

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 98/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Date of Order: 30.6.2016

In the matter of

Petition under Section 79 (1) (c) read with Regulations 17, 18 and 26 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 and Regulation 5 of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014.

And

In the matter of

ShyamCentuary Ferrous
EPIP, Rajabagan,
Byrnihat, Ri-Bhoi District,
Meghalaya-793 101

RBN Cements Private Limited
Sagarmal Ramkumar, Thane Road,
Shillong-793 001

Green Valley Industries limited
Vilage Nongsning, Elaka Sutanga,
Kheliehriat, East Jaintia Hills,
Meghalaya-793 200

Meghalaya Power Limited
Village Lumshnong, P.O.Khliehriat
Dost.Jantia Hills, Meghalaya-793 210

....Petitioners

Vs.

1. Meghalaya Energy Corporation Limited
Lumjingshal, Sjillong-794 001

2. Executive Engineer, Market Operation Division

State Load Despatch Centre
Meghalaya Power Transmission Corporation Limited
Shillong-794 001

3. Indian Energy Exchange
100A/1, Ground Floor, Capital court
Olof Palme Marg, Munirka,
New Delhi-110 067

...Respondents

Following were present:

Ms. Swapna Seshadri, Advocate, SCPL
Ms. Sumata Chand, Advocate, MECL
Shri Sahil , MECL

ORDER

The petitioners, Shyam Century Ferrous, RBN Cements Private Limited, Green Valley Industries Limited and Meghalaya Power Limited have jointly filed the present petition under Section 79 (1) (c) read with Regulations 17, 18 and 26 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 and Regulation 5 of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 with the following prayers:

- (a) Set aside the bills dated 5.5.2014 raised by SLDC, Meghalaya on the petitioners;
- (b) Direct the Respondent No.1 and Respondent No. 2 to strictly follow the billing procedure prescribed in the Short term Open Access Regulations and the Detailed Procedure for Collective Transactions without any deviation whatsoever;

- (c) Direct the Respondent No.1 and Respondent No. 2 to issue the No Objections in accordance with the Short Term Open Access Regulations so that the industries of the petitioners can operate;
- (d) Direct the Respondent No.1 and Respondent No. 2 to give necessary adjustment in terms of the deviation settlement mechanism for the period from April 2014 when the short term open access was granted to the petitioners.
- (e) Set aside the disconnection notice dated 22.5.2014 issued by SLDC, Meghalaya.

2. Shyam Century Ferrous (Petitioner No. 1) is a company which has set up its factory at EPIP, Rajabagan, Byrnihat in the district of Rai Bhoi, Meghalaya and is engaged in the manufacture and sale of Ferro Alloys and Ferro Manganese. The installed capacity of the plant of the petitioner is 27 MVA. In order to overcome the shortage of load and interrupted power supply by Respondent No. 1 in its unit, the petitioner is purchasing reliable power from the open market at its own cost and risk through Power Exchange.

3. RBN Cements Private Limited (Petitioner No. 2) has set up a cement plant in the State of Meghalaya. The petitioner's request to grant electricity connection for the operation of the plant was refused by the distribution company of Meghalaya due to acute shortage of power in the State of Meghalaya. The petitioner has submitted that the distribution licensee has turned down the request despite the fact that there is a universal service obligation on the distribution company in terms of the provisions of the Electricity Act, 2003.

4. Green Valley Industries Limited (Petitioner No. 3) has set up a cement unit in the State of Meghalaya and the distribution company of Meghalaya also refused to grant electricity connection for the operation of its plant.

5. Meghalaya Power Limited (Petitioner No. 4) has set up coal based thermal captive power generating station in the State of Meghalaya and has been granted open access by SLDC, Meghalaya for sale and purchase of power.

Submission of the petitioner:

6. The petitioners have submitted that the following facts have led to filing of this petition:

(a) After enactment of the Meghalaya State Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulations, 2012, SLDC, Meghalaya started to grant open access to the petitioners for purchase of power through Short Term Open Access (STOA). The petitioners have been purchasing power through STOA since September 2012.

