

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri K.N. Sinha, Member**
- 2. Shri Bhanu Bhushan, Member**

Review Petition No.39/2004

In the matter of

Review of certain provisions in the Central Electricity Regulatory Commission (Open access in inter-state transmission) Regulations, 2004 dated 30th January, 2004.

And in the matter of

Power Trading Corporation of India Limited

.....**Petitioner**

Vs

1. Power Grid Corporation of India Limited, Gurgaon
2. Himachal Pradesh State Electricity Board, Shimla
3. Uttar Pradesh Power Corporation Ltd., Lucknow
4. Power Development Department, Govt. of J&K, Srinagar
5. Delhi Transco Limited, New Delhi
6. Rajasthan Rajya Vidyut Prasaran Nigam Ltd, Jaipur
7. Punjab State Electricity Board, Patiala
8. Chandigarh Administration, Chief Engineer and Secretary, Chandigarh
9. Haryana Vidyut Prasaran Nigam Ltd, Panchkula
10. Bihar State Electricity Board, Patna
11. Damodar Valley Corporation, Calcutta
12. West Bengal State Electricity Board, Calcutta
13. Grid Corporation of Orissa Ltd., Bhubaneswar
14. Deptt. of Power, Govt. of Sikkim, Gangtok
15. Madhya Pradesh State Electricity Board, Jabalpur
16. Maharashtra State Electricity Board, Mumbai
17. Gujarat Electricity Board, Vadodara
18. Goa Electricity Department, Panaji, Goa
19. Union Territory of Dadra and Nagar Haveli, Silvassa
20. Electricity Department, Admn. Of Daman & Diu, Daman
21. Andhra Pradesh Transmission Corporation Ltd., Hyderabad
22. Karnataka Power Transmission Corporation Ltd., Bangalore
23. Kerala State Electricity Board, Trivandrum
24. Tamil Nadu State Electricity Board, Chennai
25. Electricity Department, Govt. of Pondicherry, Pondicherry

26. Assam State Electricity Board, Guwahati
27. Meghalaya State Electricity Board, Shillong
28. Electricity Deptt. of Manipur, Imphal
29. Deptt. of Power, Govt. of Mizoram, Aizawal
30. Electricity Deptt., Govt. of Nagaland, Kohima
31. Electricity Deptt., Govt. of Tripura, Agartala
32. Deptt. of Power, Govt. of Arunachal Pradesh, Itanagar
33. Jharkand State Electricity Board, Ranchi
34. Chhatisgarh State Electricity Board, Raipur
35. Uttranchal State Electricity Board, Dehradun

.....Respondents

The following were present:

1. Shri Chander Mohan, GM (Hydro), PSEB
2. Shri T.P.S. Bawa, OSD (Comml.), PSEB
3. Shri V.K. Gupta, Consultant, PSEB
4. Shri Padamjit Singh, Advisor, PSEB
5. Shri S.K. Dube, Dir (C), PTC
6. Shri Ameet Nayak, Advisor, PTC
7. Shri S. Basu, Advisor, PTCL
8. Shri Rajiv Bharadwaj, PTC
9. Shri Rajiv Malhotra, PTC
10. Shri Deepak Amitabh, PTC
11. Shri M. Kumar, PTC
12. Shri B.M. Das, PTC
13. Shri G.s. Gupta, PTC
14. Shri Y.K. Sehgal, DGM, PGCIL
15. Shri U.K. Tyagi, DGM, PGCIL
16. Shri P.C. Pankaj, AGM, PGCIL
17. Shri V. Mittal, GM(SO), PGCIL
18. Shri V.K. Agrawal, AGM, NRLDC, PGCL
19. Shri Sunil Agrawal, DGM (SO), PGCIL
20. Shri Rajiv Porwal, DGM, NRLDC, PGCIL
21. Shri T.S.P. Rao, PGCIL
22. Ms. Ranjna Cudoo, PGCIL
23. Shri Jyoti Prasad, PGCIL
24. Shri U.C. Misra, Director, PGCIL
25. Shri Raghavendra Singh, PGCIL
26. Shri M.S. Chawla, AGM (C), NTPC
27. Shri M.K. Roy, Member (Comml.), WBSEB
28. Shri P.C.Saha, SE(Comml.), WBSEB
29. Shri R.K. Arora, XEN/T, HVPN
30. Shri S.K. Agarwal, NHPC
31. Shri K. Gopalakrishnan, KSEB
32. Shri S.K. Khyalia, GEB

ORDER
(DATE OF HEARING : 24.5.2004)

In this application, the petitioner has made the following prayers:

- (a) Review the provisions of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2004 dated 30.1.2004, on the grounds stated in para 4 and 5 of the application.
- (b) Advise RLDCs for suitable amendments in the procedure issued by the Central Transmission Utility on 31.3.2001 as brought out in para 6 of the application.
- (c) Consider the issues discussed in paras 7 and 8 of the application.
- (d) Issue necessary orders as deemed fit in the interest of justice.

2. The Commission on 30.1.2004 had finalised the regulations on Open Access in inter-state transmission, in exercise of power to frame regulations conferred under Section 178 of the Electricity Act, 2003 (the Act), named as Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2004, (the regulations) which were notified in the Gazette of India on 6.2.2004. The regulations have been finalised after following a consultative process. As a part of this exercise a concept paper prepared by the staff of the Commission was circulated among the stakeholders and other interested persons during June 2003. Public hearing with stakeholders, experts etc was held on 24th and 25th of September 2003. After considering all the view points the Commission issued its order dated 14.11.2003. Based on this order, the Commission published draft of the Central Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2003 on 2.12.2003

affording one more opportunity to stakeholders to make their comments. The regulations have already come into force. The regulations also define the procedure for redressal of complaints on account of unfair practices, delays, discrimination, etc.

3. The applicant is aggrieved by some of the provisions of the regulations as listed in paras 4 and 5 of the application and, therefore, seeks review thereof, without having resorted to redressal mechanism prescribed under the regulations, though some of its grievances relate to actual implementation thereof. We are not adverting to the individual grievances projected by the petitioner as in the first instance we propose to consider the maintainability of the application for review.

4. In accordance with Clause (f) of sub-section (1) of Section 94 of the Act, the Commission for the purpose of any enquiry or proceedings under the Act is conferred the powers as are vested in a civil court under the Code of Civil Procedure (the Code), among others, for reviewing its decisions, directions and orders. The power of the civil court in regard to review are contained in Section 114 read with Order 47 of the Code. The civil court exercises power to review in the context of adjudication of civil disputes inter-parties. The powers under the Code are not exercisable by the civil courts to remedy any grievances arising out of powers exercised by the court in the form of delegated legislation. Therefore, it follows that the powers conferred on the Commission by virtue of Clause (f) of sub-section (1) of Section 94 of the Act to review its decisions, directions and orders are limited to the adjudicatory functions of the Commission under the Act. So far as the regulations are concerned, these are in the nature of subordinate

legislation. Accordingly, the provisions of these regulations are beyond the scope of review under Clause (f) of sub-section (1) of Section 94 of the Act. For this precise reason, the application for review is not maintainable.

5. Under the regulations, the Central Transmission Utility has been declared as the nodal agency for arranging the long-term transmission access when its own system is used. The nodal agency for the short-term transmission access are the Regional Load Despatch Centres of the region where point of drawal of electricity is situate. Under these regulations, the Central Transmission Utility is authorised to devise the procedure and form of application for granting open access. The Central Transmission Utility is further enjoined the responsibility to coordinate the formulation of procedure, guidelines and application form to be issued by the Regional Load Despatch Centres as the nodal agency for short-term open access. Powergrid Corporation of India, as the Central Transmission Utility has issued the procedure on 31.3.2004. In this application, the applicant seeks modification of some of the provisions contained in the procedure issued by the Central Transmission Utility on 31.3.2004. We take note of the fact that para 1.4 of the procedure issued by the Central Transmission Utility envisaged some teething problems. It is envisaged that in order to resolve the problems, the procedure would be reviewed if necessary after a period of three months. The applicant has further prayed for certain reliefs, which do not arise out of the procedure finalised by the Central Transmission Utility.

6. The applicant has combined separate causes of action in the same application for review. The application is a glaring instance of misjoinder of causes of action. That apart, the procedure prescribed by the Central Transmission Utility are subject to review in the light of experience to be gained after three months as we have noticed above. Therefore, for these reasons also, we find that the application for review lacks maintainability.

7. Accordingly, the application for review is dismissed.

8. Notwithstanding the position stated above, Section 21 of the General Clauses Act lays down that where by any Central Act, a power to issue notifications, orders, rules or bye-laws is conferred then that power includes a power exercisable in the like manner and subject to the like sanctions and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. Accordingly, by virtue of these provisions of law, the Commission has the power to add, amend or vary any of the provisions of the regulations. This power may be exercised by the Commission suo motu or on the representation made by any person affected or likely to be affected adversely. At the hearing, the representatives of a number of state utilities and IPPs represented that they also felt practical difficulties in execution of the provisions of the regulations. Therefore, they sought opportunity to ventilate their grievances on certain matters. The regulations were finalised after previous publication and there should not be much scope of re-agitating the issues as the stakeholders had the opportunity of representation before finalisation of the regulations. Nevertheless, we grant opportunity to the state utilities and

all others concerned to project their difficulties on the practical aspects of the regulations. The difficulties may be addressed to the Secretary of the Commission latest by 17.6.2004. The Commission will consider the representations received on the subject and take a further view whether any changes or amendments needed to be made in the regulations in the light of representations received.

9. Similarly, the difficulties in regard to the procedure laid down for making application for open access should be addressed to the Central Transmission Utility who will consider the matter dispassionately and provide the necessary redressal, where the grievance is justified, without waiting for period of 3 months provided in para 1.4 of the procedure issued.

**Sd/-
(BHANU BHUSHAN)
MEMBER**

**Sd/-
(K. N. SINHA)
MEMBER**

New Delhi, the 27th May, 2004