



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Lakdi-ka-pul, Hyderabad 500 004

O. P. No. 25 of 2020

Dated 18.02.2021

Present

Sri T.Sriranga Rao, Chairman
Sri M.D.Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s. Dr. Reddy's Laboratories Limited,
8-2-337, Road No.3, Banjara Hills,
Hyderabad – 500 034.

... Petitioner.

AND

1. State Load Despatch Centre, Vidyut Soudha,
Khairatabad, Hyderabad – 500 082.
2. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082.
3. Southern Power Distribution Company of Telangana Limited,
6-1-50, 5th Floor, Mint Compound, Secretariat Road,
Hyderabad – 500 063. ... Respondents.

This petition has come up for hearing on 29.10.2020, 19.11.2020, 11.12.2020 and 17.12.2020. Sri M.Sridhar, Advocate representing Sri Challa Gunaranjan, Advocate for the petitioner appeared through virtual hearing on 29.10.2020, Sri Challa Gunaranjan, Advocate for petitioner appeared through virtual hearing on 19.11.2020, 11.12.2020 and 17.12.2020. Sri Y.Rama Rao, Advocate for respondent Nos.1 and 2 appeared through virtual hearing on 29.10.2020, 19.11.2020, 11.12.2020 and 17.12.2020. Sri Mohammad Bande Ali, Law Attaché of TSSPDCL for respondent No.3 appeared through virtual hearing on the said dates. This petition having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

Dr. Reddy's Laboratory Limited (petitioner) has filed the petition under section 86 (1) (c) read with section 86 (1) (k) of the Electricity Act, 2003 (Act) and the Terms and Conditions of Open Access Regulation, 2005 (Regulation No.2 of 2005) (OA Regulation), seeking directions to the respondents to approve short term open access (STOA) and the fact of the case as submitted by the petitioner is as under:

- a) The petitioner is situated within the area of supply of the Southern Power Distribution Company of Telangana Limited (TSSPDCL/Distribution Licensee/ Respondent No.3) and is engaged in the business of manufacture of Active Pharmaceuticals Ingredients (API) which are used by Formulation (Freedom to Operate, FTO) projects and which requires continuous and uninterrupted power supply.
 - b) The petitioner is availing power supply under HT-I Industry category at 33 kV from the respondent No.3, with service connection H.T.S.C.No.MCL-713, having contract demand of 5.25 MVA.
 - c) In pursuance to the provisions under Section 42(2) of the Act, the then Commission has notified the Terms and Conditions of Open Access Regulation, 2005, being Regulation No.2 of 2005 (OA Regulation) which is adopted by the Commission vide Regulation No.1 of 2014, and as such said Regulation applies to the State of Telangana. Under, the said Regulation, open access users are categorized as long-term open access (LTOA) users where the requirement of open access is two (2) years or more and short term open access (STOA) users in other cases.
 - d) The petitioner has relied upon the various clauses of OA Regulation, viz.,
 - i) clause 5.2 which specified that the SLDC (Respondent No.1) is the nodal agency for the STOA and which receives and process the applications and grant No Objection Certificate (NOC) after consulting the concerned transmission or the distribution licensees whose networks would be used for such transactions i.e., respondents No.2 and 3;
 - ii) clause 6 that prescribes the criteria for allowing open access;
 - iii) clause 7.2 stipulates that the existing users of open access may continue to avail open access and shall pay the transmission, wheeling and any other charges as per the agreement;
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- iv) clause 8.1 inter alia, provides that the Nodal Agency shall permit open access to the transmission/distribution systems where the contracted capacity is greater than 1 MW;
 - v) clause 8.2 of the OA Regulation enjoins the licensees to make all reasonable attempts to ensure that operational constraints in the transmission/distribution systems, including metering, etc. are removed as per the phasing plan set out in the said OA Regulation so that no eligible consumer is denied open access on the grounds of operational constraints;
 - vi) clause 9.3.2 stipulates that in case STOA with transactions need to be accommodated through corridors which have insufficient spare capacity, the respondent No.1 is to invite bids with floor price equal to the uncongested price for the short term users;
 - vii) clause 11 prescribes the procedure for STOA and clause 11.1 stipulates that SLDC shall make available the format of application of open access requiring the details as set out in Annexure-I to the OA Regulation to the general public in physical form at its office and electronic printable form at its website.
 - viii) clause 13.1 specifies the nature of metering facilities required for availing open access. The petitioner's unit has ABT compliant metering facilities which enable metering, recording and accounting of energy for all open access transactions complying with clause 13.1 of the OA Regulation and there are no operational constraints, including metering facilities, for allowing open access to the petitioner.
- e) As the respondent No.3 had been imposing power cuts and in order to match the shortfall, the petitioner company has been purchasing the power through other sources.
 - f) In terms of the OA Regulation, any person intending to avail STOA has to make an application to the respondent No.1 for grant of NOC. The applicant has been defined to include any person engaged in generation, a licensee or a consumer eligible for open access. The petitioner herein being a consumer qualifies as an applicant under the OA Regulation.
 - g) The petitioner had applied for STOA from 01.08.2020 to 31.08.2020 through the trader viz., Tata Power Trading Company Limited (TPTCL) vide Application
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Nos.202006274090 and 202006262531 dated 27.06.2020 and 26.06.2020 respectively as per provisions of the OA Regulation.

- h) The respondent No.1 has to take a decision on the application of the petitioner within seven (7) days, as per clause 11.3 of OA Regulation. However, the respondent No.1 has kept the applications pending for over a month without any intimation whatsoever and no NOC is being issued. It is clear that the reason for not acting on the applications is not because of the congestion of corridor or insufficient capacity as no bids have ever been invited as per clause 9.3.2. The petitioner is unaware as to why its applications for short-term open access are not acted on by the respondent No.1 without any rhyme or reason. This unilateral action of respondent No.2 in not acting on the applications repeatedly is totally arbitrary, contrary to the object of open access as provided under the OA Regulation and provisions of the Act. The very object of open access defeated, nodal agency no adversarial view.
- i) The petitioner has an indefeasible right to source energy from any other source through open access under the provisions of Act and the OA Regulation and to avail open access power for its requirements.
- j) Because of the illegal action of the respondents, the petitioner is suffering both financially and operationally and therefore it is just and necessary that the Commission may be pleased to direct the respondent No.1 to consider the application of petitioner for No Objection Certificate/Standing Clearance to avail and purchase STOA energy from TPTCL for the period from 01.08.2020 to 31.08.2020 and for further periods, otherwise the petitioner put into irreparable loss and hardship.
- k) The petitioner has sought the following relief in the petition.
“In light of the aforementioned facts and circumstances, it is, therefore, prayed this Commission to direct the respondent No.1 to forthwith approve the STOA application Nos.202006274090 and 202006262531 dated 27.06.2020 and 26.06.2020 respectively submitted by the petitioner, and STOA applications for further periods.”

2. The respondent Nos.1 and 2 have filed their counter affidavit wherein it is submitted that -

- a) The subject issue is governed under the Central Electricity Regulatory Commission (Short Term Open Access interstate transmission) Regulation 2008 (CERC Regulation) and OA Regulation.
 - b) As per the section 31 of the Act, the State Load Despatch Centre (SLDC) shall be the apex body to ensure integrated operation of the power system in a State. The SLDC shall be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State, monitor grid operations, keep accounts of the quantity of electricity transmitted through the State grid, exercise supervision and control over the intra-state transmission system, be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid.
 - c) The petitioner falls under the jurisdiction of TSSPDCL and is having HTSCNo.MCL-713 with CMD of 5.25 MVA connected at 33 kV feeder voltage has submitted an interstate STOA application under collective transaction to purchase 3.85 MW power in power exchange for the months of Jul'20, Aug'20, Sep'20 through on line in web portal.
 - d) There are no operational constraints in the transmission system, but the technical clearance shall be obtained from the DISCOM that is TSSPDCL/ Respondent No.3 as stated above.
 - e) clause 5.2 of OA Regulation, for STOA transactions, the nodal agency for receiving and processing applications shall be the SLDC. The SLDC shall, however, allow STOA transactions only after consulting the concerned transmission and/or distribution licensee(s) whose network(s) would be used for such transactions.
 - f) clause 8.2 of OA Regulation says that the licensees shall make all reasonable attempts to ensure that operational constraints in the transmission and/or distribution systems as the case may be, including metering, communication systems, capacity determination, etc., are removed as per the phasing plan indicated above so that, as far as possible, no eligible consumer is denied open access on the grounds of operational constraints in the system.
 - g) The clause 9.3.2 of OA Regulation states that in case of applicants for STOA with transactions required to be accommodated through congested corridors of
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the network, the nodal agency shall invite bids by fax/email with floor price equal to the un-congested price for the short-term users. The bidders shall quote percentage points above the floor price. The respondents stated that as there is no corridor congestion in the transmission network for issuing Inter-state STOA approval.

- h) A procedure was developed by SLDC and notified in TSTRANSCO web portal. As per the procedure, consumer intending to avail open access has to make an application along with the relevant documents to the SLDC to obtain no objection certificate or standing clearance certificate to avail power through open access.
 - i) It is stated that the SLDC shall verify the following before issuing no objection certificate or standing clearance.
 - i) The availability of surplus transmission capacity in the State network. For the said purpose the SLDC shall communicate with the DISCOM about the availability of the distribution /transmission network and based on the clearance given by the DISCOM no objection certificate or standing clearance shall be communicated in writing to the applicant.
 - ii) As per the above clauses TSSPDCL has to furnish clearance for the processing of the applications which were submitted by the petitioner.
 - iii) TSSPDCL has rejected the STOA application No.202006274090, dated 27.06.2020 on 20.09.2020 which was submitted by the petitioner for the month of Aug'20. As clearance was not received from TSSPDCL, NOC's for above applications were not issued.
 - j) The petitioner has filed applications for the months of Jul'20, Aug'20, Sep'20 and the same were rejected by the TSSPDCL.
 - k) The petitioner filed a petition in Hon'ble High Court that is W.P.No.3713 of 2019 for issuing of NOC for purchasing power through exchange and the same is pending before the Hon'ble High Court. It is further stated that the petitioner is clearly misrepresenting the facts by giving false information that they had not filed any other application/petition before any other Court, Tribunal or Commission in relation to the directions sought herein which evidently shows the mala fide intent of the petitioner herein to get consideration before the Commission. It is pertinent to mention that the petition itself is to be dismissed in limine as the doctrine of res-subjudice applies to the present petition.
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- l) In the light of aforesaid facts and circumstances, it is prayed the Commission to dismiss the petition by keeping in view of pending petition filed by the petitioner at Hon'ble High Court vide W.P.No.3713 of 2019 for issuing NOC for purchasing power through power exchange and rejection of applications by TSSPDCL for the months of Jul'20, Aug'20 and Sep'20.
3. The respondent No.3 has filed its counter affidavit as under.
- a) The petitioner is a 33 kV HT consumer under HT-I category having a CMD of 5.25 MVA with TSSPDCL.
- b) In this case nodal agency is NLDC and the clauses 8.2, 9.3 and 13.1 of OA Regulation is not applicable to the present case as the proposed transaction is for collective inter-state STOA. In the present case, clause 10 of the CERC Regulations is applicable and the same states that "*where in the opinion of the nodal agency, grant of all applications at a particular stage of advance scheduling is likely to cause congestion in one or more of the transmission corridors to be used, it shall conduct electronic bidding for grant of open access for the available surplus transmission capacity among the applicants at that stage, in accordance with the detailed procedure.*"
- c) That this respondent has not been imposing any power cuts to the petitioner company but on the other hand the respondent has facilitated with reliable and quality power supply for 24 hours continuously. Therefore, the contention of the petitioner that they are purchasing the power through other sources due to power cuts is untenable.
- d) It is stated that after formation of State of Telangana, there was drastic development in the power supply scenario and all the HT consumers are provided with continuous and reliable power supply without any power cuts and even the petitioner has also merged the two of its services and has been availing supply for 5.25 MVA from TSSPDCL under an existing HT agreement without any interruptions.
- e) The petitioner has approached this office in 2018 and has filed applications to avail STOA i.e., interstate collective transactions facility i.e., the petitioner is intending to avail STOA power through power exchange via trader M/s TPTC for a short period upto one month and for such interstate transactions the
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applicable regulation shall be CERC Regulations and its subsequent amendments.

- f) TSSPDCL has initiated its process of verification of technical feasibility for study of system stability and reliability which was being carried out for all the open access transactions according to the applicable rules and regulations formulated by the Commission and CERC.
- g) The procedure for checking feasibility for allowance of open access to an applicant in accordance to the clause 3 of CERC interstate transmission Regulations is extracted below:
- "3. subject to any other regulations specified by the Commission, the long term customer shall have first priority for using the inter-State transmission system for the designated use. These regulations shall apply for utilization of surplus capacity available thereafter on the inter-State transmission system by virtue of-*
- (a) Inherent design margins;*
 - (b) Margins available due to variation in power flows; and*
 - (c) Margins available due to in-built spare transmission capacity created to cater to future load growth or generation addition:"*
- h) Open access consumer willing to avail power under inter-state STOA, feasibility has to be verified at various levels, viz., verification of interstate and intrastate transmission and distribution spare capacity, margins availability due to variation in power flows, verification of power line capacity, verification of substation feasibility, verification of metering provisions as per Central Electricity Authority (CEA) norms at the consumer end to avail open access power, verification of compatibility check of the installed ABT meters with the EBC Software. Hence, verification of feasibility is a time consuming and cumbersome process.
- i) The contention of petitioner that the producer or the trader of power as the case may be that has open access agreement with the DISCOMs is totally incorrect. Only some of the developers/producers of power have open access agreement with the DISCOMs and no trader has any sort of agreement with the DISCOMs. Even though there exist no direct open access agreement between the DISCOMs and the consumer, open access applications of any consumer will
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be processed based on distribution network feasibility and on receipt of relevant charges towards respective HT service to avail open access.

- j) The statement of the petitioner that the reason for not acting on the applications is not because of congestion of corridor or insufficient capacity as no bids have been invited as per clause 9.3.2 does not convey any meaning.
- k) TSSPDCL has allowed many of their manufacturing units located at various places to avail STOA power regularly. The following are the list of units of petitioner who have been availing open access power through various sources, other than source of DISCOM with the permission from TSSPDCL for availing open access power.

HT SC No.		Name of the OA applicant	CMD with TSSPDCL	OA availed power from RE sources	OA power availed from IEX
MCL	696	Dr Reddys Laboratories Ltd.	7.80		7.80
SGR	123	Dr Reddys Laboratories Ltd.	5.20	1.25	3.95
SGR	217	Dr Reddys Laboratories Ltd.	1.85		1.50
SGR	127	Dr Reddys Laboratories Ltd.	3.60	1.22	1.95
MCL	295	Dr Reddys Laboratories Ltd.	1.505		1.00
NLG	225	Dr Reddys Laboratories Ltd.	5.30	1.25	4.00
MCL	713	Dr Reddys Laboratories Ltd.	5.25	1.37	

It thus become very much clear that the open access applications of the petitioner are processed transparently based on the technical feasibility availability in the network.

- l) Since the petitioner intends to avail STOA power from IEX, clause 7.2 of OA Regulation referred is not applicable to the present case.
- m) The 6 units of the petitioner company are being allowed open access through various transactions as mentioned above. In fact, the petitioner himself is being allowed the following open access transactions which disprove the said allegation.

Name of the consumer	CMD	Generator source of open access supply	OA allocated capacity at the exit point	Period of the agreement
M/s Dr. Reddy's Laboratories Limited (MCL-713)	5250 kVA	M/s DRES 7.1 MW solar plant Solar Private	0.67 MW	26.04.2019 to 25.04.2021
		M/s Pragathi Group	0.70 MW	19.02.2015 to 30.05.2021

- n) Most of the units of the petitioner are being allowed open access facility. Due to network constraint and non-feasibility persisting in the network the interstate STOA application of MCL-713 was rejected.
- o) In the light of the provision of the Act, the regulations and rules set forth by the Commission and CERC, TSSPDCL is processing many open access applications every month only to provide non-discriminatory open access to the consumers through the interstate and intrastate transmission or distribution network and it has to be noticed that the maximum quantum of open access power transactions are through interstate STOA only. Hence, the network capacity (interstate and intrastate transmission/distribution network) already reached the maximum quantum for interstate STOA transactions.
- p) Non-availability of distribution corridor is attributable to the instructions of the government, that is the State of Telangana being provided with 24 hrs power supply to all the services including agricultural services from Jan'18 (the MD during the month of Jan'18 has gone up to 6312 MW and the peak demand for the FY 2018-19 has gone up to 6961 MW in the month of Oct'18) onwards to abide by the policy of the State Government to provide 24 hours of reliable power supply to all the consumers including agricultural services, the TSDISCOMs had to make necessary arrangements for adequate power procurement from various sources and as a result of which the network became completely loaded.
- q) As per section 42 of the Act and the regulations and rules set forth by the Commission, TSSPDCL is processing many open access transactions every month with a view to provide non-discriminatory open access to the consumers through the same interstate and intrastate transmission or distribution network.

For instance, transactions detailed below are being accorded permissions for open access regularly through the network.

Open Access	For the month of Oct'20	
Details	No.	Qty (MW)
Inter State		
Long term/medium term OA		
STOA generators supplying power to captive consumers	2	44.000
STOA generators supplying power to exchanges	3	42.510
STOA consumers availing power from captive generators	2	6.500
STOA consumers availing power from third party generator (bilateral)	4	27.000
STOA consumers availing power from exchange	75	446.330
Intra State		
LTOA generators supplying power to captive consumers	15	65.826
LTOA generators supplying power to third party consumers	24	119.044
STOA consumers availing power from captive generators	3	43.500
STOA consumers availing power from third party generators	1	1.500
Total	124	709.700

- r) The network (interstate and intrastate transmission network) is already loaded for the quantum of interstate STOA transactions. All the above open access transactions are accorded approval for wheeling or utilizing the transmission/distribution network every month regularly for every year and on an average the TSSPDCL is according approval for a quantum of 700-800 MW in Open access only.
- s) As the number of open access transactions have been increased, capacity of power injection by various sources into the grid system has increased, which is leading to backing down of generators from whom the DISCOM is purchasing power to maintain grid discipline or otherwise the grid shall be disturbed and causes damage to the transmission/distribution infrastructure. If the generators will back down at the request of the DISCOMs, the DISCOMs are liable to pay penalties in case of short-term procurement.
- t) The petitioner choose to avail open access power based on the market conditions i.e., the petitioner avails power through open access when the price is cheaper and lower and when the price goes high the petitioner avails supply from TSSPDCL. This type of action of the petitioner causes huge impact on the TSSPDCL schedules and grid stability. Further allocated energy at the cheaper

rate is required to be transferred from the injection point to consumer service point through the network. The distribution network is highly loaded due to various open access transactions. Availing open access by the path with intervals for short period throughout a day shall further load the network resulting in congestion of the existing network. Hence, the STOA application of the petitioner's company was declared as not feasible on the above grounds and the petitioner is aware of the reason for rejection of the application.

- u) As there exists no technical feasibility for allowance of STOA the petitioner's request cannot be processed.
 - v) The petitioner's applications dated 26.06.2020 and 27.06.2020 were not processed for the months of Jul'20 and Aug'20 respectively as the petitioner cannot be allowed to avail STOA power from power exchange as it is not feasible under interstate STOA transaction. .
 - w) The petitioner is willing to avail STOA power from power exchange through inter-state transmission system, whereas TSSPDCL is obligated to provide supply and establish distribution network of 33 kV and 11 kV voltage lines within its jurisdiction in the State of Telangana. The duty of transmission and distribution licensee is to maintain grid security while rendering supply to all categories of consumers by considering rapid and continuous power/demand variations with the available capacity.
 - x) After verification of the feasibility for the STOA transaction of the petitioner, it was found that the request of petitioner cannot be processed due to non-availability of distribution network corridor. In this regard, it is stated that clause 8 of CERC Regulations, 2008 which relates to verification of feasibility check for processing OA application is reproduced below.

"b) While processing the application for concurrence or 'no objection' or prior standing clearance, as the case may be, the State Load Despatch 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."*
 - y) NOC / standing clearance for interstate STOA shall be issued only if there exists a sufficient spare capacity in the distribution network.
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z) It is, therefore, prayed the Commission to dismiss the petition with costs.

4. The petitioner has filed rejoinder to the counter affidavits filed by the respondents requesting the Commission to allow the reliefs sought for in the present petition stating as under:

a) Clause 3 of OA Regulation specifies that the said Regulation would also apply to transactions when the transmission and distribution systems of licensees are used in conjunction with the interstate transmission system. The said Clause is extracted herein:

“3. Extent of application

This regulation shall apply to open access to intra-state transmission and distribution systems of licensees in the state, including when such systems are used in conjunction with interstate transmission system(s).”

b) The distribution system of the respondent No.3 is used in the process of buying power for the power exchange and utilizing the same. Therefore, the transaction has to be viewed from both OA Regulation and the CERC Regulations. Under both these regulations, there is a specific timeframe prescribed for considering the STOA applications, which in the present case has been entirely violated. Besides, where the application is made to the SLDC, it is the SLDC which has to act upon the same and issue standing clearance/NOC or refuse such grant. The SLDC has never communicated either refusal or acceptance and strangely in its counter affidavit, the SLDC has maintained the stand that though there is no corridor congestion in the transmission network for issuing inter-state STOA and that it had no objection, the respondent No.3 had rejected the application dated 27.06.2020 (STOA for the month of Aug'20) on 20.09.2020. It is stated that the nodal agency ought not to be adversarial in its capacity as a facilitator of open access. The nodal agency also ought to be transparent as to the real time data as is being provided by the SLDC's across the country. The nodal agency when it asserts that there is no corridor congestion, the State utility cannot come up with a different stand to suit its requirements.

c) The contention of the respondent No.3 is general and vague assertion that they reached maximum quantum is neither here nor there, in as much as when the petitioner is permitted STOA, such demand would be met from a different

source instead of the same being supplied by the respondent No.3. Therefore, in effect, there would not be any difference or additional impact on the distribution network. The stand taken by the respondent No.3 in its counter affidavit indicating that the respondent No.3 would be burdened with loss of consumption on account of open access users opting to buy from other sources clearly goes to show that the respondent No.3 is denying the open access on extraneous reasons and not in the spirit of the open access regime. When the respondent No.3 has stated that it has granted STOA for 446.33 MW in the month of Oct'20, there is no justification to deny the petitioner's application for a quantity of 3.85 MW on the so-called non-existent network constraint. It is stated that the petitioner had applied for STOA for the months of Nov'20 and Dec'20 vide application Nos.202011058650 dated 05.11.2020 and 202011266434 dated 24.11.2020. While the application dated 05.11.2020 was neither accepted nor rejected, the application dated 24.11.2020 was rejected allegedly on account of un-availability of distribution corridor. It is pertinent to note that a NOC for STOA has been granted for various industries around the petitioner's premises in the very same MCL circle, including Agarwal Foundaries, Jai Raj Ispat, Aurobindo Pharma's Unit-7, Gland Pharma etc., and in the month of Nov'20 itself, for Mahalakshmi Profiles Private Limited.

