

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION NO. 118/ MP/2012

Coram:

Dr. Pramod Deo, Chairperson

Shri V.S. Verma, Member

Shri M Deena Dayalan, Member

Date of Hearing: 16.05.2013

Date of Order: 08.06.2013

In the matter of

Filing of petition under Regulation 32 of the CERC (Grant of Connectivity, Long-term Access, Medium-Term Open Access in Inter-State Transmission and related matters) Regulations, 2009 read with Chapter 2 of CERC Conduct of Business Regulations 1999 for keeping the Long-Term Access (LTA) of Phase –II (Unit III & IV) of Lanco Babandh Power Ltd (LBPL) under abeyance in the BPTA between LBPL and PGCIL and reduce the LTA quantum from 1600 MW to 800 MW till necessary statutory clearances and permissions are obtained

And in the matter of

Lanco Babandh Power Ltd, Gurgaon

Vs

Petitioner

1. Power Grid Corporation of India Ltd, Gurgaon

2. Central Electricity Authority, New Delhi

Respondents

Present

Shri Sanjay Sen, Advocate, LBPL

Shri Mahavir Singh, LBPL

Shri R.Jhala, LBPL

Shri Ramchandra, PGCIL

Shri Ashok Pal, PGCIL

Per: Dr Pramod Deo, Chairperson & Shri V S Verma, Member

ORDER

This petition has been filed by Lanco Babandh Power Ltd under Regulation 32 of the CERC (Grant of Connectivity, Long-term Access, Medium-term Open Access in Inter-State Transmission and related matters)

Regulations, 2009 (the Long-term Access Regulations) with the following prayers, namely:

- “(a) To keep the Long Term Access (LTA) of Phase - II (Unit III & IV) of LBPL under abeyance and to allow revision in the LTA schedule for reduction of LT A quantum from 1600 MW to 800 MW in the BPTA between LBPL and PGCIL without payment of any compensation to PGCIL for such reduction in LTA capacity.*
- (b) To grant any other relief as the Hon'ble Commission may consider appropriate.*
- (c) The petitioner craves leave of the Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice.”*

2. The petitioner proposed to establish a coal based thermal power generating station with total capacity of 2640 MW in Dhenkanal District of the State of Odisha in two phases, Phase – I (2 X 660 MW) and Phase – II (2 X 660 MW) (the project). The first unit of the project was proposed to be commissioned in December 2013 and the second unit by April 2014. The commissioning of the third and fourth units was to follow. Certain other IPPs also intended to establish the generating stations in the State.

3. The petitioner and also six other IPPs planning to set up the generating stations in the State of Odisha made applications to Power Grid Corporation of India Ltd, the first respondent in its capacity as the Central Transmission Utility for availing long-term access (LTA). The petitioner applied for LTA for capacity of 1600 MW which consisted of 800 MW from Phase - I and 800 MW from Phase - II. All the seven applications for LTA were approved by the first respondent on 29.4.2009 and consequently, a joint Bulk Power Transmission Agreement dated 24.2.2010 (BPTA) was

signed by the first respondent and seven applicants for LTA, including the petitioner. The BPTA signed with the petitioner was for a capacity of 1600 MW as applied for. In accordance with the BPTA, the petitioner is required to construct Lanco Babandh – Angul Pool 400 kV 2 X D/C transmission lines with associated bays at Angul. The first petitioner is to construct, among others, Angul Pooling – Jharsuguda Pooling Station, 765 kV 2 X S/C transmission lines, as part of the Odisha System Strengthening Scheme. Further, under the BPTA, each developer was required to furnish the construction Bank Guarantee from a nationalized bank for an amount equivalent to ₹5 lakh/MW to enable the first respondent to recover damages in case the developer failed to construct the generating station/dedicated transmission system or made an exit or abandoned its project. The petitioner submitted the Bank Guarantee for ₹80 crore against total capacity of 1600 MW.

4. The petitioner has submitted that Phase-I of the generating station is expected to be commissioned as already scheduled, though in its subsequent letter dated 28.9.2012 addressed to the first respondent, the petitioner has indicated the dates of commissioning of Units 1 and 2 as April 2014 and August 2014 respectively. However, development of Phase - II of the project is stated to have been delayed on account of delay in receipt of certain inputs and statutory clearances from Central/State Governments or their agencies. The principal reason for delay in development of Phase-II is said to be on account of non-availability of coal linkage and other events such as environment/forest clearances, water availability sanction, and financial closure have to logically follow the confirmation of availability of coal

linkage. The petitioner has stated that it has been following up the matter with Ministry of Coal for grant of coal linkage. However, in view of looming uncertainties, it anticipates an abnormal delay in the implementation of the Phase-II of the project, though the petitioner is unable to guesstimate the expected commissioning date of Phase-II. In the light of this, the petitioner under its letter dated 17.10.2011 has requested the first respondent to keep LTA granted for Phase-II in abeyance. The request was followed by the petitioner's subsequent letter dated 16.1.2012.

