

BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

**Quorum**

Shri Desh Deepak Verma, Chairman  
Shri I. B. Pandey, Member

**In the matter of:**

**Petitioner**

Open Access Users Association, 2<sup>nd</sup> Floor, D 21, Corporate Park, Sector 21, Dwarka, New Delhi - 1100

Versus

**Respondents**

1. Uttar Pradesh Power Transmission Company Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow (UP)
2. Uttar Pradesh State Load Dispatch Centre, Uttar Pradesh Power Transmission Company Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow (UP)

**Present in the Hearing:**

1. Ms. Mandakini Ghosh, Advocate.
2. Shri Rahul Srivastava, Advocate, UPSLDC
3. Shri Subhojit Dasgupta, Open Access Users Association
4. Shri Puneet Chandra, Advocate, UPPTCL

**ORDER**

(Hearing on 16.10.2015)

Whereas the petitioner Open Access Users Association, 2<sup>nd</sup> Floor, D 21, Corporate Park, Sector 21, Dwarka, New Delhi – 1100 has filed **petition no. 1034/2015**, in the matter of petition U/s 142 of the Electricity Act 2003 against UPPTCL for violation of section 39 & 40 of the Electricity Act 2003 and Commission's order dated 31.5.2013, 1.10.2014 & 18.6.2014.

The present petition has been filed against UP Power Transmission Corporation Ltd. (UPPTCL) for consistent non compliance and failure to provide non discriminative open access consumers. UPPTCL has thus, according to the petitioner, failed to comply with the provisions of the Electricity Act 2003, regulations and various tariff orders of the Commission and that UPPTCL has failed to ensure development of an efficient and coordinated transmission for smooth flow of electricity and that UPPTCL has failed to

adequately augment its transmission network resulting in denial of Intra State Open Access to the Open Access Users in the State due to lack of transmission capacity.

Petitioner further submitted that UPPTCL is the State Transmission Utility and State Transmission Licensee u/s 14 & 39 of Electricity Act 2003. UPPTCL is entrusted with the responsibilities with the planning and development of an efficient and economic Intra State Transmission System, providing connectivity and allowing open access for use of the Intra State Transmission System in coordination, among others, licensees and generating companies. In accordance to UP Electricity Grid Code, 2007, UPERC (Terms and conditions for open access) Regulations, 2004, and UPERC (Grant of connectivity to Intra-State Transmission System) Regulations, 2010 as amended from time to time. The Uttar Pradesh State Load Despatch Centre, Respondent No. 2 (SLDC) was formed by the Government of Uttar Pradesh (GoUP), in exercise of the powers vested under Section 31 of the EA, 2003, vide Notification No. 78/24 U.N.N.P.-11-525/08 dated 24.01.2011 for the purpose of exercising the powers and discharging the functions under Part V of the EA, 2003, SLDC is operated by the Respondent No. 1 in its capacity as the State Transmission Utility. SLDC shall be the apex body to ensure integrated operation of the power system in the state.

The petitioner submitted that the Respondent No. 1 operates the SLDC which is entrusted with the duty of providing optimum scheduling and dispatch of electricity within a State to keep accounts of electricity flowing through the State Grid, to provide Standing Clearance/No Objection Certificate to consumers applying for Inter-State Open Access and to provide real time operation for grid control and dispatch of electricity through the State Grid.

The petitioner submitted that as per section 42(2) of the EA 2003 it is the duty of the State Commission to introduce Open Access in a State on payment of the Open Access charges. It is the duty of the distribution licensee and the State Transmission License under Section 42, 40 and 39 of the EA 2003 to provide non-discriminatory open access to applicants.

The petitioner submitted that as per Central Electricity Regulatory Commission's Open Access in Inter State Transmission Regulations, 2008 any consumer who wants to avail short term intra state open access is required to fulfill the following criteria:-

- i. Industries must have a Contract demand of 1 MW and above.
- ii. Industries must have Grid connectivity of 11 KV and above.

- iii. They must install ABT compliant meter.
- iv. They must obtain pre standing clearance or No Objection Certificate from the respective State Load Despatch Center.

