

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021

**Present: Shri U. N. Behera, Chairperson
 Shri A. K. Das, Member
 Shri A. K. Parhi, Member**

Case No. 26/2016

M/s. Satguru Metals & Power Pvt. Ltd.	Petitioner
Vrs.		
SLDC & WESCO Utility	Respondents

In the matter of: An application under Section 42 (2), (3) &(4) of the Electricity Act, 2003 read with regulations made there under for adjudication of disputes regarding grant of non-discriminatory open access for procurement of 4 MW power from power exchange.

For Petitioner: Shri Bibhu Charan Swain, the authorized representative

**For Respondents: Shri P. S. Sahu, Sr. GM, SLDC
 Shri K. C. Nanda, DGM (Fin.), WESCO Utility**

ORDER

Date of hearing: 25.04.2017

Date of order:09.04.2019

The petitioner M/s. Satguru Metals & Power Pvt. Ltd. (M/s. SMPPL) is a steel manufacturing company situated at Goriamal in Sundargarh district and availing power supply from Sundargarh 132/33 KV Grid-substation through 33 KV Bargaon feeders having contract demand of 5700 KVA with WESCO Utility.

2. M/s. SMPPL submitted that as per the Regulation 8 (3) (c) of CERC (Open Access Inter-State Transmission) (Third Amendment) Regulations, 2015, SLDC is supposed to grant NOC/issue standing clearance within 3 days from the date of receipt of open access Application. The relevant provision of the CERC Regulation is furnished below:

“8 (3) (c) : Where the existence of necessary infrastructure, availability of surplus transmission capacity in the State network and submission of affidavit as required under provisions to sub-clause (a) of clause (3) of this regulation have 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 defect, as the case may be.”

3. The representative of the petitioner further submitted that as per Regulation 12 (2) (a) (iii) (3) of the OERC (Terms and Conditions of Open Access) Regulations, 2005, SLDC is supposed to grant NOC for month wise short term open access within a period of 7 days from the date of submission of Open Access application. The relevant portion of the regulation is furnished below:-

“ 12 (2) (a) (iii) (3): State load despatch centre, in consultation with the State Transmission Utility and distribution licensee, as the case may be, shall take a decision on the application based on the following schedule:

- i. Up to one day- 12 hours*
- ii. Up to one week- Three days*
- iii. Up to one month- Seven days*
- iv. Up to one year- Thirty days”*

4. Accordingly, the petitioner has earlier availed power up to 4 MW from Indian Energy Exchange (IEX) through Short Term Open Access (STOA)/ Collective Transaction. Both SLDC & WESCO Utility have granted such open access for transfer of 4 MW power in the existing 33 KV Bargaon feeder during the period from 4.11.2014 to 31.01.2016 based on the monthly application filed by the petitioner from time to time. After allowing for such open access on several occasions, SLDC had granted NOC after an enormous delay upto 11 to 73 days and in many cases curtailing the period for which open access was applied. This issue was raised by the petitioner along with 13 to 15 numbers of similarly placed consumers during the hearing for approval of RST and Open Access Charges for the FY 2016-17 and the Commission in its Order dated 11.04.2016 has directed SLDC to consider and allow open access within the permissible time frame as per the Regulations.
5. In the present case, the representative of the petitioner has also submitted that M/s. PTC India Limited (M/s. PTC) the authorised trader had applied to SLDC on 22.01.2016 on behalf of the petitioner for grant of NOC for procurement of 4 MW power through IEX for the period from 01.02.2016 to 29.02.2016.
6. Due to inaction leading to denial of NOC by WESCO Utility and standing clearance by SLDC, the petitioner was incurring huge financial loss in each day. Hence, the petitioner

filed W.P.(C) No. 1947/2016 before the Hon'ble High Court of Orissa seeking direction of the Hon'ble Court to both WESCO Utility and SLDC for issuance of NOC for procurement of power through IEX for the period from 01.02.2016 to 29.02.2016. The Hon'ble Court vide their order dated 04.02.2016, directed both the parties to consider the application of IEX for grant of NOC as applied on 22.01.2016 as expeditiously as possible before expiry of the period so that the benefit admissible to the petitioner can be extended. The Hon'ble High Court has also observed that as per regulation, continuous process must continue by the authority in due discharge of their statutory responsibility fixed on them. The petitioner served the copy of the said order of the Hon'ble High Court to WESCO Utility on 06.02.2016 requesting for an early action for allowing open access. SLDC also informed WESCO Utility on 08.02.2016 to consider the said application of the petitioner and to communicate the necessary clearance to SLDC. But the WESCO Utility vide its letter dated 10.02.2016 to SLDC denied the open access to the petitioner on the ground that additional load of 4 MW through open access in addition to the existing load of 2.7 MVA of the petitioner cannot be possible as some other industries availing power have also applied for load enhancement and facilitating transmission corridor for the existing consumer is the prime responsibility of the Utility. Accordingly, SLDC rejected the open access application of the petitioner vide its letter on 11.02.2016. Again on 03.03.2016 and 28.06.2016, M/s. PTC, the authorised trader of the petitioner's power applied open access (collective transaction) for procurement of 4 MW power for the period from 04.03.2016 to 31.03.2016 and 01.07.2016 to 31.07.2016 respectively, which were also rejected by SLDC as technical clearance had been refused by WESCO Utility indicating network constraint.

7. The representative of M/s. SMPPL submitted that the aforesaid action of SLDC and WESCO Utility is violation of the provisions of Section 42 of the Electricity Act, 2003 and Open Access Regulations of the Commission. The Contract Demand of the petitioner with WESCO Utility is 5.7 MVA for which it is paying the demand charges to WESCO Utility. However, WESCO Utility in its rejection letter knowingly and cleverly projected the existing contract demand of the petitioner as 2.7 MVA which is not correct. Further, in its rejection letter WESCO Utility's statement that some other industries along with the petitioner have applied for load enhancement is wrong and purposefully mentioned by WESCO Utility to reject the open access application of the petitioner. In all the correspondences regarding open access the authorised trader of the petitioner has mentioned that the total drawal of power by the petitioner shall remain within the contract demand of 5.7 MVA which includes 4 MW power from IEX depending on the availability of affordable power and balance power from WESCO Utility and requested to grant standing clearance

for import of 4 MW of power through IEX using the same network. In all past open access applications WESCO Utility/SLDC has granted open access permission for 4 MW power using the said network and they are very much aware of the drawal pattern of the petitioner.

8. Therefore, the petitioner has prayed the Commission to direct SLDC to grant open access within a period of 3 days from the date of application and in case the DISCOM Utilities do not submit its timely views, then SLDC may consider it as a deemed consent and accordingly grant NOC to the open access customers including the petitioner. They have further prayed to set aside the open access denial letter dated 10.02.2016 of WESCO Utility and open access rejection letters dated 11.02.2016, 11.03.2016 and 14.07.2016 of SLDC and to issue standing clearance for open access (collective transaction) for procurement of 4 MW power from IEX which is within the contract demand of 5.7 MVA of the petitioner.
9. The representative of SLDC has submitted that the present petition has been filed by the petitioner M/s. SMPPL under Sub-section (2) (3) (4) of Section 42 of the Electricity Act, 2003 stating denial of NOC by SLDC for import of power through IEX (collective transaction). But the aforesaid Section of the Electricity Act, 2003 is not applicable in the present case. Such collective transaction is governed by the CERC Open Access Inter-State Transmission (Amendment) Regulations, 2009. Regulation 8 (3) (b) of the CERC (Open Access in Inter-State Transmission) (Amendment) Regulation, 2009 states as under:

“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. *The 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.*
10. Accordingly, SLDC has forwarded the application of the petitioner to WESCO Utility for issue of technical clearance as the petitioner’s industry is connected to 33 KV network of WESCO Utility. SLDC has discharged its responsibility as per the provisions of the relevant regulations framed under the Electricity Act, 2003. SLDC has further submitted that since such transaction is governed by CERC (Open Access in Inter-State Transmission) (Amendment) Regulations, 2009 all disputes arising under the regulations shall be decided by the CERC. Hence, SLDC has prayed the Commission to reject the petition as it is not maintainable under the Law.
11. The representative of WESCO Utility has submitted that the petitioner is an existing consumer of WESCO Utility having contract demand of 5.7 MVA and applied for reduction of CD to 3.9 MVA vide its application dated 26.11.2015. Permission for reduction of CD was allowed w.e.f. 1.12.2015 which was intimated to the petitioner vide WESCO Utility

letter dated 19.05.2016, with the clarification that this permission was valid for 30 days from the date of issue of the said letter and in the event the petitioner fails to execute the agreement with WESCO Utility within such period, the said permission for reduction of the CD shall be treated as cancelled. Since the petitioner failed to execute an agreement within the stipulated time of 30 days the permission for reduction of CD was cancelled and the same was intimated by WESCO Utility vide their letter dated 18.07.2016. Thereafter the petitioner requested WESCO Utility for extension of time period for execution of said agreement vide Letter dated 25.07.2016 & 25.08.2016, which were denied by WESCO Utility and the petitioner was advised by WESCO Utility to apply afresh for reduction of CD. Then the petitioner being aggrieved filed a complaint petition before this Commission on 21.09.2016 with a prayer for a direction to WESCO Utility for reduction of CD w.e.f. December, 2015. The Commission forwarded the complaint to the GRF-Rourkela for adjudication. The GRF after hearing both the parties had dismissed the petition vide its order dated 20.01.2017 with a direction to the petitioner to apply afresh for reduction of contract demand. Then the petitioner challenged the said order of the GRF before the Ombudsman-II. In the proceeding before Ombudsman-II, WESCO Utility had made a specific submission that the petitioner, in one hand applied for grant of open access on the declared contract demand of 5.7 MVA and on other hand applied for reduction of CD, both are contradictory approach of the petitioner. However, Ombudsman-II vide its order dated 27.02.2017 directed WESCO Utility to reduce the contract demand of the petitioner from 5.7 MVA to 3.9 MVA w.e.f December, 2015. Being aggrieved with the aforesaid order of the Ombudsman-II, WESCO Utility has filed W.P.(C). No. 4550 of 2017 before the Hon'ble High Court of Orissa and the Hon'ble Court vide their order dated 19.04.2017 has stayed the impugned order of the Ombudsman-II passed in C.R. Case No. OM(II)(W)-04 of 2017.

12. With the above backdrop WESCO Utility has submitted that after issuance of the order of the Hon'ble High Court directing SLDC and WESCO Utility to issue NOC to the petitioner, WESCO Utility vide its letter dated 10.02.2016 has made it clear to the petitioner that the 33 KV network through which the petitioner is getting supply is a common feeder to which other consumers are connected and it was not technically feasible to issue clearance to the petitioner for procurement of 4 MW power through open access using the same network. However, the petitioner was advised to develop and maintain a dedicated feeder for procuring power through open access.
13. The representative of WESCO Utility has further submitted that in the instant case the petitioner has approached the respondent for use of Intra-State network for open access

which was to be governed under OERC Regulation. Therefore, time limit for issuance of clearance for open access should be governed under it. Further, the period for which the petitioner sought open access has already been elapsed, hence the prayer of the petitioner has become in-fructuous.

14. As regard to drawal of power through open access for the subsequent period, WESCO Utility submitted that the petitioner has approached for reduction of its CD to 3.7 MVA and in that event it would not be technically feasible to issue clearance for open access of 4 MW power since other existing consumers are availing power supply through the same feeder with a composite capacity of 20.05 MVA. However, after getting adequate network relief in the concerned feeder, the petitioner had been allowed to draw power through short term open access from November, 2016 onwards (based on the declaration of the petitioner that the existing contract demand is 5.7 MVA). At this stage, if reduction of CD as claimed by the petitioner is effected with retrospective effect, the declaration made by the petitioner that the open access is within the contracted capacity would not survive. Therefore, the application of the Petitioner should be rejected.
15. The parties were heard at length and their written submissions taken on record. SLDC in its submission has indicated that the petitioner has applied for NOC to avail open access for purchase of power through power exchange and such collective transaction is governed by CERC (Open Access in Inter-State Transmission Amendment) Regulations, 2009 and as per Regulation 26 (Redressal Mechanism) of this regulations, all disputes arising under these regulations shall be decided by the CERC based on the application made by the person aggrieved. The Commission observed that there is no such provision in CERC (Open Access in Inter-State Transmission Amendment) Regulations, 2009. However, this provision is stipulated at Regulation 32 of CERC (Grant of Connectivity, Long Term Access and Medium Term Access in Inter-State Transmission and related matters) Regulations, 2009. Further, Regulation 26 of CERC (Open Access in Inter-State Transmission) Regulations, 2008 stipulates that *“Unless the dispute involves the State Load Despatch Centre and the Intra-State entities of the concerned State and falls within the jurisdiction of the State Commission, all disputes arising under these regulations shall be decided by the Central Commission based on an application made by the person aggrieved.”* In view of the above provision, the State Commission has the jurisdiction to hear the matter as the petitioner is an Intra-State entity.
16. Further, in the instant case there is involvement of the network of the state distribution utility, hence OERC Regulations for Open Access cannot be overruled. The Commission

