

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 165/MP/2012
with I.A. No.41/2012**

- Subject : Petition under section 79 (1) (c) of the Electricity Act, 2003 and Regulation 27 of the Central Electricity Regulatory Commission (Open Access in inter-state Transmission) Regulations 2008.
- Date of hearing : 16.10.2012
- Coram : Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri Deena Dayalan, Member
- Petitioner : M/s BMM ISPAT Limited
- Respondents : State Load Dispatch Centre, Karnataka
- Parties present : Shri Shridhar Prabhu, Advocate for the petitioner
Shri Anantha Narayana, Advocate for the petitioner
Shri Anand K. Ganesan, Advocate for SLDC, Karnataka

Record of Proceedings

Learned counsel for the petitioner submitted that respondent has not filed any reply despite the direction of the Commission.

2. Learned counsel for the petitioner submitted that respondent vide its letter dated 27.6.2012 had demanded Rs. eighty one lakh seventy thousand seven hundred and three towards the Short Term Open Access (STOA) charges for the period from 1.7.2012 to 31.7.2012 which means that charges have been levied for future transactions which have not taken place. Thereafter, the respondent vide letter dated 29.8.2012 raised the provisional bill toward UI charges and backup supply charges for the period from 1.6.2012 to 30.6.2012. Learned counsel submitted that in the bill meant for inter-State STOA transactions charges, the charges towards some intra-State supplies made by the petitioner to a distribution company in Karnataka to whom petitioner is supplying power under PPA, have been included.

3. Learned counsel submitted that the petitioner vide its letter dated 18.9.2012 had applied for standing clearance for 45 MW for the period from 1.10.2012 to 31.10.2012, which was not considered by the respondent. Thereafter, the respondent under its

letters dated 8.10.2012 and 10.10.2012 raised the bills for STOA and Backup Supply Charges (BSC). Learned counsel submitted that the respondent has been consistently retreating illegal demand taking advantage of the fact that no stay is operating against it. The respondent is charging 5% Electricity tax in its bills which is illegal. It is a long settled legal proposition that Electricity tax cannot be levied for inter-State open access transactions. In this regard, he relied on the Hon`ble High Court of Andhra Pradesh judgment dated 11.4.1990 in Writ Appeal No. 8488 of 1987 {NTPC Vs State of Andhra Pradesh reported in (1990) 78STC132(AP)}. Learned counsel submitted that the respondent has no authority to collect the Electricity tax in its bills covering inter-State open access charges. Learned counsel submitted the respondent be directed to grant no objection or standing clearance for open access.

4. Learned counsel for the SLDC, Karnataka submitted that the petitioner has not served the copy of the petition on the respondent and requested two weeks time to file its reply, which was allowed.

5. Learned counsel for the SLDC, Karnataka submitted that the prayers in the petition are regarding levying of back supply charges and UI charges and there is no prayer for grant of open access. Therefore, the submission of the learned counsel for the petitioner for a direction to grant open access cannot be considered.

6. Learned counsel for the petitioner sought liberty to amend the application to include the prayer for grant of no objection or standing clearance for open access.

7. The Commission directed the petitioner to file revised petition on or before 31.10.2012, with an advance copy to the respondent. The respondent may file its reply by 16.11.2012, with an advance copy to the petitioner who may file its rejoinder, if any, by 30.11.2012.

8. The petition shall be listed for hearing on 11.12.2012.

By order of the Commission,

**(T. Rout)
Joint Chief (Law)**