

Before the Karnataka Electricity Regulatory Commission

Dated this the 9th day of June 2005

Present

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|-------------------------|-----|----------|
| 1. Sri. K.P. Pandey | ... | Chairman |
| 2. Sri. H.S. Subramanya | ... | Member |
| 3. Sri. S.D. Ukkali | ... | Member |

Case No.OP 04/2005

In the matter of:

Grant of permission for purchase of power from Power Trading Corporation of India Ltd., (PTC)/other sources on Open Access Basis.

Between

Kalyani Steels Limited (KSL)
Ginigera, District Koppal,
Karnataka
(Represented by its Director Shivkumar Kheny) ... Petitioner
(Counsel for the Petitioner Sri.Amarchand & Mangaldas & Suresh A. Shroff & Co)

And

Karnataka Power Transmission Corporation Ltd.,(KPTCL)
Cauvery Bhavan
K.G. Road
Bangalore ... Respondent No.1

Gulbarga Electricity Supply Company Ltd., (GESCOM)
Station Road
Gulbarga ... Respondent No.2

(Represented by the General Manager (Technical), KPTCL, Sri. Prathapkumar on behalf of the Respondents)
(Counsel for Respondents – Sri. S.S. Naganand and Sri. Sriranga)

Petition under Sections 39(2)(d)(ii), 42, 86(1)(a) & 86(1)(c) of the Electricity Act 2003, and clauses 4(6) and 20 of the Open Access Regulations.

1. The Petitioner has sought, through this petition, to:

- a) Allow the present petition and accord approval to the Petitioner's proposal to purchase power from PTC/other sources on an Open Access basis using the existing transmission network of PGCIL and existing distribution link between PGCIL's Munirabad Sub station and the Petitioner's steel plant;
- b) Direct the Respondent No.1/Respondent No.2, as the case may be, to accommodate minor variations in power procurements of the Petitioner at any instant and also supply power to the Petitioner in case of any contingency condition in the power networks because of which PTC/other sources is unable to deliver power to the Petitioner;
- c) Fix the relevant wheeling charges and the applicable surcharge, if any, in the event this Hon'ble Commission deems it appropriate to impose such charges in the facts and circumstances of the case;
- d) Pass an Order not to levy any Intra-State (Karnataka) transmission charges losses and additional surcharge for the proposed purchase of power;
- e) Direct the Respondent to reduce the contract demand in consonance with the total power consumed by the Petitioner less the power supplied by PTC to the Petitioner; and
- f) Grant any other reliefs, which it may deem fit and proper in the interest of justice.

2. The facts of the case in a nutshell, are as follows:

The Petitioner Kalyani Steels Ltd., (hereinafter referred to as KSL) is a Company registered under the Companies Act, 1956 and has set up an integrated steel manufacturing plant at Gingera, District Koppal.

Respondent No.1 Karnataka Power Transmission Corporation Ltd., (hereinafter referred to as KPTCL) is a company established under the provisions of the Companies Act 1956 and is engaged in the business of Intra-State transmission of electricity in the State of Karnataka and holds a transmission license and functions as a State transmission utility as per the provisions of the Electricity Act 2003 (hereinafter referred to as Act).

Respondent No.2 Gulbarga Electricity Supply Company Ltd., (hereinafter referred to as GESCOM) is a Company established under the provisions of the Companies Act, 1956 and is one of the Distribution Licensees in the State of Karnataka whose area of supply covers Koppal District in which the steel manufacturing plant of KSL is situated.

The Petitioner states that he is a H.T. consumer of GESCOM under category HT2(a) having a sanctioned load of 22,100 KVA with a monthly consumption exceeding 11 million units and the plant is fed from PGCIL's (Power Grid Corporation of India Ltd.) 400 KV Munirabad Sub station at Guddadahally via the 220 KV terminal bay extension and a 7.25 km long 220 KV transmission line. The Petitioner further states that the 220 KV terminal bay extension and the 7.25 km long 220 KV transmission line to the plant have been fully financed by them and is exclusively dedicated to power supply arrangement to the plant.

3. The case was posted for hearing on 10.3.2005. KPTCL and GESCOM (Respondents 1 & 2) sought time for filing objections upto 24.3.2005. The case was posted to 24.3.2005. The Respondents filed their written submissions on 24.3.2005 resisting the petition. The following are some of the essential points brought out in the statement of objections filed by the Respondents:

- a) The petition is premature since time for introduction of Phase-I of open access has been fixed by the Commission as 10.6.2005.
- b) For the proposal to purchase power from PTC and wheeling it to the Petitioner's plant using the network of PGCIL and the intra-state network of the Respondents, necessary application for open access has to be filed with SRLDC (Southern Regional Load Despatch Centre) under CERC Regulations with all details.
- c) The contention of the Petitioner that wheeling or other charges would not be payable since power would be drawn through the CTU network and dedicated transmission line fully financed by the Petitioner is not correct as the dedicated transmission line is owned by the Respondent on the grounds that once the

lines are laid, the same would become the property of the supplier. The reliance placed on MERC order dated 3.8.2004 is misconceived.

- d) The concept of Contract demand is only with reference to a contract with the distribution licensee for supply of power. In case of open access, the same has no relevance. Petitioner would be liable to pay connectivity charge, surcharge etc., as determined by the Commission.

4. The Commission had also observed during the hearing on 10.3.2005 that applications for open access within the State have to be made to the State load dispatch center which would be the appropriate nodal agency as per the Regulations under the provision of Regulation 9 of KERC Regulations.

The Petitioner in their additional affidavit filed on 24.3.2005 submitted that the application made by him to the SLDC dated 14.3.2005 in a letter format (since the SLDC which is the nodal agency appointed under these Regulations had not issued the necessary guide lines, procedures and application forms within 30 days of the publication of the said Regulations which was published on 16.12.2004) along with DD for Rs.1000/- was returned by SLDC vide their letter dated 17.3.2005 stating that the application does not pertain to KPTCL Load despatch centre.

The Commission during the hearing on 24.3.2005 observed that open access needs to be implemented in the State and directed the Respondents to take their stand in the present case regarding its readiness to implement the open access after examining the technical feasibility by the time of the next hearing fixed for 7.4.2005. The Commission also directed the Petitioner to resubmit its application to SLDC with details for grant of open access.

5. The Respondents did not furnish the technical feasibility even during subsequent hearings held on 7.4.2005 and 21.4.2005. However, in the hearing held on 26.5.2005, the Petitioner filed an additional affidavit enclosing therewith a letter dated 21.5.2005 from the Chief Engineer, Load despatch center, rejecting the Petitioner's application for grant of open access. The reasons narrated in the letter of SLDC for rejecting open access are as follows:

- (i) The point of injection of the power stated by the Petitioner to be the 400 KV Munirabad Sub-station is not correct since there is no generation at this point and hence the question of injecting power there does not arise. SLDC has also contended that if the generation source is outside the State, the injection point should be invariably the entry point into the State which in the instant case should be RTPS for PTC power.
- (ii) Since the outgoing line from RTPS is loaded close to surge impedance load, there will be no margin available in case of contingency of line outage.

6. The Petitioner has submitted that rejection of its application for open access is based on totally irrelevant considerations and misconceived. The Petitioner has referred to the criteria mentioned in Regulation 3(2) of the KERC Open Access Regulations which state that short term open access shall be allowed by utilizing (a) inherent design margins (b) margins available due to variations in power flows, and (c) Margins available due to in-built spare transmission system capacity and distribution system capacity created to cater to a future load growth. The Petitioner mentions that the above criteria are meant to be facilitators for obtaining open access.

The Petitioner has further contended that while it is correct that the point of injection would be the generator source, in the case of open access, the relevant injection point has to be the point in the KPTCL system from which the open access is sought from the Respondents by the Petitioner. The Petitioner submits that the point of injection of power into the KPTCL system is correctly mentioned in the application as the 400 KV Munirabad Sub station, Guddaddahally, as it is at that point that power is injected from PGCIL (CTU) line/system into the KPTCL lines/system. The Petitioner states that it is from this point that the Petitioner is seeking approval for grant of open access from the Respondents. The Petitioner further contends that it would not be appropriate or within the Respondent's domain to comment on the capacity of the PGCIL lines/system.

The Petitioner has also submitted that it would be wrong for the Respondent(s) to presume at this stage that the power would be injected into the State at any particular point as PTC through which the Petitioner is sourcing the power has three inter regional points of injection within the State of Karnataka being:

- (i) Talcher – Kolar 400 KV line
- (ii) Kolhapur – Belgaum 2 x 220 KV line
- (iii) Goa – Ambewadi 220 KV line

in addition to other inter-regional lines such as Nagarjuna – Raichur 400 KV line.

The Petitioner has contended that it is premature for the Respondents to presume at this stage that the point of injection into the State would be RTPS. The Petitioner further states that once open access is granted, the Petitioner will be in a position to approach PTC and enter into definite arrangements regarding purchase of power from them and it is only after that, will the Petitioner be able to ascertain as to the correct point of injection.

The Petitioner has also submitted that the contention of the Respondents that the outgoing line for RTPS is loaded close to surge impedance loading should have been backed by supporting data. The Petitioner has also referred to the extract of information purported to have been published by SRLDC on the surplus capacity available in the inter-regional links of the State of Karnataka and have stated, that in any event, it will be the responsibility of PTC or other sources to deliver power upto PGCIL (CTU) Munirabad Sub station, Guddadahally, and that they would ascertain and enter into arrangements for use of transmission system upto the PGCIL (CTU) Munirabad Sub station.

The Petitioner has further submitted that, in any event, power is transmitted by displacement and will not flow through a path that is saturated and therefore, as long as there is surplus capacity in the inter-regional line of the State of Karnataka, the power is bound to flow.

It is submitted by the Petitioner that the Respondents have not commented on the capacity of the 7.25 km long dedicated overhead 220 KV lines from the PGCIL

(CTU) 400 KV Munirabad Sub station to the Petitioner's plant which was financed totally by the Petitioner under Deposit Contribution scheme. It is submitted that this 7.25 km long dedicated overhead 220 KV line is the only part of the entire system for which open access is sought for and is the subject matter of this Petition. The Petitioner submits that there is surplus capacity in the 7.25 km long 220 KV lines from Munirabad Sub station at Guddadahally to the Petitioner's plant as evidenced by the extract of data published by SRLDC annexed to the additional affidavit. The Petitioner has concluded that under the circumstances, the Respondents should have no objection for providing open access from a technical stand point to the 7.25 km dedicated line.

The Petitioner has submitted that the Commission may reject the stand taken by the Respondents while considering the application of the Petitioner for open access. The Petitioner has also submitted that the Respondents have not filed their stand regarding the non-applicability of the transmission charges, surcharges and additional charges despite sufficient opportunity being given to the Respondents by the Commission in this regard. The Petitioner has prayed that the Commission be pleased to decide the Petition on merits.

7. In the hearing held on 26.5.2005 the Counsels for both the Petitioner and the Respondents reiterated their respective stand taken on the points narrated in the above paras.

8. We have carefully considered the various points on which the Petitioner has sought the approval of the Commission in its original petition dated 29.1.2005, the statement of para-wise objections filed by the Respondents on the petition, the grounds on which the Respondent has rejected the Open Access application of the Petitioner and the Petitioner's rejoinder on the same and the several issues canvassed during the hearings by both the parties.

In order to consider the merits of the case before us, it is necessary to keep in view the jurisdiction of various authorities on matters connected with this case in accordance with the various provisions brought into law under the Electricity Act 2003 and the

KERC (Terms and conditions for Open Access) Regulations 2004, among other things. We deal with each of the points on which the Petitioner has sought the approval of the Commission in the background of the above.

9. Point 1 of the petition dated 29.1.2005 – The Petitioner has requested to allow the present petition and accord approval to the Petitioner’s proposal to purchase power from PTC/other sources on an open access basis using the existing transmission network of PGCIL and existing distributing link between PGCIL’s Munirabad Sub station and the Petitioner’s steel plant.

The Commission observes that it had issued the KERC (Terms and Conditions for Open Access) Regulations, 2004 which was notified on 16.12.2004. Clause 1 (iii) of the Regulations apply to the open access customers for use of intra-State transmission system/s and/or distribution system/s of Licensee/s in the State, including such system/s which are incidental to inter-State transmission of electricity. The eligibility criteria for the open access customers are also stipulated in the Regulations. The Regulations have come into force with effect from 16.12.2004. However, according approval by the Commission for power purchase is not contemplated in the Regulations.

The Commission notes that the Petitioner proposes to avail open access by using the existing transmission network of PGCIL and the existing distributing link between PGCIL’s Munirabad Sub station and the Petitioner’s steel plant, purchasing power from a source outside the State involving inter-state transmission of electricity. Under the circumstances, the Petitioner is required to file an application for transmission access with the nodal Regional Load Despatch Centre (RLDC) with all necessary details as per “Open Access in Inter-State Transmission Regulations” notified by CERC. The appropriate RLDC will have to coordinate with the SLDC with regard to availability of adequate transmission capacity in the PGCIL network upto the Munirabad sub station.

10. Point 2 of the petition dated 29.1.2005 The Petitioner has requested the Commission to direct the Respondent No.1/Respondent No.2, as the case may be, to

accommodate minor variations in power requirements of the Petitioner at any instant and also supply power to the Petitioner in case of any contingency condition in the power networks because of which PTC/other sources is not able to deliver power to the Petitioner.

The Respondents in their affidavit dated 24.3.2005 have stated that the Petitioner is seeking to avail open access and draw power from PTC and also from GESCOM. They have contended that the Petitioner in effect is seeking dual supply which is not permissible and that the reliefs sought cannot be granted under the provisions of the Electricity Act, 2003 and KERC (Terms and conditions for Open Access) Regulations, 2004. They have further stated that the reliefs claimed by the Petitioner are opposed to law.

The Commission observes that the very objective of the Act is to promote competition so that consumers can source their requirements at competitive rates from any source/s and introduction of open access is to achieve this objective.

The Commission further observes that the Petitioner has essentially sought back up service from the Respondent No.1/Respondent No.2, as the case may be, to take care of variations in supply from PTC/other sources and also to supply power to the Petitioner in case of any contingency condition in the power networks because of which PTC/other sources is not able to deliver power to the Petitioner.

In this regard, Clause 11 (viii) of KERC Regulations on Open Access is relevant which states as hereunder:

“Charges for arranging back up supply from the grid shall be payable by the open access customer in the event of failure of contracted supply to cover the risk. The amount of back up charges shall be mutually agreed between the parties.”

The Petitioner shall therefore negotiate with the Respondents regarding back up supply arrangement for availing open access duly forwarding record notes of negotiations held in this regard to the Commission. In case the parties do not come to a mutual agreement regarding the back up arrangement, they may approach the Commission for an appropriate decision.

11. Point 3 of the petition dated 29.1.2005

The Petitioner requests the Commission to fix the relevant wheeling charges and the applicable surcharge, if any, in the event the Commission deems it appropriate to impose such charges in the facts and circumstance of this case.

As represented by the Petitioner vide item 1 of the petition above, the proposal of the Petitioner is to wheel the power using the existing distributing link between PGCIL's Munirabad Sub station and the Petitioner's steel plant. The Petitioner has contended that since this distribution link is fully financed by him under deposit contribution scheme and is dedicated to power supply arrangement to his steel plant, no wheeling charges or additional surcharge would be due and payable in terms of Section 39(2)(d)(ii) and 42(4) of the Act. In this regard reliance has been placed by the Petitioner on the MERC Case No.57/2003 between M/s. Bhushan Steels and MSEB. It is stated that MERC has permitted similar supply of power without the payment of wheeling charges and additional charge.

The Respondent has stated in his submission vide his affidavit dated 24.3.2005 that the above contention of the Petitioner is wholly incorrect on the grounds that once the lines are laid, the lines become the property of the supplier. The Respondent has also stated that the reliance of the Petitioner on the order of MERC dated 3.8.2004 is misconceived.

The Commission has examined the above submissions by the Petitioner and the Respondents. The Commission observes that the tariff determined by the

Commission to various categories of consumers including the Petitioner comprises of an element of transmission charges also, worked out on the basis of the network cost of the complete grid together with operation and maintenance charges, etc. The Commission further observes that the distribution link between Munirabad Sub station and the Petitioner's steel plant is being operated and maintained by the Respondents irrespective of the fact that it has been fully financed by the Petitioner on deposit contribution basis. The Commission has examined the MERC order referred to by the Petitioner and observes that the decision of MERC in the said order can at best serve only as guidelines. Moreover, the Commission observes that the findings of MERC in the said case are not relevant and applicable to the present case. The Commission therefore deems it appropriate that wheeling charge and surcharge thereon as may be specified by the Commission would become payable by the Petitioner in terms of Section 39(2)(d)(ii) of the Act and the KERC Regulations on open access.

12. Point 4 of the Petition dt.29.1.2005

The Petitioner requests the Commission to pass an Order not to levy any intra-state (Karnataka) transmission charges, losses and additional surcharge for the proposed purchase of power.

As already mentioned in the previous paras, the retail tariff of the consumers including that of the Petitioner comprises of an element of transmission charges determined on the basis of the complete network cost together with operation and maintenance charges, etc. The Commission therefore observes that the question of passing an order not to levy any intra-state (Karnataka) transmission charges does not arise. Similarly, the applicable losses shall become payable by the Petitioner

As regards additional surcharges, Section 42(a) of the Act provides that "where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of

wheeling, as may be specified by the State Commission to meet the fixed cost of such distribution licensee arising out of his obligation to supply.”

As already observed by the Commission in respect of point 3 of the petition, wheeling charges and surcharge thereon as determined by the Commission would become payable and on the question of payment of additional surcharge if any on the charges of wheeling, the Respondents may approach the Commission for determination of such charges.

13. Point 5 of the petition dated 29.1.2005

The Petitioner requests the Commission to direct the Respondent to reduce the contract demand in consonance with the total power consumed by the Petitioner less the power supplied by PTC to the Petitioner.

The Petitioner has represented in his petition dated 29.1.2005 that in view of the agreement entered into with PTC it is anticipated that the quantum of power which will be procured from PTC may gradually increase over a period of time which requires reduction in quantum of power to be supplied by the Respondent No.2 commensurately which also means that there is a need to reduce the contract demand by the Respondent No.2 to the extent of demand met by PTC. The Petitioner has taken reliance on an order of MERC dated 13.2.2004 in respect of a case between MSEB and ONGC in which MERC has held that maintaining a certain level of contract demand, except at MSEB’s discretion and irrespective of ONGC’s captive generation as being untenable.

The Respondents have contended in their reply to the petition that the concept of contract demand is only with reference to a contract with the distribution licensee for supply of power and that in case of open access, the same has no relevance. The Respondent has also maintained that the Petitioner would be liable to pay connectivity charge, surcharge, etc., as determined by the Commission.

The Commission observes that the matter of reduction in contract demand of the Petitioner with the Respondent No.2 commensurate with the increase of supply by PTC/other sources is a matter to be mutually agreed between the parties as the aspect of back up supply arrangement by the Respondent is involved, for which, the applicable back up charges are to be agreed mutually in accordance with the provisions in KERC Regulations on open access. The Commission however observes that the Respondent shall consider reduction in contract demand to the extent sought by the Petitioner subject to back up charges to be mutually agreed to as per KERC Regulations on Open Access.

14. Point 6 of the petition dated 29.1.2005

The Petitioner has sought for grant of any other reliefs which the Commission may deem fit in the interest of justice.

To sum up the facts of case before the Commission, the main thrust of the petition as brought out by the Petitioner, vide para 9 of the additional affidavit dated 26.5.2005 filed by the Petitioner is that “the 7.25 km long dedicated overhead 220 KV line from the PGCIL’s Munirabad Sub station to the Petitioner’s steel plant is the only part of the entire system which is within the domain of the Respondents and which is the only part of the entire system for which Open Access is sought and is the subject matter of this petition.” The Petitioner has also stated that the Respondents have surplus capacity in the said 7.25 km long overhead 220 KV lines and that the only reasons given by the Respondents for rejecting the application for open access as stated in the letter dated 21.05.2005 are that (a) the present 400 KV line (outgoing line for RTPS) is loaded close to surge impedance load and that, (b) in case of contingency of line outage there will be no margin available on this line.

The Commission observes that the Petitioner has made it clear that the only part of KPTCL system for which open access is sought from the Respondent/s is “the 7.25 km long dedicated overhead 220 KV line from PGCIL’s Munirabad Sub station to the Petitioner’s steel plant.” The Petitioner has also stated that the Respondents have not commented on the capacity of 7.25 km long 220 KV Transmission line from PGCIL’s

400 KV Munirabad Sub station feeding the Petitioner's steel plant. The Commission observes that even on the hearing held on 26.5.05, on specific query by the Commission as to the adequacy of the capacity of the 7.25 km 220 KV line, the Respondents did not provide specific response in this regard.

The Commission however observes that from the information available in the Petition and the various submissions made both by the Petitioner and the Respondents, the 7.25 km long 220 KV Transmission line from the 400 KV PGCIL Sub station exclusively feeds the Petitioner's steel plant and at present is providing the Petitioner's contracted power requirements. Since no other loads are at present being fed from this line the Commission concludes that there is adequate capacity in this particular line for providing open access to the Petitioner to the extent of the Petitioner's proposal which is within the present sanctioned contract demand of 22,100 KVA and therefore the Commission allows open access on the above line.

15. The petition is allowed in terms of the above order.

(K.P. PANDEY)
Chairman

(H.S. SUBRAMANYA)
Member

(S.D. UKKALI)
Member