(b) The nodal agency for collection of all charges for collective STOA transactions is the Power Exchange and in the instant case of the petitioners, the nodal agency is Indian Energy Exchange (IEX). Accordingly, the petitioners have been purchasing power through IEX and paying all charges to it. However, SLDC, Meghalaya raised bills dated 5.5.2014 on the petitioners separately for the open access charges for collective transactions in advance for the month of May, 2014. SLDC, Meghalaya has computed the charges for the entire month of May 2014 in advance.

(c) On 22.5.2014, SLDC, Meghalaya issued a dis-connection notice to the petitioners for disconnection of power supply for failure to pay the open access charges for the months of April and May 2014 stating that unless the entire advance transmission charges bills are cleared by the petitioners, No Objection for the month of June would not be granted. According to the petitioner, the bills raised by SLDC, Meghalaya are without any basis and are against the Commission's defined Model for Collective Transactions and the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (2008 Open Access Regulations). SLDC, Meghalaya is not empowered to reserve the transmission corridor for collective transactions in advance. NLDC allocates the transmission corridor to the successful participants (buyer and seller) on daily basis which is completely market driven.

(d) The Commission in the 2008 Open Access Regulations has made the provisions for the operating charges and payment of transmission charges. Pursuant to 2008 Open Access Regulations, NLDC has made short-term open access in inter-State transmission (collective transaction) Procedure for scheduling. As per the Procedure made under 2008 Open Access Regulations, the nodal agency for collection of all charges is the Power Exchange.

(e) Meghalaya Energy Corporation Limited and SLDC, Meghalaya have not been giving any adjustment on account of the deviations to the petitioners for grant of STOA. This is *ex-facie* against the provisions of the Statutory Regulations and the Respondents ought to be directed to give the necessary adjustment for the period from April, 2014 i.e. from the grant of STOA.

(f) Any sale of power through the Power Exchange is an inter-State transaction governed by the Commission. Accordingly, the petitioners have approached the Commission in terms of Regulation 26 of the Open Access Regulations which provides that all disputes arising under these regulations shall be decided by the Commission based on an application made by the person aggrieved.

7. Based on the request of the learned counsel, the disconnection notice dated 22.5.2014 issued by SLDC, Meghalaya was stayed and SLDC, Meghalaya was directed to maintain status quo with regard to processing the applications of the petitioners for grant of open access.

8. Reply to the petition has been filed by Meghalaya Energy Corporation Limited and SLDC, Meghalaya. The petitioner has filed rejoinder to the reply of SLDC, Meghalaya.

9. Meghalaya Energy Corporation Limited (MECL), vide its affidavit dated 3.6.2014, has submitted that Section 86 (1) (a) and (c) of the Electricity Act, 2003 provides that the State Commission shall determine the tariff for intra-State transmission and facilitate intra-State transmission and wheeling of electricity. Regulation 2 of the Meghalaya State Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulations, 2012 (MeSERC OA Regulations) provides that these regulations shall apply to open access for use of intra-State transmission system and distribution systems in the State, including when such system is used in conjunction with inter-State transmission system. MECL has submitted that in case of a collective transaction conducted at Power Exchange, the intra-State transmission system is used in conjunction with inter-State

transmission system and therefore, the open access related charges and procedures should be in accordance with the MeSERC OA Regulations. As per Regulation 36 of the MeSERC OA Regulations, disputes pertaining to open access fall within the purview of MeSERC OA Regulations and should be resolved in accordance with the procedure prescribed in these regulations. Therefore, the present petition is not maintainable before the Commission. MECL has submitted that as per Regulation 34 of the MeSERC OA Regulations, in case of any default in payment of any charges payable by the open access consumers, STU can discontinue open access after giving advance notice. Accordingly, SLDC has taken action for recovery of unpaid dues and served the disconnection notices in accordance with MeSERC OA Regulations. As per Section 56 (1) of the Electricity Act, 2003, the licensee has a right to discontinue supply to consumers in the event of non-payment of dues. MECL has submitted that SLDC has neither violated any provisions of the MeSERC OA Regulations nor acted contrary to the order of MSERC, but has followed the procedure made under MeSERC OA Regulations.

