

**Central Electricity Regulatory Commission
New Delhi**

Petition No. 73/MP/2016

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M. K. Iyer, Member

Date of Order: 24th of July, 2017

In the matter of:

Petition under Section 79 (1) (c) read with Regulations 8 and 26 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008.

And

In the matter of

Millennium Cement Co. Pvt. Ltd.
Village-Kartowa, P.O. Mohanvita, District-Jalapaiguri
West Bengal

Vs

1. Office of Chief Engineer
SLDC, West Bengal State Electricity Transmission Company Ltd.,
PO Danesh Seikh Lane,
Howrah-711109
2. West Bengal State Electricity Distribution Company Ltd.,
Vidyut Bhawan, Block-DJ,
Sector-II, Salt Lake City,
Kolkata-700 091
3. Eastern Regional Load Despatch Centre
14, Golf Club Road, Tollygunge,
Kolkata-700 033
4. Indian Energy Exchange
Units 3, 4, 5 and 6, Fourth Floor,
Plot No. 7, TDI Centre,
District Centre, Jasola,
New Delhi-110 025

Parties Present:

Ms. Swapan Seshadi, Advocate for the Petitioner
Shri Sakia Choudhery, Advocate for WBSEDCL and WBSETCL
Ms. Shruti Bhatia, IEX

ORDER

The Petitioner, Millennium Cement Co. Pvt. Ltd., has filed the present petition challenging the denial of short term open access by State Load Despatch Centre, West Bengal (WBSLDC) on the ground of constraint in inter-State network for the period from 1.12.2015 to 29.2.2016.

2. Brief facts of the case are that the Petitioner has set up a cement factory at Jalpaiguri in the State of West Bengal for manufacturing and sale of cement. The Petitioner is a consumer of the Distribution Company, namely West Bengal State Electricity Distribution Company Limited (WBSEDCL) having a contracted load of 1.22 MVA at 11 kV voltage. The Petitioner intended to purchase power through open access to meet the load of its manufacturing facility. On 2.11.2015, the Petitioner made an application to SLDC, West Bengal for grant of prior standing clearance for purchase of electricity through Power Exchange by availing inter-State short term open access for the period of three months, i.e. from 1.12.2015 to 29.2.2016 in accordance with Regulation 8 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmissions) Regulations, 2008 (hereinafter 2008 Open Access Regulations). WBSLDC vide its letter dated 15.12.2015 denied no objection on the ground of limitation in transmission capability for inter-State import by STU (WBSETCL). The Petitioner vide its letter dated 28.12.2015 requested SLDC, West Bengal to reconsider its application for grant of NOC. However, no response was received from WBSLDC. In the above background, the Petitioner has filed the present petition.

3. The Petitioner has submitted that the Petitioner after enquiry found that there was no congestion in the ERLDC network and ERLDC has not refused scheduling of any transaction for the period from 1.12.2015 onwards. The Petitioner has submitted that SLDC or the Distribution Company are not concerned with any congestion in the upstream network as they are only required to verify if there is adequate capacity available in the State network to accommodate the request for open access. The Petitioner has further submitted that after giving no objection, if there is actually congestion in the inter-State network, the collective transaction would automatically not get scheduled. The Petitioner has submitted that any transaction of electricity through Power Exchange is an inter-State transaction regulated by this Commission and therefore, any dispute relating to denial of open access for transaction through Power Exchange shall be adjudicated by the Commission. Accordingly, the Petitioner has approached the Commission in terms of Regulation 26 of the 2008 Open Access Regulations with the following prayers:

- “(i) Admit the Petition;
- (ii) Set aside the letter dated 15.12.2015 of the SLDC claiming that no objection could not be granted to the Petitioner due to constraint in the inter-state network;
- (iii) Direct the ERLDC to clarify as to there was any constraint/ congestion in the eastern region inter-state network for the period 01/12/2015 to 29/02/2016;
- (iv) Compensate the Petitioner for the wrongful denial of open access by the SLDC for the period 01/12/2015 to 29/02/2016;
- (v) Direct the SLDC to process and grant the open access no objections strictly in accordance with the Short Term Open Access Regulations and not exceeding its jurisdiction;
- (vi) Pass any such further order(s) as deemed appropriate in the facts and circumstances of the case.”

