

**CENTRAL ELECTRICITY REGULATORY COMMISSION**

**NEW DELHI**

**Petition No. 153/MP/2012**

**Coram:**

**Dr. Pramod Deo, Chairperson**

**Shri S. Jayaraman, Member**

**Shri V.S. Verma, Member**

**Shri M. Deena Dayalan, Member**

**Date of Hearing: 16.10.2012**

**Date of Order : 30.04.2013**

**In the matter of**

Petition under Section 79 of the Electricity Act, 2003 read with Regulation 24 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with CERC (Grant of Connectivity, Long-term Access and Medium-Term open access in Inter-State Transmission and Related Matters) Regulation, 2009

**And in the matter of**

PPN Power Gen. Co. Pvt. Ltd

Petitioner

**Vs**

Power Grid Corporation of India Ltd

Respondent

**Parties Present**

Shri Rahul Balaji, Advocate for the petitioner

Shri Senthil Jagedeasan, Advocate for the petitioner

Shri Krishan Dev, Advocate for the petitioner

Shri Sundararurthy, PPNPGCPL

Shri RVMM Rao, PGCIL

**ORDER**

The petitioner, PPN Power Generation Company Private Limited has filed the present petition under Section 79 of the Electricity Act, 2003 (hereinafter "2003 Act") with the following prayer, namely:

*"In light of the above, this Hon'ble Commission may be pleased to issue a direction to the respondent to permit the petitioner to withdraw its application for long-term access without encashing the bank guarantee instituted by the petitioner and return the Bank Guarantee; and pass such further or other orders as this Hon'ble Commission may deem fit in the facts and circumstances of this case and thus render justice."*

## **Facts of the Case**

2. The petitioner owns and operates 330.5 MW natural gas-cum-naphtha fired combined cycle power plant in Nagapattinam District in the State of Tamil Nadu. The plant is supplying Power to Tamil Nadu Electricity Board/Tamil Nadu Generation and Distribution Company Limited (TANGEDCO) since the commissioning of the plant on 26.4.2001 under a long-term PPA.

3. The petitioner proposed to expand the generation capacity by adding three natural gas fired units of 360 MW each [1080 MW] in combined cycle mode for which the petitioner claims to have obtained all necessary clearances and approvals from the Governmental authorities and statutory bodies. The petitioner received letter of comfort dated 2.6.2010 from Ministry of Petroleum and Natural Gas regarding availability of natural gas from KG basin. The petitioner has stated that it awarded the EPC contract in August 2011 by paying Rs.20 crore after International Competitive Bidding (ICB). Accordingly, the petitioner made an application on 9.8.2010 to the respondent in accordance with the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-state Transmission and related matters) Regulations 2010 (for short, "the Connectivity Regulations") for obtaining connectivity for 3x360 MW. Subsequently, on 7.4.2011, the petitioner submitted another application to the respondent for long-term access (LTA) for 1x360 MW. The application was accompanied by the prescribed application fee of Rs.3 lakh and application Bank Guarantee of Rs. 36 lakh as prescribed under the Connectivity Regulations. The respondent vide its letters dated 28.6.2011 and 17.8.2011 conveyed approval for connectivity and LTA respectively. In the letter dated 17.8.2011, the respondent advised the petitioner to sign the Long Term Access (LTA) agreement and furnish

the Bank Guarantee for construction phase in accordance with the Connectivity Regulations.

4. Ministry of Power vide ID No. 4/5/2012-Th 1 dated 14.3.2012 informed CEA that as per information made available by Ministry of Petroleum and Natural Gas, production of NELP gas was likely to go down by 15.03 mmscmd in 2012-13 and additional 3.42 mmscmd in 2013 against the availability of 42.67 mmscmd of gas in 2011-12. It was added that Ministry of Petroleum and Natural Gas had not given any projections for the years 2014-15 and 2015-16 and therefore no additional domestic gas was likely to be available till 2015-16. Accordingly, the (project) developers were advised not to plan projects based on domestic gas till 2015-16. Ministry of Power asked CEA to place the information on its website adding that after the Ministry of Petroleum and Natural Gas indicated availability of gas, developers would be intimated accordingly. Based on the above advice of Ministry of Power, CEA issued Circular No. CEA/PLIRP/501/39/2012/938 dated 19.3.2012 stating that the gas production in the country was going down and the projections of gas production released showed a decline in production of Natural Gas for the year 2015-16 by the Ministry of Petroleum and Natural Gas. CEA accordingly advised all the developers not to plan projects based on domestic gas till 2015-16.

#### **Submission of the parties**

5. The petitioner has submitted that though it is very keen to implement the expansion project, yet on account of advice of Ministry of Power regarding non-availability of natural gas, it is unable to proceed further. The petitioner vide its letters dated 28.3.2012 and 29.3.2012 requested the respondent to cancel the application for LTA and return the bank guarantee in view of the advisory issued by Ministry of

Power. However, the petitioner has alleged that the respondent has not replied to its letters.

6. The petitioner has submitted that in the instant case, the petitioner was constrained to withdraw its application for LTA not for any reason of failure or default on its part but on account of the policy directive of the Central Government to put on hold all domestic gas based power projects till 2015-16. According to the petitioner, it amounts to *force majeure* event and the petitioner is entitled to refund of the Bank Guarantee after withdrawal of its application for LTA which has otherwise become redundant.

7. The respondent in its reply has submitted that the petitioner was granted LTA vide its letter dated 17.8.2011 for injection of power at Nagapattinam Pooling Station and for utilizing High Capacity Power Transmission Corridor-XI (Transmission System Associated with IPP projects in Nagapattinam/Cuddalore Area). It has been submitted that grant of LTA was subject to signing of LTA Agreement and submission of requisite Construction Bank Guarantee as per the Connectivity Regulations. However, the petitioner has neither signed the agreement nor has it submitted the Construction Bank Guarantee. The respondent has sought to encash the Bank Guarantee in accordance with clause (5) of Regulation 12 of the Connectivity Regulations and the Detailed Procedure approved by this Commission.

8. We have heard learned counsel for the petitioner and the representative of the respondent. We have carefully considered the pleadings of the parties and the submissions made at the hearing.

9. The procedure for grant of long term access is contained in Chapter 5 of the Connectivity Regulations. For the purpose of deciding the present dispute it is sufficient to refer to Regulations 12 to 15, which are extracted hereunder for facility of reference:

***“12. Application for long-term access***

*(1) The application for grant of long-term access shall contain details such as name of the entity or entities to whom electricity is proposed to be supplied or from whom electricity is proposed to be procured along with the quantum of power and such other details as may be laid down by the Central Transmission Utility in the detailed procedure:*

*Provided that .....*

*Provided further that .....*

*Provided also that .....*

*Provided also that .....*

*(2) The applicant shall submit any other information sought by the nodal agency including the basis for assessment of power to be interchanged using the inter-State transmission system and power to be transmitted to or from various entities or regions to enable the nodal agency to plan the inter-State transmission system in a holistic manner.*

*(3) The application shall be accompanied by a bank guarantee of Rs 10,000/- (ten thousand) per MW of the total power to be transmitted. The bank guarantee shall be in favour of the nodal agency, in the manner laid down under the detailed procedure.*

*(4) The bank guarantee of Rs. 10,000/- (ten thousand) per MW shall be kept valid and subsisting till the execution of the long-term access agreement, in the case when augmentation of transmission system is required, and till operationalization of long-term access when augmentation of transmission system is not required.*

*(5) The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are relinquished prior to the operationalisation of such rights when augmentation of transmission system is not required.*

*(6) The aforesaid bank guarantee will stand discharged with the submission of bank guarantee required to be given by the applicant to the Central Transmission Utility during construction phase when augmentation of transmission system is required, in accordance with the provisions in the detailed procedure.*

### **13. System Studies by the Nodal Agency**

*(1) On receipt of the application, the nodal agency shall, in consultation and through coordination with other agencies involved in inter-State transmission system to be used, including State Transmission Utility, if the State network is likely to be used, process the application and carry out the necessary system studies as expeditiously as possible so as to ensure that the decision to grant long-term access is arrived at within the timeframe specified in regulation 7:*

*Provided that in case the nodal agency faces any difficulty in the process of consultation or coordination, it may approach the Commission for appropriate directions.*

*(2) Based on the system studies, the nodal agency shall specify the inter-State transmission system that would be required to give long-term access. In case augmentation to the existing inter-State transmission system is required, the same will be intimated to the applicant.*

*(3) The Empowered Committee established in accordance with the 'Tariff based Competitive-bidding Guidelines for Transmission Service' issued by the Central Government, may identify one or more elements needed for augmentation of inter-State transmission system to be developed through tariff based competitive bidding:*

*Provided that the agency identified to construct one or more elements needed for augmentation of the inter-State transmission system for long-term access shall be eligible for grant of transmission licence in accordance with the regulations specified by the Commission from time to time and the guidelines for competitive bidding for transmission issued by the Central Government.*

### **14. Communication of Estimate of Transmission Charges, etc.**

*While granting long-term access, the nodal agency shall communicate to the applicant, the date from which long-term access shall be granted and an estimate of the transmission charges likely to be payable based on the prevailing costs, prices and methodology of sharing of transmission charges specified by the Commission.*

### **15. Execution of Long-term Access Agreement**

*The applicant shall sign an agreement for long-term access with the Central Transmission Utility in case long-term access is granted by the Central Transmission Utility, in accordance with the provision as may be made in the detailed procedure. While seeking long-term access to an inter-State transmission licensee, other than the Central Transmission Utility, the applicant shall sign a tripartite long-term access agreement with the Central Transmission Utility and the inter-State transmission licensee. The long-term access agreement shall contain the date of commencement of long-term access, the point of injection of power into the grid and point of drawal from the grid and the details of dedicated transmission lines, if any, required. In case augmentation of transmission system is required, the long-term access agreement shall contain the time line for construction of the facilities of the applicant and the transmission licensee, the bank guarantee required to be given by the applicant and other details in accordance with the detailed procedure."*

10. In accordance with Regulation 12, the application made for LTA is to be accompanied by a Bank Guarantee of Rs.10, 000 per MW in favour of the nodal agency, which shall be kept valid and subsisting till the execution of the LTA Agreement where augmentation of transmission system is required or till the operationalisation of the LTA where augmentation of transmission system is not required. The regulation further provides that Bank Guarantee may be encashed in case the applicant withdraws the application for LTA or LTA rights are relinquished prior to the operationalisation of such rights when augmentation of transmission system is not required. The Bank Guarantee stands discharged with the submission of fresh Bank Guarantee given by the applicant to the Central Transmission Utility, the nodal agency, during construction phase where augmentation of transmission capacity is required. Regulation 13 provides that the nodal agency on receipt of the application for LTA shall carry out the necessary system studies and based on these studies, shall identify the inter-State transmission system required to give LTA to the applicant. Regulation 14 requires the nodal agency to communicate to the applicant, the date from which long-term access shall be granted and an estimate of the transmission charges likely to be payable based on the prevailing costs, prices and methodology of sharing of transmission charges specified by this Commission. Regulation 15 mandates the applicant to sign an agreement for LTA with the Central Transmission Utility, which shall contain the date of commencement of LTA, the point of injection of power into the grid and point of drawal from the grid and the details of dedicated transmission lines, if any, required. Where augmentation of the transmission system is necessary, long term access agreement shall contain the time line for construction of the facilities of the applicant and the transmission

licensee, Bank Guarantee required to be given by the applicant, and other details in accordance with the Detailed Procedure.

11. From the above provisions of the Connectivity Regulations it emerges that there are two types of Bank Guarantees that an LTA applicant is required to furnish to the nodal agency. The first Bank guarantee is required to be given alongwith the application for the LTA @ Rs.10, 000 per MW. If as a result of system studies, it is found that no further augmentation of the transmission system is required, the applicant will be required to sign an LTA Agreement and the Bank guarantee already paid will remain valid till operationalisation of the LTA. If it is found that augmentation of transmission system is required, then the applicant will be required to enter into LTA Agreement, submit a fresh Bank Guarantee for construction period calculated as per Detailed Procedure and the bank Guarantee given earlier alongwith the application for LTA shall stand discharged. Under two circumstances, the Bank Guarantee can be encashed by the nodal agency: firstly, if the applicant withdraws the LTA application; secondly, the long term access rights are relinquished prior to operationalisation of such rights when augmentation of transmission system is not required.

12. By virtue of Regulation 27 of the Connectivity Regulations, this Commission has approved the Detailed Procedure submitted by the Central Transmission Utility on procedural aspects not adequately covered under these regulations. Clause 23 (5) of the Detailed Procedure makes following provisions on encashment of the Bank Guarantee, with an object identical with the object of clause (5) of Regulation 12:

“The bank Guarantee may be encashed by the nodal agency



- (i) if the application is withdrawn by the applicant or
- (ii) .....
- (iii) If the applicant fails to sign the Long Term Access Agreement with CTU or a tripartite agreement with CTU and transmission licensee, as the case may be, and fails to furnish appropriate BG for construction phase, within stipulated time as indicated in the intimation letter.”

13. Thus in accordance with the Detailed Procedure also, the nodal agency is permitted to encash the Bank Guarantee under certain circumstances such as non-signing of LTA or non-furnishing of Bank Guarantee for construction phase.

14. In the instant case, the petitioner made an application to the respondent which is the nodal agency for grant of LTA for 360 MW. The respondent after complying with the procedure prescribed by this Commission and carrying out of the necessary system studies, decided to grant LTA to the petitioner. The decision was communicated to the petitioner by the respondent under letter dated 17.8.2011. The respondent advised the petitioner to execute the LTA agreement and furnish the Bank Guarantee for the construction phase in accordance with the Connectivity Regulations since augmentation of transmission capacity is required. The respondent while conveying grant of LTA under letter dated 17.8.2011 *inter alia* informed the petitioner that in case of non-signing of LTA agreement within 30 days of receipt of the draft agreement from the respondent, LTA would be treated as cancelled and fresh application would be required. The respondent sent the final agreements by e-mail dated 24.10.2011 (Annexure P-8 of the petition) suggesting a meeting at the respondent's office on 28.10.2011 in view of urgency in finalising the LTA agreement. It appears that the petitioner did not participate in the meeting proposed for 28.10.2011 as the petition is silent in this regard. The petitioner by its letter/e-mail dated 2.11.2011 sought some clarifications. The matter does not seem

to have been pursued further and the petitioner developed cold feet. After issue of the advisory by Ministry of Power on 14.3.2012, the petitioner approached the respondent for cancellation for LTA and return of the Bank Guarantee. We do not find any linkage between the Ministry of Power advisory regarding the non-availability of natural gas and the petitioner's decision not to sign the LTA Agreement. In fact the petitioner's decision to withdraw the LTA started when it failed to sign the LTA Agreement within one month of grant of LTA i.e. by 17.9.2011 and tried to buy time by seeking some clarification. The petitioner appears to have seized the opportunity to withdraw the application citing force majeure after the issue of Ministry of Power advisory on 14.3.2012 regarding non-availability of natural gas. The purpose of application Bank Guarantee is to ensure commitment of the project developer to use the transmission line for which LTA has been sought and to give comfort to the CTU that the transmission line would not be stranded after it is built. The system to which LTA was sought was a part of the High Capacity Power Transmission Corridor-XI (Transmission System Associated with IPP projects in Nagapattinam/Cuddalore Area) for which the regulatory approval has been accorded by this Commission based on the commitment of the generation projects in that area including the petitioner. If the project developers are allowed to withdraw their applications in this manner, then the transmission planning cannot be effectively done and the transmission capacity will remain stranded leading to under-recovery of the project cost.

15. In view of the above, the petitioner is not entitled to return of the Bank Guarantee as prayed for in the petition and the respondent is at liberty to deal with

the Bank Guarantee in accordance with the Connectivity Regulations. The petition is accordingly disposed of.

**sd/-**  
**(M. Deena Dayalan)**  
**Member**

**sd/-**  
**(V.S. Verma)**  
**Member**

**sd/-**  
**(S. Jayaraman)**  
**Member**

**sd/-**  
**(Dr. Pramod Deo)**  
**Chairperson**