

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 233/2009

**Coram: Dr. Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri V.S.Verma, Member**

Date of Hearing: 25.2.2010

Date of order: 26.3.2010

In the matter of

Approval under Regulation 24 read with Regulation 111 and 113 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004, for grant of regulatory approval and other reliefs for execution of evacuation systems required in connection with grant of long-term open access to a group of developers.

And in the matter of

Power Grid Corporation of India Ltd.

.....**Petitioner**

Vs

1. Adhunik Thermal Energy Ltd.
2. Ind Barath Energy Ltd.
3. Simhapuri Energy Pvt. Ltd.
4. PTC
5. WBSEDCL
6. Maruti CCPL
7. Madhya Bharat Power Corporation Ltd.
8. KVK Nilachal Power Pvt. Ltd.
9. Krishnapatnam Power Corporation Ltd.
10. East Coast Energy Pvt. Ltd.
11. Aryan Coal Beneficiations
12. SKS Ispat & Power Ltd.
13. Vandana Global Ltd.
14. Coastal Energen Pvt. Ltd.
15. Andhra Pradesh Power Development Company Ltd.
16. KSK Energy & Wardha Power
17. NCC Power Projects Ltd., NCC Infrastructure Holding Ltd.
18. Dheeru Powergen Ltd.
19. Lanco Amarkantak Power Pvt. Ltd.

20. PTC (Dheeru)
21. RKM Powergen Ltd.
22. Athena Chhattisgarh Power Pvt. Ltd.
23. CESC Ltd. (dumka)
24. Jaiprakash Power Ventures Ltd. (JPVL)
25. Teesta Hydro Power Pvt. Ltd.
26. Sterlite Energy Ltd.
27. PTC India Ltd.
28. Korba West Power Co. Ltd.
29. Bharat Aluminium Co. Ltd
30. Corporate Power Ltd.
31. DANS Energy Pvt. Ltd.
32. Shiga Energy Ltd.
33. Jal Power Corporation Ltd.
34. IND-Barath Power (Madras) Ltd.
35. Monet Power Company Ltd., Monnet Ispat & Energy Ltd.
36. DB Power Ltd.
37. Gati Infrastructure Bhasmey Pvt. Ltd.
38. Essar Power (Jharkhand) Ltd.
39. GMR Energy Ltd.
40. TT Energy Ltd.
41. Gati Infrastructure Sda-Mangder Power Pvt. Ltd.
42. Jindal Power Ltd.
43. Lanco Babandh Power Pvt. Ltd.
44. Navbharat Power Private Ltd.
45. The ESE (INTER STATE), BSEB
46. The Chief Engineer (Commercial), WBSEB
47. The Sr. General Manager (PP.), Grid Corporation of Orissa Ltd.
48. The Chief Engineer (COMML), DVC
49. The Addl. Chief Engineer (SLDC/EHV), Power Deptt., Govt. of Sikkim
50. The Chief Engineer (COMML), JSEB
51. The Chairman, RRVPNL
52. The Suptd. Engineer, RRPC, AVVNL
53. The Suptd. Engineer, RRPC, Jaipur Vidyut Vitran Nigam Ltd.
54. The Suptd. Engineer, RRPC, Jodhpur Vidyut Vitran Nigam Ltd.
55. The Director (IS), HPSEB
56. The Director (ISB), PSEB
57. The Chief Engineer (COMML), Haryana Power Purchase Centre
58. The Chief Engineer (COMML), Power Development Deptt.
59. The DGM, Electricity Import, Export & Payment Circle,
60. The Chairman, DTL
61. The General Manager (SO/COMML). Chandigarh Admin.
62. The Ex. Engineer (Operation-Div), Uttrakhand Power Corporation Ltd.
63. The Manager, BSES Yamuna Power Ltd.
64. The Manager, BSES Rajdhani Power Ltd.
65. The Manager, North Delhi Power Ltd.
66. The Director (Commercial/Power), NDMC
67. The Senior DEE/TRD., North Central Railway
68. The Chairman, Karnataka Power Transmission Corporation Ltd.
69. The Managing Director, BESCOM
70. The Managing Director, GESCOM

71. The Managing Director, HESCOM
72. The Managing Director, MESCOM
73. The Managing Director, CESE
74. The Chairman, Transmission Corporation of Andhra Pradesh Ltd.
75. The Managing Director, Eastern Power Distribution Co. of Andhra Pradesh Ltd.
76. The Managing Director, Southern Power Distribution Co. of Andhra Pradesh Ltd.
77. The Managing Director, Central Power Distribution Co. of Andhra Pradesh Ltd.
78. The Managing Director, Northern Power Distribution Co. of Andhra Pradesh Ltd.
79. The Chairman, Kerala State Electricity Board
80. The Chairman, TNEB
81. Chief Secretary, Electricity Dept., Govt. of Pondicherry
82. Chief Engineer, Electricity Dept., Govt. of Goa
83. The Chairman, Madhya Pradesh Tradeco
84. The CEO, Madhya Pradesh Audyogic Kendra Vikas Nigam
85. The CEO, M/s Jindal Powers Ltd.
86. The Chairman, Maharashtra State Electricity Distribution Co Ltd.
87. The Chairman, Gujrat Urja Vikas Nigam Ltd.
88. The Secretary (Power), Electricity Dept., Admin. of Daman & Diu
89. The Secretary (Power), Electricity Dept., Admin. of Dadra Nagar Haveli
90. The Chairman, Chhattisgarh State Electricity Board**Respondents**

The following were present:

1. Shri Avdesh Kumar, CEO, MPCL
2. Shri Bimal Dhar, MPCL
3. Shri Sanjay Sen, DB Power Ltd.
4. Shri K.R.Nagendran Kumar, Jindal Power Ltd.
5. Shri J. Balasubodhmanya, Athena Chhattisgarh Power Pvt. Ltd.
6. Shri S. S. Mendiratta, DB Power Ltd.
7. Shri B. Naaasimka Rao, Athena Chhattisgarh Power Pvt. Ltd
8. Shri S. Ramesh, NPPL
9. Shri Vaibhavgarg, Manager, NPPL
10. Shri R. B. Sharma, BSEB
11. Shri Y.K. Sehgal, Powergrid
12. Shri Dilip, Powergrid
13. Ms. Maju Gupta, Powergrid
14. Shri A. M. Pavgi, Powergrid
15. Shri Prashant Sharma, Powergrid
16. Shri Ram Chandra, Powergrid
17. Shri Anil K. Meena, Powergrid
18. Shri Sanjeev K Bhardwaj, Advocate, Aryan Coal
19. Shri S.H. Khan, Advisor, Coastel Energen Pvt. Ltd.
20. Shri S.S.Sharma, PTC India
21. Shri Arun Kumar, Powergrid.

ORDER

The petitioner, Power Grid Corporation of India Limited (PGCIL) has filed this petition seeking regulatory approval for development and execution of certain identified transmission systems for evacuation of power from various generation projects planned to be promoted by the Independent Power Producers (IPPs). The petitioner has made the following prayers in the petition:

Quote

- a) Grant Regulatory approval for taking identified transmission system for evacuation of power from the first phase priority generation projects.
- b) Direct LTOA applicants for firming up the beneficiaries immediately before POWERGRID takes up the investment
- c) Utilise the appropriate platform like Forum of Regulators for early finalization of source of power requirement for States through Case-I bidding as this shall help in firming up the beneficiary States by the LTOA applicants.
- d) Ensure recovery of the capital investment of the POWERGRID (in the event of not taking of some of the above generating projects) by way of evolving alternate methodology.
- e) To pass such order as deemed fit in the interest of justice and equity.

Unquote

2. The Petitioner has submitted that in accordance with Regulation 8 of the Central Electricity Regulatory Commission (Open Access in Inter-state Transmission) Regulations, 2004 (hereafter 2004 regulations), it being the Central Transmission Utility(CTU) is the designated nodal agency for processing the requests for long term open access (LTOA) to the inter-State transmission system. The Petitioner has

received overwhelming response from the Independent Power Producers (IPP) seeking LTOA for the new generation projects proposed to be set up under the de-licensed regime.

