CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Coram:

1. Dr. Pramod Deo, Chairperson
2. Shri Bhanu Bhushan, Member
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4. Shri S.Jayaraman, Member

Review Petition No. 109/2008
in
Petition No. 60/2008

In the matter of

Review of order dated 27.8.2008 in Petition No.60/2008

And in the matter of

Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur **Petitioner**

Vs

Gujarat Flurochemicals Ltd., NOIDA, (Uttar Pradesh) **Respondent**

Review Petition No. 110/2008
in
Petition No. 60/2008

In the matter of

Review of order dated 27.8.2008 in Petition No.60/2008

And in the matter of

Superintending Engineer (SO&LD),

Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur **Petitioner**

Vs

Gujarat Flurochemicals Ltd., NOIDA, (Uttar Pradesh) **Respondent**

The following were present:

1. Shri Sitesh Mukherjee, GFL
2. Shri Vishal Anand, GFL
3. Shri Deepak Asher, GFL
4. Shri Sakya Singh Chaudhury, GFL

5. Shri Aditya Madan, Advocate, RRVPNL & SLDC, Rajasthan
6. Shri V.K. Gupta, RRVPNL & SLDC, Rajasthan
7. Shri Dudhir Jain, RRVPNL
8. Shri S.S. Shekhawat, RRVPNL
9. Shri Dinesh Khandelwal, SLDC

ORDER

(Date of Hearing: 23.12.2008)

Review Petition No. 109/2008

Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur, filed a petition on 6.10.2008 seeking review of the Commission's order dated 27.8.2008 passed in Petition No. 60/2008 on the ground that there are errors apparent on the face of the record of the said order which require to be clarified/reviewed. In this regard, the Petitioner has pointed out to the findings arrived at by the Commission at paragraphs 23 and 27 of the impugned order.

2. The grounds on which the review has been sought are, briefly stated, as under:-

(i) Gujarat Flurochemicals Ltd., ("GFL") was allowed grid connectivity on the undertaking that, till an agreement is executed for the sale of power, the power generated shall be injected into RVPNL Grid. Moreover, GFL will not raise any bill for energy supplied during commissioning and during the agreement execution phase. This, according to the Petitioner, has been an explicit agreement by GFL and continues to remain in force till the time GFL signs an agreement for sale of power to the distribution licensee or any consumer / licensee.

(ii) It is the contention of the Petitioner that grid connectivity does not mean open access. It has been submitted that grid connectivity is merely wire connection. While the open access is of the transmission system that is based on the capability of the transmission system which enables sale of power (to any person, licensee or trader). It has been further submitted that for open access there needs to be an agreement / arrangement in place for sale of power. This is required to enable the examination of the adequacy of the transmission system from the point of injection to the point of drawal. This requirement of having in place an agreement / arrangement for sale of power, is essential, as no generating company having grid connectivity can be permitted to inject power into the grid without such an agreement. It has been contended that any inadvertent injection of power will only give rise to grid indiscipline. It has been urged that such an agreement / arrangement must be in place because without such an agreement /arrangement being in place, the SLDC will not be able to effect billing.

(iii) The Petitioner has mentioned four dates when applications were made by GFL seeking inter-state open access, alongwith their dates of receipt and processing fees. One such application dated 13.3.2008 have been received without any fee. The quantum for transmission of power and the period during which the said open access have been sought, are:-

Application dated	Date of receipt of application and its processing fee	Interstate open access sought for	
		MW	Period
13.3.08	15.3.08(without fee)	1.5	1.4.08 to 30.4.08
11.4.08	17.4.08	1.5	15.4.08 to 30.4.08
1.5.08	5.5.08	1.5	1.5.08 to 30.6.08
28.6.08	30.6.08	1.5	1.7.08 to 31.8.08

The contention raised with regard to the above is that in all the four applications, the quantum for transmitting power using inter-State open access have been stated to be 1.5MW, while the generation capacity of GFL is 12MW. Furthermore, there is no agreement for sale of the balance capacity. Consequently, open access was not granted for the balance power and any injection by GFL beyond that permitted was thus inadvertent injection for the reason best known to GFL. Furthermore, the period of open access as sought by GFL is in contravention of CERC Open Access Regulations, 2008 because GFL has sought open access for a period exceeding one month. In light of this position, permitting payment to GFL for the power that has been injected will not be proper and would promote grid indiscipline. Therefore, it is contended that the Commission ought to review its findings made at paragraph 27 of the impugned order.

(iv) It has also been submitted by the Petitioner that neither the SLDC nor the STU can effect trading of electricity. Furthermore, denial of open access has been on account of provisions of various regulations. In the circumstances neither the SLDC nor the STU can effect recovery from the beneficiary of such inadvertent injection by GFL, especially because the beneficiaries of the power injected into the grid are not party to the proceedings. In effect, the review has been sought from the findings at paragraph 27 of the impugned order to enable the SLDC to effect recovery from the beneficiary from the date such an agreement / arrangement for sale of power is submitted. It has also been suggested that in the absence of such an agreement / arrangement for sale of power by GFL open access to GFL should be discontinued.

(v) The Petitioner has also referred to S. Nos. 1, 2 and 3 of "Complimentary Commercial Mechanism" of the Indian Electricity Grid Code notified on 17.3.2006. According to this, as submitted by the Petitioner, Capacity Charges corresponding to plant availability and Energy Charges for the scheduled dispatch and deviations from the dispatch schedule is payable through the UI mechanism approved by the Commission. Thus, scheduling is an essential ingredient of ABT. It has been stated that in paragraph 17 of the impugned order it has been observed that ABT cannot be applied to wind generation because of its inherent nature. However, at paragraph 27 of the impugned order the Commission has directed that in order to compensate GFL, payments be made by the Petitioner herein at the applicable rate specified by the Rajasthan Electricity Regulatory Commission ("RERC") for the wind generation till the date from which open access is allowed or injection under UI mechanism is facilitated, whichever is earlier. In this regard, it has been contended by the Petitioner that there are no regulations so far which provide for payment at UI rate for inadvertent injection. In this regard, it has been contended by the Petitioner that one aspect has not been brought to the notice of the Commission by GFL that pertains to an order dated 19.5.2008 passed by the RERC. By this order, the RERC has rejected GFL's Petition No. 168/08 whereunder GFL had sought permission to inject power into the intra-State grid on settlement through UI pool account with exemption from scheduling procedure. In the said petition, as per the petitioner, GFL had also prayed for a direction upon the Jodhpur Discom to pay for the power injected by GFL into the grid at the prevailing tariff without insisting GFL to enter into a PPA. However, as stated above, the RERC had rejected the petition of GFL.

3. The Superintending Engineer, (SO&LD), Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur, also filed a petition seeking review of the Commission's order dated 27.8.2008 passed in Petition No. 60/2008 on the ground that there are errors apparent on the face of the record of the said Order which require to be clarified/reviewed. In this regard, the Petitioner has pointed out to the findings arrived at by the Commission at paragraphs 12, 15, 16, 17, 20, 27 of the impugned order.

4. The grounds on which the present review has been sought are briefly stated as under:-

(i) At paragraph 12 of the impugned order, it was, *inter alia,* observed by the Commission that the SLDC being responsible for energy accounting within the State is also "responsible for installation of compatible and accurate energy metering". Review of the observation has been sought on the ground that under sub-clauses (b) and (d) of clause (1) of Regulation 6 read with clause (1) of Regulation 13 of the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2008, (hereinafter "the metering regulations") framed by the Central Electricity Authority, responsibility for installation of the meters and maintenance thereof is either of the State Transmission Utility or of the generating company itself, and not of the SLDC whose primary function is of grid management. Therefore, review of the observation made in the said paragraph 12, has been sought.

(ii) The second ground for review is regarding the data communication requirement and on-line reporting of generation data discussed at paragraph 13 of the impugned order dated 27.8.2008. The Commission had held that there was no

justification for disallowing concurrence for open access on the pretext of absence of on-line communication with the SLDC. According to the Petitioner, on-line monitoring is required to identify heavy MVAR drawl, affecting voltage profile and to spot that transformers are not getting over-loaded, so that, if required, generator be directed to shut down one or more modules. According to the Petitioner, in the absence of the on-line monitoring, corrective measures might get delayed, which has the propensity to affect grid operations. Against this backdrop, the Petitioner has sought review and correction of paragraph 13 of the said order dated 27.8.2008. It has been urged that the representative of the Petitioner could not properly put up the matter before the Commission at the hearing of the main petition.

