

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 118/MP/2011

**Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member**

Date of Order: 30.11.2011

In the matter of

Petition for direction to Uttar Pradesh State Load Despatch Centre to accord concurrence/No Objection Certificate/prior standing clearance in format PX-I for participation in Power Exchanges.

**And
In the matter of**

Noida Power Company Limited, Noida

....**Petitioner**

Vs

1. U.P. Power Transmission Corporation Limited, Lucknow
2. Chief Engineer (Power System) Uttar Pradesh Power Transmission Corporation Limited, Lucknow
3. Chief Engineer (Operations) Uttar Pradesh Power Transmission Corporation Limited, Lucknow
4. Uttar Pradesh Power Corporation Limited, Lucknow

....**Respondents**

Following were present:

1. Shri M.G.Ramchandran, Advocate for petitioner
2. Shri Vishal Gupta, Advocate for petitioner
3. Shri S.Ganguly, NPCL
4. Miss. Mayuri Patel, NPCL
5. Shri Rauhal Srivastava, Advocate for the UPPTCL and SLDC
6. Shri Sunil Kumar Jain, UPPCL

ORDER

The petitioner, Noida Power Company Limited has made this application under Sections 79 (1) (k) and 142 of the Electricity Act, 2003 (hereinafter referred to as "the Act") read with Regulations 26 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (herein after referred to as the "open access regulations") and Regulation 1.5 (v) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter referred to as the "Grid Code") seeking a direction to Uttar Pradesh State Load Despatch Centre to accord concurrence/No Objection Certification/prior Standing Clearance to the petitioner for participation in the Power exchange(s).

2. The petitioner is a company registered under the Companies Act, 1956 and has been granted licence for the distribution of electricity in the area of Greater Noida under Section 3 of the erstwhile Indian Electricity Act, 1910 by the State Government of Uttar Pradesh. The petitioner has submitted that it had requested vide its letters dated 7.11.2008, 12.1.2009, 29.6.2009, 30.10.2009, 30.12.2009, 15.6.2010 and 27.9.2010 to Respondents Nos. 1, 2 and 3 who are operating State Load Despatch Centre (SLDC) in the State of Uttar Pradesh to provide "Concurrence/No Objection Certificate/Standing Clearance" up to 25 MW power, which is a prerequisite for participation in Power Exchanges(s) as per the provisions of Open Access Regulations. Despite several reminders and following up the matters by holding meetings with the officials of the

Respondent Nos, 1 to 3, no response has been received so far. The petitioner has submitted that the fourth Respondent, Uttar Pradesh Power Corporation Limited(UPPCL) has been purchasing and selling powers from the Power Exchanges for which standing clearance has been accorded by the SLDC whereas the petitioner has been treated in a discriminatory manner.

3. The Petitioner has submitted that being a distribution licensee, its metering and energy accounting is done by the State Load Despatch Centre(SLDC) and therefore, it qualifies to be an "intra-State entity" as defined under Regulation 2 (1) (h) of the Open Access Regulations. The petitioner has further submitted that it has been availing short term open access for bi-lateral transactions through inter-State as well as intra-State transmission based on the transmission capacity available from time to time and is covered under the purview of short term customer as defined under Regulation 2(1) (n-b) of the Open Access Regulations;

4. The petitioner has submitted that as per clause (2) of Regulation 8 of the Open Access Regulations read with clause 2.2 of the Detailed Procedure issued by the National Load Despatch Centre, where an intra-State entity proposes to participate in trading through power exchanges and makes an application for Concurrence/No Objection Certificate/Standing Clearance, the concerned SLDC is required to process the application and communicate its result to the applicant within prescribed time period. The petitioner has submitted that it is not open to the respondents to keep silent on the

applications of the petitioner for Concurrence/No Objection Certificate/Standing Clearance. Non-processing of the applications and consequent failure to pass any order are in clear contravention of SLDC's obligations under Clauses (3), (3A) and (4) of the Regulation 8 of the Open Access Regulations and Regulation 2.7.3 of the Grid Code and have resulted in denial of inter-State open access. The petitioner has sought the following reliefs in the present petition:

- (i) Appropriate directions to Respondents Nos. 1,2 and 3 to accord Concurrence/No Objection/prior Standing Clearance in format-PX-1 to the petitioner to participate in Power Exchange (s); and
- (ii) Appropriate action against the Respondents Nos.1,2 and 3 under Section 142 of the Electricity Act, 2003 for non-compliance of clause 2.7.3 of the Indian Electricity Grid Code and Clauses (3), (3A) and (4) of the Regulation 8 of the Open Access Regulations.

