

Rajasthan Electricity Regulatory Commission

Petition No. RERC/1900/21

Petition filed under Section 86 (1) (b) (c) and (k) of the Act for removal of difficulty in implementation of RERC Open Access Regulations, 2016.

Coram:

Dr.B.N. Sharma, Chairman
Sh. S.C. Dinkar, Member
Sh. Prithvi Raj, Member

Petitioner : Hindustan Zinc Limited

Respondent : 1. Rajasthan Vidyut Prasaran Nigam Ltd.
2. Ajmer Vidyut Vitran Nigam Ltd.

Date of hearing : 04.08.2021 and 02.09.2021

Present : 1. Sh. Aditya K. Singh, Advocate for Petitioner
2. Sh. Umang Gupta, Advocate for Respondent
3. Sh. S. R. Ratnoo, Ex. En. AVVNL

Order Date: 30.09.2021

ORDER

1. Petitioner, Hindustan Zinc Limited has filed this petition on 09.03.2021 under Section 86 (1) (b) (c) and (k) of the Act for removal of difficulty in implementation of RERC Open Access Regulations, 2016.
2. Notice was issued to Respondents, Rajasthan Vidyut Prasaran Nigam Ltd. ("RVPN") and Ajmer Vidyut Vitran Nigam Ltd. ("AVVNL") on 09.03.2021 to file reply on the petition. Accordingly, RVPN filed reply on 03.08.2021.

Respondent, AVVNL does not submitted the reply on the petition.

3. The matter was heard on 02.09.2021. Sh. Aditya Kumar Singh, Advocate for Petitioner, Sh. Umang Gupta, Advocate for Respondent, RVPN and Sh. S. R. Ratnu, Ex.En. appeared for Respondent AVVNL.
4. Petitioner in its petition, rejoinder and during hearing submitted as under:
 - 4.1. The Petitioner is a company engaged in the business of metals and mining, is a power intensive industry. The company has its Captive Power Plants ("CPPs") at Chanderia, Dariba and Zawar for about 474 MW. The Petitioner is also a consumer of AVVNL and accordingly, has entered into different agreements for its different units having separate contract demand for consumption of electricity.
 - 4.2. Commission in exercise of the powers conferred by Section 42 and other enabling provisions read with Section 181 of the Electricity Act, 2003 notified the Open Access Regulations, 2016. The said Regulations apply to open access for use of intra-State transmission system and/or the distribution systems of licensees in the State, including when such system is used in conjunction with inter-State transmission system.
 - 4.3. The constitutional validity of the Open Access Regulations, 2016 was challenged by various open access customers including the Petitioner herein before the Hon'ble Rajasthan High Court in WP No. 3160/2016 on various grounds. The Hon'ble High Court vide its judgement dated 29.08.2016 upheld the constitutional validity of the said Regulations and further held that the same are in consonance to the objects of the Act. This decision of the Hon'ble Rajasthan High Court, Principal Bench later followed by Hon'ble Rajasthan High Court, Jaipur Bench in its order dated 06.09.2016. However, appeal has been filed against it and is pending adjudication before the Apex Court in SLP (C) 5771 of 2017.

4.4. The Petitioner by virtue of the petition seeks indulgence of the Commission on some issues in the Open Access Regulations, 2016 which are as under: -

A. Security towards transmission charges should be accepted the in form of Letter of Credit or Bank Guarantee, and not just in cash or demand draft without any interest payable on the same.

I. As per Regulation 24 of the Open Access Regulations, 2016 a MTOA customer is required to pay a payment security towards transmission charges for which it is required to deposit an amount equal to 3 months of the transmission charges for allotted open access capacity with State Transmission Utility. Further, it provides for security to be deposited for SLDC fee and charges, towards wheeling charges, cross subsidy surcharge and additional surcharge. Regulation 24 (d) states that such security can be in the form of cash deposit/demand draft.

II. The MTOA Agreement(s) executed between the Petitioner and RVPNL and the open access granted therein are governed by the procedure and terms and conditions specified by RVPNL in terms of the Open Access Regulations, 2016. As per Article- 8 of the said MTOA Agreement(s), the Petitioner is required to deposit a security amount equivalent to three months of transmission charges for the open access capacity allotted to it. Further, it provides that such security has to be furnished either in cash deposit/ demand draft/NEFT/RTGS for the requisite amount before execution of the open access agreements and that no interest shall be payable on such security deposits.

III. On a conjoint reading of Open Access Regulations, 2016 and the MTOA Agreements, it is understood that security for transmission charges has to be deposited either in cash/ demand draft/ NEFT/ RTGS. It is the submission of the Petitioner that open access

consumer should be allowed to furnish Bank Guarantee or a Letter of Credit as a mode for payment of the requisite security deposit and such difficulty in implementation of the Open Access Regulations, 2016 should be removed.

- IV. The practice of paying security deposit by way of BG/LC is followed and adopted by the various Electricity Regulatory Commissions across India, in their respective Open Access Regulations, such as Maharashtra, Andhra Pradesh, Gujarat, Bihar, Punjab, Jharkhand, Uttar Pradesh. Ministry of New and Renewable Energy also by its latest decision whereby it has now even allowed clean energy developers to furnish a Letter of Undertaking issued by IREDA, PFC and REC in lieu of BG for Earnest Money Deposit for their bidding/tender purposes. Therefore, it is submitted that even procedural difficulties should be relaxed as much as possible as long the interests of either party to the transaction are not harmed.
 - V. Therefore, in the alternative, it is submitted that the relevant provisions of the Open Access Regulations, 2016 and the MTOA Agreement(s) require suitable modification so that apparent difficulty is removed.
- B. Difficulty with respect to the penalty/compensation prescribed for under-injection/over-injection.
- I. The MTOA Agreement states that the open access customer connected to transmission/distribution network of the State licensees has to pay the Unscheduled Interchange charges for mismatch between the schedule and actual drawl/injection for both intra- state and inter-state transaction in accordance with the Open Access Regulations, 2016.
 - II. Regulation 21 (i) of the Open Access Regulations, 2016 provides

that any under-injection with respect to the schedule approved by SLDC by an open access consumer can be settled by either in terms of the deviation rates as notified in CERC (Deviation Settlement Regulations), 2014 or in terms of the energy charge at the rate of Temporary Tariff applicable for HT (NDS) category, whichever is higher. The CERC (Deviation Settlement Regulations), 2014 provide for penalty wherein both the producer and the consumer units are charged for the quantum of under-injection, therefore, the Commission ought not to have imposed a penalty at the rate of Temporary Tariff applicable for HT (NDS) category.

- III. Temporary Tariff for the category of consumers to which the Petitioner belongs is calculated as per the latest Tariff for Supply of Electricity- 2020 dated 17.02.2020:

“4) HT Industrial Service: Tariff Schedule for corresponding (for production/construction permanent supply plus 50% purposes).”

Therefore, the penalty for under-injection is highly unreasonable for it being even higher rate than the electricity which is otherwise available as per the contract demand with the consumer unit of the Petitioner.

- IV. Regulation 21 (ii) of the RERC Open Access Regulations, 2016, provides that any over-injection upto time block of 15 minutes and averaging upto 1% over a day with respect to the schedule approved by the SLDC by an open access customer shall be compensated at the deviation charge rate at the frequency of 50Hz or applicable deviation charge rate under the CERC DSM Regulations, whichever is less. It is submitted that it is unjust and unfair for the open access consumer to be compensated for over-injection at a prescribed frequency only irrespective of the

fact that its over-injection would have resulted in higher frequency than 50Hz and accordingly, should have been compensated in terms of the CERC DSM Regulations.

- V. Therefore, it is submitted that compensation at the rate of a fixed frequency i.e. 50HZ if the same is lower than the CERC DSM Regulations or penalty at the rate of energy charge of Temporary Tariff for HT (NDS) category is arbitrary and unreasonable and should be relaxed so that open access customer can function without such financial restrictions and operate freely.
- C. Restriction imposed on procurement from Short term open access including transactions through power exchange.
- I. Petitioner submitted that the Regulation 26 (7) (iii) of the Open Access Regulations, 2016 states that for power purchase under short-term inter-State open access including through power exchange, the schedule so given has to be uniform for atleast a period of eight hours and the minimum schedule during the day shall at any time be not less than 75% of the maximum schedule of the day. This provision of the Open Access Regulations, 2016 restricts the choice of the Petitioner to draw power as per its requirements. It is a big obstacle and in contradiction to the idea of promotion of open access as is imbibed under the Electricity Act. Since as per Regulation 26 (7) (iii) of the Open Access Regulations, 2016 schedule to be given by the Petitioner has to be uniform for atleast eight hours, this means the variation which is permissible to the Petitioner is only twice in a day and that too cannot be beyond 25%, thereby restricting the open access consumer from purchase of power through short-term open access or through power exchange.

- II. By virtue of the said provisions, the Petitioner is forced to have the power for 24 hours only with a variation of 25% with two blocks of 8 hours each. Consequently, even if the Petitioner would not need a particular quantum of power, it will be required to pay for it and the surplus will go to the distribution company. Therefore, it is restricting the freedom of the Petitioner to purchase power through short term open access. Therefore, it is submitted that such restriction should be removed and the Petitioner should be absolved of this latent difficulty in implementation of these Regulations per se.

