

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 156/MP/2012

**Coram:
Dr. Pramod Deo, Chairperson
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member**

DATE OF HEARING: 9.4.2013

DATE OF ORDER: 9.5.2013

In the matter of

Misc. Application for termination of Bulk Power Transmission Agreement / Long Term Access Agreement dated 24 December 2010 & Tri-partite Transmission Service Agreement dated 15 December 2011.

And in the matter of

Spectrum Power Generation Ltd, Hyderabad

Petitioner

Vs

1. Power Grid Corporation of India Ltd., Gurgaon
2. Vemagiri Transmission System Ltd, New Delhi
3. REC Transmission Projects Company Ltd, New Delhi
4. Samalkot Power Ltd, Mumbai

Respondents

Following were present:

Shri Sanjay Sen, Advocate for the petitioner
Ms. Sikha Ohari, Advocate for the petitioner
Shri H.M.Jain, SPGL
Shri M.G.Ramchandran, Advocate, PGCIL
Shri U.K. Tyagi, PGCIL
Shri B.Vamsi, PGCIL
Shri RVMM Rao, PGCIL
Shri Sumod Tom Thomas, PGCIL
Shri Y.K.Sehgal, CTU
Shri Dilip Rozeker, CTU
Shri V.K.Singh, RECTPCL
Ms Mazag Andrabi, RECTPL

ORDER

The petitioner, Spectrum Power Generation Ltd (hereafter "Spectrum") in the present petition has made the following prayers, namely:

- "(a) Terminate the Agreement for Bulk Power Transmission Agreement between PGCIL and the applicant with three others entered on 24.12.2010;*
- (b) Direct the respondents to return the Bank Gurantee of Rs. 67.50 crores (Rs. Sixty Seven Crores and Fifty Lakhs) issued by ICICI Bank Limited dated 15.06.2011 furnished by the applicant to PGCIL;*
- (c) Terminate the Tri-partite Transmission Service Agreement dated 15th December, 2011, entered by Spectrum Power Generation Ltd. with Vemagiri Transmission System Ltd. & Smalkot Power Ltd; and*
- (d) Pass such further order(s) as this Hon'ble Commission may deem fit and proper in the circumstances of the present application."*

2. The facts which are within a narrow compass are not in dispute. Spectrum had decided to set up a 1400 MW (4 X 350 MW) gas-based power plant (hereafter "the project") as an Independent Power Producer (IPP) in Vemagiri area of East Godavari District in the State of Andhra Pradesh with the commissioning schedule as under:

First Unit	March 2013
Second Unit	March 2014
Third Unit	September 2014
Fourth Unit	March 2015

3. Based on an application made by Spectrum, Power Grid Corporation of India, the first respondent, (hereafter "PGCIL") in the capacity of the Central Transmission Utility, granted connectivity for the project at Vemagiri-II Pooling Station vide letter dated 10.12.2010. Spectrum signed with PGCIL the Bulk Power Transmission Agreement dated 24.12.2010 (hereafter "the BPTA") for obtaining LTA for 1350 MW

of power. On 5.6.2011 Spectrum furnished a Bank Guarantee for ₹67.50 crore to PGCIL as guarantee for the construction period.

4. The Central Government in Ministry of Power notified REC Transmission Projects Company Ltd, the third respondent, as the Bid Process Coordinator to establish the transmission system for transfer of power from the power projects of the Independent Power Producers (IPPs) in Vemagiri area (hereafter “the transmission system”) to the beneficiaries in Western, Northern and Southern Regions in accordance with the tariff-based competitive bidding guidelines issued by that Government. REC Transmission Projects Company Ltd on 21.4.2011 incorporated Vemagiri Transmission System Ltd, the second respondent, as its wholly owned subsidiary to take steps for execution of the transmission system. Subsequently, Vemagiri Transmission System Ltd was to act as the Transmission Service Provider after its acquisition by the successful bidder. Samalkot Power Ltd, (hereafter “Samalkot”), the fourth respondent, another IPP operating in Vemagiri area, and Spectrum were advised by PGCIL to enter into Transmission Service Agreement (hereafter “the TSA”) with Vemagiri Transmission System Ltd. TSA was accordingly executed on 15.12.2011.

5. In the bidding process undertaken by Vemagiri Transmission System Ltd, PGCIL was selected as the successful bidder and the Letter of Intent was issued in its favour on 20.3.2012. The entire equity subscribed by REC Transmission Projects Ltd in Vemagiri Transmission System Ltd was acquired by PGCIL on 18.4.2012. Vemagiri Transmission System Ltd filed Petition No. 127/2012 under Section 63 of the Electricity Act for adoption of tariff for the transmission system discovered

through the tariff-based competitive process. Vemagiri Transmission System Ltd also filed another petition (No. 128/2012) under Section 14 of the Electricity Act for grant of inter-State transmission licence.

6. Ministry of Power vide its 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 when Ministry of Petroleum and Natural Gas indicated availability of gas, developers would be intimidated. 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 by the Ministry of Petroleum and Natural Gas showed a decline in production of Natural Gas for the year 2015-16. CEA accordingly advised the project developers not to plan projects based on domestic gas till 2015-16.

7. When Spectrum became aware of non-availability of gas as aforementioned, it by letter dated 30.3.2012 requested PGCIL not to take action for execution of the transmission system based on LTA and the BPTA signed. The said letter dated 30.3.2012 whose copies were endorsed to Ministry of Power, CEA, REC

Transmission Project Company Ltd and Vemagiri Transmission System Ltd is reproduced hereunder:

"We have been granted Long-Term Open Access granted vide PGCIL letter No.. CC/ENG/SEF/TA/L/S/10/007 dated 10.12.2010 for grant of Long Term Open Access for our 1350 MW Gas Based Power Project SPGL, Kakinada, Andhra Pradesh.

The BPTA on the basis of Long-term Open Access granted by PGCIL has been signed on 24th Dec'2010 jointly with M/s. Reliance Infrastructure Limited, M/s. GVK Gautami Power Limited and M/s. GVK Industries Limited. The System strengthening requirement as per Annexure – 3 of BPTA was designed to evacuate 5150 MW power. However, M/s. GVK Gautami Power Limited and M/s. GVK Industries Limited have not deposited the Bank Guarantee and the revised BPTA is yet to be signed. We had also signed the TSA with REC Transmission Project Company Ltd for execution of the Transmission System.

We have made substantial progress in the execution of the project and have necessary land and clearances for the project. We have also invited bids for the execution of the project on EPC basis which have already been evaluated and we were about to place order on the selected Bidder. However, based on the Notification dtd. 19.03.2012 (copy enclosed) issued by Ministry of Power, Government of India, wherein it has been intimated that no additional Gas supply is to be available upto 2015-16, we have had to defer the award of EPC Contract for the 1st Phase of 350 MW.

Keeping in view of the above, it is not possible to go ahead with the implementation of the project since the project Lenders and Share holders would not like to fund the project when the government itself is advising developers not to plan gas based power projects till 2015-16.

*It is therefore requested that no action may please be taken for implementing the execution of the transmission projects in the scope of PGCIL based on the Long Term Open Access and the BPTA signed with PGCIL. The CEA/MoP have undertaken vide notification dated 19.03.2012 that the Project Developers shall be intimated when MOP&NG indicates the availability of Gas. On receipt of such intimation about the Gas availability SPGCL shall intimate to PGCIL about the transmission system thereafter. Since no project is likely to be commissioned before 2017-18 there is no purpose to block the Bank Guarantee for such a long period. Accordingly it is requested that **the Bank Guarantee deposited by us for Rs. 67.50 Crores issued by ICICI Bank Limited submitted on 15th June, 2011 may kindly be returned.***

Similar request is being made to REC Transmission Project Company Ltd for cancellation of the Transmission Service Agreement and you may also kindly write to them not to proceed ahead for execution of the Transmission work."

8. Spectrum wrote another letter dated 7.6.2012 addressed to Vemagiri Transmission System Ltd for cancellation of the TSA. The said letter dated 7.6.2012 is also extracted below:

"We have signed the Transmission Service Agreement jointly with M/s. Reliance Infrastructure Ltd. for execution of the transmission package as per the Long Term Open Access granted by PGCIL vide letter No.. CC/ENG/SEF/TAL/S/10/007 dated 10.12.2010 for 1350 MW Gas Project.

MOP&NG has vide notification dated 19.03.2012 (copy enclosed) intimated that no additional gas supply is to be available upto 2015-16 hence developers are advised not to plan gas based projects till 2015-16. In terms of the said notification, the Central Electricity Authority has further undertaken that that it shall intimate the developers about the availability of Gas as and when the same is indicated by the MOP&NG.

Accordingly, it is not possible to go ahead with the implementation of the project since the project lenders and shareholders would not like to fund the project when the government itself is advising developers not to plan gas based power projects till 2015-16.

We have already addressed the issue to PGCIL vide our letter no. spgl/pgcil/TSA/11-12/1317 dated 30.03.2012 for not implementing the execution of the transmission projects based on the LTOA granted and BPTA signed with PGCIL.

Keeping in view of the above, it is requested that the TSA signed may kindly be cancelled under intimation to us. The bidding process initiated shall also have to be stalled as SPGL shall not be able to accept the award of contract for execution"

9. The letter dated 7.6.2012 addressed to Vemagiri Transmission System Ltd was preceded by a similar letter dated 6.4.2012, addressed to REC Transmission System Company Ltd.

10. Spectrum has alleged that it did not receive any response from any of the addressees. Accordingly, Spectrum has filed the present petition.

11. PGCIL and other respondents have not filed separate replies in the present petition, but have placed the necessary facts and their views on record in the collateral proceedings in Petition No 127/2012. The present petition and two other

related petitions (Petition Nos. 127/2012 and 128/2012) filed by Vemagiri Transmission System Ltd were heard together. Therefore, for the present order, the pleadings/documents filed by the respondents in Petition No 127/2012 have been considered.

12. The petitions were heard on 12.7.2012. This Commission directed the Central Transmission Utility to file an affidavit explaining the manner in which the transmission system was going to be fully utilized in view of withdrawal of Spectrum. Samalkot was also directed to submit the status and schedule of implementation and the availability of gas for its generating station.

13. Samalkot vide its affidavit dated 1.8.2012 has submitted that its generating station could not be allocated gas because of shortfall of KGD6 gas fields. Samalkot has further submitted that Reliance Power, its parent company, is working on setting up LNG terminal in close proximity to the proposed generating station, which would offer additional fuel to enable operations. Based on this premise, Samalkot is going ahead with setting up of its generating station and has, in fact, already commissioned some of its units.

14. In terms of its affidavit dated 16.8.2012, PGCIL (Central Transmission Utility) has submitted that in view of the huge investments that have to be undertaken to establish transmission system and the long-term funding to be arranged from the project lenders, a clear mandate is required to proceed further in procurement and financing processes which were put on hold.

15. Vemagiri Transmission System Ltd has not taken any tangible steps for implementation of the transmission system. It has filed IA No 9/2013 in Petition No 127/2012, with the following prayers, namely:

- a) *Direct that the transmission project awarded to POWERGRID under the Tariff Based Competitive Bidding be implemented by the Applicant with extension of time and with cost increase and cost over-run*
- b) *Extend the time for implementation of project to 36 months from the date of grant of transmission licence, adoption of the tariff and allowing the cost increase and over-run;*
- c) *Direct that the transmission charges shall be payable under the POC regime by Respondent No. 1 & 2 and in the event of failure on the part of respondent No. 1 or/and Respondent No. 2, to pay such transmission charges, decide the course of recovery of all such as a coordinated scheme;*
- d) *Direct that the transmission charges shall be payable to the Applicant even in the absence of the Power project of Respondent No. 1 & 2 being commissioned by the time of the commissioning of the transmission system by the extended period and even in the circumstances where the Respondent No. 1 & 2 are unable to evacuate the power through the above mentioned transmission system for any reason whatsoever; and*
- e) *Pass any such further order or orders as the Hon'ble Commission may deem just and proper in the circumstances of the case."*

16. In the IA Vemagiri Transmission System Ltd has submitted that in the absence of any decision by this Commission on the pending petitions it has not been able to proceed with finalization of the contract for execution of the various packages of works and funding and financing arrangements with the financial institutions for execution of the and proceed with the implementation of the transmission system and it is not in a position to execute the transmission system within the time limit envisaged in the bidding documents i.e. 36 months from the Effective Date and within the capital cost commensurate to the quoted tariff. Accordingly, there will be time and cost over-run. Vemagiri Transmission System Ltd has also submitted

that the delay in implementation has been on account of reasons not attributable to it or, its parent company, PGCIL and the delay is on account of *Force Majeure*.

17. We have heard learned counsel for the petitioner and the respondents. Due to non-availability of natural gas, the Government of India, Ministry of Power has issued an advisory on 14.3.2012 to all the power project developer not to plan any project based on natural domestic gas till 2015-16. In view of the advisory, the petitioner has expressed its inability to execute its generation project as per the original schedule for which the transmission line is to be constructed by Vemagiri transmission system Limited. During the hearing, learned counsel for the petitioner categorically ruled out the possibility of execution of the project in near future till the shortage of domestic natural gas projects in the country.

18. In our order dated 9.5.2013 in Petitions No. 127/2012 and 128/2012, we have directed the CEA and CTU to take a view on the implementation of the Vemagiri transmission project and file their reply by 30.5.2013. Since, prayer in the present petition is linked to execution of the Vemagiri transmission project, we are of the view that the present petition should be taken up for direction along with Petition Nos. 127/2012 and 128/2012.

19. The petition shall be listed for hearing on 13.6.2013.

Sd/-

(M. DEENA DAYALAN)
MEMBER

sd/-

(V.S. VERMA)
MEMBER

sd/-

(DR. PRAMOD DEO)
CHAIRPERSON