5. The first respondent after examination of the request of the petitioner recommended the matter for discussion and deliberation in the meeting of the Standing Committee on Power for Eastern Region. Accordingly, the request of the petitioner was deliberated upon in the meeting of the Standing Committee convened by Central Electricity Authority (CEA), the second respondent, on 8.2.2012. At the meeting, view expressed was that the request of the petitioner was genuine. The question of stranding of the transmission capacity was also deliberated and it was felt that no capacity would get stranded because in addition to IPPs, other generating companies like NTPC were ready to utilize the transmission capacity likely to become available consequent to reduction of capacity allocated to the petitioner. The Standing Committee, however, advised the petitioner to approach this Commission for appropriate directions. Accordingly, the present petition has been filed. The petitioner has sought permission for reduction of the LTA quantum from 1600 MW capacity to 800 MW capacity without payment of any compensation to the first respondent.

6. The first respondent in its reply dated 31.5,2012 has generally not controverted the petitioner on the factual matrix narrated in the petition. It has brought to this Commission's notice clause 6 (a) of the BPTA which provides for payment of compensation in case of defaults by the developer, though the first respondent itself has not staked claim for compensation. Clause 6 (a) of the BPTA is reproduced below:

"In case any of the developers fail to construct the generation station/ dedicated transmission system or makes an exit or abandons its project, POWERGRID shall have the right to collect the transmission charges and/or damages as the case may be in accordance with the notification/regulation issued by CERC from time to time. The developer shall furnish a Bank Guarantee from a nationalized bank for an amount which shall be equivalent to Rs. 5 (five) Lakhs/MW to compensate such damages..... "

7. The first respondent has submitted that a number of generation projects set up by IPPs are coming up in the State of Odisha though the pattern of growth of these projects was initially not known with certainty. Accordingly, the first respondent has explained, a minimum transmission system was planned to facilitate evacuation of power from these projects, and the transmission system is under various stages of construction. Therefore, with the delay in commissioning of Phase - II of the project of the petitioner, there is no apprehension of stranding of any capacity in the transmission system planned. The first respondent too has suggested that in case LTA of the petitioner is reduced, it may be permitted to make a fresh application for seeking connectivity and LTA, when implementation of Phase - II achieves concrete progress. The second respondent has pointed out that reduction in LTA capacity of the petitioner will cause reduction in injection of power into the inter-State transmission system and thereby marginally

increase the share of other IPPs in the PoC charges as these charges are directly related to injection of quantum of power in the inter-State transmission system. The first respondent has, however, urged that the construction Bank Guarantee submitted by the petitioner (₹5 lakh/MW) should not be reduced corresponding to surrender of LTA of 800 MW by the petitioner till the transmission system becomes operational. The first respondent has suggested that the construction Bank Guarantee may be reduced or refunded on reviewing the situation once it becomes certain that no transmission capacity will remain stranded after commissioning of the transmission system.

8. The second respondent, CEA in its letter dated 24.5.2012 after referring to the deliberations at the Standing Committee meeting held on 8.2.2012 has recommended that 800 MW LTA for Phase – II of the petitioner's generating station may be kept in abeyance and the same may be revived after considerable progress in getting the necessary clearances for Phase - II units is achieved. As suggested by the first respondent, the second respondent too has suggested that the petitioner be advised to make a fresh application for seeking connectivity and LTA to the inter-State transmission system and the BPTA needs to be modified accordingly.

9. The petitioner in its affidavit dated 5.7.2012 has sought for refund of proportionate bank guarantee for 800 MW quantum of power.

10. Pursuant to the directions by this Commission, the first respondent has filed an affidavit dated 28.9.2012. It has explained that the comprehensive transmission system was planned for evacuation of power

from the generation projects of IPPs in the State of Odisha and Srikakulam area in Southern Region, envisaging two 765 kV D/C lines in Angul – Jharsuguda – Dharamjayagarh section and HVDC bi-pole. The first respondent has stated that seven IPP generation projects with total capacity of 10090 MW were coming up in the State of Odisha. However, IPPs applied for LTA for capacity of 6080 MW only. Therefore, the first respondent in consultation with the second respondent took up construction of one 765 kV transmission line in Angul – Jharsuguda – Dharamjayagarh section for evacuation of Phase – I of generation projects with total capacity of 4000 MW, likely to be commissioned by May 2014. The first respondent has stated that the second 765 kV D/C transmission line also under implementation is planned to be commissioned by April/May 2015, coinciding with the commissioning of Phase–II of the generation projects. In such a situation, capacity equivalent to Phase – II of the project of the petitioner would be stranded unless some other projects come up by that time. The first respondent has, however, stated that the capacity of the transmission system would have remained unaltered even if Phase – II of the petitioner's project had not been conceived at all. For most of the elements of the transmission system under construction in the State of Odisha, the first respondent has indicated the anticipated date of commissioning as May 2014.

11. We heard learned counsel for the petitioner and the representatives of the respondents. At the hearing, the representative of the first respondent clarified that in case the petitioner does not avail of LTA for the entire

sanctioned capacity of 1600 MW, the transmission network would be less stressed as it has planned for skeleton network. He further clarified that with the entire generation not coming up as initially scheduled, the system would be less stressed, otherwise the system would have been over utilized and over stressed.

12. The Commission in its interim order dated 22.1.2013 directed the CTU as under :-

"We direct the CTU to examine the case and submit under affidavit by 25.1.2013 its considered views on the quantum of stranded capacity on account of surrender of 800 MW by LBPL, its effect on the liability of other users under the POC regime and retention / refund of construction Bank Guarantee with cogent reasons."

13. CTU in its reply has submitted as under :-

"A comprehensive transmission system has been planned for evacuation of power from Phase-I generation projects in Orissa and the Srikakulum generation project in Southern Region. Under this scheme, 2 nos. of 765 kV/ D/c corridors are envisaged in Angul-Jharsuguda-Dharamjayagarh section. The first corridor is associated with phase-I generation projects of Orissa having about 6000MW LTA quantum, while the second corridor is associated with phase-II generation projects of Orissa as well as Srikakulum generation project of SR having about 3900MW LTA quantum.

The investment for the above transmission scheme has been made based on the commitment from the generation project developers. Now, the developer of Lanco Babandh generation project has requested for surrender of 800 MW committed power. We have also received a communication from another developer of Phase-I generation projects in Orissa viz. Navbharat generation project (installed capacity 1050 MW, LTA capacity 720MW requesting to revise the LTA commencement date from Mar-2012 to Mar-2015, as the project is getting

delayed. Similar requests have also been received from generation projects in other high capacity corridors.

Hence, it may be mentioned that POWERGRID, based on the commitment to pay the transmission charges by different developers as well as the regulatory approval of CERC, is in the advanced stage of implementation of the high capacity transmission corridors. Now, different IPPs due to various reasons are making efforts to reduce LTA quantum and at this stage it is difficult to assess real situation which will likely to happen at the time when transmission assets will actual be commissioned. The decision regarding the stranded capacity can be made only at the time when different phases of the transmission system are commissioned. Accordingly, at this stage, it may not be appropriate to make any decision on the same."

14. We have perused the record of the case and have also considered the submissions of the parties.

15. The petitioner has indicated that on Angul there are other generators in addition to Lanco – Babandh are granted LTA. With reduced LTA of 800 MW for Lanco Babandh, there would be 5280 MW of LTA at Angul which is more than the capacity of transmission system. If the energy generated by this generator is considered then PoC charges would recover the investment in the transmission system created under HCPTC-I without affecting other beneficiary in any way. The transmission charges incident at Angul & Jharsugunda are divided by the average energy injection by all these generators and Lanco – Babandh which has an installed capacity of 1320 MW will also share this. Hence, having a LTA of 800 MW in place of 1600 MW is not likely to affect other beneficiaries in any way or burden them with additional charges for transmission system. Hence there will not be any stranded capacity.

16. The first respondent in its affidavit dated 28.9.2012 has stated that the capacity of the transmission system would have remained unchanged even if Phase – II of the petitioner’s project had not been conceived at all. From this it follows that the petitioner’s request for allocation of 800 MW of the transmission capacity for Phase – II did not influence the transmission system planned and undertaken for construction by the first respondent. As a corollary it further follows that non-materialisation of capacity of 800 MW reserved for Phase – II of the petitioner’s project will not be of any consequence so far as the construction of the planned transmission network is concerned. Therefore, there cannot be any valid objection to surrender of transmission capacity of 800 MW.

17. The CTU in Petition No 233/2009 as per order dated 31.05.2010 in regard to High Capacity Power Transmission Corridor –I (HCPTC-I) has clarified as follows:

"A. HCPTC-I : Corridor for Orissa IPPs

With regard to HCPTC – I, the CTU has submitted as under:

“This corridor has been proposed for transfer of power from 7 nos of IPPs in the State of Orissa seeking LTOA for about 6080 MW. Based on the present exercise, it has been observed that about 3000 MW power injection from projects, where there is good physical progress (viz. GMR-800 MW, Monnet-900 MW, Sterlite-400 MW & Ind-Barath-616 MW), is likely to materialize with good level of certainty. As regards, the utilization of proposed HCPTC-I, it is pertinent to mention the proposed corridor envisages only skeleton transmission system which in any case shall be required even if 50% of the LTOA quantum (6000 MW) is materialized.

In view of the above, it is proposed that HCPTC-I may be taken up for implementation, however, the commissioning of the elements shall be phased out keeping in view the progress of the generating units.”

After examination of the submissions made by CTU, we are of the view that out of the seven IPPs, four developers have signed the BPTA and submitted the Bank Guarantee. The report of physical progress shows that work is in progress in all these projects. The remaining three projects viz. Sterlite (Long-term access (LTA) sought for 400 MW), Jindal India Thermal Power (LTA for 1044 MW) and Navbharat Power Pvt. Ltd. (LTA for 720 MW) have submitted the Bank Guarantee, though they have not signed the BPTA as yet. However, out of these, both Sterlite and Jindal India Thermal Power have fulfilled all the milestones shown in Annexure-I. In the case of Sterlite, commissioning of Unit no. I is also under progress. All these plants have also awarded the EPC contract. We fully agree with the suggestion of the CTU that HCPTC-I be taken up for implementation. However, the commissioning of the projects shall be phased out in keeping with the progress of the generating units."

18. As such, there are 7 generators which are beneficiary of this transmission corridor and this transmission system was initially constructed for 50% of the LTA in which Lanco LTA was considered as 1600 MW and therefore, by surrendering 50% of that there is no standard capacity as the system itself was conceived only for 50% of the capacity.

19. From the facts available on record it clearly emerges that with the reduction in transmission capacity allocated to the petitioner, there is no likelihood of stranding of the transmission capacity available for Phase – I. However, in the affidavit of 28.9.2012, the first respondent has stated that with the surrender of the transmission capacity of 800 MW on the commissioning of the complete transmission system, the capacity equivalent to Phase – II of the generation project of the petitioner would be stranded unless some other projects come up by that time. In the meeting of the Standing Committee held on 8.2.2012 it was specifically brought out that no capacity would get stranded because in addition to IPPs, other generating companies like NTPC were ready to utilize the surplus transmission capacity

becoming available consequent to reduction of capacity allocated to the petitioner. Therefore, there is no possibility of capacity getting stranded after surrender of capacity of 800 MW by the petitioner.

20. In context of PoC charges payable by other developers, the first respondent has stated that reduction in capacity of the petitioner would marginally increase the liability of other IPPs to pay these charges since these charges are computed *inter alia* by accounting for the quantum of power injected at the point of interconnection. The methodology of computation of PoC charges was designed specifically with the object that only users of a particular system pay the PoC charges to safeguard the interest of Home State like Odisha. The provision of Sharing Regulation under Regulation 7 (t) is as given below:-

"The Implementing Agency shall aggregate the charges for geographically and electrically contiguous nodes on the ISTS to create zones, in order to arrive at uniform zonal charge in Rs / MW / month. Implementing Agency shall create zones for generation and demand. Such zoning shall be governed by the following considerations:

Zones -----

Transmission charges for thermal power generators either directly connected with ISTS or through pooling stations that are designed to handle generation capacity of more than 1500 MW for inter-state transfer shall be determined as charges at these specific nodes (such nodes would be considered as separate generation zones) and not clubbed with other generator nodes in the area.

Transmission charges for hydro power generators either directly connected with ISTS or through pooling stations that are designed to handle generation capacity of more than 500 MW for inter-state transfer shall be determined as charges at these specific nodes (such nodes would be considered as

separate generation zones) and not clubbed with other generator nodes in the area."

21. This provision was made to take care of IPPs which are located in coal bearing areas like Odisha, Jharkhand and Chhattisgarh and selling power to NR & WR. There is no implication on the Home State due to transmission system created for evacuation of IPPs power. This Regulation was further amended vide sharing Regulation which is given below:-

"Any inter-State generating Station directly connected to the 400kV inter-State Transmission System shall be treated as a separate zone and shall not be clubbed with other generator nodes in the area, for the purpose of calculation of PoC injection rate;"

22. From the above, it is clear that transmission system created beyond Angul is to be paid by either these IPPs or their customers and no other user will be affected by this transmission system as he need not to pay for this transmission system.

23. We have already noted that IPPs and other generating companies like NTPC are available to utilize the surplus transmission capacity. In this manner, any reduction in injection of power by the petitioner will be offset against injection of power by the other generators ready to use the surplus capacity. Thus there is no possibility of increasing liability of IPPs even marginally. Further, as noted above, the first respondent's submission is that allocation of 800 MW of the transmission capacity to the petitioner in the first instance would not have influenced the capacity planned. For this reason

too, the surrender of 800 MW capacity now does not increase the liability for payment of PoC charges.

24. We therefore conclude that surrender of capacity by the petitioner neither causes stranding of transmission capacity nor does it affect the liability of others for payment of PoC charges

25. Regulation 18 of the Long-term Access Regulations with regard to relinquishment of access rights provides as follow:

"Relinquishment of access rights

(1) A long-term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity as follows

(a)-----

(b) Long-term customer who has not availed access rights for at least 12 (twelve)8years - such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access right."

26. A long-term customer is liable to pay compensation of an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of twelve years of access right in case he relinquishes access right before expiry of period of 12 years. In the present case, we have held that there will not be stranding of the transmission capacity. As such, the petitioner is not liable to pay any compensation. Incidentally, the first respondent has not claimed any compensation in case the petitioner is allowed surrender the capacity.

27. The petitioner has stated that the coal linkage presently allotted with other developers for a total capacity of 10000 MW is inadequate to meet its full requirements for Phase – I and Phase – II of the project. Therefore, the petitioner submitted an application dated 1.7.2008 to Ministry of Coal for grant of additional coal linkage. The petitioner has submitted that its application is pending with the Standing Linkage Committee of Ministry of Coal, which has not met since January 2010. The petitioner is not optimistic about allocation of coal linkage even if the Committee meets because of shortage of coal in the country, though the petitioner is stated to have pursued the matter with Ministry of Coal. Therefore, according to the petitioner, there is complete uncertainty regarding availability of coal for Phase – II of the project. The petitioner has stated that Ministry of Environment and Forests insists on long-term coal linkage and water sanction before according environment clearance. The petitioner has also stated that the State level environment authorities issue the 'Consent for Establishment' which authorises construction only after issue of environment clearance. The petitioner has further stated that it applied for water sanction for Phase – II to the State Government on 9.2.2008, but the Government has not yet given approval for water. Further, according to the petitioner, under the present scenario of uncertainty, the financial institutions are unwilling to fund Phase – II of the project. These facts have not been disputed by the first respondent. It thus transpires that construction of Phase – II of the project is linked to coal linkage by Ministry of Coal. It is matter of common knowledge that because of overall shortage, many coal-based thermal power

projects are unable to take off. Therefore, delay in construction of Phase – II of the petitioner's project on account of non-availability of coal linkage is for reasons beyond the control of the petitioner.

28. In the petition, the petitioner has requested to keep LTA in abeyance and has stated that it would approach the first respondent for revival of LTA once the necessary clearances for Phase – II of the project have been obtained. Under the Long-term Access Regulations there is no provision for keeping LTA in abeyance. Also, in case LTA is kept in abeyance, the first respondent will not be able to allocate the corresponding capacity to any other person. When this was pointed out to learned counsel for the petitioner, he confirmed that the petitioner was seeking to relinquish the access right and was not insisting on keeping LTA in abeyance. In the facts and circumstances of the present case, we allow the petitioner to relinquish the long-term access rights to the tune of 800 MW, without payment of any compensation. The petitioner shall be at liberty to make a fresh application at any stage for grant of long-term access and the application, as and when made, shall be considered by the first respondent in accordance with the Long-term Access Regulations, as applicable.

29. The first respondent has argued that the construction Bank Guarantee submitted by the petitioner (₹5 lakh/MW) corresponding to surrendered LTA of 800 MW by the petitioner should not be refunded till such time the transmission system becomes operational and it becomes certain that no transmission capacity will remain stranded. The discussion in the previous

part of this order has established the fact that no transmission capacity is likely to get stranded. Therefore, we do not think that under these circumstances, the first respondent should be permitted to retain construction Bank Guarantee corresponding to surrendered capacity of 800 MW. We direct the CTU to release the construction Bank Guarantee to the petitioner corresponding to the quantum of LTA surrendered, within one month from the date of this order.

30. With the above directions, the petition stands disposed of.

Sd/-
(V.S.Verma)
Member

sd/-
(Dr. Pramod Deo)
Chairperson

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION NO. 118/ MP/2012

**Dr. Pramod Deo, Chairman
Shri V.S. Verma, Member
Shri M Deena Dayalan, Member**

**Date of Hearing: 16.05.2013
Date of Order : 14.06.2013**

In the matter of

Filing of petition under Regulation 32 of the CERC (Grant of Connectivity, Long-term Access, Medium-Term Open Access in Inter-State Transmission and related matters) Regulations, 2009 read with Chapter 2 of CERC Conduct of Business Regulations 1999 for keeping the Long-Term Access (LTA) of Phase –II (Unit III & IV) of Lanco Babandh Power Ltd (LBPL) under abeyance in the BPTA between LBPL and PGCIL and reduce the LTA quantum from 1600 MW to 800 MW till necessary statutory clearances and permissions are obtained

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Shri R.Jhala, LBPL
Shri Ramchandra, PGCIL
Shri Ashok Pal, PGCIL

Per: Shri M. Deena Dayalan, Member

ORDER (PART II)

I have the privilege of going through the order Part I of learned Members of the Commission, Dr Pramod Deo, Chairperson and Shri V S Verma, Member



directing the CTU to release the construction Bank Guarantee to the petitioner after coming to the conclusion of the fact that no transmission capacity is likely to get stranded despite specific recommendation of the respondent No.1, that is Power Grid Corporation of India Ltd that the construction bank guarantee submitted by the petitioner namely LANCO Babandh Power Ltd, Gurgaon (₹.5 lakh per MW) corresponding to the surrendered LTA of 800 MW should not be refunded till such time the transmission system becomes operational and it becomes certain that no transmission capacity will remain stranded as a result of premature surrender of the LTA granted for 25 years. I respectfully disagree with the said order and I am recording my views in the succeeding paragraphs.

2. The petitioner, Lanco Babandh Power Ltd has filed this petition under Regulation 32 of the CERC (Grant of Connectivity, Long-term Access, Medium-term Open Access in Inter-State Transmission and related matters) Regulations, 2009 (Connectivity Regulations) with the following prayers, namely:

- “(a) To keep the Long Term Access (LTA) of Phase - II (Unit III & IV) of LBPL under abeyance and to allow revision in the LTA schedule for reduction of LTA quantum from 1600 MW to 800 MW in the BPTA between LBPL and PGCIL without payment of any compensation to PGCIL for such reduction in LTA capacity.*
- (b) To grant any other relief as the Hon'ble Commission may consider appropriate.*
- (c) The petitioner craves leave of the Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice.”*

3. Brief facts of the case leading to the filing of this petition are that the petitioner planned to implement a coal based thermal power generating station in Dhenkanal District in the State of Odisha in two phases of 1320 MW each. The petitioner applied for LTA to CTU on 22.10.2007 for 1600 MW which was granted on 29.4.2009 and BPTA was signed on 24.2.2010 for 800 MW for Phase I and 800 MW for Phase II. The petitioner has submitted that the Phase I of the project has received all necessary permits and clearances and construction work is going on at full swing and the project is expected to be commissioned on schedule. The development of Phase II of the project has been delayed due to delay in receipt of approval for coal and water linkage and statutory environmental clearance. Though the petitioner has been following for the coal linkage with Ministry of Coal and water linkage with Govt of Odisha, in view of the uncertainties which are beyond its control, the petitioner anticipates abnormal delay in implementation of the project. The petitioner requested CTU to keep the LTA in abeyance with a request to approach the CTU for revival of the LTA after necessary clearances are obtained for Phase II of the project. The request of the petitioner was discussed as an agenda in the Standing Committee Meeting on Power for Eastern Region held on 8.2.2012 and it emerged during the discussion that the transmission capacity would not get stranded on account of surrender of 800 MW LTA by the petitioner as there are other applicants like NTPC etc. to utilise the proposed surrendered capacity. The petitioner was advised to approach this Commission for a decision in the matter. In the light of the above background, the petitioner has filed the present petition for

reduction of the LTA quantum from 1600 MW to 800 MW without payment of any compensation to CTU.

4. The respondent, CTU in its reply has submitted that the request of the petitioner raises two issues, namely, stranded transmission capacity and changes in PoC charges. As regards the stranded transmission capacity, the respondent has submitted that keeping in view the uncertainty of development of generation projects in Odisha due to a variety of reasons, a minimum transmission system was planned to facilitate evacuation of power from these projects and therefore, due to the delay in execution of the Phase II of the petitioner's project, stranded capacity in the transmission system is not apprehended. The respondent has submitted that change in injection of power from 2640 MW to 1320 MW with the corresponding reduction in LTA capacity from 1600 MW to 800 MW would marginally affect the PoC charges. The respondent has submitted that the LTA of the petitioner for 800 MW capacity may be kept in abeyance till considerable progress in getting the necessary clearance is achieved and the petitioner shall be required to make a fresh application for connectivity and LTA after it achieves sufficient progress in getting clearances. The respondent has further submitted that the construction bank guarantee submitted by the petitioner shall not be reduced corresponding to surrendering of LTA of 800 MW till the transmission system becomes operational and it is ensured that no transmission capacity remains stranded as the same depends upon continuance of other developers. The respondent has submitted that the

bank guarantee shall be reduced/refunded after reviewing the situation on declaration of date of commercial operation.

5. CEA in its reply dated 23.5.2012 has expressed the view that "800 MW LTA for LBPL's Phase II units may be kept in abeyance and the same may be revived after the considerable progress in getting the necessary clearances for those two units are achieved. When the activities for implementation of 3rd and 4th unit achieves any progress, the generation developer is advised to make a fresh application for seeking connectivity, LTA to ISTS etc. BPTA needs to be modified accordingly."

6. The Commission in its interim order dated 22.1.2013 directed the CTU to submit the following information:

"We direct the CTU to examine the case and submit under affidavit by 25.1.2013 its considered views on the quantum of stranded capacity on account of surrender of 800 MW by LBPL, its effect on the liability of other users under the POC regime and retention / refund of construction Bank Guarantee with cogent reasons."

7. CTU in its reply vide affidavit dated 22.2.2013 has submitted as under:

"A comprehensive transmission system has been planned for evacuation of power from Phase-I generation projects in Orissa and the Srikakulum generation project in Southern Region. Under this scheme, 2 nos. of 765 kV/ D/c corridors are envisaged in Angul-Jharsuguda-Dharamjayagarh section. The first corridor is associated with phase-I generation projects of Orissa having about 6000MW LTA quantum, while the second corridor is associated with phase-II generation projects of Orissa as well as Srikakulum generation project of SR having about 3900MW LTA quantum.

The investment for the above transmission scheme has been made based on the commitment from the generation project developers. Now, the developer of Lanco Babandh generation project has requested for

surrender of 800 MW committed power. We have also received a communication from another developer of Phase-I generation projects in Orissa viz. Navbharat generation project (installed capacity 1050 MW, LTA capacity 720MW requesting to revise the LTA commencement date from Mar-2012 to Mar-2015, as the project is getting delayed. Similar requests have also been received from generation projects in other high capacity corridors.

Hence, it may be mentioned that POWERGRID, based on the commitment to pay the transmission charges by different developers as well as the regulatory approval of CERC, is in the advanced stage of implementation of the high capacity transmission corridors. Now, different IPPs due to various reasons are making efforts to reduce LTA quantum and at this stage it is difficult to assess real situation which will likely to happen at the time when transmission assets will actually be commissioned. The decision regarding the stranded capacity can be made only at the time when different phases of the transmission system are commissioned. Accordingly, at this stage, it may not be appropriate to make any decision on the same."

8. I have perused the records of the case and have also considered the submissions of the parties.

9. As per the Connectivity Regulations and the Detailed Procedure issued thereunder, the LTA holder is required to give a bank guarantee @ ₹.5 lakh/MW which will remain valid till the commissioning of the transmission system. Relevant extract of the Detailed Procedure is extracted below:

"7.3 *****Further applicant shall furnish Bank Guarantee (BG) for the amount EITHER (a) at the rate of Rs. 2.5 lakhs/MW (or such amount as amended from time to time, with the approval of the Commission)) if the connectivity requires transmission lines upto 20 kms OR (b) at the rate of Rs. 5 lakhs/MW (or amount as amended from time to time in the Regulations if the connectivity requires transmission lines more than 20 kms. The BG as per format given at **FORMAT-CON-7** should be made in favour of CTU / Transmission licensee within one month of signing of transmission agreement with validity upto commissioning of above transmission system."

10. According to the above provisions, the bank guarantee shall be deposited within one month of signing the transmission agreement and shall remain valid upto the commissioning of the transmission system. The petitioner has paid the bank guarantee for ₹80 crore for 1600 MW. The petitioner while signing the agreement for Long Term Open Access with Power Grid Corporation of India Ltd has in Annexure 1 specifically mentioned that it would require 1600 MW LTOA (NR 650 and WR 950) and also indicated dates of commissioning of different units as Unit 1 : December 2013, Unit 2 : April 2014, Unit – 3: August 2014 and Unit – 4: December 2014. On this basis, the PGCIL has gone ahead with planning investments and execution of the transmission projects. The petitioner has now prayed for refund of the bank guarantee for 800 MW as there is delay in the Phase II (Unit 3 and 4) of the generating station due to delay in grant of coal linkage and water linkage. However, the petitioner is interested for execution of Phase II of the project subject to availability of coal and water linkage. In my view, these cannot be considered as sufficient reasons for not implementing the project which are beyond the control of the petitioner. Imported coal and e-auction coals are available. As regards the water linkage, the case of the petitioner has not been rejected but is pending with the Govt of Odisha. It is possible that Phase II of the generating station may take off sooner than it is expected.

11. As per the Clause 5 and 6 of the agreement for Long Term Open Access between PGCIL and the petitioner, the petitioner has to pay

compensation in accordance with the CERC Regulations issued from time to time. The provisions are as under:

"5. The long term transmission customer shall not relinquish or transfer his rights and obligations specified in the bulk power transmission agreement without prior approval of PGCIL and the CERC and subject to payment of compensation in accordance with the CERC Regulations issued from time to time.

6. a) In case of any of the developers fail to construct the generating stations/dedicated transmission system or makes an exit or abandon its project, POWER GRID shall have the right to collect the transmission charges and/or damages as the case may be in accordance with the notification/regulation issued by CERC from time to time. The developer shall furnish a bank guarantee from a nationalised bank for an amount which shall be equivalent to Rs.5 (five) lakhs/MW to compensate such damages....."

12. The petitioner can relinquish the LTOA rights subject to payment of compensation as per Regulation 18 of Grant of Connectivity, Long Term Access and Medium Term Open Access in Inter-State Transmission and related matters, Regulations 2009 which is extracted as under:

"18. Relinquishment of access rights

(1) A long-term customer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for stranded capacity as follows

(a)-----

(b) Long-term customer who has not availed access rights for at least 12 (twelve)8years - such customer shall pay an amount equal to 66% of the estimated transmission charges (net present value) for the stranded transmission capacity for the period falling short of 12 (twelve) years of access right."

13. From the above it emerges that the LTA customer has to make payment of compensation for the stranded transmission capacity if it intends to relinquish the LTA rights. It follows that only if there is no stranded capacity, then the LTA customer can be allowed to relinquish the LTA rights

without any compensation and in that event, the construction bank guarantee can be refunded if the transmission line has not been commissioned.

14. The Commission wanted a categorical statement from the CTU whether there would be any stranded capacity if the petitioner is allowed to surrender LTA for 800 MW. CTU in its reply dated 22.2.2013 has submitted that "now, different IPPs due to various reasons are making efforts to reduce LTA quantum and at this stage it is difficult to assess real situation which will likely to happen at the time when transmission assets will actually be commissioned. The decision regarding the stranded capacity can be made only at the time when different phases of the transmission system are commissioned. Accordingly, at this stage, it may not be appropriate to make any decision on the same. When the CTU is not in a position to confirm about the stranded capacity on account of the tendency on the part of the project developers to reduce the LTA quantum, it would not be proper for the Commission to come to the conclusion that there would not be any stranded capacity on account of surrender of the LTOA for 800 MW by the petitioner. The CTU has also stated that the investment for the 1st and 2nd Corridors of the transmission scheme has been made based on the commitment from the generation project developers. As the investments have already been made, the planning and execution of work has been taken up, it would be against the interest of the PGCIL if the generators who have applied for LTOA and have given commitment are allowed to withdraw for reasons not acceptable.

15. According to CTU vide their reply dated 28.9.2012, the first 765 kV D/C line is expected to be commissioned by May 2014. As per the information available at that time, projects with LTOA capacity of about 4000 MW are expected to be commissioned by that time. The 765 kV D/C line along with transmission system would just suffice the evacuation need for the above power, and during n-1 contingency the loading on the other circuit is expected to be critical. Hence, CTU had opined that technically there would not be any stranded capacity till the 2nd 765 kV D/C line comes up which is also under implementation and planned to be commissioned by April-May 2015. With the commissioning of the 2nd 765 kV D/C line the capacity equivalent to 3rd and 4th unit of the generation project of the petitioner would be stranded unless other generation projects come up by that time. Therefore, as stated by the CTU, the position of stranded capacity can only be ascertained when the transmission system is commissioned.

16. Regarding PoC charges, CTU has stated that the transmission system associated with Phase I generation projects of Odisha would be a part of the ISTS for which the transmission tariff would be shared under PoC by all the utilities for injection and drawl of LTOA power. For the generation project of the petitioner (LBPL), the injection charge at Angul pooling point would be applicable for injection of 1600 MW LTOA power if all 4 units of LBPL come up and 800 MW LTOA power if only 2 units of LBPL come up, and the difference in the transmission charges would have to be shared by all other users of ISTS. Moreover, any decision to allow the surrender of LTOA without it being replaced by any fresh LTOA customer would result in

increasing the liability of existing LTOA customers for injection charges under the PoC regime.

17. In my view, it would be prudent to wait till the commissioning of the transmission system before deciding the issue of stranded capacity and the request of the petitioner for refund of bank guarantee. At this stage, no relief can be granted to the petitioner.

18. In view of the above discussion, the petition is dismissed.

sd/-
(M Deena Dayalan)
Member