

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 15/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: 29th September, 2017

In the matter of

Petition under Section 79 (1) (c) and 79 (1) (h) read with Regulation 20 and 26 of CERC (Open Access in Inter-State Transmission) Regulations, 2008 further read with Regulation 4 of the RERC (Intra-State ABT) Regulations, 2006 and Regulation 4.2 of the State Grid Code seeking directions for preparation of UI account for under drawl against collective transactions within specified time and for payment of UI charges.

And

In the matter of

Rajasthan Steel Chambers
B-234, Road No. 9, VKI Area
Jaipur

.....Petitioner

Vs

1. State Load Despatch Centre
Rajasthan Vidyut Prasaran Nigam Limited,
Vidhyut Bhawan, Jyoti Nagar
Jaipur
2. The State Power Committee,
Rajasthan Vidyut Prasaran Nigam Limited,
Vidhyut Bhawan, Jyoti Nagar
Jaipur
3. Jaipur Vidyut Vitran Nigam Limited,
Vidhyut Bhawan, Jyoti Nagar
Jaipur
4. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial State,
Jodhpur-342003
5. Ajmer Vidyut Vitran Nigam Limited,
400 kv GSS building, Ajmer road, Heerapura,
Jaipur- 302024



6. Rajasthan Vidyut Prasaran Nigam Limited
Vidhyut Bhawan, Jyoti Nagar, Jaipur

..... Respondents

Parties present:

Ms. Swapna Sheshadri, Advocate, RSC & NEIL
Shri S.K. Agarwal, Advocate, Rajasthan Discoms
Dr. A.P. Sinha, Advocate, Rajasthan Discoms
Shri Manoj Kr. Sharma, Advocate, RVPNL
Shri M.K. Verma, RVPNL

ORDER

The Petitioner, Rajasthan Steel Chambers has filed this petition seeking the following reliefs:

- a) *Direct the Respondents to compile and provide UI energy accounts of the members of the Petitioner from March, 2012 (billing month) till date and continue to provide the same on a regular basis in future;*
- b) *Direct the respondents to pay for the under drawals, the UI charges computed based on the energy accounting in terms of the Inter-State Regulations, 2008 of the Hon'ble Commission as applicable to intra-state entities, namely under drawals worked out at the periphery of the Regional entity (interface of RRVPNL with Northern Grid) and intra-state UI as per the regulations;*
- c) *Direct that on or after 17.2.2014, frequency linked charges for deviation as per CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014 is to be considered as inter-state UI rate and applied for the payment of under drawals;*
- d) *Direct the Respondents to pay interest at the rate of 15% per annum for delay in payment of UI compensation in terms of the Regulations;*
- e) *Award cost of the present proceedings; and*
- f) *Pass such other further order(s) as the Hon'ble Commission may deem just in the facts of the present case.*

Background of the case

2. The Petitioner is an association of Steel Industries in the State of Rajasthan, registered under the provisions of the Companies Act, 1956 and formed for the purpose of representing the interest of its Members, who are the consumers of the Distribution Companies in the State of Rajasthan i.e. Respondent Nos. 3 to 5. The Members of the Petitioner Association have contract demands with the respondents



for supply of power for their industrial activities. In addition to the contract demand, the Members also procure electricity from time to time through the Indian Energy Exchange (Power Exchange) by availing inter-State open access as per the provisions of the Central Electricity Regulatory Commission (Open Access to inter-State Transmission) Regulations, 2008, as amended from time to time. A list of Members of the Petitioner Association, their respective contract demands with the distribution licensees, the dates from which power has been procured through open access through the Power Exchange have been indicated at Annexure-A to the petition.

3. The Petitioner in the petition has submitted as under:

(a) The Rajasthan Electricity Regulatory Commission has notified the RERC (Terms and Conditions for Open Access) Regulations, 2004 (RERC Open Access Regulations, 2004) which apply to Intra-State open access, namely procurement of electricity on bilateral basis by consumers from the generating or other sources located within the State of Rajasthan. For procurement of electricity from outside the State through Inter-State open access, the Electricity Act vests the regulatory functions and jurisdiction exclusively on the Central Commission. Even the use of transmission and distribution lines of State utilities, which are used as incidental to inter-State transmission of electricity is covered by the definition of Inter-State Transmission System and is subject to the regulatory jurisdiction of the Commission.

(b) In exercise of its powers under the Electricity Act with regard to Inter-State open access as well as Section 66 of the Electricity Act for market development, the Commission has framed and introduced the concept of power exchanges, which provides platform for buyers and sellers to transact in purchase and sale of



electricity. The transactions over the power exchanges are deemed Inter-State transactions which are within the exclusive jurisdiction of the Commission.

(c) The Commission has notified the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (Open Access Regulations) inter-alia dealing with short term open access. The said regulations provide for the manner in which collective transactions (set of transactions discovered in power exchange through anonymous, simultaneous competitive bidding by buyers and sellers) are to be dealt with, the open access to be granted, the manner of dealing with deviations and schedules etc.

(d) Under the ABT mechanism of the Commission, the drawal/generation are measured at the regional periphery for each State. The ABT mechanism is a commercial mechanism of grid management in providing adjustments for unscheduled exchanges at UI rate among Regional entities which are defined in the Open Access Regulations and Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (Grid Code) as “a person whose metering and energy accounting is done at the regional level”. The State Electricity Regulatory Commissions (SERC) are also empowered to implement the ABT mechanism for Intra-State entities, subject to the provisions of the Open access Regulations. Rajasthan Electricity Regulatory Commission (RERC) has notified on 24.8.2006 the RERC (Intra-State ABT) Regulations, 2006 (RERC ABT Regulations) which are applicable to users who are required to give daily schedules to the SLDC.

