

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

Petition No. 231/2010  
&  
Interlocutory Application No.6/2011

Coram: Dr Pramod Deo, Chairperson  
Shri S Jayaraman, Member  
Shri VS Verma, Member  
Shri M Deena Dayalan, Member

Date of Hearing: 24.3.2011

Petitioners: Tata Power Company Limited  
Tata Power Trading Company Limited

Respondents: 1. Maharashtra State Load Despatch Centre, Kalwa  
2. Reliance Infrastructure Limited, Mumbai

Counsels/ parties present: Shri Sitesh Mukherjee, Advocate for petitioners  
Shri Vishal Aand, Advocate  
Shri Sakya Chaudhuri, Advocate  
Shri Abhijeet Kumar Lala, Advocate for petitioners  
Shri V. H. Wagle, Tata Power  
Shri B. J. Shroff, Tata Power  
Shri Abhishek Roy, TPTCL  
Shri Ashish Alaspurkar, Advocate for MSLDC  
Shri B. H. Gujrati, MSLDC

Subject: Petition under Regulation 8(3) of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission), Regulations, 2008 for directions to Maharashtra Load Despatch Centre to grant No-Objection/concurrence/standing clearance for inter-State open access.

**RECORD OF PROCEEDINGS**

Tata Power Company Limited (TPCL), petitioner No.1 herein had challenged the Memorandums dated 7.5.2010 and 19.5.2010 issued by Government of Maharashtra in the High Court of Bombay. Under the memorandum dated 7.5.2010, the Government of Maharashtra had suggested to TPCL to supply 360 MW to Reliance Infra, the Respondent No.2 till 30.6.2010 and thereafter 200 MW to till 31.3.2011. Subsequently, Government of Maharashtra in its memorandum dated 19.5.2010 directed the Chief Engineer, State Load Despatch Centre, Kalwa and all officers and employees working under him to maintain status quo with regard to scheduling of 360 MW power of TPCL till further directives from

Maharashtra Electricity Regulatory Commission (MERC) or till further orders or directions by the State Government.

2. During the pendency of the writ petition, Tata Power Trading Company Limited (TPTCL), petitioner No.2 made an application on 28.6.2010 before the Respondent No.1 Maharashtra State Load Despatch Centre, for standing clearance for sale upto 358 MW generation capacity at the power exchange as required under Regulation 11 (B)(i) of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 and clause 2.3 of the Procedure for scheduling of collective transactions framed by the CTU. SLDC in its reply dated 30.6.2010 declined to issue the standing clearance in the following terms:

*“As the said matter is pending with Hon’ble Commission, this application cannot be considered at this stage. It shall be considered in view of orders which shall be passed by Hon’ble Commission in the proceeding pending before it.”*

The petitioner in its affidavit dated 1.7.2010 brought its application dated 28.6.2010 and MSLDC’s reply dated 30.6.2010 on the record of the High Court.

3. The learned counsel for the petitioners submitted that the High Court of Bombay in its order dated 9.8.2010 clarified that pendency of the writ petition would not come in the way of the petitioners (TPCL and TPTCL) availing the remedies available to them under law. The petitioners have accordingly approached the Commission against the unlawful denial of open access by MSLDC in violation of Regulation 8(3) Central Electricity Regulatory Commission (Open Access in inter-State Transmission), Regulations, 2008. The petitioners have sought a declaration to quash the communication dated 30.6.2010 issued by MSLDC and for direction to MSLDC to grant standing clearance for inter-State open access and compensation from SLDC for the losses suffered by TPCL on account of the difference between the market rate discovered in the power exchanges and the rate at which TPCL is forced to sell power to Reliance Infra among other prayers.

4. The learned counsel for the petitioners further submitted that the High Court of Bombay in its order dated 18.1.2011 has quashed and set aside the Government of Maharashtra Memorandum dated 7.5.2010 as ultra vires. The High Court has further observed that the Memorandum of 19.5.2010 is consequential to the memorandum dated 7.5.2010. Once the State Government came to the conclusion that exercise of statutory directive was not warranted at that stage, it would be impermissible for the State Government to issue what it termed as a request but which it treated as a binding advice by issue a directive in the subsequent memorandum of 19.5.2010. The learned counsel submitted that the Interlocutory Application No.6/2011 has been filed to bring on record the judgement of the High Court and for disposal of the main petition by passing appropriate order. The learned counsel for the petitioners submitted that though the period for which open access was sought has since expired, nevertheless the Commission may consider to issue appropriate orders.

6. The learned counsel for Respondent No. 1, MSLDC has submitted that as per the directions of the High Court of Bombay in its order dated 9.8.2010, MERC has disposed of the Petition No. 37/2010 in its order dated 29.9.2010 holding that administrative action of MSLDC was reasonable. The learned counsel sought time to file its reply to the IA.

7. The Commission directed the staff to take the judgment of the High Court of Bombay on record. The Commission allowed time to MSLDC till 22.4.2011 to file its reply and the petitioners to file their rejoinder, if any, by 29.4.2011. The Commission further directed that the matter will be listed for further hearing only in the event a specific request is received from MSLDC.

8. Subject to directions in para 7 above, order in the petition was reserved.

Sd/-  
(T. Rout)  
Jt. Chief (Legal)