B. Pradhan)
Chairperson**

