

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 116/2011

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

Date of Hearing: 21.7.2011

Date of Order : 19.12.2011

In the matter of:

Miscellaneous petition under section 94(1) of the EA 2003 read with CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) (Amendment) Regulations 2010 and Regulation 24 of CERC (Conduct of Business) Regulation 1999 seeking direction from commission for development of transmission system for connectivity of IPP generation projects whose date of connectivity is less than the time line indicated in the regulation in case of implementation by CTU.

And

In the matter of:

Power Grid Corporation of India Limited, New Delhi
Vs

Petitionerer

1. Thermal Powertech Corporation India Limited., Hyderabad
2. Essar Power Gujarat Limited, Maharashtra
3. M B Power (Madhya Pradesh) Limited, New Delhi
4. Chitrangi Power Private Limited, Navi Mumbai
5. GMR Rajahmundry Energy Limited, Bangalore
6. Lanco Vidarbha Thermal Power Pvt. Limited, Haryana
7. SJK Powergen Limited, Bangalore
8. Raigarh Energy Limited, Nagpur
9. Pipavav Energy Pvt. Limited, New Delhi
10. Gupta Energy Pvt. Limited, Nagpur
11. Torrent Energy Limited, Ahmedabad
12. Gujarat Fluorochemicals Limited, Noida

...Respondents

The following was present:

1. Shri Subir Sen, Power Grid
2. Shri S. Venkatesh, SJK Power
3. Shri S.K. Thakur, PEPL
4. Shri Akhilesh Awasthy, IEX

ORDER

The petitioner, Power Grid Corporation of India Limited has filed this petition seeking permission and approval for deviation from Regulation 8(8) of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Open Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 as amended (hereinafter referred to as "the Connectivity Regulations") in respect of the applications for connectivity regarding development of dedicated transmission system included in Enclosure-2 to the petition and to direct the applicants seeking connectivity to develop dedicated transmission systems on their own due to paucity of time available for implementation by Central Transmission Utility.

2. The petitioner has submitted that Regulation 8(8) of the Connectivity Regulations as amended provides that an applicant may be required to construct a dedicated transmission line to the point of connection to enable connectivity to the grid. However, a thermal generating station of 500 MW and above other than a captive generating plant shall not be required to construct a dedicated line to the point of connection and such lines shall be taken into account for coordinated transmission planning by Central Transmission Utility(CTU) and Central Electricity Authority(CEA). The petitioner has submitted that as per Clause 7.3 of the Detailed Procedure approved by the Commission, the time line for commissioning of the dedicated systems upto the point of connection from signing of Bulk Power Transmission Agreement (BPTA) would be nine months plus the timeline specified in

the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter "2009 tariff regulations) or the actual date of commissioning required by the applicant and agreed to by the Central Transmission Utility whichever is earlier.

3. The petitioner has submitted that in the cases of the applications mentioned in Enclosure 1 to the petition, the CTU has granted connectivity and agreed to develop the transmission systems where the desired dates of connectivity match with the time schedule provided in the detailed procedure and the applicants have signed the Transmission Agreements with the CTU. However, in respect of the applications included in Enclosure 2 to the petition, though connectivity has been granted, the time available for connectivity is less than the scheduled time provided in the detailed procedure. Such cases were deliberated in various meetings of the constituents, the applicants and the Central Electricity Authority. As the petitioner expressed its inability to take up implementation of the proposed transmission systems for connectivity in such cases, it was decided in the said meetings that considering the time period for commissioning of the transmission lines for connectivity and the date of commencement of connectivity, the applicants should take up the implementation of such transmission lines for connectivity. Accordingly, the petitioner has requested the applicants to take up implementation of transmission systems for connectivity. The petitioner has placed on record the minutes of the meetings of the constituents of various regions in this regard.

4. The petitioner has submitted that M/s SJK Powergen Ltd was granted connectivity for 1320 MW power from their generation project in Madhya Pradesh

vide intimation letter dated 14.9.2010 at 765/400 Jabalpur Pooling station at 400 kV level. The transmission system for connectivity was to be implemented by CTU/inter-State transmission licensee subject to signing of transmission agreement and submission of bank guarantee. M/s SJK Powergen Ltd has neither signed the transmission agreement nor submitted the Bank Guarantee. Similarly, connectivity was granted to M/s Raigarh Energy Ltd for 600 MW power from their generation project in Chhatishgarh in Western Region vide intimation dated 14.9.2010. Though the applicant had initially indicated to implement the transmission lines on its own, subsequently the applicant had requested the CTU to take up the implementation of the transmission system required for connectivity. However, despite request by the CTU, M/s M/s Raigarh Energy Ltd has neither signed the Transmission Agreement nor submitted the Bank Guarantee to enable CTU to take up implementation. The petitioner has submitted that since all transmission projects of STUs/CTU for which BPTAs/TSAs have not been signed on or before 5.1.2011 shall be implemented through tariff based competitive bidding route, the petitioner is not in a position to take up the implementation of the connectivity systems for IPPs of M/s SJK Powergen Ltd and M/s Raigarh Energy Ltd.

5. The petitioner has submitted that the CTU in association with CEA and the regional constituents have arrived at the decision to request the applicants to develop dedicated transmission systems of their own due to paucity of time available for implementation by the CTU. Since such request is not in line with the Connectivity Regulations, the petitioner has approached the Commission for approval of the deviation from Regulation 8(8) of Connectivity Regulations.

6. Torrent Energy Limited (TEL), Respondent No.11 in its reply filed vide affidavit dated 14.7.2011 has submitted that it is a Special Purpose Vehicle (SPV) company promoted by Torrent Power Limited to generate and supply electricity including distribution of power at Dahej Special Economic Zone as a co-developer of the Dahej Special Economic Zone. TEL is in the process of setting up of 1196.85 MW (3x398.95MW) gas based generating plant in DSEZ area. It has been granted long term access by the CTU for 1200 MW vide letter dated 7.2.2011 for which beneficiaries have been identified as (i) 400 MW for Torrent Power Limited, Ahmedabad, (ii) 400 MW for Western Region and (iii) 400 MW for Northern Region. It has been stated that for the purpose of connectivity of the generation project, the transmission system comprising 400 kV D/C (Triple) line from TEL, Dahej to PGCIL's Navasari sub-station has been identified by the CTU and needs to be established/implemented matching with the commissioning schedule of the generating project. In the 13th meeting of the Western Region Constituents Committee, since the petitioner had expressed its inability to commission the line by October 2012, the respondent offered to take up the implementation of the transmission line for connectivity with the request that the cost of the transmission line may be considered as part of the coordinated transmission planning of CTU and CEA and accordingly, the same should be brought under the total cost of western regional pool. After approval by the petitioner, the respondent has identified the connectivity scheme as TEL(DGEN)TPS-Navsari 400 kV D/C (Triple/Quad). The respondent has submitted that in the event the aforesaid connectivity scheme is to be implemented by the respondent, the Commission may consider to issue directions that the connectivity scheme to be implemented by the respondent be considered as part of Coordinated Transmission Planning and costs of the same be

made part of the western regional pool charges in line with the Regulation 8(8) of Connectivity Regulations.

7. During the hearing of the petition on 21.6.2011, the representative of the petitioner made a presentation regarding the status of the dedicated transmission systems involving 39 applications for which the petitioner had granted connectivity in accordance with the Connectivity Regulations. The representative of the petitioner further submitted that in respect of 13 applications, time available for connectivity is less than the time required for development of transmission system as per the detailed procedure under Connectivity Regulations. In the Standing Committee Meetings on Transmission Planning of the respective regions, all developers except SJK Powergen Limited and Raigarh Energy Limited have agreed for construction of the dedicated lines on their own. He further submitted that SJK Powergen Ltd. (Respondent No.7) had failed to sign the transmission agreement and submit the bank guarantee even after seeking two months extension which expired in December 2010. Raigarh Energy Ltd. (Respondent No. 8) first agreed for construction of the dedicated lines but subsequently requested CTU to construct the same. However, the developer has neither signed the transmission agreement nor submitted the bank guarantee. He submitted that these two cases would now be considered under tariff based competitive bidding. The representative of Torrent Power Limited submitted that although the line was being constructed by TEL, the transmission line should be pooled with the regional assets as in the case of the transmission lines constructed by the CTU. During the hearing, the petitioner in response to our query had submitted that all respondents except respondent nos.7 and 8 (SJK Powergen Limited and Raigarh Energy Limited) have agreed in the

Standing Committee Meetings to undertake construction of the dedicated transmission lines on their own.

8. During the hearing of the petition on 21.7.2011, the learned counsel for respondent No.7, SJK Powergen Limited sought time to file reply. He further submitted that the time line for construction of the connectivity scheme by the CTU shall reckon from the date of signing of the Transmission Agreement and submission of the Bank Guarantee. In response to a query of the Commission, learned counsel for respondent no.7 clarified that time is not a constraint in case of SJK Powergen and the transmission line may be implemented by CTU as part of coordinated transmission planning. The representative of the petitioner submitted that since the BPTA with SJK Powergen would be signed after 5.1.2011, the transmission line would be implemented through tariff based competitive bidding.

9. The petitioner has filed the present petition seeking deviation from the provisions of Regulation 8(8) of the Connectivity Regulations in order to permit the applicants for connectivity to construct the dedicated transmission lines on their own. The petitioner has submitted that proviso to Regulation 8(8) of Connectivity Regulations makes it mandatory on the CTU to construct the dedicated transmission lines for the thermal generating stations of 500 MW and above and a hydrogenating station of 250 MW and above. Regulation 8(8) of Connectivity Regulations is extracted as under:

"8 (8) An applicant may be required by the Central Transmission Utility to construct a dedicated line to the point of connection to enable connectivity to the

grid:

Provided that a thermal generating station of 500 MW and above and a hydro generating station of 250 MW and above, other than a captive generating plant, shall not be required to construct a dedicated line to the point of connection and such stations shall be taken into account for coordinated transmission planning by the Central Transmission Utility and Central Electricity Authority."

10. The main part of the regulation provides that an applicant may be required by the CTU to construct a dedicated transmission line to the point of connection for connectivity to the grid. This provision is in keeping with the spirit of the Act in section 10(1) which provides that it shall be the duty of a generating company to construct dedicated transmission lines from the generating station to the load centres. The proviso to the regulation carves out an exception in cases of thermal generating stations of 500 MW and above and hydrogenating stations of 250 MW and above, other than captive generating plants, which shall be taken into account for coordinated transmission planning by the CTU and the CEA and accordingly the applicants for these generating stations shall not be required to construct the dedicated transmission lines to the point of connection. Thus the purpose of the proviso is to include the dedicated transmission lines of generating stations of certain capacities within the coordinated transmission planning to facilitate connectivity to the grid. However, the proviso does not provide that these lines after being included in the coordinated transmission planning shall necessarily be implemented by the CTU. If it is not possible for the CTU to implement the dedicated transmission lines included in the coordinated transmission planning due to paucity of time, it may require the applicants to implement these transmission lines as per the main provision of Regulation 8(8) of Connectivity Regulations. In our view, the word 'shall' used in the proviso is directory in nature and does not prevent the generating stations to

construct the dedicated transmission lines if so required by the CTU. Therefore, there is no requirement to permit deviation from proviso to Regulation 8(8) of Connectivity Regulations as prayed for by the petitioner in order to get the dedicated transmission lines implemented by the project developer.

11. Torrent Power Limited has raised the issue that the dedicated transmission lines which were taken into consideration for coordinated transmission planning by the CTU but were required to be implemented by the generating stations due to paucity of time, should be included in the regional pool charges. These dedicated transmission lines were taken into consideration for coordinated transmission planning and in normal course would have been implemented by the CTU or through tariff based competitive bidding. In that case the dedicated transmission lines would have been included in the basic network for calculation of PoC charges. Though their implementation is being carried out by the generating stations themselves, they remain part of the coordinated transmission planning and therefore, should be considered as part of basic network. However, these lines need to fulfil the conditions of the relevant regulations before being included in the basic network for computation of PoC charges. Regulation 7(1)(c) of Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2010 (hereinafter "Sharing Regulations") provides as under:

"(c) The dedicated transmission lines constructed, owned and operated by the ISTS licensees shall be considered as part of the Basic Network. Dedicated lines constructed, owned and operated by the generator shall not be considered as part of Basic Network. In the latter case, the generators will be deemed to be connected directly to the ISTS".

It is evident from the above provision that the dedicated transmission lines constructed, owned and operated by the generator cannot be considered as part of

the basic network. The reason for this provision is not far to seek. Once a transmission line is included in the basic network, it will be entitled for allocation of transmission charges and losses. In other words, it will get tariff for the use of its transmission line. Section 12 of the Electricity Act, 2003 (hereinafter “the Act”) provides that no person shall transmit electricity unless a licence is granted by the appropriate Commission. A generator is not required to take a licence as the dedicated transmission line is considered as part of the generating station which is a non-licensed activity under the Act. Therefore, for a dedicated transmission line to qualify as part of the ISTS, the generator is required to take a licence for the line. In this connection, reference may be made to Regulation 6(c) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 (hereinafter “Transmission Licence Regulations”) which provides for grant of transmission licence to a generating company. The Regulation 6 of Transmission Licence Regulations is extracted as under:

“6. Eligibility for grant of licence

No person shall be eligible for grant of licence unless it is-

- (a) selected through the process under the guidelines for competitive bidding, or
- (b) a state owned or controlled company identified as project developer on or before 5.1.2011, or
- (c) a generating company which has established the dedicated transmission line, and intends to use such dedicated transmission line as the main transmission line and part of the inter-State transmission system.”

Thus in accordance with the provision of Regulation 6(c) of Transmission Licence Regulations, a generating company intending to use the dedicated transmission line as part of the inter-State transmission system is eligible to seek licence from the

Commission. It is therefore clarified that the dedicated transmission lines which form part of the coordinated transmission planning but are developed by the generators themselves shall qualify for inclusion under the basic network only after a transmission licence is obtained in accordance with the Transmission Licence Regulations.

12. As regards SK Powergen Limited, the learned counsel appearing on its behalf had submitted that it was in the process of signing the BPTA and providing the Bank Guarantee and the transmission line should be constructed as part of coordinated transmission planning within the timeline of CTU from the date of signing of BPTA and depositing the Bank Guarantee. Accordingly, the CTU shall implement the project in accordance with the prevalent policy.

13. The petition is disposed of in terms of our observations in the order.

sd/-
(M Deena Dayalan)
Member

sd/-
(S Jayaraman)
Member

sd/-
(Dr Pramod Deo)
Chairperson