

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

WEST BENGAL

Petition No. OA-333/19-20

Date of hearing: 29<sup>th</sup> January, 2021

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 seeking  
action against West Bengal State Electricity Transmission Company Limited for failure  
to comply with the relevant provisions of 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,  
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 Despatch Centre (in short 'SLDC') of West Bengal State  
Electricity Transmission Company Limited (WBSETCL) [Respondent]

1. Mr Dibyendu Bhattacharyya, ACE, WBSLDC
2. Mr Soumen Kumar Mandal, DE, WBSLDC

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

- 1.0. The petitioner, ITC limited, has made an application before the Commission on 06.03.2020. In their petition, the petitioner inter alia has stated as follows:
  - 1.1. The petitioner has a manufacturing unit located at 93/1, Karl Marx Sarani, Kolkata, West Bengal ("Kidderpore Unit") having contract demand of 1400 KVA. Petitioner also stated that they own a wind farm of 46 MW at Anantpur, Andhra Pradesh for captive use for their various manufacturing units including Kidderpore Unit.
  - 1.2. The petitioner applied before the respondent no 1, who is also the nodal agency for Short Term open access 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 20.05.2019 and 30.08.2019 seeking inter-state short term open access for the periods from June 2019 to September 2019 and from September 2019 to November 2019 respectively for its Kidderpore Unit from its wind project to the extent of 1.4 MW. The respondent no. 1 has not responded to the aforesaid applications of the petitioner, which is a gross violation of the provisions of WBERC Open Access Regulations. 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 18<sup>th</sup> September 2019 before the respondents seeking Short Term Open Access (STOA) 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, the respondent no. 1 neither replied to the said letter nor processed the open access application.
- 1.4. The Petitioner made applications 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 2019 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. 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 2019 to November 2019, 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.
- 1.6. Since source is from wind power, petitioner also requires stand-by power from the respondent 2 and the open access agreement is required to be executed accordingly.
- 2.0 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 months 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.
- 3.0 The Commission vide letter dated 29<sup>th</sup> May 2020 directed both the respondents to submit their para-wise response against the submission of the petitioner.
- 3.1 CESC Limited, respondent no 2, in their written reply on 03<sup>rd</sup> July 2020, submitted, inter-alia, the following:





- a) 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, is required to be obtained from SLDC/nodal agency i.e. respondent no 1 and does not pertain to CESC Limited;
- b) In regard to relief sought under prayer (c), as the period from June 2019 to March 2020 has already expired, the relief sought by the petitioner in the prayer has become infructuous and cannot be allowed;
- c) In regard to relief sought under prayer (d), as the power of granting STOA lies with SLDC, CESC Limited. 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;
- d) In regard to relief sought under prayer (e) and (f), submissions made by the 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;
- e) 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, two options were discussed in a meeting with the petitioner on 27.07.2018;
- f) 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 Limited further submitted that, open access agreement between the concerned parties cannot be executed without ascertaining suitability of the the metering point.

3.2 No reply, however, was received from SLDC.

4.0 Upon receipt of the reply from CESC Limited only, the Commission felt it necessary to have a hearing where the petitioner and the respondents no. 1 and 2 can place their





arguments. Accordingly, an e-hearing was held on 6<sup>th</sup> July, 2020 where the representatives of all the parties were present on line.

5.0 After hearing the parties, the Commission observed that –

- a) Open Access is a right of the consumer under the Electricity Act 2003 and SLDC, the 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;
- b) It is the responsibility of CESC Limited 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;
- c) A consensus regarding ABT meter installation has been arrived between the petitioner and the CESC Limited;
- d) Standby power/ backup power requirement may be clarified by ITC after solving the ABT meter issue. Standby / backup power will be provided by CESC Limited, if it is required by ITC Ltd considering the provisions of Tariff Policy 2016;
- e) As submitted by Ld. advocate on behalf of ITC Ltd, the issue of compensation will be dealt with subsequently during the final order.

5.1 With the above observations, the Commission directed CESC Limited to take up the issue with the ITC Ltd. For installation of ABT meter and come out with a final decision within 21 days;

6.0 The Commission again heard all the parties through e-hearing on 26<sup>th</sup> August, 2020. During the hearing it was revealed that –

- 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;
- d) Whether the open access be rejected / disallowed based on quantum of power. In terms of sub-section (2) of section 42 of the Electricity Act and clause (iv) of regulation 3 of the WBERC Phasing Regulation, 2006, 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 out Regulations, 2006
- e) As far as the aspect of compensation, as has been sought for in the petition, is concerned, the same is being withdrawn by ITC Limited. However, it was urged upon the Commission 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;
- f) According to SLDC, SLDC has 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. 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;
- g) SLDC were also 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. 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.





