

**WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

**WEST BENGAL**

**Petition No. OA-333/19-20**

**Date of hearing: 26<sup>th</sup> August, 2020**

**Time of hearing: 14.30 hours**

**Coram:**

**Shri Sutirtha Bhattacharya, Chairperson**

**Shri Durgadas Goswami, Member**

**Shri Pulak Kumar Tewari, 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**



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West Bengal State Electricity Transmission Company Limited

Vidyut Bhawan, Block-DJ, Sector-II, Kolkata -700091..... Respondent (1)

And

CESC Limited,

CESC House, Chowringhee square, Kolkata-700001

..... Respondent (2)

Representatives attended:

ITC Limited [Petitioner]

1. Mr J P Khaitan, Ld. Sr Advocate
2. Mr Agnibesh Sengupta

West Bengal State Load Dispatch Centre ( in short 'SLDC') of

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

1. Mr Prabir Kumar Kundu, Chief Engineer, SLDC
2. Mr Dibyendu Bhattacharyya, 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

- 1.1. The petitioner applied before the Commission seeking action against West Bengal State Electricity Transmission Company Limited (in short 'WBSETCL') for failure to comply with the provisions specified in the WBERC (Open Access) Regulations, 2007 and the WBERC (Phasing for Open Access in Distribution / Sale of Electricity) Regulations, 2006 and to issue direction to WBSETCL for compensating the petitioner towards unutilized banked energy.



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- 1.2. The Commission heard the matter on 06<sup>th</sup> July, 2020 at 14.00 hours and issued the following directions after hearing all the parties present.
- (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.
- 1.3. On request from the parties on several occasions, the date of hearing was postponed to 26<sup>th</sup> August, 2020 and the e-hearing was held on 26<sup>th</sup> August, 2020 at 14.30 hours as scheduled.
- 1.4. Sri Sakya Singha Chaudhuri, on behalf of CESC Limited (Respondent 2) submitted that they have filed a Sur-Rejoinder against the Rejoinder dated 04.08.2020 filed by the petitioner through e-mail on 25<sup>th</sup> August, 2020 evening and the hard copy of the same was served upon the Commission on 26<sup>th</sup> August, 2020, i.e., the day of hearing. Since the Sur-Rejoinder was submitted too late, the same was not put up with record. Sri Chaudhuri stated that the sur-rejoinder contained certain factual aspects of the case. However, Sri Chaudhuri craved leave to plead on next day of hearing.
- 1.5. Sri J. P. Khaitan, Senior Advocate, submitted on behalf of ITC Limited that after the last hearing held on 6<sup>th</sup> July, 2020 and the direction given by the Commission vide order dated 9<sup>th</sup> July, 2020, some correspondences took place between CESC Limited and ITC Limited regarding infrastructure development and open access agreement.. He further submitted that the summary of their contention has been specified under serial no. 10 of the Order of the Commission dated 9<sup>th</sup> July, 2020. Sri Khaitan also drew attention of the Commission to the clause (vii) of the observation of the Commission under serial no. 14 of the order dated 9<sup>th</sup> July, 2020 wherein it is mentioned that a consensus regarding installation of ABT meter as per option 1 has been arrived at by and between the petitioner and the respondent no. 2 and submitted the progress that has been taken place in this regard as follows:
- a) Procurement and installation of required transformer by the approved vendor of the respondent no. 2 is under progress;
  - b) The respondent no. 2 has submitted a proforma invoice to the petitioner for payment towards the cost of the transformer within 15<sup>th</sup> September, 2020;
  - c) The petitioner sought for two weeks' time for finalization of open access agreement and communication protocol and for infrastructure development.



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- 1.6. Sri Khaitan further submitted that they have not yet received any communication from SLDC, the nodal authority for open access, granting their permission for open access based on the observations made by the Commission in its order dated 9<sup>th</sup> July, 2020, excepting what they have communicated to the petitioner regarding the ABT meter, communication protocol, etc. during the pendency of this case. In this regard Sri Khaitan submitted that the issue of ABT meter has been resolved and the issues of open access agreement and communication protocol are in progress.
- 1.7. Sri Khaitan reiterated his contention as to whether the open access be rejected / disallowed based on quantum of power. In this regard, Sri Khaitan quoted sub-section (2) of section 42 of the Electricity Act and clause (iv) of regulation 3 of the WBERC Phasing Regulations, 2006 to establish that open access should be provided if contract demand of a consumer is above 1 MW and there is no bar whatsoever on quantum of open access. Accordingly, since the petitioner's connected load is more than 1 MW, the petitioner is entitled for open access. But, the respondent no. 1 vide their letter dated 21<sup>st</sup> September, 2019 has rejected the application for grant of open access submitted by the petitioner, on the ground that the quantum of power to be conveyed through open access is below the stipulated limit of regulatory norms. Now, the question is, whether the respondent no. 1 can reject such application in terms of section 42 (2) and fifth proviso of the Electricity Act, 2003 and the clause (iv) of regulation 3 of WBERC Phasing Regulations, 2006.
- 1.8. Sri Khaitan also submitted that the respondent no. 2 has raised a question as to whether the open access agreement can be finalized without having received the grant of open access from SLDC as specified in regulation no. 12.1(a) of the WBERC (Open Access) Regulations, 2007. Sri Kahaitan opined that a draft containing the terms of the agreement can be finalized in the meantime and the final agreement can be signed only after receipt of the grant of open access from respondent no. 1. This will prevent from wastage of time.
- 1.9. Sri Khaitan also submitted that as far as the aspect of compensation, as has been sought for in the petition, is concerned, the same is being withdrawn in consultation with the petitioner. However, Sri Khaitan urged that the Commission may lay down a guideline / procedure for grant of open access considering the fact that when the nodal agency is required to grant open access within three days from the date of submission of application, but it takes years together to finalize the other related issues with the licensee.
- 1.10. Sri P. K. Kundu, Chief Engineer, SLDC, the apex body under the management of WBSETCL (respondent no. 1) submitted that they are well aware of the Electricity Act, 2003 and the Regulations made thereunder by the Commission, but they are unable to