(e) Regulation 5(3)(i)(III) to (VI) and (IX) of the RERC ABT Regulations segregates the deviations from schedule by the users into inter-State UI and intra-State UI and applies the intra-State UI rate in terms of Regulation 4.

(f) The collective transactions are deemed inter-State open access transactions and subject to the exclusive jurisdiction of the Commission. Regulation 20(4) of Open



Access Regulations requires the deviation from the schedule to be determined by the SLDC. Regulation 20(5) of Open Access Regulations provide that unless so specifically determined by the concerned SERCs, the intra-State UI rate shall be 105% or 95% of the applicable UI charges at the regional periphery. In terms of the Open Access Regulations, the procedure for dealing with bilateral transactions and collective transactions are completely different, including the charges payable, the manner seeking the open access is to be sought for and obtained, the concurrence to be obtained from SLDC etc.,

(g) The concept of collective transactions in the power exchange was introduced for the first time under the Open Access Regulations and the same was not and could not have been envisaged or provided for in the RERC ABT Regulations notified in the 2006. In the RERC ABT Regulations, inter-State UI account and charges for Inter-State open access will be determined by NREB (now by NRLDC and NRPC). For transactions through Power exchanges, Regulation 20 (1) and (2) of Open Access Regulations provides for issuing composite account for each regional entity and not carrying out transaction wise (inter-State UI accounting and UI accounting for intra-State entities participating in collective transactions) at the regional level. This could not have been envisaged by the State Commission. However, as per Open Access Regulations as well as the State Grid Code, it is the obligation of SLDC to determine the mismatch between the schedule and drawal of power by the Petitioner.

(h) In terms of the Open Access Regulations and the detailed procedure notified there under, the Members of the Petitioner have been applying for and are granted from time to time by the SLDC, the Standing clearance /No objection certificate to procure electricity from the Power Exchange.

(i) In terms of Regulation 20(2) and 20(4) of the Open Access Regulations and Regulation 4.2 of RERC Grid Code (as amended on 10.6.2011), it is the



responsibility of the Rajasthan SLDC to undertake and maintain the energy accounts for the intra-State entities. The Members of the Petitioner Association being connected to the network of the State utility and the scheduling and despatch being notified to the SLDC, the responsibility for maintaining proper energy and UI accounts and provide the same to the Members of the Petitioner Association is that of the Rajasthan SLDC.

(j) For the Petitioner, SLDC was required to determine the under drawal and preparation of the UI accounts (in terms of energy) based on which the UI charges have to be applied and paid by the members of the Petitioner Association. The entire energy contracted at power exchange and due at delivery point after accounting for Intra state losses has not been considered by Respondents and no details of difference have been supplied or made available to the Members of the Petitioner Association.

(k) The RERC ABT Regulations do not provide for or cover the collective transactions undertaken at the Power Exchanges in terms of Open Access Regulations. In the absence of intra-State UI Rate specified by the State Commission, the intra-State entities including members of the Petitioner Association who undertake collective transactions through the power exchange and under-draw power are to be paid at the rate of 95% of the UI charges at the periphery of the State of Rajasthan.

(l) Regulation 4 of the RERC ABT Regulations provides for UI charges for frequency steps as specified by the Commission for the northern region as adjusted with the inter-State transmission losses. Accordingly, RERC has considered in the RERC ABT Regulations the UI Rate as ex-bus ISGS. RERC has accounted for inter-State losses to work out UI rate at the periphery of RVPN system and considers it as intra-State UI rate. Thus, in principle, UI Rate at periphery of the State is Intra State UI rate as per Regulation 4 of Intra State ABT Regulations,



2006. In case, there was a specific provision governing the collective transaction and accordingly, the collective transactions account been made at the regional level, the Members of the Petitioner would have got UI charges for under drawal at Inter State UI rate corrected for Inter State losses and UI charges, so worked out, would have been shared among other Inter State entities (mainly the distribution companies).

(m) Till date, the Respondent No. 1 has not prepared the UI accounts for Members of the Petitioner Association and other Intra State entities procuring electricity by means of collective transaction through the power exchange. Non- preparation of UI accounts by SLDC is a clear violation of the regulations framed. The Members of the Petitioner have made numerous representations and sent communication to the Respondents for the same.

(n) In terms of Regulation 4.5 of the State Grid Code, the Respondent No. 2 i.e. the State Power committee is to look into and examine any problems or issues raised by the users and to resolve such disputes. In the circumstances, Members of the Petitioner Association have also taken up the issue with Respondent No. 2. In response, the State Power committee by communication date 8.7.2015 has stated that it is not possible to provide the UI accounts as requested. It has further stated that since the case is at the preliminary stage between the distribution licensees, SLDC and the open access consumers, the issue cannot be put up before the State Power Committee.

4. In the above background, the Petitioner has submitted that it has been constrained to approach this Commission against the failure of the Respondents to provide UI accounts for the members of the Petitioner. The Petitioner has also submitted that based on the UI accounts, the individual consumers will be in a



position to calculate and claim the UI charges that they are entitled to for under drawal during low frequency period. Hence, the present petition.

5. The Petition was admitted on 31.3.2016 and the Commission directed the parties to complete pleadings in the matter. Reply has been filed by the respondents and the Petitioner has filed its rejoinder to the said replies.

Submissions of SLDC (on behalf of Respondents 1 and 2)

6. The Respondents 1, 2 and 6 vide reply affidavit dated 16.5.2016 has submitted as under:

(a) In view of Regulation 20(4) of the Open Access Regulations, any mismatch between scheduled and actual drawal at drawal points and scheduled and actual injection at injection points for the intra-State entities shall be determined by the concerned SLDC and covered in the intra-State UI accounting scheme. Clause 25 (8) of RERC Open Access Regulations, 2004 provides that the distribution licensee is required to prepare the provisional weekly energy account and consider the UI provisionally. Also, a copy of provisional energy bills and provisional UI is required to be provided to SLDC in order to prepare the final UI account.

(b) Since Open Access consumers are embedded customers of the Discoms, it is the responsibility of the respective discoms to further adjust account at their end and send a provisional account to SLDC in compliance to RERC ABT Regulations for finalization. Further, in compliance with the RERC Open Access Regulations, 2004, distribution companies are required to send data to SLDC from the supplier end distribution licensee and the consumer end distribution licensee in whose area of supply point of injection/point of drawal of open access supply is situated.

(c) The actual drawal with frequency stepping is not provided by the respective discoms to SLDC by way of meter reading in compliance of Regulation 17(5) of



RERC Open Access Regulations, 2004. Since required information is not available with SLDC, it is unable to draw up the UI account for each of the open access customers and to determine the deviation from the schedule. Therefore, SLDC is unable to fulfill the request made by the members of Petitioner Association.

(d) The object of DSM Regulations specified by the Commission is to maintain the grid discipline and security as envisaged under the Grid Code through the commercial mechanism for deviation settlement through drawal and injection of electricity by the users of the grid. Since as per this Regulation, no deviation is allowed and in the absence of the intra-State UI rate specified by the RERC for the collective transactions, the settlement of UI account of the Intra-State entities is not possible.

(e) SLDC has taken up the matter with discoms to provide provisional UI accounts/ data and advised to provide 15 min data in 96 blocks to SLDC for finalization of UI account but neither the required data nor the provisional UI account was provided by the discoms. STU is in the process of establishing Central Billing Station (CBS) in the state which will facilitate automatic arrangement of meter readings from remote areas at CBS for preparation of different types of information/ accounts including UI/ DSM accounts and the same is expected to be established by August, 2017.

Submissions of Discoms of Rajasthan (Respondent Nos. 3, 4 and 6)

7. The discoms of Rajasthan vide affidavit dated 20.7.2016 have submitted as under:

(a) The Petitioner has sought compilation of UI energy accounts of the members of the Petitioner Association from March, 2012 till date. However, the Petition does not disclose the necessary data such as names of such members, consumption of electricity, privity of contract, cause of action, position of steel industries, etc. The



Petition does not refer to any statement showing year wise details of deviation in drawal of energy by steel industries vis-à-vis the schedule energy.

(b) Both the Open Access Regulations of the Commission and the RERC ABT Regulations assign a predominant role upon SLDC.

Rejoinder of the Petitioner

8. The Petitioner vide its rejoinder affidavit dated 11.6.2016 has submitted as under:

(a) SLDC is avoiding to render the UI accounts. On account of alleged delay in installation of ABT meters based on which accounting would be done by SLDC, there is delay in the payment of UI charges to the members of the Petitioner Association. The installation of ABT meters is at the upstream locations and not at the consumer premises. At the consumer premises, ABT meters are already installed. The non-installation of ABT meters at upstream location is the fault of the licensees. The Petitioner can in no way be prejudiced on account of fault of the licensees.

(b) It is for SLDC to coordinate with the distribution licensees as it is the responsibility of SLDC to ensure implementation of intra-State ABT in consultation with other entities. The members of the Petitioner association ought not to be made to suffer due to default on part of SLDC. The energy remains in the system and is utilized by the distribution licensees which either supplies it to its consumers or sells in the open market. It is only fair that compensation be paid to the open access consumers for the units underdrawn.

(c) The cause of action for filing the present petition has arisen only because SLDC failed to implement the regulatory provisions regarding the maintenance of UI accounts and thereby causing loss to the Petitioner.



(d) Regulation 20 (4) of the Open Access Regulations clearly states that the mismatch for the intra-State entities shall be determined by SLDC. Therefore, it is wrong for SLDC to state that it is not the obligation of SLDC to determine mismatch between the schedule and drawal of the Petitioner.

(e) It is clear from Regulation 20(5) of the Open Access Regulations that in the absence of Intra-State UI rate specified by the State Commission, UI rate for intra-State entity shall be 95% (for under drawals) of UI rate at the periphery of the regional entity and the same is being sought by the Petitioner. According to the regulations of RERC, inter-State losses to work out the UI rate is to be done at the periphery of RVPNL system. The same is considered as the intra-State UI rate. Had there been some specific provision regarding inter-State UI rate in the RERC regulations for collective transactions, the Petitioner would have got the same. In the absence of the same, the members of the Petitioner Association are entitled to 95% of the applicable UI charges for under drawal at the periphery as specified by the Central Commission.

(f) The submissions of the respondents that the under drawal of the power has been absorbed in the transmission and distribution system of the State itself supports the case of the Petitioner. The under drawal of power by the Petitioner has helped the State grid and therefore the Petitioner shall be compensated for the same.