4. Notices were issued to the Respondents to file their replies. West Bengal State Electricity Transmission Company Ltd. (WBSETCL), West Bengal State Electricity Distribution Company Ltd. (WBSEDCL), Eastern Regional Load Despatch Centre (ERLDC) and Indian Energy Exchange (IEX) have filed their replies.

5. WBSETCL and WBSEDCL (hereinafter “the Respondents”) have raised the issue of maintainability of the present petition before this Commission under Section 79(1) (c) of the Electricity Act, 2003 read with Regulations 8 and 26 of the Open Access Regulations. The Respondents have submitted that since the dispute is in relation to denial of open access by SLDC, the West Bengal Electricity Regulatory Commission (WBERC) has the jurisdiction to adjudicate such issues. The Respondents have further submitted that the Petitioner has deliberately manipulated the interpretation of the letter dated 15.12.2015 as the said letter no-where states that there is transmission constraint in inter-State network as claimed by the Petitioner and the letter indicates only limitation in transmission capability for inter-State sale. The Respondents have contended that the Petitioner despite being aware that clearance of short term open access is required to be obtained under the provisions of West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007 has wrongly approached this Commission which does not have jurisdiction to adjudicate the present dispute. The Respondents have submitted that since the crux of the present dispute revolves around the availability of capacity in the State transmission system or operational constraints, the Petitioner should have referred the same to WBERC under Regulation 11 of the West Bengal Open Access Regulations which provides for adjudication of any dispute regarding availability of transmission capacity in the intra-State system. The Respondents have submitted that filing of the present petition is an afterthought and the Petitioner is indulging in

forum shopping. The Respondents have stated that due to congestion in the State network, NOC was denied to the Petitioner and therefore, the right forum for resolution of dispute for non-availability of capacity in the State transmission system is WBERC.

6. The Petitioner in its rejoinders dated 25.7.2016 and 28.7.2016 has submitted that jurisdiction cannot be conferred or claimed by framing regulations. Jurisdiction needs to be found in the statute, namely the Electricity Act, 2003. The Petitioner has submitted that no regulations including regulations framed by the State Commission define the 'collective transaction'. In a collective transaction, the one to one relationship of buyer and seller of power in a transaction is not known. Therefore, it is not possible to distinguish whether such procurement is on inter-State basis or Intra-State basis. To avoid any jurisdictional issues, any exchange of power through collective transactions on the Power Exchange is deemed to be inter-State sale and purchase and is regulated by the Commission. The Commission has framed the Open Access Regulations which deals with the role of various parties including the State SLDC and the Petitioner in the course of inter-State open access. Regulation 26 of the Open Access Regulations provides that all disputes arising under the said regulations shall be decided by the Commission based on an application made by the person aggrieved. Therefore, irrespective of the fact that the State entities are involved, the State Commission cannot exercise jurisdiction in the present case as the denial has been of inter-State open access permission. The Petitioner has submitted that two authorities cannot exercise jurisdiction in respect of the same transaction. In so far as any transaction through Power Exchange is concerned, it is deemed to be an inter-State transaction and is governed by 2008 Open Access Regulations. The Petitioner, in support of its argument has relied upon the Judgment

of the Appellate Tribunal for Electricity in Appeal No. 210 of 2012 (BALCO Vs. CSERC and Another's) and has submitted that the issue of jurisdiction is no longer *res integra*. The Petitioner has submitted that Regulations 11 and 28 of the WBERC Open Access Regulations have no application since the congestion claimed by WBSLDC is in the inter-State network over which WBERC has no jurisdiction. The Petitioner has also submitted that WBSLDC denied the open access on the ground of limitation in transmission capability for 'inter-State import by STU' which means that the WBSETCL is not able to import enough power due to a congestion in the inter-State network due to which the open access cannot be granted to the Petitioner. Since the Petitioner has been drawing its sanctioned load without any interruptions whatsoever, there can be no question of congestion in the State network.

