



Chhattisgarh State Electricity Regulatory Commission
Civil Lines, G.E. Road, Raipur – 492001
Tel: 0771-4073555, Fax-4073553

Petition No.27 of 2006(D)

In the matter of provision of open access to captive generating plant.

Arasmeta Captive Power Company Pvt.Ltd Petitioner
2A Sony Apartments, Rebello Road
Bandra West, Mumbai.

V/s

Chhattisgarh State Electricity Board Respondent
Raipur.

Present: S.K. Misra, Chairman
Sarat Chandra, Member

ORDER
(Passed on 25/11/2006)

Arasmeta Captive Power Company Pvt. Ltd (CPC, for short) has submitted this petition for provision of open access to its captive generating plant, under section 9(2) of the Electricity Act, 2003 (the Act), by the Chhattisgarh State Electricity Board (CSEB), the first respondent in this case. The brief facts of the case are that CPC is a special purpose vehicle through which a captive power plant has been set up, a fact which is not contested, for meeting the power requirements of two cement plants of Lafarge India Pvt. Ltd., located at Arasmeta, district Janjgir-Champa (Arasmeta Cement Plant or ACP) and at Sonadih, Balodabazar, district Raipur (Sonadih Cement Plant or SCP). The petitioner company has commissioned the 43 MW coal-based power plant at Arasmeta, which was synchronized with CSEB's grid on 01/05/06 and is presently in operation. Of the two cement plants the electricity requirements of which this generating plant is to cater, ACP is being provided electricity through a dedicated transmission line. However, the other cement plant (i.e. SCP), which is located at a distance from the CPC can be supplied power only through the wires of respondent CSEB i.e. State grid. The petitioner, therefore, applied for open access in terms of section 9(2) of the Act and the provisions of the Chhattisgarh Electricity Regulatory Commission (Intra-State Open Access in Chhattisgarh) Regulations, 2005 (the Open Access Regulations, for short). The CSEB, which is an integrated entity operating under the transitional provisions of section 172 of the Act as the State transmission utility, granted permission for wheeling of 16MW power to SCP on 11/11/05. The petitioner submitted an application for short-term open access to State Load Despatch Centre (SLDC), the nodal agency for

short-term open access, under the control of CSEB, on 10/05/06. Approval of short-term open access was granted on 25/05/06 and an agreement was entered into between the petitioner and SLDC on 02/06/06. On 15/06/06 the SLDC withdrew the approval for open access on the ground that the petitioner does not have independent connectivity to the EHV sub-station as stipulated in the procedure and guidelines for short-term open access issued by the SLDC. It is against this order that this petition has been filed.

2. The main contentions of the petitioner are that CSEB, having approved the grant of short-term open access and having entered into the necessary agreement with the petitioner, should not have withdrawn permission on a purely technical ground. The petitioner has further contended that the procedure and guidelines issued by SLDC for short-term open access, particularly Clause 2, on the basis on which permission for open access has been withdrawn, is illegal and is in contravention of the provisions of the Act and the Open Access Regulations in as much as it lays down additional criteria for grant of open access other than those laid down in the Regulations of the Commission. The petitioner has pleaded that the procedure and guidelines being illegal should be declared null and void and the order issued on 15/06/06 by the SLDC, in pursuance of the above guidelines, should also be declared void and the petitioner allowed open access to carry power from its captive generating plant to SCP. The respondent CSEB has, in reply, submitted that the petitioner claimed to be an existing open access user in terms of Clause 6 of the Open Access Regulations while it had not entered into any wheeling agreement with the CSEB before the Open Access Regulations were issued by the Commission in July, 2005. Although the Board had given necessary permission for wheeling and a draft wheeling agreement was also sent to the petitioner on 24/11/05, it never entered into any wheeling agreement. Therefore, as a new open access customer it has to meet the eligibility criteria for open access. The petitioner did not satisfy the criterion laid down in Clause 2 according to which only such licensees/ generating companies/ consumers who are connected independently with EHV sub-station shall be provided open access. The CPC is connected to the existing 132KV Bhatapara-Akaltara line by tapping arrangement and is not connected to any sub-station of CSEB. Therefore, in terms of Clause 2 of the guidelines it is not entitled to open access. CSEB has, therefore, justified withdrawal of permission for open access on this ground, even after entering into an agreement.

3. The only points for determination are (i) whether the petitioner is entitled to short-term open access; and (ii) whether the action of CSEB withdrawing open access after having entered into an agreement is legally sustainable.

4. It would be necessary in this case to go over the chronology of events leading to the cancellation of open access in order to put the whole case in perspective and for better appreciation of the issues involved in the case:

11/06/05 The petitioner makes an application to CSEB regarding the setting up of a 43 MW coal-based generating plant at Arasmeta

in Janjgir-Champa district indicating that the electricity generated would be utilized by ACP by their dedicated transmission line and SCP through CSEB's grid and requesting the latter for permission to synchronize the plant for parallel operation, with the CSEB grid.

- 30/07/05 The Open Access Regulations are notified.
- 20/08/05 The petitioner requests for approval for wheeling of 16MW power to SCP.
- 11/11/05 CSEB accords permission for running the captive generating plant in parallel with the CSEB grid on 132 KV.
- 11/11/05 On the same day CSEB accords permission for wheeling of 16MW power from CPC to SCP.
- 24/11/05 CSEB delivers draft of the wheeling agreement to the petitioner.
- 10/04/06 Procedure and guidelines for short-term open access are issued by the SLDC/ CSEB with the approval of the Commission.
- 02/05/06 CSEB's Bilaspur office informs head office at Raipur, with a copy to the petitioner, that their power plant has been synchronized with the CSEB grid on 01/05/06.
- 10/05/06 The petitioner submits application for short term open access to SLDC as per the Open Access Regulations notified on 30/7/05.
- 10/05/06 SLDC, in response to the application, seeks some clarification from the petitioner which is submitted the next day.
- 15/05/06 SLDC informs the petitioner that it being a new entity and not having connection to the grid sub-station as stipulated in Clause 2 of the guidelines, short-term open access can not be given.
- 25/05/06 Petitioner replies that he has already received permission for wheeling and is connected to the grid. As SCP is also an existing consumer having EHT connectivity with CSEB, he requests for grant of short-term open access.
- 25/05/06 The very same day SLDC grants short-term open access subject to the condition interalia, that since they have tapped connectivity, the load regulation measures as stipulated in Clause 2.2 of the guidelines shall apply and should be followed, and also indicating that the consent in the present tapped arrangement shall be valid only for one year.
- 02/06/06 SLDC and the petitioner enter into an agreement for short-term open access in which apart from others, two conditions are

incorporated i.e. (i) the load regulation measures shall apply as per Clause 2.2 of the guidelines since they had tapped connectivity (ii) the consent for open access shall be from the date of its disconnection of SCP.

The second condition is as per the request of the petitioner and the permission for open access granted on 25/05/06 as above was subject to this condition.

15/06/06 SLDC withdraws open access on the ground that the petitioner 'does not fulfill the criteria of existing entity' as defined in Clause 6 of Open Access Regulations issued by the Commission for grant of short-term open access.

It would be seen from the above sequence of events that the petitioner has not defaulted at any stage in obtaining necessary permission for synchronization of his power plant and parallel operation of the plant with CSEB grid. He has also complied with the necessary procedure for obtaining short-term open access and entered into an agreement with the SLDC. The only ground on which permission for open access granted in his favour has been withdrawn, soon after it was granted, is that he is not an existing user as claimed by him and he did not fulfill the criterion of EHT connectivity with grid sub-station. We find that the CSEB is right in not considering the petitioner as an existing open access customer as per Clause 6 of the Open access Regulations. This clause defines 'existing entities' as those who already had access to the transmission/distribution system in the State under an existing agreement/contract on the date of notification of the Open Access Regulation i.e. 30/07/05. Such entities are permitted continue to have such open access on the same terms and conditions as per the agreement they have entered into with the CSEB. As already mentioned, although the petitioner applied for wheeling of power to SCP and had also received a draft agreement from respondent CSEB, it did not enter into any agreement. However, the withdrawal of open access only on the ground of the petitioner not having independent EHV connectivity to EHV sub-station is totally unjustified. This condition (Clause 2 of the guidelines) has been stipulated with a view to ensure proper monitoring of energy injected/drawn by a generating plant and to ensure that the parallel operation of the power plant with the grid does not adversely affect CSEB's grid. Independent connectivity of the captive consumer is also insisted upon to ensure accurate accounting of energy received from captive plant by the SLDC. In this case the CPC had been provided a tapped connection in spite of the fact that monitoring of electricity supplied/received through such a connection is not possible. After having provided such a connection and grant permission to the captive generating plant to be synchronized with the grid, denial of open access is unjustified. At no stage of this case was this fact (lack of connectivity with EHV sub-station) was unknown to CSEB. In fact, initially open access was denied to the petitioner (vide SLDC's letter dated 15/05/06) on this ground alone and permission was granted subsequently taking into account tapped connectivity and stipulating that load regulation measures shall have to be observed by the petitioner. It also said that the tapped arrangement shall be valid for one year.

The agreement itself refers to tap connectivity [Clause(c) on page 2 of the agreement]. In view of this position withdrawal of open access on the same ground cannot be legally sustained.

5. As to the other condition, of disconnection of SCP from CSEB's grid, this is to be effected by the respondent CSEB, and not the petitioner. Therefore, taking recourse to this condition for denial of open access is again unjustified. Therefore, we are convinced that denial of open access in this case is against the canons of natural justice and is not legally sustainable. The order of SLDC withdrawing open access, is therefore, quashed and the open access agreement dated 02/06/06 is reinstated.

6. We would also like to mention about the manner in which the SLDC has tried every method in this case to ensure that the petitioner does not get open access. After the Commission's interim order of 13/07/2006 for restoration of open access, a submission was made to the Commission by the CSEB for clarification. The Commission clarified the position vide order dated 10/08/06 during the proceedings. It was again reiterated that open access be provided to the petitioner on completion of necessary formalities within a week. Since an agreement was already in place, the other necessary formalities could be completed within a week. We also directed that the CSEB should prepare the necessary estimates for connectivity of the petitioner with EHV sub-station and directed the petitioner to complete all formalities within a period of three months from the date such estimates are given to him. These directions were also not complied with and a letter was issued by SLDC on 26/10/06 to the petitioner asking for compliance with certain conditions, some of which were illogical, such as the petitioner had not executed/submitted an agreement for open access, and such as ABT meters not being available at consumer end. As already mentioned, the petitioner had already signed the open access agreement and the respondent CSEB admitted during proceedings that ABT meters had already been given to them by the petitioner for testing and installation. It is clear in this case that there is no coordination between the CSEB's head office and the SLDC in the important matter of grant of open access and the SLDC appeared keen to deploy all weapons in its armoury to ensure that open access is denied. The state of affair is most unsatisfactory; open access which is an important provision of the Act deserves greater attention of the Board.

7. The petitioner has made much of the procedure and guideline issued by the SLDC and has in fact pleaded that these be declared void as being illegal and against the provisions of the Act and the Open Access Regulations. It has to be noted that apart from the Regulations there has to be detailed procedure for monitoring of parallel operation, which are to be followed in the interest of stability of the grid system. The guidelines, in any case, have been issued with the approval of the Commission and to our mind there is no provision in these guidelines which is contrary to the Regulations or the provisions of the Act. The only defect of the guidelines is that the Rules and Regulations under which the various conditions have been stipulated have not been cited. We, however, hasten to add that the guidelines can not be used as a means of delaying or stopping open access. Remedial

measures with regard to the guidelines shall be taken by the Commission so as to ensure that instances as above are not repeated. It is noted that as per the Open Access Regulations guidelines are to be issued for the grant of long-term open access and not short-term. However, detailed procedure for the latter is also required.

8. In the light of the above discussion we order that:-

- (i) Open access be allowed to the petitioner under section 9(2) of the Act for a period of one year as per the agreement the petitioner has entered into with the CSEB (SLDC).
- (ii) Open access for carrying power for captive use under section 9(2) of the Act is of permanent nature. Therefore, although the present agreement is for a period of one year from the effective date 'i.e. the date of disconnection of ACP from the grid', the petitioner may apply for and enter into an agreement with the CSEB for long-term open access under the provisions of the Open Access Regulations.
- (iii) The respondent CSEB shall provide the estimates for the petitioner's connectivity with EHV sub-station as early as possible, if not already provided. The petitioner shall complete all the formalities in this regard within a period of three months from the date of receipt of the estimates. On completion of formalities by the petitioner the respondent CSEB shall expeditiously construct the independent EHV connectivity. Open access shall not be denied to the petitioner in the meantime only on the ground that he is not having independent EHV connectivity except in case the petitioner defaults in completion of formalities as above.
- (iv) Disconnection of supply to ACP which is to be undertaken by the respondent CSEB and is a conditionality in the open access agreement, shall be effected by the CSEB most urgently.

Sd/-
Member

Sd/-
Chairman

True Copy

(Ajay Srivastava)
Dy. Secretary