



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

O. P. No. 26 of 2021

Dated 06.12.2021

Present

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

Between:

M/s MSN Laboratories Private Limited,
MSN House, Plot No.C-24,
Sanath Nagar Industries Estates,
Sanath Nagar, Hyderabad – 500 018.

... Petitioner

AND

1. State Load Dispatch Centre,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082.
2. Transmission Corporation Company of Telangana Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082.
3. Sothern Power Distribution Company of Telangana Limited,
H.No.6-1-50, 5th Floor, Mint Compound,
Hyderabad – 500 063.

... Respondents.

The petition came up for hearing on 11.08.2021, 06.09.2021 and 27.09.2021. Sri Uma Shankar, Advocate for petitioner and Sri Mohammad Bande Ali, Law Attaché for respondents have appeared through video conference on 11.08.2021 and Sri S.Ravi, Senior Advocate representing Sri Uma Shankar, Advocate for petitioner, Sri Y.Rama Rao, Advocate for respondent Nos.1 and 2 and Sri Mohammad Bande Ali, Law Attaché for respondent No.3 have appeared through video conference 06.09.2021 and 27.09.2021. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

The petitioner has filed a petition under section 86 (1) (c) read with section 86 (1) (k) of the Electricity Act, 2003 (Act, 2003) and the Terms and Conditions of Open Access Regulation, 2005 being Regulation No. 2 of 2005 (O.A. Regulations), seeking to question the rejection of short term open access application and consequently to issue no objection certificate to the petitioner. The averments of the petition are as below.

- a. The petitioner stated that 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 stated that MSN Group is the fastest growing research-based pharmaceutical company based out of India. Founded in 2003 with a mission to make health care affordable, this Hyderabad-based venture has nine API and five finished dosage facilities established across Hyderabad and USA. The group has an integrated R&D centre for both API and formulation under one roof, dedicated to research and development of pharmaceuticals to make them more accessible.
- c. The petitioner stated that the Indian pharmaceutical industry is the world's third largest drug producer by volume and the country's market manufactures 60 percent of vaccines globally. This constitutes 40 to 70 percent of supply to satisfy the World Health Organization's (WHO) demand for Diphtheria, Tetanus and Pertussis (DPT) and Bacillus Calmette Guerin (BCG) vaccines and 90 percent of the global demand for the measles vaccine.
- d. The petitioner stated that according to a report on the Indian pharmaceutical industry, the source of APIs is a crucial part of the pharma industry's strategic plan to combat the COVID-19 pandemic. The majority of APIs for generic drug manufacturing across the globe are sourced from India, which also supplies approximately 30 percent of the generic APIs used in the US. However, Indian manufacturers rely heavily

on APIs from China for the production of their medicine formulations, procuring around 70 percent from China, the top global producer and exporter of APIs by volume.

- e. The petitioner stated that during these unprecedented times API manufacturing companies are responding to the rapid challenges arising from disruption in supply chains and the need to change business processes. If the current COVID-19 pandemic lasts for a medium/long span of time, it may impact the supply of active material and ingredients (mainly from China), as well as the import and export of other Key Ra. There is also the potential for negative impacts of both a medium and longer term nature on R&D and manufacturing activities, as well as delay on projects / programmes not related to the core supply chain/data management operations. While the full impact of the global pandemic is still unknown, API manufacturers need to respond, recover and thrive.
- f. The petitioner stated that it is committed to fight against COVID with the given background of the speed to develop the drugs that are found to be cure and prevention for COVID-19. Global Pharma giants has identified the few molecules that are showing promising results to fight against the pandemic.
- g. The petitioner stated that it manufactures several lifesaving drugs in the premises situated at MSN House, Plot No. C-24, Sanath Nagar Industries Estate, Sanath Nagar, Hyderabad. It also manufactures Favipiravir, which is used in the treatment of COVID-19.
- h. The petitioner stated that Favipiravir, sold under the brand names Avigan. Abigan and FabiFlu, is an antiviral medication used to treat influenza in Japan. It is also being studied to treat a number of other viral infections. Like the experimental antiviral drugs (T-1105 and T-1106), it is a pyrazinecarboxamide derivative. In February 2020, Favipiravir was being studied in China for experimental treatment of the emergent COVID-19. With the given Antiviral activity, Favipiravir has been approved in many countries like China, Japan, Russia, Italy and India as well to treat severe COVID-19 symptoms. Favipiravir is available in 200 mg tablet dosage form.