7. Indian Energy Exchange Limited (IEX) in its reply dated 2.8.2016 has submitted there is not a single open access consumer participation till date on the exchange platform. The regulatory environment and utilities have not been forthcoming in allowing open access to consumers in the State. IEX has submitted that in the present case, the Petitioner had applied for NOC for procurement of power through open access within its contract demand which is any way being served by WBSEDCL. Therefore, open access denial on account of congestion is doubtful. IEX has submitted that independent assessment of the claim of import congestion in the State of West Bengal is required as it is not clear from the SLDC letter that which part of the system or line was congested.

8. Eastern Regional Load Despatch Centre (ERLDC) in its reply has submitted that since there is no network congestion in the West Bengal region, RLDC/NLDC

has not declared any ATC/TTC for the same in terms of Regulation 3 (3) of the Central Electricity Regulatory Commission (Measures to Relieve Congestion in real time operations) Regulations, 2009 (Congestion Regulations). ERLDC has submitted the details of monthly TTC/ATC for December, 2015, January, 2016 and February, 2016 showing the limited constraint for arriving of inter/intra regional TTC/ATC values. ERLDC has placed on record the quarterly operational feedback furnished by NLDC to CEA and CTU for the period from October 2015 to March 2016 showing the transmission constraint in the inter-State system.

9. During the hearing, learned counsel for Respondents placed heavy reliance on the decision of the Hon'ble Appellate Tribunal for Electricity dated 28.7.2016 in Appeal Nos. 231 of 2015 and 251 of 2015 and submitted that the present case is squarely covered under the said judgment wherein the Appellate Tribunal has taken a view that the State Commission has jurisdiction to adjudicate the disputes arising out of refusal on the part of SLDC to give NOC for inter-State open access where intra-State transmission system is involved. Learned counsel for the Respondents contended that in the light of the principles decided in the said judgment, the present petition is not maintainable before CERC and the Petitioner should approach WBERC with its grievance. Learned counsel for the Petitioner submitted that the judgments relied upon by the Respondents are distinguishable on facts since the SLDC in the present case has cited congestion in the inter-State network as the ground for denial of NOC, and not the transmission constraints in the State network. As no congestion in the State network has been shown, the Respondents could not have denied open access in terms of the Open Access Regulations. Learned counsel for the Petitioner relied upon the judgment of the Appellate Tribunal in

Appeal No. 210 of 2012 and submitted that issue of jurisdiction of this Commission in the matter of inter-State Open Access stood settled in the said judgment.

Analysis and Decision:

10. After consideration of the rival contentions of the parties, the following issues emerge for consideration:

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

(b) Whether the petition suffers from delay and laches?

(c) If the petition is maintainable, whether WBSLDC has dealt with the application of the Petitioner for open access in accordance with the provisions of the Act and Open Access Regulations?

(d) Whether the Petitioner is entitled to compensation for denial of open access for the period from 1.12.2015 to 29.2.2016?

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

11. The Petitioner has filed the present petition under Section 79 (1) (c) of the Electricity Act, 2003 and Regulations 8 and 26 of the 2008 Open Access Regulations seeking direction to set aside WBSLDC letter dated 15.12.2015 under which short term open access for the period from 1.12.2015 to 29.2.2016 was denied to the Petitioner. Section 79 (1) (c) vests power in the Commission to regulate inter-State transmission of electricity. Regulation 8 of the Open Access Regulations deals with the procedure for processing the application for open access. Regulation 26 of the Open Access Regulations provides for a redressal mechanism of the aggrieved party arising out of the non-compliance of the Open Access Regulations. WBSEDCL and WBSETCL have raised objection that the present dispute ought to have been agitated before WBERC under Regulation 11 of the West Bengal Open Access

Regulations since the dispute related to availability of capacity in the State transmission system, and not in the inter-State transmission system.

12. To re-capitulate the facts, the Petitioner made an application on 2.11.2015 clearly mentioning that the Petitioner is seeking standing clearance for collective transactions through inter-State open access in terms of 2008 Open Access Regulations and West Bengal Open Access Regulations for the period from 1.12.2015 to 29.2.2016 for drawal of 1.5 MW power at 11 kV voltage at its power plant. WBSLDC vide its letter dated 15.12.2015 informed the Petitioner that open access cannot be granted to the Petitioner due to limitation in transmission capability for inter-State import by STU. Relevant portion of the said letter dated 15.12.2015 is extracted as under:

“With reference to above, regarding granting standing clearance for collective transactions through inter-State Open Access for drawal of 1.5 MW Power at 11 kV to your plant at above mentioned address from 1.12.2015 to 29.2.2016, we regret to state that due to limitation in inter-State transmission capability between WBSETCL (STU) and PGCIL (CTU)/other state network for import of power, it is not possible to allow import of 1.5 MW by your through STOA.”

SLDC vide format 2A annexed with the said letter dated 15.12.2015 has stated as under:

- “6. Open access cannot be granted immediately due to the following reasons;
- (i) Limitation in transmission capability for inter-State import by STU (WBSETCL)”

13. The above letter dated 15.12.2015 has been challenged in the petition before us. Therefore, we have to determine whether we have the jurisdiction to deal with the denial of the open access by WBSLDC on the basis of said letter dated 15.12.2015. In the said letter, WBSLDC has stated that there is limitation in the inter-State transfer capacity between WBSETCL (STU) and PGCIL CTU. Since the

limitation with regard to inter-State transfer capacity has been cited as the reason for denial of open access, this Commission being vested with the power to regulate inter-State transmission of electricity and open access to inter-state transmission system is the appropriate forum to look into the legality of the denial of open access. This Commission has notified the Open Access Regulations in exercise of its power under Section 2 (47) read with Section 178 of the Electricity Act, 2003 to regulate the open access to inter-State transmission system. While Regulation 8 deals with the procedure and conditions for grant of open access, Regulation 26 provides the aggrieved party a legal remedy to approach this Commission for redressal of its grievance. Therefore, the petition is maintainable in terms of Section 79 (1) (c) read with Regulation 8 and 24 of the Open Access Regulations.

14. The Respondents have submitted that in terms of Regulations 11 and 24 of West Bengal Open Access Regulations, the Petitioner's case is subject to adjudication by WBERC. Regulations 11 and 28 of the West Bengal Open Access Regulations provides as under:

“11. Adjudication of dispute on capacity availability: In case of any dispute regarding availability of transmission 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 the SLDC, as the case may be, the aggrieved party may file a petition along with all necessary documents before the Commission for adjudication / settlement of the dispute within 60 days from cause of action.

“28. Dispute Resolution

28.1 In the event of any dispute on any or all of the following, the same shall be referred to the Commission for decision.

- (a) Available capacity of the system,
- (b) Operational constraints,
- (c) Charges to be recovered,

- (d) Eligibility for open access,
- (e) Allotment / Curtailment priority, etc.

28.2 The Commission, while deciding any dispute under these regulations or otherwise, by a general or special order made from time to time, may lay down, if required, the conditions to be complied with by the Licensees concerned, STU, SLDC and Open Access Customer in regard to operation constraints and the open access shall be allowed only subject to the due satisfaction of such conditions.”

West Bengal Open Access Regulation is applicable in cases of the intra-State transmission system or distribution system as may be seen from the following provisions:-

“3. Extent of Application

3.1 These regulations shall apply to open access for use of intra-State transmission lines and/or distribution systems and associated facilities with such lines or systems of the Licensee(s) under the purview of the Commission including any such lines and/or systems as are used in conjunction with inter-State transmission lines.

3.2 These regulations shall apply to all Open Access Customers who are at present availing open access by orders of the Commission or had been granted open access by the Commission and notwithstanding anything to the contrary contained in earlier Regulations or orders of the Commission, these regulations shall have overriding effect.”

Since in the present case, the denial vide letter dated 15.12.2015 does not refer to any constraints in the intra-State transmission system of West Bengal or distribution system of the distribution companies of West Bengal, the provisions of Regulations 11 and 28 are not attracted in this case.

15. Learned counsel for the Respondents relied upon the judgment of the Appellate Tribunal dated 28.7.2016 in Appeal Nos. 231 of 2015 and 251 of 2015 in support of the given direction of WBERC in this matter. The relevant extract of the said judgment is as under:

"13. (r) ..The current matter under consideration is consisting of two transactions, one where Inter State Open Access was sought for supply of power from Shree Cements Rajasthan Plant to Pali Sub-Station and the other where Intra-State Open Access is

required for using UPPTCL transmission system. After considering all the relevant provisions of Electricity Act and the provisions of Regulations of Central Commission and the State Commission, we are of the considered view that the UPERC Open access regulations shall be applicable for applying for open access for use of intra-state transmission system and / or the distribution systems of licensees within the State, including, when such system is used in conjunction with inter-state transmission system. Hence any dispute arising due to non-issuance of NOC by UPSLDC/UPPTCL for use of Intra State Transmission System for open access transactions has to be brought before the State Commission which in this case is UPERC. Hence on this issue of jurisdiction we hold that in the present case the UPERC's jurisdiction is attracted."

In the above judgment, the Appellate Tribunal recognized that every inter-State open access consists of two transactions-one arising the inter-State transmission system and other using the intra-State transmission system. As per the facts of the said case, the dispute pertained to congestion in the State network and whether the State Commission should have jurisdiction in the matter since it was in the course of intra-State open access. In that context, the Appellate Tribunal decided that UPERC Open Access Regulations shall be applicable for use of intra-State transmission system and/or distribution system of licensees within the State including where such system is used in conjunction with the inter-State transmission system and such cases fall within the jurisdiction of UPERC.

16. In the present case, the letter dated 15.12.2015 does not say that there is congestion in the intra-State transmission system or in the distribution system of licensees of West Bengal. On the other hand, it speaks about the inter-State transfer capacity which falls within the jurisdiction of the Central Commission. Therefore, the said judgment of APTEL dated 28.7.2016 is not applicable in this case.

17. In the light of the above decision, we are of the view that the present dispute falls within the jurisdiction of the Central Commission and hence, the petition is maintainable.

Issue No. 2: Whether the petition suffers from delay and laches?

18. WBSLDC has submitted that since, the Petitioner has filed the present petition after five months, the inordinate and unexplainable delay or laches is by itself a ground for rejection of the present petition at preliminary stage. The Petitioner has submitted that there is no period of limitation prescribed in the Act or the Regulations applying the general principle of limitation the Petitioner could have approached the Commission within 3 years from the denial of open access which in fact has been done by the Petitioner.

19. We have considered the submissions of the Petitioner and Respondents. No period of limitation has been prescribed in the Electricity Act, 2003 for filing the petition for adjudication of the disputes. Even, Regulation 26 of the Open Access Regulations does not prescribe any period of limitation. As we have held that WBERC Open Access Regulations is not applicable in case, the period of limitation provided in Regulation 11 of WBERC Open Access Regulations shall not be applicable. Though, Limitation Act is not applicable in case of the disputes arising under the Electricity Act, 2003 which has been reiterated by the Hon'ble Supreme Court and Appellate Tribunal in a number of judgments. The Hon'ble Supreme Court in Andhra Pradesh Power Co-ordination Committee Vs. Lanco Kondapalli Power Limited [(2016) 3SCC 468] held that the claims coming for adjudication before the Commission cannot be entertained or allowed if otherwise the same is not recoverable in a regular suit on account of law of limitation. Relevant extract of the said judgment is as under:-

“30...In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of

the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.”

20. In the light of the above judgment, the limitation period prescribed for money claims in the Limitation Act, 1963 i.e. 3 years will be applicable, in the absence of any period of limitation for filing the application before the Commission in terms of Open Access Regulations. Since, the Petitioner has approached the Commission in April, 2016 i.e. after 5 months of the issue of the letter dated 15.12.2015, the present petition is not hit by delay and laches. Accordingly, we reject the contention of the Respondents in this regard.

Issue No. 3: If the petition is maintainable, whether WBSLDC has dealt with the application of the Petitioner for open access in accordance with the provisions of the Act and Open Access Regulations?

21. We have already held that the petition is maintainable before this Commission. It necessarily follows that the dispute between the Petitioner and Respondents will have to be considered in accordance with the provisions of Open Access Regulations. Regulation 8 of the 2008 Open Access Regulations provides for concurrence of State Load Despatch for bilateral and collective transactions as under:

“8 (3) (b) While processing the application for concurrence or ‘no objection’ or prior standing clearance, as the case may be, the State Load Despatch Centre shall verify the following:

- (i) existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, and
- (ii) availability of surplus transmission capacity in the State network.

(iii) submission of affidavit regarding existence of valid contract according to the second proviso to sub-clause (a) of clause (3) of this regulation with respect to bilateral transactions and according the last proviso with respect to collective transactions.

(c) Where the existence of necessary infrastructure, availability of surplus transmission capacity in the State network and submission of affidavit as required under provisos to sub-clause (a) of clause(3) of this regulation been established, the State Load Despatch Centre shall convey its concurrence or no objection or prior standing clearance, as the case may be, to the applicant by e-mail or fax, in addition to any other usually recognized mode of communication, within three (3) working days of receipt of the application.

Provided that when short-term open access has been applied for the first time by any persons, the buyer or the seller, the State Load Despatch Centre shall convey to the applicant such concurrence or 'no objection' or prior standing clearance, as the case may, within seven (7) working days of receipt of the application by e-mail or fax, in addition to any other usually recognized mode of communication."

As per the above provisions, SLDC is mandated to convey its concurrence within three days if two conditions are fulfilled i.e. necessary infrastructure for energy metering and time block-wise accounting exists and required capacity in the State network is available. If these conditions are not satisfied, then SLDC is required to communicate in writing with reasons within two days. In case of new applicant, SLDC is required to grant no objection or prior standing clearance within seven working days.

22. The Petitioner is HT consumer of WBSEDCL. The Petitioner made an application to WBSLDC on 2.11.2015 for grant of standing clearance for collective transactions through inter-State open Access for drawal of 1.5 MW power for the period from 1.12.2015 to 29.2.2016. SLDC, West Bengal vide its letter dated 15.12.2015 rejected the Petitioner`s application on the ground of limitation in inter-State Transmission capability between WBSETCL (STU) and PGCIL(CTU)/other State network for import of power. IEX has submitted that there is not even one open access consumer participation till date on the Exchange platform which inter-alia suggests that the regulatory environment and utilities have not been forthcoming in

allowing open access to consumers in the State. IEX has further submitted that the Petitioner had applied for NOC for procurement of power through open access within its contract demand which is any way being served by the incumbent Discom i.e. WBSEDCL. Therefore, open access denial on account of congestion is doubtful. ERLDC has submitted that since there was no congestion in the West Bengal Region, RLDC/NLDC has not declared any ATC/TTC for the same. ERLDC has further stated that being a nodal agency for bilateral transactions, ERLDC did not refuse any short term open access for bilateral application due to transmission constraint.