(iii) The next issue raised is regarding the Commission's observation on time synchronization of metering through GPS, adverted to at paragraphs 15 and 16 of the impugned order dated 27.8.2008. The Commission had pointed out that synchronization through GPS was not required for intra-State metering. The Commission had referred to clause 4.11 of the Indian Electricity Grid Code, according to which time synchronization was required only for disturbance-recorders and event-loggers, though it was insisted upon by the Petitioners relying upon clause (4) of Regulation 6 of the State Commission on intra-State ABT. The State Commission was urged to review the provisions of its regulations in the light of the observations made in the said order dated 27.8.2008. The Petitioner has submitted the State Commission was approached for review of these provisions, but the petition was rejected. The Petitioner feels that a time drift in energy meters would have financial implications which may outweigh the cost of time synchronising.

Accordingly, the Petitioner seeks review and modification of paragraphs 15 and 16 of the impugned order dated 27.8.2008.

(iv) In paragraph 18 of the impugned order it was observed, *inter alia*, that imposing intra-State regulations in case of inter-State transactions was not justified. The Petitioner has submitted that segregation of UI into inter-State and intra-State is possible by invoking the regulations framed by the State Commission. Therefore, the Petitioner seeks modification of the observation made at paragraph 18.

(v) The Commission at paragraph 20 of the impugned order had sought to allay the apprehension that in the event of grant of concurrence for open access, the State distribution companies will have to make up for the deviations in the supply by the generating company or there will be commercial losses to other entities, as, in consideration of the Commission, the fear was based on misconception and lack of understanding of the scheme in vogue. The Petitioner has stated that its representative could not properly put up the matter before the Commission at the hearing of the main petition and has accordingly sought review and correction of paragraph 20 of the impugned order seeking direction for appropriate security deposit to be utilized in case GFL did not pay UI charges when liable to pay.

(vi) The Petitioner has raised identical ground as made in Petition No. 109 of 2008 as at paragraph 2(v) above.

Discussion

5. Having heard the parties and after considering the material placed on record, the Commission is of the view that the two petitions seek review of the same

impugned order dated 27.8.2008 in respect of findings arrived therein by the Commission and, have been heard together, and, therefore, both these petitions are required to be disposed of by this common order. In the first instance, the review petitions, as filed, need to be tested against the settled principles of review proceedings. Review may be granted upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons. It is well settled that there are definitive limits to the exercise of the power of review. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court. Notwithstanding this, it may at times be necessary for this Commission to elaborate on technical aspects for enhancing general understanding of the matter by those concerned.

6. Since a number of issues have been submitted attempting to justify a case for review, it is required to make a reference to those issues. The following points are, therefore, framed for consideration in this order:-

(1) Does the contention that there is no agreement / arrangement in place for sale of power by GFL, require the impugned order to be reviewed? Does the undertaking given by GFL to feed energy into the State grid at zero cost as interim arrangement, require the impugned order to be reviewed?

(2) Does the contention that the quantum for transmitting power using inter-State open access have been 1.5MW while the generation capacity of GFL is 12MW, require the impugned order to be reviewed?

(3) Does the contention that neither the SLDC nor the STU can effect recovery from the beneficiary of such inadvertent injection by GFL, require the impugned order to be reviewed?

(4) At Paragraph 17 of the impugned order it is observed that ABT cannot be applied to wind generation because of its inherent nature. However, at paragraph 27 of the impugned order the Commission has directed that in order to compensate GFL, payments be made by the Petitioners herein at the applicable rate specified by the RERC for the wind generation till the date from which open access is allowed or injection under UI mechanism is facilitated, whichever is earlier. Is there any contradiction between paragraphs 17 and 27 of the impugned order? If so, does it require the impugned order to be reviewed?

(5) Does the contention that the responsibility for installation of meters for energy accounting are vested with the STU / Supplier and not on SLDC, require the impugned order to be reviewed?

(6) Does the contention regarding Data Communication Requirement, require the impugned order to be reviewed?

(7) Does the contention regarding Synchronization of Meters through GPS, require the impugned order to be reviewed?

(8) Does the contention regarding Segregation of inter-State and intra-State UI charges, require the impugned order to be reviewed?

(9) Is the submission seeking direction for appropriate security deposit to be utilized in case GFL did not pay UI charges when liable to pay, sustainable in law?

