

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH**

Petition No. 22 of 2019
Date of Order:18.10.2019

Petition under regulation 86(1)(c) of the Electricity Act, 2003 and Regulations 37 and 45 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011 and Regulation 10, of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, for permitting Indian Railways to submit Reserve Bank of India's Letter of Mandate as payment security mechanism towards various charges payable for availing open access at its Traction substations situated in the State of Punjab.

AND

In the matter of: Indian Railways, through Senior Divisional Electrical Engineer, Traction Distribution, Northern Railways, DRM Office, Ambala Cantt., Haryana - 133001

.....Petitioner

Versus

- (i) Punjab State Power Corporation Limited, The Mall, Patiala.
- (ii) Punjab State Transmission Corporation Limited, The Mall, Patiala.

.....Respondents

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member

ORDER:

Indian Railways has filed this petition seeking direction to the Respondents Punjab State Transmission Corporation Limited (PSTCL) and Punjab State Power Corporation Limited (PSPCL) to accept 'Letter of Mandate' issued by Reserve Bank of India in lieu of 'Letter of Credit' as a payment security mechanism provided for in Regulation 37 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011 for the purpose of meeting its electricity requirements through Long Term Open Access at the Traction substations situated in the State of Punjab.

2.1 The Petitioner submitted that for meeting its energy requirements, Indian Railways is seeking to avail power through Long Term Open Access, as a deemed licensee for the purposes of its operations in the State of Punjab. Pursuant to the above, Indian Railways acting through Northern Railways has already been issued No-Objection Certificate dated 01.07.2019 by PSTCL for sourcing 35MW of power for a period of 25 years at 11 Traction Substations (drawal points) situated in the State of Punjab.

2.2 On 01.07.2019, a Bulk Power Transmission Agreement (BPTA) was executed between the Indian Railways acting through Northern Railways and PSTCL with regard to transfer of 35MW power from Nabinagar-I Generation Project of Bhartiya Rail Bijlee Company Limited (BRBCL) in the State of Punjab.

2.3 On 06.08.2019, Power Grid Corporation of India, Central Transmission Utility, revised the allocation of Indian Railways for

transfer of 35MW power from Nabinagar-I Generation Project of M/s Bhartiya Rail Bijlee Company Limited (BRBCL) in the State of Punjab.

2.4 Pursuant to the above agreements, power flow from BRBCL to the Traction substations situated in the State of Punjab was planned to commence from 26.08.2019 subject to fulfillment of terms and conditions of the BPTA including with regard to establishment of Letter of Credit as per clause 8 of the BPTA. Clause 8 of BTPA reads as under:

“8. ESTABLISHMENT OF LC AND PAYMENT OF BILLS

.....

- c. *Further the OA Customer will open an irrevocable revolving Letter of Credit (LC) equivalent to estimated amount of various charges for a period of two months in favour of Accounts Officer of concerned Agency (AO/ARR,PSTCL, Patiala for Transmission Charges & AO/SLDC, PSTCL, Patiala for SLDC Operating Charges) in line with the intra State MTOA & LTA procedures approved by Hon’ble PSERC, with validity of 12 months. The LC shall be recouped and remain valid upto one month after LTA period.*
- d. *OA Customer, being a non-consumer of distribution licensee will also open an irrevocable and revolving Letter of Credit (L.C.) in favour of the Distribution Licensee (Accounts Officer/ISB, PP&R, PSPCL payable at Patiala) for the estimated amount of various*

charges (UI/ Deviation/ Imbalance Charges (approx. for 50% of approved quantum @ highest UI/Deviation rate as stipulated by CERC (at present the highest UI/Deviation rate is Rs. 8.00 per unit)), reactive energy charges and any other charges) for a period of two months (as computed by the designated office of CE/PP&R, PSPCL). The L.C. shall be valid for at least three months beyond the entire duration of the transaction.”

In terms of the BPTA, Indian Railways was called upon for establishment of ‘Payment Security Mechanism’, by way of opening a ‘Letter of Credit’ in favour of the respondents.

