

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 530/MP/2020  
along with IA No. 45/2020**

Subject : Petition under Section 79(1)(c), 79(1)(f) and other applicable provision of the Electricity Act, 2003 seeking directions against the Respondents in relation to wrongful rejection of the Application for Short-Term Open Access for transfer of power from the Western Region to Southern Region.

Petitioner : KSK Mahanadi Power Limited (KSKMPL)

Respondents : Western Regional Load Despatch Centre and Anr.

Date of Hearing : 23.7.2020

Coram : Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member

Parties present : Ms. Swapna Seshadri, Advocate, KSKMPL  
Shri Anand Ganesan, Advocate, KSKMPL  
Shri Ashwin Ramanathan, Advocate, KSKMPL  
Ms. S. Usha, WRLDC and SRLDC  
Shri Ashok Ranjan, WRLDC  
Shri Aditya Das, WRLDC

**Record of Proceedings**

The matter was heard through video conferencing.

2. Learned counsel for the Petitioner submitted that the instant Petition has been filed, *inter-alia*, seeking directions against the Respondents in relation to wrongful rejection of the application for grant of Short-Term Open Access (STOA) for transfer of power from the Western Region to Southern Region. Learned counsel for the Petitioner further submitted as under:

(a) The Petitioner was supplying power from its generating station located in the State of Chhattisgarh to the Distribution licensees of the State of Andhra Pradesh (in short 'AP Discoms') in terms of Power Purchase Agreement (PPA) entered into between the parties on Medium-Term Open Access (MTOA) basis till June, 2019.

(b) Post expiry of the MTOA, the Petitioner was supplying power to the AP Discoms by availing STOA in terms of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (in short 'STOA Regulations'), which was granted by the Respondent No.1, Western Regional Load Despatch Centre (WRLDC) and Respondent No. 2,



Southern Regional Load Despatch Centre (SRLDC) for the period from June, 2019 to January, 2020, without any dispute.

(c) On 27.1.2020, the Petitioner made an application to SRLDC for grant of STOA for supply of 392 MW power to AP Discoms for the period from 1.2.2020 to 8.2.2020.

(d) WRLDC, vide its email dated 30.1.2020, rejected the Petitioner's application for grant of STOA on the ground that the Petitioner already has LTA Agreements with UP Discoms, TANGEDCO and CSPDCL for 1582 MW while the maximum schedule from the Petitioner's Plant is 1680 MW (1800 MW capacity - 120 MW Auxiliary Consumption). WRLDC also sought to enquire about the basis on which the Petitioner had applied for open access for a quantum more than its installed capacity.

(e) In response, the Petitioner, vide its e-mail dated 30.1.2020, brought to the notice of WRLDC the Commission's order dated 19.6.2019 in Petition No. 162/MP/2017, wherein precisely the same issue had already been dealt with by the Commission.

(f) The said Petition was filed by the Petitioner against WRLDC for this very reason of curtailing open access on the purported basis that the Petitioner did not have sufficient installed capacity to supply as per the PPAs entered into by it. Rejecting the actions of WRLDC therein, the Commission vide its order dated 19.6.2019 had observed that WRLDC can restrict the export schedule only for reason of transmission constraints and not otherwise and that in any event the total schedule from the generation station of the Petitioner for all its procurers cannot exceed the total available capacity.

(g) Subsequently, WRLDC, vide its e-mail dated 31.1.2020 imposed further conditions for issuance of NOC, *inter-alia*, that total scheduled quantum will not exceed total capacity after Auxiliary Consumption (Ex-pp.), and that before contracting any trade, ISGS shall ensure that no PPAs are being breached. On 31.1.2020, SRLDC rejected the Petitioner's STOA application on the ground of rejection of consent by WRLDC.

(h) The actions of the Respondents are in gross violation of the Commission's order dated 19.6.2019 in Petition No. 162/MP/2017.

(i) In the said order, the Commission has also laid down the procedure to be adopted by RLDCs in such circumstances, where the open access capacity under different PPAs taken together is more than the installed capacity.

(j) Grant of STOA is in no manner dependent on the applicant's capacity to fulfil its obligation under the PPAs executed by it. In terms of STOA Regulations, a short-term customer is eligible to avail open access if there is sufficient margin available in the inter-State network.

(k) WRLDC has no locus to open contractual issues between the Petitioner and its beneficiaries under various PPAs. WRLDC has no authority to restrict open access except for reasons of capacity constraints in the transmission infrastructure, etc. as provided in the STOA Regulations. The role of WRLDC *inter-se* with SRLDC is to ensure margins on transmission network.



