

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Petition No. 29 of 2014**

**In the matter of:**

Application under Section 42(2) of the Electricity Act, 2003 read with Regulation 58 of the UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010 for clarification on the aspect of payment for under-drawal.

**AND**

**In the matter of:**

Shree Cement Ltd. Bangur Nagar, Post Box No. 33, Beawar-305901 (Raj)

**...Petitioner**

**And**

Managing Director, Uttarakhand Power Corporation Limited (UPCL), Victoria Cross  
Vijeta Gabar Singh Bhawan, Kanwali Road, Dehradun.

**...Respondent**

**CORAM**

**Shri C.S. Sharma Member**

**Shri K.P. Singh Member**

**Date of Order: November 17, 2014**

This Order relates to the Petition filed by M/s Shree Cement Ltd. hereinafter referred to as "Petitioner" under Section 42(2) of the Electricity Act, 2003 read with Regulation 58 of the UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010 for clarification on the aspect of payment for under-drawal.

## 1. Petitioner's Submission

- (a) The Petitioner in his Petition has stated that the Commission has classified the open access consumers broadly in two categories namely (i) Embedded open access consumer and (ii) limited short-term open access consumer. In so far as limited short-term open access consumers are concerned they are compensated according to the methodology provided in regulation 38(2) of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010 in case such consumers are not able to draw or partly draw the scheduled open access power. The regulation 38(2) states that:

### *38(2) Underdrawal*

*"In case where Limited short-term open access consumer under-draws from the grid, he shall be compensated at average rate for power purchase cost by distribution licensee as per applicable tariff order for relevant year and as described below:*

*Average rate of power purchase cost= [Total power purchase cost/total units purchased]."*

- (b) The Petitioner has stated that there is no provision of compensation available to embedded open access consumers even though there are many instances where such consumers are unable to draw scheduled power due to reasons attributable to the Respondent. The Petitioner has submitted working sheet showing date wise instances where it could not use power scheduled under open access due to fault of distribution licensee i.e. respondent.
- (c) The Petitioner has contended that since open access charges are paid in advance, the power contracted through open access must reach the open access consumer and if the open access consumer including embedded open access consumer is unable to draw fully such power due to reasons attributable to the Respondent then he should be compensated in the same manner as limited short-term open access consumer.
- (d) The Petitioner further stated that the power purchase through exchange and scheduled under open access is included in the inter-State drawl schedule of the State. When open access power is not consumed by the petitioner due to the

fault of transmission/distribution licensee then the same is consumed by the State consumers and the Respondent gets paid for the same. If at the same time, the respondent i.e. UPCL also under draws against its inter-State schedule then it receives payment for such under drawn power from Northern Region Load Dispatch Center (NRLDC) at the frequency link UI rate for such under drawn power.

- (e) The Petitioner further contended that there may be instances when Respondent is in the State of over drawl under its inter-State schedule during the period when the petitioner was under drawing power under open access due to the reasons attributable to the Respondent, then in such case also, the quantum of overdrawal comes down to the extent of power is under drawn by the Petitioner as such, the Respondent must have paid less amount towards its UI settlement to NRLDC to the extent of power under drawn by Petitioner.
- (f) In view of the above, the Petitioner has contended that the Respondent must pay the Petitioner the total cost (landed at its premises) at which Petitioner has bought power from exchange which remained un-utilised because of the fault on the part of the Respondent.
- (g) The Petitioner has further stated that if one contracting party does not perform his part of contract the other party should be entitled some compensation to mitigate its losses, therefore like limited short-term open access consumers, embedded open access consumers should also be compensated for the power under-drawn by them solely due to the fault of the Respondent.
- (h) The Petitioner has stated that limited short-term open access consumers are allowed to purchase power under open access during scheduled rostering hours declared in advance by the Respondent. Since, in such instances, Respondent is unable to supply power, limited open access consumer buys power from the third party. Being an embedded consumer of the licensee, the Petitioner averred that it is permitted to buy power during non-rostering hours, however, it wholly depends on supplies from Respondent under HT supply contract, therefore, it also buys open access power in anticipation of un-schedule

rostering imposed by the Respondent. In that sense it can be placed in the same category as limited open access consumers.

- (i) The Petitioner further states that Electricity Act 2003 does not differentiate between open access consumers, therefore, the provisions of regulations 38(2) should also be applicable to it.
- (j) The reliefs sought by the Petitioner are as follows:

*"In view of the above, it is respectfully prayed that this Hon'ble Commission may be pleased to:*

- i. Pass an Order under regulation 58 of the Open access Regulations clarifying that the compensation provision in Regulation 38(2) would also be applicable for embedded open access consumers;*
- ii. In the alternative, initiate a process for appropriate introducing a specific amendment in the Open Access regulations and in the interim, pass an Order under Regulation 58-Removal of difficulties;*
- iii. Pass any such further order(s) as deemed fit in the facts and circumstances of the case."*

A motion hearing in the matter was held on 10.07.2014 to determine admissibility of the Petition.

## **2. Submission of the Respondent**

- (a) The Respondent stated that the present Petition is not maintainable as the same was not presented as per the provisions contained in Regulations 12 and 13 of UERC (Conduct of Business) Regulations, 2004.
- (b) The Respondent contended that as the Petitioner is coming up as a consumer for Redressal of its billing grievances, the Petition is liable to be dismissed.
- (c) Further, the Respondent averred that as per the present Petition the limitation has been calculated according to Limitation Act 1963. However, provisions of Limitation Act, 1963 are not applicable to the proceedings before the Commission.
- (d) The Commission after hearing both the parties passed a daily order stating that:

*“Heard the parties in the matter of admissibility. Ordered that the Respondent should submit, within two weeks time, procedure in detail alongwith the calculations for the connection of Petitioner demonstrating that the settlement of energy for short-term Open Access availed by the Petitioner and procedure adopted complies with the provisions of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010.*

*The Petition to this extent is admitted.”*

- (e) On the direction of the Commission the Respondent submitted the desired information under an affidavit.
- (f) In the information submitted the Respondent contended that the settlement of the open access energy for all the embedded open access consumers is being done in accordance with regulations 46 and 37 of open access regulations. The Respondent further stated that lesser of scheduled drawal and actual consumption recorded in the meter of the consumer is taken into consideration for the billing purpose.
- (g) The Respondent further stated that there are no averments in the Petition that the bills raised by the respondent are not as per open access regulations. The Petitioner has only sought relief to the extent that the compensation available to the Limited short-term open access consumer under regulation 38(2) is also extended to embedded open access consumers.

### **3. Commission’s View**

The issues raised by the Petitioner and Respondent’s submissions on the same have been considered and decided as follows:

The existing open access regulations clearly brings out the distinction that the compensation provision in Regulation 38(2) would only be applicable to limited short term open access consumers and not embedded open access consumers. Amending a regulation is a legislative process and cannot be undertaken by the Commission while performing its judicial function. The Petitioner’s prayer of allowing compensation for under-drawal by way of introducing a specific amendment in the Open Access Regulations or in the interim pass an Order under

Regulation 58 of the Open Access Regulations, can only be taken into account by way of legislative process and not through proceedings before the Commission as the same require an amendment of the existing Open Access Regulations.

It has been 04 years since the last open access regulations were promulgated by the Commission. Based on the feedback/representations from various stakeholders, Commission has issued draft UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2014 for seeking their suggestions/comments.

In the draft regulations separate provisions for limited short term open access consumers and embedded open access consumers are not proposed. The Petitioners may go through the proposed draft regulations and may come up with suggestions/changes, if any needed, which would be duly considered before finalising the draft regulations.

Accordingly, the Petition stands disposed off.

(K.P. Singh)  
Member

(C.S. Sharma)  
Member