

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

Petition No. 39 of 2022
Date of Order: 21.04.2023

Petition under clause 43 of Punjab State Electricity Regulatory Commission (Terms and conditions for Intra-State Open Access) Regulations, 2011, for setting aside the order passed by the CMC in its 26th meeting dated 23.11.2021, in the case of the petitioner, vide which the credit of the electricity injected by the MHP's of the petitioner in the grid during the gap period the STOA agreements expired and the MTOA agreements executed was denied; and further for issuance of necessary directions to the respondents to adjust/ account for as wheeled energy the electricity generated from the five Mini Hydro Projects (MHPs) of the petitioner and injected in the grid for the gap period the STOA signed for the above said five MHPs were expired and MTOA agreements were signed.

AND

In the matter of: M/s Winsome Yarns Limited, Office SCO No. 191-192, Sector 34-A, Chandigarh, through its authorized signatory, Col. Nardeep Singh Bhasin (Retd.) Vice President of the Company

...Petitioner

Versus

1. Punjab State Power Corporation Limited, through its Managing Director, The Mall, Patiala.
2. Punjab State Transmission Corporation Limited, "State Transmission Utility (STU)", through its Managing Director, The Mall, Patiala

....Respondents

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

Petitioner: Sh. Tajender Joshi, Advocate

PSPCL: Ms. Suparna Srivastva, Advocate

PSTCL: Ms. Poorva Saigal, Advocate

ORDER

M/s Winsome Yarns Limited, has filed the present petition for setting aside the order passed by the Commercial and Metering Committee (CMC) in its 26th meeting dated 23.11.2021 denying the credit of electricity injected by the Mini Hydro Electric Projects (MHP's) of the petitioner in the grid during the gap period when Short-Term Open Access (STOA) agreements expired and the Medium-Term Open Access (MTOA) agreements were executed and for directions to the respondents to give credit of the electricity injected by the MHP's in the grid during the gap period. The learned counsel for PSPCL and PSTCL opposed the admission of the petition on grounds of maintainability and requested for time to file reply. PSPCL and PSTCL filed their replies to the petition and the petitioner filed its rejoinder thereto. After hearing the Ld. Counsel for the parties on 01.02.2023, the order was reserved.

Submissions of the Petitioner

- 1.0 The petitioner has submitted that it is having five Mini Hydro Electric Projects (MHPs) on the Sidhwan Branch of the Sirhind Canal at Barewal, Issewal, Bhairawal, Raowal and Mansian generating an aggregate power of 3.9 MW. The electricity produced through the above MHPs is injected into the grid and the injected units are credited to the account of the petitioner while preparing the bill of consumption of electricity at its Yarn Manufacturing plant at Derabassi. The MHPs were commissioned during the years 2008 to 2010 and the petitioner entered into Short Term Open Access agreements (STOA) with the Punjab State Load Despatch Centre Ltd. (SLDC). The STOA agreements were going to expire and the petitioner applied for renewal of STOA for a one year period. Vide letter dated 08-06-2020 the Office of the Chief Engineer informed the petitioner that as per PSERC (Terms and

Conditions for Intra-State Open Access) (8th Amendment) Regulations, 2019, the open access for a period equal to or exceeding three months but not exceeding five years falls under Medium-term open access. The petitioner was already having Open Access permission for one year for the above said plants so the 8th amendment had nothing to do with the application of the petitioner for grant of Open access permission.

- 1.1 That from 22nd March, 2020 there was COVID-19 Pandemic and the companies etc. were working with skeleton staff only. After receiving the letter dated 8-6-2020, the petitioner company again applied for renewal of the Open Access Agreements as Medium Term Open Access (MTOA). The applications for three MHPs were made before the earlier STOA agreements expired however, there occurred a delay in applying for the renewal of two MHPs due to COVID-19 Pandemic. PSPCL took time in granting consent and thereafter Medium-term open access (MTOA) agreements were signed. The petitioner has submitted the details of expiry date of STOA, Date of application for MTOA, date of consent given by the PSPCL and signing date of MTOA as under:

| Sr. no. | Plant | Date of Expiry of STOA | Date of Application of MTOA | Date of deposit of fees | Date of Consent given by PSPCL | Signing Date of MTOA |
|---------|----------|------------------------|-----------------------------|-------------------------|--------------------------------|----------------------|
| 1. | Raowal | 8-9-2020 | 13-7-2020 | 13-7-2020 | 9-9-2020 | 22-10-2020 |
| 2. | Barewal | 18-9-2020 | 12-11-2020 | 21-10-2020 | 10-12-2020 | 21-1-2021 |
| 3. | Isewal | 31-10-2020 | 12-11-2020 | 21-10-2020 | 10-12-2020 | 21-1-2021 |
| 4. | Bharowal | 28-02-2021 | 5-2-2021 | 27-1-2021 | 24-2-2021 | 24-3-2021 |
| 5. | Mansian | 28-02-2021 | 25-2-2021 | 24-2-2021 | 10-3-2021 | 5-5-2021 |

The petitioner applied for MTOA agreements and as per clause 15(2) of the Open Access Regulations the respondents were required to grant consent within 20 days. PSTCL called the petitioner for signing the MTOA agreements and the same were executed by the petitioner without any delay. The petitioner continued to inject electricity generated from the MHPs in the grid during the pendency of the applications for MTOA. Earlier also there

were occasions when the time period of OA agreements expired and pending the renewal application before the SLDC, the petitioner continued to inject the electricity generated from MHPs into the Grid. The renewal was made later but it was kept operative from the expiry date of the earlier agreement. The MTOA agreement for the MHP Raowal was renewed on 22-10-2020 but it was made effective from the date the STOA expired i.e. 9-9-2020.

- 1.2 That PSPCL did not give credit of the electricity injected by the MHPs of the petitioner in the Grid from the expiry date of the earlier STOA agreements till the date of signing of MTOA agreements. The petitioner sent a request letter dated 15-6-2021 to PSPCL for granting credit of 771586 units of electricity injected by the MHPs of the petitioner in the grid in the period from the date of expiry of the STOA to the date of signing of the MTOA agreements. The case of the petitioner was put before the Commercial & Metering Committee (CMC). The CMC in its 26th meeting held on 23-11-2021 rejected the prayer of the petitioner and held that the power injected by the petitioner is against the provisions of the OA regulations and so benefit cannot be given. The order passed by CMC in its 26th meeting held on 23-11-2021 is totally wrong and illegal. The said order is not only against the provisions of the Open Access Regulations but also the principle of unjust enrichment and principle of estoppel and is liable to be set aside by the Commission.
- 1.3 That the CMC has not given any finding whether the delay in execution of MTOA occurred due to fault of the petitioner or it was due to fault of the Nodal Agency. Further, the CMC has not given any finding whether the time taken by the nodal agency in granting permission and signing MTOA agreements was as per clause 15(2) of the Open Access Regulations or not.
- 1.4 That PSPCL and PSTCL has taken a stand that as per the procedure approved by the Commission five months' time is required by the nodal agency to approve the application for MTOA and there is no delay on their

part in approving the MTOA. The Commission has framed PSERC Open Access Regulations. The Regulations framed by the Commission are in the nature of delegated legislation and are binding upon all the stakeholders. PSPCL has annexed the alleged procedure guidelines with its reply and in the said guidelines it has been mentioned that in case of any contradiction of this procedure with provisions of the Regulations, provisions of the Regulations shall prevail. A perusal of regulation 17 of the OA Regulations would show that decision to grant or refuse medium-term open access has to be made within the timeframe specified in clause (2) of Regulation 15 and the time granted by regulation No. 15 of the Open Access Regulations is binding upon all the stake holders including the respondents and same is 20 days only.