Details of the existing service connection of the petitioner company:

- i. The petitioner stated that it is availing power supply under HT-I (A) Industry category at 33 kV from the respondent No.3, with service connection H. T. S. C. No. SGR 832, having contract demand of 6.5 MVA.
- j. The petitioner stated that in pursuance to the provisions under section 42 (2) of the Act, 2003 the then Commission has notified O.A. Regulations, which is adopted by this Commission vide Regulation No.1 of 2014 and as such the 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.
- k. The petitioner stated that in terms of the O.A. Regulations, any person intending to avail STOA has to make an application to the respondent No.1 for grant of NOC. The applicant under the regulations 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 O.A. Regulations.
- l. The petitioner stated that in pursuance of the same, it submitted an online short term open access application for issuance of no objection certificate for purchase of 3 MW power through Power Exchange under collective transaction for the month of May 2021.
- m. The petitioner stated that as a condition precedent for procurement of power under the open access policy, it also obtained a no dues certificate from the respondent No. 3 dated 16.04.2021 in respect of electricity dues to the respondent No. 3. The respondents had earlier given an NOC dated 30.09.2014 under application No. TG_201409306585 / 2014 for the period November, 2014. The respondent No.1 vide letter dated 28.04.2021 had rejected the application for issuance of NOC on the ground of non-availability of distribution corridor.

- n. The petitioner stated that aggrieved by the rejection of the application, it is filing the present petition on the following grounds, amongst others, which would be raised at the time of hearing:

Grounds:

- A. It is stated that the petitioner has an indefeasible right to source energy from any other source through open access under the provisions of Act and the O.A. Regulations and to avail open access power for its requirements.
- B. It is stated that the contention of the respondent No.3 is general and vague assertion that no distribution corridor is available is false and baseless. 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.
- C. It is stated that the stand taken by the respondent No.3 that there is no distribution network available clearly goes to show how respondent No.3 is denying the open access on extraneous reasons and not in the spirit of the open access regime.
- D. It is stated that under the provisions of the Act, 2003 and O.A. Regulations framed, 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. It 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 it. 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 unavailability of distribution network. For this reason, the DISCOM cannot deny the facility of STOA to the Petitioner.
- E. It is stated that the action of the respondents is contrary to their own stand earlier as in the year 2014 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. Companies such as Dr. Reddy's Laboratories, Aurobindo Pharma, Gland Pharma, MRF are given NOC for procuring power under the open access policy whereas, it is denied the same benefit.

F. It is stated that it is the duty of the licensee in terms of section 42 of the Act, 2003 to provide non-discriminatory open access to any of the consumers subject to the operational constraints specified thereunder. The respondents cannot at their whims and fancies permit a few applications for open access and deny it's application.

G. It is stated that the Hon'ble High Court of Telangana through its judgement dated 01.04.2021 in W.P.No.19445 of 2021 has passed the following directions in respect of issuance of NOC under the open access policy

"(i) SLDC being a nodal agency is statutorily empowered to grant necessary permission for the use of the Open Access and any application for Open Access has to be routed through the SLDC.

(ii) As and when SLDC receives an application from any person / industry / agency for grant of Open Access, they shall have to get the necessary inputs from the distribution company in relation to the application for Open Access.

(iii) The Distribution Company as soon as he receives a request from the SLDC shall process and send the necessary inputs inconsonance with regulation 8 (4) of the Regulation, 2008. They shall have to necessarily follow the said Regulation in true letter and spirit and send the necessary inputs to SLDC in the shortest time frame, preferably within a period

of one week from the date of receiving the request from SLDC. The SLDC after getting the necessary inputs from the Distribution Company shall pass orders immediately thereon. In case, the SLDC does not receive the necessary inputs within the stipulated time, they shall pass orders under the deemed provision as contemplated under Regulation 8(4).