23. WBSLDC has relied upon a letter of ERLDC dated 15.10.2015 in support of its contention that there was a constraint in inter-State network between PGCIL (CTU) and West Bengal (STU) for import of power. ERLDC vide its letter dated 15.10.2015 had suggested WBSETCL to limit its import from ISTS within 2430 MW, since constraints were experienced in 400 kV Khargpur-Baripada S/C and 400 kV Parulia-Bidhannagr D/C which were used to meet the load for South Bengal system. ERLDC vide its letter dated 20.3.2017 has clarified about the congestion for inter-State transfer of power for providing open access to the Petitioner as under:

“The Petitioner has a connected load of 1.22 MVA, located within the 11 kV distribution network of WBSEDCL, in Kartowa village, Jalpaiguri district of North Bengal.

The ISTS system involved for meeting West Bengal load in the area where Petitioner's plant is located are 220 kV Binaguri-NJP (WB) D/C and 2) 132 kV Siliguri-NBU D/C.

ERLDC vide its letter dated 15.10.2015 has suggested WBSETCL to limit its import from ISTS within 2430 MW because of the constraints experienced in 400 kV Khargpur-Baripada S/C and 400 kV Parulia-Bidhannagar D/C, which are responsible for meeting the load in South Bengal system only. Also the constraint of import of power from ISTS varies with time, as the capability of importing of power changes with change in load generation pattern.

ERLDC in its letter dated 15.10.2015 has not expressed any constraint for meeting West Bengal load through 220 kV Binaguri-NJP (WB) D/C and 132 kV Siliguri-NBU D/C ties. Further, South Bengal and North Bengal system is strongly inter-connected through Inter State Transmission System.

The total purchase through STOA bilateral transactions by West Bengal during 2015-16 is 2.5 BU (approx.) and through collective transaction is 1.25 B (approx.)”

Perusal of the above letter reveals that the Petitioner is a load in North Bengal. However, the letter dated 15.10.2015 was issued in the context of South Bengal in which ERLDC suggested WBSETCL to limit its import from ISTS due to constraints experienced in 400 kV Khargpur-Baripada S/C and 400 kV Parulia-Bidhannagar D/C, which are responsible for meeting the load in South Bengal system only. Therefore, there was no constraint in the ISTS for supply of power to North Bengal where the Petitioner’s load is located.

24. If there was a constraint in intra-State network, WBSLDC should have clearly communicated the same to the Petitioner. The reasons cited by WBSLDC for denial of open access i.e. constraint in inter-State transfer of power cannot be sustained, particularly in view of the clarification of ERLDC that there was no constraint in the ISTS for meeting the load through 200 kV Binaguri-NJP (WB) D/C and 132 kV Siliguri-NBU D/C in the area where the Petitioner’s plant is located.

Issue No. 4: Whether the Petitioner is entitled for compensation for denial of open access for the period from 1.12.2015 to 29.2.2016?

25. We have held that denial of open access from 1.12.2015 to 29.2.2016 by WBSLDC to the Petitioner was in violation of the provisions of the Open Access Regulations. The Petitioner in its prayer has sought compensation for the wrongful denial of open access by WBSLDC for the period from 1.12.2015 to 29.2.2016. However, in the absence of relevant details with regard to the loss suffered by the

Petitioner on account of denial of open access, no compensation can be awarded in favour of the Petitioner.

26. The Petitioner has further prayed that directions be issued to WBSLDC to process its application and grant no objection for open access as per the Open Access Regulations of the Commission. We direct that WBSLDC shall consider the application of the Petitioner for no objection for open access in accordance with the provisions of Regulation 8 of Open Access Regulations and grant no objection if the conditions of the said regulations are satisfied.

27. With the above, the present petition is disposed of.

Sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson