

**ODISHA ELECTRICITY REGULATORY COMMISSION
PLOT NO. 4, CHUNUKOLI, SAILESHREE VIHAR,
CHANDRASEKHARPUR,
BHUBANESWAR-751023**

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

Case No. 46/2016

M/s. OCL India Ltd.

.....

Petitioner

Vrs.

SLDC & Another

.....

Respondents

In the matter of: **An application under Section 42 (2) (3) & (4) of the Electricity Act, 2003 read with OERC (Terms and Conditions for Open Access) Regulations, 2005 for refusal to permit import of power on short term open access.**

For the Petitioner: Shri R. P. Mahapatra, the authorized representative of M/s. OCL India Limited, Shri Suryakanta Pati, DGM, M/s. OCL India Limited.

For the Respondent: Shri P. K. Mishra, GM, SLDC, Shri S. K. Puri, GM, OPTCL, Shri A. C. Bal, AM (Legal), WESCO Utility and Shri Chittaranjan Swain, DGM (EI), CESU.

Date of hearing: 05.09.2017

Date of Order: 08.12.2017

ORDER

The present Petitioner is an industry in Rajgangpur having Captive Generating Plant (CGP) with installed capacity of 2 x 27 MW in WESCO Utility area. In addition to its drawal from CGP the industry has an agreement with WESCO Utility for supply of power (CD of 12 MVA). The Petitioner after consuming the required power in Rajgangpur works wheels 9 MW power to its another works at Tangi (CESU area) through intra-State open access and also sells 15 MW power on Round The Clock (RTC) basis through the power exchange. The Tangi works of the Petitioner which is situated in CESU licenced area has also an agreement with CESU for supply of power having CD of 9 MW. Sometimes the Petitioner faces shortage of power both at its Rajgangpur and Tangi works due to breakdown / shutdown of its CGP. In one occasion the Petitioner had requested OPTCL to issue standing clearance for purchase of maximum 30 MW power from the Power Exchange on RTC basis for the period 22.08.2015 to 31.08.2015 and from 01.09.2015 to 22.09.2015. The Respondent OPTCL issued technical clearance to the Petitioner basing on the undertaking of the Petitioner M/s.

OCL that they would not wheel power to their plant at Tangi during 22.08.2015 to 22.09.2015.

2. Again the Petitioner in its letter dated 07.12.2015 applied for standing clearance for purchase of power maximum upto 30 MW on RTC basis from power exchange for the period 07.12.2015 to 31.12.2015, 01.01.2016 to 31.01.2016 and 01.02.2016 to 29.02.2016. The Petitioner had submitted to SLDC that their application is a backup / contingency arrangement to meet the plant requirement at the time of any unforeseen problem of CGP. But during that period they would not wheel power from their boundary. In its reply dated 11.12.2015 SLDC intimated that since the transaction involve simultaneous purchase and sale to different entities the application for import of power cannot be considered. In response to this the Petitioner informed SLDC that their application should not be rejected without considering their undertaking not to wheel power from their boundary during the import of power or in other words there would be no simultaneous purchase and sale of power. Without receiving any reply from SLDC, the Petitioner has filed the present application seeking direction from the Commission to SLDC to issue NOC / standing clearance and to take a decision on their application for short term open access.
3. To buttress up its argument the Petitioner stated that the Commission has provided time frame for SLDC to take decision on the application for open access through its OERC (Terms and Conditions for Open Access) Regulations, 2005 but SLDC is not adhering to the same. The Petitioner has prayed the Commission to direct SLDC to take decision on its application for import of power maximum upto 30 MW on RTC basis from the power exchange through open access. The Petitioner has further prayed the Commission to direct SLDC not to insist on cancellation of the existing NOC for export of power to the exchange and the NOC for wheeling of power to Tangi as a pre-condition of issuance of NOC / standing clearance for import of power. NOC / standing clearance are permissible for back up / contingency arrangement to meet the plant requirement in case of unforeseen problem in the CGP. The Petitioner in such a situation will be able to schedule for import of power from the power exchange for any block / all blocks of the day. Cancellation of the existing NOC for export of power to import power is thus neither required nor provided in the Regulation. In addition to the declaration of the Petitioner, SLDC may impose this condition in the NOC / standing clearance to be issued that there shall be no simultaneous import and export of power.
4. The matter was heard by the Commission on 02.05.2017, 11.07.2017 and 05.09.2017. During the hearing the Petitioner submitted that the import and export meters are available

at their Rajgangpur industry under WESCO Utility. There cannot be a situation when export and import of power shall be made by them simultaneously. The Petitioner apprehends that NOC either for export or import cannot be given by SLDC within 30 minutes of its requisition.

5. SLDC submitted that the prayer of the Petitioner for issue of NOC is a part of procedure for scheduling developed by NLDC and governed by various provisions of CERC (Open Access in Inter-State Transmission) Regulations, 2008. In this case CERC is the appropriate authority for adjudicating any dispute arising under these Regulations. Hence the present petition is not maintainable and liable for rejection. SLDC has further submitted that the import and export of power cannot be done simultaneously since the schedule is always a net schedule. During the hearing the Commission had directed the Petitioner to submit its views on the above submission of the SLDC. SLDC was also directed to submit the technical difficulty in allowing both import and export simultaneously.
6. In the next hearing the Petitioner submitted that the question of jurisdiction to adjudicate any dispute between SLDC and applicant for inter-State Open Access has been decided by CERC in its order dated 31.07.2017 vide Petition No. 228/MP/2016 which is limited to inter-State availability of corridor. In the present case SLDC has not denied open access due to congestion in inter-State corridor, therefore, CERC jurisdiction cannot be invoked in this case. The Petitioner has further submitted that it has not applied for simultaneous import and export of power through power exchange. It has categorically confirmed that during the period of import there shall not be export from the boundary of the Petitioner. Even if there is import from power exchange and simultaneous export to Tangi works of the Petitioner, it can be very well known by the SLDC since it requires scheduling for both the transactions. Otherwise power consumed at Tangi works of the Petitioner shall be treated to have been drawn from CESU. In addition to that SLDC can proceed against the Petitioner under Section 33 of the Electricity Act and relevant provision of Open Access Regulation for violation of the commitment. The Petitioner has stated that at the incoming 132 KV feeder to the 132 KV bus bar of the Petitioner's Rajgangpur plant sub-station there are three ABT compliant energy meters which record import / export at 15 minutes intervals. The meter reading is taken on the 1st date of the subsequent month and energy accounting is made. Therefore, the date on which there is export and import of power in a particular time block is available from the monthly energy account. Any illegality by the Petitioner to simultaneously import power from the power exchange and export to its 'Tangi Unit' can be easily detected.

7. M/s. SLDC submitted that in case Petitioner is issued NOC for purchase of power through power exchange there is every possibility that the Petitioner may import power through power exchange and wheel it simultaneously to its plant at Tangi which is a consumer of separate distribution utility. In such case power supply to Tangi works of OCL becomes a non-CGP power which is equivalent to a trading transaction. As per Section 12 of the Electricity Act Generator cannot be involved in trading business. In case of planned shutdown / breakdown of its unit applicant may apply for issue of NOC for import of power through power exchange cancelling the NOC issued for export of power. The applicant cannot import power through power exchange and wheel to its plant at Tangi which is a consumer of separate distribution utility. SLDC further pointed out an e-mail from WRLDC rejecting an application of NVVNL (a trader) for wheeling of power from GRIDCO to Bharat Aluminium, Chhatishgarh through inter-State short term open access on the ground of 'simultaneous import and export by generator'.
8. M/s. WESCO Utility during the hearing submitted that the instant application is not maintainable as the applicant has sought approval to wheel 9 MW power to its work at Tangi and sale 15 MW RTC power through power exchange. The Petitioner at the same time is unauthorisedly wheeling power from its CGP to its belt conveyor at mines end and water works to the tune of 3.5 MW without permission / without executing open access agreement. Therefore, the submission of the Petitioner to the extent of non-wheeling of power from its boundary during sourcing of open access power is not correct. No doubt both are in different voltage level but the Petitioner is duty bound to disclose such fact before the Commission for judicious decision. M/s. WESCO Utility has prayed that the petitioner company may be directed to execute LTOA agreement and payment of wheeling charges for the power they use in mines, intake well and belt conveyor.
9. Heard the Petitioner and Respondents in detail. Perused the case record. The crux of the dispute is simultaneous import and export of power through open access. Open Access is defined in the Act in Section 2 (47) as follows:

“2. (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;”

As per Regulation 4 of OERC (Terms and Conditions for Open Access) Regulations, 2005

“4. (1) The licensees and the generating companies including the persons who have established a captive generating plant and the consumers shall be eligible for non-

discriminatory open access to the intra-state transmission system of the State Transmission Utility (STU) or any transmission licensee subject, however, to the availability of adequate transmission facility in such intra-state transmission system and further subject to the payment of the transmission charges as may be determined by the Commission from time to time.”

10. While allowing open access through appropriate Regulation, the Commission cannot discriminate among generator, licensee or a consumer. Similarly, the Commission cannot discriminate between import or export of power. The import or export of power are two different open access transactions. The only restriction on simultaneous operation of the two transactions is that the same power which is imported cannot be exported which results in an activity which fits in the definition of trading. The trading cannot be allowed without a trading licence under the Act. But the Petitioner has categorically given the undertaking that during the period of import there shall not be any export from the boundary of the Petitioner. Moreover, simultaneous import and export through open access requires scheduling in both the cases. While the Petitioner is in import mode and exports power simultaneously to ‘Tangi works’ without scheduling the same can be very well treated as drawal from incumbent licensee ‘CESU’. Since scheduling is done through SLDC, the unauthorised export can certainly be ascertained by them. In addition to that there are ABT compliant meters at 132 KV bus bar of the Petitioner at Rajgangpur works which records both import and export at 15 minutes time interval and shall aid SLDC to find out the nature of the transaction. Concerns raised by SLDC are not based on facts, rather on apprehensions. If standing clearance for import and export is found to be misused at any time this can be withdrawn forthwith by SLDC. The reference of SLDC towards rejection of application of NVVNL (a trader) by WRLDC for wheeling of power from GRIDCO to Bharat Aluminium, Chhatisgarh through inter-State short term open access on the ground of ‘simultaneous import and export by generator’ cannot be made a reference here without verifying their context.

Hon’ble Supreme Court has held that *“It is to be seen that the procedure is the handmaid of justice and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice. Therefore technicalities would not stand in the way to subserve substantive justice. (Ramankutty Gupta vs Avara on 3 February, 1994, Equivalent citations: 1994 AIR 1699, 1994 SCR (1) 542)*

“Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. Jagatjit Industries

Limited vs The Intellectual Prop Appellate ... on 20 January, 2016, Civil Appeal No. 430 OF 2016.”

11. In view of the above views of the Hon’ble Court a statutory right like ‘Open Access’ can be availed by the Petitioner if he is found to be eligible under the Regulation. From our above mentioned discussion and submission of the Petitioner it can be inferred that there is sufficient safeguard against simultaneous import and export of power through open access. SLDC, therefore, should obtain necessary undertaking from the Petitioner regarding this and put the same as condition for allowing standing clearance for open access to import and export of power. SLDC should reserve the right to cancel the standing clearance if at any time the Petitioner is found to be retracting from its commitment or violating it.
12. The reply of M/s. WESCO Utility has no relevance to the present proceeding. If they are aggrieved by any conduct of the Petitioner they must approach the appropriate forum for its redressal separately.
13. With the above observation the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson