

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 176/MP/2022

Coram:

**Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 18th January 2024

In the matter of:

Petition under Regulation 26 of the CERC (Open Access in Inter-State Transmission) Regulations, 2008 read inter alia with Sections 79(1)(c) and (f) of the Electricity Act, 2003 seeking Registration in the NOAR for inter-state short term open access for the energy generated by ITC Ltd at the wind power project in Anantapur District, Andhra Pradesh, for captive consumption at its factories at Bollaram and Bhadrachalam, Telangana

And

In the matter of:

ITC Limited,
Virginia House, 37 J.L. Nehru Road,
Kolkata 700071 & Divisional Headquarters
106, Sardar Patel Road, Secunderabad
500 003, represented by its Divisional
Chief Executive, Hyderabad 500073

.....Petitioner

Versus

1. National Load Despatch Centre,
Power System Operation Corporation Ltd, B-9, Qutab Institutional Area, Katwaria Sarai, New Delhi 110016
2. Southern Regional Load Despatch Centre,
Power System Operation Corporation Ltd. 29, Race Course Cross Road,
Bengaluru 560009.
3. State Load Despatch Centre for Telangana,
Transmission Corporation of Telangana Ltd. Vidyut Soudha, Khairatabad,
Hyderabad 500082



4. Southern Power Distribution Company of Telangana Ltd
6-1-50, Mint Compound, Hyderabad-500063
5. Northern Power Distribution Company of Telangana Ltd,
2-5-31/2, Vidyut Bhavan, Nakkalagutta, Hanamkonda,
Warangal506001

.....**Respondents**

Parties Present:

Shri K Gopal Choudhary, Sr. Advocate, ITCL
Shri S. Vallinayagam, Advocate, ITCL
Shri D Abhinav Rao, Advocate, TS SLDC
Shri Devadipta Das, Advocate, TS SLDC
Shri Rahul Jajoo, Advocate, TS SLDC
Shri Ganjendra Sinh, NLDC

ORDER

ITC Limited has filed Petition No. 176/MP/2022 under Regulation 26 of the CERC (Open Access in Inter-State Transmission) Regulations, 2008 read inter alia with Sections 79(1)(c) and (f) of the Electricity Act, 2003 seeking Registration in the NOAR for inter-state short term open access for the energy generated by ITC Ltd at the wind power project in Anantapur District, Andhra Pradesh, for captive consumption at its factories at Bollaram and Bhadrachalam in Telangana.

2. The Petitioner has made the following prayers:

Prayer for Interim Relief

- i. Direct that the Petition be urgently listed before the Hon'ble Commission for hearing on the prayer of interim relief: and*
- ii. Direct that the 1st Respondent NLDC be directed to immediately register the Petitioner in the NOAR provisionally on the basis of the information and documents already uploaded onto the NOAR portals with respect to the Petitioner's Application Nos ITCSLDCD72 and ITCSLDCD73 so as to enable the Petitioner to continue to apply for inter-state short term open access for captive consumption at its industrial units in Telangana of the wind energy generated at its captive wind generation plant in Andhra Pradesh without insisting on the undertakings or any curtailment of drawal quantum.*
- iii. and/or pass such other or further orders as the Hon'ble Commission considers fit and proper in the facts and circumstances of the case.*

Prayer

- i. Declare that the discrepancies intimated by the 3rd Respondent TS-SLDC with respect to NOAR the Petitioner's NOAR Application Nos ITCSLDCD72 and ITCSLDCD73 are contrary to law and/or not correct or necessary; and*



- ii. *Declare that the Petitioner is not liable to give any undertakings in respect of Open access or DSM (UI) or RPPO as demanded by the 3rd Respondent TS-SLDC; and*
- iii. *Direct that the Petitioner be duly registered in the NOAR on the basis of the information and documents already uploaded without insisting on the undertakings or any curtailment of drawal quantum so that the Petitioner is able to continue to apply for inter-state short term open access as required.*

And/or pass such other or further orders as the Hon'ble Commission may consider fit and expedient in the facts and circumstances of the case.

Submission of Petitioner

3. Petitioner has made the following submissions:

- (a) Petitioner has established and commissioned a 46 MW wind power project as a captive generating plant in Anantapur District, Andhra Pradesh. The energy generated is evacuated through three 33 kV feeders combined at the 33 kV bus in the 100 MW 33kV/132kV pooling substation at Tagguparthi village, where the voltage is stepped up to 132 kV and connected to the APTRANSCO 220/132/33 kV substation at Kalyandurg. There are fully compliant ABT metering arrangements in both the 132 kV bays at the Kayandurg substation for energy accounting.
- (b) The Petitioner has set up an industrial unit for the manufacture of paperboards and speciality papers at Bhadrachalam, Telangana, and is a consumer of the 5th Respondent distribution licensee with a service connection at 132kV through a dedicated feeder and a Contracted Maximum Demand ("CMD") of 5000 kVA. The electricity requirements of this industrial unit are met partly from its captive co-generation plants and partly from the Petitioner's own captive wind generation plant at Anantapur in Andhra Pradesh through short term inter-state open access according to the varying availability from time to time and partly through power purchases through power exchange and short term inter-state open access as and when the need arises, and partly from the CMD with the 5th Respondent distribution licensee. The metering facility installed and operational at this unit is fully compliant for open access transactions and energy accounting. This industrial unit has been availing of inter-state open access from September 2016 onwards after this Commission passed its order dated 13.06.2016 in Petition No. 121/MP/2015 holding that the denial of concurrence and open access by the APSLDC and the SRLDC was incorrect and directed APSLDC and the SRLDC to process the applications in accordance with the CERC Open Access Regulations.

- (c) Unit located at Bollaram, Telangana, is engaged in the manufacture of poly coated paperboard and is a consumer of the 4th Respondent with a CMD of 2501 kVA through a dedicated 33 kV feeder. The electricity requirement of this industrial unit is met partly from the Petitioner's own captive wind generation plant at Anantapur in Andhra Pradesh through short term inter-state open access according to the varying availability from time to time and partly or wholly from the CMD with the 4th Respondent distribution licensee. The metering facility installed and operational at this unit is fully compliant for open access transactions and energy accounting. This industrial unit has been availing of inter-state open access since March 2017.
- (d) The Commission issued the fifth amendment to CERC (Open Access in inter-State Transmission) (Fifth Amendment) Regulations, 2008, providing for the National Open Access Registry, which came into effect from 01.05.2022.
- (e) Petitioner had filed the following documents in the NOAR portal for Registration from 07.12.2021 to date for its Bollaram Unit and Bhadrachalam unit:

<i>Sl No</i>	<i>Document</i>	<i>Upload dates</i>
1	Connectivity (HT Bill)	07.12.2021, 25.01.2022, 11.04.2022
2	Metering details	07.12.2021, 25.01.2022, 11.04.2022, 27.04.2022, 30.04.2022
3	Metering diagram	07.12.2021, 25.01.2022, 11.04.2022, 27.04.2022, 30.04.2022
4	Cancelled cheque	07.12.2021
5	PAN Card	07.12.2021
6	TAN Card	07.12.2021
7	GST Registration	07.12.2021
8	NABL Test Report	25.01.2022, 11.04.2022, 27.04.2022, 30.04.2022
9	HT Service agreement	25.01.2022
10	EBC Compatibility	25.01.2022, 11.04.2022, 27.04.2022, 30.04.2022, 19.05.2022
11	Feasibility	19.05.2022

<i>Sl No</i>	<i>Document</i>	<i>Upload dates</i>
1	Connectivity (HT Bill)	07.12.2021, 11.04.2022
2	Metering details	07.12.2021, 11.04.2022, 30.04.2022
3	Metering diagram	07.12.2021, 11.04.2022, 30.04.2022
4	Cancelled cheque	07.12.2021
5	PAN Card	07.12.2021
6	TAN Card	07.12.2021, 11.04.2022, 30.04.2022
7	GST Registration	07.12.2021
8	NABL Test Report	11.04.2022, 30.04.2022
9	HT Service agreement	11.04.2022
10	EBC Compatibility	11.04.2022

- (f) The outstanding issues as per the TS-SLDC's last intimation of discrepancies on 19.05.2022 in respect of the Bollaram unit and the last intimation of discrepancies on 30.04.2022 in respect of the Bhadrachalam unit are as follows:

Bollaram Unit:

- i. Latest NABL test reports
- ii. Open Access Undertaking
- iii. DSM (UI) Undertaking
- iv. RPPO Undertaking

Bhadrachalam Unit:

- i. DSM (UI) Undertaking
- ii. Drawee quantum to be equal to or less than the CMD of the unit with the distribution licensee.

- (g) The Petitioner vide letter dated 29.04.2022 to NLDC stated that the Petitioner's applications for registration are held up with TS-SLDC since December 2021 for want of undertaking(s) and other requirements which are contrary to the Regulations, and requested that energy scheduling may be continued in RLDC's portal till at least July 2022. An e-mail reply dated 29.04.2022 was received from NLDC stating that this is a procedural and compliance issue at Telangana SLDC and that it may be taken up by Telangana SLDC.
- (h) The petitioner has repeatedly filed the **NABL test report** in respect of the Bollaram unit. Repeated seeking of NABL test reports is incomprehensible. The licensee is the owner of the meters in terms of Clause 6 of the CEA Metering Regulations 2006. Clause 10 of the said Regulation provides for the operation, testing and maintenance of meters by the licensee. Clause 18 of the said Regulation provides for calibration and periodical testing of meters by the licensees. It is, therefore, clear that the responsibility of testing the meters is entirely on the licensee.
- (i) The **OA Undertaking demanded** by the 3rd Respondent TS-SLDC under cover of e-mail dated 25.01.2022, which is applicable for OA consumers fed from dedicated feeders availing power through power exchanges, is to the effect:
- i. That power will not be drawn in excess of power/energy contracted through OA for the feeder.
 - ii. The settlement of OA will be as per CERC DSM Regulation 2014.

- iii. During the open access period, the power availed from all sources put together will be within the CMD with the DISCOM.
 - iv. That the Petitioner agrees to pay DISCOM additional charges as per clause 12.3.2 of GTCS and prescribed by the Commission.
 - v. The Petitioner will not claim any compensation in case of power purchased from exchange in case of incoming supply failure to 220/132 kV substation, or for 33 kV feeder breakdown or any system emergency load relief or scheduled load shedding on feeder, or load restrictions (LRs) are in force “due to availability of other than open access consumers and other category consumers” on feeders, or if LRs are revised due to grid conditions, and that no request will be made to keep feeder “ON” during periods of LR, and that no compensation will be claimed in respect of OA power loss as a result of LR or other interruptions, and that settlements will be as per meter reading dates.
 - vi. That the priority in case of more than one generator shall be given before 10 days of meter reading date.
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- (j) The undertaking is with respect to availing power through power exchanges and is not applicable to the Petitioner. The short term inter-state open access required by the Petitioner is for the energy generated at its own captive wind generation plant for captive consumption by the Petitioner’s own industrial units. In Inter-State Open access, a fixed quantum of power is scheduled for a time block.
 - (k) The consumer has the right to source power from any sources and also more than one source. The CMD is the power that the consumer has contracted to purchase from the licensee. To require that in order to avail power from any other source, the consumer has to necessarily contract an additional CMD with the licensee to purchase the same amount from also the licensee is grossly unreasonable and contrary to law. The ulterior motive and avarice of the licensee is to recover additional demand charges component of tariff from the consumer even in respect of the power being sourced from other sources.
 - (l) The General Terms and Conditions of Supply (GTCS) are the terms for the power contracted with the licensee. It applies only when the maximum recorded demand actually availed from the licensee, net of demand availed from other sources, exceeds the CMD with the licensee. The ulterior motive in seeking such an undertaking is to levy penal demand charges on the consumer in respect of the recorded demand from all sources when such recorded demand exceeds the CMD.

- (m) **Bollaram –DSM (UI) Undertaking:** In terms of the CERC DSM Regulations, the liability for deviation charges for wind generation, being a regional entity, is entirely on the wind generator according to the special provisions for wind and solar generators. There is no liability at all for the drawal entity. The settlement of deviation charges is to be done entirely in terms of the APERC Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation Regulation 2017 by the AP-SLDC to/from the State Pool account in Andhra Pradesh.
- (n) **The issue of DSM (UI) undertaking** was considered by this Commission in its order dated 13.06.2016 in Petition No 121/MP/2015. The Petitioner herein was the Petitioner in that case, and the 3rd Respondent TS-SLDC was a party respondent. This Commission categorically examined the need for a UI undertaking as demanded in that case and held that no Regulation makes any provision for any type of UI undertaking to be submitted by applicants. This was pointed out to the 3rd Respondent by the Petitioner in a letter dated 25.01.2022.
- (o) **Bollaram-RPPO Undertaking:** The consumption of wind power, being renewable energy, is not subject to any RPPO obligation. In terms of Clause 2.10(ii) of TSERC Regulation No 2 of 2018, only a captive user which has a grid connected captive generating plant based on conventional fossil fuel is an “Obligated Entity” with RPPO obligations. The Petitioner is not an obligated entity. In any case, no such undertaking is required or stipulated by any Regulation as a pre-condition for availing open access or for registration in the NOAR.
- (p) **Bhadrachalam – DSM (UI) Undertaking:** The submissions, with respect to the requirement of such an undertaking in respect of the Bollaram unit, are applicable to the Bhadrachalam unit also.
- (q) **Bhadrachalam – Drawee quantum \leq CMD:** If the Petitioner has a 5 MVA CMD with the licensee, the TS-SLDC’s stand is that the quantum sought to be drawn under open access shall be less than or equal to 5 MVA. It is an attempt to curtail open access and to force the Petitioner to contract for higher CMD with the Discom.
- (r) The TS-SLDC has been asking the Petitioner to upload documents which are neither required nor specified by the Regulations and which are also unwarranted otherwise:

- i. The NABL test reports for the meters are to be obtained by the licensees as they are the owners of the meters, and it is their responsibility to get the meters tested periodically as per the CEA Regulations.
- ii. EBC Compatibility is not a document which is available with the Petitioner. It is an internal document of the licensee.
- iii. No connectivity certificate is provided by the licensee to the Petitioner. The Petitioner can only provide a copy of the HT Bill to prove connectivity.
- iv. There is no specified feasibility certificate that is provided to the Petitioner.

Interim Relief

- (s) Petitioner has submitted that if the Petitioner is disabled or frustrated in its application for registration in the NOAR, the petitioner will be disabled from applying for inter-state short term open access. If the petitioner is not able to secure open access, the wind energy generated at its captive generating plant for captive consumption will get stranded. The Petitioner will be put to irreparable harm and injury. The Petitioner has submitted all the documents that are necessary in terms of the CERC Regulation and the detailed procedure for NOAR approved by this Commission. The Petitioner's applications for NOAR registration have been kept pending since 07.12.2021 due to mishandling by the TS-SLDC so as to deny open access to the Petitioner.

Hearing on 05.07.2022

4. Petition was admitted on 05.07.2022, and the Commission directed the Respondent TS-SLDC to provide the Procedure issued under Clause 5.2 of the TSERC (APERC) Regulation 2 of 2005 and if the Petitioner was allowed to avail STOA in the existing regulatory framework with metering and transmission system in place during the pre-NOAR regime, justification/explanation as to on what basis the Petitioner is not being allowed to register in NOAR and subsequent denial of concurrence and STOA in ISTS after implementation of NOAR.
5. The request of the Petitioner for issuing interim direction will be considered on the next date of hearing after taking into account the submissions of the Respondents.
6. Petitioner is also at liberty to furnish the undertakings to the Respondent TS-SLDC in order to complete the registration in NOAR, which shall be without prejudice and subject to the outcome of the present Petition. The Respondent TS-SLDC is

directed to take into account such undertakings strictly for the purpose of completion of registration of the Petitioner's applications in NOAR.

Submission of Respondents

7. Respondent No.1 NLDC vide affidavit dated 25.07.2022 has submitted as follows:

- (a) Commission approved the Procedure for Short Term Open Access in inter-State Transmission System through National Open Access Registry (NOAR) on 1st April 2022 and directed that the short term open access applicants may apply for registration in NOAR prior to 1.5.2022 in accordance with the detailed procedure. The documents required for the registration in NOAR by any intra state entity vary from SLDC to SLDC and are not uniform. As NOAR is a platform to facilitate Open Access in Inter State system, it is respectfully submitted that the harmonisation of documents may kindly be considered by the Commission.
- (b) Registration of ITC Bollaram and ITC Bhadrachalam have been approved and reviewed by Telangana SLDC and SRLDC. respectively, on 22.07.2022.

6. Respondent No.4 Southern Power Distribution Company of Telangana Ltd (SPDCTL) vide affidavit dated 10.02.2023 has submitted as follows:

- (a) The Interface Meters for availing Open access shall be installed at the cost of Intra state Entities (i.e., Petitioner in the present case). The owner of the Interface meter shall be the supplier of the Electricity, and in the present case, as the Petitioner is availing Open access supply from his Captive Wind Power plant Located in A.P. through Interstate Open access (Bilateral) owner of the meter shall be the captive Generator, i.e., the Petitioner himself.
- (b) Calibration of the said Interface meters of any Open access consumer at NABL accredited laboratory shall be carried out at least once in five years by the owner of the meter in the presence of the representatives of the supplier and buyer (as per Regulation 18 of Central Electricity Authority (Installation and Operation of Meters) Regulation, 2006. The Petitioner has earlier uploaded the NABL test reports dated 26.02.2017, whose validity had lapsed by 25.02.2022. Hence, the answering Respondent herein intimated to Respondent No. 3, i.e., TS-SLDC to communicate

the requirement of the latest NABL Test Reports to the Petitioner to be uploaded on the concerned portal.

- (c) As per Cl. 5.2 of the TSERC (Terms and Conditions of Open Access to Intra-State Transmission and Distribution Networks) Regulations, 2005 read with TSERC Proceedings No. TSERC / Secy / 159 /2015, the “SLDC and Licensees shall devise procedures for coordination among themselves for allowing such short-term transactions. Accordingly, procedures such as submission of Format A, Format B, UI Undertaking etc., were devised. After the issuance of Proceedings No. TSERC / Secy / 159 /2015 by Telangana State Electricity Regulatory Commission, the answering Respondent has designed an undertaking to be sought from all the Open Access consumers for the issuance of open access. The clauses mentioned in the undertaking are in accordance with the said proceedings and extant statutory and regulatory framework.

8. Respondent No.3 State Load Despatch Centre for Telangana vide affidavit dated 18.01.2023 has submitted as follows:

- (a) A major deficiency in the application submitted by the Petitioner was the drawal capacity, which was mentioned in the NOAR portal for the Badrachalam unit as 30MW. However, the Contracted Maximum Demand of the Petitioner is 5MW as per the H.T. Service Agreement, which was subsequently enhanced from 5MVA to 15MVA. As per Clause 19.4 of the TSERC Open Access Regulations, 2005, Respondent No. 3 had requested the Petitioner to correct the drawl capacity or furnish the supporting documents. Another deficiency is of latest NABL test reports and HT Periodical.
- (b) Prior to the implementation of the NOAR portal, Respondent No. 3 processed the Bilateral Applications and issued concurrence by curtailing the quantum limited to Contracted Maximum Demand as per the H.T. Service Agreement as per the clause 19.4 of the TSERC Open Access Regulations.
- (c) The Petitioner has submitted all the required documents and reduced the drawl capacity as per the H.T. Service Agreement, i.e., 15 MW to process the application for registration in the NOAR portal. Accordingly, Respondent No. 3 has issued the approval to the Petitioner for registration in the NOAR portal for two applications submitted by the Petitioner for its Bollaram and Badrachalam units.

- (d) Respondent No. 3 and the Discoms in the State of Telangana decided to collect certain documents for the registration on NOAR portal. The details of the documents sought by Respondent No. 3 and the Discoms are:
- i. NABL & HT periodical test reports
 - ii. HT Service agreement
 - iii. EBC (Energy Billing Centre) Compatibility
 - iv. OA Undertaking (Feeder specific Mixed/dedicated)
 - v. DSM (UI) Undertaking & RPPO Undertaking for FY2022-23
 - vi. Connectivity certificate, and
 - vii. Metering details and metering diagram from Utilities
- (e) As of now, 93 Utilities have applied for Registration in NOAR from Telangana, and 81 Utilities have been registered after submitting the required documents and obtaining NOCs from Respondent No. 3. The remaining 12 Applicants are yet to furnish certain documents for Registration.
- (f) The petitioner i.e., M/s. ITC Ltd. vide letter dated 14.07.2022 has submitted all the required documents and attended remarks which were requested by TS-SLDC to process the application for Registration in NOAR Portal and requested for processing of applications of Badrachalam, Bollaram units of M/s. ITC Ltd. Accordingly, TSSLDC has approved the application No. ITCSLDCD72 for a unit of Bollaram unit and application No. ITCSLDCD73 for a unit of Badrachalam.

Submission of Petitioner:

9. Petitioner vide affidavit dated 24.02.2023 has filed a Rejoinder to the reply filed by Respondent No.1st,3rd and 4th and has submitted as follows:
- (a) Clause 5(2) of the Procedure for NOAR specifies that the application for NOAR registration is to be in the Format-A appended to the approved procedure. The said Format-A itself specifies the details required and the documents to be uploaded for the NOAR registration. The NLDC, being the nodal agency in terms of Clause 4.1 of the approved procedure, has not specified any other details or documents to be furnished in terms of item 21 of Format-A of the approved procedure. There is nothing in any CERC Regulations or the approved procedure which enables or authorizes the SLDC to require any other documents or details for the purposes of the NOAR registration. As provided in Clause 5.2(e) of the approved procedure, the

scope of the role of SLDC is limited to conducting a preliminary scrutiny to ensure that the application form (Format-A) is complete in all respects along with the necessary documents (as specified in Format-A) and the applicable processing fee. There is no scope for the documents required for NOAR registration to vary from SLDC to SLDC. It is only the documents that are required in terms of the approved procedure which are necessary, and nothing more.

- (b) The Petitioner had given undertakings as required by the SLDC without prejudice and subject to the outcome of the petition as provided in para 5(d) of the RoP dated 05.07.2022 and consequently reduced the drawal capacity on the portal. The NOAR registration was thereupon completed.
- (c) Respondent has not produced the procedure issued under clause 5.2 of the TSERC Regulation 2 of 2005.
- (d) The SLDC is not any nodal agency with respect to inter-state STOA. It is only the RLDC which is the nodal agency in terms of Clause 5 of the CERC Open Access Regulations, 2008. The NOCs/concurrences issued by the SLDC for inter-state STOA are in pursuance of the CERC Open Access Regulations, 2008. TSERC Open Access Regulation 2 of 2005 is applicable only to intra-state open access and not to inter-state open access; the proviso to Clause 5.2 only contemplates the SLDC and licensees devising procedures only for coordination among themselves for allowing short term transactions with a duration of less than one week. It is denied that all open access users have been submitting the documents and undertakings demanded by the Respondent.
- (e) TSERC Regulation 2 of 2005 is inapplicable to inter-state open access; the 5th Respondent NPDCL sought a clarification by letter dated 08.06.2017 from the TSERC as to whether short term open access to the Petitioner's Bhadrachalam unit should be limited to its CMD in view of Clause 19.4 of Regulation 2 of 2005. The State Commission, vide its clarification dated 25.07.2017 stated that the Petitioner is well within its right to avail captive consumption of energy to the extent it requires. Thereafter, the Petitioner was allowed to continue to avail of open access to its Bhadrachalam unit even beyond the CMD till July 2021. Without any further approach to the State Commission, and contrary to the specific clarification of the State Commission, the open access quantum from December 2021 was arbitrarily and illegally curtailed to the CMD of the Petitioner with the distribution licensees.

- (f) Clause 19.4 of the TSERC Open Access Regulation does not prohibit availing of open access of a quantum beyond the CMD with the distribution licensee. It only purports to caution the parties that they should endeavour to adhere to the open access contracted capacity at both the injection and drawal points and that otherwise, the provisions of the Interim Balancing Code will apply to the deviations; In any case, the statutory right of the Petitioner under section 9(2) of the Act to open access for the energy generated at its captive power plant and captive use thereof cannot be defeated or restricted by any Regulation.
- (g) The Petitioner has submitted the undertakings only in terms of the RoP dated 05.07.2022 without prejudice to the Petitioner's contentions and subject to the outcome of the petition. The CMD was enhanced to 15 MW as a short-term measure due to problems of coal supply to the Petitioner's co-located co-generation plants and due to coercive steps being taken by the 3rd and 5th Respondents with respect to facilitating open access for captive wind energy. The drawal capacity in the NOAR portal was also reduced from 30 MW to 15 MW.
- (h) The responsibility of testing the interface meters is always with the STU/licensee in terms of Clauses 6(1)(b) and 18 of the CEA Metering Regulations. Merely because the Petitioner has arranged for the NABL testing of the meters in the circumstances that the licensee is adamantly remiss in its own responsibility under the Regulations is no justification for the omission of the Respondent licensee.
- (i) Proceedings No TSERC/Secy/159/2015 dated 18.08.2015 is with respect only to consumers connected on mixed feeders. It does not apply at all to consumers such as the Petitioner, who are connected to dedicated feeders. The said proceedings can apply only to intra-state open access and not to inter-state open access, which is beyond the jurisdiction of the State Commission. Any such proceedings of the State Commission cannot be in derogation of the Petitioner's statutory right to open access under section 9(2) of the Act or to the inter-state open access, which is within the exclusive jurisdiction of only the Central Commission.

Hearing on 15.09.2023

10. Respondent No.3, TSLDC, submitted that the Petitioner has already been granted registration in the National Open Access Registry (NOAR) and, therefore, the present petition has become infructuous.

11. Petitioner opposed the said submission and pointed out that the Petitioner has been granted the registration to NOAR as per the direction of the Commission, vide Record of Proceedings for the hearing dated 5.7.2022 and upon the Petitioner furnishing certain undertakings as requisitioned by the Respondent TSLDC, which were strictly for the purpose of completion of registration in NOAR and are subject to the outcome of the present Petition. Learned senior counsel submitted that in the present Petition, the Petitioner has also challenged the validity of these undertakings as insisted upon by the TSLDC. Learned senior counsel further referred to these undertakings in detail and pointed out that these undertakings restrict the Petitioner from wheeling its captive power beyond the contract demand with a distribution licensee and that they are not only against the concerned Regulations of the State/Central Commission but also the order passed by this Commission dated 13.6.2016 in Petition No. 121/MP/2015.
12. The Commission reserved the matter for order on 15.09.2023 and directed the Respondent, TSLDC, to furnish its written comments on the aspect of various Undertakings as raised by the Petitioner.

Submission of Respondent No.3, State Load Despatch Centre for Telangana

13. Respondent No.3 State Load Despatch Centre for Telangana vide affidavit dated 27.09.2023 has submitted as follows:
 - a) To resolve the issues and comply with TSERC Regulation, the SLDC and the Discoms are mandated to follow a procedure for allowing STOA and also advised to design a protocol for ensuring the methodology of RPPO obligation. The Discoms and the SLDC together prepared a protocol of undertakings to ensure the implementation of Regulations. The detailed description of each undertaking which the SLDC/Discoms are insisting upon is as follows:
 - i. **OA Undertaking (Feeder specific Mixed/dedicated:** To ensure that the consumer shall not draw power/ energy in excess of power/energy contracted through OA for dedicated/Express/Mixed feeder and during the Open Access period avail supply from all sources puttogether, within the Contracted Maximum Demand (CMD) entered with the DISCOM. Also, to ensure that the consumers who are willing to take supply on Roundthe Clock (RTC) basis only for allowing of Open Access

- ii. **DSM (UI) Undertaking:** When the open access consumer deviates from their schedule, the consumer has to pay Deviation Charges and to ensure the liability of deviation energy charges payable to Discoms to permit to avail OA, SLDC /Discoms are insisting on submission of the DSM Undertaking as the processing/ Certifying entities are different.
- iii. All the Open Access Consumers and captive users to fulfil RPPO obligations shall submit in advance the necessary details regarding the total estimated consumption of electricity and quantum of power to be purchased from Renewable energy sources, as some consumers are not submitting their captive consumption details, SLDC is insisting to submit the **RPPO Undertaking**.

Analysis and Decision

14. We have considered the submissions of the Petitioner and Respondents and perused all relevant documents on record.
15. The Petitioner has submitted that it has established and commissioned a 46 MW wind power project as a captive generating plant in Andhra Pradesh. The Petitioner has set up an industrial unit for the manufacture of paperboards at Bhadrachalam, Telangana, and is a consumer of the 5th Respondent North Power Distribution Company of Telangana Ltd with a service connection at 132kV through a dedicated feeder and a Contracted Maximum Demand (“CMD”) of 5000 kVA. The electricity requirement of this industrial unit are met partly from its captive co-generation plants, partly from the Petitioner’s own captive wind generation plant at Anantapur through short term inter-state open access according to the varying availability from time to time, and partly through power purchases through power exchange, and partly from the CMD. The Contracted Maximum Demand was subsequently enhanced from 5MVA to 15MVA as stated by TS-SLDC. For another Unit located at Bollaram, Telangana, which is engaged in the manufacture of Poly coated paperboard and is a consumer of the 4th Respondent South Power Distribution Company of Telangana Ltd with a CMD of 2501 kVA through a dedicated 33 kV feeder. The electricity requirement of this industrial unit is met partly from the Petitioner’s own captive wind generation plant at Anantapur in Andhra Pradesh through short term inter-state open access according to the varying availability from time to time and partly or wholly from the CMD with the 4th Respondent distribution licensee.

16. The Petitioner has stated that TSLDC has raised queries for issuing No objection Certificate for registration in NOAR in respect of the Bollaram unit and Bhadrachalam unit vide which for Bollaram unit -(i) Latest NABL test report, (ii) Open Access Undertaking, (iii) DSM(UI) Undertaking (vi) RPPO Undertaking and in respect of the Bhadrachalam unit (i) DSM (UI) Undertaking (ii) Drawee quantum to be less than or equal to the CMD of the unit with the distribution licensee, was required to be submitted.
17. The petitioner, during the pendency of the present petition, vide letter dated 14.07.2022 has submitted all the required documents and addressed the remarks made by TS-SLDC to process the application for registration in NOAR Portal and requested for processing of applications of Badrachalam, Bollaram units of M/s. ITC Ltd. Accordingly, TS-SLDC has approved the applications, which have also been confirmed by the Respondent NLDC that registration has been approved and reviewed by Telangana SLDC and SRLDC. respectively, on 22.07.2022. The Petitioner, however, stated that it has given undertakings as required by the SLDC without prejudice and subject to the outcome of the petition.
18. The Respondent SPDCTL has submitted that Interface Meters for availing Open access are required to be installed at the cost of intra-state entities, i.e the Petitioner. Calibration of the Interface meters of any open access consumer at NABL accredited laboratory is required to be carried out at least once in five years by the owner of the meter in the presence of the representatives of the supplier and the buyer as per Regulation 18 of Central Electricity Authority (Installation and Operation of Meters) Regulation, 2006. The Petitioner has earlier uploaded the NABL test reports dated 26.02.2017, whose validity had lapsed by 25.02.2022, SPDCTL intimated the TS-SLDC to communicate the requirement of the latest NABL Test Reports to the Petitioner.
19. The Respondent TS-SLDC submitted that TSERC Regulations read along with TSERC/Secy/159/2015 Order dated 18.08.2015 mandate submission of OA (Feeder specific Mixed/dedicated), DSM (UI) Undertaking & RPPO Undertaking for registration in the National Open Access Registration and stated that OA Undertaking is to ensure that the consumer shall not draw power/ energy in excess of power/energy contracted through OA for dedicated/Express/Mixed feeder and during the Open Access period avail supply, from all sources puttogether, within the Contracted Maximum Demand (CMD) entered with the DISCOM. In regard to DSM

(UI), when the open access consumer deviates from their schedule, the consumer has to pay Deviation Charges. All the open access consumers and captive users to fulfil RPPO obligations are required to submit in advance necessary details regarding the total estimated consumption of electricity and quantum of power to be purchased from the renewable energy sources. As some of the consumers are not submitting their captive consumption details, SLDC is insisting on submitting the RPPO Undertaking.

20. We have considered the submissions of the Petitioner and the Respondents and have also perused the facts on record.
21. We observe that Regulation 26 of the CERC (Open Access in Inter-State Transmission) Regulations, 2008:

.....

Redressal Mechanism

26. Unless the dispute involves the State Load Despatch Center and the intra-State entities of the concerned State and falls within the jurisdiction of the State Commission, all disputes arising under these regulations shall be decided by the Commission based on an application made by the person aggrieved.

As per above, the dispute involving intra-state entities falls within the jurisdiction of the State Commission.

22. Further, the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 provide inter alia as under:

6. Ownership of meters.-

(a) All interface meters installed at the points of interconnection with Inter-State Transmission System (ISTS) for the purpose of electricity accounting and billing shall be owned by CTU.

(b) All interface meters installed at the points of interconnection with Intra-State Transmission System excluding the system covered under sub-clause (a) above for the purpose of electricity accounting and billing shall be owned by STU.

(c) All interface meters installed at the points of inter connection between the two licensees excluding those covered under sub-clauses (a) and (b) above for the purpose of electricity accounting and billing shall be owned by respective licensee of each end.

(d) All interface meters installed at the points of inter connection for the purpose of electricity accounting and billing not covered under sub-clauses (a), (b) and (c) above shall be owned by supplier of electricity.

10. Operation, Testing and Maintenance of meters. –

The operation, testing and maintenance of all types of meters shall be carried out by the generating company or the licensee, as the case may be

.....

18. Calibration and periodical testing of meters. –

(1) Interface meter

(a) At the time of commissioning, each interface meter shall be tested by the owner at site for accuracy using standard reference meter of better accuracy class than the meter under test.

(b) All interface meters shall be tested at least once in five years. These meters shall also be tested whenever the energy and other quantities recorded by the meter are abnormal or inconsistent with electrically adjacent meters. Whenever there is unreasonable difference between the quantity recorded by interface meter and the corresponding value monitored at the billing center via communication network, the communication system and terminal equipment shall be tested and rectified. The meters may be tested using NABL accredited mobile laboratory or at any accredited laboratory and recalibrated if required at manufacturer's works.

(c) Testing and calibration of interface meters may be carried out in the presence of the representatives of the supplier and buyer. The owner of the meter shall send advance notice to the other party regarding the date of testing.

As per the above, the interface meters installed at the points of interconnection with the Intra-State Transmission System are required to be owned by the supplier of electricity and at the time of commissioning, each interface meter should be tested by the owner at the site for accuracy. The operation, testing and maintenance of all types of meters shall be carried out by the generating company or the licensee, as the case may be.

23. The Procedure for Short Term Open Access in inter-State Transmission Systems through National Open Access Registry (NOAR) under Regulation 4 of the Central Electricity Regulatory Commission Open Access in inter-State Transmission (Fifth Amendment) Regulations,2018 is extracted below:

.....

“5. Registration for STOA

5.1. A short term customer shall be able to make an application for seeking standing clearance or applying for STOA transaction, both bilateral and collective, only after successful registration on the NOAR platform.

5.2. The process of registration shall be as under.

a) Any short term customer which intends to avail Short Term Open Access in inter-State transmission system through Bilateral or Collective Transaction or both shall get registered in the NOAR by submitting the application as per Format-A and paying a registration fee of Rs.5000/- (Rupees Five Thousand only). The registration fee shall be paid through electronic payment gateway of NOAR.

.....

d) In case of a short term customer which is a regional entity, the application shall be processed by the host RLDC and for a short term customer which is an intra-State entity the application shall be processed by the host SLDC.

e) After the receipt of application for registration, NLDC, RLDC, SLDC as the case may be, shall conduct a preliminary scrutiny to ensure application form is complete in all respects along with the necessary documents and applicable processing fees. In case of any discrepancy or requirement of any further information, the NLDC or the host RLDC or

SLDC, as the case may be, shall communicate the applicant through NOAR for rectification of the same within 1 (one) working day of receipt of the application. In case the applicant does not respond to the requirements of rectification within 2 (two) working days to the NLDC or the host RLDC or SLDC, the registration request shall be rejected and reasons for such rejection shall be communicated to the applicant through NOAR. The registration fees paid, shall stand forfeited.

.....

m) The short term customer shall ensure that all details are correct and accurate, failing which, the registration may be cancelled or renewal may be denied by the host RLDC or SLDC, as the case may be, with reasons communicated through NOAR.

n) The Nodal Agency shall maintain a centralised database of registered short term customers based on registrations carried out by RLDCs and NLDC.

.....”

As per the procedure for a short term customer, which is an intra-state entity, the application shall be processed by the host SLDC, which is required to conduct a preliminary scrutiny to ensure that the application form is complete in all respects along with the necessary documents. The ‘necessary documents’ which are required to be submitted are not enlisted in the above-quoted procedure. In case of any discrepancy or requirement of any further information, the NLDC or the host RLDC or SLDC, as the case may be, shall communicate with the applicant through NOAR for rectification.

24. The Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulations, 2005 or the Terms and Condition of Open Access to Intra-State Transmission and Distribution Network Regulation No.2 of 2005 provide as follows:

5.Nodal Agency

.....

5.2 For short-term open access transactions, the Nodal Agency for receiving and processing applications shall be the State Load Dispatch Centre (SLDC). The SLDC shall, however, allow short-term open access transactions only after consulting the concerned transmission and/or distribution licensee(s) whose network(s) would be used for such transactions:

Provided that for short-term transactions with duration of less than one week, the SLDC may not consult the concerned licensees for permitting such transactions. **The SLDC and Licensees shall devise procedures for coordination among themselves for allowing such short-term transactions**

.....

19.4 Energy and Demand Balancing: All open access users, and the users covered under clause 7.2, shall make reasonable endeavor to ensure that their actual demand or actual sent-out capacity, as the case may be, at an inter-connection does not exceed the Contracted Maximum Demand or allocated sent-out capacity for that inter-connection:

As per the above, the SLDC and the licensees shall devise procedures for coordination among themselves for allowing such short-term transactions, and all open access users shall make a reasonable endeavour to ensure that their actual demand or actual sent-out capacity, as the case may be, at an inter-connection does not exceed the Contracted Maximum Demand or allocated sent-out capacity for that inter-connection.

25. TSERC Order dated 18.08.2015 in Proceeding No.TSERC/Secy/159/2015 is quoted as under:

13..... Open access can be allowed to those consumers only who are availing supply through mixed feeders which are not feeding to any of the agricultural feeders / loads, apart from consumers availing supply through dedicated feeders subject to the following conditions. The other clauses of the Regulation 2 of 2005 remain same.

- a) **To allow open access to those consumers who give undertaking that they avail supply within the contracted maximum demand (CMD) entered with the Discom.**
- b) To allow open access to those consumers who are willing to take supply on Round The Clock (RTC) basis only.
- c) By taking an undertaking letter from consumers that they will forego the energy loss occurred to them on account of imposing load reliefs in case of grid emergencies.

As per the above, open access can be allowed to the consumers who give an undertaking that they will avail supply within the contracted maximum demand (CMD) entered with the Discom in addition to other requirements.

26. The Respondent No.5 Northern Power Distribution Company of Telangana Limited letter dated 08.06.2017 to TSERC is quoted as follows:

"M/s. ITC Limited , Bhadrachalam being HT Sc. No. KMMM-036 with a CMD of 5 MVA is availing inter-state Short Term Open Access (STOA) from its captive generator located at Ananthapur of Andhra Pradesh.

The month wise details of Open Access power requested by M/s. ITC Limited Bhadrachalam is listed below:

SL.No	Name of the Month	Period	Feasibility Issued in MW
1	September'16	01.09.2016 to 30.09.2016 23.09.2016 to 30.09.2016	10 14
2	October'16	01.10.2016 to 31.10.2016	10+1
3	November'16	01.11.2016 to 30.11.2016	7+1
4	December'16	01.12.2016 to 31.12.2016	7+0.5
5	January'17	01.02.2017 to 31.01.2017	10+1
6	February'17	01.02.2017 to 28.02.2017	10+1
7	March'17	01.03.2017 to 31.03.2017	15+1
8	April'17	01.04.2017 to 30.04.2017	15

9	May'17	01.05.2017 to 31.05.2017	15
10	June'17	01.06.2017 to 30.06.2017	23

In this regard it is to submit that as per clause 19.4 of regulation 2 of 2005, all open access users, and the users covered under clause 7.2, shall make reasonable endeavor to ensure that their actual demand or actual sent-out capacity, as the case may be, at an inter-connection does not exceed the Contracted Maximum Demand or allocated sent-out capacity for that inter-connection.

In view of the above, it is requested to arrange to clarify if the quantum of power availed under inter-state Short Term Open Access (STOA) from its captive generation unit plus DISCOM supply should limit to CMD entered with Discom or otherwise.”

27. TSERC issued clarification dated 25.07.2017 in response to the NPDCTL letter dated 08.06.2017, which is quoted as follows:

“2. The Commission is of the view that applying the tests provided in Electricity Rules, 2005 insofar as the captive generation is concerned, the said M/s. ITC limited is well within its right to avail captive consumption of energy to the extent it requires so.

3. The Commission is also of the view that the clarification sought by you is unwarranted and you should proceed with the action as being taken earlier. Further, if at all, the licensee has grievance it has liberty to approach the concerned nodal agency as provided in the regulations, else, seeking declaration through a proper petition before the Commission as to the interpretation of the clauses and applicability of the rules. “

As per the above, TSERC clarified to NPDCTL insofar as the captive generation is concerned, the said M/s. ITC Limited is well within its right to avail captive consumption of energy to the extent it requires, and further, if the licensee has a grievance, it has the liberty to approach the concerned nodal agency or else seek declaration through a proper petition before the commission.

28. The Respondent No.3 TS-SLDC has submitted Format for OA Undertaking (Feeder specific Mixed/dedicated), DSM (UI) Undertaking & RPPO Undertaking as below:

Undertaking by OA Consumer (Who fed from dedicated feeder), for availing power through Power Exchanges under Inter-state Short term Open access

I, Sri..... (Name of person); (Designation) having HT Sc.No. , in the name of M/s (Service Name)..... do hereby undertake that I shall not draw power/ energy in excess of power/energy contracted through OA for my dedicated/Express/Mixed feeder. The settlement of open access + third party if any, will be as per the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 read in tune with necessary modifications/Amendments issued from time to time in this regard.

As per Clause 19.4 of Regulation 2 of 2005, we also hereby undertake that during the Open Access period we shall avail supply, from all sources put together, within contracted Maximum Demand (CMD) entered with the DISCOM. We agree to pay DISCOM additional charges for maximum demand exceeding the contracted demand as per clause 12.3.2 of GTCS and as prescribed by the commission from time to time.

We further, hereby undertake that we will not claim any compensation in case of supply failures during the period of power purchased from exchange under following conditions.

- i. Incoming supply failure to 220/132 KV EHV substation.
- ii. 33 KV feeder breakdowns (or) any system emergency load relief and scheduled load shedding is given to our feeder.
- iii. If LRs are in force due to availability of other than open access consumers and other category consumers on our feeders.
- iv. If LRs are revised due to grid conditions.
- v. We will not make any request to keep our feeder "ON" during the period of LR even if it coincides with the duration of OA schedule for the consumers existing on mixed/express feeder.
- vi. We further undertake that, we will not claim any compensation in respect of OA power loss as a result of LR and any other type of interruptions.
- vii. The settlement will be as per meter reading dates (excluding present meter reading date).
- viii. If power purchased from more than one generator, the priority shall be given before 10 days of meter reading date.

This undertaking will be valid from DD.MM.YYYY to the end of this Financial Year.

Undertaking by OA Consumer for not drawing power/energy in excess of power/energy contracted through OA and not claiming any compensation during ELR/SLR

I, Sri..... (Name of person); (Designation) having HT Sc.No. , in the name of M/s (Service Name)..... do hereby undertake that I shall not draw power/ energy in excess of power/energy contracted through OA for my dedicated/Express/Mixed feeder. The settlement of open access + third party if any, will be as per the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 read in tune with necessary modifications/Amendments issued from time to time in this regard.

We further, hereby undertake that we will not claim any compensation in case of supply failures during the period of power purchased from exchange under following conditions.

- i. Incoming supply failure to 220/132 KV EHV substation.
- ii. Feeder breakdowns (or) any system emergency load relief and scheduled load shedding is given to our feeder.
- iii. If LRs are in force due to availability of other than open access consumers and other category consumers on our feeders.
- iv. If LRs are revised due to grid conditions
- v. We will not make any request to keep our feeder "ON" during the period of LR even if it coincides with the duration of OA schedule for the consumers existing on mixed/express feeder.
- vi. We further undertake that, we will not claim any compensation in respect of OA power loss as a result of LR and any other type of interruptions.
- vii. The settlement will be as per meter reading dates (excluding present meter reading date).
- viii. If power purchased from more than one generator, the priority shall be given before 10 days of meter reading date.

- ix. During the open access period we shall avail supply within the contracted maximum demand (CMD) entered with the DISCOM.
- x. We shall avail open access Round the clock (RTC) basis only. If unable to avail the power on RTC basis we shall not be eligible for open access from next month onwards.

This undertaking will be valid from DD.MM.YYYY to the end of this Financial Year.

RPPO Undertaking

I, _____, S/o _____, R/o _____, having HT.Sc.No. _____ for _____ and _____ on behalf of _____ having applied for Open Access to get the power from M/s _____ and/or for self consumption, hereby undertake that in compliance of obligation flown under TSERC RPPO Regulation No.7 of 2022, Dt:01.04.2022, we would purchase 8.0% of Solar power & 1.25% of Non-Solar power for the FY 2023-24.

In case we could not purchase above percentage of Solar & Non-Solar power, we hereby undertake to purchase required quantum of REC certificates for such compliance in the FY 2023-24, Otherwise, I am bound by the consequences of default as per TSERC Regulation No.7 of 2022 and as amended from time to time. Hence this undertaking.

DSM Undertaking

I S/o Aged
 R/o representing
 the Company
 HT.SC.No..... hereby undertake and state that I have made open access arrangement for receiving power from a Trader/ Open-access generator of other state/TS state by name to have power, during the period while continuing to be the consumer of Discoms. And in this connection I undertake, that if due to default of said open-access generator in supplying power as agreed to by the company or for any other, or if I am found to have drawn any quantum of energy from the Discoms as reflected in the meter, dehor's to the fact whether the said drawal has taken place with or without information from my open access generator, I agree to pay Deviation Energy charges as per CERC Regulations as may be payable time to time depending on the frequency in addition to M.D charges as per tariff order issued by TSERC. This undertaking for the liability of Deviation Energy charges is given to Discoms to permit my company to avail OA.

I/We Agree to ensure that aggregate quantum in each time block of 15 minutes for all the bid(s) in collective transactions through all markets including RTM & G-TAM shall not exceed the quantum for which No-Objection or Prior Standing Clearance has been granted.

This undertaking will be valid from DD.MM.YYYY to the end of this Financial Year.

As per the above, TS-SLDC has issued format of undertaking to be sought from all the Open Access consumers.

- 29. We have pursued the TSERC Regulations and Order as quoted above. We observe that the State Commission has specified certain requirements to be fulfilled by the intra-state open access consumers. The State Commission has also issued certain

clarifications specific to the subject in the instant case. We are of the considered view that the requirements of undertakings or any other documents as required to be checked by SLDC under Clause 5.2(e) of the NOAR Procedure under 'necessary documents' shall be as specified by the State Commission. We note that the Petitioner has already been registered in NOAR during the pendency of the petition. In case of any grievance regarding the documents to be furnished, the Petitioner is at liberty to approach the State Commission for interpretation of its regulations read with the relevant provisions of the Electricity Act, 2003, and the rules made thereunder. While parting, we would like to urge the Forum of Regulators to consider evolving uniform and harmonized procedures and documentary requirements for the intra-state component of the inter-state open access transactions so as to facilitate seamless implementation of the concept of open access as envisaged under the Act.

30. Petition No. 176/MP/2022 is disposed of in terms of the above.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I. S. Jha)
Member

Sd/
(Jishnu Barua)
Chairperson