

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

WEST BENGAL

Petition No. OA-333/19-20

Date of hearing: 06th July, 2020

Time of hearing: 14.00 hours

Coram:

Shri Sutirtha Bhattacharya, Chairperson

Shri Durgadas Goswami, Member

In the matter of

Petition under section 86(1)(e) and section 86(1)(f) of the Electricity Act 2003 for seeking action against West Bengal State Electricity Transmission Company Limited for failure to comply with the relevant West Bengal Electricity Regulatory Commission (Open Access) Regulations 2007 and West Bengal Electricity Regulatory Commission (Phasing for Open Access in Distribution / Sale of Electricity) Regulations 2006 and to issue direction to West Bengal State Electricity Transmission Company Limited for compensating the petitioner towards unutilized banked energy.

And

**In the matter of
Section 86(1)(e), 86(1)(f) and 42 of the Electricity Act 2003**

And

In the matter of

**ITC Limited,
93/1 Karl Marx Sarani, Kidderpore, Kolkata-70043**

..... Petitioner

And

**West Bengal State Electricity Transmission Company Limited
Vidyut Bhawan, Block-DJ, Sector-II, Kolkata -700091..... Respondent (1)**

And

CESC Limited,



Representatives attended:

ITC Limited [Petitioner]

1. Mr J PKhaitan, Ld. Sr Advocate
2. Mr Agnibesh Sengupta

West Bengal State Electricity Transmission Company Limited (WBSETCL) [Respondent]

1. Mr Prabir Kumar Kundu, Chief Engineer, SLDC
2. Mr Soumen Mondal, DE, SLDC

CESC Limited [Respondent]

1. Mr. Sakya Singha Chaudhuri, Advocate
2. Mr. Avijeet Lala, Advocate
3. Ms. Gargi Chatterjea, Executive Director, CESC Limited

CASE IN BRIEF

1. The petitioner, ITC limited, has a manufacturing unit located at 93/1, Karl Marx Sarani, Kolkata, West Bengal ("Kidderpore Unit") having contract demand of 1400 KVA. Petitioner also owns a wind farm of 46 MW at Anantpur, Andhra Pradesh. The wind project was established for captive use by petitioner for its various manufacturing facilities including Kidderpore Unit. The petitioner in their petition has submitted as follows:
 - 1.1. The petitioner applied before the respondent no 1, who is also the nodal agency for STOA being the State Load Despatch Center as per West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007 [hereinafter referred as 'WBERC Open Access regulations'], on 20th May 2019 seeking inter-state open access from June 2019 to September 2019 for its Kidderpore Unit from its wind project to the extent of 1.4 MW. Respondent has not responded to the aforesaid application of the petitioner, which is a gross violation of the provisions of WBERC Open Access regulations.
 - 1.2. The Petitioner made an application dated 30th August 2019 before respondent 1 and 2 seeking open access for the period from September 2019 to November 2019, for 1.4 MW but again received no response from respondent 1. Despite generating power for self-use petitioner availed entire power from the distribution licensee during the period and was required to pay higher power cost.
 - 1.3. The Petitioner again made an application dated 18th September 2019 before the respondents seeking open access for the period from October 2019 to December 2019 to



the extent of 0.4 MW. On 21.09.2019 petitioner received a letter from respondent (1), whereby the petitioner was informed that, as the maximum power to be conveyed was below the stipulated limit of regulatory norms, the application dated 18.09.2019 could not be processed further. Vide letter dated 24.09.2019 the petitioner submitted their legal explanation before respondent (1), mentioning that their contract load is 1.39 MW. But petitioner neither replied to the said letter nor processed the open access application.

- 1.4. The Petitioner made application within the time prescribed and manner prescribed in the applicable laws including WBERC Open Access Regulations, but respondents have acted arbitrarily by not processing the application in terms of WBERC Open Access regulations for the months of June to September 2019 and further wrongfully rejected the STOA application of the petitioner for October to December 2019 on the basis of fallacious interpretation of WBERC Phasing Regulations. Wind power being 'must run' in nature, it has been injected into the grid and petitioner incurred loss on account of not utilizing the power properly due to such denial / restriction of open access.
- 1.5. The Petitioner has further submitted that, installation of ABT meters and infrastructure and communication protocols and execution of open access agreement, though initiated at the time of application for open access for the period from September 2017 to November 2017, has not yet been completed due to delay and inaction on the part of the respondents. It is also submitted that respondent (2) has neither provided ABT meter of their own nor accorded approval to purchase order of the ABT meter by the petitioner.
2. The Petitioner further mentioned that, since source is from wind power, petitioner also requires stand-by power from the respondent 2, for which open access agreement is required to be executed.
3. In view of the facts and circumstances mentioned above petitioner inter-alia prayed before the Commission to:
 - a) Hold and declare that non-processing of applications for STOA for the months from June 2019 to March 2020 by the respondents and consequent denial of inter-state open access for captive consumption is illegal and contrary to law;
 - b) Hold and declare that the rejection of concurrence by respondent (1) for the month of October 2019 to December 2019 with regard to STOA sought for 0.4 MW is illegal and contrary to law;
 - c) Direct respondent (1) to forthwith grant STOA permission for June 2019 to March 2020;



- d) Direct respondents to adjust the credit of units in the bill of Kidderpore unit in the immediately ensuing billing cycle for power injected from the petitioner's wind power plant in Anantpur, Andhra Pradesh for the period from September 2019 to march 2020.
 - e) Direct respondents to forthwith install ABT meters and other infrastructure, if any, for open access at petitioner's Kidderpore unit.
 - f) Direct respondents to forthwith execute open access agreement with the Petitioner.
 - g) Direct the respondents to assist and co-operate with the petitioner for completing all necessary formalities for seeking inter-state open access from petitioner's wind power plant in Andhra Pradesh in timely manner;
 - h) Direct the respondents to issue timely concurrence for interstate open access for the month of February 2020, march 2020 and subsequent months in accordance with the provisions of the Electricity Act 2003
 - i) Award costs for this proceeding against the respondents and in favour of the petitioner; and
 - j) Pass such other order(s) as the Hon'ble Commission may deem just in the facts of the present case.
4. The Commission vide letter dated 29th May 2020 directed both the respondents to submit their para-wise response against the submission of the petitioner.
5. CESC Ltd, respondent no 2 submitted in their written reply on 03rd July 2020, where CESC Ltd. inter-alia, submitted the following:
- 5.1. Relief sought by the petitioner under prayer (a), (b) and (g) to (h) of their petition pertains to grant of short-term open access approval, which in accordance to WBERC (Open Access) Regulations 2007 is required to be obtained from SLDC/nodal agency i.e. respondent no 1 and does not pertain to CESC Ltd.
 - 5.2. In regard to relief sought under prayer (c), as the period from June 2019 to March 2020 has already expired, the relief sought by petitioner in the prayer has become infructuous and cannot be allowed.
 - 5.3. In regard to relief sought under prayer (d), as the power of granting STOA lies with SLDC, CESC cannot be made liable to bear / refund / adjust any losses purportedly incurred by the Petitioner on account of non-grant of open access by respondent no 1.



- 5.4. In regard to relief sought under prayer (e) and (f), submissions made by petitioner in regard to installation of ABT meters and execution of open access agreement are based on misconstrued reading and erroneous understanding of the facts and the extant regulatory framework.
- 5.5. CESC submitted that regarding installation of ABT meter, while inspecting / examining the premises of the petitioner, it was found that supply point / drawal point where meter is required to be installed does not have enough space. Considering the difficulty, following two options were discussed in a meeting with the petitioner on 27.07.2018:
- Option 1: Replace existing 0.5 class CTs & PTs with 0.2s class CTs and PTs and house the same inside the existing CT-PT compartment or attach a module with the existing cubicle (in place of existing CT-PT compartment), subject to feasibility and availability from Schneider.
- Option 2: If the option 1 cannot be achieved, the petitioner proposed to install a separate consumer module having CTs & PTs in the existing switch room and terminate the power cables at the new consumer module.
- 5.6. CESC further submitted that, in view of CEA Metering Regulations and regulation 17.1 of WBERC Open Access Regulations, location of ABT compliant meters shall be the point of drawal. Thus option 2 proposed by the petitioner due to lack of sufficient space is not as per regulation. Thus, the petitioner's prayer seeking relief in terms of installation of ABT meters is not as per provision of the law. Therefore, respondent no 2 cannot be held liable for non-installation of ABT compliant meters.
- 5.7. CESC also submitted that, in terms of regulation 12.1(a) of WBERC Open Access Regulations requirement to execute open access agreement arises only once the open access has been allowed by the concerned nodal agency. In the present case application has not yet been allowed by respondent no 1. Therefore, there is no statutory obligation on the respondent no 2 to execute open access agreement with the petitioner. CESC further submitted that, open access agreement between the concerned parties cannot be executed without ascertaining the metering point.
6. Commission decided to hear all the parties on 06th July 2020 at 14:00 hrs through video conference.

SUBMISSION DURING HEARING

7. Ld. Sr Advocate Mr J.P.Khaitan on behalf of the petitioner, submitted that ITC have made five (5) applications for STOA for getting power from its wind power plant at Andhra



Pradesh to its Kidderpore unit. In 4 number of cases no response has been received from respondent no 1, who is nodal agency for granting STOA as per WBERC Open Access regulations. Only in 1 case where STOA was sought for 0.4 MW, respondent no 1 (SLDC) rejected the application on the ground that the maximum power to be conveyed was below the stipulated limit of regulatory norms. Ld. Advocate quoted sub-section (2) of section 42 of the Electricity Act and clause (iv) of regulation 3 of the WBERC Phasing Regulation to establish that open access should be provided if contract demand of a consumer is above 1 MW and there is no bar based on quantum of open access.

8. Ld. Sr Advocate on behalf of ITC also mentioned that, they have received a letter from SLDC dated 19.06.2020 i.r.o their STOA application for 1.1 MW. In the said letter SLDC has mentioned some pre-conditions for open access including installation of ABT meters, real time data display, 24 x7 control room, open access agreement with CESC and certification of captive plant from competent authority.
9. Ld. Sr Advocate on behalf of ITC, further mentioned that, reply submitted by CESC Ltd regarding ABT meter installation is not based on factual information. He mentioned that two options were initially decided and CESC was responsible to re-check the options and communicate the feasibility of those to ITC. Despite several communications made by ITC Ltd, CESC never expressed non-applicability of option 2, prior to their reply dated 03.07.2020 on the present petition.
10. Accordingly, he pleaded that,
 - (i) Whether SLDC is right to keep application pending and thereby restricting the open access?
 - (ii) Can open access be rejected/ disallowed based on quantum of power?
 - (iii) Prayed relief on installation of meters and development of related infrastructure at Kidderpore unit premises of ITC as per extant regulations.
 - (iv) Direction for execution of open access agreement with CESC Ltd.
 - (v) Issue of compensation may be dealt with subsequently.
11. Chief Engineer, SLDC, WBSETCL, respondent no 1 submitted that, they have processed all the applications submitted by ITC Ltd within the due date by sending them to CESC Ltd, the distribution licensee for their consent. Only in case of STOA application for 0.4 MW, based on their understanding of sub-section (2) of section 42 of the Electricity Act 2003,



they have rejected the application. He further mentioned that, as SLDC has information about STU network only, they usually send the application of open access to concerned distribution licensee to ascertain the status of congestion, if any, at the distribution network. However, SLDC has repeatedly requested CESC Ltd for their consent on open access, but received response from CESC Ltd in one occasion only and accordingly replied to the petitioner.

12. Ld. Advocate Sri Sakya Singha Chowdhury on behalf of CESC Ltd, submitted that rejoinder is to be submitted by the petitioner regarding their stand. He also mentioned that, SLDC is responsible to grant short term open access as per WBERC Open Access Regulations and SLDC cannot shift their responsibility to CESC Ltd. He made a presentation before the commission regarding the option 1 and option 2 discussed in the meeting previously held between CESC Ltd and ITC Ltd for installation of ABT meter. Quoting the provisions of CEA metering Regulations and regulation 17.1 of the WBERC Open Access Regulation he explained that, option -2 is not feasible as per the provisions of law. Sri Chowdhury further mentioned that, the application of STOA by the petitioner cannot be maintainable as without ABT metering system petitioner cannot ask for open access.
13. During hearing Ld. Sr. Advocate on behalf of ITC Ltd mentioned that, ITC never rejected the proposal of option-1, they only preferred option-2 due to their operational easiness and they are ready to pay all the charges as required under the regulations. Thus, both ITC and CESC Ltd came to a consensus regarding installation of ABT meters in terms of option -1 decided in the meeting dated 27.07.2018.
14. After detailed deliberations and upon hearing both the parties, the Commission observed the following points:
 - (i) Open Access is a right of the consumer under the Electricity Act 2003 and nodal agency, in terms of WBERC Open Access Regulation is to scrutinize the application as per regulations and grant permission for open access subject to maintaining the grid security;
 - (ii) In case SLDC, being nodal agency for STOA, finds any non-compliance by open access customer they have to intimate the applicant as per the provisions of the WBERC Open Access Regulations;
 - (iii) SLDC cannot afford not to take any action by citing non-response of the distribution licensee;
 - (iv) Whenever SLDC rejects any application they have to see the provisions of applicable rules and regulations properly;



- (v) It is the responsibility of CESC Ltd to provide ABT meters and necessary infrastructure for which cost will be borne by the open access customer in terms of WBERC Open Access regulations;
- (vi) ITC may submit their views, if any, in writing against the submission made by CESC Ltd.;
- (vii) A consensus regarding ABT meter installation has been arrived between the petitioner and the respondent no 2;
- (viii) Standby power/ backup power requirement may be clarified by ITC after solving the ABT meter issue. Standby / backup power will be provided by CESC Ltd, if it is required by ITC Ltd considering the provisions of Tariff Policy 2016.
- (ix) As submitted by Ld. advocate on behalf of ITC Ltd, the issue of compensation will be dealt subsequently during the final order.

INTERIM ORDER

15. The Commission with the above observation, issues interim order as below:

- (i) CESC Ltd should take up the issue of installation of ABT meter with ITC Ltd and come out with a final decision within 21 days;
- (ii) Next date of hearing is 06.08.2020 at 2 PM.

16. A copy of this order be served to the petitioner and the respondents.

**Sd/-
(DURGADAS GOSWAMI)
MEMBER**

**Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON**

Dated: 09.07.2020


**(T. K. MUKHERJEE)
SECRETARY**



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