10. Meanwhile, the petitioner filed I.A.No. 21/2015 seeking direction to SLDC, Meghalaya to comply with the Commission's direction dated 27.5.2014 and the instructions issued during the hearing on 17.6.2014. The petitioners have submitted that SLDC, Meghalaya is applying the provisions of MeSERC OA Regulations in case of open access of the petitioners for the purpose of deviation settlement despite the direction of the Commission that the said regulations would apply only in case of intra-State bilateral transactions only. The petitioners have submitted that net deviation charges should be claimed by SLDC as per the provisions of the Central Electricity

Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014.

11. SLDC, Meghalaya, vide its sub-rejoinder dated 20.8.2015, has submitted as under:

(a) SLDC, Meghalaya is bound by the orders passed by the MeSERC under the provisions of the MeSERC OA Regulations. The Deviation charges are levied in accordance with Regulation 30 of the MeSERC OA Regulations. MeSERC vide its order dated 12.4.2014 had prescribed the rates of Imbalance charges in accordance with MeSERC OA Regulations.

(b) SLDC, Meghalaya has taken action as per directions of MeSERC and the same cannot be challenged before this Commission. Since, MePDCL represents the State of Meghalaya in totality, it is responsible for penalties whether financial or technical, for any violation in regard to grid discipline by any of the consumers inside the State including the petitioners (Short Term Open Access consumers). Therefore, overdrawal by the petitioners or any other short term open access consumer will create congestion, overloading of lines thereby reducing system security and stability. MeSERC in its wisdom has issued the directions in the order dated 12.4.2014 to prevent this constraint and for grid security.

(c) The Commission vide order dated 20.1.2015 in Petition No. 6/RP/2014 observed that the State of Meghalaya along with other small States of the country, has a limit to overdraw up to 48 MW, at the inter-State periphery. If the total overdrawal by all open access consumers is more than 48 MW, either MePDCL would be forced to resort to under drawal at the inter-State periphery or MePDCL would be heavily

penalized. Accordingly, MSERC has framed the MeSERCOA Regulations to maintain the overall balance at the inter-state periphery so that the grid security is not compromised in any condition.

(d) MePDCL has to avoid under-drawal to fulfill its universal obligation to supply electricity to consumers, otherwise MePDCL may not be in a position to fulfill the demand of the consumers in the State. If such overdrawal of open access entity is not penalized in the said manner as provided in MeSERC OA Regulations, then open access consumers may overdraw extra volume which would lead to grid insecurity and may have a cascading effect on the entire NE regional grid.

(e) Since, all open access consumers of the State are connected at the 132 kV level along with the major portion of the MePDCL, line loading is a critical issue and even an increase of only 10 MW would result in lines overloading, failure of the line and may result in grid failure. At present, in the State of Meghalaya, there are five open access buyers and at times only one open access seller is there, and certain entities are adhering grid discipline. However, the schedule *vis-à-vis* drawal within the State is limited to a permissible extent and ultimately has to be balanced and maintained by MePDCL at the inter-State level. Therefore, if the Open Access consumers continue to overdraw, the burden directly shifts to the Deviation Settlement of MePDCL.

(f) As per sub-clause (3) of the Regulation 30 of MeSERC OA Regulations, deviations between the schedule and the actual injection/drawal in respect of open access consumers with load of 5 MW and above and the generating stations

irrespective of the capacity is required to be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle based on net metering in accordance with the charges specified by MSERC or as specified by the Central Commission.

12. SLDC, Meghalaya vide its affidavit dated 24.7.2015 to the reply of IA has submitted as under:

(a) The dispute in the present case relates to recovery of Imbalance Charges from the petitioners in terms of Regulation 30 of the MeSERC OA Regulations.