2.5 By letter dated 04.07.2019, petitioner approached the respondents for acceptance of Letter of Mandate in lieu of Letter of Credit (LC) stating that Railway Board vide letter No.2008/AC-II/2/4 dated 08.04.2019 has conveyed its approval for acceptance of “Letter of Mandate” in lieu of “Letter of Assurance” in view of the RBI Letter No. DGBA. GBD. No.2340/31.03.002/2018-19 dated 13.03.2019. In view of the above, it was requested that respondents may be pleased to accept “Letter of Mandate” issued by ‘Reserve Bank of India’ (RBI) as a valid instrument for establishment of ‘Payment Security Mechanism’.

2.6 On 09.07.2019, PSTCL sought clarification from the concerned authorities in whose favour the Letter of Credit is to be established in terms of clause 8(c) and 8(d) of the BPTA with regard to acceptance of Letter of Mandate in lieu of Letter of Credit. However, the petitioner was informed by the respondents

that, they cannot accord approval for accepting a Letter of Mandate in lieu of Letter of Credit without the approval of the Commission

2.7 The petitioner vide its letter dated 22.07.2019 requested the Commission for issuing appropriate directions to the Respondents for acceptance of Letter of Mandate in lieu of Letter of Credit in view of the RBI's Letter dated 12.02.2019 and Railway Board's Letter dated 21.02.2019. On 01.08.2019 the petitioner again requested PSTCL to approach the Commission for seeking approval of acceptance of Letter of Mandate in lieu of Letter of Credit as a valid payment security mechanism. It was also informed that similar action has been taken by the STU of state of Haryana wherein the Hon'ble Haryana Electricity Regulatory Commission (HERC) has given its approval. The Commission vide letter dated 13.08.2019 informed that the request made is not in line with Regulation 37 of PSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2011. On 22.08.2019, PSTCL sought the consent of the Commission for acceptance of RBI Letter of Mandate in lieu of Letter of Credit as provided for in Regulation 37 of the Open Access Regulations 2011.

2.8 The Petitioner further submitted that the Payment Security Mechanism is established to secure the State Transmission Utility of the payment which it is entitled to receive from the Open Access Customer. In case the Open Access Customer fails to make timely payments, the State Transmission Utility is entitled to invoke the Letter of Credit for the amount not paid and appropriate the same towards payment of its dues. PSTCL in the present case being the

State Transmission Utility, in case of default on the part of the Open Access Customer is entitled to invoke the Letter of Credit for the amount not paid and appropriate the same towards payment of its dues. In this regard, Indian Railways initially had been providing a Letter of Assurance from the Reserve Bank of India. However, the Reserve Bank of India (RBI) has now expressed its inability to provide a Letter of Assurance. Considering the services being provided by the Indian Railways, RBI has agreed to provide a Letter of Mandate as an effective payment security mechanism. It was submitted that in terms of the RBI Policy PSTCL / PSPCL shall have the option to claim the default amount from the Indian Railways through the RBI. The RBI shall be bound to clear the claim of the Indian Railways even if its balance in the RBI account is in the negative. Thus, providing for a similar if not better mode of payment security mechanism than provided by a Letter of Credit. That the Indian Railways has been sourcing power through open access in the State of Haryana as well as in the State of Delhi and the respective State Electricity Regulatory Commissions have also accorded their approval for acceptance of the Letter of Mandate issued by RBI in place of Letter of Credit as Payment Security Mechanism. That the respondents are principally ready and willing to accept RBI Letter of Mandate in lieu of Letter of Credit as payment security mechanism.

2.9 That the Indian Railways have complied with all the conditions precedent as provided for in the BPTA except for the payment security mechanism, and therefore Indian Railways has not been able to commence flow of power through open access. The petitioner intends to procure energy from BRBCL through

Long Term Open Access only for running the Indian Railways in an efficient and cost effective manner and since Indian Railways is an essential part of the transport infrastructure in India and is the backbone of Indian economy, it is essential for the Indian Railways to get reasonably priced power, which would be beneficial for the general public.

The Petitioner has made the following prayers to the Commission to:

- a) Exercise its powers under Regulation 45 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access) Regulations, 2011 and direct the respondents to accept Letter of Mandate issued by RBI in lieu of Letter of Credit as provided for in Regulation 37 of the said Regulations;
- b) pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.

3. After preliminary consideration, the Commission admitted the petition vide Order dated 23.09.2019. Since the option of accepting a letter of mandate from the RBI in lieu of a letter of credit was not provided for in the Regulations and an amendment was required, a staff paper was prepared and published alongwith the public notice for inviting objections/comments on the proposed Amendment in the Regulations on 24.09.2019 in leading newspapers namely the Tribune (English), Hindustan Times (English), Jagbani (Punjabi) and Punjab Kesari (Hindi) besides being uploaded on the website

of the PSERC. In response, no objections/comments were received.

4. The petitioner also requested the Commission vide letter No. 230-Elect./TRD/Open Access/1122 dated 09.10.2019 for relaxation in period of “atleast one month” as specified in Sl. no. 5.5, Sl. No. 6 of the procedure of the Open Access Customer (OA Customer), & 14.1 of the Procedure for Intra-State Medium Term Open Access and Long Term Access reproduced below:

“5.5 After signing of MTOA/LTA Agreement, the applicant/customer (if not a consumer of distribution licensee) shall submit a Letter of Credit (LC) in favour of the agency responsible for collection of Transmission, Wheeling & SLDC Operating Charges in line with Sr. No. 14.1 of this procedure, atleast one month prior to the commencement of Open Access. LC shall also be submitted by the applicant/ customer (non-consumer) in favour of the agency responsible for collection of Deviation/ Imbalance Charges and any other Charges in line with Sr.No. 14.3 of this procedure.”

*“6. After getting conditional approval, the Open Access customer will be required to complete necessary formalities like installation of meters, etc. **atleast one month prior to the commencement of Open Access**, failing which SLDC shall deny scheduling of open access transactions.”*

“14.1 In case of Open Access customers (other than

*the consumers of the licensee), the applicant/ customer shall furnish an irrevocable, unconditional and revolving Letter of Credit in favour of the agency responsible for collection of Transmission, Wheeling & SLDC Operating Charges for the estimated amount of various charges for a period of two months in accordance with the provisions in Regulation 37 of OA Regulations, 2011, as amended from time to time **atleast one month before the commencement date of Open Access.**"*

5. The petition was taken up for public hearing on 10.10.2019 wherein none except representatives of PSPCL, PSTCL and the Indian Railways appeared. The representatives of PSPCL & PSTCL submitted that they have no objection in case the letter of mandate issued by RBI in lieu of letter of credit is allowed to be accepted as payment security mechanism for availing Open Access by the petitioner. The petitioner again during the hearing requested the Commission to relax the period of one month as provided for in Sl. No. 5.5, 6 and 14.1 of the procedure for commencement of power under the OA after submission of LC & testing of meter.

The Commission observed that the issue of relaxation in Sl. No. 6 & 14.1 of the Procedure raised by the petitioner now, is not part of the present petition and in case the same is to be considered, the process of going to public for inviting objections/suggestions, if any, has to be followed again. In view of the Commission's observation, the petitioner withdrew its prayer on this issue.

The Order was reserved in the petition after hearing the submission of the parties.

6. Decision of the Commission:

After careful consideration of the submissions made in the Petition and all the pleadings available on the record, the Commission decides to amend the provisions of Regulation 37 of the Punjab State Electricity Regulatory Commission (Terms and Conditions for intra-State Open Access), Regulations 2011 to the extent that, “Letter of Mandate” issued by Reserve Bank of India (RBI), wherever applicable, shall also be acceptable as Payment Security Mechanism in lieu of “Letter of Credit”. The notification for the same is being issued separately.

Accordingly, PSTCL/SLDC is directed to incorporate the said amendment in its Procedures to be followed by Open Access consumers.

The petition is disposed of accordingly.

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 18.10.2019