3. The Petitioner is stated to have received 225 nos. of applications amounting to capacity addition of about 1,98,438 MW seeking LTOA for 1,62,898 MW. While processing these applications, readiness of generation projects who had applied for LTOA were assessed through several rounds of discussions held with the project developers, wherein status of proposed generation projects with respect to availability of land, fuel and water linkages, environment and other statutory clearance was examined in association with the beneficiaries of concerned regions and Central Electricity Authority (CEA). Based on the information furnished by the applicants for LTOA, the Petitioner has prioritized the group of generation projects who have made progress on ground and considered them for grant of LTOA. Accordingly, the Petitioner has processed and granted or is in process of issuance of LTOA to 90 nos. of applications and remaining applications are at different stages of processing.

4. The Petitioner has further submitted that the generation projects, for which LTOA has been sought, are mainly concentrated in small pockets in pit-head coal areas in Orissa, Chhattisgarh, Jharkhand or Coastal sites with port facilities in Andhra Pradesh, Tamil Nadu or hydel sites in Sikkim etc. These projects are likely to add generation capacity of about 49,323 MW in which LTOA has been sought for 42,108 MW. The LTOA for these projects has been granted or finalized. The Petitioner has clarified that since the above IPPs have no firm beneficiaries, the transmission system requirement has been worked out on the basis of target beneficiaries/regions as informed by the LTOA applicants.

5. For meeting the evacuation requirement of the generation projects likely to be commissioned progressively from 2011 onwards, the Petitioner has assessed that construction of nine nos. high capacity transmission corridors shall be necessary on urgent basis at an estimated cost of Rs. 58,061 Crores. These transmission corridors designated as “High Capacity Power Transmission Corridors” (HCPTC) have been evolved and finalized after lot of deliberations with stakeholders in consultation with CEA at forums including LTOA Meetings, Standing Committee Meetings of CEA for Power System Planning and respective Regional Power Committee meetings.

6. The Petitioner has submitted that the implementation of finalized transmission system require many pre-investment project preparation activities like survey, land identification, preparation of DPR including cost estimates, tendering activity like issuance of NIT, opening/evaluation of bids etc. which, besides incurring cost, requires substantial time. Considering the urgency due to likely commissioning of IPP projects progressively from 2011 onwards and to enable unhindered development of transmission system necessary for LTOA projects, the Petitioner has gone ahead with such activities with the tentative/target beneficiaries given by the LTOA applicants.

7. The Petitioner has submitted that in the absence of firm beneficiaries for these generation projects, the investment of such magnitude involves high risk and therefore, there is a requirement to evolve adequate security mechanism to mitigate the risk. The Petitioner has submitted that the commitment of the IPP developers lack security which is available with otherwise regular beneficiaries of POWERGRID transmission system and therefore, for the risk coverage towards construction of transmission system, the Petitioner has adopted the approach of taking Bank

Guarantee of 10% of the estimated cost of system which works out to about Rs.10-15 lakh/MW. Moreover, as per the Central Electricity Regulatory Commission (Grant of Connectivity, Long term Access and Medium term open Access) Regulations, 2009, the Petitioner is allowed to take Bank Guarantee of Rs.5 lakh/Mw. For the implementation of the identified HPPTCs, Bank Guarantee of about Rs.10-15/MW or Rs.5 lakh/MW may not provide adequate comfort for mobilizing funds of such a tall order. The Petitioner relying on the provisions of Para 7.1(4) of the Tariff Policy notified on 6.1.2006 has filed the present petition for grant of regulatory approval for implementation of the transmission corridors and successful operationalisation of LTOA.

8. The petitioner has also filed IA 56/2009 seeking a direction from the Commission permitting the Petitioner to go ahead with the execution of the Agreement for implementation of the transmission system as mentioned /prayed in the main petition.

9. The Commission in its Record of Proceedings dated 25.11.2009 had directed the Petitioner to submit the corridor-wise details of the scheme. Accordingly, a Project Inception Report (PIR) covering 9 nos of High Capacity Power Transmission Corridors (HCPTC) has been submitted indicating the tentative estimated cost as per the details given as under:

	High Capacity Power Transmission Corridor (HCPTC)	Rs. Crs
Section-I	HCPTC – I (Transmission System Associated with Phase-I Generation Projects in Orissa)	8,752
Section-II	HCPTC – II (Transmission System Associated with IPP projects in Jharkhand)	5,709
Section-III	HCPTC – III (Transmission System Associated with IPP projects in Sikkim)	1,304
Section-IV	HCPTC – IV (Transmission System Associated with IPP projects in Bilaspur complex, Chattisgarh & IPPs in Madhya Pradesh)	1,243

Section-V	HCPTC – V (Transmission System Associated with IPP projects in Chattisgarh)	28,824
Section-VI	HCPTC – VI (Transmission System Associated with IPP projects in Krishnapatnam Area, Andhra Pradesh)	2,065
Section-VII	HCPTC – VII (Transmission System Associated with IPP projects in Tuticorin Area, Tamil Nadu)	2,357
Section- VIII	HCPTC – VIII (Transmission System Associated with IPP projects in Srikakulam Area, Andhra Pradesh)	2,986
Section-IX	HCPTC – IX (Transmission System Associated with IPP projects in Southern Region for transfer of power to other regions)	4,821
Total		58,061

10. During the hearing of the matter on 12.01.2010, the Commission directed the petitioner to take following actions:

(a) To seek the information regarding progress of the power projects from developers, verify it on the basis of the approvals by the competent authorities and the order placed for plants and equipments and thereafter seek for regulatory approval in respect of critical corridors and if required, in a phased manner.

(b) To prioritize the transmission system out of the proposed corridors depending upon the expected commissioning of the related generation projects and likelihood of the utilization of the transmission system on the commissioning. It was clarified that the petitioner may seek approval separately for different corridors/transmission systems depending upon their priority of completion.

(c) To take Bank Guarantee in accordance with the provisions of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term open access in inter-State Transmission and related matters) Regulations, 2009 under the BPTA even for the cases of open access prior to the Regulations.

11. During the hearing on 25.2.2010, the petitioner made a presentation on HCPTC proposed to be constructed for evacuating power from the IPPs mentioned in para 9 above. The petitioner submitted that it had arranged a meeting with all the developers of IPPs on 24.2.2010 for signing BPTA and submitting Bank Guarantee (BG) for payment security of transmission charges. While 37 IPPs have already signed BPTAs, some of them have submitted BGs totaling 875 Crore and the remaining IPPs have been requested to submit BGs by 31.3.2010.

12. The Petitioner has accordingly prayed for grant regulatory approval for implementation of 7 nos. of Transmission corridors as first priority and 2 nos. of Transmission corridors as 2nd Priority and for ensuring recovery of capital investment of the Petitioner in the event of non materialization of some of the identified generation projects

13. Some of the beneficiaries and the IPPs have filed their comments/suggestions. MSEDCL submitted that the petitioner may be asked to submit the details of priority wise IPPs, their tentative programmes and the confirmed beneficiaries. MPPTCL has submitted that the Petitioner be asked to submit details such as location and capacity of the generating stations, point of injection, quantum of LTA applied and granted, firmed up beneficiaries, if any, and their quantum etc. The consequential annual transmission charges upon commissioning of new transmission system, the liability shall be proportionately restricted to the quantum of share allocated in favour of MPPTCL.

14. One of the IPPs, M/s. KSK Mahanadi Pvt. Ltd. submitted that it was decided in the meeting held on 1.2.2010 in CEA that for the present lot of cases, the generators would lay dedicated lines upto the specified pooling points and the same dispensation would not be changed at this advanced stage. This decision, according to the IPP, is a departure from the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (2009 Regulations) which provides that the transmission system has to be developed upto the bus-bar of the generating stations. While the petitioner has accepted Rs 5 lakh/ MW as BG as per the provisions of the 2009 Regulations, the petitioner is unwilling to construct the dedicated transmission line as per the provisions of the said regulations. M/s Wardha Power Company Ltd has made a similar submission. Another respondent, M/s. Navbharat Power Private Ltd. has submitted that it did not sign BPTA because it was asked to submit BG by 31.3.2010 failing which their application would not be considered whereas the 2009 Regulations allow the BG to be submitted within three months of signing of BPTA.

15. We have considered the submissions of the petitioner, the beneficiaries and the IPP developers. At this stage, the following issues need to be addressed:

- i) Construction of dedicated transmission lines by the CTU.
- ii) PPAs to be signed with the beneficiaries for the IIPs.
- iii) Time required for submitting the Bank Guarantee after signing the BPTAs.

16. As regards the construction of dedicated transmission lines by the CTU, we are of the view that under section 10 (1) of the Electricity Act, it is the duty of the generating company to install, operate and maintain the dedicated transmission lines in accordance with the provisions of the Act or the rules or regulations made there

under. The 2004 Regulations did not provide for inclusion of the dedicated transmission lines as part of system strengthening and accordingly the CTU has not planned the dedicated transmission lines in the HCPTCs for which the regulatory approval has been sought in this petition. However, recently in 2009, the Commission after detailed deliberation has decided that the CTU should also develop the dedicated transmission lines as part of planned and coordinated development of inter-State transmission system and accordingly, provisions have been made in the 2009 Regulations. Such arrangement cannot be extended in case of the transmission lines which were planned prior to the said regulations as it will delay the construction of the HCPTCs and consequently bottle up the generation projects.

17. As regards the requirement for signing of PPAs with the beneficiaries, we observe that the IPPs have not been able to come forward to sign the PPAs, primarily because the States have not yet gone ahead with the bidding process for evacuation of power. However, linking the signing of the PPAs with regulatory approval will hamper the progress of the transmission projects. The Tariff Policy issued vide Govt. of India in para 7.1.4 does not make it mandatory for network expansion by the CTU/STU. The said para reads as under:

“In view of the approach laid down by the NEP, prior agreement with the beneficiaries would not be a pre-condition for network expansion. CTU/STU should undertake network expansion after identifying the requirements in consonance with the National Electricity Plan and in consultation with stakeholders, and taking up the execution after due regulatory approvals.”

In view of the above mandate of the Tariff Policy, we are of the view that the CTU should carry out consultation with the stake holders and satisfy itself about the bonafide nature of generation projects which are likely to materialize during the next three years and submit the detailed report about such projects, including the physical

progress made wherever feasible and approach the Commission by first week of April, 2010.

18. As regards the BG, some of the IPPs have argued for submission of the BG within a period of three months from the date of signing of the BPTA in accordance with the 2009 Regulations. At this point, the Commission would like to clarify that the CTU had adopted an approach to take about 10% of the estimated cost of the transmission system as Bank Guarantee which works out to Rs.10-15 lakh/MW for the coverage of the risk towards construction of the transmission system. However, taking note of the concern of some of the IPPs and considering the provision in the 2009 Regulations, the Commission in the Record of Proceeding dated 12.01.2010 had directed the petitioner "to take Bank Guarantee in accordance with the provisions of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term open access in inter-State Transmission and related matters) Regulations, 2009 under the BPTA even for the cases of open access prior to the Regulations". The Bank Guarantee of Rs 5 Lakh / MW for projects planned prior to the 2009 Regulations was allowed as a special dispensation which should not be construed that all the provisions of the 2009 Regulations shall be applicable to the IPPs whose applications have been considered and accepted by the CTU for grant of LTOA under 2004 Regulations. We make it clear that if any IPP is interested to be considered under the 2009 Regulations, it is at liberty to do so for which all provisions of the said regulations shall apply. However, in cases of IPPs which have already been granted LTOA by the CTU, such IPPs should sign the BPTA with the Petitioner and deposit the BG at the rate of Rs 5 lakh/ MW by 31.3.2010 in order to ensure that the progress of some of the IPPs which are in the most advanced stage is not stalled due to other IPPs.

19. The CTU is directed to submit the present position of BPTA and BG by the first week of April 2010 including the information required under para 17 above. Subject to the above, order in the petition is reserved.

-sd/-
(V.S.VERMA)
MEMBER

-sd/-
(S.JAYARAMAN)
MEMBER

-sd/-
(DR.PRAMOD DEO)
CHAIRPERSON