(b) Regulations 23 to 31 of the MeSERC OA Regulations specifically provide for the various charges to be recovered from inter-State Open Access consumers and intra-state open Access consumers either in terms of the MeSERC OA Regulations or in terms of the 2008 Open Access Regulations.

(c) Since, the bills raised for imbalance charges are in consonance with the provisions of Regulation 30 of the MeSERC OA Regulations, the petitioners cannot invoke Section 79(1)(c) of the Electricity Act, 2003 to adjudicate disputes arising out of bills raised under MeSERC OA Regulations.

(d) This Commission does not have the jurisdiction to decide on the validity of the State Commission's Regulations or to review a decision of the State Regulator made in terms of State Commission's Regulations. Therefore, implementation of such directions of the State Regulator in consonance with the MeSERC OA Regulations cannot be challenged under the provisions of Section 79(1)(c) before this Commission.

(e) Regulation 36 of the MeSERC OA Regulations provides that all disputes and complaints regarding any matter related to open access shall be directed to SLDC, Meghalaya in the first instance and only if SLDC, Meghalaya is unable to resolve, the matter shall be referred to MSERC for decision. Therefore, the present petition is not maintainable before this Commission.

(f) The petitioners have failed to approach the appropriate forum and instead approached this Commission whereas the MSERC is the only competent forum to adjudicate on the issues in the present application.

(g) SLDC has strictly followed the DSM Regulations, MeSERC OA Regulations and orders of the MSERC issued from time to time. The allegation that the SLDC is earning from overdrawal is grossly unfounded and without any basis since the Deviation Settlement Mechanism Pool Account is balanced and remains zero at the end by timely receipts and payments to all the beneficiaries. SLDC is performing its duties under the provisions of the Grid Code to prevent overdrawl from the grid and gaming during the transaction(s) as this may hamper the intra-State grid security by causing overloading of intra-State transmission system which if allowed, may lead to intra-State as well as inter- State and regional system failure.

(h) SLDC is performing its duty in compliance to the MSERC's State Grid Code, 2012 and MeSERC OA Regulations in which all entities within the State have to abide including order of MSERC dated 12.4.2014.

Analysis and decision:

13. We have considered the submissions of the petitioner and the respondents and perused documents available on record. The first issue for our consideration is as to whether the Commission has jurisdiction to look into the dispute in the present petition. MECL and SLDC, Meghalaya have submitted that since the dispute in the present petition relates to recovery of Imbalance charges from the petitioners in terms of the Regulation 30 MeSERC OA Regulations, dispute connects with bills raised under the State Regulations and adjudication of the dispute in relation to such bills falls within the jurisdiction of the Meghalaya State Electricity Regulatory Commission. MECL and SLDC, Meghalaya have submitted that this Commission does not have the jurisdiction to decide on the validity of the State Commission's Regulations or to review a decision of the State Commission's dated 12.4.2014 made in terms of State Commission's Regulations. Therefore, implementation of such directions of the State Commission in consonance with the MeSERC OA Regulations cannot be challenged under the provisions of Section 79(1) (c) of the Act before this Commission.

14. We have considered the submissions of the petitioner and the respondents. According to SLDC, MeSERC OA Regulations provide for various charges which may be recovered from open access consumers including inter-State Open Access consumers. Similarly, Open Access Regulation of this Commission prescribes the charges which shall be levied from the consumers in the course of inter-State open access transaction. The regulations of this Commission as well as the regulations of the State commission have to be harmoniously constructed in order to achieve the objective of the Act. The petitioners have been selling power at the power exchange after obtaining inter-State open access. If the petitioners are aggrieved by the action of SLDC

in relation to inter-State open access, they are within their rights to approach this Commission. After considering the submission of the parties, it is for this Commission to decide whether the dispute falls within the jurisdiction of this Commission or the State Commission. Since the issue raised in the petition pertains to open access into inter-State transmission of electricity, this Commission has jurisdiction to look into the dispute in exercise of its powers under Section 79 (1) (c) read with Section 79 (1) (f) of the Act.

