

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 517/MP/2014

Subject : Petition under Section 79 (1) (c) of the Electricity Act, 2003.

Date of hearing : 10.2.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Petitioner : Udupi Power Corporation Ltd.

Respondents : Karnataka Power Transmission Corporation and others

Parties present : Shri Sakya Singh Chaudhuri, Advocate, UPCL
Shri Shubhranshu Padhi, Advocate, UPCL
Ms. Swapna Seshadri, Advocate, SLDC, Karnataka
Ms. Anushree Bardhan, Advocate, PCKL
Shri Ranjitha Ramachandran, PCKL
Ms. Stuti Venkat, PCKL
Shri G. Sreenivasan, KSEB
Ms. Jayantika Singh, SRLDC
Shri V. Suresh, SRLDC

Record of Proceedings

Learned counsel for the petitioner submitted as under:

(a) The petitioner has set up a generating station of 1200 MW (2X600 MW) in Udupi district, Karnataka. The capacity of the generating station originally was 1015 MW which was subsequently enhanced to 1200 MW in the year 2009 by way of augmentation after obtaining environment clearance from Govt. of Karnataka.

(b) On 26.12.2005 and 29.9.2006, the petitioner had entered into PPAs with the Karnataka Escoms and Punjab State Power Corporation Limited (PSPCL) for supply of 90% and 10% power from its 1015 MW's generating station respectively.

(c) Though the PPA for supply of 10% of initial capacity of 1015 MW was signed with PSPCL, it has not been able to evacuate the power due to certain issues with KPTCL and PGCIL. After tying up 90% of the augmented capacity of

185 MW with Karnataka Escoms, the petitioner is left with 18.5 MW freely available to contract with any third parties.

(d) The petitioner had offered 10% of augmented capacity to PSPCL i.e. 18.5 MW of augmented capacity. However, PSPCL did not respond to such offer. Therefore, the petitioner had participated in the bid floated by Kerala State Electricity Board Limited (KSEBL) and being successful, entered into PPA with KSEBL for supply of 18.5 MW of energy on short term basis between June 2014 and May 2015. In terms of the conditions of the said PPA, KSEBL applied for open access to SRLDC for 18.5 MW power, which was denied by SRLDC at the behest of KPTCL.

(e) As per the provisions of Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008, as amended from time to time (Open Access Regulations) only relevant factor for the purpose of grant of NoC for open access is the availability of transmission capacity. Since no transmission constraint has been shown, the refusal of NoC is illegal. The reason for denial is for extraneous reasons and therefore, cannot be relied upon. In support of its arguments, the learned counsel for the petitioner relied upon the Commission's order dated 7.9.2009 in Petition No.135/2009.

(f) As per the PPA, the contracted capacity was for 90% of gross capacity and not for 100% as claimed by Karnataka Escoms. If at all, SLDC and SRLDC should have been guided by the express terms of the contract, and not on the basis of Karnataka Escom's claim. The reliance placed on clause 3.10 of the PPA to claim right over 100% capacity by Karnataka Escoms is misplaced since the clause relates to (i) any generation above the target availability of 80% of the contract capacity of 90%, and not to any generation beyond 90% capacity, and (ii) the un-requisitioned capacity referred in the clause refers to the portion of the contract capacity that has not been scheduled by the Karnataka Escoms and not part of the balance 10% capacity.

2. Learned counsel for SLDC, Karnataka submitted that SLDC is required to act as per the provisions of the Electricity Act, 2003 and regulations framed thereunder for scheduling and dispatch of electricity. Learned counsel submitted that the petitioner sought to supply electricity to KSEBL and applied for grant of open access. PCKL which acts on behalf of the distribution companies of Karnataka represented that in terms of contractual obligations of the petitioner, the petitioner is required to first supply 90% of the power to the distribution companies of Karnataka and 10% to PSPCL. In case of refusal of power by PSPCL, the first and primary option rests with Karnataka Escoms as they are principal buyers for the petitioner's generating station. Therefore, open access consent was not granted to KSEBL. Learned counsel referred to the judgment of Appellate Tribunal for Electricity dated 5.9.2014 in Appeal No. 171/2003 and submitted that it is the duty of SLDC to examine any contesting claims relating to any capacity raised by any party while deciding on the grant of NoC.

3. The representative of SRLDC submitted that the petitioner has clubbed the averments against SRLDC along with SLDC, Karnataka in all its allegations. SRLDC is not a party to the decision taken by SLDC, Karnataka. As per the provisions of Open Access Regulations, SRLDC is the nodal agency for processing the STOA applications. SRLDC is not accountable for denial of open access by SLDC, Karnataka. He further submitted that the validity of terms and conditions of the PPA is a dispute between SLDC, Karnataka and the petitioner.

4. Learned counsel for Power Company of Karnataka Limited (PCKL) submitted as under:

(a) PCKL has a valid claim on the quantum of 18.5 MW of power from the generating station. The petitioner has no right to divert the above power to third party on the ground that PSPCL had refused to source the said quantum. The petitioner is required to give the first option for the right of first refusal to the distribution companies of Karnataka in regard to such quantum.

(b) Since the tariff for the entire 1200 MW was determined by this Commission under Section 62 of the Electricity Act, 2003, there was no occasion for the petitioner to sell any part of the power under Section 63.

(c) The petitioner's project is on cost plus basis. The entire project cost including the expenditure on its associated amenities is being reimbursed by ESCOMs of Karnataka and PSPCL. The benefits of power also need to be shared between these utilities in proportion of their contracted capacity and not by any other utility like KSEBL.

5. The Commission observed that since the tariff of the generating station was determined under Section 62 of the Act, the petitioner has no right to sell part of the power of generating station under Section 63 of the Act as it will in violation of Section 62(4) and (6) of the Act. The Commission further enquired whether the power could have been sold with the concurrence of PSPCL. In response, the learned counsel for the petitioner submitted that there are number of instances where tariff of part capacity of the plant is determined under Section 62 and the balance capacity is available for sale as merchant capacity. Learned counsel further clarified that the capacity charges for 18.5 MW would not be chargeable to Karnataka and would be paid by KSEB.

6. In response to the submissions of learned counsels for the parties, learned counsel for the petitioner submitted as under:

(a) SLDC was required to proceed on the basis of written contract and not on the basis of claim by Karnataka Escoms without seeking the view of the petitioner.

(b) The capacity of 18.5 MW under contract with KSEBL has not been tied up with any distribution company. It is proposed to be sold to KSEBL under short term contract.

(c) Even though PSPCL has not responded to the offer for taking 18.5 MW, the petitioner vide its letter dated 19.5.2014 had informed PSPCL about the sale to KSEBL.

7. In response to the Commission`s query regarding nature of the agreement entered into between the petitioner and the Karnataka Escoms for off-taking PSPCL`s share of power, learned counsel for the petitioner submitted that the supply is being made on ad-hoc basis without any formal agreement between the parties.

8. After hearing the learned counsels and representatives of the parties, the Commission directed the petitioner and KSEBL to clarify whether affidavit as per Regulation 8 of the Open Access Regulations was furnished in the prescribed format to SLDC, Karnataka and submit a copy of the same latest by 25.2.2015.

9. The Commission directed the petitioner and PCKL to submit on affidavit the arrangement between the petitioner and PCKL for taking 10% share of PSPCL in the generating station by 25.2.2015.

10. The Commission directed the petitioner and the respondents to file their written submissions by 25.2.2015.

11. The Commission directed that due date of filing the information and written submissions should be strictly complied with. The information and written submissions filed after due date shall not be considered.

12. Subject to the above, the Commission reserved order in the petition.

By order of the Commission

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