

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

1. **Shri Bhanu Bhushan, Member**
2. **Shri R. Krishnamoorthy, Member**

**Petition No. 60/2008**

**In the matter of**

Petition for direction to RRVPNL to pass order on concurrence as per the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008

**And in the matter of**

Gujarat Flurochemicals Limited, Dist. Panchmahal (Gujarat) **.Petitioner**  
**Vs**

1. Superintending Engineer, (SO &LD), Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur **..Respondents**

**The following were present:**

1. Shri Hemant Sahai, Advocate, GFL
2. Shri Sitiesh Mukherjee, Advocate, GFL
3. Shri Vishal Anand, Advocate, GFL
4. Shri A.D. Mirajkar, GFL
5. Shri V.K.Gupta, RRVPNL
6. Shri R.P.Katara, RRVPNL
7. Shri B.K.Makhija, RRVPNL

**ORDER**

**(Date of Hearing: 26.6.2008)**

Gujarat Flurochemicals Limited has made this application on 25.4.2008

with the following prayers, namely:

“(a) To direct the Respondent to comply with the CERC Open Access Regulations, 2008 and dispose of the application for concurrence filed by the petitioner at the earliest;

(b) Pass appropriate interim order directing the Respondent to allow open access to the petitioner to facilitate sale of power by the petitioner to LEUL till the disposal of the application for concurrence;

(c) In the alternative to prayer (b) direct in the interim that till such time as the application is disposed of by the SLDC, the respondent should pay the petitioner for the Power Purchase Agreement prevalent as per the policy in Rajasthan;

(d) To pass such other and further orders/directions as the Hon`ble Commission considers may deem appropriate in the facts and circumstances of the case.”

2. LANCO Electric Utility Ltd. (LEUL), a trader to whom the petitioner proposed to sell electricity generated at its wind generation plants in Rajasthan, made an application under the Central Electricity Regulatory Commission (Open access in Inter-State Transmission) Regulations, 2008 (hereinafter referred to as “the open access regulations”) on 13.3.2008 for concurrence of the first respondent, the Rajasthan State Load Despatch Centre (hereinafter referred to as “the SLDC”) for open access for transmitting 1.5 MW to AP Transco with effect from 1.4.2008. The petitioner thereafter approached the second respondent, the Rajasthan Vidyut Prasaran Nigam Ltd. (hereinafter referred to as “the RRVPNL”) which is designated as the State Transmission Utility and operates the SLDC, to expedite the process of concurrence for open access. From the correspondence placed on record by the petitioner, it has been noticed that in response to the application made by LEUL and its follow up by the petitioner, Advisor (LD), RRVPNL conveyed to the petitioner on 24.3.2008 lack of following facilities, namely:

- (i) ABT compliant metering on interface point, mandated by the Rajasthan Electricity Regulatory Commission (RERC) Intra-State ABT Regulations, 2006;
- (ii) Data communication to the SLDC;
- (iii) Time synchronization of the metering system through GPS.

3. Accordingly, the petitioner was further advised to get the above installed/commissioned and then apply for the SLDC`s concurrence.

4. Subsequently, the petitioner again sought concurrence of the SLDC for open access vide its letter and application dated 11.4.2008 as per detailed procedure formulated by the CTU and approved by the Commission, this time for transmitting 1.5 MW of electricity to Noida Power Company with effect from 15.4.2008. In the said letter, the petitioner had brought out that ABT compliant meters had been installed at the inter-connection point of their generation facility with the State grid i.e. 132/33 kV GSS Jaisalmer. The petitioner had further stated that these meters were connected with sub-station control room for metering and data communication. It was also mentioned that their generation data was getting reported at the SLDC and Central Billing Station, Heerapura. The applicable SLDC charges were paid by the petitioner through the Demand Draft dated 12.4.2008 for Rs.5000/- towards application fee, which is stated to have been received by the respondents on 17.4.2008. The RRVPNL responded to this application vide letter dated 3.5.2008, which is stated to have been received by the petitioner on 19.5.2008, raising the following issues, namely –

- (a) generation data was not getting reported at the SLDC and Central Billing Station, Heerapura;

- (b) application for concurrence of the SLDC was for 1.5 MW whereas the total generation capacity was 12 MW; and
- (c) details for sale of balance power and consumption of auxiliary power, if any, whenever plant was not generating.

