

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Record of Proceedings

Coram	Dr. Pramod Deo, Chairperson Shri R.Krishnamoorthy, Member Shri S. Jayaraman, Member Shri V.S.Verma, Member
Petition No.	21/2009 (Suo motu)
Date of Hearing	16.4.2009
Subject	Petition under section 76 and 79 of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Open Access in inter-State Transmission Regulations 2008)
Petitioner	GMR Energy Ltd., Bangalore
Respondent	Karnataka Power Transmission Corporation Ltd., Bangalore
Parties present	Shri Gopal Jain, Advocate, GMR Shri Anand K. Ganesan, Advocate, KPTCL

The learned counsel for the petitioner submitted that the request by the petitioner for open access had been denied on the sole ground that the State Government order dated 30.12.2008 under section 11 of the Electricity Act, 2003 (the Act) required that all the power generated within the State was to be supplied to the State grid. According to him, the order of the State Government could not be a ground for denial of open access. He highlighted that the power under section 11 was required to be invoked only to meet extra ordinary circumstances as mentioned in the explanation, whereas the State Government order dated 30.12.2008 was prompted by power shortage in the State. He added that the power under section 11 of the Act could be used only for issuing directions relating to operation and maintenance of the generating stations, and not in relation to supply of power. He also pointed out that other States had also taken similar action by issuing notifications under section 11 of the Act. This, according to learned counsel, will prove fatal to the basic concept of open access prescribed in the Act.

2. Learned counsel for the respondent, on the other hand, contended that the State Government order dated 30.12.2008 under section 11 of the Act

prohibited sale of power to any agency outside the State and the validity of the notification was under examination by the Hon'ble High Court. To the pointed question as to whether the Hon'ble High Court had stayed all proceedings relating to open access, learned counsel answered that the interim order of the Hon'ble High Court pertained to the order of the Commission in a specific case and there was no stay on any other proceedings relating to open access. He added that interested parties moved the Hon'ble Supreme Court seeking stay of the interim order of the Hon'ble High Court, but the Hon'ble Supreme Court had dismissed the request. He contended that the power to issue an order included the power to enforce it and accordingly the State Government had issued directions to the respondent, for ensuring enforcement of the order issued under section 11 of the Act. He also pointed out that section 37 of the Act empowered the State Government to issue such directions to SLDC.

3. The learned counsel for the petitioner submitted that even his application dated 6.3.2009 for open access for the month of June 2009 has not been responded to despite the fact that the order dated 17.12.2008 was applicable up to May 2009 only. According to him, there was no justification for denial of open access for the month of June 2009. In reply to this submission, learned counsel for the respondent stated that he was not aware of the subsequent applications filed by the petitioner and did not get any instructions as regards these applications. The Commission directed the petitioner to submit the copies of subsequent applications for open access with a copy to the respondent.

4. Subject to above, order in the petition was reserved.

Sd/=
(K.S. Dhingra)
Chief (Legal)