

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

**Petition No.114/2009**

Coram : Dr. Pramod Deo, Chairperson  
Shri S.Jayaraman, Member  
Shri V.S.Verma, Member

Date of Hearing : 14.7.2009

Subject : Petition under Section 78 of the Electricity Act, 2003

Petitioners : Davanagere Sugar Company Ltd., Davanagere

Respondents : 1. Karnataka Power Transmission Cor. Ltd., Bangalore  
2. Bangalore Electricity Supply Co.Ltd., Bangalore  
3. State Load Despatch Centre, KPTCL, Bangalore  
4. Reliance Energy Trading Co. Ltd., Mumbai

Parties present : 1. Shri Prabhuling K. Navadgi, Advocate for the petitioner  
2. Shri Mukesh Kumar, DSCL  
3. Shri Anand K. Genesan, Advocate for the KPTCL

This application has been made alleging denial of open access by the third respondent in contravention of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (the open access regulations) and the Commission's previous order on the subject.

2. The applicant own a sugar mill, having co-generation facility of 24 MW with exportable capacity of 20 MW. In January 2002, the petitioner entered into an agreement with the first respondent, KPTCL for sale of power at an agreed rate. In the purported exercise of power under Section 11 of the Electricity Act, 2003 (the Act), the Government of Karnataka directed all co-generating units in the State of Karnataka to supply electricity to the State grid at a rate of Rs. 7.25 per kWh which was subsequently reduced to Rs. 6.50 per kWh.

3. Learned counsel for petitioner stated that the order passed by the Government of Karnataka under Section 11 of the Act was challenged by some of the generating units before the Hon'ble High Court of Karnataka and the matter was pending before that Court. He further stated that Government of Karnataka vide order dated 1.6.2009 directed that all generating units in the State of Karnataka would have to supply 50% of electricity generated by them to the State grid and they were entitled to supply/ sell the remaining 50% of electricity through open access. It was added that in that order made no distinction between the generators with PPA and generators without PPA. The

State Government of Karnataka vide order dated 6.6.2009 is stated to have withdrawn its said order dated 1. 6.2009.

4. Learned counsel for the petitioner stated that on 6.6.2009, Reliance Energy Trading Company Ltd. (Respondent No. 4) with the consent of the petitioner company filed an application before the third respondent for concurrence for short-term open access. The learned counsel further stated that SLDC, Karnataka had denied short term open access on ground that PPA existed between the petitioner and KPTCL as indicated in SLDC's letter to RETCL.

5. Learned counsel stated that open access was allowed earlier by the SLDC, Karnataka. He mentioned that BESCOM had filed petition before Karnataka Electricity Regulatory Commission (OP No. 5/2008) in which BESCOM submitted that M/s DSCL which had a PPA with it sought open access and which was allowed by Karnataka SLDC without obtaining any permission or order from KERC or the consent of petitioner. It was contented before KERC by BESCOM that when PPA was persisting the petitioner could not sell power to any person and hence concurrence by SLDC, Karnataka for open access was illegal or unsustainable. In this petition, KERC disposed of the matter and observed that as held by the Commission in its order dated 3.12.2007, PPA could not override provisions of the open access regulations which are subordinate legislation and parties had to initiate separate proceedings for the enforcement of the PPA. KERC vide order dated 12.03.2009 stated that the open access given by SLDC, Karnataka was not illegal.

6. Learned counsel further quoted paras 15, 16 and 22 of the Commission order dated 3.12.2007 in Petition No. 108/2007 in which the Commission had reiterated that SLDC should consider the applications for open access in an impartial manner and in line with the provisions of the Act and open access regulations. Any denial of open access on considerations other than those prescribed under the law and taken note of will attract the penal provisions of the Act.

7. Learned counsel for the petitioner stated as the matter had been already settled before the Commission and upheld by Appellate Tribunal, denial of open access by SLDC, Karnataka on the same ground i.e. existing of PPA with BESCOM was illegal. He cited the Supreme Court judgment to substantiate his argument that the matter once decided by the Court and upheld could not be raised again.

8. Learned counsel for the petitioner requested to set aside the decision by SLDC, Karnataka denying concurrence for open access and to direct SLDC for approval of the same.

9. Learned counsel for the respondent mentioned that SLDC, Karnataka had cancelled open access application in view of the order of Government of Karnataka because of a substing PPA with the petitioner. Learned counsel argued that the petitioner was under an obligation to supply power to BESCO by virtue of the PPA. He further stated that the matter relating to under proceeding Section 11 of the Act was pending before the High Court of Karnataka. He contended that the decision by Hon'ble High Court could affect this case also.

10. The Commission reserved its order.

Sd/-  
**(K.S.Dhingra)**  
**Chief (Legal)**