

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 244/MP/2012**

- Subject : Petition under section 79 (1) (c) and 79 (1) (k) of the Electricity Act, 2003 for directions to accept schedules for supply of power against Long Term Access.
- Date of hearing : 13.12.2012
- Coram : Dr. Pramod Deo, Chairperson  
Shri S.Jayaraman, Member  
Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member
- Petitioner : Jindal Power Limited
- Respondents : National Load Despatch Centre, New Delhi  
Western Regional Load Despatch Centre, Mumbai  
Power Grid Corporation of India Limited, Gurgaon
- Parties present : Shri Pinaki Mishra, Senior Advocate, JPL  
Shri Sanjay Sen, Advocate, JPL  
Shri Vikas Saksena, JPL  
Shri RC Gupta, JPL  
Shri Hemant Singh, JPL  
Shri Swarbhanu Bhattady, JPL  
Shri Amey Kurkarni, JPL  
Shri Sanjay Kaul, JPL  
Shri Ankush Bajoria, Advocate  
Shri V.K Agrawal, NLDC  
Ms Jyoti Prasad, NLDC  
Shri S.R. Narasimhan, NLDC  
Shri S.C. Saxena, NLDC

**Record of Proceedings**

Learned senior counsel for the petitioner submitted that his submissions during the hearing on 21.11.2012 have been aptly recorded in the RoP and he would prefer to submit his rejoinder after the submission of the respondents.

2. The representative of NLDC appearing for Respondent No.1 & 2 submitted that it is not clear from the prayer of the petitioner under which provisions of the regulations, reliefs have been sought against NLDC and WRLDC.

3. The representative of NLDC submitted that he would divide para 3 of the record of proceeding dated 22.11.2012 into four parts and make submission on each one of them. The first part pertains to the submission on behalf of the petitioner that under the 2004 Open Access Regulations, "long term PPA was not mandatory for availing long term access". The second part of para 3 of the RoP dated 21.11.2012 pertained to the statement that "in terms of Regulation 34 (2) of the Connectivity Regulations, long term access granted in accordance with Open Access Regulations is saved and shall continue to be valid till the expiry of the terms of the long term access." The third part of para 3 of the RoP abid pertained to the submission that "BPTA executed between petitioner and PGCIL is saved in terms of the Connectivity Regulations and as such, the terms of such agreement cannot be subjected to any curtailment based on any subsequent of or procedure or any contract." The fourth part pertained to the submission that "PGCIL and NLDC cannot claim that the rights conferred under the Open Access Regulations and the BPTA can be taken away by application of procedures evolved under the Connectivity Regulations".

4. The Commission directed the representative of NLDC to explain the term "long term customer" and his entitlement under the regulations. The representative of NLDC submitted that 2004 Open Access Regulations define the term "long term customer as any person who has been granted long term access for 25 years". Further "allotted transmission capacity" has been defined to mean power transfer in MW between the specified points of injection and specified points of drawal allowed to a long term customer on the inter-State transmission system under normal circumstances". Both terms read together would mean that a person on becoming a long term customer is also required get the allotted transmission capacity with firm points of injection and drawal for availing long term open access. The petitioner did not have the allotted transmission capacity as it had no firm point of drawal. The representative of NLDC referring to the BPTA between the petitioner and CTU submitted that though drawee utilities were shown as Gujarat and Chhatisgarh in the BPTA, by a subsequent letter dated 26.2.2008 (also referred in the BPTA), the petitioner has clarified that the PPAs with Gujarat and Chhatisgarh had not materialized. Moreover in BPTA, it has been mentioned that power transfer to other than Gujarat in Western Region may be effected in the short term. He further submitted that the petitioner in its letter dated 26.2.2008 has expressed its intention to remain a merchant plant. Referring to the order of the Commission dated 31.1.2004 which was in the nature of Statement of Reasons to 2004 Open Access Regulations, representative of NLDC submitted that the introduction of the concept of "allotted transmission capacity" in 2004 Open Access Regulations aimed at ensuring that a long term customer should get the transmission capacity allotted before availing the long term access. Referring to Regulation 6.4.14 of the Grid Code, representative of NLDC further submitted that for scheduling, the user is required to indicate the injection and drawal points to CTU who shall intimate the same to RLDC to

implement the schedule. He submitted that under 2006 Grid Code also, similar provision was there. He submitted that the petitioner did not have any allotted transmission capacity as the point of drawal was not clear.

5. The representative of NLDC submitted that he agreed to the submission in second part of para 3 of the RoP dated 21.11.2012 that the long term access is saved under Regulation 34(2) of Connectivity Regulations. He further submitted in response to the submissions in third and fourth parts of para 3 of the RoP dated 21.11.2012, that Regulation 34(1) of Connectivity Regulations repealed specific provisions of 2004 Open Access Regulations. These regulations only pertained to procedural matters. Referring to page 15 of the reply of CTU, the representative of NLDC submitted that the BPTA provided that the parties would be subject to the regulations and conditions specified by CERC from time to time and therefore, the BPTA cannot be kept out of the purview of the Connectivity Regulations.

6. The Commission enquired from the representative of NLDC whether as a system operator, RLDCs can schedule the power of a long term customer who does not have the identified drawee utility and from whom RLDCs should get the instructions. The representative of NLDC submitted that scheduling cannot be done in such cases and instructions in this regard would come from CTU and in this particular case, no such instruction has been received.

7. The representative of NLDC submitted that from April 2011 till the date of hearing, the average injection of the petitioner was around 750 MW as against their long term access of 500 MW. After the long term and short term charges became the same, whatever the petitioner is paying as long term charges, it is getting it back as short term charges.

8. Learned senior counsel for the petitioner submitted that the submission of NLDC regarding injection of power by the petitioner is not correct and sought permission from the Commission to file affidavit in rebuttal.

9. The Commission directed NLDC to file its written submission on affidavit within one week and the petitioner is directed to submit its response within one week thereafter.

10. The Commission observed that it is necessary to ascertain the views of Central Transmission Utility on the scope of the long term open access granted to the petitioner

in terms of the BPTA which was executed in accordance with the provisions of 2004 Open Access Regulations. Particularly, CTU should clarify whether it is necessary to indicate the drawee utility for availing long term access or any person having a long term access but without an identified drawee utility can avail long term open access subject to availability of capacity to accommodate such access. CTU was directed to file its response within one week after serving the copy of the same on the petitioner and other respondents, who may file their response within one week thereafter. The Commission further directed CTU to depute an authorized representative to assist the Commission during the next date of hearing.

11. The petition shall be listed for hearing on **31.1.2013**.

**By order of the Commission**

**sd/-  
(T. Rout)  
Joint Chief (Law)**