5. Replies to the petition have been filed by the second and third respondents under affidavit dated 24.6.2011. The following reasons have been advanced by the respondents for not granting the concurrence/standing clearance to the petitioner:

- (a) In case, SLDC fails to communicate any deficiency or defect, Concurrence or No Objection or prior Standing Clearance is deemed to have been granted under first proviso to Regulation 8 (4) of the Open Access Regulations and in such an event, the applicant is entitled to

submit an affidavit to the nodal agency with a declaration that SLDC has failed to convey any deficiency or defect or refusal within specified time and it has the necessary infrastructure for time block-wise energy metering and accounting in accordance with the provisions of the Grid Code. In the present case, the petitioner has not submitted such an affidavit with the nodal agency to participate in the collective transactions at the Power Exchanges. Having failed to comply with the Regulation 8(4) of the Open Access Regulations, the petitioner preferred to make a case of non-compliance of the said regulations;

(b) The petitioner is purchasing 45 MW from the UPPCL in addition to bilateral transactions for which short term open access has been allowed. The petitioner has never participated in scheduling of 45 MW purchased from UPPCL as required by Uttar Pradesh Electricity Regulatory Commission's order dated 24-25/9/2007 in suo motu petition pertaining to preparation and implementation of Availability Based Tariff in the State. Therefore, the petitioner be directed to explain the reasons for not participating in scheduling of 45 MW;

(c) The petitioner has failed to provide data on SCADA maintained at the SLDC for control and monitoring of the power drawn by it and thus, did not comply with the provisions of the UPERC orders and the Grid Code as well as the Regulations of Central Electricity Authority for connectivity to the grid. A direction has been sought to the petitioner to establish

proper metering system in confirmation with CEA metering regulations at its drawal points and ensure that meter readings are communicated to UP SLDC for energy accounting.

6. The petitioner in its rejoinder dated 8.7.2011 has submitted that the petitioner is aware of the provisions for deemed clearance under the Open Access Regulations. Reliance of the respondents on the said provision clearly establishes that that the respondents have not granted concurrence or no-objection or prior standing clearance to participate in power exchanges without any valid reason. With regard to scheduling of 45 MW power purchased from the UPPCL, the petitioner has submitted that as per the order of UPERC dated 24-25/9/2007, Respondent No.4 has to prepare drawal schedule of 45 MW along with the drawal schedule of Paschimancial Vidyut Vitran Nigam Ltd. and the said power was supplied to the petitioner in terms of orders of Hon`ble High Court of Judicature at Allahabad, Lucknow Bench, dated 14.11.2008 and 14.1.2009 in Writ Petition (C) No. 9892 (M/B) of 2008. The petitioner has denied its failure in providing data and communication facilities for control and monitoring of the power drawn by it as alleged by the respondents. The petitioner has submitted that it has the requisite data and voice communication facilities and ABT meters are installed on all interface points from where the petitioner is drawing supply through the Respondents Nos.1 to 3. As per the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2008, proper metering system has been installed at the drawal points of the petitioner. As regards the energy accounting, the

petitioner has submitted that as admitted by the answering respondents, energy accounting is being carried out by PVVNL and therefore, the respondents are deliberately acting in contravention of the provisions of Electricity Act, 2003, Open Access Regulations and Grid Code.

7. We have considered the submissions of the petitioner and respondents. From the rival contentions of the parties, it emerges that both the petitioner and respondents have relied upon the provisions of Regulation 8 of the Open Access Regulations which is extracted as under:

“8. Concurrence of State Load Despatch Centre for bilateral and collective transactions

(1) Wherever the proposed bilateral transaction has a State utility or an intra-State entity as a buyer or a seller, concurrence of the State Load Despatch Centre shall be obtained in advance and submitted along with the application to the nodal agency. The concurrence of the State Load Despatch Centre shall be in such form as may be provided in the detailed procedure.

(2) When a State utility or an intra-State entity proposes to participate in trading through a power exchange, it shall obtain a “no objection” or a prior standing clearance from the State Load Despatch Centre in such form as may be prescribed in the detailed procedure, specifying the MW up to which the entity may submit a buy or sell bid in a power exchange.

