

**CENTRAL ELECTRICITY REGULATORY COMMISSION**  
**NEW DELHI**

**Record of Proceedings**

**Petition No. 43/MP/2011 with I.A. No.32/2012**

Subject : Petition under section 79(1) (f) of the Electricity Act 2003, regarding a dispute arising between the petitioner, being a generating company and the respondent, being a transmission licensee.

Date of hearing : 21.6.2012

Coram : Dr. Pramod Deo, Chairperson  
Shri S. Jayaraman, Member  
Shri V.S. Verma, Member  
Shri M. Deena Dayalan, Member  
Shri A.S. Bakshi, Member (*Ex-officio*)

Petitioner : Himachal Sorang Power Limited

Respondents : PGCIL, New Delhi

Parties present : Shri Sitesh Mukherjee, Advocate, HSPL  
Shri Sakyasingha Chaudhuri, Advocate, HSPL  
Ms. Anusha Nagarajan, Advocate, HSPL  
Shri Anand Srivastava, HSPL  
Shri S.C. Mahajan, HSPL  
Shri Prabhat Gujral, AGM, HSPL  
Shri T.P. Vijayarathy, TPL  
Shri Pawan Upadhyaya  
Shri Rashmi Pant Joshi, PGCIL,  
Shri Avinash M. Pangi, PGCIL

This petition has been filed by Himachal Sorang Power Limited (HSPL), seeking extension of the date of commencement of open access under the Bulk Power Transmission Agreement (hereinafter referred to as "the BPTA") dated 21.10.2009 executed between HSPL and PGCIL.

2. The learned counsel for the petitioner submitted that:-

- (i) The petitioner is constructing a 100MW hydro power project on the Sorang Nallah tributary of Satluj River. M/s. Jaypee PowerGrid Limited has constructed a 400kV D/C quad line from Karcham Wangtoo to Abdullapur (hereinafter referred to as "transmission

line") to evacuate power. The power generated is to be evacuated through LLO circuit in the transmission line at the petitioner's switchyard.

- (ii) PGCIL granted the LToA for 25 years to the petitioner and as per the BPTA, signed between HSPL and PGCIL, the date of commencement of open access was May, 2011.
- (iii) The project is delayed due to geological surprises, torrential rain and labour strikes. Even the 'hydro policy' talks about the risk of geological surprises.
- (iv) The reasons for delay fall under the force majeure clause as defined in clause 13.0 of the BPTA. As per the said clause of the BPTA, no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the agreement to the extent that such a failure is due to force majeure events such as fire, rebellion, mutiny, civil commotion, riot, strike, lock-out, force of nature, accident, act of God and any other reason beyond the control of concerned party. But the party claiming the benefit of this clause shall satisfy the other party of the existence of such an event and give written notice with a reasonable time to the other party to this effect.
- (v) The petitioner wrote to Himachal Pradesh State Electricity Board on 19.1.2011 stating that due to unforeseen circumstances beyond its control, the project commissioning has been delayed and is likely to be commissioned in May 2012 instead of May 2011. The matter was also placed before NRPC which refused to accede to the petitioner's request for postponement of commencement of BPTA with PGCIL from May 2011 to May 2012.
- (vi) A claim has been made under the force majeure clause of the BPTA. The claim has not been contested by PGCIL. The claim made by the petitioner has to be adjudicated. Learned counsel suggested that the Commission may consider appointing an arbitrator to go into the dispute.
- (vii) The respondent, PGCIL has not contested its claim under force majeure. PGCIL in its reply has submitted that only after the NRPC rejected its claim for extension of LTA, the petitioner by its letter dated 7.7.2011, has revised its stand for time extension for Open Access up to the date of commissioning of said line. PGCIL has further submitted that such eventualities are common in the project of such nature and suitable action is required to be taken by the respective agencies. PGCIL's stand is that the petitioner by the

writing the letter dated 7.7.2011 has given up the claim under force majeure which is not correct.

- (viii) The ambit of force majeure is wide and the reasons for delay fall under the force majeure clause and claim has been made accordingly. The claim cannot be dismissed at the threshold and it should be adjudicated.

2. In response to Commission's query, the learned counsel for the petitioner submitted that geological surprises, torrential rains and labour strikes are covered in the force majeure clause under the head "any other reason beyond the control of concerned party".

3. The representative of the PGCIL submitted that:-

- (i) The petitioner cannot decide that heavy rain fall under the force majeure clause. There are two ingredients to the force majeure clause, the first part of the clause deals with the instances of force majeure and as per the second part, the party claiming force majeure has to satisfy the other party that there was an event to make a claim under force majeure.
- (ii) The petitioner for the first time on 2.8.2010 wrote a letter to the respondent stating that due to unforeseen circumstances beyond its control, the project commissioning has been delayed and is likely to be commissioned in January 2012 instead of May 2011. As per the contract, the project was to be commissioned in May 2011. In August 2010, the petitioner informed, just before 8 months before the scheduled completion that the project was likely to be commissioned by January 2012. The petitioner has concealed its letter of 2.8.2010 from the Commission.
- (iii) The project was scheduled to be commissioned in May 2011, whereas it was actually commissioned in April 2012, and accordingly, the petitioner automatically got 11 months of extension.
- (iv) It is incorrect to state that PGCIL has not contested the petitioner's claim of force majeure. In Para (g) of the reply, PGCIL has disagreed with the contention that the situation was beyond the petitioner's control.
- (v) Hydro Policy was in existence at the time of the entering into the contract. Because of the risks involved in this kind of projects, a timeline of 54 month has been specified, whereas the timeline for plain areas is 34 or 36 months.

- (vi) Suspension or delaying of the project would affect the beneficiaries and the consumers as well, as the transmission charges are a pass through.
- (vii) If the generation project was ready and the transmission line was not ready, the petitioner would have made a claim against the respondent seeking compensation for the delay.
- (viii) The project was conceived with the consent of the beneficiaries and hence the beneficiaries should be impleaded as respondents.

3. Responding to the PGCIL's submissions, the learned counsel denied the charge of concealment against the petitioner and submitted that the issue of amending the BPTA for commencement of Open Access from May 2012 instead of May 2011 was taken up with the PGCIL and the Standing Committee of NRPC vide letter dated 19.1.2011. The letter clearly stated that since the petitioner had encountered the difficulties, it was seeking extension of BPTA till April 2012, not on account of force majeure but because the line was not ready. He further submitted that LTOA had been granted without any additional system strengthening in ISTS and no new asset of PGCIL has been stranded on account of the delay of the project. Further, as this LTA involves LILO of a new line, there was no denial of LTA to other applicants.

4. The learned counsel for the petitioner submitted that the bill raised by the respondent in the month of April has been cancelled by the respondent because the line was not ready. He submitted that the respondent has raised fresh bills in the month of June 2012. He requested that these bills should be stayed by the Commission.

5. The Commission directed the petitioner to submit on affidavit with copy to the respondent, the following information:

- (a) Whether any geological surprises have taken place after April 2012?
  - (b) Whether the failure to estimate the time will be considered as force majeure?
6. Subject to the above, order in the petition was reserved.

By the order of the Commission

Sd/-  
(T. Rout)  
Joint Chief (Law)