

**BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 188/2009**

**Coram**

**Dr. Pramod Deo, Chairperson  
Shri S. Jayaraman, Member  
Shri V.S.Verma, Member  
Shri M Deena Dayalan, Mrmber**

**Date of Hearing: 20.7.2010**

**Date of Order: 7.9.2012**

**In the Matter of**

**Petition under Section 79 (1) of the Electricity Act, 2003**

**And in the Matter of**

**Narayanpur Power Company Pvt. Ltd. Bangalore**

**Petitioner**

**Vs**

**1. Government of Karnataka, Bangalore**

**2. Gulbarga Electricity Supply Company Ltd., Gulbarga**

**3. State Load Despatch Centre, Bangalore**

**Respondents**

**Present**

None

**ORDER**

The petitioner has alleged denial of open access by the respondents and seeks the following reliefs, namely –

- (i) quash/set aside the letters dated 1.7.2009 and 18.12.2008 and hold that there is no binding PPA between the petitioner and the second respondent,

- (ii) direct the second respondent to make the payment for the outstanding for the energy received without a binding PPA,
- (iii) allow open access to the petitioner, and
- (iv) pass any order (s) deemed fit in the interest of justice, equity and good conscience.

2. The petitioner has established a 7.2 MW mini hydro based generating station in the State of Karnataka. The petitioner has indicated that it intended to sell power to the second respondent who was also willing to purchase the power. Therefore, the petitioner prepared the draft Power Purchase Agreement (PPA) dated 12.2.2008 for purchase of power by the second respondent. According to the petitioner, it submitted the draft PPA to the Karnataka Electricity Regulatory Commission (KERC) for its approval. However, KERC by its letter dated 21.4.2008 suggested certain modifications to the draft PPA so as to bring it at par with the standard draft agreement formalised by KERC. The petitioner claims to have changed its mind to sell power to the second respondent since the modifications suggested by KERC were not acceptable to it and informed the second respondent accordingly by e-mails dated 15.12.2008, 23.12.2008 and 25.12.2008.

3. The petitioner has stated that it decided to sell its generation at power exchanges by availing open access on the inter-State transmission system. The petitioner made an application before the Karnataka State Load Despatch Centre (KSLDC), the third respondent, on 22.9.2008 for standing clearance to sell the generated power through the Indian Energy Exchange. KSLDC under its letter dated

3.12.2008 referred the application to the second respondent who by its letter dated 18.12.2008 advised that grant of open access was in violation of the PPA executed between the petitioner and the second respondent on 12.2.2008 and as such open access could not be granted. Accordingly, the third respondent did not permit the petitioner the short-term open access. Subsequently, on 30.12.2008 the State Government, the first respondent, issued a notification under Section 11 of the Electricity Act whereby all the generating companies operating in the State were directed to operate and maintain their generating stations to the maximum exportable capacity and PLF and supply all exportable electricity generated to the State Grid. The petitioner filed a petition before KERC as it felt financially prejudiced by the directions of the State Government.

4. According to the petitioner, it was informed by the Indian Energy Exchange by the latter's letter dated 23.6.2009 that the former's application for proprietary membership had been approved. It appears that after approval of its membership of the Indian Energy Exchange, it made a fresh application dated 24.6.2009 before the third respondent for standing clearance. The third respondent, by its letter dated 24.6.2009 informed the petitioner of the defects in the application which were removed by the petitioner the next day, that is on 25.6.2009. However, the third respondent rejected the application by its letter dated 1.7.2009 on the ground of existence of the valid PPA between the petitioner and the second respondent. The petitioner further claims to have pursued the matter with the third respondent, but to no avail. The petition has been filed against the above background.

5. The first and second respondents in their replies have submitted that the PPA signed between the petitioner and the second respondent on 12.2.2008 was approved by KERC under its letter dated 21.4.2008, though it suggested certain modifications of 'ministerial' nature. It has been stated by them that the petitioner had been supplying power to the second respondent since the commissioning of the generating station in January 2009 in accordance with the terms of the PPA. The respondents have filed copy of the judgment dated 26.3.2010 of the Hon'ble Karnataka High Court who has upheld the validity of the notification dated 30.12.2008 issued by the State Government under Section 11 of the Electricity Act. The respondents have vehemently denied the genuineness of the e-mails dated 15.12.2008, 23.12.2008 and 25.12.2008 reportedly sent by the petitioner.

6. The basic issue that has been raised by the parties is whether there existed a PPA for sale of power by the petitioner to the second respondent. According to the petitioner, approval of the PPA is the condition precedent for its validity and operation. The petitioner has argued that since there is no unconditional approval by KERC to the PPA and that the conditions imposed by KERC have not been complied with and the modifications suggested by KERC have not been incorporated, the PPA has not become operational. On the contrary, the respondents have urged that the PPA had become operational and the petitioner had been supplying electricity to the second respondent since January 2009 under the PPA. It is the case of the respondents that the modifications suggested by KERC are insignificant and do not affect the validity of the PPA signed by both the parties on 12.2.2008 since the modifications suggested do not affect the substantive provisions.

7. Earlier, in certain petitions (Petition Nos. 108/2007, 114/2007 and 116/2007) filed before this Commission for grant of inter-State open access, the question of existence or otherwise of the PPAs between the generating companies and distribution companies in the State of Karnataka was raised, as in the present proceeding. This question was decided by this Commission by order dated 3.12.2007. The State utilities filed appeal, being Appeal No. 6/2008, before the Appellate Tribunal against the said order dated 3.12.2007. The Appellate Tribunal vide its order dated 1.4.2008 which binds us, disposed of the appeal in following terms:

*“With the consent of the parties, the following order is passed:-*

*The Appellant may approach the Karnataka Electricity Regulatory Commission for matters relating to the rights of the appellant and the obligations of the Respondent-Generating companies under the Power Purchase Agreements including for interim orders for supply of power to the appellant, as per the rights claimed by the appellant but denied by the Respondent-Generating Companies. In the event any such petition is filed, the State Commission shall consider the same uninfluenced in any manner by the impugned orders of the Central Commission, expeditiously, in accordance with law. Subject to the above, the impugned order is not interfered with in these appeals but the issues decided shall not be considered as a precedent in any other case. The existing open-access arrangement between the parties shall continue in the meanwhile. The appeals are disposed of in terms of the above.”*

8. In view of the Appellate Tribunal's order dated 1.4.2008, the petitioner may, if so advised, approach the State Commission for adjudication of the validity of the PPA. The question of reasonableness of denial of open access will arise subsequently.

9. Before parting, we may add that the appeals against the judgment dated 26.3.2010 of the Hon'ble High Court, the copy of which has been placed on record by the respondents, are presently pending before the Hon'ble Supreme Court.

10. The petition stands disposed of in above terms.

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**(M DEENA DAYALAN)**  
**MEMBER**

**(V.S.VERMA)**  
**MEMBER**

**(S. JAYARAMAN)**  
**MEMBER**

**(DR.PRAMOD DEO)**  
**CHAIRPERSON**