- 1.5 That the respondents have failed to mention the reasons for causing delay in approving the applications and signing the agreements. Even if 20 days time, as per regulation 15 of the Open Access Regulations, is applied for approving the MTOA applications and notional date of agreement is accordingly determined then the petitioner is entitled to get the relief as prayed for. Perusal of the impugned order would show that the Dy. CE/ Open Access submitted that for MTOA a person has to apply 5 months before the MTOA is granted and under the same impression the impugned order has been passed by the CMC.
- 1.6 That the respondents have tried to portray that they had no control over the supply of power by the petitioner from its MHP and sent many emails to the petitioner informing that the petitioner would not get any benefit for the electricity injected in the system till the MTOAs are executed. In case the PSPCL did not want to take power then they could have stopped the inflow of power at their end but they continued to accept the power as at that time there was power deficit in the State of Punjab. PSPCL utilized the power

supplied by the petitioner from its MHPs and later on refused to give benefit of this power to the petitioner which is unjust enrichment on the part of the PSPCL. PSTCL granted extension for 'Raowal' MHP and they could also do the same for other MHPs.

Submissions of the respondents.

2.0 The respondents have submitted that an open access customer is required to obtain connectivity in the manner laid down in the PSERC Open Access Regulations, 2011 and in accordance with the State Grid Code. The State Transmission Utility (STU), after conducting consultations and system studies, grants (or rejects) the connectivity; however, such grant does not entitle the grantee to interchange any power with the grid unless it obtains open access in accordance with the provisions of the Regulations. For grant of MTOA, a detailed procedure is prescribed in Regulation 17. Further, a provision is made under Regulation 15 for the Application Procedure for Open Access wherein the time frame for disposal of application is specified. Furthermore, a provision has been made in Regulation 19 for consent of the area distribution licensee to ensure the existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the State Grid Code and availability of capacity in the transmission/distribution network. For the access granted in accordance with the above provisions, the open access grantee is required to pay such charges as are laid down in Chapter-5 of the Regulations. As per Regulation 6.8 of the PSERC Open Access Regulations, 2011, a generating station, including a captive generating plant is allowed to inject infirm power before availing any type of open access but only after obtaining permission of the State Load Despatch Centre. A perusal of the above provision shows that permission/ concurrence/NOC of SLDC or distribution licensee is required

before injection of power by a generating plant into the InSTS or distribution system, as the case may be. Thus, even the injection of infirm power by a generating plant prior to its commercial operation date requires permission from SLDC; however, in the present matter, the Petitioner has intentionally injected firm power into the State Grid without availing any kind of open access or permission from SLDC or PSPCL (the distribution licensee) after expiry of the STOA Agreements, which amounts to “*unauthorized open access transaction*” in contravention of the PSERC Open Access Regulations, 2011.

2.1 That under the PSERC Open Access Regulations, 2011, PSTCL has prescribed a Procedure for Intra-State Medium Term Open Access and Long Term Access which has been approved by the Commission. Under the said Procedure,

- i. The Nodal Agency for grant of MTOA is the STU (PSTCL herein) (clause 1.6);
- ii. MTOA is to be provided on the basis of availability of transmission/distribution capacity in the existing transmission/distribution system (clause 2.1);
- iii. An MTOA applicant is required to fulfill the eligibility criteria (clause 2.1) before applying for MTOA as per the requirements laid down in Regulation 4 to 13 of the PSERC Open Access Regulations, 2011 read with the provisions under the Procedure;
- iv. On receipt of the MTOA application, the STU is required to forward one set of application to PSPCL, seeking consent from the nodal office of the Distribution Licensee (clause 4.1). The distribution licensee is responsible for grant of consent pertaining to use of standby/startup power by the open access applicant as

per the provisions of the Open Access Regulations, 2011. On receipt thereof, the nodal office of PSPCL is to verify the information and seek confirmations/field data in the manner set out in clause 4.2;

- v. An applicant is required to apply for MTOA at least 5 months in advance before the intended date of the commencement of MTOA. Clause 4.3 prescribes as under:

“4.3 Time Frame

i) The start date of MTOA shall not be earlier than 5 months and later than 2 years from the last day of the month in which application has been made.”

