

**Central Electricity Regulatory Commission,
New Delhi**

Petition No. 228/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: 31st of July, 2017

In the matter of:

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

And

In the matter of

OCL India Ltd.

Village-Rajgangpur, Odisha, 770017

Vs.

1. Office of Chief Engineer
SLDC, West Bengal State Electricity Transmission Company Ltd.,
PO Danesh Seikh Lane,
Howrah-711109.
2. West Bengal State Electricity Distribution Company Ltd.,
Vidyut Bhawan, Block-DJ,
Sector-II, Salt Lake City,
Kolkata-700 064.
3. Eastern Regional Load Despatch Centre
14, Golf Club Road, Tollygunge,
Kolkata-700 033.
4. Power System Operation Corporation Ltd.
B-9, Qutub Institutional Area,
Katwaria Sarai,
New Delhi-110016.

Parties Present:

Shri Manu Seshadri, Advocate for the Petitioner

Shri M.G.Ramachandran, Advocate for WBSETCL
Ms. Anushree Bardhan, Advocate, WBSETCL
Shri Hemant Sahai, Advocate, WBSEDCL
Shri Surajit Chakraborty, WBSEDCL
Shri S.S. Barpanda, ERLDC

ORDER

The Petitioner, OCL India Limited, has filed the present petition against the denial of short term open access by State Load Despatch Centre, West Bengal (WBSLDC) on the ground of constraint in inter-State network for the period from 1.3.2016 to 31.5.2016.

2. Brief facts of the case are that the Petitioner has set up a cement factory at Kalupachuria in the State of West Bengal for manufacturing and sale of cement. The Petitioner is a consumer of the Distribution Company, namely West Bengal State Electricity Distribution Company Limited (WBSEDCL) having a contracted load of 14.5 MVA at 132 kV voltage. The Petitioner intended to wheel power from its captive plant at Rajganjpur, Odisha to its unit in West Bengal. On 9.5.2015, the Petitioner made an application for grant of prior standing clearance for bilateral transactions through inter-State open access for the period of three months, namely from 1.4.2015 to 30.6.2015 in accordance with Regulation 8 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (hereinafter referred to as '2008 Open Access Regulations'). WBSLDC vide its letter dated 21.4.2015 denied no objection on the ground of non-satisfaction of n-1 criteria. On 11.8.2015, the Petitioner further made an application to WBSLDC for grant of prior standing clearance for bilateral transactions through inter-State open access for the period from 1.9.2015 to 30.11.2015 in accordance with the 2008 Open Access Regulations. WBSLDC vide its letter dated 12.12.2015 denied no

objection on the ground of insufficient transmission capability of WBSETCL system. Subsequently, on 9.2.2016, the Petitioner made an application to SLDC, West Bengal for grant of prior standing clearance for wheeling of electricity from its captive power plant in Odisha to West Bengal in accordance with Regulation 8 of the 2008 Open Access Regulations. WBSLDC vide its letter dated 15.3.2016 denied no objection on the ground of non-availability of room in CTU (Power Grid)-STU (WBSETCL) corridor and non-receipt of clearances from PTP, WBSEDCL. In the above background, the Petitioner has filed the present petition.

3. The Petitioner has submitted that after the enquiry, it was found that there was no congestion in the inter-State network in the Eastern Region and ERLDC has not refused scheduling of any transaction for the period from 1.4.2015 onwards. The Petitioner has submitted that SLDC or WBSEDCL are not concerned with any congestion in the CTU network as they are only required to verify if there is adequate capacity available in the State network to accommodate the request for open access. The Petitioner has submitted that since the reason for rejecting the application for grant of no objection was congestion in the inter-State network and no intra-State congestion, such a dispute would squarely fall with the jurisdiction of this Commission. Accordingly, the Petitioner has approached the Commission in terms of Regulation 26 of the 2008 Open Access Regulations with the following prayers:

- “(i) Admit the Petition;
- (ii) Set aside the letter dated 15.3.2016 of the SLDC denying no objection to short term open access to the Petitioner;
- (iii) Direct the ERLDC to clarify as to availability of room in CTU corridor for the above mentioned period;
- (iv) Compensate the Petitioner for the wrongful denial of open access by the SLDC for the period 01/3/2016 to 31/5/2016;

(v) Direct the SLDC to process and grant the no objections for short terms open access as per the provisions of 2008 Open Access Regulations;

(vi) Pass any such further order(s) as deemed appropriate in the facts and circumstances of the case and thus render justice.”

4. Notices were issued to the Respondents to file their replies. West Bengal State Electricity Transmission Company Limited (WBSETCL), West Bengal State Electricity Distribution Company Limited (WBSEDCL) and Eastern Regional Load Despatch Centre (ERLDC) have filed their replies vide affidavits dated 14.1.2017, 16.1.2017 and 20.12.2016 respectively.

5. West Bengal State Electricity Transmission Company Ltd. (WBSETCL) has raised the issue of maintainability of the present petition before this Commission under Section 79(1) (c) of the Electricity Act, 2003 read with Regulations 8 and 26 of the Open Access Regulations. WBSETCL has submitted that since the dispute is in relation to intra-State transmission system owned, operated and maintained by STU, the West Bengal Electricity Regulatory Commission (WBERC) has the jurisdiction to adjudicate such issues. WBSETCL has submitted that the Commission does not exercise jurisdiction over matters relating to intra-State Transmission System. The transmission system owned, operated and maintained by WBSETCL is primarily for conveyance of the electricity within the State of West Bengal and therefore, is part of the intra-State transmission system within the meaning of Section 2 (37) of the Act. WBSETCL has submitted that the terms and conditions of tariff in regard to use of such system by others are decided by WBERC under Section 86 read with Sections 61, 62 and 64 of the Act. Since, no part of such system owned, operated and maintained by WBSETCL falls with the scope of inter-State transmission system as

defined in Section 2 (36) of the Act, the petition is not maintainable before this Commission. WBSETCL has submitted that the Petitioner had sought STOA for use of CTU/STU corridor for conveyance of power through the open access to its unit in West Bengal. The said open access should not be agreed to for the reason for non-availability of room in the CTU/STU corridor/insufficient transmission capacity of WBSETCL.

6. WBSEDCL has submitted that the present petition is not maintainable before this Commission since the consent to inter-State short term open access has been rejected on the ground of intra-State network constraints. Therefore, it is for the WBERC to consider and adjudicate on such aspects of network constraints. WBSEDCL has submitted that since the crux of the present dispute revolves around the availability of the transmission capacity in the State transmission system or technical constraints, the Petitioner should have referred the same to WBERC under Regulation 11 of the WBERC Open Access Regulations which provides that for adjudication of any dispute regarding availability of the transmission capacity, the aggrieved party may file a petition before WBERC within sixty days from the cause of action. WBSEDCL has submitted that the present petition has been filed before this Commission to circumvent and avoid such bar under the WBERC Open Access Regulations and the Petitioner is indulging in forum shopping. WBSEDCL has submitted that as per Regulation 10.1 (a) of the WBERC Open Access Regulations, the Petitioner made an application to SLDC for grant of open access in the Format-1, mentioning the point of drawal as WBSEDCL (132 kV LILO line connected between Dharma and Bishnupur sub-stations at Midnapore, West Bengal). WBSEDCL has submitted that as per Regulation 10.4 (a) and (c) of WBERC Open Access Regulations, the nodal agency is required to analyse all the applications

made for STOA on the basis that there are no technical constraints in the State transmission and distribution system. WBSEDCL has submitted that the applicability of WBERC Open Access Regulations can be pointed out from Regulation 3 of the WBERC Open Access Regulations which provides that WBERC Open Access Regulations shall apply to open access for use of intra-State transmission lines and/or distribution system and associate facilities with such lines or systems of the licensees. WBSEDCL has submitted that it is a settled principle of law that jurisdiction cannot be assumed where there exists none. WBSEDCL has placed reliance upon the judgment of the Hon`ble Supreme Court in Jagmittar Sain Bhagat and others Vs. Director, Health Services, Haryana and others [(2013) 10 SCC 136]. WBSEDCL has submitted that the instant petition is squarely covered by Regulation 28 of the WBERC Open Access Regulations and the petitioner has failed to prove that there is any cause of action to attract the jurisdiction of the Commission under Section 79(1)(c) of the Act. WBSEDCL has submitted that the petitioner has wrongly relied on the findings given in Energy Watchdog Vs. CERC as the facts in the instant case and Energy Watchdog are clearly distinguishable and the findings thereto cannot be applied in a piecemeal manner to the dispute raised in the present petition. In support of its contentions, WBSEDCL relied upon the judgment of the APTEL in Appeal No.70 of 2015 in State Load Dispatch Centre Vs. Gujarat Electricity Regulatory Commission.

7. ERLDC has submitted that during the period from 1.3.2016 to 31.5.2016, no real time congestion was experienced in any of the intra-regional links within the Eastern Region. ERLDC has placed on record the monthly data of TTC/ATC for the months of March, April and May, 2016 indicating the limiting constraint for arriving at inter-

intra regional TTC/ATC values. ERLDC has submitted that being a nodal agency, it has not refused any STOA bilateral application due to transmission constraint during the period from 1.3.2016 to 31.5.2016.

8. The Petitioner in its rejoinders dated 23.2.2017 has submitted that Regulations 3.1 and 11 of the WBERC Open Access Regulations, have no application since the non-availability of room in CTU-STU corridor as claimed by WBSETCL is in the inter-State network and the State Commission has no jurisdiction to entertain disputes with respect to inter-State network. The Petitioner has submitted that jurisdiction cannot be conferred or claimed by framing Regulations. Jurisdiction needs to be found in the Statute, namely the Electricity Act, 2003. Since the denial has been of inter-State open access permission, the merits of such a denial can only be questioned before this Commission and not before the State Commission. The petitioner has submitted that WBSETCL has wrongly relied on the judgment of the APTEL dated 28.7.2016 in Appeal No. 231 of 2015. In the present case, the transaction sought to be done by the petitioner is purchase of power by a bilateral transaction through a specified buyer, who is in the other State (Odisha) and amounts to an inter-State transaction. The usage of the State network is incidental and will not give rise to the jurisdiction of the State Commission. The petitioner has submitted that WBSEDCL has wrongly relied on Regulations 10.4 and 10.5 of the WBERC Open Access Regulations which have no application as in the present case, there was no technical constraint in the ERLDC network and not a single transaction was refused to be scheduled by ERLDC during the period of 1.3.2016 to 31.5.2016.

Analysis and Decision:

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

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

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

(c) Whether the Petitioner is entitled to compensation for denial of open access for the period from 1.3.2016 to 31.5.2016?

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

10. The Petitioner has filed the present petition under Section 79 (1) (c) of the Electricity Act, 2003 and Regulations 8 and 26 of the 2008 Open Access Regulations seeking direction to set aside WBSLDC's letter dated 15.3.2016 under which short term open access for the period from 1.3.2016 to 31.5.2016 was denied to the Petitioner. Section 79 (1) (c) vests power in the Commission to regulate inter-State transmission of electricity. Regulation 8 of the Open Access Regulations deals with the procedure for processing the application for open access. Regulation 26 of the Open Access Regulations provides for a redressal mechanism of the aggrieved party arising out of the non-compliance of the Open Access Regulations. WBSEDCL and WBSETCL have raised objection that the present dispute ought to have been agitated before WBERC under Regulation 11 of the West Bengal Open Access Regulations since the dispute is related to availability of capacity in the State transmission system, and not in the inter-State transmission system.