As per Regulation 8 of CERC Regulations, when a State Utility or Intra-State Entity proposes to participate in trading through power exchange, it is required to obtain a No Objection or prior standing clearance from the SLDC. The SLDC is required to acknowledge receipt of the application for No Objection or standing clearance within twenty four hours. While processing the application, the SLDC is required to verify there is existence of infrastructure necessary for time block wise energy metering and accounting in accordance with the Grid Code and whether surplus transmission capacity is available in the State network. Where the applicant fulfils both conditions, the SLDC shall convey its concurrence or No-Objection or prior standing clearance to the applicant within three working days. If the application is found to be defective or incomplete, the SLDC is required to communicate the deficiency or defect within two working days. Where the SLDC has neither communicated the defect in the application nor the refusal nor the concurrence/no objection/standing clearance within the stipulated time frame, the concurrence/no objection/standing clearance shall be deemed to have been granted. Regulation 8 of the Open Access Regulations.

The petitioner further submitted that the industrial consumers are deprived of quality power at competitive rates through RTC. The consumers are desirous of sourcing power through inter-state open access as the domestic tariffs of the state distribution licensees is very high in comparison to the tariffs available in other states. However, the industrial consumer in Uttar Pradesh with contract demand of 1MW more are not getting standing clearance/NOC from the SLDC. The SLDC is refusing to grant the standing clearance/NOC to industrial consumers on the grounds of lack of surplus transmission capacity. Therefore, the consumers in the State of Uttar Pradesh with contract demand of more than 1 MW are forced to continue violation to the rights of non-distribution open access available to a consumer under Section 39, 40 & 42 of the EA 2003.

The petitioner submitted an example of an Industrial consumer with contracted load of 5 Mega Watt, M/s Kanpur Edibe Oil (Pvt.) Ltd. who have installed ABT complaint meter but has not been granted permission for inter state Open access for lack of inter state transmission corridor. The Industries have even installed the required infrastructure, i.e. ABT metering. Despite having ABT meters, the SLDC continues to refuse grant of standing clearing for availing inter-state short term open access on grounds of lack of surplus transmission capacity.

The petitioner submitted that a tariff orders dated 31.5.2013, 1.10.2014 and 18.6.2015, this Hon'ble Commission has recorded that despite repeated reminders, the Respondent No. 1 is failing to submit capital investment plan. Accordingly, this Hon'ble Commission has discounted 30% of the capital cost due to such non-compliance.

Order dated 31.5.2013

"The directives to the Licensee as issued under the present Tariff Order along with the time frame for compliance are given in the table below:

Sr. No.	Description of Directives for UPPTCL/SLDC	Time period for compliance from the date of issue of the Tariff Order
10	<p>The Commission directs the UPPTCL to submit a long term business plan in accordance with Clause 2.1.6 of the Transmission Tariff Regulations.</p> <p>The UPPTCL in such business plan shall identify capex projects for the ensuing</p>	Within 3 months

"C) The Commission's view:

3.2.6 The Commission directs the Petitioner that the capital investment plan should be commensurate with the anticipated load growth, improvement in voltage profile, improvement in quality of supply and system reliability. The Commission directs the Petitioner to claim the capital investment plan henceforth, strictly in accordance with applicable Tariff Regulations for the Petitioner. The Commission directs the Petitioner to take adequate measures at the planning stage itself, so as to mitigate the Right of Way issues.

3.2.7 The Commission also directs the Petitioner to submit the detailed road map.

The Commission's Order dated 18.6.2015

"6.4.9 the Commission has observed that the capital investment proposed by the Petitioner is not in strict accordance with the Transmission Tariff Regulations, 2006. In order to reprimand the Petitioner, the Commission disallows 30% of the capital investment proposed in the Petition and allows only 70% of the

proposed capital investment for FY 2015-16. The Commission directs the Petitioner to claim the capital investment plan henceforth, strictly in accordance with applicable Tariff Regulations for the Transmission Licensee.”

