
**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 21st March, 2017

Present:

Sheri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

Suo Motu Case No.1 / 2016

BETWEEN:

- 1) Vedprakash Power Private Limited,
301, Mahalaxmi Industrial Estate,
Gandhi Nagar, Lower Parel,
Mumbai – 400 013,
Maharashtra.
- 2) Global Energy Private Limited,
6th Floor, Le-Meridien Commercial Tower,
Raisina Road,
New Delhi – 110 001

PETITIONERS

*[Petitioner No.1 is represented by Praxis Counsel, Advocates & Solicitor;,
Petitioner No.2 is represented by Adlaw Partners, Advocate]*

AND:

- 1) The Power company of Karnataka Limited,
501, 5th Floor, KPTCL Building,
Cauvery Bhavan,
Bengaluru - 560 009.
- 2) The State of Karnataka,
Represented by its Secretary,
Department of Energy,
Room No.236, 2nd Floor,
Vikas Soudha,
Bengaluru - 560 001.

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- 3) Bangalore Electricity Supply Company Limited,
K.R. Circle,
Bengaluru – 560 001.
- 4) Mangalore Electricity Supply Company Limited,
MESCOM Bhavana,
Kavoor Cross Road,
Bejai,
Mangaluru – 575 004.
- 5) Chamundershwari Electricity Supply Corporation Limited,
No.29, Kaveri Grammeena Bank Road,
Vijayanagar, 2nd Stage,
Mysuru – 570 019.
- 6) Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi – 585 101.
- 7) Hubli Electricity Supply Company Limited,
P.B. Road, Navanagar,
Hubballi – 580 025.
- 8) Maharashtra State Electricity Distribution Company Limited,
Prakashghad,
Bandra Post,
Mumbai – 400 051.

RESPONDENTS

[Respondents-1, 3 to 7 are represented by Just Law, Advocates;
Respondent-8 is represented by M.V. Kini & Co]

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ORDERS

- 1) The above *Suo Motu* case is registered as per the directions of the Hon'ble High Court of Karnataka, by its Order dated 10.12.2016 in W.P.No.51361/2016 filed by the 1st Petitioner – Vedprakash Power Private Limited (Vedprakash) herein. The 2nd Petitioner – Global Energy Private Limited (GEPL) filed an application on 5.1.2017 to implead itself in the above *Suo Motu* case. The 2nd Petitioner (GEPL) has also produced the Order dated 6.1.2017 passed by the Hon'ble High Court

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of Karnataka in Writ Appeal No.5082/2016 c/w Writ Appeal No.5082/2016, wherein this Commission has been directed to allow it to participate in the proceedings of this *Suo Motu* case.

2) The material facts leading to the initiation of the above *Suo Motu* case may be stated as follows :

(a) The 1st Respondent – Power Company of Karnataka Limited (PCKL) had issued a Tender for purchase of 200 ± 25% Mega Watts (MW) RTC power on a short-term basis. The 1st Petitioner (Vedprakash) filed Writ Petition No.51361/2016 to set-aside the said Tender proceedings contending that, certain terms and conditions of the Tender were arbitrary and discriminatory. The request of the 1st Petitioner (Vedprakash) in the said Writ Petition for granting of an Interim Order of Stay of the Tender process was turned down by the Hon'ble High Court by its Order dated 26.9.2016. In Writ Appeal No.3869/2016 filed by the 1st Petitioner (Vedprakash) against the said Order dated 26.9.2016, the Division Bench of the Hon'ble High Court by its Order dated 6.10.2016, directed the 1st Respondent (PCKL) and other Respondents therein, not to award any Contract pursuant to the Tender proceedings, without the leave of the Hon'ble High Court. The said direction of the Division Bench of the Hon'ble High Court was extended till the first week of January, 2017, as per its Order dated 25.10.2016.

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- (b) In the meanwhile, the Tender process was decided to be withdrawn by the 1st Respondent (PCKL) as per its Resolution dated 18.11.2016 and it negotiated with the 8th Respondent – Maharashtra State Electricity Distribution Company Limited (MSEDCL) for purchase of 300 MW of RTC power at the rate of ₹3.62 per unit and got approval of this Commission on 21.11.2016. A Letter of Award (LoA) dated 21.11.2016 along with the terms and conditions for supply of power was issued to the 8th Respondent (MSEDCL). Accordingly, accepting the said terms and conditions of the LoA for supply of power, the 8th Respondent (MSEDCL) started supplying power from 25.11.2016 at 00:00 hours, fulfilling the preliminary requirements.
- (c) The 2nd Petitioner (GEPL) challenged the said LoA dated 21.11.2016 issued to the 8th Respondent (MSEDCL) in Writ Petition No.61187/2016 and obtained an Interim Order dated 29.11.2016, staying this Commission's approval dated 21.11.2016 for purchase of power on a short-term basis from the 8th Respondent (MSEDCL). Against the said Order dated 29.11.2016 passed in W.P.No.61187/2016, both sides preferred Writ Appeals, viz., Writ Appeal No.5082/2016 and Writ Appeal No.4786/2016. In Writ Appeal No.5082/2016 filed by the 2nd Petitioner (GEPL), it was prayed to pass an Order staying the operation of the LoA dated 21.11.2016 and any further steps taken pursuant to the said LoA. In Writ Appeal No.4786/2016, the 1st Respondent (PCKL) prayed for setting aside the Interim Order passed in Writ Petition No.61187/2016

dated 29.11.2016 staying the operation of the approval of this Commission.

- (d) In Writ Petition No.51361/2016, subsequently an Interim Order was passed on 30.11.2016 restraining the 1st Respondent (PCKL) and other Respondents therein from taking steps / executing any documents pursuant to the LoA dated 21.11.2016. The 1st Respondent (PCKL) filed an Interlocutory Application in those proceedings for vacation of the Interim Order dated 30.11.2016. By Order dated 2.12.2016, Writ Appeal No.3869/2016 was dismissed, on the ground that, the Tender proceedings had been withdrawn. During the final hearing of Writ Petition No.51361/2016, after hearing the rival contentions of the parties and taking into consideration the withdrawal of the Tender proceedings, the Hon'ble High Court by its Order dated 10.12.2016 held that, the Writ Petition had become infructuous. Further, taking into consideration that, during the final hearing of the said Writ Petition the 1st Petitioner (Vedprakash) had undertaken to supply power at the rate of ₹3.61 per unit and that the learned Senior Counsel for the 1st Respondent (PCKL) had submitted that the 1st Petitioner (Vedprakash)'s offer to supply power at the rate of ₹3.61 per unit to the 1st Respondent (PCKL) would be placed before this Commission for consideration, the Hon'ble High Court had directed the 1st Petitioner (Vedprakash) to submit a detailed representation to the 1st Respondent (PCKL), who in turn should forward it along with its

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comments to this Commission for taking further necessary action in the matter.

- (e) Accordingly, the 1st Petitioner (Vedprakash) presented its proposal dated 16.12.2016 for supply of 300 MW of power to the 1st Respondent (PCKL), who in turn forwarded the same with its comments dated 22.12.2016 along with the relevant documents to this Commission.
 - (f) Upon receipt of the above documents from the 1st Respondent (PCKL), this *Suo Motu* Case No.1/2016 was registered by this Commission and Notices were issued to the parties concerned.
 - (g) While disposing of Writ Appeal No.5082/2016 c/w Writ Appeal No.4786/2016, the Hon'ble High Court by its Order dated 6.1.2017 directed this Commission to consider the 2nd Petitioner (GEPL) as one of the competitors for supply of electricity at a cheaper rate. As already noted above, the application dated 5.1.2017 filed by the 2nd Petitioner (GEPL) was pending in the above *Suo Motu* case for impleading it as a party to the said case. Therefore, this Commission allowed the 2nd Petitioner (GEPL) to participate in the *Suo Motu* case (the GEPL is arraigned as the 2nd Petitioner in this Order).
- 3) The material facts required for the disposal of the claim of the 1st Petitioner (Vedprakash) may be stated as follows :

- (a) The terms and conditions of the offer dated 16.12.2016 of the 1st Petitioner (Vedprakash) was objected to by the 1st Respondent (PCKL) in its objections dated 22.12.2016. The gist of the said objections is that, the landed cost per unit of electricity offered by the 1st Petitioner (Vedprakash) would work out to more than ₹3.61 per unit indicated in its offer and that the terms and conditions of the offer in respect of the procurer, period of supply, billing cycle, surcharge, open access charges, deviations and the dispute settlement mechanism, payment of liquidated damages for failure to supply / off-take power, etc., were not favourable when compared to the terms and conditions of the offer of the 8th Respondent (MSEDCL). Further that, the 1st Petitioner (Vedprakash) was not competent to supply 300 MW of power for the required period, as the 1st Petitioner (Vedprakash) was only a Category-IV Trading Licensee.
- (b) The 1st Petitioner (Vedprakash) has filed its revised offer on 12.1.2017 stating that, it would match with the terms and conditions for supply of power undertaken by the 8th Respondent (MSEDCL). The 1st Petitioner (Vedprakash) has contended that, though it is a Category-IV Trading Licensee, it is not barred from supplying 300 MW power for the required period.
- (c) The 1st Respondent (PCKL), in its comparative statement along with remarks dated 1.2.2017, has contended that, the revised offer of the

1st Petitioner (Vedprakash) is still not favourable and comparable with that of the 8th Respondent (MSEDCL).

4) The material facts required for the disposal of the claim of the 2nd Petitioner (GEPL) may be stated as follows :

(a) The 2nd Petitioner (GEPL) has presented its offer dated 19.1.2017 along with the terms and conditions for supply of power at the rate of ₹3.60 per unit.

(b) The 1st Respondent (PCKL) has filed its objections on 1.2.2017, by way of filing a Statement of Comparison of the terms and conditions of the offers of the rival claimants with that of the 8th Respondent (MSEDCL). The 1st Respondent (PCKL) has contended that the terms and conditions offered by the 2nd Petitioner (GEPL) are not favourable and comparable with that of the offer of the 8th Respondent (MSEDCL). It has stated the details in respect of the differences between the terms and conditions of the 2nd Petitioner (GEPL) and the 8th Respondent (MSEDCL).

(c) The 2nd Petitioner (GEPL), in response to the stand taken by the 1st Respondent (PCKL) in its comparative statement filed on 1.2.2017, has again filed its revised offer dated 16.2.2017, intending to match the terms and conditions of the 8th Respondent (MSEDCL).

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- (d) On 17.2.2017, the 2nd Petitioner (GEPL), by way of an Affidavit, filed its revised and final proposal with reference to the terms and conditions of the LoA dated 21.11.2016.
- (e) The 1st Respondent (PCKL) has filed its objections on 2.3.2017 to the revised final proposal dated 17.2.2017 of the 2nd Petitioner (GEPL).
- (f) The 2nd Petitioner (GEPL) has filed its reply dated 8.3.2017 to the objections dated 2.3.2017 filed by the 1st Respondent (PCKL).
- 5) The *Suo Motu* case was posted on 16.2.2017 for filing the written arguments and also to address the oral submissions by the parties. As already noted above, on 16.2.2017, the 2nd Petitioner (GEPL) filed its revised offer in response to the reply dated 1.2.2017 of the 1st Respondent (PCKL). This Commission heard the arguments in part and found that, the 2nd Petitioner (GEPL) and the 1st Respondent (PCKL) were not in agreement, in respect of which terms, the offers of the 2nd Petitioner (GEPL) were matching with that of the offers of the 8th Respondent (MSEDCL). Therefore, this Commission suggested to the 1st Respondent (PCKL) to furnish a copy of the LoA dated 21.11.2016, along with the terms and conditions for supply of power issued to the 8th Respondent (MSEDCL), to the 2nd Petitioner (GEPL) and asked the 2nd Petitioner (GEPL) to file an one-line Affidavit stating that, it would be ready to match with the terms and conditions of the LoA dated 21.11.2016. This suggestion was made by this Commission, as the

learned Senior Counsel for the 2nd Petitioner (GEPL) submitted that the 2nd Petitioner (GEPL) was ready to match with all the terms and conditions of the LoA dated 21.11.2016, in its letter and spirit. The learned Senior Counsel for the 2nd Petitioner (GEPL) and the learned Senior Counsel for the 1st Respondent (PCKL) submitted that, in that event, this Commission may proceed for passing orders, on merits. Accordingly, this Commission reserved the *Suo Motu* case for orders.

6) The 1st Respondent (PCKL) has served a copy of the LoA dated 21.11.2016 along with its terms and conditions to the 2nd Petitioner (GEPL) and has filed a Memo dated 17.2.2017 to that effect. The 2nd Petitioner (GEPL) has filed its revised final proposal by way of an Affidavit dated 17.2.2017, in response to the suggestion made by this Commission on 16.2.2017. On 27.2.2017, additional written submissions were filed by the 8th Respondent (MSEDCL). As already noted above, on 2.3.2017 and 8.3.2017, the 1st Respondent (PCKL) and the 2nd Petitioner (GEPL) have filed their objections and reply.

7) From the rival contentions, the following issues would arise for our consideration :

(1) Whether the 1st Petitioner (Vedprakash), being a Category-IV Trading Licensee, is competent to supply 300 MW of power till the end of May, 2017?

(2) Whether any of the Petitioners herein is better placed than the 8th Respondent (MSEDCL) for supply of 300 MW of power, on a

short-term basis, to the Distribution Licensees in Karnataka through the Kolhapur-Chikodi transmission line?

(w) What Order?

8) **ISSUE No.(1)** : *Whether the 1st Petitioner (Vedprakash), being a Category-IV Trading Licensee, is competent to supply 300 MW of power till the end of May, 2017?*

(a) The Trading Licence of the 1st Petitioner (Vedprakash) is issued by the Central Electricity Regulatory Commission (CERC) under the CERC (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2009. Regulation 3(3) of the said Regulations provides that, a Category-IV Trading Licensee is allowed to trade not more than 100 Million Units (MUs) of electricity in a year. Regulation 7(b) of the said Regulations provides that, the Trading Licensee shall not exceed the volume of trading authorized under the Licence, but may, in exceptional circumstances, undertake trading in electricity upto a maximum of 120% of the volume of trading authorized under the Licence granted to him. The second proviso to the said Regulation provides that, the Licensee may, with the prior approval of the Commission and on such terms and conditions as the Commission may decide, exceed the specified limit of 120% in a year.

(b) Admittedly, in the present case, the quantum of electricity to be supplied is 300 MW RTC power upto the end of May, 2017, which would exceed more than the volume of electricity that could be traded in a year by the 1st Petitioner (Vedprakash). The 1st Petitioner

(Vedprakash) obtaining the prior approval of the CERC to exceed the specified limit of 120% of the authorized trading volume of power, is time consuming and there is no guarantee that the CERC would approve of such excess limit of power for trading. Therefore, we are of the considered view that, the 1st Petitioner (Vedprakash) is not competent to supply 300 MW of RTC power till the end of May, 2017. Accordingly, we answer Issue No.(1) in the negative.

- 9) **ISSUE No.(2)** : *Whether any of the Petitioners herein is better placed than the 8th Respondent (MSEDCL) for supply of 300 MW of power, on a short-term basis, to the Distribution Licensees in Karnataka through the Kolhapur-Chikodi transmission line?*
- (a) As the 1st Petitioner (Vedprakash) is found to be not competent to supply 300 MW of RTC power at least for the next two months, the claim of the 2nd Petitioner (GEPL) alone would survive for our consideration on this issue.
- (b) There cannot be any dispute regarding the offer of ₹3.60 per unit made by the 2nd Petitioner (GEPL), which is better than the rate of ₹3.62 per unit offered by the 8th Respondent (MSEDCL).
- (c) The revised offer dated 17.2.2017 of the 2nd Petitioner (GEPL) is opposed by the 1st Respondent (PCKL) insofar as it relates to the following terms :
- (i) Seller;

- (ii) Open access charges, transmission losses and scheduling charges;
- (iii) Payment Terms / Payment Security.

(d) We will now examine below the above terms, which are in controversy:

(i) SELLER :

(1) Earlier, the 2nd Petitioner (GEPL) had not disclosed its source for procurement of power. Now, the 2nd Petitioner (GEPL) has stated that, it shall procure power from the JSW Energy Limited for supply and in case he JSW Energy Limited is not in a position to supply the required quantum of power, then it shall make alternate arrangements for procuring the power through other generators.

(2) The learned Senior Counsel for the 1st Respondent (PCKL) has contended that, the present offer for supply of power on a short-term basis envisages supply of around 200 MUs of power per month to meet the demand in the summer season on firm basis. Further, the learned Senior Counsel submitted that, the supply of power by the 8th Respondent (MSEDCL) is assured and reliable, as it has already got sufficient quantity of excess pooled power for supply. The learned Senior Counsel relied on the written submissions dated 23.2.2017 filed on behalf of the

8th Respondent (MSEDCL), to point out the fact that, the 8th Respondent (MSEDCL) is already having a surplus power scenario. In the written submissions of the 8th Respondent (MSEDCL), it is stated that, as per the MYT Order dated 3.11.2016, the Hon'ble MERC had considered the projected surplus power availability of: 28,188 MUs for FY 16-17, 45,386 MUs for FY 17-18, 41,419 MUs for FY 18-19 and 36,559 MUs for FY 19-20. Therefore, the learned Senior Counsel for the 1st Respondent (PCKL) submitted that, the 8th Respondent (MSEDCL) is in a better position to supply quality power, which is assured and dependable. On the other hand, the learned Senior Counsel for the 2nd Petitioner (GEPL) submitted that, the 2nd Petitioner (GEPL) is a reputed Trading Licensee and had previously supplied energy to the same extent through the same Kolhapur-Chikodi transmission line, without any interruption, to the satisfaction of the 1st Respondent (PCKL). Therefore, the learned Senior Counsel for the 2nd Petitioner (GEPL) submitted that the 2nd Petitioner (GEPL) would also supply assured and quality power to the 1st Respondent (PCKL).

(3) The coming two months, viz., April, 2017 and May, 2017, are crucial months to meet with the demand and energy requirement, as per estimation of power demand and availability filed by the 1st Respondent (PCKL) in this case. As per its projection, there will be an average daily shortage of

4 MUs of energy during the month of April, 2017 and the estimated daily average availability of energy for the month of May, 2017 is just sufficient to meet with the estimated energy requirement. While computing this average daily energy availability, 6 MUs of energy per day being supplied by the 8th Respondent (MSEDCL) is also taken into consideration.

(4) An electricity Trader can supply energy after entering into a Power Purchase Agreement (PPA) with some generator of his choice. The 2nd Petitioner (GEPL) has not specifically stated that, it has such ready availability of energy for supply. The supply from a Trader is entirely dependent upon the performance of the generator with whom it has a back-to-back Agreement for supply of power.

(5) Considering the above facts, we are of the considered view that the supply of power by the 8th Respondent (MSEDCL) is more assured and preferable than that of the supply of power offered by the 2nd Petitioner (GEPL).

(ii) OPEN ACCESS CHARGES, TRANSMISSION LOSSES AND SCHEDULING CHARGES:

(1) The 2nd Petitioner (GEPL), in its revised final offer, has stated that, it would agree to adhere to the provisions of the applicable law with respect to payment of the open access

charges upon revision / cancellation of the approved open access. Further, it has stated that the LoA dated 21.11.2016 issued to the 8th Respondent (MSEDCL) is silent on the said clause. Regarding this term, it is contended by the 1st Respondent (PCKL) that, the said statement of the 2nd Petitioner (GEPL) is false. Further, it is contended that, the LoA dated 21.11.2016 issued to the 8th Respondent (MSEDCL) is not silent on the said clause and as per the LoA, the tariff is paid for the actual energy supplied and no open access charges are reimbursable for revision / cancellation of the approved open access. In reply, the 2nd Petitioner (GEPL) has stated that, the term offered in this regard is in line with the 'Guidelines for Short-Term Procurement of Power' dated 30.3.2016 issued by the Ministry of Power and that, the parties should be subjected to the same terms.

(2) The 'Guidelines for Short-Term Procurement of Power' does not prohibit the parties from entering into a Contract, as agreed to between them regarding payment of Liquidated Damages in the event of revision / cancellation of the approved open access schedule. The said Guidelines suggest that, there should be some term in the proposed PPA, to be entered into by the parties regarding payment of Liquidated Damages on this aspect. Further, the agreement to supply power as per the LoA dated 21.11.2016 between the

8th Respondent (MSEDCL) and the 1st Respondent (PCKL) is a bilateral Agreement and not an Agreement under the 'Guidelines for Short-Term Procurement of Power'. Therefore, we hold that, the offer made by the 2nd Petitioner (GEPL) on this term is not matching with the term offered to the 8th Respondent (MSEDCL) by the 1st Respondent (PCKL).

(iii) PAYMENT TERMS /PAYMENT SECUIRITY:

(1) In this regard, the 2nd Petitioner (GEPL) has stated that, it would agree for the Payment Security Mechanism in the form of an unconditional, irrevocable, revolving Letter of Credit (LC), as offered to the 8th Respondent (MSEDCL) under the LoA dated 21.11.2016. However, the 2nd Petitioner (GEPL) has filed a proposed format of the LC acceptable to it.

(2) The 1st Respondent (PCKL) has objected to the proposed format of the LC and has stated that, the main features of the terms and conditions of the LC opened by the Electricity Supply Companies (ESCOMs) concerned in favour of the 8th Respondent (MSEDCL) are as follows :

- Irrevocable LC;
- LC validity is upto 30 days from the date of last shipment;
- For invoking the LC, certification by the ESCOM concerned is required, certifying the non-payment of Monthly Invoice.

(3) It is contended that, in the proposed format of the LC furnished by the 2nd Petitioner (GEPL), the following major deviations are observed:

- The nature of the LC shall be irrevocable, transferable, revolving, standby LC;
- The LC validity is upto 75 days from the date of last shipment;
- This is a revolving, standby LC, which is automatically revolved upon each drawing of this standby LC.

(4) We have noticed from the proposed format of the LC produced by the 2nd Petitioner (GEPL) that, the documents required for invoking the LC are:

- Demand / Claim;
- Invoices for the energy supplied by the Beneficiary (i.e., the 2nd Petitioner (GEPL)), in original plus two (2) copies, specifying the period of supply, quantum of energy supplied and the rate per KWh;

This proposed format of the LC does not indicate that, for invoking the LC, a certification from the ESCOM concerned, certifying the non-payment of Monthly Invoice, is required. In the reply dated 8.3.2017 of the 2nd Petitioner (GEPL), it is stated that, such a certification by the ESCOM concerned would nullify

the purpose of the Payment Security Mechanism and such a clause would make the LC impossible to invoke. It is also stated that, the 8th Respondent (MSEDCL) has also not accepted the said term regarding certification by the ESCOM concerned and had asked the 1st Respondent (PCKL) to get the LC amended accordingly. In support of this contention, the 2nd Petitioner (GEPL) has produced a copy of the e-mail communication dated 26.12.2016 addressed to the ESCOMs concerned and also to the 1st Respondent (PCKL).

- (5) The 8th Respondent (MSEDCL), in its pleadings, has not claimed any deletion or amendment of the certification clause by the ESCOMs concerned, before invoking the LC. It is not disputed that, the 8th Respondent (MSEDCL) is continuously supplying energy till the date of acceptance of the LoA dated 21.11.2016. Therefore, it can be stated that, even if an e-mail communication was sent to the ESCOMs concerned to delete the term regarding certification of non-payment of Monthly Invoice, the same is not insisted upon by the 8th Respondent (MSEDCL).
- (6) The term regarding certification of non-payment of Monthly Invoice may be onerous, but it is not illegal or absurd. One need not assume that, the ESCOM concerned would wrongfully refuse to issue such certification of non-payment, if it were to be

a fact. If the LC is furnished in the format proposed by the 2nd Petitioner (GEPL), there would also be a possibility of the supplier wrongfully invoking the LC by producing a falsified Monthly Invoice for the energy purportedly to have been supplied.

(7) As the 8th Respondent (MSEDCL) has not pursued further to delete the clause regarding certification of non-payment of the Monthly Invoice amount, it is deemed that, it has agreed for retention of the said term in the LC. Therefore, we hold that, the clause in the LC regarding certification of non-payment of the Monthly Invoice, is not illegal or wrongfully inserted and that the request of the 2nd Petitioner (GEPL) to open the LC in the format proposed by it, does not match with the offer made by the 1st Respondent (PCKL) to the 8th Respondent (MSEDCL).

(e) The 1st Respondent (PCKL) has contended that, the 2nd Petitioner (GEPL) had acted contrary to the interest of the consumers in Karnataka by indulging in initiation of multiple legal proceedings with the intention of preventing the State Power Utilities from getting power to offset the gap between the demand and the supply, which led to a critical situation of load shedding, and that the intention of the 2nd Petitioner (GEPL) is also not genuine, as the price offered presently is only with the intention of derailing the existing arrangement with the 8th Respondent (MSEDCL).

- (f) As against the initiation of multiple legal proceedings by the 2nd Petitioner (GEPL), it is not yet held by any competent Forum that, the legal proceedings initiated are frivolous or vexatious. The other contention that, the intention of the 2nd Petitioner (GEPL) in offering the price of ₹3.60 per unit in the present proceedings is only with the intention of derailing the existing arrangement, is premature. Therefore, these grounds alleged by the 1st Respondent (PCKL) are not relevant.
- (g) The 8th Respondent (MSEDCL) has contended that, the offer of the 2nd Respondent (GEPL) to supply power at ₹3.60 per unit, is totally against the regulatory process and commercial principles. It is true that, in the absence of the directions by the Hon'ble High Court of Karnataka, there was no question of reconsidering the arrangement entered into between the 1st Respondent (PCKL) and the 8th Respondent (MSEDCL) on the ground that, the 2nd Petitioner (GEPL) had later made an offer to supply power at a cheaper rate. In the present proceedings, the Commission has to take a view, as to who is better placed amongst the rival claimants, including the 8th Respondent (MSEDCL), for supply of power.
- (h) The Commission has noted that, the competency for supply of power by the 8th Respondent (MSEDCL) is more assured and reliable. It is also noted that, the terms offered by the 2nd Petitioner (GEPL) for supply of

power, in respect of open access charges and the payment security to be offered by the ESCOMs, do not match with that of the 8th Respondent (MSEDCL). However, the rate per unit offered by the 2nd Petitioner (GEPL) is two paise less than the offer of the 8th Respondent (MSEDCL). Assuming that, in the coming two months, the ESCOMs would have drawn 360 MUs of energy, the financial gain to them would be ₹72,00,000/-. This plus point, which is in the interest of the consumers of the State, is relevant while arriving at a decision in this case. The 1st Respondent (PCKL) has stated in its objections that, a Contract Performance Guarantee (CPG) with the 8th Respondent (MSEDCL) was not insisted upon, since it is a State Entity (Government of Maharashtra) and the same exception cannot be extended to the 2nd Petitioner (GEPL), which is a Private Trader. This contention appears to be reasonable. Usually, the CPG is an amount calculated at ₹2,00,000/- per MW per month of the Contract period.

- (j) Taking into consideration the above facts and circumstances of the case, this Commission is of the considered view that, the 2nd Petitioner (GEPL) may be allowed to supply power for the remaining period, subject to the conditions that: (1) the 2nd Petitioner (GEPL) furnishes a CPG; and (2) the 2nd Petitioner (GEPL) matches with all the terms and conditions, offered to and accepted by the 8th Respondent (MSEDCL), for supply of power. Therefore, we answer Issue No.(2), accordingly.

10) **ISSUE No.(3)** :

For the foregoing reasons, we pass the following :

ORDER

- (1) The 2nd Petitioner (GEPL) may be allowed to supply power to the ESCOMs in Karnataka at the rate of ₹3.60 (Rupees Three and Paise Sixty) only per unit for the remaining period, upto the end of May, 2017, subject to the conditions that:
- (a) it shall furnish a CPG in an amount of Rs.12,00,00,000/- (Rupees Twelve Crores) only, in the form of a Bank Guarantee issued by a Nationalized / Scheduled Bank, valid for the period of the Contract, with a claim period of one month after the expiry of the Contract period;
 - (b) it shall match with all the terms and conditions, offered to and accepted by the 8th Respondent (MSEDCL), for supply of power, as per the LoA dated 21.11.2016;
 - (c) it shall file an undertaking before this Commission, within one week from the date of this Order, expressing its willingness to comply with the above conditions for supply of power;

- (2) If the 2nd Petitioner (GEPL) fails to file an undertaking as stated above, its claim for supply of power to the ESCOMs in Karnataka shall stand rejected; and
- (3) The supply of power by the 8th Respondent (MSEDCL) shall continue till the 2nd Petitioner (GEPL) starts supplying power by fulfilling the above conditions.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER