

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 124/MP/2011

Coram:

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri S. Jayaraman, Member**

Date of Hearing: 20.12.2011

Date of order: 09.10.2012

In the matter of:

Petition under Section 79(1)(f) read with Regulation 26 of Central Electricity Regulatory Commission (Short Term Open Access in inter-State Transmission) Regulations, 2008.

And

In the matter of:

Shamanur Sugars Limited, Bangalore

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Petitioner

Vs

1. Karnataka Power Transmission Corporation Ltd., Bangalore

2. Karnataka State Load Despatch Centre, Bangalore

Respondents

The following were present:

1. Shri Sanjay Sen, Advocate, Shamanur Sugars Ltd.
2. Shri T.R. Venkata Subramanian, Advocate, for Respondents

ORDER

The Petitioner, Shamanur Sugars Limited has filed the present petition under clause (f) of sub-section (1) of Section 79 of the Electricity Act, 2003 (the Act) read with Regulation 26 of Central Electricity Regulatory Commission (Short Term Open Access in Inter-State Transmission) Regulations, 2008 seeking direction that clause (m) introduced as the additional condition in the Standing Clearance/No-Objection Certificate issued by the Respondent No. 2, State Load Despatch central (SLDC) Karnataka is contrary to the Central Electricity Regulatory Commission (Short Term Open Access in Inter-State Transmission) Regulations, 2008 (hereinafter called the Open Access Regulations) and Central Electricity Regulatory Commission (Unscheduled Interchange and related matters) Regulations, 2009 (hereinafter called the UI Regulations). The petitioner has made the following prayers:

- (a) declare that clause (m) introduced as the additional condition in the Standing Clearance issued by the Respondent No. 2 to the Petitioner from 1st April, 2010 are contrary to the CERC (Open Access in inter-State Transmission) Regulations, 2008 and the CERC (Unscheduled Interchange Charges and related matters) Regulations, 2009 and
- (b) direct the Respondent to compute the UI charges for the transactions made by the Petitioner from January, 2010 till date and settle the same in terms of the CERC (Unscheduled Interchange charges and related matters) Regulations, 2009, as amended from time to time.

- (c) direct the Respondent to give detailed energy accounts and necessary supporting documents towards UI settlements to the Petitioner for each settlement period.
- (d) pass such other or further orders as the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

2. The facts of the case in brief are that the petitioner, Shamanur Sugars Limited in September 1999 commissioned a 2,500 TCD Sugar Plant along with 20 MW bagasse based co-generation plant which was put under commercial operation in September 1999. The petitioner started selling power to the State grid under Power Purchase Agreement (PPA) dated 7.3.1998 executed with Respondent No. 1 Karnataka Power Transmission Corporation Ltd. Under this PPA, the petitioner was selling the surplus power of about 10-15 MW to the respondent No. 1 from September 1999 to September 2009.

3. The petitioner has submitted that the PPA with Respondent No. 1 came to an end on 20.9.2009., and the petitioner was under no obligation to sell power to Respondent No. 1 or its successors. The petitioner after meeting its internal captive load is selling its surplus power on Short-term Open Access through bilateral sale or through Power Exchange to the consumers outside Karnataka. Accordingly, the petitioner has applied for Standing Clearance/No Objection Certificate (NOC) from Respondent No. 2, SLDC who has the statutory obligation to provide Standing Clearance/No Objection Certificate for short term open access in terms of the applicable regulations, and Standing Clearance/ NOC was being granted by SLDC in terms of the "Open Access Regulations".

4. The petitioner has submitted that over/under injection by the petitioner is dealt as per the Open Access Regulations, which inter alia, provide as under:

"Unscheduled Interchange (UI) Charges

(1)

(2)

(3)

(4) *Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme.*

(5) *Unless specified otherwise by the concerned State Commission, UI rate for intra-State entity shall be 105% (for over-drawals or under generation) and 95% (for under drawals or over generation) of UI rate at the periphery of regional entity.*

(6)

5. The petitioner has submitted that accordingly, the initial Standing Clearance/NOC granted by the SLDC contained clause (m) in the Standing Clearance/NOC, which is as follows:

"(m) Payment will not be made if power is supplied in excess of 5% of the approved schedule by KPTCL/ESCOMs."

The petitioner has submitted that clause (m) was in line with the Open Access Regulations and on account of support given to the grid from September to December 2009, the petitioner has received Rs. 11,00,000/- as UI charges from the Respondents but the manner of calculation was not shared with the petitioner. The petitioner has not received the payment of UI charges from January to March 2010,

though the petitioner is entitled for UI charges for over injection during the said period also. The petitioner has alleged that the respondents have withheld the UI dues of the petitioner till date and the request to share the energy accounts has also not been complied with.

