

**CENTRAL ELECTRICITY REGULATORY COMMISSION**  
**Record of Proceedings**

**Petition No.84/2009**

- Subject** : Petition under Section 146 read with Sections 142, 149 and 11(2) of the Electricity Act 2003.
- Coram** : Dr. Pramod Deo, Chairperson  
Shri R.Krishnamoorthy, Member  
Shri S.Jayaraman, Member  
Shri V.S.Verma, Member
- Date of Hearing** : 27.10.2009
- Petitioner** : M/s Global Energy Ltd. (GEL)
- Respondents** : 1. State of Karnataka through Principal Secretary, Energy Deptt., Bangalore,  
2. Karnataka State Load Despatch Centre (SLDC)  
3. Karnataka Power Transmission Corporation Ltd. (KPTCL),  
4. Western Regional Load Despatch Centre (WRLDC).
- Parties present** : Shri Sanjay Sen, Advocate, GEL  
Shri Rajiv Yadav, Advocate, GEL  
Shri Anand K Ganesan, Advocate, KPTCL

The petition has been filed by Global Energy Ltd. with the following prayers:

- “(a) Pass an order, directing the Respondents to implement the order dated 3.2.2009, passed by this Hon’ble Commission in petition no. 153 of 2008, by giving concurrence to the Petitioner’s inter-State open access applications;
- (b) Pass an order, imposing maximum penalty under Sections 142 and 146 of the Electricity Act, 2003 against the Respondent Nos. 2 & 3 and their erring officials;
- (c) Pass an order, directing the Respondent Nos.1, 2 and 3 to pay a sum of Rs. 4,09,25,700/- to the Petitioner, being the financial loss suffered by the

Petitioner on account of denial of open access as a result of the government orders notified by the State of Karnataka;

- (d) Pass an order, directing the Respondent Nos. 1, 2 and 3 to pay interest @ 18% per annum to the Petitioner on the aforesaid sum of Rs. 4,09,25,700/-;
- (e) Pass such other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case."

2. Learned Counsel for the Petitioner submitted that he was not pressing for the first prayer as the same had become infructuous on account of the stay order granted by the High Court of Karnataka on the order dated 22.1.2009 in Petition No.147/2008 which involved the similar issue as in the Commission's order dated 3.2.2009 in Petition No.153/2008.

3. Learned counsel for the Petitioner pointed out that the respondent Nos. 2 and 3 were liable to be proceeded against under Sections 142 and 146 of the Act for contravention of the order of the Commission for denying open access for the period 19.11.2008 to 17.12.2008 which was a denial simplicitor in the absence of any order issued by the State Government under Section 11 of the Act. He further added that there was not even a whisper as to why order of the Commission dated 3.2.2009 was not implemented by the respondent Nos. 2 and 3. Learned Counsel stated that the respondents had not raised any objection to the prayers for the proceeding under Sections 142 and 146 of the Act and therefore, the prayer should be allowed by the Commission.

4. As regards the prayer at para 1 (c) and (d) above, the learned counsel for the petitioner submitted that on account of the denial of open access, the petitioner had not been able to honour its commitment under the contract with REL and has suffered huge financial

loss to the tune of Rs. 4,09,25,700 up till 31.9.2009. He further submitted that this Commission has the power under section 11 (2) of the Act to offset-the adverse financial impact of the directions issued by the Govt. of Karnataka and therefore, the Commission be pleased to direct the Govt. of Karnataka alongwith KPTCL and Karnataka SLDC to pay the compensation along with the interest.

5. The learned counsel for the respondent Nos. 2 and 3 submitted that the petition was not maintainable against the respondents as the power purchase cost /compensation under section 11 (2) of the Act can not be borne by a person which is only a transmission licensee and is not the beneficiary of power Moreover, the appropriate Commission for the purpose of section 11 (2) of the Act is the State Commission and the jurisdiction of the Central Commission only extends to the generating companies owned and controlled by the Central Government or companies having a composite scheme for generation and supply of electricity under section 79 (1) (a) and (b) of the Act. As regards the penalty under section 142 and 146 of the Act, the learned counsel submitted that the Commission has not issued any notice under the said section and in case the Commission decides to issue notice, the respondent be granted time to file an appropriate reply.

6. The learned counsel for the petitioner in his rejoinder submitted that section 11 (2) does not exclude the jurisdiction of the Central Commission and in the circumstances of the present case, the Central Commission has the jurisdiction to award compensation as loss has been suffered by the petitioner on account of denial of open access in violation of the directions of the Commission. Referring to the provision of regulation 26 of the Central

Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, the learned counsel submitted that the Redressal Mechanism conceived under the said regulation provides that all disputes arising under the regulations shall be decided by the Commission based on an application made by the person aggrieved. Therefore, the Central Commission has the power under the regulation to deal with the dispute regarding compensation arising out of the denial of open access. The learned counsel further submitted that as per the Govt. of Karnataka order dated 17.12.2008, all co-generation Sugar Plant Units existing and operating in the State of Karnataka were required to supply all exportable electricity generated in the state to the state grid. Since the order was silent as to which DISCOM, the power was to be supplied, the petitioner has not made any of the DISCOMs as parties to the petition. If the DISCOMs are identified and intimated by the respondents, the petitioner will take necessary steps to implead them as parties. In reply to the Commission's query as to whom the petitioner had supplied power and billed therefor, the learned counsel for the petitioner replied that the power was supplied to HESCOM @ Rs. 5 per kWh.

7. After hearing the parties at length, the Commission reserved its order in the petition.

-sd/-  
(T. Rout)  
Jt. Chief (Legal)