- vi. The maximum processing time for verification of field data and subsequent initial consent to STU (PSTCL) by the designated office of PSPCL is 15 days, from the receipt of application of STU [clause 4.3(iii)];
- vii. Subsequent to the decision by the nodal agency (STU), the conditional approval for grant of MTOA is to be conveyed to the applicant with a copy to SLDC, the nodal office of PSPCL and concerned field office of distribution licensee/transmission licensee (clause 5.1);
- viii. After the issuance of conditional MTOA approval, an applicant is required to enter into MTOA Agreement with the STU within 30 days of issue of conditional approval (clause 5.2). The MTOA Agreement is to contain the quantum of power, date of commencement and end of MTOA, the point of injection of power into the grid and point of drawal from the grid, the details of dedicated transmission lines required, if any, the letter of credit

required to be given by the applicant and other terms and conditions;

- ix. After signing of MTOA Agreement, an applicant is required to submit a letter of credit in favour of the agency responsible for collection of transmission, wheeling and SLDC operating charges, and for collection of deviation/ imbalance charges atleast one month prior to the commencement of open access (clause 5.5);
- x. The scheduling of MTOA transactions metering, energy accounting and accounting of UI/deviation settlement/ imbalance charges are to be as per the applicable Regulations (clause 7.0); and
- xi. The monthly bill towards net power by open access customer, who is a consumer of the distribution licensee, are to be raised by PSPCL duly taking into account the open access power and deviation settlement/ imbalance amount payable to the customer based on the energy account prepared by SLDC/sent by designated office of PSPCL (clause 13.1).

2.2 That the 3rd Amendment to the PSERC Open Access Regulations, 2011 notified by the Commission on 02.09.2013, inserted clause 31.5 providing quantum of penalty in the event of unauthorized open access power transaction. The above Regulations not only prohibits undertaking of unauthorized open access transactions but also prescribes for the levy of penalty in case of flow of unauthorized power into the transmission/distribution system. It is a matter of record that the Petitioner, in the present case, by indulging in continued unauthorized open access power transaction during the gap period, has deliberately acted in contravention of the Regulations.

- 2.3 That the Petitioner has installed and commissioned the MHPs during the years 2008 to 2010 and has been wheeling power to its yarn manufacturing unit in Derabassi under STOA since 2010. The power generated at the above-mentioned different locations is injected directly into the grid and the injected units are credited to the account of the Petitioner at the said yarn manufacturing facility at Derabassi. The then existing STOA for wheeling of power from 850KW MHP Raowal expired on 8.9.2020. On 26.5.2021, the Petitioner applied for renewal of STOA for wheeling of power from 850KW MHP Raowal to its unit; and the said application was forwarded to PSPCL for its consent. Vide letter dated 8.6.2020, PSPCL informed the Petitioner that as per the 8th Amendment, open access for a period exceeding 3 months but not exceeding 5 years fell under the category of MTOA. Accordingly, the Petitioner's application was rejected and it was advised to apply for MTOA in accordance with the Regulations. Subsequently, the Petitioner applied for MTOA on 13.7.2020 followed by removal of discrepancies and submission of the rectified application on 4.8.2020. The said MTOA was granted to the Petitioner (Raowal) on 24.08.2020, and accordingly on 22.10.2020, the MTOA Agreement was signed between PSTCL and the Petitioner, allowing it open access into the In STS or distribution network of PSPCL on medium term basis from the due date i.e. from 9.9.2020 upto 8.9.2025. Since, for Raowal MHP, the Petitioner had submitted the application for MTOA grant well in time (one month in advance), no gap period emerged and as such, the MTOA was made effective from the date of the expiry of the STOA.
- 2.4 That the Petitioner also applied for grant of MTOA for Barewal, Isewal, Bharowal and Mansian MHPs but none of the said applications were filed within the prescribed time. The MTOA application of the

Petitioner was received 23 days in advance for Bharawal MHP (on 5.2.2020) and 3 days in advance for Mansian MHP (on 25.2.2021), whereas the MTOA applications for Isewal MHP (on 12.11.2020) and Barewal MHP (on 12.11.2020) were received 12 days and 56 days after expiry of STOA consent respectively. The Petitioner had all along been conscious of the fact that it would be required to apply for MTOA for wheeling of power from its MHPs to its unit at Derabassi in accordance with the 8th Amendment as early as on 8.6.2020 and yet the MTOA applications were not received in time. The Petitioner had never been diligent enough to apply for MTOA within the prescribed timelines, and as such, its MTOA applications, as and when made, were processed by PSTCL as per Regulations and the MTOA grants were made accordingly. The Petitioner also signed MTOA Agreements with PSTCL pursuant to such grants. PSPCL has submitted the details of the date of expiry of STOA, Date of receipt of complete MTOA application, consent received from PSTCL, Date of signing of MTOA and the gap open access period submitting that from the expiry of STOA till the grant of MTOA, no open access had been made available to the Petitioner for the 4 MHPs (Barewal, Isewal, Bharawal and Mansian). As such, as per the Regulations, the Petitioner could not have injected power from the said 4 projects during the gap period. The transaction of power during the gap period in the absence of open access, not only amounted to “*unauthorized open access transaction*” but also formed a subject matter of levy of penalty.

- 2.5 The Petitioner was repeatedly requested by SLDC/PSTCL vide emails dated 14.9.2020, 8.1.2021, 22.1.2021 and 8.3.2021 to stop injection of power from its MHPs, whose STOA Agreements had expired and it was also clarified that the generation units injected by such MHPs were

not to be accounted for under open access for adjustment at drawl end from the expiry of STOA consent till the grant of MTOA. However, the Petitioner did not pay any heed to such requests and continued to inject power into the grid unauthorizedly, and kept delaying the application process of MTOA. The Petitioner has deliberately and willfully concealed the emails sent by PSTCL and has presented an incomplete and a false picture before the Commission, only to achieve an ulterior purpose, which amounts to an abuse of process of the Court. The Regulations not only prohibit unauthorized open access transactions but also provide for levy of penalty for the same. The Petitioner is not entitled to any credit of the units injected as the injection of power into the grid in itself is unauthorised.

2.6 That request of the petitioner to consider the credit of 771586 units of electricity injected by it into the grid after the expiry of the STOA till the grant of MTOA and for condonation of delay was considered by the CMC in its 26th Meeting wherein it was observed that the injection of power by the Petitioner was against the provisions of the PSERC Open Access Regulations, 2011. CMC decided that injection made by the Petitioner during the gap period was not to be adjusted at the drawl end. Therefore, the plea of violation of principles of natural justice raised by the Petitioner is not tenable. Petitioner was well informed by PSPCL on 8.6.2020 that MTOA is required for MHPs but the Petitioner continued to dilly-dally the process of submission of the MTOA applications.

2.7 That MTOA and STOA are two distinct categories of access and the procedure applicable for their grant is different. Therefore, the regime adopted for STOA can under no circumstances be adopted for MTOA.

However, relaxation once provided to the applicant in certain situations (when the delay wasn't on part of applicant), cannot be replicated in each & every case (when the applicant has deliberately delayed and that too by a number of days in submitting its MTOA application). Power can be injected into the grid only after requisite permission has been obtained from the SLDC and NoC has been given by PSPCL which, in the present case, has not been available with the Petitioner. The respondents have also relied in this regard on the judgment dated 03.09.2017 passed by the Hon'ble APTEL in case of *Renew Wind Energy (AP) Pvt. Ltd. Vs. Karnataka Electricity Regulatory Commission* and order dated 16.05.2011 in *[Appeal No.123/2009]*, in case of *M/s. Indo Rama Synthetics (I) Ltd. Vs. Maharashtra Electricity Regulatory Commission [Appeal No.123/ 2009]*, wherein it has been held that injection of power without permission from SLDC tantamounts to grid indiscipline due to which grid security may be compromised and the injection of power without the consent of the distribution licensee is to be discouraged in the interest of security and economic operation of the grid.

- 2.8 That the judgment of the Hon'ble Supreme Court relied upon by the petitioner for extending the limitation due to the Covid-19 pandemic is not applicable in the present case. The aforesaid judgment directed extension of the period of limitation in all proceedings before Courts/Tribunals and was made applicable on petitions, applications, suits, appeals and all other quasi proceedings on which the general law of limitation applied. The judgment took into consideration the adversities faced by the litigants and the benefit of the same could not have been extended to the Petitioner as the extension that it was

seeking was based on a day to day commercial and contractual transaction, and not in a legal proceeding. The impugned Order of the CMC has taken into consideration all the important aspects while adjudicating the issue at hand and has passed a well-reasoned Order and is, therefore, not liable to be set aside. The bills raised and charges levied on the Petitioner are in line with the provisions mentioned under the STOA and MTOA Agreements. As such, the Petitioner continues to be liable to pay the charges and surcharge in accordance with the agreed terms under the Agreements.

Observation and Decision of the Commission

The Commission has examined the submissions made by the petitioner and the respondents. The case of the petitioner is that during the pendency of its applications for grant of medium-term open access (MTOA), the petitioner continued to inject electricity generated from its Mini-Hydro electric projects in the grid but PSPCL has not given credit for the electricity so injected from the date of expiry of the earlier agreements for short-term open access (STOA) till the date of signing of the MTOA agreements. The matter was referred to the Commercial & Metering Committee (CMC) and the CMC vide Order dated 23.11.2021 has rejected the prayer of the petitioner to give credit of electricity injected during the gap period. The petitioner has challenged the decision dated 23.11.2021 passed by CMC asserting that CMC has failed to appreciate that there are instances when the renewal of STOA agreements was delayed but the same were made effective from the date of their expiry.

Bare perusal of Regulation 16 (2) and 17(2) of the PSERC OA Regulations, 2011 clearly mandates that the application for grant of LTA/MTOA shall contain details including the agreement for LTA/MTOA as per the detailed procedure to be laid by the STU.

The Commission notes that, as rightly pointed out by PSPCL, as per Clause 4.3 (i) of the LTA and MTOA procedure the start date shall not be earlier than 5 months and later than 2 years from the last day of the month in which application has been made. Clearly the petitioner ought to have applied for grant of MTOA, atleast 5 months prior to the date when it required MTOA which the petitioner has not done in the present petition. The application for grant of MTOA was filed by the petitioner only one month in advance for Raowal, 23 days in advance for Bharowal, 3 days in advance for Mansian, 12 days post expiry of STOA for Isewal and 56 days after expiry of STOA for Barewal clearly defying the timelines provided in the procedure. Further, the Petitioner has relied upon the timelines specified in Regulation 15(2) of the PSERC OA Regulations, 2011, however, from the perusal of the Regulation 15(2) in consonance with clause 4.3(iii) of the LTA/MTOA procedure the 20 days time line (15 days for PSPCL to verify and 5 days processing time of STU) is only with regard to disposal of the application received for grant of MTOA. Clearly both the provisions are distinct and in no case can be intermingled and as such the contention of appellant that the notional date of agreement be considered excluding the time of 20 days and relief as sought be provided for the remaining delay is not tenable.

Further, the Hon'ble APTEL in case of Renew Wind Energy (AP) Pvt. Ltd.-v-Karnataka ERC [Judgment dated 03.09.2017 in Appeal No.117 of 2016] held as under:

“From the combined reading of the above provisions and decision of the State Commission, it is clear that the Appellant was not supposed to inject power into the grid without commercial agreement and without prior consent

of

SLDC. Injection of power without permission from of SLDC tantamounts to grid indiscipline due to which grid security may be compromised. Although in the present case the quantum of power injected is low but it is a matter of grid discipline if violated by the many generators at a time may result in insecure grid operation. Grid indiscipline cannot be allowed whether it is renewable power or conventional power...”

In case of Kamachi Sponge & Power Corporation Ltd.-V-Tamil Nadu Generation and Distribution Corporation Ltd. [Judgment dated 08.05.2017 in Appeal No.120 of 2016 and I.A.No.272 of 2016] the Hon'ble APTEL held as under

“From the combined reading of all the above provisions and the communications exchanged between the Appellant and the Respondent No.1 it is clearly established that the Appellant has pumped the energy on its own without entering into any contract with Respondent No.1 and without the knowledge/schedule from SLDC. The energy pumped into the grid during the period under dispute by the Appellant is unauthorized and does not call for any payment by the Respondent No.1.”

In addition to the above, relevant provisions of the PSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2011, as amended to date prescribes as under:

Regulation “3.1. (cc) Unauthorized Open Access Power Transaction” shall mean open access availed by an open access customer for sale / purchase of power by indulging in any wrongful action or unfair means such as forgery, tampering with records, misrepresenting or concealing facts etc., which may or may not affect the eligibility for availing open access by the open access customer”

Further, Regulation 31(5) pertains to Quantum of penalty in the event of unauthorized open access power transaction and provides that in case of any unauthorized open access power transaction of purchase of power by a medium term / short term open access customer who is a consumer of the distribution licensee also, no financial benefit, whatsoever, shall be given to the medium term / short term open access customer, i.e. the power purchased under open access by the medium term / short term open access customer, shall not be deducted from the total power consumption of such customer. The power purchased by the medium term / short term open access customer during such unauthorized open access period shall be treated as utility power and billed to the open access customer accordingly as per the applicable tariff.

A bare perusal of the provisions of the PSERC (Terms and Conditions for Intra –State Open Access) Regulations 2011, and the case law referred above makes it clear that injection of power into the grid without execution of the requisite agreement and without prior consent of the respondents amounts to an unauthorized transaction. The petitioner was not entitled to inject power into the grid without entering into the MTOA agreement and obtaining prior consent of the respondents. Moreover, it is specifically mentioned in the submissions

of the respondents that the petitioner was repeatedly restrained, in fact, prohibited from injecting power in the grid unless and until the MTOA agreement is executed. Therefore, the injection of electricity in the grid by the petitioner from the date of expiry of the earlier agreements for short term open access till the date of signing of the MTOA agreements amounts to an unauthorized open access power transaction and the petitioner is not entitled for credit of the same to its account.

Further, the submission of the petitioner that there are instances when the renewal of STOA agreements was delayed but the same were made effective from the date of their expiry and the respondents cannot decline the prayer of the petitioner on account of principle of Estoppel and Unjust Enrichment is also without any substance. To rebut the contentions of the petitioner, the respondents have referred the decisions of the Hon'ble Supreme Court in case of **Durga Tea Industries Private Limited -v- State of Assam and Others, (2016) 9 SCC 519, Tata Chemicals Limited -v- Commissioner of Customs (Preventive) Jamnagar, (2015) 11 SCC 628 and M/S Elson Machines Pvt. Ltd. -v- Collector of Central Excise, 1989 (1) SCC671** wherein it has been held that it is a settled legal position that there cannot be any estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of the law at all. Something that is illegal cannot convert itself into something legal by the act of a third person.

It is a settled law that there cannot be any estoppel against law. Merely because PSTCL granted the Petitioner a one-time accommodation/dispensation to mitigate the impact does not mean that PSTCL is bound to grant approval against the existing law. The

past practice and the concessions granted by PSTCL in the past, if any, cannot be quoted as precedents to claim an automatic similar convention to extend further transactions. The Petitioner is not entitled to any credit/ adjustment contrary to law. The respondents being state utilities are bound to act in terms of the Electricity Act, 2003 and the Regulations framed thereunder. The respondents cannot account for the power injected by the Petitioner after the expiry of STOA and prior to the grant of MTOA particularly when it was repeatedly advised not to do so. There are no substantial grounds to unsettle the decision dated 23.11.2021 passed by the CMC. The petitioner is not entitled for a direction to the respondents to give credit to the electricity injected in the grid after the expiry of the Short Term Open Access Agreements and prior to the signing and execution of the Medium Term Open Access Agreements.

Prima Facie, the petition is not maintainable and does not merit admission or further examination and accordingly dismissed in limine. Having decided as above the Commission would also like to raise concern that SLDC has been allowing short term access for 1 year which is clear contravention of the Regulations. Further, if the procedure provides for start date of MTOA to be not earlier than 5 months and later than 2 months, STU has been granting the start date much prior to the timeline specified in the procedure. Accordingly, the Commission directs SLDC/PSTCL to comply with the Regulations.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: **21.04.2023**