6. The petitioner has further submitted that in the month of March 2010, the petitioner has again applied for Standing Clearance/NOC from SLDC for selling power through the Power Exchange. The Standing Clearance/NOC issued by Respondent No. 2 for the month of March 2010 contained following amended clause (m):

"(m) For any excess generation, the rates fixed by KERC for old plants only will be paid and not as per UI rates. However, for shortfall in generation as compared to the scheduled generation, the firm will pay UI rates."

According to the petitioner, the above amended clause is contrary to the Open Access Regulations and the UI Regulations. The petitioner has submitted that the above clause is now being inserted in all the Standing Clearances/NOCs issued by the respondent from 1.4.2010 till date.

7. The petitioner has submitted that petitioner is selling power through the Power Exchange for which short term open access under the Open Access Regulations has been granted, the respondents do not have the jurisdiction to amend the clause (m) and / or make the same applicable to the petitioner, which restricts the UI receivables in the hands of the generator. The petitioner has submitted that the restriction on UI charges receivable in the hands of the generator and linking the same to the tariff determined by the Karnataka Electricity Regulatory Commission (KERC) is illegal and without jurisdiction. The petitioner has further submitted that it

is being denied its rightful claim from January 2010 onwards on one pretext or another and is causing financial loss to the petitioner. The petitioner has also submitted that since the present dispute relates to the inter-State transactions as the sale of power is in more than one State, the same is within the jurisdiction of this Commission.

8. In response the respondents in their reply affidavit dated 24.8.2011 have submitted that SLDC has been bestowed with certain duties as specified under section 32 of the Electricity Act, 2003. One such duty is that of monitoring grid operations within a State so as to ensure safety of the grid and to ensure compliance with the Grid Code, amongst other functions. The respondent further submitted that it had noticed that petitioner had the tendency to supply power at variance to the approved schedule indicated by SLDC. In order to avoid such unscheduled injections/ variations from the approved schedules, the respondents inserted into the Standing Clearance/ NOC an additional clause so as to encourage generators to maintain grid discipline and not compromise the safety of the grid. The respondent has submitted that it has always acted in a manner so as to ensure compliance with the mandate of Electricity Act, 2003 to ensure grid stability and safety.

9. The respondents have also submitted that the petitioner's plant is a bagasse based cogeneration plant which is ordinarily not prone to volatile fluctuations of drawals or injection like mini hydel or wind based plants. Such being the case, it very much within the capabilities of the petitioner to regulate its supply in such a manner so as to adhere to the schedule. Hence, to contend that imposition of conditions so as to maintain grid security being bad in is wholly untenable.

10. In its rejoinder to the objections filed by the respondents, the petitioner has submitted that respondents have failed to present any sustainable reasoning for inserting clause (m) in the Standing Clearance/ NOC issued by the Respondent No. 2 or for non payment of UI charges despite there be no regulatory permission for the same. The petitioner in its rejoinder has denied the allegations made by the respondents that it is not complying with the schedule given to the SLDC and in turn endangering the grid security. The petitioner has submitted that it has at all times tried to abide by the schedule approved by the SLDC and respondent has failed to file any data which supports the allegations that the petitioner has consistently not complied with the schedule given by the SLDC.

11. The Commission in its ROP dated 20.12.2011 raised a query as to whether the State of Karnataka has implemented Availability Based Tariff (ABT). The Commission also directed the respondents to file on affidavit under which provision of the Regulations, the additional clause has been inserted and whether the Karnataka State Electricity Commission has framed such Regulations.

12. In response to Commission's directions, the respondents have filed an affidavit dated 5.1.2012 in which it has been submitted that the rationale behind inclusion of clause (m) was to regulate injection and drawal of power by generators so as to effectively monitor the grid to ensure grid safety and security at all times. The Respondents have further submitted that the petitioner herein had the tendency to deviate drastically from the approved schedule resulting in sharp increase/decrease in the grid frequency. The Respondents further submitted that SLDC is entitled to give directions to operate in term of Section 33 of the Act for integrated grid operation. Having regard to its statutory functions, the respondent

took precautionary measures to ensure that generator having obtained open access follow their schedule so as to ensure grid stability. The Respondents in the said affidavit annexed the generation pattern of the petitioner prior to the insertion of clause (m) and generation pattern pursuant to insertion of clause (m) in the Standing Clearance/NOC. The Respondents have submitted that the data would justify that prior to the insertion, there was gross negligence on the part of the petitioner in following the approved schedule and causing danger to the grid. The Respondents have further submitted that there are numerous independent power producers (IPPs) within the state of Karnataka whose gross exportable capacity is over 700 MW and if all variations in supply are not in keeping with schedules of all these IPPs, then it would have disastrous effect on the stability of the grid, as there would be random over drawal/injection endangering the grid.

13. Regarding the query pertaining to ABT regime, the respondents have submitted that as per order of KERC dated 20.6.2006 and as per the Grid Code issued by the KERC, all generators with installed capacity of 25 MW and above come under the purview of ABT. Generators having an installed capacity less than 25 MWs are not required to compulsorily install ABT/SCADA. The petitioner being a co-generation plant of 20 MWs capacity would therefore not come under the purview of ABT / SCADA. Hence, monitoring of injections or drawals through ABT of the petitioner's plant is not possible.

14. In its response, to the affidavit dated 6.1.2012 filed by the respondents, the petitioner has submitted that the respondent has filed cryptic data and not detailed schedule of generation as downloaded from the ABT of the petitioner. The data

submitted by the respondent is of chosen few days (five to ten days only) and is therefore not reliable to ascertain the conduct of the petitioner.

15. We have considered the submissions made by the petitioner as well as the respondents.

16. Regulation 20 of the Open Access Regulations provides as under:

20. *Unscheduled Inter-change (UI) Charges*

(1) *All transactions for State utilities and for intra-State entities scheduled by the nodal agency under these regulations, shall be accounted for and included in the respective day-ahead net interchange schedules of the concerned regional entity issued by the Regional Load Despatch Centre.*

(2) *Based on net metering on the periphery of each regional entity, Composite UI accounts shall be issued for each regional entity on a weekly cycle and transaction-wise UI accounting, and UI accounting for intra-State entities shall not be carried out at the regional level.*

(3) *The State utility designated for the purpose of collection / disbursement of UI charges from / to intra-State entities shall be responsible for timely payment of the State's composite dues to the regional UI pool account.*

(4) *Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme.*

(5) *Unless specified otherwise by the concerned State Commission, UI rate for intra-State entity shall be 105% (for over-drawals or under generation) and 95% (for under-drawals or over generation) of UI rate at the periphery of regional entity.*

(6) *No changes, other than those specified under these regulations shall be payable any person granted short-term open access under these regulations.*

17. As per clause (5) of the above Regulations, UI rates for intra-State entity shall be 105% for over-drawals or under generation and 95% for under-drawals or over generation of UI rate at the periphery of the regional entity. However, these rates will not be applicable if the concerned State Commission has specified other

rates. It is seen in the course of submissions by the counsel of the respondents that there is no intra-State ABT in the State, further, it is evident from the record that the KERC has not prescribed any limit for over-drawals or under generation and under-drawals or over generation by any intra-State entity. That being the case, the SLDC is bound to comply with the Open Access Regulations of this Commission while issuing Standing Clearance/ NOC for open access in the inter-State transmission of electricity. Therefore any deviation from clause (5) of Regulation of 20 of Open Access Regulation is in violation of the said regulations. The respondents have modified clause (m) of the Standing Clearance/NOC to provide that for any excess generation, the rates fixed by KERC for old plants only will be applicable. This provision has no basis and is arbitrary. The contention of the respondents that by insertion of the said clause, grid security and stability has been achieved cannot be accepted. Moreover, while the SLDC will be getting UI charges for over-injection by the intra-State generators from the RLDC at the rate applicable to prevailing frequency, it will make payments to the generators at the rates fixed by KERC for old plants. In other words, respondents would make profit on account of the provisions of amended clause (m) of the Standing Clearance. The provision is also otherwise discriminatory. While the generator will pay at the prevailing UI rate for shortfall in actual generation in relation to scheduled generation, it will be getting lesser rate than the UI rate for over injection.

18. It is a settled principle of law that Statutory Regulations cannot be changed though administrative instructions and in case of conflict between Statutory Regulations and administrative instructions, the former shall prevail. The action of the respondents by inserting the amended clause (m) in the Standing Clearance/NOC has virtually changed the provisions of the Open Access

Regulations. Therefore the clause (m) of the Standing Clearance/NOC being in violation of the Open Access Regulations cannot be sustained and is accordingly set aside. The respondent is directed to align its Standing Clearance /NOC for open access to inter-State transmission with the provisions of the Open Access Regulations and UI Regulations framed by the Commission. The respondent is further directed to settle the dues of the petitioner from January 2010 onward in accordance with clause (5) of Regulation 20 of Open Access Regulations after sharing the relevant injection and drawal data with the petitioner.

19. This order disposes of Petition No. 124/MP/2011.

Sd/-

(Shri S. Jayaraman)
Member

Sd/-

(Dr. Pramod Deo)
Chairperson