- d) It is the duty of the licensee in terms of section 42 of the Act to provide non-discriminatory open access to any of the consumers subject to the operational constraints specified thereunder. The petitioner relied upon the various judgments of Hon'ble ATE, Hon'ble Meghalaya High Court and NTP as given below:

The Hon'ble ATE in its judgement dated 27.03.2019 in Appeal No.311 of 2018 and batch held as follows:

52. [...] Open access connotes freedom to procure power from any source. When we refer to transmission vis-a-vis open access it implies freedom of licensee to procure power from any source of his choice. Same open access in distribution means option to the consumer to get supply of power from any source of his choice. Open access connotes even the private players are entitled to use distribution lines or transmission lines in a non-discriminatory manner."

Further, the Hon'ble ATE in its judgement dated 07.08.2018 in Appeal No.77 of 2015 held as follows:

“8.3 (d) [...] As per the Electricity Act, trading activity has been recognised as a distinct and licensed activity which can be accomplished effectively only with the non-discriminatory open access provided to consumers intending to avail power from the other sources including trading licensee. [.. .]”

The Hon'ble Meghalaya High Court in 2015 (4) GLT 379 observed as follows:

“9. The concept of open access was introduced as an option to power starved consumers to take supply by using the transmission and distribution network available in the State. In order to compensate for usage of the network, the open access charges have been stipulated. [...]”

“10. The National Electricity Policy and National Tariff Policy also promote this concept of open access. The National Electricity Policy provides that open access in transmission will promote competition and in turn lead to availability of cheaper power. [.. .] Open access to distribution networks initially for bulk consumers, would increase the availability of cheaper and reliable power supply. It has also been envisaged that the amount of cross subsidy surcharge and additional surcharge to be levied from consumers who are permitted open access should not become so onerous that it eliminates competition.”

- e) It is further stated that the Commission while dealing with a similar matter in its order dated 07.10.2020 in O.P.No.19 of 2020 was pleased to direct the nodal agency and the distribution licensee to grant permission for LTOA to the petitioner therein.
- f) The respondents had taken objection that the petitioner had filed W.P.No.3713 of 2019 before the Hon'ble High Court for similar prayer of non-consideration of applications which has since been withdrawn. However, the period in question is different in both the cases. Therefore, it is incorrect to state that the petitioner had been pursuing the proceedings with any mala fide intent.
5. The Commission has heard the submissions of the counsel for the petitioner, counsel for the respondent Nos.1 and 2 and the representative of the respondent No.3. The Commission had the benefit of perusing the regulations and judgments.
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6. Briefly stated the rival submissions during the respective dates of hearing have been narrated below.

ROP dated 29.10.2020

The counsel for the petitioner stated that the issue in the petition is with regard to giving permission for STOA in accordance with the Regulation No.2 of 2005 as adopted by the Commission. Applications were made for earlier months and the prayer has been sought in this petition for subsequent months also. The counsel for the petitioner, on the specific question about the prayer, stated that the same is not merely limited to the earlier applications but also the subsequent applications.

The counsel for the respondents No.1 and 3 stated that the petitioner had already placed on record the prayer before the Hon'ble High Court, which the petitioner had filed and on cursory reading the prayer appears to be identical.

The representative of the TSSPDCL pointed out that the petitioner had already filed W.P.No.3713 of 2019 before the Hon'ble High Court for the self-same relief for an earlier period. The petitioner cannot maintain or invoke two fora in respect of the similar relief. Unless the petitioner chooses to withdraw either of the proceedings, this present petitioner cannot be considered and proceeded with. The counsel for the respondents and representative insisted that the petitioner should withdraw the writ petition then only pursue the present petition. They also sought time for filing counter affidavit in the matter.

The counsel for the petitioner stated that the petitioner had already filed a letter with the Hon'ble High Court seeking to withdraw the writ petition filed earlier. He also stated that the said writ petition had become infructuous.

ROP dated 11.12.2020

The counsel for the petitioner stated that the petitioner has made applications for the months of Nov'20 and Dec'20 also and the SLDC replied to the petitioner rejecting the request for the month of Dec'20.

From the counter affidavit, it is seen that the DISCOM is not inclined to allow STOA owing to the reason that 24 hours supply to agriculture is being extended and also the capacity on the line is exhausted. The said action is contrary to their own stand earlier as in the year 2015, they had allowed STOA to the petitioner and now reverting to state that other technical difficulties are prohibiting them from allowing STOA is not correct.

The counsel for the petitioner stated that section 42 of the Act clearly emphasizes on allowing open access. In continuation of the said provision only, the State Commission had made regulation in Regulation No.2 of 2005 as adopted by it and the CERC notified similar Regulations in the year 2008. The counsel for the petitioner sought to rely on the provisions of the said Regulations. It is his case that the licensees are denying STOA on irrelevant grounds contrary to the Act and the regulations mentioned earlier. In the rejection made for Dec'20 nothing is stated except stating that DISCOM conveying 'not feasible' and SLDC saying that 'rejected'.

The counsel for the petitioner also relied on the decision rendered by this Commission in O.P.No.19 of 2020, wherein the Commission emphatically held that open access has to be provided and the licensees cannot deviate from the provisions of the Act and regulations thereof.

The counsel for the respondent Nos.1 and 2, while reiterating the submissions in the counter affidavit, stated that there is no congestion in 132 kV line but there might be congestion at 33/11 kV line, which report has been placed by the DISCOM before the 1st respondent, based on which the 1st respondent refused to accord permission for STOA. The central regulation is not required to be considered as in any case there is a State specific regulation on the aspect of open access. He sought to rely on sections 42 and 86 of the Act with regard to the powers and functions of the Commission. The present refusal of STOA is based on the technical inputs of the DISCOM. The contention that the SLDC rejected the application without reasons is not acceptable and as it is based on the inputs given by the DISCOM only. In fact, the Commission has limited role in the matter as the petitioner has alternative remedy under sub-section 5 of section 42 of the Act.

ROP dated 17.12.2020

The DISCOM's action is contrary to their own stand earlier as in the year 2015, they had allowed STOA to the petitioner and now reverting to state that other technical difficulties are prohibiting them from allowing STOA, which is not correct. It is strange that the petitioner is denied STOA facility while the other consumers on the same line with higher capacities are being allowed open access.

The counsel for petitioner explained the provisions in sections 42 and 86 of the Act and also elaborated on the functions of the Commission therein. It is his case that the Commission is required to ensure compliance of open access facility in each and every case, however, the Commission in its wisdom without burdening itself had delegated its task to the SLDC by specifying the timelines. Therefore, non-compliance of the regulation requires interference by the Commission itself.

The counsel for the petitioner relied on the provisions of the Act, wherein the Commission is required to ensure that open access has to be provided and the licensees cannot deviate from the provisions of the Act and regulations thereof. The petitioner would be availing STOA within the capacity availed from the DISCOM and in any case, the DISCOM would have to supply the demand by themselves or from any other source to the petitioner. Since, the petitioner is seeking to avail the demand that is within the demand agreed between the licensee and the petitioner, there cannot be an issue of operational constraints like congestion in the line. For this reason, the DISCOM cannot aver or deny the facility of STOA to the petitioner.

The counsel for the respondent Nos.1 and 2, while reiterating the submissions on the earlier occasion relied on the provisions of section 86 (1) (a) and (b) of the Act to support their case that the respondents No.1 and 2 have complied with the provisions of the Act and the regulations thereof. He also explained the provision of the regulation of the Commission and that of the CERC insofar as their understanding is concerned. It is his case that the regulations require SLDC to consult the transmission and distribution licensee, but at the same time discretion is given to them to consider the cases without any consultation. Even otherwise, the transmission and distribution licensees being system operators have to be consulted while deciding the application on open access. The representative for the respondent No.3 stated that the regulations provide for open access, however, such facility is dependent on several factors. While reiterating the contents of the counter affidavit, he sought to highlight the various technical details shown in the counter affidavit as regards the petitioner and also allowing open access to various consumers. The representative explained the difficulties faced by the licensee in extending open access and also rebutted the submissions made in the rejoinder. Though the Act and

Regulation emphasize on providing open access, it requires the suitability and availability of the capacity to extend such facility. He opposed the contention of the petitioner that earlier open access was provided to the petitioner and now the same is being denied for extraneous reasons as the licensee has made all efforts to provide the same but it is unable to do so due to system constraint only.”

7. The issue for consideration is with regard to allowing STOA to the petitioner in terms of the OA Regulation. Further, the reference to other proceedings before the Hon'ble High Court is also irrelevant to a substantial extent as the issue with regard to grant or otherwise of STOA is unrelated to the present proceedings. However, the petitioner has withdrawn the proceedings pending before the Hon'ble High Court, as such the Commission is at liberty to proceed with the present petition. In order to advert to the issue in the matter, it may be appropriate to notice the provisions of the CERC Open Access in inter-State Transmission Regulations, 2008 and OA Regulation, which has been relied upon by the respondents.

8. The petitioner has alleged that as the respondent No.3 had been imposing power cuts and in order to match the shortfall, the petitioner company has been purchasing the power through other sources. The respondent no.3 in their counter rebutted the contention of the petitioner that they are purchasing the power through other sources due to power cuts which is untenable as they are not been imposing any power cuts to the petitioner company or for that matter to any consumer in the State but on the other hand the respondent has facilitated with reliable and quality power supply for 24 hours continuously. Further, stated that after formation of State of Telangana, there was drastic development in the power supply scenario and all the consumers are provided with continuous and reliable power supply without any power cuts, even the petitioner has been availing supply for 5.25 MVA from TSSPDCL under an existing HT agreement without any interruptions. The Commission observes that the petitioner's allegation of imposing power cuts by the respondent No.3 is not proper and is vague as is not substantiated with any record of proper log sheet of interruptions in power supply, etc., and hence is untenable.

9. The respondents contention that the present case dealing with the conveyance of power on STOA through power exchange is termed as collective transaction and is

to be regulated by the provisions of CERC Open Access Regulations notified in 2008 and the relevant extracts are as under.

“Short Title, Commencement and Application

1. (1) *These regulations may be called the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008.*

(2) *These regulations shall apply to the applications made for grant of short term open access for energy transfer schedules commencing on or after 1.4.2008 for use of the transmission lines or associated facilities with such lines on the inter- State transmission system.*

2.....

(c) *“collective transaction” means a set of transactions discovered in power exchange through anonymous, simultaneous competitive bidding by buyers and sellers;*

8. Concurrence of State Load Despatch Centre for bilateral and collective transactions

(1) *Wherever the proposed bilateral transaction has a State utility or an Intra-State entity as a buyer or a seller, concurrence of the State Load Despatch Centre shall be obtained in advance and submitted along with the application to the nodal agency. The concurrence of the State Load Despatch Centre shall be in such form as may be provided in the detailed procedure.*

(2) *When a State utility or an Intra-State entity proposes to participate in trading through a power exchange, it shall obtain a “no objection” or a prior standing clearance from the State Load Despatch Centre in such form as may be prescribed in the detailed procedure, specifying the MW up to which the entity may submit a buy or sell bid in a power exchange.*

(3) (a) *For obtaining concurrence or ‘no objection’ or prior standing clearance an application shall be made before the State Load Despatch Centre who shall, acknowledge receipt of the application, either by e-mail or fax, or any other usually recognised mode of communication, within twenty four hours from the time of receipt of the application:*

Provided that where the application has been submitted in person, the acknowledgement shall be provided at the time of submission of the application.

(b) *While processing the application for concurrence or 'no objection' or prior standing clearance, as the case may be, the State Load Despatch 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 recognised mode of communication, within three*

(3) working days of receipt of the application:

.....

15. Curtailment in case of transmission constraints

(1) *The Regional Load Despatch Centre may curtail power flow on any transmission corridor by cancelling or re-scheduling any transaction, if in its opinion cancellation or curtailment of any such transaction is likely to relieve the transmission constraint on the corridor or to improve grid security:*

Provided that subject to provisions of the Grid Code, while cancellation or curtailment of any transaction, among short-term, medium-term and long-term transactions, short-term transactions shall be cancelled or curtailed first, followed by medium-term and thereafter long term–transactions:

Provided further that while cancelling or curtailing any short-term transaction, bilateral transactions shall be cancelled or curtailed first followed by collective transactions.

(2) *In case of inter-regional bilateral transactions, approved schedule may be revised or cancelled by the Regional Load Despatch Centre, if the Central Government allocates power from a central generating station in one region to a person in the other region and such allocation, in the opinion of the Regional Load Despatch Centre, cannot otherwise be implemented because of congestion in inter-regional link. The intimation about such revision or cancellation shall, as soon as possible, be conveyed to the affected short-term customers.*

(3) In case of curtailment of the approved schedule by the Regional Load Despatch Centre, transmission charges shall be payable prorata in accordance with the curtailed schedule:

Provided that operating charges shall not be revised in case of curtailment.

Payment of transmission charges and operating charges

18. In case of the bilateral transaction, the applicant shall deposit with the nodal agency transmission charges and operating charges within three (3) working days of grant of application and in case of collective transactions, the power exchange shall deposit with the nodal agency these charges by the next working day falling after the day on which its application was processed:

Provided that in case of the collective transactions, the transmission charges for use of State network and operating charges for State Load Despatch Centre shall be settled directly by the power exchange with respective State Load Despatch Centre.

Redressal Mechanism

26. All disputes arising under these regulations shall be decided by the Commission based on an application made by the person aggrieved.”

10. The petitioner is an embedded consumer of the respondent No.3. Any transaction whether collective or intra-State would not change the position of the petitioner as an embedded consumer of the respondent No.3. With regard to the jurisdiction of the Commission over the inter-state STOA for collective transactions through power exchange is concerned. We are clear that STOA for collective transactions through power exchange are granted by NLDC and which in turn fall within the ambit of CERC. Whereas the issue of grant of “standing clearance/NOC” by SLDC for use of intra-State transmission and/or distribution system for availing STOA for collective transactions through power exchange is well within the jurisdiction of the State Commission. In this regard, the Commission relied that the present petition is squarely covered by the Hon'ble ATE judgment dated 07.04.2016 in case of State Load Dispatch Centre Vs. Gujarat Electricity Regulatory Commission in Appeal No.70 of 2015, wherein it was held as under:

“9. After having gone through all the relevant aspects of the present Appeal as stated above, our observations are as under:-

- (i) On perusal of letter dated 30.04.2014 of the Appellant No.1 to the Respondent No.2, it has been noted that the Appellants have dealt with the issue in accordance with clause 16(1) of the Intra-State Open Access Regulations, 2011 of the State Commission issued by the State Commission.*
- (ii) The Respondent No.2 is an embedded consumer of the Appellant No.2. Any transaction whether bilateral or collective or Intra-State would not change the position of the Respondent No.2 as an embedded consumer of the Appellant No.2. Even if we consider that one to one relation of the buyer and seller of power in respect of the power exchange transaction of Respondent No.2 is not known but the drawl point is known on the day one. Even uncertainty of the delivery point does not make it an Inter-State transmission case in light of the fact that drawal point is well known and the fact that the open access as sought by the Respondent No. 2 is for the use of transmission and distribution system of the State located in the command area of the Appellant No.2. If the dispute arises for users of Intra-State network in collective transaction, it would fall within the jurisdiction of the respective State Commission within whose jurisdiction the Intra-State network falls.*
- (iii) Having regard to the provisions of Section 32 and 33 of the Electricity Act, 2003 pertaining to the functions of the State Load Despatch Centre and compliance of its directions, this case falls within the ambit of Appellant No.1 and 2. We have further noted that as per the prevailing Regulations of the State Commission, any dispute arising due to non-issuance of NOC by the Appellants has to be brought before the State Commission which in this case is GERC and for the same reason, the GERC's jurisdiction is attracted.*
- (iv) We are of the considered view that the State Commission was right in dealing with the present case. The State Commission has the jurisdiction in the present case."*

11. As such, this Commission has exclusive jurisdiction to determine such dispute under Section 86 (1) (c) of the Act and under the provisions of OA Regulation. We have further noted that as per the provisions of the OA Regulation, any dispute

regarding the availability of transmission facility shall be adjudicated upon by the Commission and for the same reason this Commission's jurisdiction is attracted. We are of the considered view that this Commission was right in dealing with the present case.

12. The provisions of the OA Regulation, which has been relied upon by all the parties are reproduced hereunder:

“3. Extent of application

This regulation shall apply to open access to intra-state transmission and distribution systems of licensees in the state, including when such systems are used in conjunction with interstate transmission system(s).

4.

5. Nodal Agency

5.1

5.2 *For short-term open access transactions, the Nodal Agency for receiving and processing applications shall be the State Load Despatch 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.

6. Criteria for allowing open access to transmission and/or distribution systems

6.1

6.2 *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 variations in power flows and unutilized capacity, if any; and*

- (c) Margins available due to in-built spare capacity in transmission and/or distribution system(s) created to cater to future load growth.

8. Phasing of Open Access

- 8.1 Where open access to the Transmission and/or Distribution systems is sought by any user, the Nodal Agency shall permit such open access strictly in accordance with the following phases:

Phase	Eligibility Criteria	Communication date
1	Consumers availing of power from NCE developers irrespective of the quantum of contracted capacity	September, 2005
2	Contracted capacity being greater than 5 MW	September, 2005
3	Contracted capacity being greater than 2 MW	September, 2005
4	Contracted capacity greater than 1 MW	April, 2008

Provided that the Commission shall allow open access to consumers with contracted capacity of 1 MW or less in due course at such time and in such phases as it may consider feasible having due regard to operational constraints and other factors:

Provided further that the Commission may revise the above schedule for the subsequent phases of open access, as considered necessary, not being inconsistent with the provisions of the Act.

Provided also that the Commission may exempt any consumer or a class of consumers from this phasing scheme if it considers necessary or expedient in the public interest:

Provided also that only the consumers availing of supply from the existing users covered under clause 7.2 from a date prior to coming into force of this Regulation shall not be affected by the above phasing.

11. Procedure of application for Short-Term open access

11.1 *The SLDC shall make available the format of application similar to the one referred to the clause 10.1 above, to the general public in physical form at its office and in electronic printable form at its website.*

11.2 *The application for short-term open access to Transmission and/or Distribution system(s) shall be filed with, the SLDC with copies to concerned licensees. The application shall be accompanied by a non-refundable processing fee as prescribed by the Commission in the tariff orders, or otherwise, from time to time.*

Provided that till such time the processing fee is so prescribed by the Commission, it shall be Rs. 1,000.

11.3 *The SLDC shall process the applications for Short-Term open access within the following time limits:*

<i>Duration for which open access is required</i>	<i>Maximum processing time</i>
<i>Up to one day</i>	<i>12 hours</i>
<i>Up to one week</i>	<i>Two days</i>
<i>Up to one month</i>	<i>Seven days</i>
<i>Up to one year</i>	<i>Thirty days</i>

21. Dispute resolution

... .. any disputes regarding the availability of transmission facility shall be adjudicated upon by the Commission.”

13. In terms of provisions of the Act the statutory role of the SLDC is to operate the intra-State grid and allow STOA after satisfying that there will absolutely be no impact on the grid safety and security. Respondents are rightly mandated to carrying out their vital functions viz., the transmission network contingencies and other related aspect while granting open access. Further, the STOA gets the lowest priority and can be accorded only when there is a surplus capacity available after meeting the requirements of LTOA users and MTOA users and as such, the STOA has to be decided keeping in view the system contingency and needs of the State grid. In terms of provisions of OA Regulation, the respondents are supposed to process the open access application of the petitioner within seven (7) days.

14. Further, as submitted by the respondent No.3, before giving its consent or otherwise, is required to verify (i) inter-state and intra-state transmission and distribution spare capacity; (ii) margins available due to variation in power flows, power line capacity, substation feasibility; and (iii) metering provisions as per CEA norms at the consumer end to avail open access power, compatibility check of the installed ABT meters with EBC software.

15. Since the petitioner has been availing STOA in the past also, obviously, the facilities at sl.no. (i) and (iii) were existing. Regarding sl. no. (ii) the transmission licensee submitted that there is no congestion in the transmission system whereas respondent No.3 could not demonstrate any congestion in their network. In fact, the STOA sought by the petitioner was well within its contracted demand with the distribution licensee i.e., respondent No.3, and as such demand for STOA power sought by the petitioner could not have overloaded the distribution network.

16. The respondent No.3 strenuously contended in its submissions both written and oral that there is already system constraint existing insofar as serving the petitioner is concerned and this is happening due to policy of the Government to serve all the categories of consumers 24x7 with quality power supply. No submission or evidence rebutting this situation is noticed from the pleadings or submissions of the respondent No.3. It is also noticed from the submissions that the respondent No.3 placed on record the macro situation of allowing STOA and difficulties faced by it but did not elaborate insofar as the reasons attributed in the case of the petitioner.

17. It is observed that relevant facts on the system dynamics have not been analyzed or recorded by the respondent No.1 which was mandatory for denying the STOA permission to the petitioner and by just mentioning in the letter that the respondent No.3 as not accorded consent cannot be considered as justifiable reason for such denial. In the present case, the reasons stated for denying the STOA to the petitioner for the applied months was neither right nor in accordance with the prevailing Regulations. We agree that the open access should be provided subject to operational constraints but the specific reason for such denial ought to be given as per the OA Regulation.

18. This Commission had occasion to consider the issue of long-term open access in O.P.No.19 of 2020, wherein it had specific observation about the functioning of the TSTRANSCO as well as the TSDISCOM therein, who are the parties to this petition also. This Commission had relied on the decisions rendered by the Hon'ble High Court with regard to allowing open access and had observed thus -

“.....

28. *Though the judgement referred to by the petitioner directly does not fit into the facts and circumstances of the case, yet cue can be deciphered that the licensees, have to give effect to the provisions of the Act and the regulations made thereunder in so far as providing open access. The distribution licensee cannot now at this stage resile from the implementation of the above said provisions. The reasons assigned by the respondents for such resile is contrary to the established law.*

.....”

19. The statutory right under section 42 of the Electricity Act, 2003 of the embedded consumer of distribution licensee cannot be curtailed. Inasmuch as the OA Regulation it is very clear as to when and in what period the open access has to be allowed. The provisions of the OA Regulation is emphatic on communicating the feasibility or otherwise for providing STOA. In the present case, when the consumer has made application for specific period, the SLDC ought to have decided the matter within the timelines specified in the OA Regulation. Whereas, from the pleadings, it is noticed that the SLDC and distribution licensee have failed to adhere to the timelines as specified in the OA Regulation. This action of the respondents is very contrary to the provisions of OA Regulation itself and are directed that they devise procedure for coordination among themselves for processing the open access applications within the stipulated timelines in terms of OA Regulation.

20. Owing to the above reasons and observations, this petition should succeed and is accordingly required to be allowed. However, as the period for STOA purchase has already expired insofar as the specific prayer is concerned, the same is being disposed of as no further action is required. But, it does not mean that the respondents had acted properly in the matter, as they failed to comply with the provisions of the Act and Regulations thereof.

21. The present petition stands disposed of, directing the respondents to ensure compliance of the Act and Regulations thereof subject to the observations made above.

This order is corrected and signed on this the 18th day of February, 2021.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M.D.MANO HAR RAJU)
MEMBER

Sd/-
(T.SRIRANGA RAO)
CHAIRMAN

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