9. During the hearing of the Petition on 27.10.2016, the learned counsel for SLDC, Rajasthan submitted that the present Petition was not maintainable before this Commission as only the Rajasthan Electricity Regulatory Commission (RERC) has the jurisdiction to deal with the matter as the members of the Petitioner Association are embedded customers of the State. The learned counsel also submitted that the present petition does not fall under the provisions of Section 79(1) (a) to (d) of the



Electricity Act, 2003 and therefore the jurisdiction of the Commission under Section 79(1)(f) cannot be invoked. The learned counsel further submitted that the present dispute can be dealt with in accordance with the Regulation 29 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulations, 2004. He also submitted that notwithstanding the jurisdiction, actual drawal with frequency stepping is not provided with the SLDC. The learned counsel added that SLDC is trying to get the data from the respective distribution companies and address the grievance of the Petitioner. The learned counsel for the Rajasthan discoms submitted that the tender for Central Billing System has already been awarded and the software for calculation of UI account was ready. It has also submitted that SLDC is trying to cull out the data from March, 2012 to June, 2016 which would take some time and accordingly prayed for four weeks' time. The learned counsel for the Petitioner submitted that Regulation 20(4) of the Open Access Regulations clearly provide that the mismatch for the intra-State entities shall be determined by SLDC. The learned counsel also submitted that this Commission has jurisdiction to adjudicate the dispute as it involves the implementation of the provisions of the Open Access Regulations of this Commission and accordingly requested that suitable directions be issued to SLDC for settlement of UI dues of the members of the Petitioner Association in terms of Regulation 20(5) of the Open Access Regulations. The Commission after noting the submissions of the Rajasthan discoms, vide ROP dated 27.10.2016, directed the discoms to submit ABT data to SLDC and also directed SLDC to settle the UI accounts of the Petitioner and file affidavit accordingly.

10. During the hearing of the petition on 20.12.2016, the learned counsel for SLDC submitted that it has filed an appeal before the Appellate Tribunal for Electricity



(Appellate Tribunal) against the directions of the Commission in ROP dated 27.10.2016 on the ground of lack of jurisdiction of this Commission to deal with the matter and prayed that the petition be kept pending till disposal of the said appeal by the Appellate Tribunal. Accordingly, the Commission adjourned the hearing of the petition along with another similar petition with liberty to the Petitioner to revive the same in the light of the interim or final order of the Appellate Tribunal in the said appeal.

11. Subsequently, the learned counsel for the Petitioner vide letter dated 21.2.2017 informed that the appeal (Appeal No. 16/2017) filed by SLDC, Rajasthan had been disposed of the Tribunal on 15.2.2017 at the admission stage as under:

“..... Let the data be furnished as directed by the Central Commission. We direct the Central Commission to dispose of the petition filed by Respondent No. 2 independently and in accordance with law. Needless to say that the preliminary objection shall be decided by the Central Commission first. Needless to say further that if the Central Commission comes to a conclusion that it has no jurisdiction to entertain the petition it cannot proceed further. The Central Commission shall not pass any order or direction which will finally dispose of Respondent No.2’s petition till it decides the preliminary objection regarding maintainability. We make it clear that we have not expressed any opinion on the merits of the case. The Central Commission shall decide the matter as expeditiously as possible.”

12. In line with the observations of the Appellate Tribunal in order dated 15.2.2017, both the Petitions were heard on 13.7.2017 on the question of maintainability and the Commission directed the parties to file their written submissions.

13. The Petitioner has filed its written submissions vide affidavit dated 14.8.2017. However, none of the respondents have filed their written submissions on the issue of maintainability. Rajasthan SLDC, without prejudice to its contention that the Central Commission has no jurisdiction to entertain and decide the petitions, has submitted vide affidavit dated 10.7.2017 that as all the three discoms have not provided UI account for (-) 5% to +5% permissible deviation of actual drawl against scheduled



drawl of the consumers at drawl end for 96 blocks of each day and each time block of 15 minutes, in reference to Regulations 20 & 25 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Open Access), Regulation, 2004, it is very difficult to finalize the UI account of the consumers by the SLDC. As per the directions of the Appellate Tribunal, we are dealing with the issue of jurisdiction first before proceeding to deal with the merit of the case if the jurisdiction of this Commission is established.

Jurisdictional Issue

14. The Petitioner vide affidavit dated 14.8.2017 has submitted as under:

- a) The petition is maintainable only before this Commission as the issue before this Commission is only on the compliance of Regulation 20 of the Open Access Regulations and payment of UI charges.
- b) For procurement of electricity from outside the State through inter-State open access, the Electricity Act vests the regulatory functions and jurisdiction exclusively on the Central commission. Even the use of transmission and distribution lines of State Utilities, which are incidental to Inter-State transmission of electricity is covered by the definition of ISTS and is subject to the regulatory jurisdiction of the Central Commission.
- c) The Commission has framed and introduced the concept of Power exchanges, which provides a platform for buyers and sellers to transact in purchase of sale of electricity. The transactions over the Power exchange are deemed inter-State transactions which are within the exclusive jurisdiction of the Central Commission.
- d) Under the ABT mechanism, frequency linked tariff is specified as a commercial mechanism for payment of UI charges by those persons who violate grid discipline by over-drawing/under-injecting in low frequency conditions or under-drawing/over-



injecting in high frequency conditions. The said mechanism has also been approved by the Hon'ble Supreme Court in CPDCL vs CERC & another {(2007) 8 SCC 197}.

e) The collective transactions are deemed inter-State Open Access transactions and are subject to exclusive jurisdiction of the Central Commission. Also, Regulation 20(4) requires the deviation from the schedule to be determined by SLDC. Regulation 20(5) permits the State Commission to determine the intra-State UI rate, if any and unless so specifically determined by the State Commission, the Intra-State UI rate shall be 105% or 95% of the applicable UI charges at the regional periphery. In terms of the Open Access Regulations, the procedure for dealing with bi-lateral transactions as against collective transactions are completely different, including the charges payable, the manner in which open access is to be sought for, the concurrence to be obtained from SLDC, etc.

f) The nature of transactions on the Power Exchange being inter-State transactions is also recognized in the decision of the APTEL in CESC v CERC (order dated 4.3.2010 in Appeal No. 168 of 2009). Thus, the jurisdiction of the Central commission and the respective State commissions is well delineated and settled. Transactions wholly within a particular State are within the jurisdiction of the respective State Commissions whereas transactions involving the territories of two or more states would fall within the exclusive jurisdiction of the Central Commission. This has been settled in a recent decision of the Hon'ble Supreme Court in the case of Energy Watchdog Vs CERC {(2017) SCC online SC 378}.

g) The Respondent SLDC in its reply has admitted that there is no Intra-State UI rate specified by RERC for collective transactions and therefore, it cannot contend that in the absence of intra-State UI rate, the settlement of UI account of the intra-State entities in the course of inter-State open access is not possible. In fact, this specific situation is dealt with under Regulation 20(5) of the Open Access Regulations. It is thus



clear that in the absence of intra-State UI rate specified by RERC, UI rate for Intra-State entities shall be 95% (for under drawals) of UI rate at the periphery of the regional entity. The said 95% rate is being sought by the Petitioner.

h) The inter-State losses to work out the UI rate is to be done at the periphery of RVPNL system and the same is considered as intra-State UI rate by RERC. Had there been some specific provisions regarding inter-State UI rate in the RERC regulations for collective transactions, the Petitioner would have got the same. In the absence of the any provision, the Petitioner is entitled to the 95% of the applicable UI charges at the periphery as specified by this Commission.

15. As stated, the Respondents have not filed any written submissions on the question of maintainability of the Petition. However, the learned counsel for SLDC, Rajasthan during the hearing on 20.7.2016 has submitted that the present Petition is not maintainable before this Commission as only the Rajasthan Electricity Regulatory Commission (RERC) has the jurisdiction to deal with the matter as the members of the Petitioner association are embedded customers of the State.

16. Thus, the issue for consideration in the present petition is *“whether the Central Commission has the jurisdiction to deal with issues emerging out of the inter-State short term open access availed by the members of the Petitioner Association for collective transactions through Power Exchange.”*

Analysis and Decision

17. The members of the Petitioner association are consumers of the distribution companies of State of Rajasthan (Respondents 3-6 herein) having a contract demand ranging from 2750 kVA to 9740 kVA. In addition to this, the members have been obtaining short term open access to inter-State transmission system to procure power through Power Exchange since February, 2011. The members of Petitioner



Association are aggrieved on account of the failure of the Respondents to provide UI accounts and make payment of UI charges for under-drawals in terms of the Open Access Regulations as applicable to intra-State entities. The main contention of Rajasthan SLDC is that the present case does not fall under the provisions of section 79 (1) (a) to (d) of the Electricity Act and hence, the jurisdiction of this Commission under section 79 (1) (f) cannot be invoked.

18. Section 79 of the Electricity Act, 2003 provides for the functions of the Central Commission as under:

“Functions of Central Commission- (1) The Central Commission shall discharge the following functions, namely:-

(a) To regulate the tariff of generating companies owned or controlled by the Central government;

(b) To regulate the tariff of generating companies other than those owned or controlled by the Central government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one state;

(c) To regulate the inter-State transmission of electricity

(d) To determine tariff for inter-state transmission of electricity

(e)

(f) To adjudicate upon disputes involving generating companies or transmission licensees in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration.

(g) XXXXXXXX

19. One of the functions of the Central Commission specified under section 79 (1) (c) is to regulate the Inter-State transmission of electricity. Inter-State Transmission System or ISTS has been defined in Section 2 (36) of the Electricity Act as under:

“(36) “Inter-State transmission system” includes -

(i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;

(ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;



(iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility.”

20. In terms of the Section 2(36) of the Electricity Act, conveyance of electricity across the territory of a State and conveyance of electricity within the State which is incidental to inter-State transmission of electricity is covered under the definition of ISTS. Therefore, where a transaction involves conveyance of electricity within the State which is incidental to inter-State transmission of electricity shall be covered under the definition of ISTS and by virtue of the power vested in the Commission under section 79(1)(c) of the Electricity Act, 2003 read with section 79(1)(f), any dispute concerning regulation of inter-State transmission of electricity shall fall within the jurisdiction of the Central Commission. Further, Section 2(47) of the Electricity Act defines the “open access” as under:

“(47) “open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;”

21. As per the above provision, this Commission has been vested with power to specify the regulations for providing non-discriminatory open access for use of inter-State transmission lines by any licensee or consumer or generator. This Commission has specified the Open Access Regulations for Short Term Open Access to ISTS which caters to both bilateral transactions and collective transactions at the Power Exchanges. Therefore, any instance of violation or non-compliance with the provisions of Open Access Regulations shall be subject to adjudication in terms of Section 79(1)(c) and (f) of the Electricity Act. Moreover, Open Access Regulations also contain the provisions for adjudication of disputes arising out of implementation of the said regulations.