3. The representative appearing on behalf of the Respondents, WRLDC and SRLDC, submitted as under:

(a) The Petitioner's generating station is having ex-bus generation capacity of 1680 MW against which it has PPAs of 1982 MW (1000 MW with UP Discoms, 500 MW with TANGEDCO, 82 MW with CSPDCL and 400 MW with AP Discoms).

(b) The learned counsel of the Petitioner is mixing up the Commission's order dated 19.6.2019 in Petition No.162/MP/2017 and STOA Regulations. In the said case, the issue was in respect of scheduling against the LTA and MTOA. However, in the present case, the issue relates to STOA. The grant of STOA is governed by the different regulatory framework than that of LTA/MTOA.

(c) STOA granted to the Petitioner upto January, 2020 was on account of inadvertent error on the part of the Respondents. However, after coming to know about the said error in January, 2020, the Respondents have taken corrective measures as per the STOA Regulations.

(d) The Respondents have been acting in accordance with the STOA Regulations and the Commission's order dated 16.9.2019 in Petition No. 162/MP/2017. As per STOA Regulations, the Respondents are required to verify that there is no other contract for sale or purchase of power in respect of which STOA is applied for.

(e) Since against the ex-bus generation capacity of 1680 MW, the Petitioner has already tied-up 1582 MW under the LTAs, the Petitioner was entitled to STOA only to the extent of untied capacity of 98 MW on 'Advance' or 'First Come First Serve' (FCFS) basis and not for 392 MW. Accordingly, the Petitioner was granted STOA for 98 MW for the period from February, 2020 to June, 2020.

(f) The Petitioner could not have furnished an undertaking to the effect that there is no other contract for sale or purchase of such power (balance 294 MW) as required under STOA Regulations as the said capacity is already tied up with the other procurers/beneficiaries under LTA.

(g) The Petitioner can schedule its un-requisitioned surplus power as not scheduled by its beneficiaries/procurers through STOA only on 'Day Ahead Basis' or 'contingency' basis. However, the Petitioner cannot be allowed to schedule already tied-up power through LTAs contracts through STOA on 'Advance' or 'FCFS' basis as sought for by the Petitioner.

(h) The Petitioner, in the order dated 19.6.2019 in Petition No.162/MP/2017, was granted liberty to choose its LTA/MTOA beneficiaries and to declare the allocation under the different PPAs upto the capacity limited to the installed generation capacity on 'Day Ahead Basis'. However, in the present case, the issue relates to STOA and that too not for 'Day Ahead Basis' but on 'Advance' or 'FCFS' basis.



(i) With effect from 12.6.2020, CTU has regulated the power supply from the Petitioner's generating station on account of non-payment of transmission charges. Accordingly, no question of granting of STOA to the Petitioner arises thereafter.

(j) The Petitioner should convert its LTA to target region, WR for 400 MW as LTA to SR to schedule power to AP Discoms.

4. In response to a specific query of the Commission regarding any documentary evidence indicating that the Petitioner was granted STOA for 98 MW as stated by the Respondents for the period from February, 2020 to June, 2020 and the related Regulatory provisions, the representative of the Respondents sought liberty to place the requisite documents on the record of the Petition.

5. After hearing the learned counsel for the Petitioner and the representative of the Respondents, the Commission admitted the Petition and directed to issue notice to the Respondents.

6. The Commission directed the Petitioner to serve copy of the Petition including the IA on the Respondents, if not already served. The Respondents were directed to file their reply to the Petition and IA by 31.7.2020 with copy to the Petitioner, who may file its rejoinder, if any by 4.8.2020. The Commission directed the Respondents to place on record the documents pertaining to grant of 98 MW STOA to the Petitioner. The due date of filing of reply, rejoinder and documents shall be strictly complied with.

7. Learned counsel for the Petitioner further submitted that IA No. 45/2020 has been filed by the Petitioner praying for an interim direction to the Respondents to grant STOA to the Petitioner for supply of electricity to the AP Discoms. Learned counsel submitted that due to rejection of its STOA application, the Petitioner was constrained to arrange for alternate supply to perform its obligation under the PPA with AP Discoms. However, the period of supply from the alternative source is also over and the Petitioner has been unable to fulfil its obligation under the PPA. The Commission declined to issue any interim direction at this stage without considering the reply of the Respondents. The Commission further clarified that if the Respondents fail to file their reply within the stipulated timeframe, interim relief as prayed by the Petitioner shall be taken up for consideration.

8. The Petition along with IA shall be listed for hearing in due course for which separate notice will be issued.

**By order of the Commission**

**Sd/-  
(T.D. Pant)  
Deputy Chief (Law)**

