

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 1/MP/2012

Sub: Levy of UI charges in violation of Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 20089 and back supply charges under the Karnataka Electricity Regulatory Commission (Open Access) Regulations, 2004 for an inter-State open access transaction.

Date of hearing : 28.6.2012

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

Petitioner : Sadashiva Sugars Limited, Bangalore

Respondents : State Load Despatch Centre , Karnataka, Bangalore

Parties present : Shri G.Joshi, Advocate for the petitioner
Shri Anand K.Ganesan, Advocate, SLDC, Karnataka

Record of Proceedings

Learned counsel for the petitioner submitted that the respondent, SLDC Karnataka in its reply to the petition has raised the objection with regard to the jurisdiction of the Central Commission without citing any reasons. Learned counsel submitted that the said objection is not sustainable as all inter-state open access transactions will be governed by Central Electricity Regulatory Commission (Open access in inter-State Transmission) Regulations, 2008 (hereinafter referred to as "the Open Access Regulations"). Learned counsel submitted that Karnataka Electricity Regulatory Commission has no jurisdiction to adjudicate the dispute involving inter-State open access. Learned counsel further submitted that the Commission in the Statement of Reasons of the Open Access Regulations had clarified that "*In case of inter-State transmission, the jurisdiction lies with the Central Commission -----.*" In view of the said findings the issue of jurisdiction with regard to inter-state open access stand settled. Learned counsel further submitted that as per Regulation 20 (6) of the Open Access Regulations, no charges, other than those specified in the Open Access Regulations can be levied. Therefore, the back-up supply charges levied by the SLDC under Karnataka Electricity Regulatory Commission (Terms and Conditions for Open access) (First Amendment) Regulations, 2006 (KERC Open Access

Regulations) is illegal and bad in law. KERC Open Access has been framed in exercise of the power conferred under Section 181 read with Section 39 (2) (d), 40 (c), 42 (2) and (3) and 86 (1) (c) of the Electricity Act, 2003 and these Sections are applicable to an intra-State entity selling power within the State.

2. Learned counsel further submitted that the petitioner is availing open access since 2008. Earlier, the bills were raised in time without any other charges i.e. back-up supply charges, etc. However, the bills indicated in the petition pertain to the period 2009-10 and have been raised in the year 2011. Learned counsel relied on the judgment of the Supreme Court in the State of Andhra Pradesh V/s NTPC and submitted that as per the said judgment taxes are not to be imposed on the inter-State transaction. He further submitted that charges for arranging back-up supply from the grid as per the KERC Open Access Regulations are applicable only to the open access consumers. The petitioner being a generating company is not liable to pay the back-up supply charges. Learned counsel further submitted that the petitioner could not avail back up supply as it was directly connected to the transmissions system of the State Transmission Utility and not to the network of distribution licensee. Regulation 18 of the KERC Open Access Regulations provides that the back-up supply can only be levied by the distribution licensee, transmission licensee or STU depending on whose facility are used by the consumer and in no circumstances it can be levied by the SLDC. charges in respect of open access customers shall be payable directly to respective nodal agency. The nodal agency shall specify the terms and conditions of payments. If these charges have to be levied, same can be levied only by the distribution licensee, transmission licensee or STU, whose facilities are used by the consumers for availing open access and in any case it could not levied by the SLDC.

3. The learned counsel for the respondent submitted that there are only two charges which are in issue in the present case, namely, Unscheduled interchange charges for the variation in the schedule from the actual generation of electricity and back-up supply charges for the electricity supplied to the generating company as a consumer when there is a outage in the generating station and power is drawn from the State Grid. Both the charges are independent of each other. The UI is payable/receivable by the petitioner as a generating company. The charges for back-up supply of electricity are when the petitioner is drawing electricity as a consumer. Learned counsel for the respondent further submitted that the charges applied on the petitioner under the KERC Open Access Regulations are applicable to all similarly placed generators. Regulation 20 (5) of the Open Access Regulations provides that unless specified otherwise by the State Commission, charges have to be applied as per Open Access Regulations. Since, KERC has specified the charges, the same are applicable on the petitioner as well. Regulation 1 (iii) of the KERC Open Access Regulations are applicable to the open access customers for use of intra-State transmission systems(s) and/or distribution system(s) of licensee(s) within the State, including such system(s) which are incidental to inter-State

transmission of the electricity. When the generator is not generating power, it may draw power from the State grid and based on this drawl or consumption of electricity, bills have been raised on the petitioner.

4. The Commission directed the SLDC Karnataka to file the following on affidavit by 25.7.2012 with copy to the petitioner:-

- (a) Whether the petitioner is a consumer and whether there is any permanent arrangement for supply of start-up power to the petitioner.
- (b) Whether other open access consumers/generators are being charged the back-up supply power charges.
- (c) The quantum and duration of electricity consumed and drawn by the petitioner when its generation was under shut- down.
- (d) The reasons and justification for raising the unscheduled inter-change charges after considerable delay and charging interest for the delay.

5. The petition shall be listed for hearing 7.8.2012.

By order of the Commission

**Sd/-
(T. Rout)
Joint Chief (Law)**