

No./124/2020

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**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.**

**Dated: 29.10.2021**

**Present**

|                                 |                   |
|---------------------------------|-------------------|
| <b>Shri Shambhu Dayal Meena</b> | <b>: Chairman</b> |
| <b>Shri H.M. Manjunatha</b>     | <b>: Member</b>   |
| <b>Shri M.D. Ravi</b>           | <b>: Member</b>   |

**OP No. 52 OF 2020**

**BETWEEN**

Shree Cement Limited,  
A Company incorporated under the  
Companies Act, 1956,  
Having its office at:  
SB-187, 4<sup>th</sup> Floor,  
Opp. Rajasthan University  
J.L.N. Marg, Bapu Nagar,  
Jaipur-302 015.

**...PETITIONER**

(Represented by Sri. Amarjit Singh,  
Assistant Vice President-Power Business)

**AND**

State Load Despatch Centre (SLDC)  
Having its office at  
Race Course Road, Gandhi Nagar,  
Bangalore.

**...RESPONDENT**

(Represented by Shahbaaz Husain,  
Advocate for Precinet Legal)

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**ORDERS**

1. This Petition is filed under Regulation 20 (2) of Karnataka Electricity Regulatory Commission (Terms & Conditions for Open Access) Regulations, 2004, praying to:
  - a) Direct the Respondent to issues No Objection Certificate of up to 27 MW as may be applied by the Petitioner.
  - b) Pass such other orders as the Commission deems fit in the circumstances of the petition.

Brief facts of the case are as follow:

2. The Petitioner is a Company incorporated under the Companies Act, 1956. It is represented herein by its Assistant Vice President (Power Business) and authorized signatory, Mr. Amarjit Singh who has been authorized to represent the Petitioner Company by virtue of a Power of Attorney dated 31<sup>st</sup> January 2014 executed in his favour. A copy of the said Power of Attorney is enclosed to the petition as Annexure-1.
  3. The Petitioner Company has set up a 4 MTPA capacity integrated cement plant at Kodla village, Sedam taluka in Kalaburagi District of Karnataka (herein after referred to as 'Cement Plant'). The Cement Plant is connected through a 220 KV dedicated feeder to the 220/110/33-11KV Sedam Sub-station of KPTCL and has an electricity connection with RR No. HTP 23. The Contract Demand of the connection is 30 MVA. The latest monthly HT bill for the Petitioner's cement facility is enclosed as Annexure-2.
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4. The Petitioner has also set up two (2) captive wind power plants to meet energy requirement of its Cement Plant at Kodla. The first plant is of 21 MW capacity located at village Kushtagi in Koppal district and the second plant is of 8 MW capacity located at village Basavana Bagewadi in Vijayapura district. Thus, the total capacity of captive wind power plants is 29 MW. The wind energy generated by these wind plants is being wheeled under two separate Wheeling and Banking Agreements (WBAs). The first agreement dated 05.07.2018 for 21 MW was executed between the Petitioner, GESCOM and KPTCL, and second agreement dated 22.07.2020 for 8 MW was executed between Petitioner, HESCOM, GESCOM and KPTCL. The copy of both the WBAs are enclosed as Annexures-3 & 4.
  5. In addition to wheeling of wind energy from its captive plants, the Petitioner also purchased power under short term open access through Indian Energy Exchange (IEX). For this purpose, applications for issuance of NOC were submitted every month to the Respondent as required under KERC (Terms and Conditions for Open Access) Regulations, 2004 and CERC (Open Access in inter-State Transmission) Regulation, 2008.
  6. That earlier, when Wheeling & Banking agreement dated 22.07.2020 for 8 MW capacity was not entered into by the Petitioner, Respondent was issuing NOC of 6 MW for purchase of power through IEX. The Respondent restricted the NOC quantum to 6 MW only as against Petitioner's Contract Demand of 30 MVA, citing that there exists a WBA of 21 MW and total open
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access capacity cannot be more than the existing contract demand. Accordingly, as per Respondent, the total Open Access Capacity (after WBA) allowed to the Petitioner was  $30 \text{ MVA} \times 0.9 \text{ PF} - 21 \text{ MW} = 6 \text{ MW}$  only.

7. After execution of WBA for 8 MW captive wind power plant, no NoC has been issued to the Petitioner by the Respondent for purchase of power through IEX under short-term open access.
  8. Against the application for NoC for the month of November-2020, the Chief Engineer (Electy.), SLDC vide E-mail dated 27.10.2020 conveyed that as against the contract demand of 30000 KVA (27 MW), the quantum of Open access under Wheeling & Banking Agreement is 29 MW, therefore NoC for import of power from IEX cannot be issued. Copy of e-mail dated 27.10.2020 is enclosed as Annexure- 5 to the petition.
  9. The action of the Respondent is against the provisions of KERC (Terms and Conditions for Open Access) Regulations, 2004 and CERC (Open Access in inter-State Transmission) Regulations, 2008.
  10. Aggrieved by the act of the Respondent, the Petitioner has filed this Petition under Regulation 20 (3) of Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004 for issuance of necessary Practice Directions to the Respondent.
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The grounds raised by the Petitioner are discussed in the following paragraphs:

11. No restriction is placed under the provisions of Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004 on the open access capacity that can be availed by an open access consumer, subject to technical permissible limit of the transmission system, Regulation 4(4) of KERC (Terms and Conditions for Open Access) Regulations, 2004 that deals with this matter which states that open access shall be granted considering the operational constraints. The relevant portion of the Regulation 4(4) is reproduced below:

*"Regulation 4 (4) Subject to operational constraints and other relevant factors, open access shall be allowed to the consumers by the transmission licensee's and or distribution licensee/ s in the following phases.....:"*

12. Regulation 9 (6) of Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004 further provides that the nodal agency shall process an open access application based on capacity available as assessed by system studies conducted by the concerned licensee. The said Regulation 9(6) is reproduced hereunder:

*"(6) The nodal agency, based on the system studies by the concerned licensee or otherwise assess the capacity available and communicate the same to the applicant within the time schedule indicated below".*

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13. The CERC (Open Access in inter-State Transmission) Regulations, 2008 also permits open access up-to technical limits of the system. Regulations 8.3 (b) & (c) dealing with this are reproduced hereunder:

*"8.3. (b) While processing the application for concurrence or 'no objection' or prior standing clearance, as the case may be, the State Load Centre shall verify the following, namely-*

- I. existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, and*
- II. availability of surplus transmission capacity in the State network.*

*(c) Where existence of necessary infrastructure and availability of surplus transmission capacity in the State network has been established, the State Load Despatch Centre shall convey its concurrence or 'no objection' or prior standing clearance, as the case may be, to the applicant by e-mail or fax, in addition to any other usually recognized mode of communication, within three (3) working days of receipt of the application"*

14. The Hon'ble CERC in its order dated 27.08.2008 in Petition No. 60/2008 in the matter of Gujarat Flurochemicals Ltd. Vs RRVPNL, has reaffirmed above position and held as under:

*"These observations shall be kept in view by the respondents while deciding all the applications made by any person for open access in future. At the cost of repetition, we reiterate that as system operator and statutory bodies under the Act, the respondents should consider the applications for open access in an impartial manner and in line with the spirit and the express provisions of Act and the open access regulations without being influenced by the views of any other utility, which may be extraneous to the spirit and the provisions of the Act. Any denial of open aces on considerations other*

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*than those prescribed under the law and taken note of in the above analysis, may attract the penal provisions of the Act”*

The copy of the Order of CERC is enclosed as Annexure-6 to the petition.

15. The above regulations clearly stipulate that open access to a consumer can be given up to the technical limit of the transmission system subject to available capacity and operational constraints. **No restriction on open access capacity based on Contract Demand of the consumer is envisaged in the above regulations.** Therefore, non-issuance of NoC on the grounds that Petitioner already has WBA of 29 MW, is completely illegal and is in violation to the prevailing regulatory regime in the State of Karnataka.

16. The Regulation 3 (2) of KERC (Terms and Conditions for Open Access), Regulations, 2004 clearly stipulate that STOA shall be allowed, if the request can be accommodated by utilizing inherent design margins, margins available due to variation in power flow and spare transmission capacity.

The Regulation 3(2) is reproduced hereunder:

*" 3. Criteria for allowing Open Access:*

*(1) The long-term open access shall be allowed in accordance with the transmission planning criteria and distribution planning code stipulated in the State Grid Code.*

*(2) The short-term open access shall be allowed, if the request can be accommodated by utilizing*

*a. Inherent design margins*

*b. Margins available due to variation in power flows and*

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c. Margins available due to in built spare transmission system capacity and distribution system capacity created to cater to future load growth. "

17. The Petitioner is connected through a 220 KV dedicated feeder from 220 KV/110 KV/33-11 Sedam Sub-Station of KPTCL. There is enough transmission capacity available to draw up to 45 MW of power at Petitioner's end considering the available transformer capacity.
18. That clause 6.1.3 of the WBA dated 05.07.2018 executed by the Petitioner, provides for levy of Demand Charges as under:

*"6.1.3 While billing the monthly demand charges, the power injected by the Company under wheeling shall be charged first to the consumption of exclusive, nonexclusive Consumers and Captive Consumers and the residual demand shall be deemed to have been met by the ESCOM in whose jurisdiction such consumer is located and shall be billed as per the applicable tariff.*

**[Example-1:** *If during a month, Maximum Demand [MD] recorded is 80 MW, the Contract Demand [CD] of the Consumer is 100 MW and the power supplied under wheeling by the Company is 20 MW, then 60 MW [80 MW-20 MW] is deemed to be supplied by ESCOM and shall be billed at 75% of CD [i.e. 75 MW] as 60 MW is less than 75% of CD]*

**Example-2:** *If during a month, Maximum Demand [MD] recorded is 100 MW, the Contract Demand [CD] of the Consumer is 100 MW and the power supplied under wheeling by the Company is 20 MW, then 80 MW [100 MW-20 MW] is deemed to be supplied by ESCOM and shall be billed at 80 MW as 80 MW is more than 75% of CD].*

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*Note: for the portion of power contracted under wheeling, there is no need to enhance the CD with the distribution licensee. In the above example there is no need to enhance CD from the existing 100 MW to 120 MW."*

19. That from the above it is clear that the power supplied by the captive wind power plant under wheeling and banking arrangement is over and above the Contract Demand (CD) that the Petitioner has with DISCOM. It is abundantly clear from the above that Petitioner as a consumer of the DISCOM, can draw DISCOM power to the extent of its contract demand and continues to draw wind power to the extent of 29 MW without increasing its contract demand. This further establishes that there is sufficient capacity available in the system for the Petitioner to simultaneously draw wind power up to 29 MW and additional power to the extent of Contract Demand from DISCOM / open access. Therefore, the Respondent's view that total open access including that from captive wind power plant should be restricted upto Contract Demand is devoid of any merits and not in line with the Regulations and this commission's directive as given in the WBA.

20. The Petitioner, as directed by the Commission during the hearing held on 06.07.2021, has filed an undertaking on 07<sup>th</sup> July, 2021, stating that, the total schedule from multiple sources by the Petitioner's cement facility in any of the 15 minutes' time block, shall not exceed 28 MVA i.e. its contract demand with GESCOM.

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21. The Petitioner, as directed by the Commission during the hearing held on 16.07.2021, made additional submissions on 17.07.2021, submitting the procedure for scheduling of collective transactions by power exchange. The procedure for scheduling is issued by the Central Transmission Utility with approval from the Central Electricity Regulatory Commission. It is submitted that Para 3 of the procedure deals with "Submission / Processing of Application" and Para 4 on "Scheduling" and that the SLDC under the above Regulations / Procedure has scheduled power under collective transactions in the past. In this regard, the Petitioner has submitted the e-mail of SLDC dated, 05.09.2020 and 05.10.2020 furnishing the import details for the months of August, 2020 and September, 2020. The Petitioner has once again requested the Commission to issue directions to SLDC for issuing the NOC to the Petitioner.

22. The Respondent in response has submitted the following:

- i. The Petitioner has filed the instant Petition seeking an order to direct the Respondent to issue no Objection Certificate of up to 27MW, as may be applicable to the Petitioner.
  - ii. The above Petition filed by the Petitioner is devoid of any merits and the same needs to be dismissed in limine. The Respondent hereby save and except those which are specifically admitted hereunder, denies and disputes all the interpretations, claims and averments of the Petitioner.
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- iii. It is submitted that the Petitioner is a company registered under the Companies Act, 1956. The Petitioner has set-up a 4 MTPA capacity integrated cement plant at Kodla, village, Sedam taluka in Kalaburagi District of Karnataka. The Petitioner's plant is connected through a 220 KV dedicated feeder to the 220/110/33-11KV Sedam Sub-station of KPTCL and has an electricity connection against RR No. HTP 23.
  - iv. It is submitted that the Petitioner had a Contract Demand (CD) of 30MVA. It is pertinent to note that the CD was reduced from 30 MVA to 28 MVA on 05.12.2020 vide OM No. GESCOM/ CEE(Opr)/SEE (coml)/ EE/AEE/20-21 / 36012-25, issued by CE(E), Operations, GESCOM, Kalaburagi. The copy of the OM is produced as Annexure R-1 of Statement of Objections.
  - v. The Petitioner has a CD of 30000 KVA and has sought to satisfy the CD by entering into a Wheeling and Banking (W&B) Agreement with GESCOM for a quantum of 21 MW. The Petitioner has satisfied the remaining CD by purchasing energy from Indian Electricity Exchange under short term open access. Accordingly, the Petitioner has been obtaining the statutory NOC from SLDC from August,2019 to October, 2020.
  - vi. It is submitted that the Petitioner, thereafter, entered into another W&B agreement of 8 MW, from the wind project at Basavana Bagewadi Taluk, with HESCOM. Thus, the Petitioner is purchasing a total of 29 MW of
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energy (21MW+8MW) via W&B agreements with GESCOM & HESCOM. It is pertinent to state that the Petitioner has satisfied and exceeded its CD of 28MW by way of the W&B agreements.

vii. It is submitted that even after satisfying its CD, the Petitioner once again sought for an NOC from the Respondent for purchase of energy from IEX for the month of November, 2020. The Respondent has refused to grant the NOC, as the CD has already been met and informed the same vide email dated 27.10.2020. The Petitioner has approached this Commission due to being aggrieved by the said denial of issuance of NoC by the Respondent.

viii. It is submitted that the Respondent is a nodal agency and as such it is duty bound to follow the regulations set forth by this Commission and the regulations issued by the Central Electricity Regulatory Commission. This Commission, had issued a letter dated 30.06.2020, to this Respondent.

The letter stated:

- i. *"1. As per the provisions of the Electricity Act, 2003, open access has to be provided to all the consumers who require a supply of Electricity where the maximum power to be made available at any time exceeds one megawatt and is subject to system availability. Thus, the consumer has the right to choose his source of electricity supply and can have contract with multiple suppliers: and*
  - ii. *2. At the time of scheduling the power to such consumers, SLDC shall ensure that the procurement from all sources including the power procured from the distribution licensee*
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*of the area is limited to the extent of contract demand with the distribution Licensee"*

Thus, as per the letter and the directions of this Commission, the Respondent was duty bound to ensure that the Petitioner should not exceed its CD and as such denied the issuance of NOC. The copy of the letter is produced herewith as Annexure R-2 of Statement of Objections.

- ix. It is submitted that the Petitioner has claimed that there is no restriction placed under the provisions of the KERC (Terms and Conditions for Open Access) Regulations, 2004 on the open access capacity that can be availed by an open access customer, subject to technical permissible limit of the transmission system. This submission of the Petitioner is false and incorrect. The procedure for grant of Open Access, other-than Day Ahead Transactions under regulation 9 of the KERC (Terms and Conditions for Open Access) Regulations, 2004 was substituted under Notification No. Y/02/15/1143, dated 05.10.2015. The substitution introduced the following statement:

- a. *"1. An application for grant of Open Access, in the format specified by the nodal agency and approved by the Commission, shall be filed before the Nodal Agency with all the required particulars, by an intending open access customer along with an undertaking that he has not entered into PPA or any other bilateral agreement for the capacity (Quantum of Power) for which open access is sought..."*
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- b. Thus, the Petitioner must be restricted to his Contract Demand and the grant of NoC by the Respondent shall be in direct violation of the mandate of this Commission.

In light of the aforementioned facts and submissions, the Respondent prayed for dismissal of the petition in its entirety, in the interest of justice and equity.

- x. The Respondent has submitted its response on 11.08.2021 to the additional submissions of the Petitioner made on 17.07.2021, wherein it is submitted that:

- a) The procedure for scheduling is issued by Central Transmission Utility and the provisions of the same indicate the power of SLDC to monitor at the time of scheduling, the procurement of power through Power exchanges by the Petitioner, which is denied.

- b) As per procedure of Scheduling, Clause 3.4 states as hereunder:

*“Power Exchange shall ensure the scheduling request is within the limits for each time block as intimated by NLDC. Further, Power Exchange (s) shall ensure that the scheduling request is within the limits for each time block specified by respective SLDCs in the “Standing Clearance”/ “No Objection Certificate” (submitted by State Utilities / intra state entities to power exchange”.*

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- c) Referring to Para 3.4 of the procedure, the Respondent has submitted that, in the entire process of scheduling, the SLDC is not made a party to check on the scheduling and that the SLDC will come into picture only after confirmation of scheduling of collective transaction to the power exchange.
  - d) As per Clause 4.4, the Power exchange shall then send collective transaction schedule to the SLDC, the SLDC will thereafter schedule individual transactions for state utilities / intra state entities. Wherefore, the SLDC can only regulate / schedule for the state generator and not the energy received through power exchange.
  - e) In view of the above, it is stated that, only NLDC can procure data from consumers pertaining to procurement of power from other sources.
  - f) In the absence of any power to control the scheduling, the only way forward for the Respondent to comply with the instructions of the Commission as per its letter dated 30.06.2020, was for the Respondent to deny NoC for trading through power exchange as the quantum of power through trading and quantum of power through wheeling from other sources was not within the contract demand with the distribution licensee. The only way to ensure that Petitioner will not procure power exceeding the contract demand is by denying by NoC to the Petitioner to procure excess power from IEX.
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xi. The Respondent has also submitted that, it follows the methodology mentioned below to monitor power procured from IEX / PXIL and other trading entities:

(a) Being a nodal agency, the state load dispatch center will issue only the NOC / Consent as per the Open Access customer's request for the period of 1 day to 30 days (from 00: 00 to 24:00hrs) under STOA to trade power through Power Exchanges (IEX and PXIL) and for bilateral transactions for next succeeding month.

(b) At the end of the day (Evening), IEX / PXIL will mail the energy schedule details of next day (on day ahead basis DAM) and RTM data will be mailed to SLDC on the day (after 22:00hrs.)

(c) For Bilateral Transactions SLDC will download the 15-minute block-wise, daily energy schedule details from SRLDC website on the next day.

(d) At the end of the month, the above Daily Energy Schedule details (15 min block wise) will be consolidated and the same will be sent to concerned ESCOMs for the billing of Open Access customers.

(e) At the end of the month, the concerned sub division, O&M, ESCOM officers will download the actual energy consumed by Open Access consumers.

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xii. In view of the above, Respondent has submitted that they have followed the directions of the Commission to ensure that the Petitioner will not procure power beyond its contract demand.

23. We have heard the arguments of the learned counsels for the parties. From the facts of the case and the submissions made by the parties, the following issues would arise, for our consideration:

Issue No.1: Whether the Petitioner is entitled for No Objection Certificate (NoC) as prayed for?

Issue No.2: What Order?

After considering the submissions of the parties and the pleadings and material on record, our findings on the above issues are as follows:

24. **Issue No.1:** Whether the Petitioner is entitled for No Objection certificate as prayed for?

i. The Petitioner is a company registered under the Companies Act, 1956. The Petitioner has set-up a 4-Million Tons Per Annum (MTPA) capacity integrated cement plant at Kodla, village, Sedam taluka in Kalaburagi District of Karnataka. The Petitioner's plant is connected through a 220 KV dedicated feeder to the 220/110/33-11KV Sedam Sub-station of KPTCL and has an electricity connection with RR No. HTP-23. The Petitioner initially had a Contract Demand (CD) of 30MVA, which was subsequently reduced to 28MVA on 05.12.2020. The Petitioner in addition to procuring power from the Distribution Licensee has its own captive wind power

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plant of 21MW at Kustagi Taluk, Koppal District and 8 MW wind project located at Basavana Bagewadi Taluk, Vijayapura District, for which the Petitioner has entered into wheeling and banking agreement. In addition to the above, the Petitioner proposed to purchase power from the power exchange and in this context approached the State Nodal Agency namely, SLDC seeking No Objection Certificate (NOC). The Nodal Agency did not give NoC stating that the captive capacity for which wheeling has been entered into, is 29MW and exceeds the contract demand of 28MVA with the distribution licensee.

- ii. In this regard, the Commission notes that one of the objectives of the Electricity Act, 2003 is to promote competition in the business of electricity. In order to introduce competition and to provide consumers with a choice, the Electricity Act, 2003, has envisaged open access. The important provisions of the Electricity Act, 2003, under various sections pertaining to open access and regarding SLDC's function are reproduced below:

*“2(47) “open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;*

*9. Captive Generation:*

*(1) -----*

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*(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:*

*Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:*

*Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.*

*32. Functions of State Load Despatch Centres. – (1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.*

*(2) The State Load Despatch Centre shall. –*

*(a) be responsible for optimum scheduling and dispatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;*

*(b) monitor grid operations;*

*(c) keep accounts of the quantity of electricity transmitted through the State grid;*

*(d) exercise supervision and control over the intra-State transmission system; and*

*(e) be responsible for carrying out real time operations for grid control and dispatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.*

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39. State Transmission Utility and functions:

(1)-----

(2) The functions of the State Transmission Utility shall be –

(a)-----

(b)-----

(c) -----

(d) to provide non-discriminatory open access to its transmission system for use by-

i. any licensee or generating company on payment of the transmission charges; or

ii. any consumer as and when such open access is provided by the State Commission under subsection (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

*Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:*

*Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:*

*Provided also that the manner of payment and utilization of the surcharge shall be specified by the State Commission:*

*Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.*

40. Duties of transmission licensees: - It shall be the duty of a transmission licensee –

(a)-----

(b)-----

(c) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

*Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:*

*Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the Appropriate Commission:*

*Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:*

*Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.*

42. Duties of distribution licensees and open access:

(1)-----

(2) The State Commission shall introduce open access in such phases and subject to such conditions,

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*(including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:*

*Provided that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:*

*Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:*

*Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:*

*Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:*

*Provided also that the State Commission shall, not later than five years from the date of commencement of Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.*

*(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date), requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such*

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*electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access .*

*(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.*

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**49. Agreements with respect to supply or purchase of electricity:**

*Where the Appropriate Commission has allowed open access to certain consumers, under section 42, such consumers, notwithstanding the provisions contained in clause (d) of sub-section (1) of section 62, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them."*

- iii. Thus, from the above provisions it is clear that, the Commission through Regulations, has to allow open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt, subject to availability of transmission / distribution system and such open access is non-discriminatory in nature. Thus, the provision of open access to introduce competition provides choice to consumers to procure power from multiple sources like distribution licensee of the area, distribution licensee other than the area
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distribution licensee, generators, traders, power exchange etc., In view of the above, the consumer is entitled to purchase power from multiple sources, in addition to his own captive generation, which is subject to Transmission/Distribution system availability and operational constraints. From the submissions made, the Commission notes that, there is no system constraint to draw power upto the contract demand. The criteria as specified in Regulation-3 of the KERC (Terms and Conditions for Open Access) Regulations, 2004 shall be followed while allowing open access. However, at any point of time the sum total of power procured from various sources cannot exceed the contract demand entered into with the distribution licensee, as the contract demand sanctioned is based on the feasibility report to ensure that transmission / distribution network is capable of supplying the power upto the sanctioned contract demand. The contention of the petitioner that no restriction on open access capacity based on Contract Demand of the consumer is envisaged in the KERC regulations, is not correct. In this regard the Commission draws attention to the third Proviso to KERC (Terms and Conditions for Open Access) Regulations, 2004, as amended (Third proviso to Regulation 9(6) of Third Amendment dated 05.10.2015), which specifies as follows:

*“Provided also that the system studies at the drawal point to ascertain the availability is not required for a consumer of the licensee availing open access, subject to he furnishing an undertaking that, he would not exceed the contract demand*

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*specified in his supply agreement with the licensee even after opting for open access.”*

- iv. Thus, the Commission vide its letter dated 30.06.2021 (Annexure – R- 2), had informed to Managing Director, KPTCL on clarification sought by SLDC regarding entitlement of EHT / HT / Captive consumers having an existing WBA to procure power under open access stating that:

*“1. As per the provisions of the Electricity Act, 2003, open access has to be provided to all the consumers who require a supply of Electricity where the maximum power to be made available at any time exceeds one megawatt and is subject to system availability. Thus, the consumer has the right to choose his source of electricity supply and can have contract with multiple suppliers: and*

*2. At the time of scheduling the power to such consumers, SLDC shall ensure that the procurement from all sources including the power procured from the distribution licensee of the area is limited to the extent of contract demand with the distribution Licensee”*

- v. Therefore, the Commission reiterates that the consumer can source his power requirement from multiple sources, subject to the condition that the sum total of power procured from multiple sources does not exceed the contract demand in any 15-minute time block.
- vi. The Respondent has expressed difficulty regarding monitoring the power scheduled from Power exchange. The Commission notes that as per the procedure approved by CERC, RLDC will incorporate all buyers with in a State and all sellers with in a State in the schedules of collective transaction
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and the individual transaction for State utilities / Intrastate entities has to be scheduled by respective SLDC. Further, the power exchange will send the detailed breakup of each point of injection and each point of drawl within the State to the respective SLDCs, after receipt of acceptance from NLDC. Also, as per provisions of the EA,2003 referred supra, it is the duty of the SLDC to schedule and despatch electricity within a State and keep accounts of the quantity of electricity transmitted through the State grid. The Karnataka Electricity Grid Code (KEGC), 2015 also specify as follows:

*“Section 8.5(5). Scheduling of collective transaction:*

*a. The individual transactions for State Utilities/intra-State entities shall be scheduled by the SLDC. Power Exchange(s) will send the detailed breakup of each point of injection and each point of drawal within the State to SLDC after receipt of acceptance from NLDC. Power Exchange(s) will ensure necessary coordination with SLDC for scheduling of the transactions.*

*b. Timeline for above activities will be as per detailed procedure for Scheduling of Collective Transaction issued in accordance with the CERC (Open access in inter-State transmission) Regulations, 2008 and the KERC [Terms and Conditions for Open Access] Regulations, 2004 as amended from time to time.”*

vii. Thus, as per the functions assigned to the SLDC under Section 32 of the Electricity Act, 2003 and the State Electricity Grid Code, 2015 specified by the Commission, to discharge its duties, the SLDC has powers to obtain schedules from users of grid and finalize the schedules and give despatch

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instructions, so as to operate the grid in a safe and secure manner. In view of the above, the contention of the respondent regarding scheduling does not hold water.

viii. The Authorized Signatory on behalf of the Petitioner has filed an undertaking dated 07.07.2021 by way of affidavit stating that:

“1. ....

2. ....

3. That the Petitioner has also entered into Wheeling and Banking Agreement of 21 MW and 8 MW (Total = 29 MW) with state utilities (HESCOM, GESCOM and KPTCL) for wheeling of wind power from its captive wind power plants located in the state of Karnataka.

4. That the Petitioner in order to meet power requirement of its cement manufacturing facility at Kodla, also intends to avail short term open access through IEX, for which “no objection” or “prior standing clearance” is required from Karnataka SLDC.

5. That Karnataka SLDC vide its E-mail dated 27.10.2020 denied issuance of “no objection” or “prior standing clearance” to the Petitioner to purchase power from IEX, citing that the aggregate of quantum under WBA i.e. 20 MW and quantum applied for NOC i.e. 6 MW exceeded its then effective CD of 30 MVA (i.e. 27, MW).

6. That aggrieved by above act of SLDC, the Petitioner filed a Petition (OP 52/2020) before the Hon'ble KERC under Regulation 20(2) of KERC (Terms and Conditions for Open Access) Regulations, 2004 with a prayer to direct SLDC to issue no objection / standing clearance to the Petitioner by issuing necessary practice directions.

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7. That the SLDC in its written reply and during hearing in the matter on 6<sup>th</sup> July 2021, made reference to KERC letter KERC/DD-trans /OA /Misc-1/2020-21/253 dated 30.06.2021 in which it was stated that at the time of scheduling the power to open access consumers having multiple supply contract, SLDC shall ensure that the procurement from all such sources including the power procured from the distribution licensee of the area is limited to the extent of contract demand with the distribution licensee.

8. That the Hon'ble Commission while hearing the matter on 06<sup>th</sup> July 2021 directed the Petitioner to submit an undertaking by way of an affidavit that total drawl schedule in any of the 15 minutes time block, at its Cement plant near Kodla, will not exceed its Contract Demand with GESCOM i.e. 28 MVA.

9. That in compliance with above directions of the Hon'ble Commission, undertake and state that the total schedule from multiple sources by the Petitioner's cement facility in any of the 15 minutes time block, shall not exceed 28 MVA i.e. it's contract demand with GESCOM."

ix. In the circumstances and also as per the affidavit stated Supra, the Petitioner shall ensure that the total schedule from multiple sources by the Petitioner in any of the 15-minute time block does not exceed the contract demand of 28-MVA with GESCOM.

x. Further, at the end of each month, when the actual data is available, the concerned ESCOM shall ensure that the consumer has not drawn power exceeding CD from all sources in any 15-minute time block and take

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appropriate action, in terms of Clause 42.03 of Conditions of Supply of Electricity of the Distribution Licensees in the State of Karnataka.

- xi. In view of the above discussion, the Commission directs SLDC to issue 'No Objection Certificate' to the Petitioner to procure power from the power exchange.

25. **Issue No.2:** What Order?

For the foregoing reasons, we pass the following:

**ORDER**

- a) The Commission directs the Respondent SLDC to issue 'No Objection Certificate' to the Petitioner to procure power from Power Exchange, in terms of the Petitioner's undertaking by way of affidavit dated 07.07.2021, that the total schedule from multiple sources by the Petitioner in any of the 15-minute time block shall not exceed the contract demand of 28-MVA with GESCOM.
- b) The concerned ESCOM, at the end of each month, when the actual data is available, shall ensure that the Petitioner has not drawn power exceeding CD from all sources in any 15-minute block and take appropriate action, in terms of Clause 42.03 of Conditions of Supply of Electricity of the Distribution Licensees in the State of Karnataka.
- c) The petition is accordingly disposed of.

sd/-

(SHAMBHU DAYAL MEENA)  
Chairman

sd/-

(H.M.MANJUNATHA)  
Member

sd/-

(M.D.RAVI)  
Member

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