

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 127/MP/2013
with I.A. No. 16/2013**

Subject : Petition for grant of Connectivity, Long Term Access and Medium Term Open Access in Inter-State Transmission and related matters.

Date of hearing : 17.9.2013

Coram : Shri V.S.Verma, Member
Shri M. Deena Dayalan, Member

Petitioner : EMCO Energy Limited, Mumbai

Respondent : Power Grid Corporation of India Limited, Gurgaon

Parties present : Shri Sanjay Sen, Advocate, EMCO
Shri Rajiv Yadav, Advocate, EMCO
Shri A.M. Pavgi, PGCIL
Shri R.P. Padhi, PGCIL

Record of Proceedings

At the outset, learned senior counsel for the petitioner submitted as under:

(a) The present dispute has arisen on account of PGCIL levying PoC charges on the petitioner without having completed the requisite transmission network in terms of the Bulk Power Purchase Agreement (BPTA) dated 17.1.2009 executed between the petitioner and PGCIL.

(b) Learned senior counsel referred to the minutes of meeting of Western Region constituents regarding LTOA application in Western Region, LTOA approval dated 22.10.2007 and the BPTA dated 17.1.2009 executed between the petitioner and the respondent. Relying on the said documents learned senior counsel submitted that commencement of LTOA was subject to completion of the Western Region System Strengthening Scheme-II (WRSS-II).

(c) As per the terms of the BPTA, PGCIL cannot levy any PoC charges till completion of WRSS-II.

(d) According to PGCIL, certain transmission lines, forming part of the WRSS-II are yet to be completed. However, as per the express terms of the BPTA, open access has not been triggered until the completion of WRSS-II and therefore, levy of PoC charges with effect from October 2012 is not sanctioned by the terms of the BPTA.

(e) The transmission systems associated with Sipat-I, II, Kahalgaon TPS and WR strengthening scheme are still under construction and petitioner has been paying short term open access charges for supplying power to Dadra and Nagar Haveli.

(f) Despite repeated requests, PGCIL has not responded to the petitioner's request for a change of beneficiary within the Western Region. However, such change of beneficiary has been allowed by PGCIL in other cases.

(g) The BPTA entered with the respondent still subsists, as there is no relinquishment or amendment on the part of either party to vary the terms of the BPTA. The POC charges, being contractual in nature cannot be levied until completion of WRSS-II.

2. The representative of PGCIL submitted as under:

(a) At the time of application of LTOA, the petitioner indicated the commissioning schedule of the generating station as mid 2009 and the date of commencement of open access is June, 2009. Accordingly, while granting MTOA to the petitioner, system studies were carried out considering Western Region load generation scenario corresponding to 2009-10 timeframe. All the transmission system scheduled for implementation by this timeframe was considered in the studies. At that time, power was imported by WR from ER.

(b) Notwithstanding the non-availability of certain lines forming part of WRSS-II, the existing transmission network can adequately meet the petitioner's LTOA quantum for supply to beneficiaries originally identified at the time of making the LTOA application in 2007.

(c) Owing to sufficiency of existing transmission network, PGCIL was levying PoC charges on the petitioner.

(d) In the Connection Agreement dated 13.1.2012, the petitioner had indicated the commissioning schedule of the generating station as May 2012 which was delayed and expected to be commissioned by October 2012. Therefore, the transmission charges were levied from the October, 2012 i.e. from the date of availability of dedicated transmission system.

3. In response to the Commission`s query, the representative of PGCIL submitted that no prior approval was taken while granting LTOA before WRSS-II lines were completed. He further submitted that the short term open access charges for supplying power (200 MW) to Dadra and Nagar Haveli is applicable to the petitioner as same was discussed in the Standing Committee meeting.
4. In response to the Commission`s further query regarding imposing extra conditions, the representative of PGCIL submitted that certain conditions were imposed on the petitioner for system strengthening and the purpose was adequacy, reliability and security of ISTS.
5. In response, learned senior counsel relied on the judgment of the Hon`ble Supreme Court in *Rajasthan Sate Industrial Development and Investment Corporation Vs. Diamond and Gem Development Corporation Limited [(2013) 5 SCC 470]*, in support of his contention that the BPTA must be interpreted strictly in accordance with the terms thereof.
6. Learned senior counsel for the petitioner sought one week time to file its written submission which was allowed by the Commission.
7. The Commission directed the petitioner and the respondent to file their written submissions by 25.9.2013 with an advance copy to each other.
8. Subject to above, the Commission reserved order in the petition.

By order of the Commission
Sd/-

(T. Rout)
Chief (Law)