(3) (a) For obtaining concurrence or ‘no objection’ or prior standing clearance an application shall be made before the State Load Despatch Centre who shall, acknowledge receipt of the application, either by e-mail or fax, or any other usually recognised mode of communication, within twenty four hours from the time of receipt of the application:

Provided that where the application has been submitted in person, the acknowledgement shall be provided at the time of submission of the application.

(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, namely-

(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.

(c) Where existence of necessary infrastructure and availability of surplus transmission capacity in the State network has 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 recognised 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 person, 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 be, within seven (7) working days of receipt of the application by e-mail or fax, in addition to any other usually recognised mode of communication.

(3A) In case the State Load Despatch Centre finds that the application for concurrence or 'no objection' or prior standing clearance, as the case may be, is incomplete or defective in any respect, it shall communicate the deficiency or defect to the applicant by e-mail or fax, in addition to any other usually recognised mode of communication, within two (2) working days of receipt of the application:

Provided that in cases where the State Load Despatch Centre has communicated any deficiency or defect in the application, the date of receipt of application shall be the date on which the application has been received duly completed, after removing the deficiency or rectifying the defects, as the case may be.]

(4) In case the application has been found to be in order but the State Load Despatch Centre refuses to give concurrence or 'no objection' or prior standing clearance as the case may be, on the grounds of non-existence of necessary infrastructure or unavailability of surplus transmission capacity in the State network, such refusal shall be communicated to the applicant by e-mail or fax, in addition to any other usually recognized mode of communication, within the period of three (3) working days or seven (7) working days, as the case may be, from the date of receipt of the application, specified under clause (3), along with reasons for such refusal:

Provided that where the State Load Despatch Centre has not communicated any deficiency or defect in the application within two (2) days from the date of receipt of application or refusal or concurrence or 'no objection' or prior standing clearance, as the case may be, within the specified period of three (3) working days or seven (7) working days, as applicable, from the date of receipt of the application, concurrence or 'no objection' or prior standing clearance, as the case may be, shall be deemed to have been granted:

Provided further that where concurrence or 'no objection' or prior standing clearance, as the case may be, is deemed to have been granted by the State Load Despatch Centre, the applicant while making application, shall submit to the nodal agency an affidavit (in the format provided in the detailed procedure), duly notarised, declaring that –

(a) the State Load Despatch Centre has failed to convey any deficiency or defect in the application or its refusal or concurrence or 'no objection' or prior standing clearance, as the case may be, within the specified time,

(b) necessary infrastructure for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, is in place; and enclosing with the affidavit –

(i) a copy of the complete application after removal of deficiency or rectification of defects, if any communicated, made to the State Load Despatch Centre for seeking concurrence or 'no objection' or prior standing clearance, as the case may be, and

(ii) a copy of the acknowledgement, if any, given by the State Load Despatch Centre, or any other evidence in support of delivery of the application to the State Load Despatch Centre.”

8. The above regulation provides that when a State utility or intra-State entity proposes to participate in trading through power exchange, it is required to obtain a no objection or prior standing clearance from the State Load Despatch Centre (SLDC). The SLDC is required to acknowledge receipt of the application for no objection or standing clearance within twenty four hours. While processing the application, the SLDC is required to verify whether there is existence of infrastructure necessary for time block wise energy metering and accounting in accordance with the Grid Code and whether surplus transmission capacity is available in the State network. Where the applicant fulfils both conditions, the SLDC shall convey its concurrence or no-objection or prior standing clearance to the applicant within three working days. If the application is found to be defective or incomplete, the SLDC is required to

communicate the deficiency or defect within two working days. Where the SLDC has neither communicated the defect in the application nor the refusal nor the concurrence/no objection/standing clearance within the stipulated time frame, the concurrence/no objection/standing clearance shall be deemed to have been granted and the applicant is required to approach the RLDC in accordance with last proviso to Regulation 8(4) of Open Access Regulations. In other words, inaction on the part of SLDC to act on the open access application vests a right on the applicant to approach RLDC for open access on the basis of deemed concurrence/no objection/standing clearance. This statutory remedy has been provided to facilitate open access and discourage SLDCs to deny the concurrence/no objection/standing clearance on frivolous grounds.

