

3. Shri Deepak Asher, GFL
4. Shri Sakya Singh Chaudhury, GFL
5. Shri Aditya Madan, Advocate, RRVPL & SLDC, Rajasthan
6. Shri V.K. Gupta, RRVPL & SLDC, Rajasthan
7. Shri Dudhir Jain, RRVPL
8. Shri S.S. Shekhawat, RRVPL
9. Shri Dinesh Khandelwal, SLDC

ORDER
(Date of Hearing: 23.12.2008)

The petitioner has established wind power plants in the State of Rajasthan. The petitioner had agreed to sell power from its wind power plants in April 2008 to LANCO Electric Utility Ltd (hereinafter "LANCO."). LANCO made an application dated 13.3.2008 before the respondents for concurrence for open access in terms of Regulation 8 of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 (hereinafter "the open access regulations") for conveyance of electricity outside the State of Rajasthan. This was followed up by the petitioner vide its letter dated 20.3.2008 requesting the respondents to expeditiously process the application. By letter dated 24.3.2008, the petitioner was informed by the respondents that it had to install ABT compliant meters at interface points in accordance with the regulations made by the Central Electricity Authority and the State Electricity Regulatory Commission. The respondents, by their letter dated 24.3.2008, also advised the petitioner to ensure proper data communication to SLDC, and also time synchronization of the metering system through Global Positioning System. The petitioner was further advised to make an application for approval of SLDC, along with necessary fee. The petitioner is said to have complied with all the directions

of the respondents conveyed as per the letter dated 24.3.2008 and submitted a fresh application under letter dated 11.4.2008 for concurrence for open access for the period 15.4.2008 to 30.4.2008. A demand draft for the prescribed fee was forwarded vide letter dated 12.4.2008. The respondents, however, did not act on the petitioner's application till 3.5.2008 when they returned the application fee deposited by the petitioner, raising certain other issues.

2. Feeling aggrieved by the action or inaction of the respondents, the petitioner filed Petition No. 60/2008 (hereinafter "the main petition") for directions, *inter alia*, to the respondents to comply with the open access regulations and for disposal, at the earliest, of the applications made before the respondents for concurrence for open access. In its order dated 27.8.2008, (hereinafter "the said order dated 27.8.2008"), the Commission gave certain directions to the respondents, though the petition was kept pending for consideration whether or not the respondents were liable for penalty under Sections 142 and 149 of the Electricity Act, 2003 (hereinafter "the Act").

3. After detailed examination of the issues (six in all) raised by the respondents in the letters dated 24.3.2008 and 3.5.2008, the Commission found that they were not at all germane to the grant of concurrence for open access in accordance with the provisions of the open access regulations. The Commission termed their actions as "unfair and illegal" as, while considering the applications for concurrence for open access, the respondents were required to only verify

availability of the ABT compliant meters and surplus transmission capacity on their network. The Commission also found that the process adopted by the respondents was clearly *de hors* the express provisions of law and denial of concurrence for open access to the petitioner was unjustified and was for extraneous reasons. On these findings, the Commission directed the respondents to keep in view the observations made in the said order dated 27.8.2008 while examining the applications made by any person (including the petitioner) in future for concurrence for open access. Consequent to the said order dated 27.8.2008, the petitioner was granted concurrence for open access for the period 10.10.2008 to 31.10.2008.

4. The petitioner again applied for concurrence for open access for the month of November 2008 by letter dated 13.10.2008. The petitioner's this application was not granted since the State Government of Rajasthan by its clarification dated 10.10.2008 on the policy directive dated 25.11.2004 to the State Commission under Clause (1) of Section 108 of the Act, directed the power producers setting up renewable energy sources plants in the State to offer energy generated by their plants to open access consumers, distribution companies and Captive Power Plants within the State for fulfillment of their RE obligation as prescribed by the State Commission and to sell surplus electricity available after meeting this obligation, outside the State. After rejection of its application for concurrence for the month of November 2008, the petitioner made an interlocutory application on 6.11.2008, being IA No. 83/2008 in the main petition,

for initiation of proceedings under Sections 142, 146 and 149 of the Act. This IA has been considered as the fresh petition (Petition No. 154/2008). It is noticed that operation of the said clarification issued by the State Government was stayed by the Jaipur Bench of the Hon'ble Rajasthan High Court by its order dated 12.11.2008 in Civil Writ Petition No. 12421/2008 filed by the petitioner.

5. The respondents made applications to seek review of the said order dated 27.8.2008. The applications for review, made by the respondents have been dismissed by a separate order dated 3.2.2009.

6. We heard Shri Aditya Madan, Advocate for the respondents and Shri Sitesh Mukherjee, Advocate for the petitioner. Learned counsel for the petitioner did not press for imposing penalty on the respondents for non-compliance of the open access regulations or the said order dated 27.8.2008. We were also informed that the respondents had granted open access to the petitioner for the months of December 2008, January and February 2009.

7. In view of the fact that the charges leveled by the petitioner against the respondents of non-compliance of the open access regulations were not insisted upon by the petitioner, the notices issued under Sections 142 and 149 of the Act are discharged. The proceedings accordingly stand dropped.

Sd/-
[S. JAYARAMAN]
MEMBER

Sd/-
[R. KRISHNAMOORTHY]
MEMBER

Sd/-
[BHANU BHUSHAN]
MEMBER

Sd/-
[DR. PRAMOD DEO]
CHAIRPERSON

New Delhi, dated the 3rd February 2009