(iv) The official respondents i.e., SLDC and the Distribution Company shall place in the public domain the monthly/quarterly figures of the peak load without fail so that there is fair play and transparency in the whole process of granting Short Term Open Access and avoid criticism that the applications are rejected as per whims and fancies of the authorities.

(v) The Distribution Company shall take into consideration the peak load statistics for the preceding three months for grant of No Objection and provide the necessary inputs to SLDC besides taking into consideration the other contingencies that may arise. That, in case, SLDC does not receive the necessary inputs or No Objection from the distribution company, they are obligated to pass orders within the stipulated period as contemplated in Regulation 8(4).

(vi) The official respondents should take a pragmatic approach to the applications, more so, when the applications for Short Term Open Access are submitted for minuscule energy of less than 5 MW to be bought from the private sources or exchange".

H. It is stated that the respondents have ignored the directions of the Hon'ble High Court in as much as the application made by it is for issuance of NOC for 3 MW of energy. The Hon'ble High Court had

directed the respondents to take a pragmatic approach for applications below 5 MW.

- I. It is stated that the respondents have neither uploaded the peak load data statics on the website, nor have they mentioned the details of the same in the rejection order, but have arbitrarily stated that the distribution network is unavailable.
- J. It is stated that the rejection order does not refer to any communication being made by the SLDC to the DISCOM as directed by the Hon'ble High Court. The SLDC has arbitrarily, without any basis stated that there is no distribution network available.
- K. It is stated that the only reason for the rejection of the application of the petitioner appears to be the apprehension of loss of revenue for the respondents and the same is not a valid ground to reject the application of the petitioner.

2. The petitioner has sought the following relief in the petition.

“To declare the action of the respondents in rejecting the application of the petitioner for Short Term Open Access (STOA) bearing No.202104266284 dated 26.04.2021 as being arbitrary, illegal, violative of the provisions of the Act, 2003 and the Open Access Regulations and consequently direct the respondents to issue no objection certificate for Short Term Open Access to the petitioner.”

3. The respondent Nos.1 and 2 have filed counter affidavit and stated as below:

- a. It is stated that the subject issue is governed under The Central Electricity Regulatory Commission (Short Term Open Access inter State Transmission) Regulations 2008 and O.A. Regulations.
- b. It is stated that the submissions made by the petitioner that the company is engaged in the business of manufacture of Active Pharmaceuticals Ingredients (API), which are used by formulation (FTO) projects and the importance of the petitioner's company in manufacturing lifesaving drugs, especially drugs which are used for fighting the pandemic

situation, i.e., COVID-19 are not known to the respondents. The petitioner may be put to a strict proof of the same.

- c. It is stated that the petitioner has mentioned various applicable regulations of CERC and TSERC for granting of No-Objection Certificate with respect to open access.
- d. It is stated that the petitioner has submitted the online application on web portal to purchase of power through Power Exchange under collective transaction for a quantum of 3 MW for the month of May, 2021. The application submitted by the petitioner comes under inter short term open access and it has to be processed as per the existing CERC and O.A. Regulations.
- e. As per Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008

“Clause 8.3, While processing the application for concurrence or ‘no objection’ or prior standing clearance, as the case may be, the State Load Dispatch Centre shall verify

- 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.”*

As per O.A. Regulations

As per the clause 5.2 of the O.A. Regulations, for short-term open access transactions, the Nodal Agency for receiving and processing applications shall be the State Load Dispatch Centre (SLDC) i.e., respondent No.1 herein. 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. It is stated that the petitioner herein has H. T. S. C. No. SGR-832 connected at 33 kV feeder voltage of 132 kV Pashamylaram substation, which falls under the jurisdiction of TSSPDCL. As per the above regulations, technical clearance shall be obtained from the concerned DISCOM i.e., respondent No.3 herein. The respondent stated that as per the above, the application and necessary

documents which are submitted by the petitioner are transmitted to TSSPDCL for furnishing technical feasibility to process the application. After obtaining technical feasibility from TSSPDCL, No Objection Certificate will be issued by TSSLDC to purchase power through Power Exchange under collective transactions.