(10) Does the submission identical with that made at paragraph 2(v) above, require consideration?

7. The Commission is guided by the principles of law stated at paragraph 5 above, while answering the issues as under:-

(i) With regard to the issue at item no. (1) above, the Commission is of the view that the Commission has, in the impugned order, taken into account the submission made by the Petitioners that GFL had not furnished the details of agreement for sale of balance power and auxiliary consumption. The Commission did not find any merit in the said submission as stated in the impugned order at paragraph 23 for the reasons stated therein. The Commission has also held therein that the Open Access Regulations do not envisage signing of any agreement for the open access transactions. The Commission has held that payment of appropriate tariff to the distribution company for the auxiliary power consumption is enough, in case it is not accounted for as UI. In so far as the STU is concerned, the necessary terms and conditions for use of intra-State transmission lines have already been spelt out in the

open access regulations. No error could be pointed out by the Petitioner with regard to the above findings. It is for this reason that the Commission does not find any error in the findings arrived at in paragraph 23 of the impugned order. All contentions in relation thereto, are therefore dismissed. The Petitioner has also contended that the GFL undertook to feed energy into the State grid at zero cost till it was able to arrange for sale of power through the inter-State trading licensee for further sale outside the State. In this regard the Petitioner has referred to an undertaking contained in the letter dated 20.3.2008. We note that this letter dated 20.3.2008 was addressed by GFL to CMD, Rajasthan Renewable Energy Corporation Ltd., with a copy to the petitioners, and following is stated therein: *"We hereby undertake that till agreements are executed, the energy generated by us will be fed into RRVPNL's grid. We will not raise any bill for the energy supplied during commissioning and agreement execution phase."* We also note that GFL had signed an agreement with M/s LANCO on 23.1.2008 for sale of power to the latter w.e.f. 1.4.2008. In the impugned order the Commission has held that payment shall be made for energy injected by GFL with effect from 20.4.2008, or the first subsequent date on which relevant meter readings were jointly recorded. The Commission is of the view that specific performance of the said letter dated 20.3.2008 is not a subject matter of the present review proceedings. According to the Commission, even in the presence of the said letter dated 20.3.2008, GFL is entitled to recover the dues in accordance with Section 70 of the Indian Contract Act, 1872. However, this is for GFL to enforce and the Commission need not delve any further on this issue.

(ii) With regard to the issue at item no. (2) above, the Commission is of the view that in the impugned order the Commission has taken into account the issue related

to the gap between capacity of the generation facility in commercial operation (12MW) and the capacity for which concurrence was sought (1.5 MW). The Commission has held at paragraph 19 of the impugned order that wind generation facility seeking open access will have to make arrangements for sale of capacity much lower than its installed capacity and seek open access accordingly. The Commission has held that limit on variation from the schedule (5% in a time-block and 1% over the day) is not correct because this type of restriction is part of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 and are applicable to the thermal and hydro generating stations whose entire capacity is assigned to the identified beneficiaries. No such restriction is applicable to the wind generation facilities and is not specified in the open access regulations or for that matter in any other regulations. The Commission has also held that in case generation reaches a level which is causing overloading of some part of the network (which is unlikely to occur with generation facility with small installed capacity as in the case on hand), the SLDC has the powers to issue appropriate directions. No error has been pointed out in the aforesaid findings. Therefore, the Commission does not find any reason to review its findings made in the impugned order. Further, metered data submitted by GFL shows an average injection of only around 3 to 5 MW during June-September 2008 (the windy months) and only about 2MW in October, 2008. This justifies GFL's contract (and open access application) for a quantum of only 1.5 MW.

(iii) With regard to the issue at item no. (3) above, the respondent has placed on record joint monthly meter readings for April 2008 to October 2008 for its wind farms and those for 15-minutes time blocks for October 2008 and November 2008 taken at

132 kV sub-station, Jaisalmer, and also its generation data. These joint meter readings have been signed by the Petitioners. Also, the State Government has established the Power Procurement Centre which functions under the supervision and control of the Managing Director of the Petitioner. The Power Procurement Centre, a non-statutory body, coordinates the activities of the distribution companies to meet requirements of power in the State and payments to be made for the power purchased. It is also responsible for settlement of regional UI dues allocated to the State of Rajasthan as a whole, which are ultimately recovered from or disbursed to the distribution companies. Thus, the Petitioner *de facto* acts as an agent for the distribution companies and is the proper authority for settlement of power bills for the State. The Petitioner is responsible for accounting of energy within the State. Also, energy fed into the State grid by any agency, including the respondent is utilized by the State distribution companies based on the energy accounts prepared by the Petitioner. Therefore, the dues payable to GFL are liable to be settled by the Petitioner and recovered from the distribution companies based on intra-State energy accounts. When seen against this background, the prayer for review of the direction is not maintainable as it does not take into consideration the existing practice in the State of Rajasthan. The direction cannot be faulted on the ground that the Petitioner cannot recover the amount from the distribution companies. It also bears notice that the distribution companies as also the Petitioner are the companies promoted by the State Government. Thus, the Commission is of the view that the Petitioner cannot say that it is not liable to make any payment since it cannot effect recovery from the beneficiary of such inadvertent injection by GFL. Section 70 of the Indian Contract Act 1872 makes its obligatory on the person who enjoys the benefits of non-gratuitous act to pay compensation to the person who has provided the

benefit. The plea that no payment can be made because the Petitioner cannot effect recovery from the beneficiary has therefore only to be rejected. Also, the Commission is of the view that GFL cannot be denied charges for the electricity injected into the State grid on the ground GFL did not sign Power Purchase Agreement with the distribution companies in the State. The matter may be examined from another angle. The fact that one or more of the distribution companies in the State drew power injected by GFL and supplied to the consumers in the State from whom tariff has been recovered. In case concurrence for open access was granted, GFL would have got paid at the rates agreed to with its purchaser/off-taker. By not allowing open access, permitted under law, GFL has been denied compensation at contracted rates because the energy was generated at its wind energy farm, which could not be otherwise stored. Under these circumstances, denial of charges to GFL is not justified in equity or law as it will amount to unjust enrichment of the Distribution Company or companies drawing power supplied by GFL. The doctrine of unjust enrichment is a salutary doctrine. While dealing with the doctrine of unjust enrichment, the Hon'ble Supreme Court in Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 6*44* has held as under that –

> *"98. The principle of unjust enrichment proceeds on the basis that it would be unjust to allow one person to retain a benefit received at the expense of another person. It provides the theoretical foundation for the law governing restitution."*

In K.T. Venkatagiri v. State of Karnataka, (2003) 9 SCC 1 while dealing with the principle of unjust enrichment, the Hon'ble Supreme Court held that no person can be permitted to retain undue benefit derived by it, in the following words:

"29. The appellants admittedly took benefit of the interim order passed by this Court in Khoday case. They cannot, having regard to the doctrine of "unjust enrichment", retain the undue advantages derived by it. They must be asked to pay back the amount received either directly or indirectly on account of MSIL. The doctrine of restitution must, thus, be applied in these appeals."

In yet another case reported as Sahakari Khand Udyog Mandal Ltd. v. CCE & Customs,(2005) 3 SCC 738 , the Hon'ble Supreme Court delved upon the issue in great detail, holding that no person can enrich inequitably at the expense of another. The relevant portion of the judgment is extracted hereunder:

"31. Stated simply, "unjust enrichment" means retention of a benefit by a person that is unjust or inequitable. "Unjust enrichment" occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.

32. The doctrine of "unjust enrichment", therefore, is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of "unjust enrichment" arises where retention of a benefit is considered contrary to justice or against equity."

In light of the position of law as above, the Commission holds that GFL, in the facts and circumstances of the case before us, cannot be deprived of compensation for the electricity injected by it in the State grid and used by the distribution companies in the State.

(iv) As regards the issue at item no. (4) above, the same stands disposed of in terms of the finding at sub-paragraph (iii) above. The Petitioners themselves have stated during the hearings that wind generation is very unpredictable. It implies that it cannot be scheduled based on any declared capacity. As such, ABT cannot be applied for wind generation. The Commission has only talked about applying UI (not ABT) for wind injection. There is nothing wrong with the Commission's order. It is also noted that this issue was not pressed by the Petitioner during the hearing.

Furthermore, the fact that GFL's Petition No. 168/2008 was rejected vide order dated 19.5.2008 passed by the RERC cannot be a ground to seek review, and accordingly this contention is rejected. Moreover, the data for the energy injected by GFL in the State grid is already available. To avoid any delay in payment of GFL's dues, the Commission directs that the rate decided by the State Commission for the year 2008-09, as applicable to those who have signed Power Purchase Agreement with the distribution companies shall apply in the present case as well. The payments shall be made accordingly within a period of three weeks from the date of issue of this order, in accordance with paragraph 27 of the said order dated 27.8.2008.

(v) With regard to the issue at item no. (5) above, clause (1) of Regulation 6 of the CEA's metering regulations requires to be examined as under:

> *"6. Ownership of meters-*
>
> *(1) Interface meters*
>
> *(a) All interface meters installed at the points of interconnection with Inter-State Transmission System (ISTS) for the purpose of electricity accounting and billing shall be owned by CTU.*
>
> *(b) All interface meters installed at the points of interconnection with Intra-State Transmission System excluding the system covered under sub-clause (a) above for the purpose of electricity accounting and billing shall be owned by STU.*
>
> *(c) All interface meters installed at the points of inter connection between the two licensees excluding those covered under sub-clauses (a) and (b) above for the purpose of electricity accounting and billing shall be owned by respective licensee for each end.*
>
> *(d) All interface meters installed at the points of inter connection for the purpose of electricity accounting and billing not covered under sub-clause (a), (b) and (c) above shall be owned by the supplier of electricity."*

In terms of clause (1), all interface meters installed at the points of interconnection with inter-State Transmission System for the purpose of electricity accounting and billing are owned by the Central Transmission Utility, those installed at the points of interconnection with intra-State Transmission System by the State Transmission Utility, those installed at the points of interconnection between the two licensees by the licensees concerned at their respective end, and in all other cases by the supplier of electricity. According to clause (1) of Regulation 13 of the metering regulations, operation and maintenance of the meters is the responsibility of the licensee or the State Transmission Utility or the generating company. On perusal of these regulations, it is seen that the generating company is assigned the responsibility of installation, testing, operation and maintenance of the meters at the generating stations only. However, paragraph 12 of the impugned order dated 27.8.2008 deals with installation of meters for intra-State energy accounting, which even in terms of sub-clause (b) of clause (1) of Regulation 6 is the responsibility of the State Transmission Utility. The question in the main Petition No. 60/2008, in fact, arose whether GFL was responsible for installation of energy accounting meters. It was there on record that the wind generating plants owned by GFL were connected directly with intra-State transmission system in a sub-station belonging to the State Transmission Utility. In such a case, sub-clause (b) of clause (1) of Regulation 6 becomes applicable and accordingly it was the responsibility of the STU to install meters. As the SLDC is being operated by the Petitioner, installation, operation and maintenance of meters becomes their joint responsibility. A reading of paragraph 12 as a whole makes this point clear that the State Transmission Utility and only through it the SLDC, were responsible for making the metering arrangements. For proper appreciation of the observation sought to be revised, it is pertinent to refer to other

observations made at paragraph 12 which are to the effect that “(t)he SLDC and the RRVPNL who operates the SLDC as the STU cannot abdicate their responsibility, and entrust this task to the users, …” and further that “(t)he open access regulations require that the meters should be installed by the STU/SLDC, since they have the ultimate responsibility for intra-State energy accounting.” It cannot be said that in the said order dated 27.8.2008, the responsibility for installation of energy accounting meters was sought to be assigned exclusively to the SLDC. Therefore, ground for review of paragraph 12 of the said order dated 27.8.2008 has not been made out. It is also to be noted that all joint meter readings are signed by RVPNL representative as well.

(vi) With regard to the issue at item no. (6) above, though this ground was not pressed at the hearing, the Commission makes it clear that this ground for review is not sustainable based on established legal position. In this context reference may be made to the decision of Madras High Court in Soosai Anthony D’Costa Nicholas D’Costa Vs Francis Roche Kurush Roche (AIR 1962 Mad 304) wherein a similar ground for review that the counsel for the party could not explain the legal position was rejected, holding that failure of the counsel to argue a point, inspite of the instructions from his client, whether advertently or inadvertently, cannot be pressed as a ground for review. The decision has been followed by Allahabad High Court in Bhagwati Singh Vs Deputy Director of Consolidation (AIR 1977 All 163) and recently by Patna High Court in Hem Narain Singh Vs Ganesh Singh (AIR 1995 Pat 5). It is also noted that the Commission at paragraph 13 of the said order dated 27.8.2008 did not prohibit on-line data communication, but felt that there was no need for any on-line data communication to the SLDC while considering the application for grant

of concurrence for open access and whatever data was considered necessary by the SLDC it could be picked up from State Transmission Utility's own sub-stations, using the communication links already established. It was further observed that reporting of on-line data to the extent necessary was the responsibility of the State Transmission Utility. As such, neither any error has been pointed out nor is there any other ground for review of paragraph 13 of the said order dated 27.8.2008. Further, it was categorically confirmed by the petitioners during the hearing on 23.12.2008 that they were not facing any problem on account of the on-line data not being displayed in the SLDC. This itself totally negates the arguments of the petitioner.

(vii) With regard to the issue at item no. (7) above, the applicants have placed reliance on the metering regulations framed by the CEA on installation, operation and maintenance of energy meters. Even under those regulations the requirement for energy meters through GPS has not been specified. In the view of the Commission, in the absence of metering through GPS, a time drift of one or two minutes shall not have any impact on accuracy of energy accounting. The observations at paragraphs 15 and 16 of the impugned order were made after examining provisions of the Indian Electricity Grid Code and the regulations framed by the State Commission. As such, neither any error has been pointed out nor is there any other ground for review of paragraphs 15 and/ or 16 of the impugned order. It is settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of review. While the State Commission may decide not to adopt the practices followed by the Central Commission, it does not mean that the Central Commission cannot express its

considered views. We stand by the statements in para 15 and 16 of our order dated 27.8.2008.

(viii) With regard to the issue at item no. (8) above, it is clarified that even the open access regulations stipulate that segregation of UI shall be done at the State level. The Petitioner has placed on record joint monthly meter readings for April 2008 to October 2008 for its wind farms and those for 15-minutes time blocks for October 2008 and November 2008 taken at 132 kV sub-station, Jaisalmer, and also its generation data. Thus, segregated data is already available. Here again, no error apparent on the face of record has been pointed out.

(ix) With regard to the issue at item no. (9) above, for the legal position already discussed at paragraph (vi) of this order, the submission seeking direction for appropriate security deposit to be utilized in case GFL did not pay UI charges when liable to pay, is not sustainable in law. The State utilities do not require any security from the generator, since the latter is captive to the former and can at any time be forced to pay UI charges through a threat for disconnection.

(x) With regard to the issue at item no. (10) above, since the Petitioner has raised identical ground as made in Petition No. 109 of 2008 as at paragraph 2(v) above, the same stands disposed of in terms of the observation and finding at sub-paragraph (iv) above.

8. In view of above, review against the said order dated 27.8.2008 is not maintainable. Therefore, both the petitions seeking review are hereby dismissed.

9. In the passing the Commission observes that the State Government with a view to promoting generation of power from non-conventional energy sources has

promulgated a comprehensive policy, called the Policy for Promoting Generation of Electricity through Non-Conventional Energy Sources 2004, to address the problems faced by developers, investors and utilities, in the State. In accordance with this policy, as amended, the cap on purchase of energy generated through non-conventional energy sources shall be that in accordance with that specified by the State Commission. Accordingly, the State Commission, in terms of the Rajasthan Electricity Regulatory Commission (Terms & Conditions for Determination of Tariff) (Third Amendment) Regulations, 2006, has specified that during 2008-09 minimum of 5% and maximum of 7% of wind energy was to be procured by the distribution companies. These provisions are made to promote and encourage renewable energy sources. So long as the power injected by GFL is not causing a breach of the upper limit (7%) laid down by the State Commission, there does not appear any justification for denial of charges to GFL. The conclusion arrived at by us is in furtherance of the State Policy. This is an additional reason to dismiss the contention of the Petitioner on the payment of dues ordered by the Commission.

10. In para 9 of Petition No.110/2008, it is stated that "energy accounting capability does not exist with SLDC on date". This appears to be a strange statement. It is now incumbent on the Petitioners to comply with our order dated 27.8.2008 without any further delay.

Sd/-	Sd/-	Sd/-	Sd/-
[S. JAYARAMAN]	[R. KRISHNAMOORTHY]	[BHANU BHUSHAN]	[DR. PRAMOD DEO]
MEMBER	MEMBER	MEMBER	CHAIRPERSON

New Delhi, dated the 3rd February, 2009