5. It is obvious that the RRVPNL has not granted concurrence in view of the issues raised and mentioned under (a) to (c) above, although the application has not been specifically rejected. Pending final disposal of the application dated 11.4.2008, two more applications for concurrence to inter-State open access were submitted by the petitioner to the respondents on 28.4.2008 and 28.6.2008. The only response to the application dated 28.4.2008 appears to be the RRVPNL's letter dated 24.5.2008, returning two demand drafts dated 12.4.2008 and 2.5.2008 of Rs.5000/- each to the petitioner, without disclosing any reason for doing so. The petitioner vide its affidavit dated 8.7.2008 annexed a copy of letter dated 2.7.2008 received from the RRVPNL. This letter was in response to the petitioner's application dated 28.6.2008, which was stated to have been received on 30.6.2008. In this letter, the RRVPNL has referred to non-availability of the time-block-wise generation data at the Central Billing Station, Heerapura as the reason for not granting concurrence and has returned to the petitioner the demand draft dated 28.6.2008 for Rs.5000/- paid by the petitioner towards application fee. The respondents have not filed any response to the petitioner's affidavit dated 8.7.2008. It is pertinent to mention that the RRVPNL has not repeated the requirements of on-line reporting of the data at the SLDC, gap between the installed capacity and the capacity for which concurrence is sought, details for the sale of the balance power and consumption of auxiliary power earlier raised in the letter dated 3.5.2008. It may, therefore, be presumed that

these were no longer being considered as hurdles in grant of concurrence to the petitioner's application for open access. This also follows from the clarifications given by Shri R.D. Katara who appeared for the RRVPNL before us, that for carrying out UI accounting, the only requirement was availability of time-block-wise energy injection.

6. The application and subsequent submissions made by the petitioner are to be seen against the above background, with prayers noted in the opening para of this order. The application was admitted by our order dated 15.5.2008.

7. There is no dispute on facts narrated above. The RRVPNL and the SLDC, in their common reply, have pointed out that the data communication at the Central Billing Station, necessary for preparing UI account of intra-State entities was not existing and that the petitioner had wrongly stated in its letter dated 11.4.2008 that generation data was getting reported at the SLDC and the Central Billing Station. The respondents have further pointed out that the petitioner had not furnished the details of agreement for sale of balance power and auxiliary consumption. It has been averred that open access was not granted to the petitioner because of its failure to comply with various requirements under the regulations and for not providing the information called for.

8. We heard the learned counsel for the petitioner and the representatives of the respondents at great length. We have carefully perused the available records.

9. We now proceed to examine the validity of the grounds relied upon by the respondents for declining open access to the petitioner. In accordance with clause (4) of Regulation 8 of the open access regulations, if the SLDC decides not to grant concurrence, this has to be communicated within 3 working days of receipt of the application. In this case, the respondents took about 3 weeks time to respond to the application dated 11.4.2008 made by the petitioner. During the hearing, Shri V.K. Gupta, appearing for the RRVPNL contended that the application was not accompanied by the necessary fee and therefore, was incomplete. To us, it appears to be an after-thought, as this deficiency was not pointed out in the RRVPNL's letter dated 3.5.2008, which is the first and natural response to the petitioner's application. This may lead any one to believe that delayed receipt of the application fee was not an issue for rejection of the application. It was admitted by Shri Gupta that the application could have been returned immediately for the reason that necessary fee was not remitted, but the same had not been done. He fairly conceded that it was a mistake committed by the RRVPNL of the open access regulations, for which the respondents could be proceeded against under Section 142 of the Electricity Act, 2003 ( the Act). Shri Gupta, however, sought to explain that the "mistake", as he termed it, was the first of its kind. There is no denying the fact that the respondents have failed to comply with clause (4) of Regulation 8 of the open access regulations. From the available records, it is observed that the respondents, though statutory authority under the Act, did not even bother to respond to the petitioner's application dated 28.4.2008.

10. In spite of the apparent change in the stand of the respondents in the course of the hearing, we are examining all the six issues raised by the RRVPNL

in its letters dated 24.3.2008 and 3.5.2008. During the hearing, Shri R.D. Katara appearing for the RRVPNL relied on the regulations framed by the RERC for insisting on some of the requirements. The Commission, vide order dated 8.7.2008 had directed the respondents to file copies of the relevant regulations and orders of the RERC. The RRVPNL under its letter dated 17.7.2008 has filed three documents, namely regulations on intra-State ABT, terms and conditions of tariff applicable to Renewable Energy Generating Stations and policy of the Government of Rajasthan for promoting generation of electricity through non-conventional energy sources.

### **Issues raised in letter dated 24.3.2008**

11. We first take up the three issues raised by the petitioner in its letter dated 24.3.2008, which are listed in para 2 above. The first issue relates to installation of “ABT compliant metering” on interface point. The required metering arrangement was stated to be in position as on 30.3.2008, as per jointly signed minutes of meetings held on 30/31.3.2008 available on record. It may be another matter that the RRVPNL relied only on the assertion of M/s Suzlon in the above respect, rather than verifying for itself that the meters installed in the RRVPNL’s own sub-station fulfilled its requirements for energy metering.

12. As per the Act, the SLDC is responsible for energy accounting within the State. This implies that the SLDC is responsible for installation of compatible and accurate energy metering also. The SLDC and the RRVPNL who operates the SLDC as the STU cannot abdicate their responsibility, and entrust this task to the

users, as appears to be the case before us. The open access regulations require that the meters should be installed by the STU/SLDC, since they have the ultimate responsibility for intra-State energy accounting. It is most unfortunate that in the present case, after leaving the metering to the petitioner, the respondents have disallowed open access on the excuse that the meters installed were not adequate.

13. The second issue relates to the data communication. The purpose of such data communication is the on-line display at the SLDC of the current power injection into the grid. This would not serve any purpose for a wind generating station, since the SLDC can hardly take any action based on such data. Wind generation is non-dispatchable, and has zero variable cost. Therefore, no instruction at all can be given by the SLDC to a wind generator for backing down. The representatives of the respondents fairly agreed during the hearing that there was no need for any on-line data communication to the SLDC. Further, whatever data is still considered necessary by the SLDC, can easily be picked up from the RRVPNL's own sub-stations, using the communication links already established for its own transmission system. There is, therefore, no justification for disallowing open access on the pretext of absence of on-line communication with the SLDC.

14. The third issue in the respondent's letter dated 24.3.2008 is regarding time synchronizing of the metering system through GPS. This requirement seems to have been derived from clause (4) of Regulation 6 of the RERC regulations, which is reproduced below:



*“ABT compliant metering, will be the interface metering as per CEA’s (Installation and Operation of Meters) Regulations, 2006 at the points of injection/drawal, to the meter will be provided by the respective user who will ensure proposed data communication to SLDC. The time synchronization of the metering system will be through Global Positioning System (GPS) with counter check from Heerapura central billing station. Respective users will bear their own expenses.”*

15. We are constrained to point out that synchronization through GPS need to be resorted to only where the clocks of geographically dispersed devices are required to be tallied within milliseconds. There is no such requirement for energy meters. For example, the special energy meters for inter-State energy accounting are allowed to have clock drift of up to a minute. There would be little merit in attempting a higher precision in intra-State metering, and it is obviously a case of over-enthusiasm.

16. We may also point out that the Indian Electricity Grid Code (IEGC), in clause 4.11, requires time synchronization only for disturbance- recorders and event-loggers. The stipulation in the IEGC seems to have been unwittingly extended to the energy meters in the State of Rajasthan. We urge the RERC to review the matter pragmatically, so that money and efforts are not wasted on a sophistication which would serve little useful purpose.

### **Issues raised in the letter dated 3.5.2008**

17. Coming now to the first issue raised by the RRVPNL in its letter dated 3.5.2008, namely non-reporting of generation data at the SLDC and the Central Billing Station, we need to point out that the open access regulations do not

provide for on-line reporting of generation data in case of inter-State open access transactions. It was argued by the representatives of the respondents that this requirement was part of the RERC regulations. In our opinion, since the transaction for which concurrence was sought was of inter-State nature, the regulations framed by the RERC for intra-State transactions or matters relating to intra-State issues are generally not applicable, except those specifically adverted to in the open access regulations. Further, we have noted from clause (1) of Regulation 3 of the RERC regulations that these are not applicable to wind generating stations. This Commission too affirms that ABT cannot be applied to wind generation because of its inherent nature. ABT can only be applied for the generating stations which can have a day-ahead availability declaration, and then commit to operate according to the given schedule. Due to its very unpredictable nature, wind generation is not amenable to either and is, therefore, totally unsuited for ABT application. Further, ABT has a merit where the generating company can perform better if incentivised for increasing the plant's availability. This too is not relevant for wind generation where the plant's capability depends solely on the nature, and cannot be controlled by the generating companies.

18. From the submissions made by the petitioner, it appears that even though the requirement of on-line data reporting was not applicable to its generation facility, attempts have been made to arrange for such reporting. During the hearing, the representatives of the respondents admitted that data was available at 132 kV Jaisalmer sub-station. From the RERC regulations, it is clear that responsibility of the user is only to provide appropriate meters and make the data available for further communication. The responsibility of communicating the data

should rest with the RRVPNL, which is the STU. This is clear from the last line of the above-quoted RERC regulations wherein the obligation of the user is only to the extent of bearing the expenses. This position too was admitted by the representative of the RRVPNL during the hearing. That the RRVPNL attempted to obstruct inter-State open access to the petitioner is established beyond any cavil or doubt by its following three actions, which were wholly unjustified:

(i) imposing intra-State regulations which are not applicable in case of inter-State transactions;

(ii) applying provisions of the intra-State ABT regulations, not applicable on generating facility in question, that is, wind generation; and

(iii) putting onus of its own failure to ensure communication of generation data (which is a non-mandatory requirement) on the petitioner.

19. The second issue raised by the RRVPNL in its letter of 3.5.2008 relates to the gap between capacity of the generation facility in commercial operation (12 MW) and the capacity for which concurrence was sought (1.5 MW). Related to this is part of the third issue raised in that letter, namely, details for sale of balance power and consumption of auxiliary power. The respondents, in their common reply, have made out an issue that the petitioner did not furnish the details called for. For explanation on these issues, the respondent has to look no further than its own submissions during the hearing as well as additional submission contained in affidavit dated 17.7.2008. In the submissions, the respondents have sought to emphasize on the variability of the generation at wind generation facility. In the face of such variability, the wind generation facility

seeking open access will have to make arrangements for sale of capacity much lower than its installed capacity and seek open access accordingly. However, the position taken by the respondents that there is a limit on variation from the schedule (5% in a time-block and 1% over the day) is not correct. This type of restriction is part of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 and are applicable to the thermal and hydro generating stations whose entire capacity is assigned to the identified beneficiaries. No such restriction is applicable to the wind generation facilities and is not specified in the open access regulations or for that matter in any other regulations. Therefore, application of the stipulation to inter-State open access transactions is unwarranted. In case generation reaches a level which is causing overloading of some part of the network (which is unlikely to occur with generation facility with small installed capacity as in the case on hand), the SLDC has the powers to issue appropriate directions.

20. Another related contention of the respondents that forms part of the additional submissions made in the affidavit dated 17.7.2008, though not raised in the reply to the petitioner, is that when wind generator is not able to generate up to the schedule, the power to the purchaser outside the State will flow from the State distribution companies. This contention reflects lack of understanding of the respondents not only about the UI mechanism but also about the functioning of the integrated system. Nevertheless, we will try and explain the situation pointed out by the respondents. Whatever may be the technology of generation, deviations in the generation from the schedule cannot be avoided. Similarly, deviations in the drawal from the schedule are also unavoidable. In an integrated

grid, these deviations are met from the numerous other sources available in the grid. Under the UI mechanism, deviations by the generator from the generation schedule as well as deviations from the drawal schedule by the open access customer are to be adjusted based on UI charge at the respective ends. This way the actual injection by the generator and actual drawal by the open access customer get decoupled. The commercial application of UI mechanism is such that neither the open access customer nor the distribution licensees in whose area the generator or the open access customers are located suffers commercial loss. We may demonstrate it with the help of an example. Let us say that the wind generator in the State has proposed to generate X MW and corresponding schedule for the open access customer outside the State after accounting for the transmission losses is Y MW. If the wind generator is generating below its proposed generation by say,  $\Delta X$  MW, almost same deviation will be reflected in the increase in actual drawal of the State (the difference will be on account of transmission losses in the State), if other things remain the same. In accordance with the open access regulations, the generator will pay UI charges for this deviation to the UI pool of the State based on 105% of the UI rate specified by this Commission, unless a different rate has been specified by the State Commission concerned. This will cover the payment to the regional UI pool account that the State will be required to make on account of increase in actual drawal. Thus, apprehension of the respondents that State distribution companies will have to make up for the deviations in the supply by the generating company or there will be commercial loss to other entities is devoid of merit, based as it is on misconception and lack of understanding of the scheme presently in vogue.

21. A part of the third issue raised by RRVPNL that is still to be dealt with is regarding agreement for sale of balance power and consumption of auxiliary power when no generation takes place. A generating station connected to the grid is liable to draw start-up power from the grid. We have noted that in the Rajasthan Electricity Regulatory Commission (Terms & Conditions of Tariff for determination of tariff) (Third Amendment) Regulations, 2006 pertaining to tariff for the renewable resources, this aspect has been taken care of by netting of the energy drawn with the energy injected. This issue could have been addressed by the respondents while allowing connectivity to the grid, but attention was perhaps not paid to it for the reason of expectation of the respondents that the petitioner would supply power to the State utilities only. However, this is not a problem at all and obviously what is required is to apply appropriate tariff notified by the RERC for the power drawn by the petitioner from the grid. Alternatively, any such energy drawal can be treated as UI, i.e. deviation from schedule. For example, if the generator draws 0.5 MW against an injection schedule of 1.5 MW, it would be accounted as negative UI of 2.0 MW.

22. Thus, all the six issues raised by the RRVPNL vide its letters dated 24.3.2008 and 3.5.2008 while not giving concurrence were not germane to the grant of concurrence when seen in the light of the open access regulations. The RRVPNL was to only verify availability of the ABT compliant metering and availability of surplus transmission capacity in terms of Section 36 and 39 (2)(d) of the Act, while considering the petitioner's application for inter-State open access. The action of the RRVPNL is, therefore, unfair and illegal. This action of the RRVPNL has not only caused commercial losses to the petitioner but has also resulted in unwarranted UI benefit and thereby causing unjust enrichment to

the State utilities because the injection by the petitioner in the grid was not reflected in their schedules. This aspect has already been detailed in the order dated 8.7.2008. The process adopted was clearly de hors the express provisions of law and denial of open access to the petitioner was for extraneous reasons.

23. During the hearing, the representatives of the respondents contended that the petitioner had to sign an agreement with the distribution company in the State for auxiliary power and with the State Transmission Utility (STU) for use of the transmission service. We do not find any merit in this contention. We have already concluded that payment of appropriate tariff to the distribution company for the auxiliary power consumption is enough, in case it is not accounted for as UI. In so far as the STU is concerned, the necessary terms and conditions for use of intra-State transmission lines have already been spelt out in the open access regulations. It is for this reason that the open access regulations do not envisage signing of any agreement for the open access transactions.

24. We have also noted that in its letter dated 2.7.2008 to the petitioner, the RRVPNL has stated that "SLDC shall have no objection if you have mutually agreed arrangement for data communication, energy accounting/UI implication/metering directly with NRLDC in place". This again shows that the SLDC has no valid objection to grant of concurrence for the open access on the intra-State transmission lines, but it is shirking responsibilities assigned under the open access regulations, wherein accounting for the mismatch between the schedule and actual drawal/injection of the intra-State entities has to be carried out by the SLDC. For this purpose, the SLDC and/or the billing centre only requires data of 15-minute-wise actual energy injection of the petitioner for the

relevant week. This should be organized by the respondents for single-point responsibility in intra-State energy accounting.

25. In the above referred letter dated 2.7.2008, the RRVNPL has again stated that “it was found that the time block-wise wind generation data for injection at 132 kV GSS, Jaisalmer of RVPN are not available for accounting at Central Billing Station, Heeprapura, Jaipur. We are therefore unable to give concurrence for STOA as requested by you.” It is thus obvious that the respondent has not done anything from April to July 2008 to facilitate open access to the petitioner. In fact, the only thing that the respondents have to take care of is its mandated responsibility of energy accounting. This too is being avoided or rather shirked, apparently to frustrate the petitioner’s legitimate entitlement. In our considered view, the position should not be allowed to be continued any further.

26. In view of the foregoing, we are not able to find any justification for respondents’ actions in denial of open access to the petitioner. Besides blocking open access to the petitioner, the respondents have also opposed the petitioner’s application for being allowed to notionally inject power into the regional grid as UI, in Petition No. 33/2008. It is apparent that the respondents have been attempting to create a situation in which the petitioner is forced to sell its entire output to the State utilities only, and at terms and conditions dictated by the latter. This is not acceptable, being against the intent and content of the Act.

27. In order to compensate the petitioner for the commercial losses caused due to unfair and illegal action of the respondents, we direct that payments at the applicable rate specified by the RERC for the wind generation shall be made by



the respondents to the petitioner till the date from which open access is allowed or injection under UI mechanism is facilitated, whichever is earlier. Accepting the fact that application dated 12.4.2008 for grant of open access was not accompanied by the prescribed fee and claim of the respondents that the fee sent separately was received only on 17.4.2008, we direct that such payment shall be made for energy injected by the petitioner with effect from 20.4.2008, or the first subsequent date on which relevant meter readings were jointly recorded.

28. These observations shall be kept in view by the respondents while deciding all the applications made by any person for open access in future. At the cost of repetition, we reiterate that as system operator and statutory bodies under the Act, the respondents should consider the applications for open access in an impartial manner and in line with the spirit and the express provisions of Act and the open access regulations without being influenced by the views of any other utility, which may be extraneous to the spirit and the provisions of the Act. Any denial of open access on considerations other than those prescribed under the law and taken note of in the above analysis, may attract the penal provisions of the Act.

29. We need not restate the established merits of wind generation, particularly in the context of global warming concerns. Acts and omissions which impinge upon wind generation (by putting stumbling blocks or otherwise) amount to a failure to fulfill national and social responsibility. Further, it should be amply clear from clause (e) of Section 86 (1) of the Act, that “sale of electricity to any person”

from renewable sources of energy has already been envisaged in the Act. This is another reason for the view we have taken above.

30. We have noticed above that the open access regulations mandate that in terms of Clause (3) of Regulation 8 thereof, the SLDC is to accord its concurrence or 'no objection' within three working days of receipt of the application. Similarly, in terms of Clause (4) thereof, the refusal to grant concurrence or 'no objection' is also needed to be communicated to the applicant within three working days. As we have noted above, the petitioner made applications on different dates, for grant of open access. However, in none of these various cases, reply was sent, within the stipulated time of three working days. This prima facie amounts non-compliance of the open access regulations, punishable under Section 142 of the Act.

31. The respondents are directed to show cause, latest by 25.9.2008, as to why action under Section 142 of the Act for non-compliance of clauses (3) and (4) of Regulation 8 of the open access regulations, be not taken against them.

32. List the matter for further directions on 30.9.2008.

**Sd/-**  
**(R KRISHNAMOORTHY)**  
**MEMBER**

**Sd/-**  
**(BHANU BHUSHAN)**  
**MEMBER**

**New Delhi dated 27th August 2008**