15. The next issue for our consideration is whether SLDC, Meghalaya is entitled to raise the advance bills on the petitioners. The petitioners are industrial consumers in the State of Meghalaya and are purchasing power from the open market through Power Exchange. According to the petitioner, the nodal agency for collection of all charges including the charges for inter-State transmission system is the Power Exchange. The petitioners have submitted that since September, 2012, the petitioners have been purchasing power through IEX and paying all charges to IEX. However, SLDC, Meghalaya has raised bills dated 5.5.2014 on the petitioners for the open access charges for collective transactions in advance for the month of May 2014. The petitioner has submitted that there is no basis for changing the billing methodology prescribed in the Open Access Regulations and the Detailed Procedure for Collective Transactions prescribed by the Commission in such a unilateral manner. The petitioners vide their various letters brought to the notice of SLDC, Meghalaya the correct position with respect to billing. However, on 22.5.2014, SLDC, Meghalaya issued a disconnection notice to the petitioners for disconnection of power supply for failure to pay the open access charges for the subsequent month i.e. June, 2014 stating that unless the entire

advance transmission charges bills are paid by the petitioners, No- Objection for the month of June, 2014 would not be granted.

16. In the present case, the petitioners have alleged that the actions of the SLDC are in violation of Regulations 17, 18, and 26 of the 2008 Open Access Regulations.

17. Regulations 17 relates to payment of operating charges for bilateral and collective transactions. Relevant portion of the Regulations is extracted as under:

“17. (1) Operating charges at the rate of Rs. 2,000 /- per day or part of the day for each bilateral transaction for each of the Regional Load Despatch Centre involved and at the rate of Rs.2,000 /- per day or part of the day for each State Load Despatch Centre involved shall be payable by the applicant.

(2) In case of the collective transaction, operating charges shall be payable by the power exchange @ Rs.5000/- per day to the National Load Despatch Centre for each State involved and Rs.2,000 /- per day for the State Load Despatch Centre involved for each point of transaction.”

Further, Regulation 18 of the 2008 Open Access Regulations which is extracted below deals with payment of transmission charges and operating charges:

“18. Payment of transmission charges and operating charges: In case of the bilateral transaction, the applicant shall deposit with the nodal agency transmission charges and operating charges within three (3) working days of grant of application and in case of collective transactions, the power exchange shall deposit with the nodal agency these charges by the next working day falling after the day on which its application was processed:

Provided that in case of the collective transactions, the transmission charges for use of State network and operating charges for State Load Despatch Centre shall be settled directly by the power exchange with respective State Load Despatch Centre.”

As per the above provisions, which were in force during the period in question, the transmission charges for use of State network and operating charges for State Load Despatch Centre shall be settled directly by the Power Exchange with the respective State Load Despatch Centre. Therefore, levy of transmission charges and operating

charges by SLDC, Meghalaya while granting the NOC is not in conformity with the 2008 Open Access Regulations. We direct SLDC, Meghalaya to comply with the provisions of the 2008 Open Access Regulations as amended from time to time in case of STOA transactions. It is noted that the petitioners in its I.A. No. 21 of 2015 have submitted that after the Commission's direction dated 27.5.2015, SLDC, Meghalaya is granting no-objections to the petitioners for STOA.

18. Next issue for our consideration is whether SLDC, Meghalaya is entitled to impose imbalance charges as per the provisions of MeSERC OA Regulations and order of MSERC. According to the petitioners, although SLDC, Meghalaya is granting no-objection to the petitioners after the Commission's directions dated 27.5.2014 but is following the provisions of MeSERC OA Regulations for deviation settlement mechanism and the distribution company of State is earning money from regional pool on this account.

19. SLDC has submitted that the dispute in the present case relates to recovery of imbalance charges from the petitioners. SLDC has submitted that bills raised for imbalance charges are in consonance with the provisions of Regulation 30 of the MeSERC OA Regulations and the petitioners cannot invoke Section 79 (1) (f) of the Electricity Act, 2003 to adjudicate the disputes arising out of bills raised under the State Regulations. SLDC has submitted that by way of the present petition, the petitioners cannot seek a judicial review of the Regulations of the State Commission. SLDC has further stated that Regulation 23 to Regulation 31 of the MeSERC OA Regulations specifically provides for the various charges to be recovered from inter-State open access consumers and intra-State open access consumers either in terms of MeSERC

OA Regulations or in terms of 2008 Open Access Regulations. SLDC has submitted that as per the Commission's order dated 20.1.2015 in Petition No. 6/RP/2014, the State of Meghalaya along with other small States of the country, has a limit to overdraw up to 48 MW, at the inter-State periphery and if the total overdrawal by all open access consumers is more than 48 MW, either MePDCL has to resort to force under drawal at the inter-State periphery or MePDCL would be heavily penalized. SLDC has submitted that to maintain the overall balance at the inter-State periphery, the provision with regard to Imbalance charges has been specified in the MeSERC OA Regulations so that the grid security is not compromised in any condition. SLDC has submitted that since all open access consumers of the State are connected at the 132 kV level along with the major portion of the MePDCL, line loading is a critical issue and even an increase of only 10 MW would result in lines overloading and failure of the line and subsequently may result in grid failure. According to SLDC, at present, there are five open access buyers and one open access seller in the State of Meghalaya, and certain entities are adhering to grid discipline. However, the schedule *vis-a-vis* drawal within the State is limited to a permissible extent and ultimately has to be balanced and maintained by MePDCL at the inter-State level. Therefore, if the open access consumers continue to overdraw, the burden directly shifts to the deviation settlement of MePDCL. SLDC has submitted that Imbalance charges recovered from the petitioners are valid in accordance with the provisions of the MeSERC OA Regulations and as per the MSERC's directions dated 12.4.2014.

20. We have considered the submissions of the petitioners and SLDC. It is noted that Regulation 20 of the 2008 Open Access Regulations as amended from time to time provides that unless specified otherwise by the concerned State Commission, the UI

rates for intra-State entities 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.

The relevant extract of Regulation 20 of the 2008 Open Access Regulations is extracted as under:

Unscheduled Inter-change (UI) Charges

20 (1).....

(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.

Provided that all payments on account of Unscheduled Interchange Charge (Deviation Charges) including Additional Unscheduled Interchange Charges (Deviation Charges) and interest and implications for all other aspects of Unscheduled Interchange (Deviation Charges), shall be regulated in accordance with the provisions of Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009, as amended from time to time or any subsequent re-enactment thereof.

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

The above provisions are applicable only in cases where the concerned State Commissions have not specified any charges for deviation settlement. Regulation 30 of MeSERC OA Regulations provides as under:

30. Imbalance Charge

(1) Scheduling of all transactions pursuant to grant of long-term access or medium term open access or short-term open access shall be carried out on day-ahead basis in accordance with the relevant provisions of IEGC for inter-State transactions and in accordance with State Grid Code/ Commission's order for intra-State transactions.

(2) In case of deviation by open access consumers with load of less than 5 MW, the difference between the applicable sanctioned Open Access load and the actual drawal shall be accounted through the Time of Day (TOD) Meters on monthly basis and settled at the rate of the imbalance charge as determined by the Commission or where imbalance charge has not been determined by the Commission, UI charges as specified by the Central Commission shall be applicable. Unless specified otherwise by the 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.

(3) Deviations between the schedule and the actual injection/drawal in respect of open access consumers with load of 5 MW and above and the Generating Stations irrespective of the capacity, shall be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle based on net metering in accordance with the charges specified by the Commission or as specified by the Central Commission. Unless specified otherwise by the 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.

(4) Payment of imbalance charges shall have a high priority and the concerned constituents shall pay the indicated amounts within 10 (ten) days of the issue of the statement, into a State imbalance pool account operated by the SLDC. The person who has to receive the money on account of imbalance charges would then be paid out from the State imbalance pool account, within three (3) working days.