- h) CESC Limited also urged upon 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.
- i) The Commission observed that the letter dated 21.09.2019 of SLDC, inter-alia, saying that the 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 commission 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,
- j) The Commission clarified to SLDC the significance of the regulation 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 mis-interpretation of the Regulations.
- k) The Commission appreciated the generosity of the petitioner for withdrawing his prayer for compensation.

6.1 Based on the arguments at sub paras (a) to (h) above and the observations of the Commission at sub paras (i) to (k) above, the Commission inter-alia directed that –

- a) SLDC shall submit their written submission keeping in mind the observations made by 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;

7.0 The matter was again heard by the Commission on 23<sup>rd</sup> November, 2020, and the Commission observed that despite the fact that the system of granting open access came into effect in 2004, the very process followed in the instant case is procrastinating which shall be avoided at all costs in future. The process and the required documents including STOA agreement have to be standardized. However, during the e-hearing held on 23<sup>rd</sup> November, 2020, the Commission directed the following:

- a) SLDC is required to grant open access as per provisions of the Electricity Act, 2003 and in compliance with the provisions of the WBERC (Open Access) Regulations and take a considered decision on real-time data communication system; and
- b) All the parties shall take all possible measures so that the STOA connection is given by the first week of January 2021.

8.0 The hearing was scheduled on 29.01.2021 at 14.30 hours and communicated to parties concerned vide Commission's letter No. WBERC/OA-333/19-20/46-49 dated 8<sup>th</sup> January, 2021.

8.1 In the meantime, ITC Limited, vide their letter dated 13<sup>th</sup> January, 2021 confirmed the status of the open access, in question, which are as follows:

- a) The consent from SLDC has been received on 31<sup>st</sup> December, 2020 for the period 01.01.2021 to 31.03.2021.
- b) The approval for scheduling power from ERLDC for the month of January, 2021 has been received on 8<sup>th</sup> January, 2021.
- c) Open access agreement has been executed between ITC Limited and CESC Limited.
- d) Wheeling of power from captive wind plant in Andhra Pradesh to Kidderpore in West Bengal has been started from 10<sup>th</sup> January, 2021.





8.2 The hearing was held on 29<sup>th</sup> January, 2021, as scheduled, wherein the representatives from all the parties, i.e., ITC Limited, CESC Limited and WBSEDCL, were present.

### **SUBMISSIONS DURING THE HEARING**

- 9.0 Mr. J. P. Khaitan, Ld. Senior Advocate, on behalf of ITC Limited, submitted that the matter has been resolved and the wheeling of the power, as has been sought for in their petition, has already been started. He also reiterated the present status of the case as has been enumerated in the letter dated 13<sup>th</sup> January, 2021 issued by ITC Limited.
- 9.1 Mr. Sakya Singha Chaudhuri, Advocate, on behalf of CESC Limited expressed his concern in regard to validation of captive status of open access source of generation, which is now a burning issue for the Commissions of all the States. This issue has been covered in the open access agreement between the ITC and CESC Limited, by dint of which ITC shall provide necessary documentary evidences showing the captive status of the open access source of generation, as and when asked for, by CESC Limited. Mr Chaudhuri also requested the Commission to indicate that in future the open access consumer in collaboration with the Discom, SLDC and ERLDC shall arrange for documentary evidences for validation of the captive status of the open access source of generation.

### **OBSERVATION OF THE COMMISSION**

- 10.0 The Commission observes during the course of hearing that the short term open access in question has already been commenced.
- 10.1 The Commission expressed its anguish to the effect that the open access is a right as per the statute and the Commission should not be involved in the disputes which is otherwise artificial, so that the time of the Commission is not misused.

### **ORDER**

- 11.0 In view of the submission of the petitioner that he is not pressing his prayer for compensation, said prayer is disposed off.





11.1 In future, this kind of disputes should be mutually settled amongst the parties themselves and if there is any specific issue for which Commission's intervention is required, parties can approach the Commission.

11.2 The case is disposed off. Let a copy of this order be served upon ITC Limited, CESC Limited and WBSLDC.

sd/-

(PULAK KUMAR TEWARI)  
MEMBER

sd/-

(DURGADAS GOSWAMI)  
MEMBER

sd/-

(SUTIRTHA BHATTACHARYA)  
CHAIRPERSON

**Certified true Copy**

Dated: 03<sup>rd</sup> March, 2021



*M. Guha Roy*  
(M. Guha Roy)  
Secretary