

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Coram:
Dr. Pramod Deo, Chairperson
Shri R. Krishnamoorthy, Member
Shri S. Jayaraman, Member**

Petition No.121/2008

In the matter of

Unlawful and arbitrary denial of Tamil Nadu Electricity Board for granting concurrence for Open Access sought by Tata Power Trading Company Limited.

And in the matter of

- 1. Tata Power Trading Company Limited, Mumbai**
- 2. DCW Limited, Mumbai** ... **Petitioners**

Versus

Tamil Nadu Electricity Board, Chennai ... **Respondent**

Petition No.158/2008

In the matter of

Unlawful and arbitrary denial of Tamil Nadu Electricity Board for granting concurrence for Open Access sought by Tata Power Trading Company Limited.

And in the matter of

Wilful violation of Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008

And in the matter of

DCW Limited, Mumbai ... **Petitioners**

Versus

Tamil Nadu Electricity Board, Chennai ... **Respondent**

The following were present

1. Shri Amit Kapoor, Advocate, Petitioners
2. Shri Mansoor Ali, Advocate, Petitioners
3. Ms.Shobhana, Advocate, Petitioners
4. Ms. Sugandha, Advocate, Petitioners
5. Shri M.S. Ramachandran, DCW Ltd.
6. Shri Barkul Jain, DCW Ltd.
7. Shri Kovilan Poongkuntran, Advocate, TNEB
8. Shri P.S.Ganesh, TNEB
9. Ms. P. Soma Sundaram, TNEB

**ORDER
(DATE OF HEARING 22.1.2009)**

Petition No.121/2008

This is a joint application made by Tata Power Trading Company Ltd., an inter-State trading licensee (first petitioner) and DCW Limited (second petitioner) owning a 2x25 MW coal-based captive co-generation power plant at Sahupuram, near Tuticorin in the State of Tamil Nadu.

2. It has been stated that for effective functioning of the captive co-generation power plant the second petitioner required Grid parallel operation with the transmission system owned by respondent, for which approval was granted by the respondent under its letter dated 29.3.2008. It was, inter alia, provided in the approval that the second petitioner would sell balance surplus power to the respondent. Subsequently, a formal agreement dated 11.4.2008 is said to have been signed between the second petitioner and the respondent wherein, according to the petition, the condition for sale of balance surplus power to the

respondent was not stipulated, and thereby, it has been urged, the second petitioner had no obligation to sell its power to the respondent.

3. The first unit of the second petitioner's captive co-generation power plant was commissioned during April 2008. As the second petitioner is stated to have surplus power after commissioning of the first unit, it entered into a Power Purchase Agreement with the first petitioner for sale of 15 MW power. As per the Power Purchase Agreement, the delivery point for power contracted was the metering point between the petitioner's captive co-generation power plant and the respondent at 110 kV to 132 kV. The second petitioner was required to execute the connection agreement with the respondent. It was further agreed between the petitioners that the second petitioner would facilitate installation and commissioning of ABT compliant special energy meters at delivery point in coordination with the respondent.

4. After signing of the Power Purchase Agreement, the first petitioner made an application before the respondent on 25.4.2008 for getting open access for the period 1.5.2008 to 31.5.2008. In response to the application made, the respondent, by its letter dated 30.4.2008, insisted on fulfillment of the conditions for installation of special energy meters, availability of arrangement for downloading the meter readings and availability of SCADA and other communication facilities. The petitioners have alleged that despite the fact that the matter was followed up with the respondent through a large number of communications, no

decision on the application dated 25.4.2008 was ever communicated to them. According to the petition, by letter dated 14.6.2008, the second petitioner approached the respondent for deputing its official to manufacturer's sites at Solan, Chandigarh and ETDC, Chennai for testing and sealing of meters. In the meantime, on 1.10.2008, the first petitioner made another application seeking open access for the period 10.10.2008 to 31.10.2008. However, the respondent by its letter dated 4.10.2008, communicated its refusal to grant concurrence for open access, without assigning any reason. But subsequently, by its letter dated 13.10.2008, the respondent is stated to have informed the petitioners that their request for open access for 15 MW was under consideration and its decision was to be communicated in due course. But no decision was ever communicated.

5. The petitioners are aggrieved by non-grant of open access as prayed for and accordingly, have sought directions to the respondent to comply with the Central Electricity Regulatory Commission (Open Access in Inter-state Transmission) Regulations, 2008 (hereinafter referred as the "open access regulations") and for grant of concurrence for open access to the petitioners at the earliest. A further prayer has been made by the petitioners to settle the principles for compensation or damages which the petitioners would be entitled to because of unlawful inaction or refusal by the respondent and also to grant an opportunity to the petitioners to submit details of damages or compensation that may be claimed by them.

6. At the outset at the hearing, learned counsel for the respondent stated that copy of the petition was received by the respondent in the first week of January 2009. Therefore, counter-reply could not be filed in time. He submitted copy of the counter-reply in the Court and also handed over a copy to learned counsel for the petitioners.

7. Learned counsel for the petitioners detailed a sequence of events and referred to the application dated 25.4.2008 submitted by the first petitioner to the respondent for grant of concurrence. He submitted that in complete violation of Regulation 8 of the open access regulations, the respondent had not dealt with the application. He further referred to another application dated 1.10.2008 submitted by the first petitioner to the respondent for grant of concurrence for open access for the period 10.10.2008 to 31.10.2008 and submitted that, while keeping its earlier application pending, the respondent, contrary to the regulations, had simply rejected the application without assigning any reason, though mandated by the open access regulations to give reasons for rejection. He further submitted that the respondent with the malafide intention to renege from its statutory obligations and with the purpose of harassing the second petitioner, issued a communication dated 18.11.2008 wherein it unlawfully and contrary to the statutory and contractual obligations under the agreement dated 11.4.2008 for parallel operation required to second sign addendum incorporating the term "and the sale of balance surplus power to Board" to the agreement dated 11.4.2008.

8. During the course of arguments, learned counsel for the petitioners relied on the order of the Commission dated 3.12.2007 Petition No.108/2007 and submitted that Commission had clearly laid down that the open access could be denied only if there was transmission constraint or on the ground of absence of ABT compliant meters and on no other ground, whatsoever. Learned counsel pointed out that the aforesaid order further held that even if there was a Power Purchase Agreement, the rights and obligations of the parties arising out of the Power Purchase Agreement were to be decided by the concerned State Electricity Regulatory Commission and existence or non-existence of the Power Purchase Agreement did not impact the right to open access. Learned counsel for the petitioners further submitted that there was a clear violation of the open access regulations and penal consequences must follow.

9. Learned counsel for the respondent mainly raised the following objections:

(a) The generating company (the second petitioner) had nothing to do with the SLDC and petitioners cannot file a joint petition, implying that it was a case of mis-joinder of parties.

(b) The second petitioner had agreed to sell the surplus power to the respondent and the parallel operation approval was granted only on this understanding, and this was specifically provided in the

approval letter dated 29.3.2008. However, the aforesaid term did not find mention in the agreement because there was collusion between the second petitioner and the officers of the respondent, particularly the Superintending Engineer at site who had signed the agreement. He further submitted that the respondent had already initiated departmental action against the erring officer.

- (c) Pursuant to the application dated 25.4.2008, the respondent had requested the first petitioner to comply with certain conditions and provide infrastructure such as ABT complaint meters and till date the infrastructure was not in place and that it was not necessary to re-state the same reasons while rejecting the application dated 1.10.2008.
- (d) The respondent terminated the parallel operation agreement dated 11.4.2008 entered into by it with the second petitioner.

10. We have carefully considered the matter in the light of the submissions of the parties.

11. In accordance with clause (3) of regulation 8 of the open access regulations, the State Load Despatch Centre shall accord concurrence for open

access within three working days of receipt of the application in case infrastructure required for energy metering and time block-wise accounting exists and surplus transmission capacity exists. There is no dispute raised regarding availability of surplus transmission capacity. The dispute raised concerns existence of infrastructure for energy metering and time block-wise accounting. Learned counsel for the respondent denied that ABT compliant meters had been installed in accordance with its letter dated 30.4.2008. This has been explicitly stated in the reply filed by the respondent. Though initially learned counsel for the petitioners insisted that such arrangements existed on ground, subsequently, at the end, he conceded that ABT complaint meters were not installed and for this, the second petitioner's request for deputing an officer by the respondent for testing and sealing of meters had not materialized. He accordingly urged that the respondent be directed to depute its officer for the purpose.

12. It appears to us that the respondent has been purposely delaying inspection and installation of the special energy meters, even though under clause (1) of Regulation 22 of the open access regulations, it is the responsibility of the respondent, as the STU to install special energy meters for and at the cost of the intra-state entities. We have taken a serious note of the respondent's conduct. In our opinion the matter cannot brook any further delay. Therefore, the respondent was directed at the hearing to depute an officer for testing, sealing and installation of meters in accordance with the request made by the

second petitioner in its letter dated 14.6.2008, (Annexure P-II), within one week.
A compliance of the direction shall be reported latest by 6.2.2009.

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13. The petitioner in this petition has prayed for action against the respondent and its officers under section 142 and 149 of the Electricity Act, 2003, (the Act) alleging willful violation and disobedience of sections 38, 39, 40 thereof and regulation 8 of the open access regulations, on the ground that concurrence for open access was withheld without any justification. For the view we have taken on the main petition we feel that this petition be also kept pending.

Conclusion:

14. We direct that main petition as also petition No.158/2008 be listed for hearing on 12.2.2009 for further directions.

Sd/-
(S. JAYARAMAN)
MEMBER

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(DR. PRAMOD DEO)
CHAIRPERSON

New Delhi, dated 27th January, 2009