The petitioner has further agreed that one of the major reasons for lack of transmission corridors is delay in proper planning and commissioning of transmission projects. It is stated that the Respondent No. 1 has been failing to provide a proper capital investment plan for developing an efficient transmission network. It has consistently been failing to comply with the directions of this Hon'ble Commission. Resultantly, the Respondent No. 1 is failing to plan and develop its transmission projects resulting in lack of augmentation of transmission capacity in the State. Further, the Respondent No. 1 is unable to provide the consumers with open access. The Respondent No. 1 is accordingly acting in violation of Section 39 & 40 of the EA 2003 and Regulation 3.6 of the Transmission Tariff Regulations by impeding the consumers from availing inter-state open access due to its own failure to develop adequate transmission lines.

The petitioner submitted that National Electricity Policy, 2005 also lays emphasis on the development of an efficient transmission network so as to promote open access and to avoid stranded generation capacity.

The petitioner further submitted that denial of open access in the state is also against the spirit, scope and object of the Competition Act, 2002. By restricting open access and forcing the consumers to procure power from the state distribution licensee amounts to allowing the distribution licensee to bring monopolism in the power trading market thereby making gross violation of Section 4 of the Competition Act, 2002. Denial of open access may lead to monopoly of the local distribution licensee. As a result, it will increase the prices of commodity (electricity) and thus will make procuring power through the local distribution licensee unviable. Therefore, with such denial of open access, there will be no competition in the market which shall not only lead to increase in price of commodity but also will defeat the very object of the National Tariff Policy and EA, 2003.

That Open Access provides an alternative to the consumers to have an option to procure power through any source other than the distribution licensee. In other words, it gives them the freedom to procure power from any source other than the distribution licensee, if they so desire. As a result, denial of open access implies a restriction on the consumers not to enjoy their freedom of choice.

That every consumer demands cheap and efficient power. Cheap power can only be made available if and only if open access is allowed to be procured from outside the state. As a result, it would enhance more competition in the market and will allow more and more industries to come to the State. The power tariff for every category of consumers is quite high and with denial of open access it will rise further and thereby it is leading to industries moving out of the state of Uttar Pradesh. As a serious consequence, it may cause severe loss of infrastructure in the state of Uttar Pradesh.

The petitioner further submitted that the members of the Petitioner is greatly aggrieved by such denial of Open Access due to the failure on the part of the Respondent No. 1 to comply with the direction of this Hon'ble Commission and develop adequate transmission capacity for smooth flow of power. The Respondent No. 1 has failed to comply with its duties under the EA 2003 and Transmission Tariff Regulations, 2006. The Petitioner is accordingly challenging the wrongful non-compliance by Respondent No. 1 which has lead to denial of open access in the state.

The petitioner prayed the following:-

- a. Initiate action against Respondent No. 1 under Section 142 of the Electricity Act, 2003 for acting contrary to the provisions of the Act, Rules and Regulations and Orders of this Hon'ble Commission;
- b. To direct the Respondent No. 1 to fulfill its functions under the EA 2003 and develop an efficient network and provide non-discriminatory open access in a time bound manner;
- c. To direct the Respondent No. 1 to comply with Regulation 3.6 of the Transmission Tariff Regulations and submit a capital investment plan in a time bound manner; and
- d. Pass suitable directions or orders that in the interim and during the pendency of the aforementioned petition before this Hon'ble Commission, short-term inter-state open access may be allowed to open access applicants;
- e. Direct the Respondent No. 1/SLDC to promote and allow Open Access in the state of Uttar Pradesh.

Shri Puneet Chandra, Advocate appearing on behalf of UPPTCL and Shri Rahul Srivastava, Advocate appearing on behalf of SLDC submitted that they have not received the copy of the petition.

The Commission directed the petitioner to serve the copy to the respondents within one week and respondents to file the reply within next seven days and petitioner to file the rejoinder if any within next seven days.

List on 18.11.2015 at 15:00 hrs.

(I. B. Pandey)  
Member

(Desh Deepak Verma)  
Chairman

Dated: 09.11.2015