observed that both in existing OERC Intra-State Open Access Regulations and CERC Inter-State Open Access Regulations, NOC for short-term open access/collective transaction shall be allowed by the SLDC subject to availability of adequate transmission facility in the system network. But SLDC/WESCO Utility had not allowed open access to the petitioner during the period from February, 2016 to October, 2016 due to technical constraint in the network. However, open access was allowed from November, 2016 onwards after getting adequate network relief in the concerned feeder.

17. The Commission observed that the contract demand of the petitioner was 5.7 MVA and he applied for reduction of CD from 5.7 MVA to 3.9 MVA which was allowed by the WESCO Utility vide its letter dated 19.05.2016 with the condition that the petitioner shall sign the agreement within 30 days. Since, the petitioner failed to sign the agreement for reduction of CD within the stipulated time, the WESCO Utility did not accept reduction of CD and asked the petitioner to make a fresh application for such reduction of CD. Being aggrieved, the petitioner had filed a petition before the Commission against such act of WESCO Utility. The Commission forwarded the petition to the concerned GRF and the GRF in its order has directed the petitioner to apply afresh for reduction of CD. Again being aggrieved petitioner had filed a petition before the Ombudsman against the order of the GRF. The Ombudsman-II vide its order dated 27.02.2017 has set aside the order of the GRF and directed WESCO Utility for reduction of CD of the petitioner from 5.7 MVA to 3.9 MVA w.e.f. December, 2015. Being aggrieved with the aforesaid order of the Ombudsman WESCO Utility has filed W.P.(C). No. 4550/2017 before the Hon'ble High Court of Orissa and the Hon'ble Court vide its interim order dated 19.04.2017 has stayed the said order of the Ombudsman-II passed in C.R. Case No. OM(II)(W)-04 of 2017. The decision of the Court on this matter will be binding on the parties.
18. On network constraints and inadequate available capacity cited by the distribution licensee WESCO Utility for the period under discussion we observe that the licensee had earlier allowed open access for the same capacity to the petitioner between 04.11.2014 and 31.01.2016 and also later in November 2016 and December 2016. Dispute arose between the licensee and the petitioner when the latter sought reduction in contract demand from prevailing 5.7 MVA in its application dt.26.11.2015. There had been an intimation from the Respondent-WESCO Utility approximately six months later permitting reduction of contract demand by signing a revised agreement with retrospective effect from 01.12.2015 to which the petitioner did not agree though open access transaction had already taken place through grant of NOC by the Respondent.

19. After going through the case records and taking in to consideration the submissions made by the parties, the Commission is of the view that non-discriminatory short term open access/collective transaction should be allowed by SLDC within the stipulated time, if the total transaction i.e. drawal from the utility plus drawal through open access is within the contract demand of the petitioner. If the total drawal is beyond the contract demand then NOC for open access may be issued by SLDC after examining the availability of transmission capacity. The prayer of the petitioner to set aside the open access denial letter dated 10.02.2016 of WESCO Utility and open access rejection letters dated 11.02.2016 and 11.03.2016 of SLDC may be settled between the parties considering the above principle subject to the judgment of the Hon'ble High Court in W.P.(C) No.4550 of 2017 in this matter.
20. Accordingly, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson

