

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 153/MP/2011

**Coram: Dr. Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri M. Deena Dayalan, Member**

Date of Hearing: 28.7.2011

Date of Order: 11.11.2011

In the matter of:

Miscellaneous petition under section 94(1) of the Electricity Act 2003 read with Central Electricity Regulatory Commission (Open Access in inter-State Transmission Regulations 2004 and Regulation 24 of Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999, seeking approval of cancellation of Long Term Open Access (LTOA) and determination by Central Electricity Regulatory Commission the compensation payable by the LTOA applicant.

And

In the matter of:

Power Grid Corporation of India Limited, Gurgaon

...Petitioner

Vs

1. Air Liquide India Holding Private Limited, New Delhi
2. Madhya Pradesh Power Trading Company Ltd., Jabalpur
3. Electricity Department, Admn. Of Daman & Diu, Daman
4. Gujarat Urja Vikas Nigam Ltd., Vadodara
5. Electricity Department, Govt. of Goa, Goa
6. Electricity Department, Admn. Of Dadra Nagar Haveli, Silvassa
7. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
8. Chhatisgarh State Electricity Board, Raipur
9. Madhya Pradesh Audyogik Kendra, Indore

....Respondents

Parties present:

1. Shri Rakesh Prasad, PGCIL



ORDER

This petition has been filed by Powergrid Corporation of India Limited seeking approval of the Commission for cancellation of the Long Term Open Access (LTOA) granted to M/s Air Liquide India Holding Private Ltd. (ALIHPL) and for determination of compensation payable by the LTOA applicant under section 94(1) of the Electricity Act 2003 read with Central Electricity Regulatory Commission (Open access in inter-state Transmission) Regulations 2004 (hereinafter referred to as “2004 Open Access Regulations”) and Regulation 24 of Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 (hereinafter referred to as “Conduct of Business Regulations”).

2. The petitioner has submitted that ALIHPL was granted LTOA for transfer of 6 MW power from its proposed 540 MW plant of Wardha Power Company Pvt. Ltd., near Warora in Maharashtra to be drawn at 66 kV Randeri sub-station (GETCO) in Gujarat, under 2004 Open Access Regulations for a period of 25 years from the date of open access. No additional system strengthening was required for granting above LTOA. The Bulk Power Transmission Agreement (BPTA) was executed by the petitioner with ALIHPL on 17.11.2009. The petitioner has further submitted that ALIHPL requested to hold the starting date of BPTA. This issue was discussed in the 15th Western Region Power Committee (WRPC) meeting held on 12.11.2010 at Udaipur wherein it was agreed to extend the date of commencement of open access till January 2011. Subsequently, ALIHPL has informed the petitioner that the commissioning of the generating station from which it has the arrangement to take power has been delayed by 12 months. ALIHPL has further informed that it is coming up with a new production



facility at Pune, Maharashtra with similar power requirement and it would be preferable to transfer power through intra-State open access from Warora to the upcoming facility at Pune. ALIHPL has requested the petitioner to cancel the BPTA without penalties, since BPTA has not been implemented as the actual transfer of power from M/s Wardha Power Company Pvt. Ltd. to the manufacturing facility in Gujarat has never taken place.

3. The petitioner has submitted that though additional strengthening was not required for the grant of LTOA to ALIHPL, the petitioner had to reserve the contracted regional transmission capacity for the applicable period for which ALIHPL has committed to share and pay the regional transmission charges for the period of open access. The petitioner has further submitted that as per the BPTA, the due date for operationalisation of LTOA was January 2011 and the regional charges payable by ALIHPL are ₹ 6 lakh per month. ALIHPL has not been paying the applicable regional transmission charges from January 2011. Therefore, the petitioner has prayed for approval of the cancellation of the LTOA and for determination of compensation payable by ALIHPL in accordance with Regulation 12 of 2004 Open Access Regulations.

4. We have heard the representative of the petitioner. We propose to dispose of the petition at the admission stage for the reasons recorded in the succeeding paragraphs.

5. ALIHPL had applied for LTOA in its application dated 18.5.2009 for transmission of power from proposed 540 MW plant of Wardha Power Company Pvt. Ltd., near Warora in Maharashtra to be drawn at 66 kV Randeri sub-station (GETCO) in Gujarat. Clause (iv) of Regulation 9 of 2004 Open Access Regulations provides as overleaf:

“(iv) Based on system studies conducted in consultation with other agencies involved including the transmission licensees, the nodal agency shall within 30 days of receipt of application, intimate to the applicant whether or not the long term access can be allowed without further system strengthening:

Provided that where the long term access can be allowed without further system strengthening, this shall be allowed immediately after entering into commercial agreements.”

6. The petitioner after system studies found that the LTOA could be granted without system strengthening and accordingly, gave the intimation of LTOA to ALIHPL vide its letter dated 22.7.2009. Subsequently, the petitioner has entered into a BPTA with ALIHPL on 17.11.2009 in accordance with Regulation 11 of 2004 Open Access Regulations. Para 4.0 of the BPTA provides that the Long Term Customer can relinquish its right in accordance with Regulation 12 of the 2004 Open Access Regulations.

7. After grant of LTOA, the Commission notified 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 (hereinafter referred to as “connectivity regulations”). In accordance with the Regulation 34(1) of Connectivity Regulations, Regulation Nos. 4(1)(a), 4(ii), 5(i), 6(i), 7, 8(i), 9, 10, 12, 16(i) and 18 in so far as they applied to long term customers stood repealed with effect from 1.1.2010. However, Regulation 34(2) of Connectivity Regulations provides that long term access granted in accordance with 2004 Open Access Regulations shall continue to be valid till the expiry of the term of long term access.

8. This petition has been filed under Regulation 12 of the 2004 regulations for determination of compensation for relinquishment of the long term access by the long term customer. Since, Regulation 12 of 2004 Open Access Regulations has been repealed with effect from 1.1.2010, the said regulation cannot be applied in the present case, where relinquishment of access rights is sought to be enforced after 1.1.2010. Consequently, the application is not maintainable under Regulation 12 of the Connectivity Regulations. The petitioner may take necessary steps to claim compensation from ALIHPL in accordance with Regulation 18 of the Connectivity Regulations. If any dispute arises between the parties, with regard to resolution of the issue, either party has a right to approach the Commission under Regulation 32 of the Connectivity Regulations.

11. Petition No.153/2011 is disposed of accordingly.

Sd/-

**(M. Deena Dayalan
Member**

sd/-

**(S. Jayaraman)
Member**

sd/-

**(Dr. Pramod Deo)
Chairperson**

