

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 83/MP/2013**

Subject : Petition for illegal denial of Open Access by the respondents in violation of Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008.

Date of hearing : 23.7.2013

Coram : Shri V.S.Verma, Member  
Shri M. Deena Dayalan, Member  
Shri A.S.Bakshi, Member (EO)

Petitioner : Sagar Power (Neerukatte) Private Limited, Bangalore

Respondents : SLDC, Karnataka and others

Parties present : Shri Shridhar Prabhu, Advocate for petitioner  
Shri Anantha Narayana, Advocate for petitioner

**Record of Proceedings**

Learned counsel for the petitioner submitted as under:

- (a) The petitioner had entered into a Power Purchase Agreement (PPA) with Mangalore Electricity Supply Company Limited (MESCOM) on 6.12.2006;
- (b) The petitioner filed petition before KERC inter- alia praying for an declaration that there is no valid or subsisting agreement between the petitioner and MESCOM, as the PPA was not approved by KERC and alternatively prayed that petitioner's tariff be re-determined, in the wake of financial crises faced by it.
- (c) MESCOM did not open the Letter of Credit (LC), as agreed under the PPA. Since the events of default under the PPA could not be remedied by MESCOM, the petitioner terminated the PPA with MESCOM on 22.10.2011.
- (d) After due termination of the PPA, the petitioner on 11.7.2012 executed a Member Client Agreement with PTC India Ltd for sale of the power generated from its project through IEX.

(e) On 6.8.2012, PTC made an application to the SLDC, Karnataka for grant of STOA . In response, on 10.8.2012, SLDC, Karnataka informed PTC that the petitioner has a valid PPA with MESCOM and as per the Government Order dated 1.9.2009, all private generators having valid PPAs with State utilities are bound to supply to respective power utilities. Subsequently, on 23.3.2013, the petitioner made applications through PTC for grant of open access. In response, SLDC, Karnataka rejected the applications on the similar said grounds.

(f) Since MESCOM has not challenged the termination of PPA, SLDC, Karnataka has no right to deny open access. The factum of termination notice or termination of contracts cannot be criteria for grant or rejection of the Inter-State Short Term Open Access.

2. After hearing, learned counsel for the petitioner, the Commission observed that the petitioner should take up the matter with the Government and make it clear with the Government that since there is no valid PPA, the power would not be supplied. The Commission further observed that since the petitioner is continuing to supply the power, which means the petitioner is indirectly accepting the existence of PPA. In response, learned counsel for the petitioner submitted that though the petitioner is not bound to supply the power under the PPA after termination of the PPA, it is constrained to supply the power into the grid.

3. The Commission directed to admit the petition and issue notices to the respondents. The Commission directed the petitioner to serve copy of the petition to the respondents by 8.8.2013. The respondents may file their replies by 23.8.2013, with an advance copy to the petitioner. The petitioner may file its rejoinder, if any on or before 10.9.2013.

4. The petition shall be listed for hearing on 19.9.2013.

By the order of the Commission,

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