understand as to whether such a low quantum (0.4 MW) of power is to be allowed to be conveyed through open access. During the submission of Sri Kundu, Sri P. K. Tewari, Member, WBERC opined that since SLDC has not submitted any objection in writing to the petition of the petitioner, SLDC has accepted all the contentions of the petition filed by the petitioner and they have hardly any opportunity to make submission comment to make.

- 1.11. Sri P. K. Kundu also submitted that once open access of such a low volume of power is granted, then there will be huge applications for open access of low volume of power which will jeopardize the system. Moreover, the distribution licensee is to decide as to whether open access will be allowed because distribution licensee is responsible to handle the distribution of power and not the SLDC. It is also submitted by Sri Kundu that they have not rejected the application of the petitioner but said that the application could not be processed further. This is because, for open access, infrastructure development, installation of ABT meter communication protocol, etc. are required to be settled and those issues are under the jurisdiction of the distribution licensee. Sri Kundu has submitted that once SLDC receives clearance from respondent no. 2 in regard to open access, in question, SLDC will consider the application of the petitioner for granting No-objection Certificate.
- 1.12. Sri Durgadas Goswami, Member of the Commission, drew the notice of SLDC to their letter dated 21.09.2019 which, inter-alia, says quantum of power is below the stipulated limit of regulatory norms, is utterly mis-interpretation of the regulation. SLDC should accept that they have taken incorrect step by writing such a letter to the petitioner. In fact, the submission made by SLDC is in contrary to the letter issued. In case they had any comments to make in this regard, they could have filed a written submission to the case but they did not do so. Therefore, as the situation prevails now, it is better to accept that SLDC has no objection in granting permission for short term open access by the petitioner.
- 1.13. Sri Goswami, Member of the Commission also stated that from the written submissions made by the respondent no. 2 it is apparent that the respondent no. 2 has passed the onus of the issue onto the SLDC based on their letter dated 21.09.2019. But, SLDC has never said anything about that nor they have made any written submission explaining the reasons as to why they are unable to grant such permission in absence of 'no objection certificate' for which SLDC did not receive any response from CESC even after having issued letters.
- 1.14. Sri Sutirtha Bhattacharya, Chairperson of the Commission, clarified SLDC the significance of the regulations and advised them to read and understand the regulations properly and



act accordingly. Being an apex body under the Electricity Act, 2003 to ensure integrated operation of the power system in a State, it is the duty of the SLDC to act as per the Regulations and Electricity Act, and within the time frame specified in the Regulations. If SLDC has any confusion regarding the Regulations, they are at liberty to approach the Commission for clarification, but under no circumstances can act based on misinterpretation of the Regulations. SLDC should know that there is a difference between open access load and the connected load. SLDC is directed to follow the advice given by both the Members of the Commission and file the written submission before the next hearing.

- 1.15. Sri Sakya Singha Chaudhuri, Advocate, submitted on behalf of respondent no. 2 that although he agrees to the observations made by the Commission during the hearing, he urged the Commission to formulate a guideline for low volume of open access load in regard to scheduling of the same. It is obvious that there will be some more low volume open access load in future and if there is any guideline for scheduling for such low volume open access load then this will help the licensee in handling the matter judiciously. Sri Chaudhuri also assured that in case the Commission seeks any assistance from the respondent no. 2 in regard to formulation of guidelines / procedures as suggested by Sri Khaitain, the respondent no. 2 will be pleased to do so.
- 1.16. Sri Durgadas Goswami, Member of the Commission, opined that the suggestion given by the representative of respondent no. 2 in regard to formulation of guidelines for scheduling of low volume of open access load has merit and the same may be considered by the Commission.
- 1.17. On being queried by Sri Sutirtha Bhattacharya, Chairperson of the Commission as to whether the open access agreement is in process pending the decision of the SLDC, Sri Chaudhuri, on behalf of respondent no. 2, confirmed that the issue is in progress.
- 1.18. Sri P.K.Tewari, Member of the Commission invited the representative of the petitioner to assist the commission by offering his suggestions in framing the guideline as proposed by him for determination of compensation for not giving access to open access in terms of Regulation in time. The Member also appreciated the generosity of the petitioner for withdrawing his prayer for compensation.

#### ORDER

- 2.0 In view of the submissions made by the parties and the observations made by the Chairperson and Members of the Commission, the Commission directs that –



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- a) SLDC shall submit their written submission keeping in mind the observations made by the Chairperson and Members of the Commission within next date of hearing;
- b) SLDC shall coordinate with the distribution licensee (respondent no. 2) and communicate the open access approval to the petitioner;
- c) The respondent no. 2 shall consequently take it forward and shall send the status report in compliance with due process of law to the Commission within 21 days from the date of this order;
- d) The next date of hearing shall be communicated separately in due course.

sd/-

(PULAK KUMAR TEWARI)  
MEMBER

sd/-

(DURGADAS GOSWAMI)  
MEMBER

sd/-

(SUTIRTHA BHATTACHARYA)  
CHAIRPERSON

Dated: 08.09.2020

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(T. K. Mukherjee)  
Secretary

*[Handwritten Signature]*  
8/9/20