9. The petitioner has requested Respondent Nos. 1 to 3 for concurrence/no objection/standing clearance vide its letters dated 7.11.2008, 12.1.2009, 29.6.2009, 30.10.2009, 30.12.2009, 15.6.2010 and 27.9.2010. It is an admitted fact that the Respondent Nos.1 to 3 have not responded to these letters. After expiry of the stipulated period, the petitioner has a right to approach the concerned RLDC in terms of clause (4) of Regulation 8 of Open Access Regulations. Obviously, the petitioner has not availed the statutory remedy provided in the Open Access Regulations. The petitioner has not explained the reasons for not approaching the RLDC for open access after expiry of the stipulated period of response by SLDC. In our view, the petitioner has to strictly follow the provisions of the regulations to avail the remedy. It cannot bypass

the remedy available to it and approach the Commission for issue of directions to SLDC. It is pertinent to mention that only under Regulation 26 of the Open Access Regulations, an aggrieved person can approach the Commission for adjudication of dispute. Regulation 26 provides that "all disputes arising out of these regulations shall be decided by the Commission based on an application made by the person aggrieved". The petitioner has not been able to establish existence of any dispute between the petitioner and Respondent Nos. 1 to 3, particularly in view of the submission of the respondents that the petitioner could have availed the open access in terms of Regulation 8(4) of Open Access Regulations.

10. The petitioner has sought appropriate directions to Respondents Nos. 1,2 and 3 to accord Concurrence/No Objection/prior Standing Clearance in format-PX-1 to the petitioner to participate in Power Exchange (s). This prayer of the petitioner needs to be considered in the light of the fact whether the petitioner was prevented by the Respondent Nos. 1 to 3 from trading at the power exchange. As already discussed in the preceding paragraph, the petitioner in the absence of any response from the Respondent Nos.1to3 has a statutory remedy in the form of deemed clearance or no objection or prior standing clearance for trading at the power exchange(s). The regulations do not provide for issue of directions to SLDCs in such circumstances.

11. The petitioner has also prayed for appropriate action against the Respondents Nos.1,2 and 3 under Section 142 of the Electricity Act, 2003 for non-compliance of clause 2.7.3 of the Grid Code and Clauses (3), (3A) and

(4) of the Regulation 8 of the Open Access Regulations. Clause 2.7.3 of the Grid Code provides as under:

“In case of inter-State bilateral and collective short term transactions having a state utility or an intra-State entity as a buyer or a seller, SLDC shall accord concurrence or no objections or prior standing clearance, as the case may be, in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 as amended from time to time.”

It is apparent from the above that SLDC shall accord concurrence or prior standing clearance or no objection in accordance with Open Access Regulations. We have already discussed the provisions of Regulation 8 of the Open Access Regulations in para 9 of this order and have come to the conclusion that the said regulation contains an in-built remedy in the form of deemed clearance in the event of failure by SLDC to respond to the application of an applicant. From the point of SLDCs, it is its statutory responsibility to reply to the applications of the applicant for open access within the stipulated period. Existence of a provision of deemed no-objection or clearance or concurrence does not absolve the SLDCs from discharging their statutory obligations. In our view, the Respondent Nos.1 to 3 have failed to comply with the provisions of clauses 3, 3A and 4 of Regulation 8 of Open Access Regulations by not responding to the applications of the petitioner for open access within the stipulated time. Such attitude on the part of SLDC will defeat the purpose of open access. This being a first instance of non-compliance, we do not intend to invoke the penal provision under section 142 of the Act. We direct the Respondent No.1 to 3 to strictly comply with the provisions of clauses 3, 3A and 4 of Regulation 8 of Open Access Regulations

and reply to the applications of the applicants for open access within the stipulated time as specified in the regulations. Failure to comply with the regulations will make the Respondent Nos.1 to 3 liable for action under section 142 of the Act.

12. Respondent Nos. 1 and 2 have raised the issue of lack of metering infrastructure and scheduling etc. for denial of open access. Regulation 8(4) provides that in such circumstances, SLDC shall communicate its refusal within 3 working days. Since the respondents have not acted as per the regulations, it is not open to them to raise this issue before the Commission. These issues may be dealt with by the Respondent Nos. 1 and 3 in accordance with law in accordance with clause 4 of Regulation 8 of Open Access Regulations.

13. The petition is disposed of in terms of the above.

sd/-	sd/-	sd/-	sd/-
(M.DEENA DAYALAN)	(V.S.VERMA)	(S.JAYARAMAN)	(Dr. PRAMOD DEO)
MEMBER	MEMBER	MEMBER	CHAIRPERSON