22. In case of inter-State transaction of electricity by availing inter-State open access, an inter-State Open Access Customer who is a consumer and an embedded entity in a State is required to wheel power through the inter-State transmission lines, intra-State transmission lines and the distribution system of the serving distribution companies. For the purpose of inter-State transactions, all the transmission systems or distribution systems which are to be used for conveyance of electricity shall be considered as ISTS in terms of Section 2(36)(ii) of the Electricity Act as the conveyance of electricity within the State which is incidental to inter-State transmission of electricity are considered as ISTS. For this purpose, the Open Access Regulations provide that where the intra-State system is involved for availing inter-State open access, the inter-State Open Access Customer shall be required to obtain a No Objection Certificate or Standing Clearance from the SLDC concerned.

23. The issue whether the transactions at the Power Exchanges are inter-State or intra-State in nature came in for consideration of the Appellate Tribunal in Appeal No. 168 of 2009 (CSEC vs CERC). The Appellate Tribunal in the judgment dated 4.3.2010 has decided the issues as under:

“28. Further, the impugned order specifically states that the fixation of the prices would be applicable to Inter-state transactions and bilateral markets. Admittedly, the power exchanges are all Inter-state transactions. The National power exchanges were granted permission to set up and operate under the guidelines issued by the Central commission. The by- laws, rules and Business rules of power are to be approved by the Central Commission. The prices discovery methodology has to be approved only by the Central Commission. The case of collective transactions in day ahead market on power exchange is double- sided closed bid option. Similarly, the power exchanges have to comply with the Central commission regulations. As per the regulation, any participant on power exchange which is a state utility for inter-state entity has to obtain a no objection from State Load dispatch Centre. It is due to the concurrence given by the SLDC that the State/ distribution network has the required transfer capability for transfer of power from the state grid. This concurrence is given for the inter-state transactions”.



24. Therefore, the concurrence given by SLDC that the State/distribution network has the required transfer capability for transfer of power from the State grid is for the purpose of inter-State transactions.

25. The next question whether the State Commission will have jurisdiction in case of inter-State open access where the intra-State transmission system and the distribution systems are used. This issue was considered by the appellate Tribunal in Appeal No. 231/2015 and 251/2015 (UPPCL v UPERC & Ors) where the question was whether dispute arising out of denial of no objection by the SLDC for inter-State open access shall be subject to jurisdiction of the Central Commission or respective State Commission. The Appellate Tribunal in the judgment dated 28.7.2016 held that UPERC shall have the jurisdiction in case of disputes involving non-issuance of NOC by UPSLDC/ UPPTCL for use of Intra-State transmission system for open access transactions. The relevant portion of the judgment of the Tribunal is extracted 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 cement 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 system 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.”

26. The dispute in the above case pertains to congestion in the state network leading to non-issuance of NOC by UPSLDC and the jurisdiction of the State Commission in the said matter. It was in this context that the Appellate Tribunal decided that the UPERC Open Access Regulations would be applicable for use of



intra-State transmission system and/or distribution system of licensees within the State, including system used in conjunction with Inter-state transmission system and the case would fall within the jurisdiction of UPERC.

27. As per the above judgement, any dispute due to non-issuance of NOC by SLDC for use of intra-State transmission system and distribution system including when such system is used in conjunction with inter-State transmission system would be adjudicated by the concerned State Commission. Except for the disputes with regard to intra-State transmission system and distribution system used for inter-State open access, this Commission will have jurisdiction in all aspects of inter-State open access.

28. In terms of the Electricity Act, transmission of electricity is an activity which falls within the jurisdiction of both the Central and State Commissions. Open access in transmission is also an incident falling under the respective jurisdiction of both Central Commission and State Commissions. As such, both are competent to frame Open access Regulations within their respective areas of jurisdiction. The Central Commission has framed the Inter-state Open access Regulations in 2008, as amended from time to time and the RERC has framed the Intra-State Open Access Regulations, 2006, as amended from time to time. The Open Access Regulations contains provisions regarding concurrence of SLDC when the proposed transaction (either collective or bilateral) has an intra-State utility as a buyer or a seller. Similarly, the RERC Open Access Regulations, 2006 would apply to open access customer for use of intra-State transmission system including such system when it is used in conjunction with inter-State transmission system.



29. Regulation 8 of the Open Access Regulations provides for concurrence of SLDC 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 Center 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 SLDC shall convey it 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 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 SLDC shall convey to the applicant such concurrence or no objection or prior standing clearance, as the case may, within seven working days of receipt of the application by e-mail or fax, in addition to any other usually recognized mode of communication.”

30. Two of the important conditions to be checked by SLDC while granting no objection certificate or standing clearance for inter-State open access including collective transactions at the Power Exchange are that there is adequate transmission capacity available in the State system and there is infrastructure in existence necessary for time-block-wise energy metering and accounting in accordance with the provisions of the grid code in force. In the present case, the Members of the Petitioner Association have been granted the standing clearance/no objection certificate by SLDC, Rajasthan for drawal of electricity from the Power Exchange. Therefore, SLDC Rajasthan was expected to have complied with the requirements of Regulation 8 of the Open Access Regulations and satisfied itself that necessary infrastructure for energy metering and energy accounting are in existence.



The SLDC, Rajasthan in its reply dated 18.5.2016 has stated that the final settlement of UI accounts could be done by SLDC after installation and commissioning of infrastructure namely ABT meters along with Central Billing Station by STU. In our view, the SLDC, before granting concurrence, was required to ensure the existence of infrastructure for energy metering and time block wise accounting in terms of Regulation 8 (3) of the Open Access Regulations and the provisions of the Grid Code. SLDC Rajasthan has clearly failed to comply with the requirements of Regulation 8(3) of the Open Access Regulations.