4.5. In view of the above, its prayed to:-

- (a) Remove the apparent difficulty in relation to Regulation 24 (d) of the Open Access Regulations, 2016 and allow furnishing of BG or LC as a mode for payment of security deposit.
- (b) Take suitable steps for bringing about necessary changes in the provisions of Regulation 21 (i) to the extent that penalty for under-injection is not settled at energy rate of Temporary Tariff applicable to the category of HT (NDS) but rather be settled at energy rate of the tariff for electricity payable by the category to which the respective open access consumer belongs.
- (c) Take suitable steps for bringing about necessary changes in the provisions of Regulation 21 (ii) to the extent that compensation for over-injection is not limited be settled at 50Hz.
- (d) Relax/modify the provision of Regulation 26 (7) (iii) to the extent that the variation for actual drawl is not limited to 25% of the scheduled drawl in a day.

5. Respondent RVPN in its reply and during the hearing submitted as under:

- 5.1. Petitioner has filed the present petition seeking change/ modification/ relaxation in the provisions of the RERC (Terms and Conditions of Open Access) Regulations, 2016.
- 5.2. Regulation 24 (d) of RERC (Terms and Conditions of Open Access) Regulations, 2016 provides the provision for payment of security and other commercial conditions for Long Term and Medium Term Open Access Customer. It clearly states that the payment of security may be done in the form of cash deposit/demand draft.
- 5.3. It is submitted that if a MTOA/LTOA commences from 1st day of a month, the consumer may make the first payment after 75 days from the date of commencement of open access. Thus, the above provisions provide sufficient time to the open access customers for making payment against the open access charges. Therefore, the provision for payment of security as enumerated under Regulation 24 of the RERC (Terms and Conditions of Open Access) Regulations, 2016 is just, proper and in accordance to the law.
- 5.4. it is pertinent to mention here that the Petitioner has stated selectively according to Petitioner's convenience the provisions of other State Electricity Regulatory Commissions, it is submitted that the billing provisions as contained under Regulation 32 (1)(b)(v) of the Bihar State Electricity Regulatory Commission and Regulation 34 (1)(b)(v) of the Punjab State Electricity Regulatory Commission provides that the State Transmission Utility shall pay the bill within five working days of receipt of bill.
- 5.5. It is also submitted that as there are a large number of medium/long term open access consumers, therefore, handling of Letter of Credit/Bank Guarantee, its annual extension for so many consumers will be time consuming. Further, in case of default, recovery of charges will also be

more cumbersome and which will ultimately delay the recovery

- 5.6. In view of the above submissions, it is prayed to dismiss the Petition filed by the Petitioner.
6. Respondent AVVNL during hearing submitted that the provisions of Regulations are just & proper and in the larger interest of consumers, therefore should not be changed.

Commission's view

7. Commission has considered all the submissions made on behalf of the Petitioner and Respondents.
8. Petitioner is seeking the relaxations/amendment/modification in Regulation 24 (d) of the Open Access Regulations, 2016 to allow furnishing of bank guarantee or letter of credit as a mode for payment of security deposit towards transmission charges.
9. Further, Petitioner is requesting changes/modification in Regulation 21 & 26 of the Open Access Regulations, 2016 with respect to the unscheduled interchange (UI) charges and provisions regarding purchase of power through power exchange.
10. Respondent AVVNL submitted not to change the provisions of Regulations in the interest of consumers.
11. Commission observes that Petitioner is seeking amendment in the RERC Open Access Regulations, 2016 by way of the present petition. It is observed that the Petitioner is seeking amendment in Regulation 21, 24 & 26 of the Open Access Regulations, 2016.
12. Commission has considered all the requests of Petitioner seeking change/modifications of the RERC Open Access Regulations, 2016 and the facts submitted. The first relief sought by petitioner is regarding cash

deposit as security amount. Commission found it reasonable to allow for interest on the cash security deposit which is in line with section 47(4) of Electricity Act,2003. The commission, therefore, directs Respondents to provide for the interest on security deposit of the consumer at the bank Rate prevailing as on 1st April of Financial Year for which interest is due. Necessary amendments in the procedure shall be done by RVPN.

13. As far as the other prayers are concerned, the proposal of change/amendment in RERC Open Access Regulations, 2016 could be considered only after following the due procedure as per Electricity Act,2003.
14. Accordingly, Commission has noted the suggestions of the Petitioner regarding amendment in RERC Open Access Regulations, 2016, as and when Commission initiates the process for amendment in the matter, it would treat the proposal of Petitioner as a suggestion/input. However, Petitioner is at liberty to give more inputs when Commission invites comments/suggestions on further amendment in RERC Open Access Regulations, 2016.
15. Accordingly, this petition is disposed of in the above terms.

(Prithvi Raj)
Member

(S.C. Dinkar)
Member

(Dr.B.N. Sharma)
Chairman