11. To re-capitulate the facts, the Petitioner made an application on 9.2.2016 clearly mentioning that the Petitioner is seeking standing clearance for bilateral transactions through inter-State open access in terms of West Bengal Open Access Regulations for the period from 1.3.2016 to 31.5.2016 for drawal of 10 MW power at 132kV voltage from OCL India Limited with point of injection as 132 kV sub-station at Rajgangpur, Odisha to its manufacturing unit in West Bengal with drawal point as 132 kV LILO line connected between Dharma and Bishnupur sub-station at Midnapore, West Bengal. WBSLDC, after receipt of the application, vide its letter dated 15.3.2016 informed the Petitioner that open access cannot be granted to the Petitioner due to technical constraint in availability of the capacity. Relevant portion of the said letter dated 15.3.2016 is extracted as under:

“With reference to above we would like to convey our objection for 10 MW Inter-State STOA by M/s OCL India Ltd. from Rajgangpur, Odisha to OCL Bengal Cement works, West Bengal due to technical constraint in availability of the capacity.”.

WBSLDC vide format 2A annexed with the said letter dated 15.3.2016 has stated as under:

- “6. Open access cannot be granted immediately due to the following reasons;
- (i) Non-availability of room in CTU-STU corridor
 - (ii) Non-receipt of clearance from PTP, WBSEDCL”

12. The above letter dated 15.3.2016 has been challenged in the petition before us. Therefore, we have to determine whether we have the jurisdiction to deal with the denial of the open access by WBSLDC on the basis of said letter dated 15.3.2016.

13. Sub-section (2) of Section 9 of the Electricity Act, 2003 which deals with the open access to captive generating plant reads as under:

“(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.”

As per the above provision, a captive generating plant has a right to open access for the purpose of carrying electricity from his captive generating plant to the destination of his use. The petitioner has a captive 54 MW generating plant at Rajgangpur, Odisha. The Petitioner has a manufacturing/processing unit at Kalupachuria in West Bengal. The Petitioner intended to wheel power from the captive generating plant to its manufacturing facility in West Bengal.

14. We have perused the documents on record. In its communication to WBSLDC, the Petitioner has presented that it is seeking open access from its captive power plant to be used for its manufacturing facility in West Bengal. Moreover, the Petitioner, in its application dated 9.2.2016, has indicated the Injecting Agency and Drawee Agency as OCL India Limited and OCL Bengal Cement Works (a unit of OCL India Limited) respectively which shows that OCL India Limited is the owner of the integrated cement plant along with captive power plant in Odisha as well as the manufacturing facility in West Bengal. In the absence of any documentary evidence to the contrary, it can be accepted that the Petitioner's application pertained to open access for wheeling of power from its captive power plant to the manufacturing facility in West Bengal.

15. Sub-section (2) of Section 9 of the Electricity Act provides that the grant of open access to a captive power plant to the destination of its use shall be subject to adequate transmission facility and adequacy of transmission facility shall be determined by the State Transmission Utility or Central Transmission Utility as the case may be. Any dispute regarding availability of the transmission capacity shall be adjudicated by the Appropriate Commission. In the present case, open access sought by the Petitioner involves the transmission system of CTU and transmission system of WBSETCL. Therefore, in case of non-availability of the transmission system in the STU network, respective State Commission will have jurisdiction and in respect of the transmission system of CTU, the Central Commission will have jurisdiction. In the present case, the Petitioner applied for grant of standing clearance for Inter-State open access to WBSLDC. In the letter dated 15.3.2016, WBSLDC has stated that there is technical constraint in availability of the capacity and non-availability of room in CTU-STU corridor. Since, the technical constraint with regard to inter-State transfer capacity has been cited as the reason for denial of open access, this Commission being vested with the power to regulate inter-State transmission of electricity and open access to inter-State transmission system is the appropriate forum to look into the legality of the denial of open access. This Commission has notified the Open Access Regulations in exercise of its power under Section 2 (47) read with Section 178 of the Electricity Act, 2003 to regulate the open access to inter-State transmission system. While Regulation 8 deals with the procedure and conditions for grant of open access, Regulation 26 provides the aggrieved party a legal remedy to approach this Commission for redressal of its grievance. Therefore, the petition is maintainable in terms of Section 79 (1) (c) read with Regulation 8 and 26 of the Open Access Regulations.

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

“11. Adjudication of dispute on capacity availability: In case of any **dispute** regarding availability of transmission and / or wheeling capacity for open access between the applicant / Open Access Customer and the Licensee or between Licensees or between a Licensee and the STU and / or the SLDC, as the case may be, the aggrieved party may file a petition along with all necessary documents before the Commission for adjudication / settlement of the dispute within 60 days from cause of action.

“28. Dispute Resolution

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

- (a) Available capacity of the system,
- (b) Operational constraints,
- (c) Charges to be recovered,
- (d) Eligibility for open access,
- (e) Allotment / Curtailment priority, etc.

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

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

“3. Extent of Application

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

3.2 These regulations shall apply to all Open Access Customers who are at present availing open access by orders of the Commission or had been granted open

access by the Commission and notwithstanding anything to the contrary contained in earlier Regulations or orders of the Commission, these regulations shall have overriding effect.”

Since in the present case, the denial vide letter dated 15.3.2016 cites the reasons for denial of open access as non-availability of room in CTU-STU corridor and non-receipt of clearance for PTP WBSEDCL. The said letter does not refer to any technical constraints in the intra-State transmission system of West Bengal or distribution system of the distribution companies of West Bengal. Therefore, non-receipt of clearance from PTP, WBSEDCL cannot be construed that there is constraint in the transmission system of STU or distribution system of WBSEDCL. Had the WBSLDC, intimated about the congestion in State network/distribution network, this would have given rise to a dispute which would have been covered under Regulations 11 and 28 of the WBSRC Open Access Regulations. In the absence of any submission regarding the congestions in the State network, the provisions of Regulations 11 and 28 are not attracted in this case.

17. WBSETCL and WBSEDCL have relied upon the judgment of the Appellate Tribunal dated 28.7.2016 in Appeal Nos. 231 of 2015 and 251 of 2015 in support of the given direction of WBERC in this matter. The relevant extract of the said judgment is as under:

"13. (r) ..The current matter under consideration is consisting of two transactions, one where Inter State Open Access was sought for supply of power from Shree Cements Rajasthan Plant to Pali Sub-Station and the other where Intra-State Open Access is required for using UPPTCL transmission system. After considering all the relevant provisions of Electricity Act and the provisions of Regulations of Central Commission and the State Commission, we are of the considered view that the UPERC Open access regulations shall be applicable for applying for open access for use of intra-state transmission system and / or the distribution systems of licensees within the State, including, when such system is used in conjunction with inter-state transmission system. Hence any dispute arising due to non-issuance of NOC by UPSLDC/UPPTCL for use of Intra State Transmission System for open access transactions has to be brought before the State Commission which in this case is

UPERC. Hence on this issue of jurisdiction we hold that in the present case the UPERC's jurisdiction is attracted."

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

18. WBSEDCL has also relied upon the judgment of the APTEL dated 7.4.2016 in Appeal No. 70 of 2015 in the matter of State Load Despatch Centre Vs. Gujarat Electricity Regulatory Commission and has submitted that State Commission will have jurisdiction when the drawal point is well known and the open access is sought for use of the transmission and distribution network of the State. It is noted that the APTEL in its judgment dated 7.4.2016 in Appeal No. 70 of 2015 has held that if the dispute arises for users of intra-State network in collective transactions, it would fall within the jurisdiction of the respective State Commission within whose jurisdiction the intra-State networks falls. The APTEL in the said case decided that GERC Open Access Regulations shall be applicable for use of intra-State transmission system and/or distribution system of licensees within the State and such cases fall within the jurisdiction of GERC.

19. In the present case, the letter dated 15.3.2016 does not say that there is congestion in the intra-State transmission system or in the distribution system of licensees of West Bengal. On the other hand, it speaks about the non-availability of room in CTU-STU corridor, i.e. non-availability of corridor in the inter-State network which falls within the jurisdiction of the Central Commission. Therefore, the said judgments dated 28.7.2016 and 7.4.2016 are not applicable in this case.

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

Issue No. 2: If the petition is maintainable, whether WBSLDC has dealt with the application of the Petitioner for open access in accordance with the provisions of the Act and Open Access Regulations?

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

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

(i) existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, and

(ii) availability of surplus transmission capacity in the State network.

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

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

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

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

22. The Petitioner is a consumer of WBSEDCL. The Petitioner made an application to WBSLDC on 9.2.2016 for grant of standing clearance for bilateral transactions through inter-State open Access for drawal of 10 MW power for the period from 1.3.2016 to 31.5.2016. SLDC, West Bengal vide its letter dated 15.3.2016 rejected the Petitioner's application on the ground of non-availability of room in CTU-STU corridor. ERLDC has submitted that there was no real time congestion in any of the intra-regional links within the Eastern Region. ERLDC has further stated that being a nodal agency for bilateral transactions, ERLDC did not refuse any short term open access for bilateral application due to transmission constraint during the period 1.3.2016 to 31.5.2016.

23. WBSLDC has relied upon a letter of ERLDC dated 15.10.2015 in support of its contention that there was a constraint in inter-State network between PGCIL (CTU) and West Bengal (STU) for import of power. ERLDC vide its letter dated 15.10.2015 had suggested WBSETCL to limit its import from ISTS within 2430 MW, since constraints were experienced in 400 kV Kharagpur-Baripada S/C and 400 kV Bidhannagr-Durgapur D/C which were used to meet the load for South Bengal system. However, ERLDC has clarified that there was no constraint in the intra regional link within the Eastern Region during the period from 1.3.2016 to 31.5.2016 for which the petitioner sought open access. Therefore, there is no constraint in the ISTS for supply of power to West Bengal where the Petitioner's load is located.

24. If there was a constraint in intra-State network, WBSLDC should have clearly communicated the same to the Petitioner. The reasons cited by WBSLDC for denial of open access i.e. non-availability of room in CTU-STU corridor and non-receipt of clearance from PTP, WBSEDCL cannot be sustained, particularly in view of the clarification of ERLDC that there was no real time congestion in the any of the intra-regional links within the Eastern Region and ERLDC did not refuse any STOA bilateral application due to transmission constraint during the period from 1.3.2016 to 31.5.2016.

25. In view of the above, we conclude that considering the status of the Petitioner as a consumer of WBSEDCL within a sanctioned load of 10 MW which is connected to the 220 /132 kV Midnapur sub-station of WBSETCL, the Petitioner's application for open access for 10 MW power cannot be rejected by WBSLDC on the ground of the non-availability of room in CTU-STU corridor and non-receipt of clearance from

PTP, WBSEDCL as the Petitioner`s requirement is accommodated within existing transmission and distribution capacity of WBSETCL and WBSEDCL.

Issue No.3: Whether the Petitioner is entitled for compensation for denial of open access for the period from 1.3.2016 to 31.5.2016?

26. We have held that denial of open access from 1.3.2016 to 31.5.2016 by WBSLDC to the Petitioner was in violation of the provisions of the Open Access Regulations. The Petitioner in its prayer has sought compensation for the wrongful denial of open access by WBSLDC for the period from 1.3.2016 to 31.5.2016. However, in the absence of relevant details with regard to the loss suffered by the Petitioner on account of denial of open access, no compensation can be awarded in favour of the Petitioner.

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

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

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

**Sd/-
(A.S. Bakshi)
Member**

**Sd/-
(A.K. Singhal)
Member**

**Sd/-
(Gireesh B. Pradhan)
Chairperson**