

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 279/RC/2015

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A. S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Hearing: 19.1.2016

Date of Order : 10.3.2016

In the matter of:

Application/Petition for directions to State Load Despatch Centre to issue Exchange Neutral n\No Objection Certificate/Prior Standing Clearance in accordance with Regulations 8 (2) of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, as amended from time to time, and Format-PX-I of the Detailed Procedure, in letter and spirit.

And

In the matter of:

Section 79 (1) (c), 79 (1) (k) of the Electricity Act, 2003 Regulation 26 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, and Regulation 1.5 (iv) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010.

And

In the matter of:

Power Exchange India Limited
5th Floor, Tower 3,
Equinox Business Park (Peninsula Techno Park)
Off Bandra Kurla Complex, LBS Marg,
Kurla (West), Mumbai-400070

.....Petitioner

Vs

1. Assam State Load Despatch Centre
SLDC Division
Assam Electricity Grid Corporation Ltd.
ASEB Colony, Power House, Kahilipara,
Guwahati-781019

2. Chhattisgarh State Load Despatch Centre

Chhattisgarh State Power Transmission Co. Ltd.
Danganiya, Raipur-492010

3. Delhi State Load Despatch Centre
33 kV Sub Station Building
Minto Road, New Delhi-110002

4. Gujarat State Load Despatch Centre
Gujarat Energy Transmission Co. Ltd.
132 kV Gotri Sub Station Compound
Near TB Hospital, Gotri Road
Vadodara-390021

5. Haryana State Load Despatch Centre
Haryana SLDC,XEN/LD & PC
SLDC Complex, Sewah
Panipat-132103

6. Himachal Pradesh State Load Despatch Centre
ALDC Complex, Totu
Shimla-171011

7. Karnataka State Load Despatch Centre
28, Race Course Cross Road
Bangalore-560009

8. Kerala State Load Despatch Centre
O/o Chief Engineer (Transmission)
System Operation,
Kalamassery-683503, Kerala

9. Madhya Pradesh State Load Despatch Centre
MP Power Transmission Co. Ltd.
Nayagaon, Rampur
Jabalpur-482008

10. Maharashtra State Load Despatch Centre
Thane Belapur Road, P.O. Airoli
Navi Mumbai- 400078

11. Orissa State Load Despatch Centre
SLDC Building, GRIDCO Colony
P.O. Mancheswar Rly. Colony
Bhubaneswar-751017

12. Punjab State Load Despatch Centre
SLDC Building, Near 220 kV Grid Substation
PSTCL, Ablawal, Patiala-147001

13. Rajasthan State Load Despatch Centre

Rajasthan Rajya Vidyut Prasaran Nigam Ltd
Ajmer Road, Heerapura
Jaipur-302024

14. Tamil Nadu State Load Despatch Centre
State Load Despatch Centre, Chennai
TANTRANSCO
144, Anna Salai, Chennai-600002

15. Tripura State Load Despatch Centre
Tripura State Electricity Corporation Ltd.
Bidyut Bhaban, Banamalipur
Agartala-799001

16. Uttar Pradesh State Load Despatch Centre
UP Power Transmission Corporation Ltd
5th Floor, Shakti Bhawan
14, Ashok Marg, Lucknow-226001

17. Uttarakhand State Load Despatch Centre
Power Transmission Corporation of Uttarakhand Limited (PTCUL)
Vidyut Bhawan, Saharanpur Road
Majra, Near ISBT, Dehradun-248001

18. Indian Energy Exchange Ltd.
Fourth Floor, TDI centre, Plot No. 7,
Jasola District Centre, New Delhi-110 025

..Respondents

Parties Present:

Shri Kapil Dev, PXIL
Ms. Shruti Bharti, IEX
Shri Rahul Srivastava, Advocate, UPSLDC
Shri Pradeep Mishra, Advocate, Rajasthan SLDC
Shri Surendra Kumar, Rajasthan SLDC
Shri Ravia Dubey, Advocate, CGSLDC
Shri Ashok Kumar Yadav, Punjab SLDC
Shri S. Vallinayagam, Advocate, TANTRANSCO
Shri Anand K. Ganesh, Advocate, Gujarat SLDC

ORDER

The petitioner, Power Exchange India Limited, has filed this petition seeking direction to State Load Despatch Centre to issue Exchange Neutral No Objection Certificate/Prior Standing Clearance in accordance with Regulation 8(2) of the

Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 as amended from time to time (hereinafter referred to as '2008 Open Access Regulations'), and Format-PX-I of the Detailed Procedure.

2. Brief facts of the case leading to the filing of the present petition are as under:

(a) In year 2012-13, the petitioner brought to the notice of the Commission that some of the SLDCs are insisting on the intra-State entities to apply for No Objection/Prior Standing Clearance (Power Exchange-wise) in case of collective transactions. The Commission after due consultation with the stakeholders, issued the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) (Second Amendment) Regulations, 2013. After amendment, clause (2) of Regulation 8 of the 2008 Open Access Regulations provided that 'when a State utility or an intra-State entity propose to participate in trading through Power Exchange(s), it shall obtain "No Objection" or "Prior Standing Clearance" from the concerned State Load Despatch Centre in such form as may be prescribed in the Detailed Procedure, specifying the aggregate MW upto which the State utility or intra-State entity may submit buy or sell bid(s) in the Power Exchange(s) taken together. The "No Objection" or "Prior Standing Clearance" issued by the State Load Despatch Centre shall not be Exchange specific.'

(b) Even after passage of two years since the notification of Second Amendment to the Open Access Regulations, certain SLDCs are either issuing Exchange Specific NOCs or issuing Exchange Neutral NOCs with a covering letter specifying the open access customer to trade power on a

specific Exchange. Certain SLDCs are issuing Exchange Neutral NOCs to State utilities, whereas, they are issuing Exchange specific NOCs to intra-State entities/open access consumers. Such actions by SLDCs are in contravention to the provisions of Regulation 8(2) of the 2008 Open Access Regulations.

(c) As per Section 32 of the Electricity Act, 2003 read with Regulation 2.7.3 of the Central Electricity Commission (Indian Electricity Grid Code) Regulations, 2010 (Grid Code), SLDCs are required to grant NOCs in accordance with the provisions of 2008 Open Access Regulations. However, SLDCs are not complying with the provisions of Section 32 of the Act and Regulations 2.7.3 of the Grid Code.

(d) As per the prevailing practice, NOC is issued on monthly basis by SLDC. However, on account of the Exchange specific NOCs, the market participants have not been able to avail benefits of competition due to limitation imposed on their freedom to choose.

(e) When SLDC issues Exchange Neutral NOCs to State utilities and when the same SLDC issues Exchange specific NOCs to intra-State entities/open access consumers, it treats the same Format PX-I differently for State utilities and for intra-State entities, which is contrary to the provision of Regulation 8 of the 2008 Open Access Regulations.

(f) When the intra-State entities and State utilities are already allowed as per Regulation 8 (2A) of the 2008 Open Access Regulations to use the same NOC across different products, namely for day ahead or intra-day

(24x7)/contingency transactions, there is no reason why the same NOC cannot be used in different Power Exchanges.

3. Against the above background, the petitioner has made the following prayers:

“(a) Pass appropriate orders directing the Respondents SLDCs to issue “Exchange Neutral” NOC to a State Utility or an intra-State entity, which proposes to participate in trading through Power Exchange(s), strictly in compliance with Regulation 8 (2) of the OA Regulations, as amended from time to time, and Format-PX-I of the Detailed Procedure, in letter spirit, without attaching any condition/covering letter specifying the name of any Power Exchange.

(b) Pass such other order(s)/direction(s) as this Hon`ble Commission may deem appropriate in the facts and circumstances of the case.”

4. The petition was admitted on 26.11.2015 and notice was issued to the respondents to file their replies.

5. Subsequently, the petitioner vide its affidavit dated 1.12.2015 has submitted that almost all SLDCs are issuing Exchange Neutral NOCs to State utilities, whereas, they are issuing Exchange Specific NOCs to intra-State entities/Open Access consumers. The petitioner has placed on record a list of seven SLDCs issuing Exchange Specific NOCs, namely, SLDCs of Gujarat, Punjab, Rajasthan, Tamil Nadu, Arunachal Pradesh, Assam and Meghalaya, a list of 17 SLDCs issuing Exchange Neutral NOCs and a list of 17 SLDCs in respect of which no information is available with petitioner.

6. Replies to the petition have been filed by Uttar Pradesh State Load Despatch Centre, Punjab State Load Despatch Centre, Chhattisgarh State Load Despatch Centre, Tamil Nadu State Load Despatch Centre, Uttarakhand State Load Despatch

Centre and Indian Energy Exchange Ltd. The petitioner, vide its affidavit dated 12.1.2016, has submitted its rejoinder to replies. The replies of the respondents and the response of the petitioner thereto are discussed briefly as under:

(a) Uttar Pradesh State Load dispatch Centre (SLDC, UP) in its reply dated 15.12.2015 has submitted that SLDC, UP never issued Exchange specific NOC and always issued Exchange neutral NOC. In response, the petitioner has submitted that SLDC, UP is issuing Exchange neutral NOC.

(b) State Load Despatch Centre, Punjab (SLDC, Punjab) in its reply dated 15.12.2015 has submitted that since the draft amendments to the Intra-State Short Term Open Access Procedures, containing Exchange Neutral NOC, is still pending before the Hon'ble Punjab State Electricity Regulatory Commission ("PSERC"), the implementation of Exchange Neutral NOC as per the 2008 Open Access Regulations could not be made by SLDC, Punjab and it would implement the same as soon as the amendments proposed in the Intra-State Short Term Open Access Procedures are approved by PSERC. SLDC, Punjab has further submitted that for the State of Punjab, PSERC has notified the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011 (hereinafter referred to as "the Punjab OA Regulations"). The petitioner in its rejoinder has submitted that 'Intra State Short Term Open Access Procedures for Punjab,' is procedure for intra-State open access and not for inter-State open access. The procedure for inter-State open access transactions has been given in the 2008 Open Access Regulations and the Detailed Procedure made thereunder. The petitioner has submitted that SLDC, Punjab should not wait for the amendments proposed in the 'Intra-State Short Term Open Access

Procedures for Punjab' regarding Exchange Neutral NOC to be approved by PSERC and the provisions of 2008 Open Access Regulations (Exchange Neutral NOC) should be implemented independent of such/any subsequent approval from PSERC. The petitioner has further submitted that the provisions of Regulation 15 of the Punjab OA Regulations and State Grid Code provides that the provisions of the 2008 Open Access Regulations shall be applicable for inter-State open access transactions. Therefore, it is mandatory for SLDC, Punjab to grant NOC for inter-State short term open access transactions in accordance with the provisions of the 2008 Open Access Regulations and as per format PX-1.

(c) State Load Dispatch Centre, Chhattisgarh (SLDC, Chhattisgarh) in its reply dated 6.2.2016 has submitted that SLDC, Chhattisgarh is issuing Exchange neutral NOCs to the State utilities or an intra-State entities which proposes to participate through Power Exchanges.

(d) State Load Dispatch Centre, Uttarakhand (SLDC, Uttarakhand) vide its reply dated 7.1.2016 has submitted that SLDC, Uttarakhand is already issuing Exchange neutral NOCs.

(e) State Load Despatch Centre, Tamil Nadu (SLDC, Tamil Nadu), vide its reply dated 31.12.2015, has submitted that since the petition has not been filed by the purchaser who is required to obtain NOC from SLDC for approaching Power Exchange, the petitioner has no *locus standi* to file the present petition. SLDC, Tamil Nadu has further submitted that second amendment to the 2008 Open Access Regulations regarding Exchange

Neutral NOC would be implemented after approval of Detailed Procedure by POSOCO as stated by the Commission in the Explanatory Memorandum. SLDC, Tamil Nadu has submitted that the issue of Exchange specific NOC is for operational convenience only as it ensures that contract demand is not exceeded by the purchase quantum. SLDC, Tamil Nadu has submitted that amendment could only be implemented if NLDC monitors and curtails the cleared quantum/purchased quantum within the consumer's contracted demand in case of inter-State transactions via Power Exchanges. SLDC, Tamil Nadu has submitted that the petitioner itself admitted that necessary modifications in the format which would be done in the Detailed Procedure by NLDC. As per the Explanatory Memorandum of draft Second Amendment to the 2008 Open Access Regulations, POSOCO would be required to modify the Detailed Procedure after approval by the Commission and the amended regulations would come into force thereafter. In the website of NLDC, only an affidavit form PX (V) has been added in the existing Detailed Procedure for collective transaction dated 11.6.2009. SLDC, Tamil Nadu has stated that the issue of Exchange specific NOC is for operational convenience only to ensure that contract demand is not exceeded by the purchase quantum. There is no intention to abstain from implementing the second amendment to the 2008 Open Access Regulations. The petitioner in its rejoinder has submitted that the second amendment to the 2008 Open Access Regulations was notified after due consultation with all the necessary parties, including SLDC, Tamil Nadu and issue of operational convenience were already discussed before finalization of the said regulations.

(f) Indian Energy Exchange Limited (IEX) vide its reply dated 22.12.2015 has submitted that SLDC, Punjab is issuing Exchange specific NOC as per 'Procedure for Intra-State Short Term Open Access' approved by PSERC. However, due to operational constraints, SLDCs are issuing Exchange specific NOCs. IEX has further submitted that certain SLDCs are issuing Exchange specific NOCs since they are not geared up to handle the schedules of open access from multiple sources and the complexities involved therein. IEX has submitted that SLDCs of Arunachal Pradesh, Assam and Meghalaya are issuing Exchange neutral NOCs. The petitioner in its rejoinder has objected to the submission made by IEX with regard to the practice adopted by SLDCs and has submitted that all SLDCs, whether they are issuing Exchange neutral or Exchange specific NOCs, have been given opportunity to file their responses to the petition. Therefore, the submissions of IEX regarding alleged operational constraint of SLDCs to issue Exchange relevant NOCs should not be considered by the Commission.

Analysis and Decision:

7. We have considered the submissions of the petitioner and the respondents. The petitioner has filed the present petition seeking direction to SLDCs to issue Exchange Neutral NoC/Prior Standing Clearance to a State utility or an intra-State entity, which proposes to participate in trading through Power Exchanges in terms of Regulation 8 (2) of the 2008 Open Access Regulations, and format PX-01 of the Detailed Procedure. The petitioner has submitted that certain SLDCs are either issuing Exchange specific NOCs or issuing Exchange Neutral NOC with a covering letter advising the open access customer to trade power on a specific Exchange. Further, certain SLDCs are issuing Exchange neutral NOCs to State utilities,

whereas they are issuing exchange specific NOCs to intra-State entities/open access consumers. The petitioner has submitted that such practices are in contravention of Regulation 8(2) of the 2008 Open Access Regulations. The petitioner has submitted that SLDCs Gujarat, Punjab, Rajasthan, Tamil Nadu, Arunachal Pradesh, Assam and Meghalaya are issuing Exchange specific NOCs.

8. SLDC, Tamil Nadu has contended that Exchange neutral NOC would be implemented after approval of detailed procedure by POSOCO as stated by the Commission in the Explanatory Memorandum to the second amendment to the 2008 Open Access Regulations. During the course of hearing on 19.1.2016, the representative of NLDC clarified that only an affidavit form PX (V) has been approved by the Commission, which is part of the Detailed Procedure. Therefore, no further amendment to the Detailed Procedure is required. According to SLDC, Punjab, it is awaiting approval of PSERC for intra-State short term open access procedure containing the Exchange Neutral NOC and after approval of PSERC, it will implement Exchange neutral NOC as per 2008 Open Access Regulations. SLDC, Punjab has stated that the provisions of 2008 Open Access Regulations are applicable to inter-State transactions.

9. Regulation 8 of the 2008 Open Access Regulations provides as under:

“(2) When a State utility or an intra-State entity proposes to participate in trading through power exchange(s), it shall obtain "No Objection" or "Prior Standing Clearance" from the concerned State Load Despatch Centre in such form as may be prescribed in the Detailed Procedure, specifying the aggregate MW up to which the State utility or intra-State entity may submit buy or sell bid(s) in the power exchange(s) taken together. The "No Objection" or "Prior Standing Clearance" issued by the State Load Despatch Centre shall not be exchange specific.

(2A) No Objection or Prior Standing Clearance obtained by the State utility or intra-State entity from the State Load Despatch Centre can be used for collective transaction for day ahead on any Power Exchange(s) and/or for bilateral intra-day

transaction/contingency transaction in OTC market or on the Power Exchange market:

Provided that while making application to SLDC for obtaining No Objection or Prior Standing Clearance for collective transactions for day ahead or for bilateral intra-day transaction/contingency transaction, the applicant shall declare that he agrees to ensure that aggregate quantum in each time block of 15 minutes for all the bid(s) in collective transactions (day ahead contracts on Power Exchange(s)) and/or for intra-day/contingency transactions (in OTC market and/or Power Exchange Market) shall not exceed the quantum for which No Objection or Prior Standing Clearance has been granted:

Provided further that the same clearance may be utilized for the day ahead bilateral transaction also, subject to limit of quantum and time as specified in the standing clearance:

Provided also that while granting Standing Clearance time period for the clearance may be defined either in time blocks of hours or on the basis of peak period or off-peak period or round the clock (RTC):

Provided also that where violations of the limit of quantum and time are reported by SLDC against any entity, the Commission may, after giving an opportunity of hearing, debar the said entity from transacting in power market for seven days.”

As per the above provisions, when a State utility or an intra-State entity makes an application as per Detailed Procedure for grant of NOC or Prior Standing Clearance for trading in electricity through Power Exchanges, SLDC is required to grant NOC or Prior Standing Clearance, which shall not be Exchange specific. Regulation 8 (2A) further amplifies that while making application to SLDC for obtaining NOC, the intra-State entity or State Utility applicant has to give an undertaking/declaration not to exceed the clearance limit as given by SLDC considering all collective transaction in day ahead in both Power Exchanges and intra-day/contingency transactions at all times.

10. The intent of the regulation is clear that SLDCs are required to grant Exchange neutral NOC /Prior Standing Clearance to State Utility or an intra-State entity intending to participate in trading through Power Exchange(s). Since No Objection Certificate/Prior Standing Clearance is required for trading in the Power Exchanges

which are inter-State transactions, the SLDCs are required to comply with the 2008 Open Access Regulations and Detailed Procedure issued by the Commission. As regards the practice of issuing Exchange neutral NOCs with a covering letter specifying trading on a particular Exchange, we are of the view that such practice is in contravention of the 2008 Open Access Regulations and should be discontinued forthwith. SLDCs are statutory bodies discharging statutory functions vested under the Act and the Regulations issued by the Central Commission and respective State Commission. They should be impractical, neutral and fair in their dealings. Accordingly, we direct all SLDCs to ensure that Exchange Neutral NOCs are issued for trading in the Power Exchanges in terms of the Regulation 8 (2) of the 2008 Open Access Regulations, and Format PX (1) of the Detailed Procedure in letter and spirit while granting No Objection Certificate or Prior Standing Clearance for participating in the Power Exchange.

11. The petition is disposed of in terms of the above direction.

Sd/-	sd/-	sd/-	sd/-
(Dr. M.K.Iyer) Member	(A.S.Bakshi) Member	(A.K. Singhal) Member	(Gireesh B. Pradhan) Chairperson