31. Regulation 20 of the Open Access Regulations deals with the procedure of accounting of transactions by the State utilities and the intra-State entities and the manner of settlement of deviation in respect of such entities in the course of availing Inter-State short term open access. Regulation 20 provides as under:

20. *Unscheduled Inter-change (UI) Charges*

(1) All transactions for State utilities and for intra-State entities scheduled by the nodal agency under these regulations, shall be accounted for and included in the respective day-ahead net interchange schedules of the concerned regional entity issued by the Regional Load Despatch Centre; .

(2) Based on net metering on the periphery of each regional entity, composite UI accounts shall be issued for each regional entity on weekly cycle and transaction-wise UI accounting, and UI accounting for intrastate entities shall not be carried out at the regional level

(3) The State utility designated for the purpose of collection / disbursement of UI charges from / to intra-State entities shall be responsible for timely payment of the State's composite dues to the regional UI pool account.

(4) Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection .points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme.

(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.

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



32. It is clear from Regulation 20 of the Open Access Regulations that the concerned RLDC shall account for and include all transactions by the State utilities and intra-State entities in the day ahead net interchange schedule of concerned regional entity. Based on the net metering at the regional periphery, RPC shall issue a composite UI account to each regional entity on weekly basis and transaction wise UI accounting. According to Regulation 20(4), any mismatch between the scheduled and actual drawal at drawal point and scheduled and actual injection at injection point for the Intra-State entity shall be determined by SLDC and covered in the intra-State accounting scheme. In the absence of intra-State ABT or any specific scheme by the State Commission to handle the mismatch, Regulation 20(5) shall step in, which provides for default mechanism in the form of UI rate for Intra-state entity at 105% for over draws or under injection and 95% for under drawal or over injection of the UI rate at the periphery of the regional entity.

33. The Petitioner has submitted that in terms of Regulation 20(4) and (5) of the Open Access Regulations as well as Regulation 4.2 of the RERC Regulations, 2008 (Rajasthan Electricity Grid Code) as amended on 10.6.2011, it is the responsibility of the SLDC to undertake and maintain the energy accounts for the intra-State entities. It has further submitted that the members of the Petitioner association being connected to the network of the state utility and scheduling and despatch being notified to the SLDC, the responsibility for maintaining proper energy and UI accounts and providing the same to the Members of the Petitioner association is that of the Respondent No.1, SLDC, Rajasthan. The Petitioner has also submitted that the schedule drawal is communicated to SLDC by way of Form PX-IV and the actual drawl with frequency stamping is available with the SLDC by way of meter readings taken by the discoms JVVNL and conveyed to SLDC as per Regulation 17(5) of



RERC Open Access Regulations, 2004. The Petitioner has further submitted that SLDC was required to determine underdrawal and drawup the UI accounts (in terms of energy) based on which accounting of the UI charges are to be applied and paid. The Petitioner has stated that the entire energy contracted at Power Exchange and due at delivery point after accounting for intra-State losses, has not been considered by Respondents and no details of difference have been supplied or made available to the Members of the Petitioner Association. In response, the SLDC, Rajasthan in its reply dated 18.5.2016 has agreed with Regulation 20 (4) of the Open Access Regulations, subject to fulfilling the requirement of intra-State UI accounting scheme by all concerned i.e. the supplier end distribution licensee and consumer end distribution licensee. The SLDC has also while accepting the provisions of Regulation 20 (1) and 20 (2) as regards issuance of composite accounts for each regional entity disputed the obligation of SLDC to determine the mismatch between the schedule and actual drawal of the Petitioner. SLDC has submitted that since the open access consumers are embedded consumers of discoms, it is responsibility of respective discoms to further adjust accounts at their end and send provisional accounts to SLDC in compliance with the intra-State ABT Regulations, 2006 for finalization. SLDC has further clarified that it has no intention not to prepare the UI account. In fact, the SLDC has taken up the matter with discoms to provide provisional UI account/data and has advised to provide 15 minutes in 96 block data to SLDC for finalization of UI account but was not provided by the discoms. Accordingly, SLDC has stated that as and when the respective discoms will make compliance of Regulation 25 (6), 25 (7) and 25 (8) of the RERC Open Access Regulations, 2004, SLDC will finalize UI accounts of Open access consumers for the period from March, 2012 (billing month).



34. It is noticed that SLDC, Rajasthan in its reply dated 18.5.2016 while accepting Regulation 20 (4) of the Open Access Regulations has stated that the same is subject to fulfilling the requirement for intra-State UI accounting scheme by all concerned, i.e. supplier end distribution licensee and consumer end distribution licensee in terms of the provisions of Regulation 25(6) to (8) of the RERC Open Access Regulations, 2004. In short, SLDC, Rajasthan has stated that the UI account could be finalized only after the data received from the State discoms in terms of the above said regulations of RERC, is examined. While the Petitioner has submitted that if there had been any specific provision regarding inter-State UI rate for collective transactions in the regulations of the State Commission, the Petitioner would have got the same, SLDC, Rajasthan in para 15 of its reply affidavit dated 18.5.2016 has clarified that in the absence of intra-State UI rate specified by the State Commission for collective transactions, the settlement of UI account of the intra-State entities is not possible. This submission of SLDC is devoid of merits. It is evident from Regulation 20 (2) of the RERC Open Access Regulations, 2004 that where the open access supplier is governed by the inter-State ABT, it will be governed by CERC (Inter State Open Access) Regulations, 2004. The said regulation is extracted as under:

20. *Unscheduled interchange pricing:*

- (1) *Mismatch payment of schedule and actual drawal will be governed by the RERC (Intra-state ABT) Regulations, 2006*
- (2) *Where the open access supplier is governed by the Inter-State ABT, it will be governed by CERC (Inter State Open Access) Regulations, 2004. For intra state ABT, the permissible deviation of actual injection with regard to scheduled injection and actual drawal against scheduled drawal will be as under and will be settled at Intra state unscheduled interchange rate, as specified by RERC from time to time*

- | | |
|---------------------------------------|-----------------|
| (a) <i>Deviation at injection end</i> | (-) 100% to +5% |
| (b) <i>Deviation at drawal end</i> | (-) 5% to +5% |

Any deviation in excess of 5% at injection end and lower than 5% at drawal end will be considered as inadvertent supply of the supplier end distribution



licensee and to the consumer end distribution licensee respectively. Such supply will neither be payable nor bankable unless specifically provided in the RERC Regulations. However, a deviation in excess of 5% at drawal end by open access consumer will be governed by balancing the agreement for HT supply and / or standby supply.

35. CERC (Inter State Open Access) Regulations, 2004 has been repealed by Open Access Regulations. Therefore, SLDC, Rajasthan is required to deal with the mismatch in accordance with Regulation 20(5) of the Open Access Regulations. Admittedly, SLDC has not complied with the Regulation 20(4) and (5) of the Inter-State Open Access Regulations, 2008, for which the Petition shall lie before this Commission.

36. Further, Regulation 26 of the Open Access Regulations provides for the dispute settlement mechanism as under:

“26. All disputes arising under these Regulations shall be decided by the Commission based on application made by the person aggrieved.”

37. As we have in this order decided that collective transactions on Power Exchange are Inter-State transactions, dispute with regard to non-settlement of the UI accounts of the members of the Petitioner Association in accordance with the provisions of Regulations 20 (4) and (5) of the Open Access Regulations shall be maintainable before this Commission in terms of Regulation 26 of the Open Access Regulations.

38. In view of above discussions, we hold that the Central Commission has the jurisdiction to deal with the issue in the present Petition.

Issues on merit

39. Having decided that the Commission has the jurisdiction to deal with the matter and the Petition is therefore maintainable, we proceed to dispose of the case on



merits. According to Regulation 20(5) of the Inter-State Open Access Regulations, 2008, the UI rates as specified by the concerned State Commission are applicable for deviation from the schedule by an intra-State entity involved in inter-State open access. In case the State Commission has not specified the UI rates, the intra-State entity is governed by the UI rates specified by this Commission. In such cases, the intra-State entity is liable to pay the UI Charges for over-drawal and under-generation at the rate of 105% of the UI rate applicable at the periphery of the regional entity. In case the intra-State entity becomes entitled to receive the UI Charges for under-drawal and over generation, these charges are receivable at the rate of 95% of the applicable UI rate. SLDC, Rajasthan vide affidavit dated 10.7.2017 has submitted the following:

“(a) The SLDC, Rajasthan asked the Superintending Engineer (Commercial), Jaipur/Ajmer/Jodhpur Discom, Jaipur/ Ajmer/ Jodhpur to prepare provisional UI account and to provide sending and receiving end meter reading data, provisional energy account and UI/DSM account in soft as well as hard copy so that SLDC may be able to finalize the UI account. The partial data in soft copy has been received recently from JVVNL, AWNL & Jd.VVNL (Discoms) which is not in form of the provisional UI account of the Petitioner. According to the data received, the Discoms have billed the excess drawl of power against the scheduled drawl of the consumers & provided the details of under drawl of IEX purchase power against the scheduled power. As all the three Discoms have not provided UI account for (-) 5% to +5% permissible deviation of actual drawl against scheduled drawl of the consumers at drawl end for 96 blocks of each day and each time block of 15 minutes, in reference to Regulations 20 & 25 of the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Open Access), Regulation, 2004 and amended time to time, it is very difficult to finalize the UI account of the consumers by the SLDC.



(b) That, the data so received in excel sheets from all the three Discoms is being examined to ascertain whether these data & provided energy account could be utilised to finalise the UI account or not. As a sample soft copy of some data of the consumers is enclosed herewith in a CD. As known to all concerned, including the Petitioner in the case, it is not out of the way to mention here that the enormous data is to be handled for each consumer manually in absence of software support at the moment. Thus, it is not practically possible for SLDC to final the UI accounts of 41 consumers for the period from March, 2012 to 25.2.2016 in a short period of time. However, it is submitted that SLDC is poised to put all efforts to implement the directions of this Commission in minimum possible time.”

40. SLDC has submitted that the data received in excel sheet from all the three discoms is being examined to ascertain whether these data and the energy account provided could be utilized to finalize the UI account or not. The SLDC has also submitted that it is not practically possible for SLDC to finalize UI accounts of 41 consumers for the period March, 2012 to 25.2.2016 in a short period of time. It has further stated that it is poised to put all efforts to implement the direction of the Central Commission in minimum possible time. In this background, we direct that SLDC shall finalize and settle the UI accounts of the members of the Petitioner association within 3 months from the date of this order.

41. Petition No. 15/MP/2016 is disposed of in terms of the above.

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

Sd/-
(A. S. Bakshi)
Member

Sd/-
(A. K. Singhal)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson

