

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No.29/MP/2017
Along with I.A. No.14/2017**

Subject : Petition under section 79 (1) (c) read with Section 79 (1) (k) of the Electricity Act, 2003 and the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission), Regulations, 2008 for seeking appropriate directions upon State Load Despatch Centre, Odisha for grant of open access in collective transaction.

Date of hearing : 9.3.2018

Coram : Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Jindal Steel and Power Limited (JSPL)

Respondents : SLDC, Odisha and Others

Parties present : Shri Sanjay Sen, Senior Advocate, JSPL
Shri Matrugupta Mishra, Advocate, JSPL
Ms. Ankita Bafna, Advocate, JSPL
Shri Raj Kumar Mehta, Advocate, SLDC
Ms. Himanshi Andley, Advocate, SLDC
Shri R.B. Sharma, Advocate, GRIDCO
Ms. Swapna Seshadri, Advocate, IEX
Shri Ashwin Ramanathan, Advocate, IEX

Record of Proceedings

At the outset, learned senior counsel for the Petitioner submitted that the present Petition has been filed for seeking direction to State Load Despatch Centre, Odisha (SLDC, Odisha) for grant of open access in collective transactions. Learned senior counsel further submitted as under:

- (a) The Petitioner is an integrated Steel plant with a Captive Generating Plant (CGP) having a capacity of 250 MW and is supplying surplus power to the State of Odisha (through GRIDCO) after meeting its captive and open access requirements.
- (b) The Petitioner, apart from supplying power to GRIDCO is also supplying power to Indian Energy Exchange (IEX) by availing NOC/ concurrence from SLDC and vide separate Standing clearances/ NOCs, the Petitioner was availing short term open access for supplying power to various consumers through IEX.
- (c) The Petitioner was selling power to GRIDCO for which the Petitioner was raising monthly bills and the said bills are required to be honoured by GRIDCO in

terms of the Hon'ble OERC orders passed in Case Nos. 117 & 118 of 2010, Case No. 22 of 2011, Case No. 26 of 2015 and Case No. 08 of 2016. The Petitioner has its separate money claims against GRIDCO and the Petitioner reserves its rights to initiate separate proceedings for recovery of the same. However, GRIDCO vide its letters dated 16.12.2016 and 6.1.2017 informed the Petitioner that no commercial arrangements exists between the Petitioner and GRIDCO and simultaneously returned the bills of October, 2016 and November, 2016 raised by the Petitioner towards sale/ supply of power.

(d) On 26.12.2016, the Petitioner made an application to SLDC, Odisha for grant of NOC/ concurrence for collective transactions through IEX for a period from 1.2.2017 to 28.2.2017 and 1.3.2017 to 31.3.2017 which was rejected by SLDC, Odisha vide e-mail dated 30.12.2016 on the ground that the Petitioner is required to undertake that no power would be injected by the Petitioner to the Odisha Power Transmission Company Limited (OPTCL) system over and above the open access schedule and in case, such power is injected to OPTCL system inadvertently, the same would not be billed to GRIDCO.

(e) SLDC, Odisha vide its letter dated 28.12.2016 requested OPTCL for "technical clearance" for the issuance of NOC to the Petitioner which as per the Petitioner was issued by OPTCL to SLDC, Odisha in favour of Petitioner for selling power in IEX.

(f) SLDC, Odisha is acting in collusion with GRIDCO in order to coerce the Petitioner in giving up its commercial claims against the GRIDCO which is beyond the scope of Regulation 8 of Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (Open Access Regulations) for grant of NOC/concurrence. Proviso to Regulation 8(4) of Open Access Regulations provides for deemed grant of NOC, in case SLDC does not communicate its response within a period of 3 days after making of an application seeking NOC.

(g) On 6.2.2017, the Petitioner informed IEX about the application made to SLDC, Odisha seeking clearance/ NOC for undertaking collective transactions through IEX. IEX, vide its email dated 6.2.2017 sought clarification from SLDC, Odisha regarding the issuance of standing clearance/ NOC to the Petitioner, despite the fact that as per the proviso to Regulation 8(4) of Open Access Regulations, the Petitioner has obtained a deemed NOC. Subsequently, SLDC, Odisha vide its letter dated 6.2.2017 informed IEX that since, the required clearance was not received by SLDC, Odisha, NOC could not be issued. Therefore, the application made by the Petitioner for deemed NOC may not be accepted and is liable to be rejected.

(h) Learned senior counsel for the Petitioner requested to direct SLDC, Odisha to process the applications of the Petitioner for grant of NOC/ concurrence, for undertaking collective transactions in terms of Open Access Regulations and declare that the Petitioner is entitled to deemed grant of NOC/ concurrence in terms of Regulation 8(4) of the Open Access Regulations.

2. Learned counsel for SLDC, Odisha submitted that the present Petition is liable to be rejected as the Petitioner has concealed material facts that the Petitioner was issued

NOC after obtaining “Technical clearance” from OTPCL and “Commercial clearance” from GRIDCO by SLDC, Odisha. Learned counsel for SLDC, Odisha further submitted as under:

(a) There exists no contract between the Petitioner’s CGP and GRIDCO for supply of power to the State. However, the Petitioner is selling its surplus power through collective transaction and wheeling 50 MW RTC power to its plant at Barbil through intra-State short term open access.

(b) The e-mail dated 30.12.2016 was not sent for the purpose of issuance of NOC pursuant to the application dated 26.12.2016 made by the Petitioner as it was sent to all the CGP’s including the Petitioner, who intend to sell power through open access. Further, SLDC, Odisha never asked the CGP’s to submit the undertaking to SLDC, Odisha.

(c) For issuance of NOC, SLDC, Odisha requires “technical clearance” from OPTCL for adequacy of transmission system and metering infrastructure and “commercial clearance” from GRIDCO for purchase of power from all sources and receive State’s Central Sector share. However, Petitioner’s CGP has availed NOC from SLDC, Odisha to sell its surplus power through IEX upto the month of January, 2017 and SLDC, Odisha has approved wheeling of power from its CGP to its sister Industry at Barbil through intra-State short term open access transaction, which is in place at present. Similar procedure was adopted by SLDC, Odisha while allowing the earlier transactions, i.e. “Technical clearance” from OPTCL and “Commercial clearance” from GRIDCO which was also being followed by the Petitioner. Therefore, SLDC, Odisha had never denied for issue of NOC to the Petitioner’s CGP and similarly, all other CGPs are also selling power after obtaining clearance from GRIDCO.

(d) The Petitioner on 26.12.2016 applied for grant of NOC to sell its surplus power through IEX for the period from 1.2.2017 to 28.2.2017 and 1.3.2017 to 31.3.2017 which could not be issued to the Petitioner as the clearance was not received from GRIDCO which is necessary to protect the interest of the State.

3. Learned counsel for GRIDCO submitted as under:

(a) The contention of the Petitioner that it is supplying its surplus power to the State of Odisha is incorrect as at present, the State of Odisha is self-sufficient in power. Whereas, the Petitioner, at times, dumps its surplus power into the Odisha grid without the knowledge of GRIDCO and SLDC, Odisha which is improper as GRIDCO do not have any contract for the supply of power with the Petitioner.

(b) The CGP of the Petitioner is required to carry out the operation of his plant and if the electricity from CGP is through the grid, it shall be regulated in the same manner as the generating station of the generating company. The mere fact that the generation was de-licensed, the risk of higher capacity planning, if any, rests solely with the Petitioner and the surplus power on this account cannot be dumped into the Odisha grid. Therefore, the onus is on the Petitioner to operate its generating plant in a manner to avoid any dumping of its surplus power in the grid.

(c) In the event of supply of power by the Petitioner to GRIDCO, there is regular contract to supply and consequent scheduling of power by the SLDC, Odisha and accordingly, the Petitioner is entitled to raise the regular bills on GRIDCO which were also being paid by GRIDCO. The Petitioner was aware of the letter dated 16.12.2016 from GRIDCO clearly explaining the issue related to the dumping of its surplus power into the Odisha Grid without any contract or scheduling and therefore, the e-mail dated 30.12.2016 was neither a surprise nor the coercion as contended by the Petitioner.

(d) The Hon'ble Appellate Tribunal for Electricity in Appeal No.68/2014 and in Appeal No.267/2017 has observed that a generator cannot pump electricity into the grid without having consent/contractual agreement with the distribution licensee and without the approval/ scheduling of the power by SLDC and injection of such energy by generator is not entitled for any payments. Therefore, the sole purpose of asking for an undertaking is to discourage CGPs not to inject any un-connected power to grid to prevent grid collapse and the commercial interest of the Petitioner is within the overall interest of safe and economic operation of the grid.

4. Learned counsel for IEX submitted that IEX has acted in terms of proviso to Regulation 8(4) of the Open Access Regulations. Learned counsel for IEX further submitted that the Petitioner vide affidavit dated 6.2.2017 informed IEX that SLDC, Odisha had not communicated its response to the application of the Petitioner within 3 working days and NOC should be deemed to have been granted. Thereafter, IEX vide its email dated 6.2.2017 sought clarification from SLDC, Odisha regarding the issuance of standing clearance/ NOC to the Petitioner. In response, SLDC, Odisha vide its letter dated 6.2.2017 informed IEX that the Petitioner's application for deemed NOC cannot be accepted as SLDC, Odisha has not received required clearance. Learned counsel for IEX further submitted that deemed NOC is applicable in cases where the SLDC neither gives NOC nor replies to the letter of the Exchange. However, in cases where the SLDC has replied to the letter of IEX but has not given the NOC, clarification is required whether such cases shall be considered as "deemed NOC".

5. After hearing learned senior counsel for the Petitioner and learned counsels for respondents, the Commission directed parties to file their written submissions, if any, on or before 28.3.2018 with copy to each other.

6. The Commission directed that due date of filing the written submissions should be strictly complied with failing which the order shall be passed on the basis of the documents available on record.

7. Subject to the above, the Commission reserved the order in the Petition and in the I.A.

By order of the Commission

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