

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 311/MP/2013

Subject : Petition under section 79 (1) (f) & (c) read with section 38 (2) (c) & (d) of the Electricity Act, 2003 and proviso to Regulation 8.8 of the Central Electricity Regulatory Commission (grant of Connectivity, long term access and medium term open access in inter-state transmission and related matters) Regulations, 2009 seeking a direction against the respondent to construct the associated transmission system for evacuation of power from 2640MW, Bhavanapadu Thermal Power Project in Srikakulam district of Andhra Pradesh.

Date of hearing : 24.4.2014

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member

Petitioner : East Coast Energy Private Limited

Respondent : Power Grid Corporation of India Limited

Parties present : Shri Rajiv Bhardwaj, Advocate, ECEPL
Shri A.M. Pavgi, PGCIL
Shri A. Bhargava, PGCIL

Record of Proceedings

Learned counsel for the petitioner submitted that the petitioner, East Coast Energy Private Limited (ECEPL) is a generating company and is implementing 2640 MW, Bhavanapadu thermal power project (Project) located in Srikakulam district of Andhra Pradesh in two Phases. Each Phase comprises two units of 660 MW each with the aggregate capacity of 1320 MW. The first unit of the first phase is slated for commissioning in December 2015 and the second unit in March 2016. The second phase shall be commissioned subsequently after a gap of 12 to 18 months.

2. Learned counsel for the petitioner submitted that the present petition has been filed under the Central Electricity Regulatory Commission (Grant of Connectivity, Long term Access and Medium term Open Access in inter-State Transmission and related matters) Regulations, 2009 (Connectivity Regulations) on account refusal by CTU to grant of connectivity for its 2640 MW project. Learned counsel submitted as under:

(a) On 11.10.2007, the petitioner applied for grant of LTA to PGCIL for its 2640 MW Bhavanapadu TPS (Phase-I and II) with target beneficiaries in NR, WR and SR. On 3.6.2009, the respondent sent the agenda for the meeting for Long Term Open Access applications in the Southern Region. In the said LTOA meeting, SR constituents acknowledged that the petitioner had revised the allocation to target regions and now bulk of the generation would be supplied to the target beneficiaries in the Southern Region.

(b) On 3.7.2009, the petitioner requested the Respondent to phase out the development of the pooling station and associated transmission lines for evacuating the generation from Phase-I of the project only, as the Phase-II with 2x660 would be taken up at a later stage. The respondent vide letter dated 21.7.2009 advised the petitioner to modify LTOA application to 1320 MW and also to clearly specify the beneficiaries and the quantum to be supplied to each of them from Phase-I.

(c) In the Minutes of Meeting of SR constituents dated 13.4.2010 regarding long term open access application, it was informed that petitioner had revised its request for LTOA from 2640 MW to 1320 MW and also intended to supply 1000 MW to target beneficiaries in SR and rest to WR with the date of commencement of Open Access as March, 2013. The respondent acknowledged that the petitioner has revised target beneficiaries but came to the conclusion that there is no need for fresh system study for the revised allocation as the power allocations to SR constituents shall be displaced by the power allocated to NR/WR constituents in other generating projects in Tamil Nadu through principle of displacement.

(d) The petitioner's application was considered by the respondent under the Open Access Regulation, 2004 whereas the BPTA was signed on 5.7.2010 under the Connectivity Regulations (w.e.f. 1.1.2010). CTU has recognized that on the date BPTA was signed the operating statute or law was Connectivity Regulations. The Connectivity Regulations which came into effect from 1.1.2010 had provision that it would come into force after the procedure is revised by CTU and approved by the Commission. The procedure for making of application for grant of LTA to ISTS became the integral part of the Regulations and was approved by the Commission vide its order dated 31.12.2009.

(e) The petitioner was communicated the agenda for the meeting for LTOA for 2640 MW and was intimated that the whole system, which is being planned, was based on pooling station to be constructed either in the petitioner's switchyard or in the switchyard of the adjoining project. The petitioner was to implement the dedicated transmission line matching with the commissioning of pooling station to be implemented by PGCIL. The Commission has approved nine High Capacity Transmission Corridors, which included transmission system associated with IPP projects being developed in the Srikakulam area as HCPTC-VIII.

(f) In the 16th Meeting of SR constituents, the application of the petitioner was considered and on 6.5.2010, the intimation of revised LTOA was communicated by the respondent, wherein it was recognized that the dedicated transmission line from generation switchyard to Srikakulam pooling station was to be constructed by the petitioner. The respondent had incorrectly refused to entertain the petitioner's application since there is no specific time limit for LTOA applicant to migrate from 2004 Regulations to 2009 Regulations. Further, the petitioner cannot be burdened to bear the transmission charges as per the BPTA schedule for constructing the dedicated line matching with the generation project.

(g) Learned counsel for the petitioner relied upon the Hon`ble Supreme Court judgment in the State of Haryana and others Vs MP Mohla {(2007) 1 SCC457} and submitted that it is settled principle of law that "what cannot be done directly, cannot be done indirectly". If the Connectivity Regulations did not require the petitioner to construct the transmission line, CTU cannot insist on the petitioner to first construct a LILO and then extend it to its sub-station which amounts to asking the petitioner to construct the dedicated transmission line.

3. The representative of the respondent submitted as under:

(a) The petitioner approached with an application for LTOA for 2640 MW which was later on modified for a quantum of 1320 MW in July 2009. The BPTA was signed on 5.7.2010 which clearly indicates the dedicated part to be implemented by long-term access applicant (East Coast Energy Private Limited). The same was stated after the regulatory approval was granted to the respondent in May, 2010. Hence, the argument regarding putting HCPTC-VIII does not hold any meaning at all.

(b) The petitioner had been taking all measures for implementation of the dedicated transmission line as per the BPTA signed with POWERGRID. The petitioner has obtained section 68 approval from Ministry of Power in June, 2011 and the public notice and gazette notification regarding section 164 approval was done on 7.1.2014. The petitioner is delaying the process of implementation of the dedicated transmission line.

4. The learned counsel for the petitioner submitted that it was not aware about the approval of Section 164 and the petitioner has come to know the fact only now.

5. In response to the Commission's query as to reasons for not challenging the order dated 26.3.2010 in Petition No. 233/2009 in which the petitioner was a party, learned counsel for the petitioner submitted that there was no need for challenging the order of the Commission as inception report submitted and approved provides for locating the pooling station at petitioner's switchyard and the order of the Commission was consistent with the inception report. The petitioner went ahead with the planning of LILO line under the belief that LILO line is its responsibility and the pooling station would be located close to LILO connection point. As the Berhampur- Gazuwaka 400 kV D/C

line is getting delayed, construction of LILO line is not serving any purpose. Learned counsel submitted that the construction of the line, in any case, is not a legal obligation of the petitioner under the connectivity Regulations, 2009. Learned counsel further submitted that expenditure of about ` 140 crore in constructing a line would increase the capacity charge of generated electricity and make the petitioner's bids uncompetitive vis-à-vis other generators who did not have to build the evacuation line. Learned counsel submitted that since the 1st unit is scheduled in December, 2015, if the line from pooling station to its plant does not come in time, it will not be able to avail start up power to its plant. Learned counsel submitted that CTU is required to provide connectivity with the grid under the Connectivity Regulations, 2009.

6. The representative of the respondent submitted that if the petitioner's main intention is to get start-up power, POWERGRID is scheduling the commissioning of Srikakulam pooling station in June 2015 and petitioner's 1st unit is expected to come in December 2015, and the line is also likely to be ready by then, the petitioner can draw startup power based on that.

7. After hearing the learned counsel for the petitioner and representative of the respondent, the Commission directed the petitioner to submit, on affidavit, by 20.6.2014 technical schedule for time required from boiler light up to the stage of commissioning of the unit. The Commission also directed the petitioner to submit the PERT chart of the complete activity up to the COD of the unit.

8. The Commission directed the petitioner to place on record the approval under Section 68 and 164 of the Electricity Act, 2003. The Commission further directed the petitioner to submit the programs/schedule for construction of line till Srikakulam pooling station in the light of the approval under Section 164 of the Act.

9. Subject to above, the order in the petition is reserved.

By order of the Commission

Sd/-
(T. Rout)
Chief (Law)