

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri Ashok Basu, Chairman**
- 2. Shri K.N. Sinha, Member**
- 3. Shri Bhanu Bhushan, Member**

Petition No.198/2004

In the matter of

Grant of open access for inter-state transmission of electricity.

And in the matter of

Global Energy Limited

.....**Petitioner**

Vs

1. Western Region Load Dispatch Centre (WRLDC), Mumbai
 2. Eastern Regional Load Dispatch Centre (ERLDC), Kolkata
 3. Central Load Dispatch-West Bengal State Electricity Board (CLDWBSEB), West Bengal, Kolkata
 4. Adani Exports Ltd., New Delhi
 5. Calcutta Electricity Supply Company (CESC), Kolkata
- ...**Respondents**

The following were present:

1. Shri Hemant Sahai, Advocate, GEL
2. Ms Sampada Narang, Advocate, GEL
3. Shri Harry Dhaul, GEL
4. Shri V. Suresh, GEL
5. Shri V.K. Veluchamy, WRLDC
6. Shri S.K. Banerjee, GM, ERLDC
7. Shri Sunil Agrawal, PGCIL
8. Shri P.K. Bhattacharjee, Dy. CE, WBSEB
9. Shri R.B. Mathur, AEL
10. Shri Kandarp Patel, AEL
11. Shri R.K. Madan, AEL
12. Shri V. Bhattacharjee, GM, CESC
13. Shri B.B. Chakrabarti, ACE(O), CESC

**ORDER
(DATE OF HEARING : 30.12.2004)**

The application has been made for direction to the respondents to grant open access to the petitioner for transmission of 30 MW of power every day during off peak

hours in ER-WR corridor through third respondent's system in priority for any other similar application by any party.

2. It is averred that the petitioner entered into a contract with Calcutta Electricity Supply Company (CESC) (fifth respondent) to buy 30 MW of power during the period 1.12.2004 to 28.2.2005, for sale to Maharashtra State Electricity Board in Western Region. The petitioner made an application for grant of open access for inter-state transmission of electricity in ER-WR corridor through the system belonging to the third respondent. It is stated that the petitioner was advised by the third respondent to apply for open access to its system for a period of one month at a time. Based on this advice, the petitioner applied for and was granted open access up to 31.12.2004, though the petitioner in its letter to the third respondent is stated to have made clear that its contract for sale of power with the fifth respondent was till 28.2.2005 and accordingly, it should be provided with open access up to 28.2.2005. The petitioner has stated that it has made an application for grant of open access to the first respondent, but is said to have learnt that the fourth respondent has "transgressed" on the petitioner's ongoing contract with the fifth respondent and has made an application for open access in ER-WR corridor through the third respondent's system for transmission of 30 MW of power from the fifth respondent to MSEB, which is a part of the transaction the petitioner is already carrying out. Under these circumstances, the petitioner has alleged that the first, second and third respondents cannot grant open access to the fourth respondent for the same transaction as the petitioner is carrying out and for which it has been granted open access up to 31.12.2004.

3. The petitioner has made the substantive prayer against the above noted background.

4. Shri V.K. Veluchamy, representative of the first respondent submitted that the application made by the petitioner for open access from 1.1.2005 to 31.1.2005 was received on 17.12.2004. The petitioner had not made the advance payment as required, along with its application. The necessary payments were made by the petitioner on 20.12.2004, and the application was referred to the second and third respondents on the same date. However, the second and third respondents declined to give their consent for use of corridor belonging to the third respondent on 27.12.2004. On the other hand, the fourth respondent made its application for grant of open access from 1.1.2005 to 31.1.2005 on 10.12.2004, for which consent of the second and third respondents was received on 21.12.2004 confirming availability of the system for open access. The first respondent has approved open access to the fourth respondent on 29.12.2004.

5. Shri S.K. Banerjee, GM for the second respondent raised a preliminary objection that the petitioner had not complied with Regulation 35 of the Central Electricity Regulatory Commission (Open Access in Inter-state Transmission) Regulations, 2004 (the regulations), according to which all complaints regarding unfair practices, delays, discrimination, lack of information, supply of wrong information or any other matter related to open access in inter-state transmission are to be directed to the Member Secretary, Regional Electricity Board or Regional Power Committee, as the case may be, of the region in which the authority against whom the complaint is made, is located. The Member Secretary, Regional Electricity Board or the Regional

Power Committee, as the case may be, is to investigate and endeavour to resolve the grievance, and in case is unable to resolve any matter he is to report it to the Commission for a decision.

6. The representative of the third respondent submitted that based on the system studies carried out by its Planning Department, only 100 MW of power can be wheeled on its system during January, 2005 because of additional local demand on account of harvesting season. He stated that the third respondent has already made a commitment to PTC India Limited, another trader, to make available its corridor to the extent of 70 MW during January, 2005. Therefore, the surplus capacity available is to the extent of 30 MW only. He submitted that the application made by the fourth respondent was received on 13.12.2004 through the first respondent and the consent was conveyed on 21.12.2004 on the principle of 'first-come-first-served'. He clarified that this principle is being followed by the third respondent consistently and on earlier occasions the fourth respondent was denied access to the transmission system in preference to the petitioner on the same ground that its application was received later than that of the petitioner. The representative of the third respondent submitted that it had never advised the petitioner to apply for open access for one month at a time. He further submitted that in the past PTC India Limited was allowed open access on its system for more than one month at a time.

7. The representative of the fourth respondent denied the allegation made by the petitioner that it has 'transgressed' on the petitioner's ongoing contract with the fifth respondent. He supported the submission made by the representative of the fifth respondent that the power contracted was in addition to that earlier contracted by the

petitioner. The representative of the fourth respondent supported the contention of the third respondent that in the past the fourth respondent was not accommodated on the ground that its application was made later than that of the petitioner.

8. The representative of the fifth respondent clarified that the contract made with the fourth respondent for sale of 30 MW of power during January 2005 was in addition to 30 MW committed to the petitioner. He submitted that 60 MW of surplus power would be available with the fifth respondent and thus the contract with the petitioner as well as with the fourth respondent for a period up to 31.1.2005 could be honoured.

9. We have considered the oral submissions made at the hearing. We have not insisted on formal replies from the respondents since the petitioner made out a case for immediate decision on account of the fact that the open access transaction was to commence on 1.1.2005. In case at a later date it is found that the statements made by the representatives of any of the respondents recorded above are not factually correct, they will be liable to be proceeded against in accordance with law.

10. After hearing the representatives of the parties on 30.12.2004, we have ordered dismissal of the application. We now proceed to record our reasons in support of the decision.

11. Shri Hemant Sahai, Advocate for the petitioner submitted that the petitioner has not made the grievance against any authority and, therefore, the provisions of Regulation 35 are not attracted. It is noticed that when the present application was filed on 24.12.2004, neither an order to deny open access to the applicant was made nor a

decision to grant open access to the fourth respondent was taken by the competent authority. Therefore, in our opinion, Regulation 35 was not applicable when the application was made, though the application could be termed as premature and rejected on that ground. However, we have taken note of the events subsequent to making of the application and in the interest of justice and to avoid multiplicity of proceedings, we heard the contentions of the parties on merits.

12. In accordance with Clause (i) of Regulation 13, a short-term customer is required to make an application for access to the nodal Regional Load Dispatch Centre, the first respondent in the present case. The petitioner had made the application for grant of open access for the period ending 31.12. 2004 to the first respondent and was granted open access. For open access for the period 1.1.2005 to 31.1.2005, the application was made to the first respondent only on 17.12.2004. This application was not complete and accordingly, it was not processed by the first respondent. The defects in the application were removed by the petitioner on 20.12.2004. Thereafter it was processed by the first respondent in accordance with the laid down procedure. The third respondent decided on 21.12.2004 in favour of the fourth respondent by applying the principle of 'first-come-first-served', which principle it has been following consistently in the past as has been stated by the representative of the third respondent at the hearing before us. We do not find any irregularity on the part of the third respondent while considering the applications made by the petitioner.

13. Learned counsel for the petitioner submitted that on 21.12.2004 when the third respondent consented to allow access to its transmission system to the fourth respondent, the petitioner's application, complete in all respects was already before the

third respondent and, therefore, the third respondent ought to have called snap bids in accordance with the procedure laid down by the Commission. We do not propose to take notice of this issue for the reason that we have not found any irregularity in the conduct of the third respondent in allowing access to the fourth respondent and denying the same to the petitioner. The view taken by the third respondent is possible on the interpretation of the provisions made in the Regulations on open access as no cut-off date has been laid down for consideration of the application for open access. These regulations are being considered for amendment and the Commission proposes to provide for a cut-off date for processing the applications for grant of open access. In case the amendment as proposed is finalised, it may further add clarity to the existing provision.

14. Learned counsel for the petitioner submitted that in its letter dated 3.12.2004 – Annexure P-3 to the petition – addressed to the third respondent, it had requested for grant of open access for evacuation of 30 MW of power of electricity through its system from 8.12.2004 till 28.2.2005 though, to begin with, the application for open access for the period from 8.12.2004 to 31.12.2004 was submitted to the first respondent. In the said letter dated 3.12.2004, it was stated that the petitioner would make an application for the period 1.1.2005 to 28.2.2005. Taking into the contents of the said letter dated 3.12.2004, learned counsel for the petitioner contended that the third respondent was aware of the fact that the petitioner needed the open access for the period up to 28.2.2005 and in that view of the matter its application was made prior to that made by the fourth respondent. As we have noticed above, an application for open access is to be made to the nodal Regional Load Dispatch Centre, the first respondent in the present case. The application was made only on 17.12.2004, which was found to be

defective. The letter dated 3.12.2004 written by the petitioner to the third respondent cannot be said to be an application for grant of open access to the competent authority in accordance with the specified procedure. For this reason, we do not find any merit in the contention of the petitioner that it made an application for open access prior to that made by the fourth respondent.

15. At the hearing, learned counsel for the petitioner vehemently urged that the application for open access was not made for the period up to 28.2.2005 in the first instance for the reason that it was represented by the third respondent that open access could not be granted for a period exceeding one month at a time. This has been denied by the representative of the third respondent with equal vehemence and force. The representative of the third respondent brought to our notice that in the past PTC India Limited was allowed open access for a period exceeding one month based on an application to that effect made by it. No evidence in support of the argument made by the petitioner is placed on record. Therefore, we are not inclined to take notice of the submission made by the petitioner.

16. In view of the foregoing, the petition is dismissed at admission stage itself with no order as to costs.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 6th January, 2005