

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 74/MP/2014

Subject : Petition under Section 79 (1) (f) of the Electricity Act, 2003 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term access and Medium Terms Open Access in inter-State Transmission and related matters) Regulations, 2009.

Date of hearing : 26.2.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Petitioner : Bhushan Power and Steel Limited

Respondents : West Bengal State Load Despatch Centre and others

Parties present : Shri Sanjey Sen, Senior Advocate for petitioner
Shri Rajiv Yadav, Advocate for petitioner
Shri Sakya Singha Chaudhuri, Advocate, WBSETCL & WBSEDCL

Record of Proceedings

Learned senior counsel for the petitioner submitted as under:

(a) The petitioner applied for grant of NOC as per Regulation 10 (1) of CERC (Grant of Connectivity, Long term access and medium term open access in inter-State Transmission and related matters) Regulations, 2009, ('Connectivity Regulations') for LTOA for sourcing 14.9 MVA power from its Captive Power Plant in Odisha. However, the petitioner has been denied open access for more than 11 months.

(b) As per the Commission`s direction dated 22.1.2015, meeting was convened on 20.2.2015 to sort out the matter amicably between all concerned. However, matter could not be resolved.

(c) There is constraint in transmission capacity at Rishra sub-station. However, no new capacity in the transformer is required for grant of open access as it will replace the load which is being drawn by WBSEDCL.

(d) As per Section 2 (47) of the Electricity Act, 2003, Open Access has to be provided in non-discriminatory manner for the use of transmission lines or distribution system.

2. Learned counsel for WBSETCL and WBSEDCL submitted as under:

(a) As per Regulation 10 (2) of the Connectivity Regulations, if the required transmission capacity in the State network is available, the State Load Despatch will convey its concurrence. Since this condition is not satisfied, SLDC is not in a position to convey its no objection.

(b) The petitioner is seeking open access for the already connected demand. However, as per the West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007, (West Bengal Open Access Regulations), there is difference between consumers of distribution companies and open access. The arrangement sought by the petitioner is not a continuation of supply from a normal consumer to open access consumer.

(c) Presently, the petitioner, having contracted demand of 14.09 MVA, is availing power at 33 kV from 132/33 kV sub-station located in Rishra. Rishra sub-station presently has three transformers having capacity of 50 MVA each and is designed to handle a load of 85 MW (100 MVA). However, it is handling a load of 110 MW without meeting n-1 contingency criteria.

(d) WBSEDCL is presently considering a scheme for system augmentation of setting up an additional 50 MVA transformer at Rishra sub-station so that it can operate at 200 MVA to handle a load of 120 MW while meeting n-1 criteria.

(e) Allowing open access without meeting n-1 criteria would tantamount to violation of the provisions of open access Regulations. Therefore, in the present circumstances, the petitioner cannot be granted open access.

(f) Learned counsel referred to the Regulations 6.1 and 7 of West Bengal Open Access Regulations and submitted that as per Regulation 7 capacity available for open access is to be considered only after taking into account the maximum load on such transmission and associated system and safe capacity of such system. Since WBSEDCL is not able to meet the present demand, it is in the process of installing 4th transformer.

(g) The petitioner applied for LTA in 2013. As per the provisions of Open Access Regulations, the notice period of LTA has to be 3 years, particular, in such cases when augmentation is required.

(h) Section 43 of the Act imposes a mandatory obligation on the licensee to provide connection and supply to any person situated within its area of supply. Therefore, the duty to provide open access is permitted in accordance with the terms and conditions as may be specified by the State Commission from time to time. In the event BPSL chooses to avail open access from WBSEDCL, it will have to stand in queue as an open access consumer for grant of open access under section 42 (2). Therefore, the petitioner's application can be considered only after considering supply obligation of WBSEDCL to its consumers under Section 43 of the Act and on availability of network capacity after meeting such obligation. In support of its contention, learned counsel placed its reliance on the following judgments:

(a) Poonam Vs Sumit Tanwar [(2010) 4 SCC 460];

(b) Rajasthan State Industrial Development and Investment Corp. Vs Subhash Sindhi Coop. Housing Society [(2013) 5 SCC 427];

(c) Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111].

3. After hearing the parties, the Commission reserved order in the petition.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**