- f. It is stated that the TSSPDCL had rejected the open access application No.202104266284, dated 26.04.2021 which was submitted by the petitioner for the month of May, 2021 on 26.04.2021 due to non-availability of distribution corridor. Accordingly, TSSLDC has not considered the application due to non-availability of distribution corridor and the same information was shared within stipulated time period in line with Regulation to the petitioner vide letter dated 28.04.2021.
- g. It is stated that as per section 31 of the Act, 2003, the SLDC shall be the apex body to ensure integrated operation of the power system in a State, and 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. Accordingly, SLDC issues 'No-Objection Certificate' to the petitioner, 'only' after obtaining technical clearance from TSSPDCL and without obtaining the said technical clearance from DISCOM, TSSLDC cannot issue NOC, as per clause No.5.2 of O.A. Regulations.
- h. It is stated that the respondent No.3 may be the proper party to respond.
- i. It is stated that the petitioner contends on the ground of the discrimination about grant of open access to others is not tenable and the same is invented for the purpose of this petition only. On the contrary, every application for grant of open access shall be considered independently solely on the ground of technical feasibility as well as strength of the corridor including the availability of lines. These technical aspects are within the exclusive domain of the respondent No.3. It is further stated that the petitioner is only mentioning about the open access being granted to other companies without mentioning the aspect of technical feasibility or other incidental feasibilities, whether those aspects were considered or not by the answering respondents herein. Without mentioning the entire background of such approvals, the

petitioner just to invoke the ground of discrimination has mentioned the open access being granted to other companies. However, the petitioner is put to a strict proof of the information mentioned in this ground.

- j. It is stated that the respondents have not ignored the Hon'ble High Court order dated 01.04.2021 passed in W. P. No. 19445 of 2021 as alleged by the petitioner and the contention raised by the petitioner is absolutely incorrect and not tenable. It is to state that the petitioner has made a deliberate attempt to mislead this Commission by referring to other transactions where there is no relation as both are different and are connected at different substations.
- k. It is stated that the petitioner has made frivolous and baseless allegations stating that the answering respondent has neither uploaded the peak load data statics on the web site nor mentioned the details of the same in the rejection order. It is stated that the peak load data statics are being provided on the website of TSTRANSCO since the formation of Telangana State on daily basis and in the rejection order issued vide letter dated 28.04.2021 mentioned that the application is rejected due to non-availability of distribution corridor as remarks communicated by TSSPDCL.
- l. It is stated that as per the clause 5.2 of O.A. Regulations for short term open access transactions, the Nodal Agency for receiving and processing applications shall be the 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. The petitioner has submitted an application on 26.04.2021 through online in TSTRANSCO website for the month of May, 2021 to purchase power through Power Exchange under collective transaction. The application is rejected within the stipulated time by the TSSPDCL due to non-availability of distribution corridor. The TSSLDLDC has communicated a rejection letter dated 28.04.2021 within stipulated time in line with regulation to the petitioner stating that the application is not considered due to non-availability of distribution corridor.

- m. It is stated that these respondents have been scrupulously following the provisions of the Act, 2003, the rules and regulations issued from time to time and have been acting in accordance with law. Hence, there is no inaction on the part of the respondents. The respondents reserve their liberty to file an additional counter affidavit in case the necessity arises.
 - n. In the light of aforesaid facts and circumstances, it is prayed the Commission to dismiss the petition by keeping in view of rejection of application by TSSPDCL for the month of May, 2021.
4. The respondent No.3 has filed counter affidavit and stated as below.
- a. It is stated that that MSN Laboratories Private Limited (SGR 832) is a 33 kV HT consumer under HT-I category having a CMD of 6.5 MVA with TSSPDCL.
 - b. It is stated that after formation of Telangana state, 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 been availing supply for 6.5 MVA from TSSPDCL under an existing HT agreement without any interruptions.
 - c. It is stated that even though this respondent has been supplying continuous and uninterrupted power, the petitioner has approached this office to avail open access under short term interstate collective open access facility vide application dated 28.04.2021 through Power Exchange for a period up to one month.
 - d. It is stated that Central Electricity Regulatory Commission (Open Access in interstate Transmission) Regulations, 2008 and its subsequent amendments are applicable for all interstate transactions.
 - e. It is stated that this respondent has initiated its process of verification of technical feasibility according to the applicable rules and regulations formulated by the TSERC and CERC.
 - f. It is stated that the procedure for checking feasibility for allowance of open access to an applicant in accordance with the clause 3 (Scope) of Central Electricity Regulatory Commission (Open Access in interstate Transmission) Regulations, 2008 is extracted below:

"3. Subject to any other regulations specified by the Commission, the long-term customer shall have first priority for using the interstate 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;"*

- g. It is stated that in the case of new open access consumer willing to avail open access power under interstate 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 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.
- h. It is stated that open access applications of any consumer will be processed based on (distribution) network feasibility and on receipt of relevant charges towards respective HT service number to avail open access.
- i. It is stated that this respondent has allowed open access facility to many pharma company units located at various places in the jurisdiction of this respondent on short term/long term basis subject to availability of technical feasibility. The following are the list of pharma units who have been availing open access power through various sources, other than that of DISCOM with permission of this office.

Sl. No.	Name of the Company	No. of units of the company availing OA	OA Power availed from RE Sources (in MW)	OA Power availed from IEX (in MW)
1	Dr. Reddys Laboratories Ltd	7	8.764	15.7
2	M/s Aurobindo Pharma	9	0	40.9
3	M/s Mylon Laboratories Ltd.	3	2.5	8
4	M/s Gland Pharma	2	0	7.7
5	M/s Natco Pharma	2	0.9	5.8
6	M/s Neuland laboratories	2	0	2
7	M/s Piramal Pharma	1	0	4.2
8	M/s Aurore Pharmaceuticals Private Limited	1	0	2.25
9	M/s SGD Pharma India Limited	1	0	2
10	M/s Suven Pharmaceuticals Ltd.	1	0	2
11	M/s G.V.K Biosciences Private Limited	2	1.81	1
12	M/s SMS Lifesciences India Ltd.	1	0	1
13	M/s Clariant India Limited	1	1.14	0
Total		33 Nos.	15.114	92.55

It, thus, becomes very much clear that the open access applications of the pharma units are being processed transparently that is based on the availability of technical feasibility in the distribution network. Therefore, the contention of the petitioner that this respondent is denying open access to it on extraneous reasons and not in the spirit of the open access regime becomes false and incorrect.

- j. It is stated that in the light of the provision of the Act, 2003, the regulations and rules set forth by the CERC and TSERC, this respondent

has been 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 short term open access only. Hence, the network capacity (interstate and intrastate transmission/distribution network) already reached the maximum quantum for interstate short term open access transactions.

- k. It is stated that as per the instructions of the Government, the whole of Telangana State is being provided with 24 Hrs power supply to all the services including agricultural services from January, 2018. During the month of March, 2021 maximum demand has gone up to 8474 MW and the peak demand for the FY 2021-22 has gone up to 8235 MW in the month of April, 2021. To abide by the policy of the State Government to provide 24 hours of reliable power supply to all the consumers including agricultural services, this respondent and TSNPDCL had to make necessary arrangements for adequate power procurement from various sources and as a result of which the network became completely loaded.
- l. It is stated that as the number of open access transactions increases, the capacity of power injection by various sources into the grid system also get increased and the same leads to backing down of generators from whom this respondent has been purchasing power. In such case the grid discipline is bound to be disturbed and as a result of which this respondent is liable to pay penalties.
- m. It is stated that due to network constraints and persistence of non-feasibility in the network, a decision has been taken to allow open access to the existing long terms and short term open access applicants only. Therefore, the application of petitioner for short term interstate open access was rejected.
- n. It is stated that, the petitioner chooses to avail power through open access when the price is cheaper and lower and when the price goes high the petitioner avails supply from this respondent. This type of approach of the petitioner causes huge impact on the schedules of this respondent and grid stability. Further allocated energy at the cheaper

rate is required to be transferred from the injection point to the point of consumer service through the network of this respondent which is highly loaded due to various open access transactions. Availing open access through the network of this respondent with intervals for short period throughout a day increases the load on the network resulting congestion of the existing network. Hence, the open access application of the petitioner was declared as not feasible. The petitioner is very much aware of the reason of rejection of its application.

- o. It therefore, become very much clear that there exists no technical feasibility for allowance of open access under short term and hence the application of the petitioner could not be considered.
- p. It is stated that the petitioner is willing to avail open access power from Power Exchange through interstate transmission system, whereas this respondent is obligated to provide supply and establish distribution network of 33 kV and 11 kV voltage lines within its jurisdiction in Telangana state. 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.
- q. It is stated that after verification of the feasibility for the short term open access transaction of the petitioner, it was found that the request of petitioner cannot be processed due to non-availability of distribution network corridor.
- r. It is stated that clause (6) of Central Electricity Regulatory Commission (Open Access in interstate Transmission) (Amendment) Regulations, 2009 which relates to verification of feasibility check for processing OA application is reproduced below for kind perusal:
 - "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."*

- s. It is stated that in view of the above mentioned regulations, the NOC / standing clearance for interstate short term open access shall be issued only if there exists a sufficient spare capacity in the distribution network.

5. The Commission has heard the submission of the counsel and the representative appearing on behalf of the parties. It has also perused the regulation relied upon by the parties. The submission made on the respective dates of hearing have been reproduced below.

Record of proceedings dated 11.08.2021:

"... .. The counsel for petitioner stated that the matter is coming up for hearing today for first time and the counter affidavit of the respondents is to be filed. The representative of the respondents sought time for filing counter affidavit in the matter."

Record of proceedings dated 06.09.2021:

"... .. The senior counsel for petitioner stated that the matter is before the Commission in respect of the proceedings communicated in April, 2021 with regard to open access and the issue is covered by the orders of the Commission. The representative of the respondents stated that he is not ready with the matter and it may be adjourned by 10 days. Since the parties are ready with the submissions but for some time required by them as sought by the respondents,"

Record of proceedings dated 27.09.2021:

"... .. The senior advocate appearing on behalf of the counsel for petitioner stated that the matter is relating to refusal to grant short term open access. The licensee had refused the request of the petitioner on the ground that there is constraint in the corridor. It is contrary to the action of the licensees earlier. The petitioner has relied on the order of this Commission in O.P.No.25 of 2020 as also orders passed by the Hon'ble High Court and stated that the petitioner is entitled to the relief as prayed for. The counter affidavit filed on behalf of the respondent No.3 merely reiterates the reply given by them at the time of refusal of open access. The same is uncalled for. The licensee cannot distinguish and discriminate between several companies.

The representative of respondent No.3 stated that the judgment of the Hon'ble High Court as well as the order of the Commission are not relevant and not applicable to this case as the same were passed in the given set of circumstances. In this case, the petitioner has been informed clearly applying the technical principles as stated in its counter affidavit. The technical feasibility noticed in the case of the petitioner is that the licensee is constraint not to allow open access due to overloading of the corridor. The representative of the respondent No.3 reiterated the contents of the counter affidavit.

The counsel for respondent Nos.1 and 2 stated that apart from technicalities the matter has to examine in the context of section 42 of the Electricity Act, 2003 and the mandate set out to this Commission and the other authorities. The respondents have to function within the purview of the statute and the regulations thereof. The counsel for the respondents stated that the Commission had provided the mechanism under which open access is to be allowed and as such, the respondents have acted in accordance with the same. They have also offered the reasons for refusing the STOA. Accordingly, the matter may be rejected.

The counsel for petitioner stated that the statute requires non-discriminatory open access, which is not seen in this case.”

6. The issue for consideration is with regard to allowing STOA to the petitioner in terms of the O.A. Regulations. 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 O.A. Regulations, which has been relied upon by the respondents.

7. 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.

....

Definitions

....

2. (c) *“Collective transaction” means a set of transactions discovered in Power Exchange through anonymous, simultaneous competitive bidding by buyers and sellers;*

....

Concurrence of State Load Despatch Centre for bilateral and collective transactions

8. (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.*
8. (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.*
- 8.(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:*

... ..

Curtailment in case of transmission constraints

15.(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.

15.(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.*

15.(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.”*

8. 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 intrastate transmission and/or distribution system for availing STOA for collective transactions through Power Exchange is well within the jurisdiction of this Commission.

9. The Commission gainfully notices that the Hon’ble ATE in its judgment dated 07.04.2016 in case of State Load Dispatch Centre Vs. Gujarat Electricity Regulatory

Commission in Appeal No.70 of 2015, had held about the jurisdiction of the State Commission. This Commission had already considered the said order of the Hon'ble ATE in O.P.No.25 of 2020 filed by M/s Dr. Reddy's Laboratories Limited to appreciate the issue, the Commission reproduce the relevant portion of the said judgment 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.”

10. As such, this Commission has exclusive jurisdiction to determine such dispute under Section 86(1)(c) of the Act, 2003 along with the provisions of O.A. Regulations. The Commission further notices that as per the provisions of O.A. Regulations, 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. The Commission is of the considered view that it is right in dealing with the present case.

11. The provisions of the O.A. Regulations as notified and adopted by this Commission 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	<i>Consumers availing of power from NCE developers irrespective of the quantum of contracted capacity</i>	<i>September, 2005</i>
2	<i>Contracted capacity being greater than 5 MW</i>	<i>September, 2005</i>
3	<i>Contracted capacity being greater than 2 MW</i>	<i>September, 2005</i>
4	<i>Contracted capacity greater than 1 MW</i>	<i>April, 2008</i>

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.”

Further, the respondent No.3 also relied on clause 3 and 6 of the Central Regulation of 2008 and 2009 respectively, which have already been recorded elsewhere in this order.

12. In terms of the provisions of the Act, 2003, the statutory role of the SLDC is to operate the intrastate grid and allow STOA after satisfying that there will be absolutely no impact on the grid safety and security. The respondents are rightly mandated to carry out their functions relating to the transmission network contingencies and other related aspects 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 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 O.A. Regulations, the respondents are supposed to process the open access application of the petitioner within seven (7) days.

13. Further, as submitted by the respondent No. 3, before giving its consent or otherwise, is required to verify (i) interstate and intrastate 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.

14. From the rejection letter dated 28.04.2021 of the respondent No. 1, it is noticed that application of the Petitioner is rejected for 'non-availability of distribution corridor'. The STOA sought by the petitioner was well within its contracted demand with the distribution licensee that is respondent No.3 and as such demand for STOA power sought by the petitioner could not have been overloaded the distribution network as the subsisting capacity with reference to the maximum demand contracted by the petitioner being 6.5 MVA.

15. 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. Though the respondent No.3 placed on record, the permission accorded and quantum of power allowed through open access, both for renewable energy sources and Power Exchange also, it does not support its case as to what are the reasons assigned to refuse the case of the petitioner.

16. It is observed that relevant facts on the system dynamics have not been analysed 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 O.A. Regulations.

17. 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.”*

Further, the petitioner has relied on another judgment of the Hon'ble High Court in W.P.No.19445 of 2021, wherein the Hon'ble High Court specifically made the observations about the grant of open access and gave specific directions providing for

modalities in case of collective transactions. The said judgment clearly stipulates the steps required to be taken by the respondent No.1 in the grant or otherwise of the STOA. The contention of the respondent No.1 that the petitioner is misleading the Commission, is absolutely unfounded. The Hon'ble High Court gave specific directions as to the course of action to be adopted in complying with the regulation and allowing the open access. Merely because, the writ petitioner's location and the petitioner's location are different, it does not amount to misleading the Commission. Verse is the fact that on verification of the website of the Hon'ble High Court, it is noticed that the order passed by the Hon'ble High Court has attained finality as there is no appeal filed against the said order. Thus, the respondents are bound to follow the Act, 2003 and O.A. Regulations thereof.

18. The statutory right under section 42 of the Electricity Act, 2003 of the embedded consumer of distribution licensee cannot be curtailed.

19. 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 had 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, 2003 and the O.A. Regulations thereof. The disposal of this petition does not mean that the prayer of the petitioner is refused. The respondents have to comply with the Act, 2003 and the O.A. Regulations in future applications of the petitioner also.

20. Subject to the observations in the preceding paragraphs, this petition stands disposed of, but in the circumstances, without costs.

This order is corrected and signed on this the 06th day of December, 2021.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M.D.MANO HAR RAJU)	(T.SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

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