(5) If payments against the above imbalance charges are delayed by more than two days, i.e., beyond twelve (12) days from the date of issue of statement, the defaulting party shall have to pay simple interest @ 0.04% for each day of delay. The interest so collected shall be paid to the person who had to receive the amount, payment of which got delayed. Persistent payment defaults, if any, shall be reported by the SLDC to the Commission, for initiating remedial action.

As per above provisions, deviations between the schedule and the actual injection/drawal in respect of open access consumers with load of 5 MW and above and the generating stations irrespective of the capacity, are required to be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle based on net metering in accordance with the charges specified by the State Commission or by the Central Commission.

21. MSERC vide its order dated 12.4.2016 has observed that imbalance charges are levied in accordance with MeSERC OA Regulations. The rates for imbalance charges shall be as may be determined by the Commission from time to time. Accordingly, to enforce grid discipline, security of grid, load management and to avoid gaming, the State Commission after careful examination of the open access transactions in the State, has decided that over-drawals or under injections shall be charged on the UI rates as notified by CERC for intra-State entities or Rs.5.82 per unit whichever is higher

from all open access customers including generators/traders irrespective of their load.

The relevant portion of said order dated 12.4.2014 is extracted as under:

"Imbalances charges

Imbalances charges are levied in accordance with MSERC (Terms and Conditions of Open Access) Regulations 2012. The rates for imbalance charges shall be as may be determined by the Commission from time to time. Accordingly, to enforce grid discipline, security of grid, load management and to avoid gaming, the Commission after careful examination of the open access transactions in the State, has decided that over drawals or under injections shall be charged on the UI rates as notified by CERC for intra state entities or Rs.5.82 per unit whichever is higher from all open access customers including generators/traders irrespective of their load. However for under drawal or over Injections no charges shall be paid. The provisions of the grid code and regulations shall be applicable for declaration of capacity and scheduling and other parameters. In order to avoid gaming in the open access transactions the Commission either suo-motto or on a petition filed by SLDC or any affected party may initiate proceedings against any open access consumer or generator on charges of gaming in accordance with the provisions of Electricity Act 2003. In case of charges of gaming is established the Commission may take penal action under the act and may decide the penalty amount."

22. We have clearly specified in 2008 Open Access Regulations that the charges for deviation for intra-State entities shall be as specified by State Commission. MSERC has specified such rates in the MeSERC OA Regulations and in its orders. We are of the view that SLDC, Meghalaya is correctly raising bills for Imbalance charges for deviation by open access consumers in accordance with the provisions of MeSERC OA Regulations and MSERC`s order dated 12.4.2014. Therefore, we are of the view that no adjustment is required to be made in respect of imbalance charges raised by SLDC, Meghalaya on the petitioners.

23. In view of the above decision, the prayers of the petitioner are decided as under:

(a) As regards prayers (a), it is decided that as per Regulation 18 of the 2008 Open Access Regulations, the transmission charges for State network and operating charges of SLDC shall be directly settled by the Power Exchanges with

SLDCs. Therefore, SLDCs are not required to raise the bills for such charges on the open access consumers seeking NOC for sale or purchase of power at the power exchange. Accordingly, prayer (a) is decided in favour of the petitioner and the bill dated 5.5.2014 is set aside.

(b) As regards prayer (b), SLDC is directed to follow the billing procedure as prescribed by the State Commission except the transmission charges and SLDC operating charges which are collected by Power Exchanges and reimbursed to SLDC.

(c) As regards prayer (c), it is directed that SLDC shall process the application for inter-State open access and grant NOC or Standing Clearance if the metering facilities and capacity in the State network are available. Except in these two circumstances, SLDC shall not withhold the NOC or Standing Clearance to open access customers for inter-State transmission.

(d) As regards prayer (d), the same shall be regulated in terms of the MeSERC OA Regulations and order of the State Commission.

(e) As regards prayer (e), it is noted that as per the directions of this Commission, disconnection notices were not given effect to and connections were restored. In future, SLDC shall comply with the provisions of the regulations and the orders of the State Commission while issuing disconnection notice and the petitioner if aggrieved shall seek redressal from the State Commission.

24. 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