

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

1. **Shri Bhanu Bhushan, Member**
2. **Shri R Krishnamoorthy, Member**

**Petition No. 24/2007**

**In the matter of**

Refusal No 131 of 25.1.2007 by the Western Regional Load Despatch Centre of the open access application filed by Tata Power Trading Company Limited for transmission of 27 MW power through Eastern Regional Load Despatch Centre and Orissa State Load Despatch Centre from Nava Bharat Ventures Ltd, on the ground of "No consent from OPTCL".

**And in the matter of**

1. Nava Bharat Ventures Ltd, Hyderabad
  2. Tata Power Trading Company Ltd, Mumbai
- .....Petitioners**

V E R S U S

1. Western Regional Load Despatch Centre, Mumbai
  2. Eastern Regional Load Despatch Centre, Kolkata
  3. Orissa Power Transmission Corporation Ltd, Bhubaneswar
  4. Grid Corporation of Orissa Ltd, Bhubaneswar
  5. Eastern Regional Power Committee, Kolkata
- .....Respondents**

**The following were present:**

1. Shri K. Gopal Choudhary, Advocate, NBVL
2. Shri R.K. Mehta, Advocate, OPTCL
3. Shri R. B. Sharma, Advocate GRIDCO
4. Shri S.R. Sarangi, GRIDCO

**ORDER  
(DATE OF HEARING : 28.2.2008)**

This petition has been filed jointly by M/s. Nava Bharat Ventures Ltd and Tata Power Trading Company Ltd. *inter alia*, for a declaration that Refusal No 131 dated 25.1.2007 by the first respondent, vide which the second petitioner was denied short-

term open access for transmission of power on the ground that there was no consent from the third respondent was illegal, unreasonable and contrary to law and for a declaration that the petitioners were entitled to short-term open access for the inter-State transmission system in the facts and circumstances of the case and in like or similar facts and circumstances in future, with order of costs in their favour and against the third and fourth respondents, after another declaration that the conduct of the third respondent in withholding consent was invalid, unreasonable, unjustified and contrary to law. The petitioners also seek a declaration that the nodal RLDCs required to grant open access should presume that there is no impediment or constraint in transmission of electricity unless intervening RLDC and /or SLDC specifically communicate in writing that there is a specific, relevant and justifiable technical reason by way of constraint in capacity or congestion, duly providing sufficient particulars and reasons therefor.

2. Briefly, the facts of the case are that the petitioners had entered into an agreement on 20.12.2006 for sale/purchase of 27 MW of surplus power generated by the first petitioner during the period April to June 2007. The second petitioner then made an application dated 18.1.2007 with the first respondent for grant of inter-State open access from OPTCL (the third respondent) periphery to the interconnection between the State of Madhya Pradesh and the CTU. The open access is, however, stated to have been denied by the first respondent under Refusal Note No.131 dated 25.1.2007 citing "NO CONSENT FROM OPTCL", as the reason. Thereupon, the petitioners moved this Commission through the present proceedings with prayers noticed above.

3. The petition was initially heard on 6.3.2007 when it emerged that Member-Secretary, Eastern Regional Power Committee (ERPC), the fifth respondent, had already resolved the issue vide his order dated 5.3.2007 exercising the powers vested in him under Regulation 35 of the Central Electricity Regulation Commission (Open Access in inter-State Transmission) Regulations, 2004 (hereinafter referred to as “the open access regulations”). Accordingly, the Commission vide its order dated 7.3.2007 disposed of the petition, directing the parties to take further steps in consonance with the decision of the Member-Secretary, ERPC (the fifth respondent). The Commission had also made some observations on certain issues which came to its notice during the hearing of the petition.

4. The third and fourth respondents moved the Hon'ble High Court of Orissa vide Civil Writ Petition No. 3803/2007 challenging the validity of the above order of the Commission dated 7.3.2007 as also the order dated 5.3.2007 of the Member-Secretary ERPC. The Writ Petition was disposed of by the Hon'ble High Court of Orissa vide its order dated 11.12.2007 with the following directions:

“In view of the aforesaid facts, this court is satisfied that adequate opportunity was not granted to the petitioners to present their case before the Commission. Consequently, the order dated 7.3.2007 is quashed and the matter is remitted back to the Central Electricity Regulatory Commission, New Delhi for de novo hearing of Petition No. 24/2007. to shorten the span of litigation all the parties having been represented through their counsel, this court directs that all the parties shall appear before the Commission at New Delhi on 11<sup>th</sup> January 2008. on the said date on production of certified copy of this order the Commission shall take steps to dispose of the petition by fixing further dates according to its own diary. The matter shall be disposed of by the end of February, 2008. it is once again made clear that this court has not expressed any opinion with regard to merit of the contentions raised by either party”

5. Based on the above directions, the case was heard by us on 28.2.2008 along with Petition No. 10/2008, also involving the same parties and raising similar issues.

6. The petitioners' principal aim was to seek open access for the period April – June 2007, which was granted by the third and fourth respondents based on the Commission's order dated 7.3.2007 and interim order of the Hon'ble High Court in the Writ Petition filed by the third and fourth respondents. Thus, the substantive grievance of the petitioners stood addressed and to that extent the petition became infructuous. Certain other issues regarding streamlining of the procedure for grant of open access, which may have a bearing in the present case also, have also been addressed by the Commission vide its order dated 5.5.2008 in Petition No. 10/2008. However, the learned counsel for the petitioners stressed on the point that it should always be presumed that there were no technical or transmission constraints unless the SLDC specifically so communicated. He urged that the Commission should declare that the nodal RLDC shall be required to grant open access on the inter-State transmission system presuming as if no constraints existed, in the absence of a specific communication to that effect from the SLDC or other RLDC involved in the transaction. In the submission of the learned counsel for the petitioners the declaration as prayed for is necessary since otherwise it would always be possible for the SLDC to thwart the application, as done in the case before the Commission, by not responding at all.

7. We do consider such a declaration is needed at this stage. The Commission has specified the Central Electricity Regulatory Commission (Open Access in inter-State transmission) Regulations, 2008, which have come into effect from 1.4.2008. Clause (3) of Regulation 8 of these regulations mandate the SLDC to give its consent or otherwise within three days of receipt of the application. Needless to say, the SLDC shall have to comply with these regulations and in case it fails to do so, it will be open

to the Commission to initiate appropriate proceedings under Section 142 of the Electricity Act, 2003 for non-compliance of the regulations and thereby the SLDC becomes liable to be penalized. Under these circumstances, we feel that the existing statutory framework takes adequate care of the apprehension expressed by the learned counsel for the petitioners. .

8. In view of the above, this petition has become infructuous and stands disposed of accordingly.

Sd/-  
**(R.KRISHNAMOORTHY)**  
**MEMBER**

Sd/-  
**(BHANU BHUSHAN)**  
**MEMBER**

**New Delhi dated the 27<sup>th</sup> August 2008**